

The Carly Ryan Foundation

Recommendations for Enhancing Children's Online Safety

Public consultation

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Statement from The Carly Ryan Foundation

Online issues cannot be mediated or overcome by a single, central body of control due to the far-reaching impacts and influences of the online realm. For this reason The Carly Ryan Foundation recommends the integration and harmonization of all organizations associated with online issues relating to children.

Currently, there is both overlap and gaps in the resources available to those tackling online issues, such as cyber bullying, child grooming, and cyber harassment. In order to level out the resources and create a consistent and unified front against online issues, all organizations and agencies must come together and integrate their services to create a harmonized atmosphere where, together, they can be more productive in tackling online issues.

Educational agencies, law enforcement agencies, online issue-based foundations, organizations and services must come together to pool their resources, knowledge, and ability to reduce the gaps in the current system, and to promote more effective education and response to online issues.

This harmonization would best be implemented and promoted by the Children's e-Safety Commissioner during their trial period of operation.

We feel the coverage of social media sites and apps will be appropriate and workable if the necessary steps are taken to ensure all information is up to date and the relevant resources have been utilized.

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Key Definitions

Child/Children

For the purpose of this paper, the term 'child' or 'children' refers to any persons under the age of 18 years who is an Australian resident.

Complainant

The person making the complaint. This person can be of any age, and any relation to the target child.

Complaint

A complaint is a report made by a member of the public to the Children's e-Safety Commissioner that details the presence of harmful material on a social media site, with the wish for the harmful material to be removed.

Cyber bullying/harassment

Cyber bullying or cyber harassment refers to the act or acts of hurtful material, intimidation, oppression, threat, or repeated attack on another individual or group of individuals that occurs via electronic means. The electronic means is commonly, but is not limited to: text message, instant message, social media posts, social media comments, chat room comments, image distribution, and email.

Harmful material

The term 'harmful material' is incredibly broad and not well defined. Material harmful to one child may not elicit a response in another, and this must be recognized in order to construct a 'test of harm', which would be used in determining the harmful nature of all harmful material included within a complaint submitted to the Children's e-Safety Commissioner. Please see below for a list of items which are considered harmful by The Carly Ryan Foundation:

- pornographic images or text content
- threats of physical or mental harm
- negative comments concerning ability, age, culture, gender, mental capacity, physical appearance, race, religion, sexuality, sexual activity, socio-economic status, and social status
- false public accusation
- attempts of child grooming
- any comments which may trigger suicide or life-threatening mental health issues

Large social media site

To determine the criterion of a 'large social media site', it is important to consider the context of social media use. Many social media users are under the age of 18 years, and many social media sites do not index their users by age, making it difficult to adjust definitions to directly relate to children. It is also important to consider that, although there are hundreds of social media sites, only few are actively used by Australian residents due to the sites target demographic and intended audience.

With this information in mind, The Carly Ryan Foundations suggests that the term 'large social media site' is used to define social media sites which have over

100,000 active Australian users¹; or that the total number of active users is over 1% of the total Australian population².

It is important to acknowledge that most sites are linked to/controlled by smartphone apps. It is important that apps are included in the government's definition of social networking websites.

Offender

For the purpose of this paper, an 'offender' refers to a person of any age who participates in cyber bullying, cyber harassment, the distribution of harmful material, or child grooming via electronic means.

Online safety issues

An 'online safety issue' extends to all influences online activity may have on an individual's physical or mental wellbeing. These safety issues may include cyber bullying, harassment, revealing personal information (including school and home address), not using secure passwords for online resources, and online addictions.

Participating social media site

A 'participating social media site' refers to a social media site who agrees to the terms and conditions of the Children's e-Safety Commissioner and relevant schemes of rapid removal of harmful material.

Social media site

The term 'social media site' is used to refer to web-based services that allow individuals to construct a public or semi-public profile within a bounded system³, which is used as a means of networking and communication between individual users and groups who one shares a common connection with.

The Carly Ryan Foundation believes this definition extends specifically to online games with chat functions, smartphone apps and that such sites are included in all resulting definitions or legislation.

Target child

For the purpose of this paper, the term 'target child' is used to refer to a person under the age of 18 years who is the recipient of cyber bullying, cyber harassment, or is the intended target of harmful material.

¹Adcorp, Social Media Statistics January 2013, Australia and New Zealand, <http://www.adcorp.com.au/Social-Media-Statistics-January-2013-Aust-NZ>, 2013

² Australian Bureau of Statistics, Population by Age and Sex, States and Territories, <http://www.abs.gov.au/ausstats/abs@.nsf/0/AE3CAF747F4751CDCA2579CF000F9ABC?OpenDocument>, 2012, web

³ Boyd and Ellison, [Social Network Sites: Definition, History and Scholarship](#), Journal of Computer-Mediated Communication, 2008, Blackwell Publishing Limited

Establishing a Children's e-Safety Commissioner

The establishment of a Children's e-Safety Commissioner is vital in overcoming any issues relating to cyber bullying and harassment. The appointment of a single point of contact will efficiently tackle online safety issues, online safety education, and online policy change.

A high profile and visible leadership is essential in the battle against online issues, and it is important to consider the nature of these battles when appointing leadership roles. All members of the Children's e-Safety Commissioners team should be intimately familiar with the use of social media sites and the current internet culture among children.

The Carly Ryan Foundation strongly suggests the Children's e-Safety Commissioner practices a trial period of operation before making any changes to legislation or policy, in the best interests of Australian children, families, and online safety campaigners.

Establishing the Children's e-Safety Commissioner

After reviewing the options available, The Carly Ryan Foundation has found that the establishment of an expert non-government organization (NGO) or (NFP) to undertake the role of advising the Commissioner would be a most beneficial option.

A NGO or NFP would have more freedom and flexibility in their capacity to work with relevant industries, agencies, and organizations. A NGO or NFP would also have the ability to promote and coordinate the harmonization and collaboration between key agencies, leading to a more effective and integrated approach to cyber bullying and online harassment of Australian young people.

A NGO's or NFP's capacity to work with law enforcement and education agencies would facilitate the harmonization and collaboration between these two organizations, further increasing the potential impact the Children's e-Safety Commissioner would have regarding online issues.

Responsibilities of the Children's e-Safety Commissioner

The role of Children's e-Safety Commissioner is expected to adapt with advances and changes in social media, however there are some responsibilities that would remain constant throughout its existence. These responsibilities would ensure the longevity of the Children's e-Safety Commissioner, the effective harmonization and collaboration of key agencies, and would lead to a greater, more efficient use of the resources available. The expected responsibilities of the Children's e-Safety Commissioner are listed below:

- I. The acknowledgement and overcoming of inadequacies in the current methods of addressing and dealing with online safety issues. These inadequacies would be found through appropriately funded research initiatives into the use of social media and its effects on Australian children.
- II. The support and promotion of the establishment and integration of educational resources relating to online safety and cyber bullying for teachers, parents, caregivers and children. These resources would include an advice platform

- available to parents and caregivers who are concerned about the appropriateness of online media content.
- III. The promotion and facilitation of collaboration between federal and state legislation in regards to online safety, cyber bullying, and child grooming laws. This harmonization would ensure fair and consistent treatment of all offenders, and would aid the collaboration between states and territories on cyber bullying cases that broach state lines.
 - IV. The facilitation of harmonization and collaboration between all services and organizations that are involved in cyber education, online safety, and the implementations of legislation. This harmonization would reduce the gaps in the currently available resources, reduce the overlap in current services and education programs, and allow a more direct and consistent approach to the issues associated with cyber bullying and harassment.
 - V. The protection of Australian children who are subject to cyber bullying and harassment. This would include the communication with social media sites to implement child safety guidelines, the removal of harmful material from the social media site, and the offering education regarding the law as well as counseling services to target children and disciplinary action for offenders.
 - VI. The promotion and integration of a legally binding agreement with large social media sites which would hold the large social media site accountable in the event that they did not comply with the agreed protocol. The Children's e-Safety Commissioner would also enforce the consequences of a large social media site failing to comply with agreements.

Organization of existing projects

There are currently many projects which address specific issues of online safety, and in the interest of harmonizing the responsibility and resources of the Australian Government, we suggest that the following projects and programs be adopted by the Children's e-Safety Commissioner:

- *Cybersafety Help Button*
- *Australian Children's Cybersafety and e-Security Project*
- *Cybersmart*
- The various Australian Communications and Media Authority online safety initiatives;
 - *Tagged*
 - *Connect.ed*
 - *Zippep's Astro Circus*
 - *The Cloud: Dream On*
- The Australian Human Rights Commission's campaign *BackMeUp*, and
- The Australian Communication and Media Authority's research program

These projects and programs were chosen based on their target audience, how applicable they are to children, and the benefit of the outcome to children. The existing programs not chosen are expected to remain the responsibility of their current organizations, however a strong working relationship between the organization and the Children's e-Safety Commissioner is expected to be maintained to ensure consistent messaging in online safety campaigns, and reduce duplication of delivery.

Current law enforcement concerns

The current abilities and knowledge of law enforcement agencies, including Federal, State and Territory Police Departments is inadequate and insufficient to effectively deal with cyber bullying and harassment. Due to the inadequacies of the relevant departments, law enforcement agencies are limited in their response to cyber bullying and harassment cases.

A responsibility of the Children's e-Safety Commissioner, to harmonize the services and resources available to online safety campaigns, would include the improvement of law enforcement resources and facilities that would assist the response to online safety violations.

Facilitating Rapid Removal of Harmful Material from Social Media Sites

As an expectation of the Children's e-Safety Commissioner to remove harmful material that is directed at a target child, a complaints service must be constructed to collect any complaints from children, parents and caregivers who may have witnessed or become aware of cyber bullying or harassment.

The Carly Ryan Foundation envisages this complaints service would take the form of a specific office or company whose sole priority is the removal of harmful online content, based on complaints received from the Australian public. As a complaint is received, the office would contact the participating social media site with relevant information and have the harmful material removed within a set time period. The office would operate on the assumption that the member of the public had already requested the social media site remove the harmful material where there is an option to do so. It is important to note that this would only be possible if the social media site is participating in the harmful material removal scheme and have agreed to the Children's e-Safety Commissioners terms and conditions.

This would streamline the removal of any harmful material posted to a social media site by making a central body (being the Children's e-Safety Commissioner) responsible for the removal of harmful material, if the harmful material meets a certain criteria.

Administration of proposed scheme

- I. Receive and assess complaints
- II. Determine if complaint is eligible:
 - a. Under the content of the scheme
 - b. If the target child is under 18 years of age and an Australian resident
- III. Gain permission from the target child
- IV. Issue a direction to the social media site to remove the harmful material
 - a. In the event the harmful material is removed, issue a notice to the offender detailing the reasons for removal and Cyber bullying legislation

- b. In the event the social media site fails to remove the harmful material, issue a notice to the offender requesting the harmful material be removed, and proceed with penalties to the social media site
- V. Contact the target person four days after the harmful material is removed

Eligible complainants and complaints

An eligible complainant would be the target child, the target child’s parent or guardian, or another adult in a position of authority (for example, a teacher or carer).

Although all complaints should be considered, as a function of the Children’s e-Safety Commissioner, target children must be under the age of 18 years to be deemed eligible for a complaint to be investigated.

The harmful material, upon investigation, must relate directly to the target child. The harmful material must be posted on a participating social media site, and have been posted by a third party.

Complaint collection

Complaints would be lodged to the Children’s e-Safety Commissioner via a standardized online form, which would collect basic information. The information collected would need to fulfill the following checklist:

- target child’s name
- target child’s date of birth
- target child’s phone number
- target child’s current education institution enrolment
- target child’s parent or caregiver name
- target child’s parent or caregiver phone number
- social media site (from drop-down menu of participating social media sites)
- URL or screenshot of harmful material
 - it is recommended that screenshots which have been tampered with (ie. cropped or new information added) will not be considered a serious complaint
- type of harmful material (from drop-down menu, for filtering purpose)
- have you requested the social media site remove this harmful material?
- is this bullying also occurring offline? (ie. school or work)

Although it is recommended that a complaint be made to the social media site hosting the harmful material, there is no way for a person to demonstrate that a complaint has or has not been made. This can only be verified if the social media site is contacted directly with information about the complaint.

The parent or caregivers contact information should be mandatory on all complaint forms. This would ensure the Children’s e-Safety Commissioner has the option of communicating with the parent or caregiver of the target child to ensure their safety and to guarantee the parent or caregivers are aware the target child is experiencing

online issues. This mandatory information would also contest any complaints which are frivolous or vexatious in nature.

It should also be made an option for the target child to select if they currently fear for their physical and/or mental wellbeing, or if they believe they are currently been groomed. If the child did fear for their wellbeing at the time the complaint was made, further actions would be taken by the Children's e-Safety Commissioner to ensure their safety, first by contacting the target child, their parents, then the local law enforcement agency if appropriate.

It is also recommended that the complaints form have a space to enter an email address so a receipt of the complaint can be kept by the complainant.

Consent and nature of complaint

The consent of the target child should be sought before the removal of any online material, with consideration to the nature of the material.

In the event of pornographic material and threats of physical harm, The Carly Ryan Foundation expects that this type of material would be removed promptly without the consent of the target child, or their parent or guardian. The Children's e-Safety Commissioner would then contact the target child, their parents or guardians to notify them of the removal of the harmful material.

In no instance should any material be removed without the prior or subsequent knowledge of the target child.

Nominated factors

The public consultation paper suggests that the occasion and context of the material be considered in determining eligibility. The circumstances of the material and the risk of triggering suicide or other life-threatening mental illness are also recommended to be considered.

The Carly Ryan Foundation believes consideration of these criteria is inappropriate. All material, regardless of the original context, can become harmful with the addition of external sources. These external sources include others commenting online OR offline, or the inclusion of additional harmful comments. Any online material has the potential to become a risk of suicide or other life-threatening mental illness.

The subject of all complaints submitted to the Children's e-Safety Commissioner is to be considered harmful material until proved otherwise through communication with the target child.

Response to complaints

The Carly Ryan Foundation expects that all complaints would be automatically filtered by type and importance based on information gathered in the complaint form.

All complaints would be investigated electronically, with a staff member viewing the harmful material, either via URL or a submitted screenshot. The target child and their parent or caregiver would then be contacted to seek consent for removal of the harmful material- except in cases where the harmful material is pornographic or threatening in nature, where the material is removed prior to contacting the target child and their parent or caregiver.

Discretion of the Children's e-Safety Commissioner

Although all complaints must be taken in all seriousness, there is the opportunity for frivolous or vexatious complaints to be made.

Any complaints where the submitted screenshot has been tampered with would be subject to the Children's e-Safety Commissioners discretion to determine the severity of the harmful material.

Any complaints which seem non-serious, and upon investigation are deemed to be non-harmful and vexatious are subject to the Children's e-Safety Commissioners discretion.

Timeframe

An appropriate timeframe for the removal of harmful material, in most instances, is 48 hours from the time the complaint is made to the Children's e-Safety Commissioner. Thus, this would allow 24 hours for the Children's e-Safety Commissioner and 24 hours for the participating social media site.

If the harmful material was pornographic or threatening in nature, it is expected the material be removed within 12-24 hours from the time the complaint is made to the Children's e-Safety Commissioner. This would greatly reduce the available time to the Children's e-Safety Commissioner and the participating social media site, but would greatly increase the benefit to the target child and any others who found the harmful material offensive.

These expectations would require extensive communication, commitment, and organization between the Children's e-Safety Commissioner and the participating social media site. There is also the option of issuing a notice directly to the offender to remove the harmful material. Care must be taken not to name the target child in this notice, and this would also require extensive communication between the Children's e-Safety Commissioner and the participating social media site, as the contact phone number of an offender is generally not known by the target child, thus their contact information would be sought through the participating social media site.

Follow-up communication

As part of the investigation process, the target child and their parent or guardian is contacted to gain permission to remove the harmful material (with the exception of pornographic or threatening material). During this communication it is recommended that the target child be made aware of the counseling services available to them, such as [ehedspace](#) and [beyondblue](#).

It is also recommended the Children's e-Safety Commissioner conduct a follow-up communication with the target child and their parent or caregiver four days after the initial communication to request consent for removal. This follow-up communication

would help ensure the safety and wellbeing of the target child, and offer the opportunity to provide feedback to the Children's e-Safety Commissioner.

Procedural safeguards

In all instances, the target child's parent or caregiver must be contacted to ensure the physical and mental wellbeing of the target child. This can be achieved by notifying the parent or caregiver of the harmful material; how it could affect their child; and some educational information on social media sites.

It is important that if the parent or caregiver cannot be contacted, or if the parent or caregiver does not seem to be interested in the wellbeing of their child, the target child's education institution is contacted in their place to provide support to the target child during this time.

The target child and the parent or caregiver must also be made aware of free counseling services available to them, including [eheadspace](#) and [beyondblue](#), and any support services that may be available to them in their community.

Cooperation of Social Media Sites

For the Children’s e-Safety Commissioner to be able to keep Australian children safe, the cooperation and participation of large social media sites is paramount. The Australian Government expects international companies that operate within Australia (such as international social media sites) will abide by Australian laws. Many social media sites have issued public statements⁴ that they will comply with the domestic laws of the countries they operate within, yet not all social media sites with a user presence in Australia have agreed to this.

To encourage regulatory compliance by participating social media sites, it is recommended that the best interests of the social media sites are considered. Many social media sites have an operating complaints-handling procedure, thus these social media sites would only need to expand their current complaints handling instead of creating a new procedure if they choose to comply with these proposed arrangements.

However, if it becomes evident that a participating social media site fails to remove material as recommended by the Children’s e-Safety Commissioner, these social media sites must be met with consequences.

To encourage the participation by international social media sites, it is recommended that safe harbor provisions are available to the social media sites.

Safe harbor provisions

An example safe harbor provision is the current New Zealand scheme. The scheme states that the content host is not liable for any content they host, unless the content host has received a notice of complaint about the content, and fails to take reasonable steps to remove it.

The purpose of this scheme is to provide an incentive to the social media site to have an operating complaints process, and to comply with notices from the regulator (in this instance, the public and the Children’s e-Safety Commissioner)

Consequences of failing compliance

In the event that a participating social media site fails to remove harmful material after receiving notice from the Children’s e-Safety Commissioner, it is recommended that the penalties are multi-staged, allowing the participating social media site to rectify their failure to remove harmful material before further penalties are applied.

- I. The Children’s e-Safety Commissioner issuing a formal warning to the participating social media site in the event of a failure to remove harmful material
- II. The Children’s e-Safety Commissioner issuing a public statement specifying the social media site’s inability to protect Australian children from online issues
- III. The Children’s e-Safety Commissioner issuing public advice that a particular site is not safe for children to use

⁴ Peter Van der Veen, [Twitter to remove unlawful tweets: threat to free speech or the reality of internet business?](#), 27 January 2012 and [Google follows Twitter: Country specific NTD to comply with local law](#), 3 February 2012

IV. Appropriate civil penalties being issued to the participating social media site

It must be recognized that the social media site is not responsible for the content posted by the public, except under safe harbor provisions where the social media site is made aware of the inappropriate content. It is also an option of the Children's e-Safety Commissioner to penalize the offender under proposed cyber bullying legislation.

Cyber Bullying Legislation

With rapid advancements in technology, many laws are falling behind and becoming outdated without the application of new, more relevant laws. It is recommended that, with the establishment of a Children's e-Safety Commissioner, a position is also created within the same organization that deals directly with legislation research, legislation rewriting, and legislation review. This position would work very closely with any research conducted on children and the internet, and online issues in Australia.

It is recommended that any changes, or non-changes to the current legislation are advertised broadly and education programs are implemented in educational facilities. Legislation cannot be effective unless the public are aware of any parameters or penalties.

Reporting cyber bullying

It is recommended that a function of the Children's e-Safety Commissioner is all cyber bullying cases are reported to the Children's e-Safety Commissioner in the interest of coordination and harmonization of services.

As mentioned previously, the current law enforcement agencies do not have the capacity or resources to deal effectively with cyber bullying, and it seems a natural progression that such cases are reported first to the Children's e-Safety Commissioner.

Penalties for offenders under the age of 18 years

The Carly Ryan Foundation recognizes that, in many instances, cyber bullying offenders are unaware that their actions are illegal, and are many times under the age of 18 years. Although education and advertisement of legislation would assist in increasing awareness, The Carly Ryan Foundation does not believe that any persons under the age of 18 years should receive a public record (police record) of their cyber bullying except in the most serious, repeated cases.

An alternative is the harmonization and collaboration between the Children's e-Safety Commissioner, educational agencies, and law enforcement agencies.

For a first time offender under the age of 18 years, it is recommended that their school or educational institution carry out the disciplinary action in the form of internal suspension or lunch time/after school suspension. During this suspension, it is expected that the offender will be made aware of how their activity is illegal. In all cases, it is expected that the Children's e-Safety Commissioner or the education

institution contact the offender's parents to make them aware of their child's illegal activities.

For offences occurring after the first, and in the event the offender does not attend an education institution, it is recommended that the offender conduct a specified number of hours of community service under the supervision of law enforcement personnel and or participate in an education rehabilitation workshop in relation to Cyber bullying and its harmful effects on victims.

For offenders who continue to offend, or refuse to complete either of the above options, a court summons would be issued, and henceforth the offender will have a public record of their offence. As an outcome, the offender should receive a fine of a specified amount.

In all instances, an offender who is under the age of 18 years should be given the option of avoiding a public record of their offence.

Penalties for offenders over the age of 18 years

For offenders over the age of 18 years, police intervention is recommended for the first offence to ensure the offender understands their actions are illegal. For all subsequent cyber bullying offences, a court summons would be issued to the offender, and a public record of their offence would be recorded. As an outcome, the offender should receive a fine of a specified amount.

Proposed merits review

In difficult or appealed cases we would advise an internal review board to assess individual cases and to advise The E-Commissioner with an appropriate outcome. In the event of an appeal The E-Commissioner should have final authority in the best interest of the target child.

Financial and administrative costs

It is difficult to determine any potential financial impacts without understanding the full scope of the proposed final establishment of The E-Commissioner. This could be overcome by a trial period to determine the potential recourses required for an efficient and effective department.