

Enhancing Online Safety for Children

This submission is made by:

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B.H.Burns on behalf of the Child Protection Reform Movement.

The Child Protection Reform Movement brings together professionals from diverse backgrounds including law, social work, child development and child protection and early childhood education to advocate for the reduction and prevention of child abuse and neglect. Strategies to achieve these aims include:

Compulsory education in child abuse identification and child abuse dynamics for all professionals engaged in decision-making affecting children including legal, health, education and social work professionals.

Public education campaigns to promote child abuse prevention and the community's role in this.

Criminal court reforms to support the prosecution of child sexual abuse of children and of adults with intellectual and/or communication disabilities.

Family law reforms to require compulsory education in child development and child abuse for judges, lawyers, ICLs, family report writers and other professionals involved in decisions about children's lives, alongside legislated changes preventing children being placed in the care of parents with criminal convictions for child abuse.

Further information in relation to this submission can be obtained from Emeritus Professor Freda Briggs AO, St Bernards Road, Magill, E: Freda.briggs@unisa.edu.au, P: +61 8 8302 4583, F +61 8 302 4394.

The substance of the submission follows below:

We would like to open this discussion by proposing a model to enhance online safety for children, drawing on The United Nations Conventions on the Rights of the Child (UNCRC). The UNCRC outlines in article 3 that 'the best interests of the child must be the primary concern in making decisions that may affect them' (UNICEF 1990, p. 1). The articles relevant to enhancing online safety for children, in particular, in relation to cyberbullying, include:

Article 2.2 which highlights the need to protect children from discrimination;

Article 13.2 emphasises the need to apply certain restrictions to children’s freedom of expression, particularly in relation to respecting and preserving ‘the rights or reputations of others’ (p. 4);

Article 16.1 states that ‘no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation (UNICEF 1990, p. 5);

Article 16.2 states that ‘the child has the right to the protection of the law against such interference or attacks’ (UNICEF 1990, p. 5);

Article 17 (e) states that appropriate guidelines need to be developed to protect the child from material which may be injurious to the child’s wellbeing;

Article 19.1 outlines some responsibility on signatory parties to construct ‘appropriate legislative, administrative, social and educative measures to protect the child from’ abuse, including psychological violence and exploitation (UNICEF 1990, p. 5);

Article 19.2 further outlines that such protective measures should include prevention mechanisms;

Article 29 emphasises that children should be educated to develop a respect for human rights and;

Article 36 highlights that the child should be protected against all forms of exploitation prejudicial to the child’s wellbeing (UNICEF 1990).

Given that Australia is a signatory of the UNCRC, it is our obligation to children to uphold the general requirements of this convention. This means that Australia needs to protect children from potential risks which may place their wellbeing and rights at risk.

The model we propose is:

- Any online material that upsets or offends a child should be removed at the earliest timeframe. This will lessen the risk of potential negative health and wellbeing impacts on children;
- Material removed should be at the sole discretion of the commissioner. The commissioner needs to be satisfied that the complaint has generally upset or offended a member of the public. The commissioner’s decision cannot be contested. This will simplify decisions and lessen administration costs;
- Draft guidelines for laws, based on the UNCRC, include children’s wellbeing will override any concerns around freedom of speech and age appropriate laws need to be constructed for juveniles. Laws need to be enforced, rather than encouraged, with any providers whose material will appear on Australian computers. Clear

unambiguous language needs to be used, with clear operational definitions in the construction of laws;

- Cyber-risks, impacts and new laws need to be disseminated through public campaigns and educational institutions to inform the community, including children.

Responses to individual questions are as follows;

Question 1

In response to question 1, whilst the functions of the commissioner are admirable, there are still some gaps in these commitments.

a) implementing the proposed scheme for the rapid removal of material that is harmful to a child from large social media sites (outlined in Chapter 2);

These not only need implementing, but also need monitoring and should apply to all sites, not just large social media sites. Online safety goes beyond cyber-bullying only.

b) working with industry to ensure that better options for smartphones and other devices and internet access services are available for parents to protect children from harmful content;

c) establishing an advice platform with guidelines for parents about the appropriateness of media content;

This should be accompanied with a rating/classification system. Online service providers should be required to classify their site and ensure their material fits within that classification category.

d) establishing a research fund to consider the effects of internet use on children, how support services can be provided online and how to mitigate children's online risks;

The research fund needs to cover research around:

- 1) children's use of the internet to identify the ages of children and with what they mainly interact;
- 2) children's experiences with the internet (positive and negative);
- 3) best practice to provide information and support to the community including parents/teachers/children and others; and
- 4) how to mitigate children's vulnerability; education, community awareness/campaign, effective rating scheme.

e) establishing a voluntary process for the certification of online safety programmes offered within schools; and

f) establishing a funding programme for schools to deliver online safety education.

Cyber safety education needs to be compulsory in schools.

Further functions should also include:

- Funding allocated to provide professional development for teachers, materials and curriculum construction; and
- The commissioner needs to oversee the review of existing laws and codes of practice and the establishment of new laws and codes of practice to protect children online.

In relation to **what existing programs and powers should the commissioner take responsibility?**

Rather than taking over current programs which regularly overlap, the commissioners should

- a) generate the collaboration of cyber safety resources to create the best 'one-stop-shop', informed by research. This may include bringing together Department of Communication, Australian Communication and Media Authority, Australian Human Rights Commission, Federal and State Police, Department of Social Services and other organisations which have researched and created safety resources for internet use. This needs to be updated annually; also informed by research. It needs to be available beyond online to provide for some of the population who have limited access to the online domain or may not be able to navigate their way around a website adequately;
- b) develop a complaints and reporting system which is monitored daily by an adequate number of staff;
- c) oversee the Australian Police ThinkUKnow program and provide adequate funding for this program, including funding for updating and improving the resource as new risks arise;
- d) ensure the legalities around cybercrime are disseminated to the public, which could be included in the 'one-stop-shop' resource;
- e) oversee the establishment of cyber-safety education in all government and independent schools.

Question 2

Considering the intended leadership role and functions of the Commissioner, which option would best serve to establish the Commissioner?

Option 4 – designation of a non-government organisation with expertise in online child safety

This option would draw on expertise in the field from a wide range of disciplines. Such an organisation would need to work closely with police, politicians/law makers, schools and

researchers which will generate a collaborative approach in protecting children in an online environment.

Question 3

Are these definitions of 'social networking sites' suitable for defining 'social media sites' for the purposes of this scheme?

Yes

Question 4

Should the proposed scheme apply to online games with chat functions?

Yes as they equally place users at the same risk as social networks

Question 5

What is the best criterion for defining a 'large social media site', and what available sources of data or information might be readily available to make this assessment?

No comment

Question 6

Is the coverage of social media sites proposed by the Government appropriate and workable?

No, all social media sites which have Australian consumers need to have compulsory participation in in this scheme. This will be manageable through registration of sites with the Internet Service Providers and through an establishment of a complaints and reporting system.

Question 7

Should the scheme allow children who are unsupported by adults to be active participants (either as complainants or notice recipients)? Having regard to the vulnerability of children, what procedural safeguards should be in place?

Yes, children should have the same rights as are in place for them reporting abuse. Children should be able to report anonymously through the internet, telephone or through a trusted adult such as a teacher or parent.

Question 8

What type of information would it be necessary to collect from complainants in order to assess their eligibility under the proposed scheme (including age verification), and also to adequately process complaints with minimal investigation required?

Name of the website and direct link to the offensive material (URL) is required.

Contact details; address, email or phone, age of the child and relationship to the child should be optional. Obtaining the computer IP address and the ISP is best obtained through the police cyber-crime speciality unit.

Question 9

How would an eligible complainant demonstrate that the complainant has reported the content to the participating social media site?

Written correspondence either through email or letter which can be printed off or photocopied by the complainant and telephone correspondence should be recorded by the employee taking the call.

Question 10

What should the timeframe be for social media sites to respond to reports from complainants? Is 48 hours a reasonable timeframe, or is it too short or too long?

Twenty four hours is a reasonable time frame for both the victim and should be manageable for the ISP.

Question 11

What level of discretion should the Children's e-Safety Commissioner have in how he/she deals with complaints?

If someone has gone to the effort to make a complaint, then it is likely that the material has upset or offended them in some way. It should not be one person's decision about how particular material has impacted on another person's life. All complaints should be managed and removed regardless of how insignificant they may seem to the commissioner.

Question 12

What is an appropriate timeframe for a response from the social media site to the initial referral of the complaint?

Twenty four hours. Material that is offensive and has the potential to harm a child should not be left online longer than it needs reasonably be. Given that the complainant may need to further refer the complaint to the commissioner and wait for response again, and then wait for the commissioner to contact the ISP, and then wait for the ISP to remove the material, the material could potentially be visible for 4 days.

Question 13

Are the nominated factors, the appropriate factors to be taken into account when determining whether the statutory test has been met? Should other factors be considered in this test?

The nominated factors would be hard to determine and measure. Many of the information collected would be hearsay evidence because providing proof of the child's characteristics, risk of generating mental-health issues or suicide would be a lengthy process.

The only factors which should be considered are whether the material was offensive or upsetting to the child. If so, the material should be forcibly removed.

Question 14

Is the test of 'material targeted at and likely to cause harm to an Australian child' appropriate?

No, see response to question 13. In addition, material that is not directly targeted at the child can also cause harm to a child, for example if there is material posted online which

targets their parent or sibling which may equally upset the child and place them at risk of bullying or mental health issues.

Question 15

What is an appropriate timeframe for material to be removed?

Forty eight hours should be manageable by individuals and industry.

Question 16

What would be the best way of encouraging regulatory compliance by participating social media sites that lack an Australian presence?

The NZ Bill looks reasonably effective, but given the age of the document its effectiveness is unknown. Construction, trial and review of a similar bill in Australia should provide insight into the effectiveness and improvement of such a bill.

Question 17

Should the proposed scheme offer safe harbour provisions to social media sites which have a complying scheme, and if so, what should they be?

Yes, the NZ Safe Harbour Provisions are reasonable for the ISP's also allowing consequence if the ISPs are informed and do not comply

Question 18

Is merits review by the Administrative Appeals Tribunal the most appropriate review mechanism and if so, which parties and in relation to which types of decision is it appropriate? What are the alternatives?

When bullying offences are committed against children to the degree that a child requests removal of material, the material should be removed.

Question 19

What do industry representatives consider are the estimated financial and administrative impacts of compliance with the proposed scheme? How are these estimated impacts derived?

It is difficult to estimate financial and administrative impacts on constructing and monitoring compliance with the proposed scheme. Given that research findings demonstrate the prevalence of cyberbullying (Australian Communications and Media Authority 2013) and its links to suicide (The Guardian 2013) suggests that human life should come before financial and administrative impacts. Bullying can be physically harmful, socially isolating and a psychologically damaging experience. Research has found that bullying has serious impacts on children and young people's mental health, leading to: impaired social and emotional development; reduced academic outcomes and suicide (Campbell, Slee, Spears, Butler & Kift, 2013; Campbell, Spears, Slee, Butler, Kift, 2012). Children who report using bullying behaviours against others are over three times as likely to have a criminal conviction by their early twenties and higher self-reports of drug and alcohol use. They are also more likely to be dependent on public assistance programs and less likely to have the same earning potential as those who do not experience bullying (Highmark Foundation, 2013). These effects are life changing, long-term and impact on the health and wellbeing of our community, and ultimately, the social and economic fabric of society. This research suggests

that the cost of ignoring children's vulnerabilities far outweigh the costs of preventative schemes.

Question 20

In light of the Government's proposed initiatives targeting cyber-bullying set out in Chapters 1 and 2; do the current criminal laws relating to cyber-bullying require amendment?

For adults, yes

Question 21

Is the penalty set out in section 474.17 of the Criminal Code appropriate for addressing cyber-bullying offences?

For adults, yes

Question 22

Is there merit in establishing a new mid-range cyber-bullying offence applying to minors?

Yes

Question 23

Is there merit in establishing a civil enforcement regime (including an infringement notice scheme) to deal with cyber-bullying?

Yes

Question 24

What penalties or remedies would be most appropriate for Options 2 and 3?

Cyberbullying needs to be recognised as a criminal offence; however imprisonment and infringements notices would be unacceptable for children under the age of 16 years. Appropriate consequences for juveniles need to be constructed such as counselling, restorative justice, community-based order and probation.

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