7 March 2014
CCYPD/14/121

The Director, Cyber Safety Policy and Programs
Department of Communications
GPO Box 2154
Canberra ACT 2601

Dear Sir/Madam

The Commission for Children and Young People is pleased to provide the attached submission to the discussion paper *Enhancing Online Safety for Children*.

We would be happy to discuss any of the issues raised in more detail with the Department.
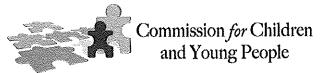
If you would like any further information from us, please contact Ms Megan Scannell, Principal Policy Adviser, via email: megan.scannell@ccyp.vic.gov.au or by phone on 8601 5289.

Yours sincerely

Bernie Geary OAM
Principal Commissioner

Submission to the Department of Communications

Enhancing Online Safety for Children: Public consultation on key election commitments

Overview

The Commission for Children and Young People (the Commission) supports the Australian government's commitment to enhance the safety and wellbeing of children in their online interactions. The creation of a Children's e-Safety Commissioner has the potential to:
- improve the capacity of individuals to have inappropriate material removed from social media sites
- enhance the quality and availability of cyber-safety resources for children and those who care for them
- promote and fund research to develop innovative and effective mechanisms to enhance the safety and wellbeing of children when online.

In all of these functions, the proposed new e-Safety Commissioner's legislative mandate should include a requirement to give particular consideration to those children in the community who are most vulnerable, including those children who have experienced abuse, neglect and trauma, those with a disability or a mental illness, those from a culturally and linguistically diverse background and those who are disengaged from education. In the *National Framework for Protecting Australia's Children 2009–2020* the State and Commonwealth Governments committed to working together to better meet the needs of those children in the community who are most vulnerable. The creation of a Children's e-Safety Commissioner provides an opportunity to develop strategies and resources to enhance the safety of these children.

Research has indicated that those who are more vulnerable in the 'real world' are also more vulnerable 'online':

> With all three types of threats (sexual solicitation, online harassment, and problematic content), some youth are more likely to be at risk than others. Generally speaking, the characteristics of youth who report online victimization are similar to those of youth reporting offline victimization and those who are vulnerable in one online context are often vulnerable in multiple contexts (Finkelhor 2008). In the same way, those identified as "high risk" (i.e., experienced sexual abuse, physical abuse or parental conflict) were twice as likely to receive online solicitations (Mitchell et al. 2008) and a variety of psychosocial factors (such as substance use, sexual aggression, and poor bonds with caregivers) were correlated with online victimization (Ybarra et al. 2007, 2007b).[1]

While there are many cyber safety strategies and materials available, there is little available research on how to implement effective strategies for those who are most vulnerable. In

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[1] Schrock, Andrew and danah boyd (2008) *Online Threats to Youth: Solicitation, Harassment, and Problematic Content Literature Review Prepared for the Internet Safety Technical Task Force (p.39)*, available at http://cyber.law.harvard.edu/research/isttf.

Australia, the report in June 2011 of the Joint Select Committee on Cyber-Safety entitled *High-Wire Act Cyber-Safety and the Young* concluded that:

> It is clear, however, that those young people who engage in risky behaviour online often also engaged in risky offline behaviour. There is a pressing need for more research into the cyber-safety needs of the most vulnerable members of our society, including those with mental health problems. (p.36-37)

Some of our most vulnerable children have very disrupted schooling and lack strong connections with adult carers. The challenge is to identify the most effective ways of keeping these children safe. A national Children's e-Safety Commissioner should have this as a primary function.

Principles to guide the development of an Australian Children's e-Safety Commissioner

The rights articulated in the United Nations Convention on the Rights of the Child provide important principles which we believe should underpin the Australian government's approach to improving the online safety of children. In particular the right of children to be safe and to feel safe as well as their rights to be heard, to have their privacy respected and to be able to access information and education to enhance their wellbeing. In considering any criminal or other penalties that might apply to children who engage in cyber-bullying particular regard should be had to Article 40 and the rights of children accused of a criminal offence to:

> be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

Establishment of a Children's e-Safety Commissioner

We note that discussion paper canvasses options for the creation of a Children's e-Safety Commissioner who will be:

> a single point of contact for online safety issues for industry, Australian children and those charged with their welfare. The Commissioner will also take the lead across government in implementing policies to improve the safety of children online.

The Commission notes that the proposed functions of the new e-Safety Commissioner are very focused on guidelines, education and support for children and parents and the creation of more effective remedies for harmful content created by individuals, particularly content on social media sites. As noted above, we believe it is important for the new e-Safety Commissioner to be explicitly required to give particular attention to the needs of those children who are most vulnerable.

To undertake these functions effectively, the new e-Safety Commissioner will need to be appropriately resourced, including sufficient funding to enable the e-Safety Commissioner to support innovative practices and research.

We support efforts to make social media sites safer for children but question the narrow focus of the proposed new e-Safety Commissioner. The e-Safety Commissioner should have significant expertise in children's welfare and development and a clear focus on promoting the best interests of children. The e-Safety Commissioner would then be well placed to be a resource for and champion of innovation in promoting the safety and rights of children in a range of online media.

We note that ACMA has a role in the regulation of a range of media providers. If the new Children's e-Safety Commissioner is to be located within or affiliated with ACMA, the Commissioner's expertise in children could be used more widely to shape media regulation and policies, including voluntary codes of practice. If the objective is to create a safer online world for children, the e-Safety Commissioner should also have a role in assisting to develop guidelines for a wider range of online materials and media which children access. Children may be harmed from material created by individuals online as well as by material produced and distributed by a range of media organisations (many of whom have an online presence).

In considering the structure and functions of any new Children's e-Safety Commissioner, it would be important to consider how this new position will link into the work of the National Children's Commissioner.

The mandate and structure of the proposed new Children's e-Safety Commissioner should strongly focus on the rights of children, including the right of children to participate in decisions which are important to them. The priorities and strategies of the new e-Safety Commissioner should be informed by the issues identified by young people as being of greatest concern to them and the strategies most likely to be useful to them.

Rapid removal of material that is harmful to a child from social media sites

The discussion paper explores options for the creation of a 'scheme to enable the rapid removal from a large social media site of material targeted at and likely to cause harm to a specific child'. We note that 'child' will be defined to mean those under the age of 18 years. We support the creation of mechanisms to encourage social media sites to be more responsive to complaints about harmful material posted on their sites and the creation of mechanisms to compel sites to take action where children are being harmed by material posted on the site. We note though that such measures will be hard to enforce given the dynamic and international nature of the online world.

We propose that consideration be given to the creation of complimentary powers in another body to receive and address similar complaints in relation to material which is harmful to people other than children. We note in particular that young people, aged 18 and older, may also be harmed by material posted online. Bullying, including cyber bullying, can have devastating impacts on young people as well as on children.

We note that one of the remedies proposed is the issuing of infringement notices to individuals and that careful 'consideration will be given to circumstances under which the Commissioner might serve an infringement notice on an individual under 18 years old'. We have concerns about the use of infringement notices on children and believe that a range of options should be available in response to a child who has posted material which is found to be harmful to another child.

Options for dealing with cyber-bullying under Commonwealth legislation

If a new offence of bullying or cyber bullying is to be created, it should be carefully drafted and tailored to ensure that the use of criminal sanctions against children for engaging in bullying behaviour is seen as an option of last resort. We would not want to see a law which results in more children being charged with criminal offences for conduct that can best be addressed through other mechanisms.

Any law reform that creates new offences or increases criminal sanctions must be accompanied by community education and support designed to enhance the safety of children and to empower them to make ethical and responsible decisions online.

We know that all forms of bullying can be profoundly harmful to children. We also know that this is a complex issue with a high percentage of young people who both bully and are bullied. The *Australian Covert Bullying Prevalence Study* published by the Child Health Promotion Research Centre Edith Cowan University in May 2009 noted:

> 'The percentages of the students who had been both bullied and who bullied others in covert ways increased from 21% in Year 4 to almost half (47%) in Year 9.' (p19)

Safety strategies must include programs which enable children who are perpetrators of bullying to understand the impact of their behaviour and to change their behaviour.

Conclusion

We welcome this opportunity to contribute to the issues canvassed in the Discussion Paper. We encourage the Department of Communications to particularly consider the needs of the most vulnerable children and young people as it considers the roles and functions of a new Children's e-Safety Commissioner.