



Consultation on the Government Discussion Paper on Enhancing Online Safety for Children (January 2014)

Submission from the Victorian Catholic Schools Parent Body (VCSPB) 7 March 2014

The Victorian Catholic Schools' Parent Body (VCSPB) welcomes the opportunity to contribute to the consultation on the Discussion Paper on Enhancing Online Safety for Children (January 2014). The VCSPB considers that this is an issue of crucial interest to parents.

The VCSPB represents parents of students in Victorian Catholic schools at diocesan, state and national levels, through school boards, or where none exist, through school based parent support groups.

The VCSPB supports the work of the Victorian Catholic education authorities in advancing the interests of Catholic schools and their students, particularly in those areas where parent input can strengthen the quality of Catholic school provision.

The VCSPB shares community concerns and looks to government and whole of community to help protect children online.

The proposals include:

- establishing a Children's E-Safety Commissioner, who would be a single point of contact in the Australian Government for children's online safety issues
- developing legislation and an effective complaints system to ensure harmful material is taken down fast from large social media sites
- exploring the need for a new, simplified cyber-bullying offence.

The VCSPB's submission addresses some issues that are important to Catholic school parents and seeks to highlight parents' perspectives on these. Online safety of our children is a complex issue involving a number of areas which are outside the scope of VCSPB's functions, for example Q.19.

Throughout this document we have used the term "*parent*", this term is used to include natural, adoptive or foster parents, guardians and caregivers of students; and the term "*child*" or "*children*" includes all children and young people in school.

The VCSPB believes that there is a need for online safety programs for all ages, but that children and other vulnerable members of society require special protection and a system that is focused on the risks for them.

For ease the questions the Discussion Paper requests comments on are noted, some questions are grouped together as in the Paper and some headings inserted.



COMMISSIONER

Q1 What existing programmes and powers should the Commissioner take responsibility for?

The VCSPB supports the view that the Commissioner should take overall responsibility for programs that are focused on children, but that other programs that affect adults should not be within the terms of reference of the Commissioner.

Clearly there needs to be a strong relationship between the Commissioner and other program directors, to ensure that issues do not fall between the cracks.

Of particular concern would be the risk of young people in schools who may still be vulnerable, but are legally classified as an adult. There should be continued coverage of such persons by the Commissioner with respect to any programs that may be aimed at this group of young people. The focus of the Commissioner must be child centred to ensure that there is adequate protection for children and the vulnerable.

The programs listed in Appendix A should be continued and enhanced where appropriate by the responsible authorities, under the oversight of the Commissioner.

It is suggested that the [Cybersafety Help Button](#), a free downloadable resource providing a one-stop-shop for cybersafety information, be a compulsory addition to all computers, laptops, iPads, tablets, mobile devices etc.

Q2 Considering the intended leadership role and functions of the Commissioner, which option would best serve to establish the Commissioner?

VCSPB considers that it is vital that the Commissioner is an independent body. This body needs to be child centred which is of critical importance in ensuring safety at a practical level, and not part of any political process. Online safety for children should not be used as a political football as this will not place the child first.

VCSPB favours the creation of an independent statutory authority (**Option 1**) because of the high level of independence that this allows the Commissioner.

The VCSPB see this independence as an issue of great importance. The important factors of independence and transparency will give the Commissioner credibility with families and the community which will mean that the system will be used by those that it is intended to serve.

The VCSPB acknowledges that this is the mostly costly option, however, it would be more costly to adopt a system in which families have little faith and do not use to the full extent possible which would result in not achieving online safety for our children or maximising the cost benefit.

If there was no capacity to set up an independent statutory authority, the VCSPB's second preference would be **Option 3**.

The VCSPB is of the view that a coordinated national approach to online safety, including the development of national guidelines for schools, parents, children and internet providers and education campaigns could be the best use of resources and beneficial to all children and give comfort to parents, schools and the community.

The ongoing work of those currently undertaking (e.g. Australian Communications and Media Authority) aspects of this suggested role could be built on and expanded. Available



resources could be maximised in the area of education and enforcement, rather than establishing a new authority.

SCOPE

Q3 Are these definitions of ‘social networking sites’ suitable for defining ‘social media sites’ for the purposes of this scheme?

The [National Safe Schools Framework](#) provides Australian schools with a vision and a set of guiding principles that assist school communities to develop positive and practical student safety and wellbeing policies. Definitions and principles of the Framework should be utilised.

VCSPB would seek the definition to be sufficiently broad to cover any emerging technologies that may not fall within the current definitions. If this is not possible then there should be a power to add to this definition by statutory instrument or regulations that are reviewed more regularly and are easier to introduce than Acts of Parliament.

The overarching definition of Boyd and Ellison (*Social Networking Sites: Definition, History and Scholarship*, Journal of Computer-Mediated Communication, 2008, Blackwell Publishing Limited) and the definition of the [Office of the Australian Information Commissioner](#) as provided in the Discussion Paper appear to be suitable for defining ‘social media sites’.

However, the definition needs to be expanded to include gaming sites or game apps that allow for groups of people to play and to “chat” at the same time. There are many such apps and gaming sites that provide this facility and in such a relaxed process there is a significant risk that children will see fellow gamers as friends and then place themselves at risk by providing personal information or be susceptible to cyber bullying.

Q4 Should the proposed scheme apply to online gaming with chat functions?

Chat functions in any area, including online games must be included in the proposed scheme. See Q. 3 above.

Q5 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?

Q6 Is the coverage of social media sites proposed by the Government appropriate and workable?

Given the nature of the Internet and its usage, the criteria should be the overall number of user accounts within a site not just reference to the number of user accounts held by Australians.

The VCSPB is concerned by the attempt to define “*large social media site*”. It is not clear to the VCSPB why it is necessary to only control large sites and not others. The effects of cyber-bullying will be the same irrespective of the size of the site.

The VCSPB believes that the focus should be on the effect on the child not the size of the site. As parents it can very difficult to control or keep up with the apps and social media sites that your child may use. Children deserve to be protected. It would be a very perverse



result if a post went viral, but until it hit one of the large social media sites nothing could be done and even then the original post would not be subject to the scheme.

The VCSPB is also concerned about the ability of large operators to “avoid” compliance by using a complex corporate structure to create different entities for different sites. This could mean that a very large social media company could split its “ownership” to avoid falling within any definition that may be set.

As stated above, we consider that the focus should be on the child and ensuring the protection of children. We do not consider that this will be achieved if the definition is narrow and the compliance network is limited to certain companies.

COMPLAINTS SYSTEM

Q7 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?

The scheme should protect all children, even those who are not supported by an adult. These children may be the most vulnerable and they must be protected.

With respect to being the recipient of such notices, this is more complex and whilst the complainant has a right to be protected a balance needs to be found between protecting those rights and ensuring that the rights of an unsupported child are met. Where a child is unsupported (whether they are a complainant or a notice recipient) there must be a mechanism in place to ensure that an unsupported child’s needs are also met and that they are given a real and genuine opportunity to tell their side of the story - there are always at least two sides to every story.

The VCSPB considers that the complaint process must be based upon the principles of natural justice and that vulnerable children are supported through the process. Perhaps a system similar to the Child Advocate (as used in family law matters) could be adopted. Both children must have a reasonable opportunity and be supported to articulate their side of the story.

The VCSPB believes that the process should be investigative and inquisitorial when it comes to children who may be the notice recipient. A focus on “*punishing*” the offence and not addressing the reasons behind it would not be a child centred approach.

Of course some of these matters will be outside the scope of the Commissioner’s terms of reference, but the opportunity to refer these issues to other agencies or to provide other support to a vulnerable child should not be lost.

Q8 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?

It should be a requirement that the participating social media site have a unique reference number provided for each complaint made to it which is retained on their records and provided to the complainant. An estimated timeframe for a response should also be provided at this time.



Also, a declaration that the information is true and correct and the complainant agrees to provide proof of their eligibility upon request.

An adult should not be in a situation where due to lack of consent by the child a complaint cannot be made. Perhaps a possible solution could be that if a child does not consent to a complaint being made a statutory declaration from two adults who know the child e.g. GP, counsellor, school representative may confirm the distress and harm of the harmful material.

Q9 How would an eligible complainant demonstrate that the complaint has reported the content to the participating social media site?

A screen shot of the contact should be sufficient. This should not be onerous and should be child friendly. The system should make it easy to make complaints so that it can be used at a practical level.

Q10 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?

To have a positive and timely effect, a 24-36 hour turnaround is not unreasonable and should be the clear expectation of the sites.

This time period should be consistent through the entire process.

Q11 What level of discretion should the Children's eSafety Commissioner have in how he/she deals with complaints?

All complaints received need to be acknowledged within the consistent timeframe.

As already stated these issues are complex and it is difficult to anticipate all possible scenarios. For this reason, VCSPB supports the idea of the Commissioner being able to exercise reasonable discretion.

Having said that, the VCSPB believes that any legislation should be clear as to the matters over which the Commissioner may have discretion. When dealing with social media companies there should be some matters over which the Commissioner has no option. These would include pornography or sexual images of persons under the eighteen, racial or religious vilification, sexist material or where there is a serious risk to the safety or well-being of a child or young person.

Q12 What is an appropriate timeframe for a response from the social media site to the initial referral of the complaint?

A 24 hour turnaround is not unreasonable for sites and should be the clear expectation of the sites.

Although this may depend on the specific issue, the VCSPB would like the timeframes to be speedy. The longer that the material stays on line the more damage is done and the less likely that the damage will be able to be fully rectified.



Q13 Are the nominated (4) factors, the appropriate factors, to be taken into account when determining whether the statutory test (material targeted at and likely to cause harm to an Australian child) has been met? Should other factors be considered in this test?

Any child in Australia should be protected not just citizens or residents.; for example children in schools who are classified as refugees, asylum seekers or other Australian visa holders.

The VCSPB considers that the factors mentioned are appropriate (subject to the concerns mentioned above about the definition of large social media). The definition gives the Commissioner the ability to consider other matters that are relevant which is a degree of flexibility that addresses matters outside of the “*normal*” case.

Q14 Is the test of ‘material targeted at and likely to cause harm to an Australian child’ appropriate?

The VCSPB supports the test.

The VCSPB suggests that perhaps the test be termed ‘material targeted at and likely to cause harm *and distress* to an Australian child’. It is considered useful to use the word *distress* in the general definition not just in the explanation of the term.

Q15 What is an appropriate timeframe for material to be removed?

Within 24 hours of an assessment/decision by the Commissioner after which a suspension of the site until the material is removed.

COMPLIANCE/ENFORCEMENT

Q16 What would be the best way of encouraging regulatory compliance by participating social media sites that lack an Australian presence?

Education and voicing of community and parent expectations is crucial.

There needs to be as a last resort, the ability in the Commissioner to block the site in Australia.

Q17 Should the proposed scheme offer safe harbour provisions to social media sites which have a complying scheme, and if so, what should they be?

With reference to Appendix C (safe harbour provisions), the content host cannot be held liable for content they host that is posted by another person, but which the host does not know about.

The VCSPB considers that safe harbour provisions have some merit, but they should only be allowed to apply where the site has taken reasonable steps in a timely manner. That is, they should be required to take steps as quickly as possible and within the consistent timeframe suggested above. This will ensure that the system remains child centred. A statutory time limit should be imposed and enforced.



RIGHTS OF APPEAL

Q18 Is merits review by the Administrative Appeals Tribunal (AAT) 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?

The VCSPB considers that a merits based review is an appropriate avenue provided that (as anticipated) the review is about reinstating the material and not delaying removal.

The VCSPB would not support a system whereby once an appeal is lodged the removal of material could be delayed. In cases where both the complainant and the notice recipient are children, a better alternative may be some alternative dispute resolution process.

The process (AAT or other) needs to be time effective. Costs should not be prohibitive.

IMPACT ON BUSINESS

Q19 What do industry representatives consider are the estimated financial and administrative impacts of compliance with the proposed scheme? How are these estimated impacts derived?

OPTIONS FOR DEALING WITH CYBER-BULLYING

Option 1

Q20 In light of the Government's proposed initiatives targeting cyber-bullying set out in Chapters 1 and 2 of the Discussion Paper; do the current criminal laws relating to cyber-bullying require amendment?

Q21 Is the penalty set out in section 474.17 of the Criminal Code appropriate for addressing cyber-bullying offences?

Option 2

Q22 Is there merit in establishing a new mid-range cyber-bullying offence applying to minors?

Option 3

Q23 Is there merit in establishing a civil enforcement regime (including an infringement notice scheme) to deal with cyber-bullying?

Q24 What penalties or remedies would be most appropriate for *Options 2 and 3*?

The VCSPB, remaining within its scope and functions, offers no specific comment on the appropriateness, adequacy or enforcement of laws in this area.

However, the understanding of the VCSPB is that the current laws do not address cyber bullying specifically and so do require amendment.

VCSPB acknowledges that the issue is complex and that it is unlikely that there will be a single strategy for example, legal sanction in dealing with cyber bullying and online safety.

A key is to be preventative and proactive through ongoing awareness raising, education and support of children, parents and the community round the issues of online safety.

The VCSPB would like to see more education and restorative practice approaches taken to cyber bullying offences rather than a punitive approach especially as we are dealing with children as defined above. The VCSPB is concerned about the possibility of children being charged with criminal offences. All children make bad choices at some point – children need to understand the consequences and learn from these mistakes so that they can become good citizens. A system that is overly punitive will not give children this opportunity.



The VCSPB acknowledges that extreme cases where death or other serious injury has occurred as a direct result of the actions of the child, that it may be necessary to have a criminal offence, but this should be the exception not the immediate response.

In the case of criminal offences being committed, then the VCSPB does favour a mid range penalty that is more proportionate to the offence that has occurred. Whilst a fine is a lesser penalty than imprisonment, it could have a devastating effect on a family already in financial distress or to a child who does not have adequate financial or other support. The VCSPB considers the community service, restorative justice and educative options mentioned above would be viable options in this area of cyber bullying.

The VCSPB strongly supports a civil enforcement regime. With respect to penalties, the VCSPB refers to restorative practice approaches, community service and education programmes.

The VCSPB acknowledges the importance of this area of child safety and is pleased to have the opportunity to contribute to the consultation on behalf of parents with children in Catholic schools in Victoria.

Tracey O'Neill
CHAIR