

7 March 2014

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

To whom it may concern,

YWCA NSW has been delivering programs aimed at addressing online safety for children for over 5 years and is excited at the prospect that the Department of Communications is seeking feedback from relevant stakeholders.

YWCA NSW has been operating for over 130 years and delivers over 55 programs in 12 locations throughout metropolitan and regional NSW. In 2012/13, YWCA NSW supported over 30,000 disadvantaged and vulnerable people across its programs:

- 3,616 children participated in programs designed to support their readiness for school;
- 14,169 children, 6-12 yrs participated in programs designed to improve literacy and numeracy;
- 7,609 parents / carers developed the skills and networks to build stronger families;
- 18,329 young people participated in programs, building skills and confidence, staying engaged in learning;
- 9,767 workers developed the skills / qualifications needed to enjoy active and productive working lives;
- 9,039 women and children were provided with specialist support to keep them safe from abuse and harm;
- 22,453 people participated in activities and programs designed to strengthen their confidence, self esteem and connections so their communities are safer;
- 1,904 women acquired knowledge and skills that contribute to them leading healthier lives; and
- 190 women had access to leadership opportunities.

Over 2012 and 2013 YWCA NSW delivered Respectful Relationships on behalf of the Department of Social Services. Respectful Relationships is a safe relationship and abuse prevention program for young people in the Shoalhaven and Macarthur region. This early intervention program worked with young people in Years 5, 6 & 7 to raise their awareness of ethical behaviour, to develop protective behaviours and to develop their skills in conducting respectful relationships. The YWCA NSW implemented a whole of community

approach to the adoption of respectful relationships by working with students, their parents/carers and teachers. The program was delivered weekly in-school, during school terms, over the course of 5-7 weeks dependent on each school's schedule. Through highly interactive and tailored education workshops, the program supports young people in Years five and six and year 7, transitioning through periods in their life where they are 'at-risk' of abuse and unsafe relationships.

Respectful Relationships facilitators build rapport and trust with the young people, educating and equipping them with strategies to build resilience and identify, prevent and resolve unsafe relationships in their lives. It is designed to assist young people navigate the complexities of home and school life, during periods of their life when they maybe at-risk of abuse.

Five key topics are covered, with content tailored in collaboration with the school to suit each year group and aligned to components of the PDHPE school curriculum:

1. Resilience;
2. Bullying;
3. Cyber bullying;
4. Sexting; and
5. Protective Behaviours.

This program also participated in a formal evaluation with University of Queensland as commissioned by Department of Social Services. Through this program and our internally funded Yise-Up program which has similar objectives, YWCA NSW has built up a wealth of experience to comment on Online Safety for Children.

Below are YWCA NSW's responses to the individual questions that have been asked as part of the public consultation on "Enhancing Online Safety for Children".

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

The programmes that have been listed in Appendix A should not be moved under the responsibility of the Commissioner. The target audiences are not necessarily just children and this is exemplified by the Line Campaign delivered by the Department of Social Services. This is an early intervention programme aimed at children, however, with the desired outcome to reduce domestic violence against women. The delivery programme is called Respectful Relationships, of which YWCA NSW has delivered, and targets children in years five, six and seven, teachers, and parents.

A better way to get effectively collaboration between the individual programmes, which will achieve the same outcome, can be achieved by:

- Having a single web site outlining all the resources available to stakeholders: and
- Ensuring that each of the Agencies' have Key Performance Indicators that reward collaboration and references each others documents.

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

The best option in regards to establishing the Commissioner would be option four, that being a designated non-government organisation (NGO) with expertise in online child safety. The reasons for this would be that an NGO would be:

- Totally independent of the Government;
- Be quick at making decisions;
- Would be better value for money than keeping it within Government control; and
- Could be regularly tendered out if performance was not good. The length of the tender could be on a three or five year basis.

It would be a requirement that the NGO have the capability to escalate issues to the appropriate authorities and that those authorities have the powers to enforce any laws. The NGO would also need the authority to work across State and Federal Government Departments, as well as geographic areas including overseas.

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

YWCA NSW believes the definitions of social network sites are suitable for defining social media sites for the purpose of this scheme.

It is also recommended that these definitions be reviewed at least yearly as the environment for social media changes very rapidly. With the development of new software and applications, there will be potentially new ways of interacting online which have not even been thought of yet. The definitions will need to keep up to date with any changes.

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

Yes.

In particular, many children use online games as a form of entertainment, as well as mental stimulation so the same rules have to apply to these as to social network sites. Increasingly young people using online games utilise multi player functions that have the capacity to invite anyone in the cyber world into that game.

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?

A large media site is a very ambiguous term and what constitutes this could be even more ambiguous. YWCA NSW believes a large social media site would be one in which 20% of an age cohort is regularly accessing the site. For example if the National Population of 5-9 year olds is currently approximately 1.4 Million, if 280,000 five to nine year olds are currently accessing this social media site then it would be large.

The sources of data can be made available by the Internet Service Providers or the owners of the individual social media sites and this could be a condition of operating in the Australia environment.

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

The coverage of social media sites only focusing on large is not appropriate or workable. Very often new social media sites are being developed and in their infancy they would not be considered large by any means. Nonetheless, these sites may be conducive to bullying behaviour and cause great concern to children. As the Internet and social media sites are moving so fast, it is essential that all sites be included so as to provide comprehensive online safety.

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?

Yes.

Children can be experiencing transitional Out of Home Care arrangements and still require access to online safety. Also children in the care of the state still require access to online safety.

Processes could be put in place to ensure that feedback to a complainant or notice recipient is given in person where possible, by phone, or in as sensitive terms as possible via email. Confidentiality would need to be ensured as well.

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?

The complainant would need to submit their date of birth, email address, physical address, twitter account if applicable, Facebook account if applicable, mobile phone number if applicable, and parent or guardian details.

The offensive material would also need to be outlined.

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

Forward to the Commissioner the email that has been sent to the social media site from the complainant.

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?

48 hours is way too long for the social media site to both respond to a complaint and also to do something about the complaint. There have been instances where cyber bullying

has occurred overnight and the complainant was found in the morning having committed suicide. If social media sites want to maintain their licence and revenue from advertising, it is not unreasonable for them to respond within three hours and have it resolved within a similar timeframe. Apple Inc have a high “Net Promoter” metric which measures their customer service capability and similarly social media sites should have a benchmark system whereby they have to meet minimum standards.

Q11. What level of discretion should the Children’s e-Safety Commissioner have in how he/she deals with complaints?

The Commissioner would need to have the power to investigate any complaint no matter what the circumstances.

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

As above, three hours would be a minimum requirement for the social media site to acknowledge the complaint and do something about it.

Q13. 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 are appropriate.

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

The test is quite subjective and what one person would consider to cause harm, may to another person appear to be fine. It would be essential during the process before establishment of the e-Commissioner to run several focus groups with children supported by their parents to establish a baseline of what constitutes “likely to cause harm”. This can then be used as a benchmark for the test.

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

The process as described in the discussion paper is flawed in so much that it recommends that the e-Commissioner issue a notice to the individual(s) that posted the material on the social media site. In some circumstances the individual is a troll and contact cannot even be made.

An appropriate timeframe would be similar to what has already been established above. Three hours would be a minimum to remove material, as outlined before in some circumstances cyber bullying has occurred overnight and the victim has committed suicide overnight.

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

In addition to the suggesting penalties suggesting in the paper for social media sites non compliance, there should be a mechanism whereby social media sites would be banned from Internet Service Providers (ISP) sites, therefore restricting access. Whilst this may seem harsh, regulatory bodies need to have the authority to do this. It would also need to be across all Australian ISPs in order to fair and not disadvantage an individual ISP.

Also there will be more civil cases that occur due to cyber bullying and defamation. This is evidenced by the recent case in Orange NSW, where an Orange High School student, Andrew Farley, was ordered to pay \$105,000 for defaming a senior teacher, Christine Mickle. The defamation occurred via a series of tweets and Facebook posts in November 2012. Furthermore, there maybe a class action against social media sites that do not respond in a timely manner to complaints and this could ultimately damage the brand and credibility of these businesses.

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?

The proposed scheme should offer safe harbour provisions which would mandate that complaints would need to be followed up by the content host provider. It needs to go further as well, by clearly stipulating the turnaround for acknowledging and reviewing complaints which should be three hours.

Q18. 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?

The Administrative Appeals Tribunal would be a useful clearing mechanism for reviewing any appeals. It needs to be noted, however, that this cannot end up being a bottleneck in the process of any appeals. Also any appeals that get upheld need to be on the conservative side of impact on any child and determined by a focus group method with clearly outlined benchmarks as outlined in the YWCA NSW response to question 10. It is better to err on the conservative side and remove more content than less, particularly in relation to children's concerns.

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?

As YWCA NSW does not operate a Social Media site and is not an Internet Service Provider it cannot comment on the financial and administrative impacts of compliance with the proposed scheme.

The e-Commissioner would need to be well enough resourced by the Department of Communications to meet the response time Key Performance Indicators as outlined in the YWCA NSW response to question 10.

Q20. 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?

The current laws that deal with cyber bullying under Commonwealth legislation are Criminal Code Act 1995 (Cth) which was updated to deal with social media in 2005. The level of the penalty is high being a maximum of three years and / or fine up to \$30,600. The digital age moves very fast and these laws need to be updated to deal not only with minors, but the changing face of the Internet. The laws and punishments need to be in proportion to the harm that has been inflicted. A good starting place would be the New Zealand *Harmful Digital Communications Bill* that was introduced on 5 November 2013. A small working party, including a range of stakeholders, could be engaged to take on recommendations that came out of the National Bullying, Young People and Law Symposium to draft legislation with commensurate legal support.

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

The level of the penalty is too high being a maximum of three years and / or fine up to \$30,600. The digital age moves very fast and these laws need to be updated to deal not only with minors, but the changing face of the Internet. The laws and punishments need to be in proportion to the harm that has been inflicted. As suggested in the New Zealand *Harmful Digital Communications Bill* a better starting place would be a fine starting at \$2,000 and imprisonment of three months and grading up to the levels in section 474.17 of the Criminal Code on a sliding scale dependent on the level of harm inflicted.

This does not preclude independent Civil cases as has already been described in the recent case in Orange NSW, where an Orange High School student, Andrew Farley, was ordered to pay \$105,000 for defaming a senior teacher, Christine Mickle. The defamation occurred via a series of tweets and Facebook posts in November 2012.

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

Yes. Education would need to be a major component that would be complementary to any offence. The education component would be a program delivered by a non government organisation and aimed at the perpetrator, the parent and teachers.

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

Yes. This would be a faster and more effective process, whilst not being a burden on the legal system.

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

As suggested in the New Zealand *Harmful Digital Communications Bill* a better starting place would be a fine starting at \$2,000 and imprisonment of three months and grading up

to the levels in section 474.17 of the Criminal Code on a sliding scale dependent on the level of harm inflicted.

Thank you for the opportunity to comment on the “Enhancing Online Safety for Children” public consultation paper. YWCA NSW is committed to ensuring the safety of children and would be willing to be involved in future Working Parties and ongoing discussion in this area if required. I am available on 0421 611 592 or 9285 6243 to speak further.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'R. Kennedy', with a long horizontal flourish extending to the right.

Roger Kennedy

Head of Programs, Impact and Collaboration