



**Australian
Human Rights
Commission**

12 February 2021

Online Safety Branch
Department of Infrastructure, Transport, Regional Development and
Communications
By email: OnlineSafety@infrastructure.gov.au

Re: Consultation on the Online Safety Bill

Dear Online Safety Branch,

Thank you for the opportunity to provide written feedback on the Online Safety Bill. We commend the Australian Government's efforts to improve Australia's online safety regulatory framework.

We note that technology has the potential to serve both as a source of opportunity to advance human rights and to elevate diverse voices, and also as a vehicle for abuse, harassment and harm. It is important that all Australians are able to meaningfully participate in public debate online without the threat of harm or abuse. We are concerned that some ongoing and emerging online behaviours are impacting the safety of Australians online, and that the digital industry is sometimes failing to adequately and speedily address those behaviours.

The COVID-19 pandemic has also created new patterns of online behaviour, risks and opportunities. The eSafety Commissioner found that the number of Australians reporting behaviour such as cyberbullying, image-based abuse and sex-based extortion has more than tripled since March 2020.ⁱ

We welcome the significant focus in the draft Bill on the prevention of harm and proactive measures to encourage safe online interactions. We consider the draft Bill to be a step forward in preventing and responding to online abuse.

Please find below our comments about specific sections of the draft Bill, noting that we have focused our feedback on the gender- and child-related aspects of the Bill, in line with our mandates. We also draw your attention to the overall view of the Australian Human Rights Commission (the Commission) that any law or scheme to



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promote and protect online safety should be approached within a human rights framework.

Basic Online Safety Expectations

We consider the draft Bill's provisions establishing a mechanism to determine Basic Online Safety Expectations for social media and internet services to be a positive step towards ensuring that digital products and services are safe for Australians to use.

In particular, we support the requirement in the draft Bill that the Minister consult publicly before he or she determines a set of Expectations. This is an appropriate step towards ensuring that the Expectations reflect community expectations and consider diverse points of view. However, we are concerned that the legislation does not establish criteria for determining the appropriate content of Basic Online Safety Expectations. We suggest that Basic Online Safety Expectations always be determined using a human rights-based approach.

We support the draft Bill's mandatory reporting requirements allowing the eSafety Commissioner to require online services to provide specific information about online harms, as well as associated penalties for non-compliance. These requirements and penalties ensure that the Expectations are enforceable, and properly strengthen the ability of the eSafety Commissioner to fulfil its role as a safety net in situations where digital platforms fail to build in appropriate safety features or appropriately enforce their terms of service to keep their users safe. These measures should be supported by appropriate resourcing of the eSafety Commissioner.

Consistent with previous submissions from the Commission, the functions of the eSafety Commissioner should be delivered consistent with Australia's international human rights obligations. We confirm that the eSafety Commissioner continues to work closely with the Commission, consistent with our mutual interests in ensuring safety and respect for all Australians.

Updated Online Content Scheme

We support the draft Bill's proposed update of Australia's Online Content Scheme, and in particular the requirement that players in the digital industry will need to create new or strengthened industry codes addressing current, new and emerging classes of harmful online content.



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We welcome the focus on user safety in the updated Scheme. Rapid developments in technology have created a need for expanded and updated rules to protect Australians online, particularly children, women, multicultural communities, LGBTQI communities, Aboriginal and Torres Strait Island communities and people with disability. We consider the power granted to the eSafety Commissioner in the draft Bill to create industry standards within twelve months to be appropriate. The Commission expects to work closely with the eSafety Commissioner to ensure that those standards take into account the needs of diverse communities and adopt a human rights-based approach.

Cyber abuse take-down scheme for Australian adults

During extensive consultations for *Respect@Work: the National Inquiry into Sexual Harassment in Australian Workplaces*,ⁱⁱ the Commission heard that communities affected by online abuse highly valued options to seek prompt removal of inappropriate materials. The primary concerns of victims interviewed by the Commission were to quickly understand their rights, and to have the harmful images taken offline or have the online abuse stop. We heard during the Inquiry that quick removal of abusive and harmful images can minimise long term harm.

As a result, we are of the view that the draft Bill's introduction of a cyber abuse take-down scheme for Australian adults, with consistent take-down requirements for image-based abuse, cyber abuse, cyberbullying and harmful online content, is a positive step towards ensuring the safety of Australian adults online. We support the draft Bill's proposed 24 hour window for online service providers to remove relevant materials after receiving a notice from the eSafety Commissioner, and associated penalties for non-compliance.

Protecting women online

We note that technology provides many opportunities to progress gender equality, including access to flexible work, diverse collaboration, improved connection and greater innovation. Online platforms are a powerful tool for women to increase their social connectedness and improve their economic security and access to information. There are new and lucrative work opportunities in the male-dominated technology industry and potential to increase the participation of women and girls in STEM industries. Social media can also amplify the voices of women who are often left behind in public debates.



However, we take this opportunity to draw your attention to the particular need to protect women online. The eSafety Commissioner has found that women are more likely than men to be the targets of all forms of online abuse.ⁱⁱⁱ Women are particularly vulnerable to image-based abuse, and are twice as likely as men to have their nude or sexual images shared using technology without their consent.^{iv} More detail is contained in the letter from Sex Discrimination Commissioner Kate Jenkins to you dated 21 February 2020 in relation to the Government's earlier consultation on online safety reforms.^v

In addition to the safety-related impacts on women of harmful online behaviour, including undermining victims' mental health and wellbeing, reputations, dignity and careers, an unsafe online environment can lead to victims self-censoring or suppressing their own engagement online, impeding their full participation in online life and lowering the diversity and richness of the online environment for all Australians. For instance, the eSafety Commissioner has reported that 40% of women who experienced abuse or harassment on a social media platform either ceased or decreased their use of that platform.^{vi} Introducing appropriate requirements to help keep Australians safe online will therefore assist all Australians, and particularly women, to access the economic and social benefits of safe use of the internet and technology.

Protecting children online

Overall, the draft Bill is a positive enhancement of the eSafety Commissioner's role in protecting children's right to safety in the online environment, recognising that children can be both victims and perpetrators of online harms. In particular, we are supportive of extension of the cyberbullying scheme to more services used by children, such as WhatsApp, TikTok and games.

Children as victims of online harm

Bullying, including cyberbullying, is a key concern for children in Australia, and a major adolescent health concern internationally. A 2015 Organisation for Economic Co-operation and Development (OECD) report showed that Australia ranked fifth among OECD countries surveyed for percentage of students who reported being bullied at least a few times a month. The OECD average percentage of students bullied was 8.9%, whereas 14.8% of students were exposed to bullying in Australia.^{vii} Cyberbullying is a particular problem for children of school age and has further increased during the COVID-19 pandemic.^{viii}

Children as perpetrators of online harm

We support the draft Bill's approach to responding to reports of cyberbullying by removing content. However, we submit that education is the most effective response to all bullying, including cyberbullying, by children. Research conducted by the Commission in 2012^{ix} emphasises that the key driver of behavioural change in children is peer support and educative approaches. The need to educate children about how to deal with negative online behaviour needs to be balanced with the recognition that access to digital technology and information supports children to claim their basic rights in a range of areas, including the right to participate, freedom of expression and freedom of association, and their right to access information.

We welcome the decision to treat cyber bullying of children differently from cyber-abuse of adults in the draft Bill's provisions. However, we are concerned that the provisions that penalise perpetrators of image-based abuse treat children and adults in the same way. Although image-based abuse may be a criminal offence in some jurisdictions (including for children), we consider that an educative approach is more appropriate than a punitive approach when children are involved as perpetrators. We recommend further research be conducted to determine the most effective way to address perpetration of image-based abuse by children.

Education and engagement with children and their families regarding online harms

Evidence shows that education and engagement is the most effective strategy to protect children and young people from the adverse effects of image-based abuse and harmful online content.^x This includes providing children and young people with information and education about safety online, critical discussions about pornography as part of age-appropriate education about sex and respectful relationships, and human rights education. A package of educative measures covering these areas has the potential to empower children and young people and their families, and to provide them with the tools needed to minimise both exposure to and the impact of pornographic and sexually exploitative online content. We support the eSafety Commissioner continuing to undertake important education work with children and young people, parents, and schools in particular.

It is important that children and young people are empowered to think critically about their online engagements and be involved in developing solutions to the problem of online safety. The eSafety Commissioner's research on online safety for children and young people makes a useful contribution to elevating the voices of children, but more can be done to take their views and experiences into account in developing

solutions, including legislative solutions. For example, the use of terms like ‘cyberbullying’, which is not widely used by children, could be examined critically through a child-centred lens. Further, because the types of online services accessed by children are subject to constant change, any legislation that hopes to regulate an expanding set of service providers should be informed, on a regular basis, by what children say they currently use.

Education and engagement of parents is pivotal to the online safety of children. Currently, as pointed out by the eSafety Commissioner, only 46% of Australian parents feel confident about dealing with the online risks their children face, and 95% want more information about online safety.^{xi} Safety in the online world is as much a part of “everyday” parenting as is safety in the physical world. Many parents currently don’t know what tools are available to them and how important the “kitchen table” conversations are with their children from the earliest ages. We need to help parents be experts in online safety for their children, just as they know to teach their children how to cross a road.

Summary of views

As outlined in greater detail above, please find below a summary of our views on the draft Bill, which focus on its implications for gender equality and young people:

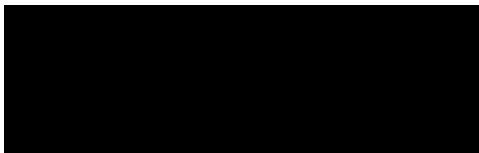
- **Basic Online Safety Expectations:** Support these provisions, in particular the consultation mechanism and mandatory reporting requirements. Concerned that the legislation does not establish criteria for determining the appropriate content of the Basic Online Safety Expectations.
- **Updated Online Content Scheme:** Support these provisions, in particular the development of new or strengthened industry codes, and the creation of industry standards.
- **Cyber abuse take-down scheme for Australian adults:** Support these provisions, noting the particular need to protect women from online abuse and harm.
- **Enhanced cyberbullying scheme for Australian children:** Support these provisions, in particular the inclusion of a broad range of online services. Note that content removal efforts should be accompanied by an appropriate and balanced education strategy for children and parents.



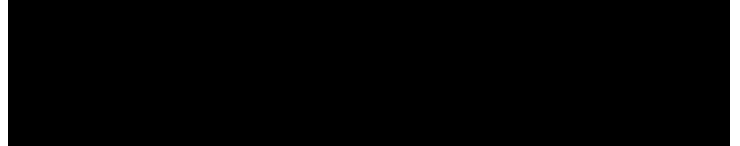
- **Image-based abuse scheme as it affects children:** Concerned that the provisions penalise both child and adult perpetrators of image-based abuse, in a context where education-based approaches are likely to be more effective for child perpetrators.

We commend you on this draft Bill, which we consider to be a positive step towards ensuring online safety for all Australians.

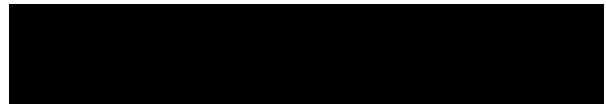
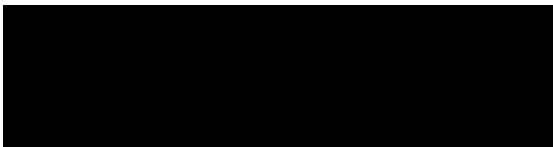
Yours sincerely



**Kate Jenkins
Sex Discrimination Commissioner**



**Anne Hollonds
National Children's Commissioner**



ⁱ eSafety Commissioner, *Know the facts about women online* at <https://www.esafety.gov.au/women/know-facts-about-women-online>

ⁱⁱ Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020) at <https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>

ⁱⁱⁱ eSafety Commissioner, *Know the facts about women online* at <https://www.esafety.gov.au/women/know-facts-about-women-online>

^{iv} eSafety Commissioner, *Know the facts about women online* at <https://www.esafety.gov.au/women/know-facts-about-women-online>

^v Sex Discrimination Commissioner, *Re: Consultation on a new Online Safety Act* (21 February 2020) at https://www.communications.gov.au/sites/default/files/submissions/consultation_on_a_new_online_safety_act_-_submission_-_sex_discrimination_commissioner.pdf

^{vi} eSafety Commissioner, *Know the facts about women online* at <https://www.esafety.gov.au/women/know-facts-about-women-online>

^{vii} Organisation for Economic Cooperation and Development, *PISA 2015 Results (Volume III): Students' Well-Being* (2017) 136.



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^{viii} yourtown and Australian Human Rights Commission, *Impacts of COVID-19 on children and young people who contact Kids Helpline* (September 2020) 61 <https://humanrights.gov.au/our-work/childrens-rights/publications>.

^{ix} Australian Human Rights Commission, *Cyberbullying and the Bystander* (Report, 2012) at www.humanrights.gov.au/our-work/childrens-rights/publications/cyberbullying-and-bystander

^x Australian Human Rights Commission, *Cyberbullying and the Bystander* (Report, 2012) at www.humanrights.gov.au/our-work/childrens-rights/publications/cyberbullying-and-bystander

^{xi} eSafety Commissioner, *Safer Internet Day* (2021) at <https://www.esafety.gov.au/about-us/events/safer-internet-day-2021/family-and-friends>