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## **Submission of the Synod of Victoria and Tasmania, Uniting Church in Australia to the Exposure Draft of the *Online Safety Bill 2020* 14 February 2021**

The Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes this opportunity to make a submission on the proposed *Online Safety Bill 2020*. The Synod welcomes and supports the *Online Safety Bill 2020*. The submission can be made public.

The Synod sees online safety as part of broader efforts to address harm against people, particularly harm of a sexual nature.

The Uniting Church in Australia has a strong commitment to opposing sexual abuse, including in the online world. The 1991 National Assembly meeting of hundreds of delegates from across Australia resolved:

*To receive the report (of the Commission for Women and Men)*

*(a) That sexual violence be deplored as a sin against God and humanity.*

*(b) That it be recognised that the origin of sexual violence lies in the practice of inequality of the sexes;*

*(c) That it be confessed that sexual violence is disturbingly frequent within the Uniting Church community as it is in the wider community;*

*(d) That it be acknowledged that in the past, the church has often made inappropriate responses or no response to victims/survivors of sexual violence. This has been experienced by many as a further violation;*

*(e) That the church be committed to hearing the voices of those who are victims of sexual violence;*

*(f) That the actions of people who work for the end of such violence and who support its victims/survivors be supported;*

*(g) That the urgent need for the church community to become part of a "network of prevention" in the area of sexual violence be recognised;*

*(h) That the publication "The Pastoral Report to the Churches on Sexual Violence Against Women and Children of the Church Community" be commended to presbyteries and parishes as a guide for study and action.*

This resolution committed the Uniting Church to hear the voices of survivors of sexual abuse and be part of broader efforts to prevent sexual violence.

There is an explicit statement opposing child sexual abuse from the Uniting Church National Assembly Standing Committee meeting of March 2013 (ASC Minute 13.07.03):

*The sexual abuse of children is criminal behaviour that is totally abhorrent and unacceptable.*

The Synod of Victoria and Tasmania has three resolutions from meetings of representatives from its congregations explicitly addressing child sexual abuse. The first is from 1993 and urges the Victorian Government to adopt measures to prevent the sexual abuse of women and children and to assist survivors of sexual abuse:

*93.4.3.5 The Synod resolved:*

*That the Victorian Government be requested to provide for the protection of women and children from rape, domestic violence and incest by:*

- (i) Developing and maintaining long term programs of preventative community education.*
- (ii) Requiring the Department of Public Prosecutions to provide information and advice to victims.*
- (iii) Collecting and publishing accurate information concerning sex crimes.*
- (iv) Enhancing education for police officers, in particular for the officers of the Uniform and Community Policing Unit, so that they better understand and can better implement codes of practice for sexual assault victims.*
- (v) Increasing support for victims of sexual assault by resourcing programs specialising in offering services to victims.*
- (vi) Encouraging and resourcing research and education designed to assist judges in sentencing, particularly sentencing involving crimes of sexual assault.*

The second is from 1994, calling on the Victorian Government to take a holistic response to child sexual abuse in the community:

*94.2.4.1 The Synod resolved:*

- (a) That the Synod call on the Victorian Government to provide additional funding for preventative services to assist children "at risk" of child abuse.*
- (b) That the Synod request the Victorian government to develop a "holistic" strategy to respond to child abuse which ensures that once reports are investigated that families receive long term support.*
- (c) That the Synod encourages Ministers and Parish leaders to attend the "Strengthening Vulnerable Families" day and/or use the resources developed.*

The third is from 2011 and explicitly addresses online child sexual abuse, calling on the Federal Government to adopt measures to deter online child sexual abuse, increase its detection and resource police to address all cases where Australians are involved in online child sexual abuse:

*11.6.18.2.4 The Synod resolved:*

- (a) To call on the Federal Government to adequately resource the Australian Federal Police to investigate all cases of online child sexual abuse where either the perpetrator or the victim is Australian;*
- (b) To call on the Federal Government to require Internet Service Providers (ISPs) to take action to assist in combating the sale, transmission and accessing of child sexual abuse images, which are always produced through human trafficking, forced labour, slavery or other means of manipulation and coercion. To that end, the Federal Government is requested :*
  - To leave the IT industry in no doubt that they have a legal obligation to report clients accessing child sexual abuse material when they detect it, regardless of privacy legislation; and*
  - To legislate to require ISPs to block client access to all websites that contain material classified as 'Refused Classification', regardless of where such sites*

- are hosted, and to log attempts by clients to access child sexual abuse sites and provide this information to the authorities for investigation;*
- (c) *To call on the Federal Government to urge those countries that have not yet criminalised the production, distribution, use and possession of child sexual abuse material to do so; and*
  - (d) *To write to the Prime Minister, the Minister for Home Affairs, the Minister for Broadband, Communications and the Digital Economy, the Leader of the Opposition, the Shadow Minister for Home Affairs, the Shadow Minister for Broadband, Communications and the Digital Economy, and the Leader of the Greens to inform them of this resolution.*

## Response to the Exposure Draft

The Synod supports Sections 8 – 12, 15 - 24, 31 – 35, 37 – 40, 42 – 45, 47 – 62, 67 – 69, 71 – 72, 74 – 86, 91 – 92, 94 – 151, 153 - 166, 169 – 211, 213 – 214, 216 – 220, and 222 – 240 of the exposure Bill.

The Synod supports Sections 6 and 7 to define cyber-bullying material against an Australian child and Australian adult. However, we urge that the definitions be changed to define cyber-bullying of any child or any adult. It should be an offence for anyone in Australia to engage in cyber-bullying of anyone, no matter their location or nationality. The Synod realises there will be many cases where it will be more difficult for law enforcement authorities to prosecute a cyber-bullying case involving a foreign national. Therefore there will be cases that law enforcement agencies decide not to investigate or prosecute, as occurs with most crimes. However, the Bill should not signal that cyber-bullying is not a serious matter if targeted at foreign nationals.

There is a strong need to deal with cyberbullying. In a poll conducted in 24 countries, 12% of parents reported that their children had experienced cyberbullying.<sup>1</sup>

### **Example of cyberbullying<sup>2</sup>**

Sarah Lynn Butler was a 12-year-old voted queen of an autumn festival at her school in Williford, Arkansas, in 2009. Her mother said that Sarah was "always laughing and giggling and cutting up and playing around" and had "lots of friends". After she was voted as queen, she began receiving hostile comments on her MySpace page. Those posting comments said Sarah was a "slut" amongst other hostile comments. When Sarah's mother saw the comments, she asked Sarah to talk about them. Sarah removed her mother from her friends list on MySpace so her mother could no longer see the comments.

Not long afterwards, when the family went out to run errands one afternoon, Sarah stayed home. Her browsing history revealed that she logged onto her MySpace page with the last message posted there saying she was "just a stupid little naïve girl, and nobody would miss her." When the family returned later in the day, they found Sarah dead. She hung herself. Her suicide note said that she could not handle what others were saying about her.

<sup>1</sup> Mary Aiken, 'The Cyber Effect', John Murray Publishers, London, 2017, 127.

<sup>2</sup> Ibid., 127.

A survey conducted by The Australia Institute in 2018 found 9% of women and 6% of men had experienced cyberhate.<sup>3</sup> Cyberhate was defined as “repeated, sustained threats or attacks on an individual through the use of electronic devices, which result in real-life harm to the target. These harms may be physical and/or psychological. The attacks may be perpetrated by one or more individuals.”<sup>4</sup>

Journalist Ginger Gorman spoke to online trolls that were part of packs that work together to get vulnerable people to harm themselves. They particularly target people with autism or mental illness. “Some people should kill themselves because they are generally pieces of shit,” one troll told Gorman.<sup>5</sup>

They also target rape survivors and the families of people who have recently died in tragic circumstances.<sup>6</sup>

The Synod is concerned that in Section 13 the Commissioner can designate a service as an exempt service if there are controls that will effectively prevent the posting of cyber-bullying material targeted at an Australian child. The Synod believes that a service should only be designated an exempt service if it can prevent the posting of all cyber-bullying material, regardless of the material's target.

Under Section 25, the Synod would like to see the Commissioner's functions amended to accept cyber-bullying complaints where the perpetrator was in Australia or its territories when the cyber-bullying occurred and when the complaint was made. As currently drafted, the Commissioner appears unable to assist any person in Australia on a temporary visa and is not an Australian resident or a person overseas being subjected to cyber-bullying by someone located in Australia or its territories. There is a need to send a clear signal that it is unacceptable to cyber-bully anybody regardless of their location or nationality. The concern is particularly relevant at the current time with the rise in far-right racist extremism in Australia. The Director-General of ASIO told the Senate Legal and Constitutional Affairs Budget Estimates hearing on 20 October 2020 that right-wing extremists were more organised, sophisticated, ideological, and active than previous years. He stated that extreme right-wing individuals comprised 30 – 40% of ASIO's priority counter-terrorism investigative subjects in the 2019 – 2020 financial year.<sup>7</sup> He told the hearing that many of these people believe ‘race war’ is inevitable.<sup>8</sup> The Synod agrees with eSafety and the Australian Human Rights Commission in their joint media release that:<sup>9</sup>

*Constant vigilance is required to condemn and address racism, whether online or off. Australia prides itself on being a safe and welcoming country that addresses issues of racism and takes each racist incident seriously.*

The statement should apply to all racist cyber-bullying where someone located in Australia is the perpetrator.

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<sup>3</sup> Ginger Gorman, ‘Troll Hunting’, Hardie Grant Books, Melbourne, 2019, 67.

<sup>4</sup> Ibid., 66-67.

<sup>5</sup> Ibid., 21.

<sup>6</sup> Ibid., 21.

<sup>7</sup> <https://www.asio.gov.au/publications/speeches-and-statements/senate-legal-and-constitutional-affairs-budget-estimates.html>

<sup>8</sup> Ibid.

<sup>9</sup> Australian Human Rights Commission and eSafety Commissioner, ‘New resources for victims of cyber abuse in diverse communities’, Media Release, 26 June 2020.

Similarly, the function of the Commissioner in Section 25 currently formulated as:

*Coordinating activities of Commonwealth Departments, authorities and agencies relating to online safety for Australians.*

Should be reworded to:

*Coordinating activities of Commonwealth Departments, authorities and agencies relating to online safety related to Australia.*

In the Synod's view, the eSafety Commissioner should have a mandate to improve online safety globally where it is in Australia's interests to do so. Further, as noted above, the Commissioner should be authorised address online safety issues where harm is originating from Australia and its territories. Such a change in focus would also require corresponding amendments to the eSafety Commissioner's functions in Section 27.

In Section 27, the eSafety Commissioner should have an explicit function to cooperate with international regulators and law enforcement agencies to improve online safety globally where it is in Australia's interests to do so. The Synod notes that the Commissioner already engages in such activities, and the Act should reflect the importance of the work.

Section 30 should be modified so that complaints can be brought by any child located in Australia, or an adult responsible for them. A complaint should also be able to be lodged by a child or an adult responsible for them located overseas where the person targeting them for cyber-bullying is located in Australia or its territories.

The Synod notes that Section 32 would appear to allow a person located overseas or temporarily in Australia to lodge a complaint relating to the online posting of an intimate image if the person making the post was an ordinary resident in Australia or if the image is hosted in Australia by a hosting service. The Synod welcomes allowing for such complaints, although it would prefer a complaint can be made where the person who made the post was located in Australia when they made the post, and at the time the complaint was made. The Synod cannot see the logic in limiting complaints by people overseas or temporarily in Australia for cyber-bullying cases, but allowing for such complaints about the posting of intimate images.

The Synod believes Section 36 should be amended so that an adult can make a complaint of cyber-bullying if the person conducting the cyber-bullying was located in Australia when they engaged in cyber-bullying and at the time the complaint was made.

Under Section 46, the Synod sees no reason why a provider under the authority of the Commonwealth Government should not be required to remove all cyber-bullying material connected with Australia. As drafted, the Bill will not address cyber-bullying material generated by an Australian user targeted at someone who is temporarily in Australia or someone who is overseas. Thus, the Synod asks that Section 46 (c) be modified accordingly. Similarly, Section 46 (e) should allow complaints to be made about any cyber-bullying material that is generated in Australia or its territories.

Similarly, Part 5 should be modified to allow for removal notices to be issued for any cyber-bullying material targeting a child generated by an end-user located in Australia. Thus, removal notices could be issued for cyber-bullying material generated in Australia targeting a child in Australia temporarily or a child located overseas.

The Synod agrees with Sections 65 and 66, that a service provider should only have 24 hours to comply with a removal notice issued by the eSafety Commissioner, unless the Commissioner permits a longer period for compliance.

There is a need to have provisions to compel providers to comply with removal notices in general. Even for child sexual abuse material, providers have been slow at removing illegal content and have contested its removal. At the 2019 eSafety conference in Sydney, the Canadian Centre for Child Protection (CCCP) reported that when they issue takedown notices for child sexual abuse material some content hosts do not prioritise the removal and others dispute removal. The CCCP said that on being issued with a notice to remove child sexual abuse material the time taken for content host companies to remove the content was:

- 10% within a day
- 25% within two days
- 50% within 3.5 days
- The worst 25% within 11.5 days
- The worst 10%, more than 25 days.

One content host took 360 days to remove an image of child sexual abuse once it was reported to them.

Content host corporations often resist removing child sexual abuse images involving children aged 13 to 17.<sup>10</sup>

Given the delay and contestation of illegal material concerning child sexual abuse material, it is likely there will be many providers that would seek to contest or delay the removal of other material such as cyber-bullying material, abhorrent violent material and intimate images posted without consent unless compelled to comply by law and under threat of penalty.

The Synod believes Part 7 should be modified to allow for removal notices to be issued for any cyber-bullying material generated in Australia or its territories, including where the cyber-bullying material is directed at someone temporarily in Australia or located overseas.

The Synod notes that Section 152 appears to be to allow flexibility to exempt certain businesses from service provider determinations. The Synod believes the Section should be modified to specify that certain requirements need to apply before the Minister can exercise such discretion. The Minister's current total discretion could result in many providers actively lobbying the Minister to obtain exemptions, with no transparency to the public when an exemption is granted.

Under Section 167, the Synod would prefer to see a condition that the Minister is satisfied that the person to be appointed as the Commissioner has a dedicated commitment to ensuring people's safety in the online world. The Commissioner's position must not be captured by the commercial interests of the digital industry by the appointment of someone from the industry that has a minimal commitment to online safety.

Under Section 212, the Commissioner should be able to disclose information to AUSTRAC as an additional agency. For example, a cyber-bullying matter could involve someone also engaged in online child sexual abuse that has come to the attention of AUSTRAC. Activities by online service providers might also be of relevance to AUSTRAC investigations and intelligence

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<sup>10</sup> Canadian Centre for Child Protection, 'How we are failing children: Changing the paradigm', 2019, 10.

operations. The Commissioner should also be able to disclose information to the Australian Institute of Criminology for their research.

Section 215 should be amended so that the Commissioner must be sure the person has given their informed consent and is capable of giving consent. Similar requirements for consent should apply as outlined in Section 21.

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