Submission into the review of the *Enhancing Online Safety Act 2015* and the Online Content Scheme

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Overview

iGen, those born after 1995, have been raised with the internet, smartphones and technology as part of everyday life. Technology and the pace of change is fast moving and has significant benefits including entertainment, socialising, research and school work. With these benefits has also come risk, including to online safety and cyberbullying.

ReachOut.com is a leading national youth and parent service, built with smart digital technology, that provides content, tools and personalised help that is free, accessible anytime and focused on self-help and early intervention. Optimised for mobile devices, it puts help in the pockets of young people (and parents) everywhere.

Over two decades, ReachOut has invested in quantitative and qualitative research to identify the issues of importance to young people in their day-to-day lives, the impact of self-help interventions delivered online, and to inform our service response. The issue of bullying and cyberbullying has been a consistent top 5 issue of concern for young people in recent years.

ReachOut's submission to the review of the *Enhancing Online Safety Act* 2015 discusses:
- The independence of the Office of the eSafety Commissioner (eSafety Commissioner)
- The expansion of the eSafety Commissioner's functions and focusing its role on regulation and enforcement, with responsibility for its awareness raising, education and research to be driven through partnerships and collaborations with existing well-known and evidence-based services.
- The need to scale-up community awareness raising, education and prevention measures to address cyberbullying with a digital response to a digital problem.
- National social media safety accreditation standards to assist the community to assess the relative safety of online platforms.

Recommendations:
1. Consider making the eSafety Commissioner an entity accountable under the PGPA Act with resourcing independent of Australian Communications and Media Authority (ACMA).
2. Focus the role and resources of the eSafety Commissioner on its unique responsibilities, its regulatory, compliance and enforcement functions, and draw on the expertise of well-known and evidence-based services to partner, collaborate and deliver other functions such as awareness raising, education and research.
3. Consider opportunities to boost awareness raising, education and prevention activities through partnerships and collaborations with digital (online) services that are evidence-based, scalable and low-cost.

4. That the eSafety Commissioner lead the design of national social media safety accreditation standards, in consultation with digital platforms, their users and organisations involved in online safety, and to assist the community to assess the relative safety of online platforms.

The Review

In 2015, the Australian Government established the Office of the Children's eSafety Commissioner under the *Enhancing Online Safety for Children Act 2015* to help protect Australian children from cyberbullying harm and to take a national leadership role in online safety for children. In 2017, the Government expanded the Commissioner's remit to cover online safety for all Australians. The office was renamed the Office of the eSafety Commissioner, and the legislation as the *Enhancing Online Safety Act 2015* (the Online Safety Act). Section 107 of the Online Safety Act requires that the operation of the Act be reviewed by the Government within three years after its commencement.

The Terms of Reference of the Review are prescribed in Section 107 of the Act which requires a review of the following matters be conducted:
* the operation of the Act and the legislative rules
* whether the Act or the legislative rules should be amended, and
* whether a delegation should be made under subsection 64 (1) of the Act.

The specific elements to be examined by the Review include:
* the extent to which the policy objectives and provisions of the Act remain appropriate for the achievement of the Government's current online safety policy intent
* the Commissioner's remit, including roles and responsibilities, and whether the current functions and powers in the Act are sufficient to allow the Commissioner to perform his/her job effectively
* whether the current governance structure and support arrangements for the Commissioner provided by the ACMA are fit for purpose
* whether legislative change is required to allow the Commissioner to perform his/her functions and powers more effectively.

In addition, the Review of Schedules 5 and 7 to the *Broadcasting Services Act 1992* (Online Content Scheme) will examine the operation of the Online Content Scheme, including the following matters:
a)   the relevance and effectiveness of the Online Content Scheme in the context of the contemporary communications environment and modern consumption patterns of online media and services
b)   the scope of regulation, including whether the Online Content Scheme's link to the National Classification Scheme categories (MA 15+, R 18+, X 18+ and RC) is still effective
c)   the most effective balance of tools available for dealing with prohibited online content, including legislation, co-regulatory schemes, self-regulatory schemes and technical protections, and
d)   an assessment of other regimes, including international models, in dealing with prohibited content that is hosted overseas.

About ReachOut

ReachOut is accessed by 132,500 people in Australia every month; or more than 1.59 million people each year.

Since its inception in 1997, ReachOut has co-designed programs and products with young people, ensuring that the evidence-based digital tools, and information and support a young person accesses on ReachOut are relevant and delivered in a way that makes sense to them.

Our core service is ReachOut.com and provides information and immediate relief to young people experiencing stress and distress. In addition we have developed a range of innovative tools and programs that extend our reach and impact, including:

- **ReachOut Next Step:** a tool that recommends customised support options based on a young person's symptoms and how significantly the symptoms are affecting them. Support options include articles, apps, forums, and online, face-to-face or phone counselling. Referral issues include mental health, alcohol, drugs, bullying and much more.
- **Apps and Tools:** a digital tool that recommends mental health and wellbeing apps and digital resources that have been endorsed by both professionals and young people. It includes three apps that have been developed by ReachOut: Recharge (managing sleep), WorryTime (managing worry/anxiety) and Breathe (managing stress and anxiety).
- **ReachOut Parents:** provides information, tools and resources to help parents and carers support 12 - 18 year-olds in their family environment; and includes an added option of coaching to give parents concerned about their relationship with their teenager additional one-on-one online support.
- **ReachOut Schools:** offers support to teachers and other education professionals on building young people's wellbeing and resilience.

Increased independence

The Online Safety Act provides for the administration of the eSafety Commissioner. The eSafety Commissioner is a statutory officeholder however the Commissioner's office has not been established as an entity as defined in the *Public Governance and Accountability Act 2013* (PGPA Act), and is not able to exercise accountable authority responsibilities under that Act.

ACMA must provide assistance as is reasonably required to the eSafety Commissioner to enable the Commissioner to perform functions and exercise powers.

Online safety is a complex, fast moving and priority area of public policy. In consideration of the policy priority it is timely to consider that the eSafety Commissioner become an entity that is accountable under the PGPA Act with resourcing independent of ACMA.

Recommendation

Consider making the eSafety Commissioner an entity accountable under the PGPA Act with resourcing independent of ACMA.

Focus the role of the eSafety Commissioner

The original mandate of the eSafety Commissioner was to enhance online safety for children. In 2017, the Government broadened the general functions of the eSafety Commissioner to cover online safety for all Australians.

The functions of the Commission as set out in section 15 of the Online Safety Act include to:
- promote online safety
- support and encourage the implementation of measures to improve online safety for Australians
- coordinate activities of Commonwealth Departments, authorities and agencies
- collect, analyse, interpret and disseminate information
- support, encourage, conduct, accredit and evaluate educational and promotional and community awareness programs
- make grants
- support, encourage, conduct and evaluate research
- publish reports and papers
- advise and provide reports to the Minister
- consult and cooperate with other persons, organisations and governments
- monitor and promote compliance with the Online Safety Act, and
- formulate guidelines and statements on online safety best practice or guidelines and statements that are directed towards facilitating the timely and appropriate resolution of incidents involving cyberbullying material targeted at an Australian child as well as promote these.

There are also functions conferred on the eSafety Commissioner by clauses 94 of both Schedules 5 and 7 to the Broadcasting Services Act to:
- monitor compliance with internet and content services industry codes and standards
- advise and assist parents and responsible adults in relation to the supervision and control of children's access to internet content and content services
- conduct and coordinate community education programs about internet content, internet carriage services and content services in consultation with relevant groups and agencies
- conduct and commission research into issues relating to internet content, internet carriage services and content services
- liaise with regulatory and other relevant bodies overseas about cooperative arrangements for the regulation of the internet and commercial content services industries, including but not limited to, collaborative arrangements to develop multilateral codes of practice and content labelling technologies; and
- to inform himself/herself and advise the Minister on technological developments and service trends in the internet and commercial content services industries.

In additional the eSafety Commissioner administers:
- a cyberbullying complaints system
- a Rapid Removal Scheme, and
- an End-user Notice Scheme.

Subject to the passage of the Enhancing Online Safety (Non-Consensual Sharing of Intimate Images) Bill 2018, the eSafety Commissioner will also administer a new complaints and objections system and a civil penalty regime for the non-consensual sharing of intimate images.

ReachOut acknowledges and supports the eSafety Commissioner and its role as a lead agency to coordinate online safety activities. However with the pace of technological change, complexity and breadth of the agency's responsibilities, it is timely to consider how to structure and prioritise this role.

It is suggested that there is an opportunity to focus the eSafety Commissioner's role and resources on what it can uniquely do, specifically its regulatory, compliance and enforcement functions, and in this way send a strong message to the public that online actions have real world consequences. The eSafety Commissioner should maintain its coordinating role in the areas of awareness raising, education and research; however draw on the expertise of well-known and evidence-based services to support the agency to execute these functions.

Recommendation

Focus the role and resources of the eSafety Commissioner on its unique responsibilities, its regulatory, compliance and enforcement functions, and draw on the expertise of well-known and evidence-based services to partner, collaborate and deliver other functions such as awareness raising, education and research.

Digital services to response to a digital problem: awareness raising, education and prevention

In December 2016, ReachOut Australia conducted an online survey of 1000 young people aged 14–25 years from across Australia. The sample was a nationally representative 50/50 split of males and females from metropolitan and regional locations[1]. Key findings:
- 23% had experienced bullying in the last 12 months.
- Many of the young people surveyed experienced bullying in multiple places – over half (52%) of them experienced bullying at school, followed by the workplace (25.3%) and online (25.3%).

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[1] ReachOut Australia, Bullying and Young Australians, 2017, http://about.au.reachout.com/wp-content/uploads/2017/01/Bullying-Research-Summary_FINAL.pdf

- Approximately half of the young people surveyed had sought help or support for their experiences of bullying.
- Of the young people who sought help for bullying, 48% turned to their parents for support, 33% to their friends and 24% to teachers.
- The top reasons for not seeking support were stigma, embarrassment and fear of being seen as 'weak', feeling that they could handle it on their own, and a perception that the problem wasn't serious enough to seek help.

The December 2016 research also showed that bullying and cyberbullying can have a significant impact on a young person's emotional and or mental wellbeing. One of the largest challenges in supporting young people to deal with cyberbullying is to understand what type of help is needed.

To date much of the focus in supporting a young person in distress has been on telephone and web-counselling, noting there have been 6,940 referrals to the eSafety Commissioner's contracted partner Kids Helpline from July 2015 to May 2018.

The Mission Australia Youth Mental Health Report 2012-2016[2] showed that after friends and family, the internet is the first place young people turn to for information and support.

There is significant potential to boost awareness raising, education and prevention activities, and support for young people in distress, through digital services that are evidence-based, scalable and low-cost. This is not to suggest the digital services are preferred to telephone and web-counselling, rather that they are used as an adjunct to these services and to significantly increase awareness raising, education and prevention, and provide emotional support to young people.

For example, over the last two years ReachOut's evidence-based bullying content, resources and online support has been accessed more than 370,000 times across its youth and parents service. It's a service with large reach, accessed by more than 1.59 million people each year. ReachOut's core digital infrastructure has the potential to raise awareness, educate and support many more young people, parents and schools at low-cost.

Further, in regional and remote Australia we know that young people find it hard to access appropriate and timely support. There is a lack of availability of supports on the ground such as school counsellors, wait lists for community-based services and many young people suffer in silence due to stigma and that they just don't know where to start.[3]

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[2] Mission Australia, Youth Mental Health Report 2012-2016, https://www.missionaustralia.com.au/publications/research/young-people
[3] ReachOut Australia, Lifting the weight: understanding young people's mental health and services needs in regional and remote Australia, 2018, http://about.au.reachout.com/wp-content/uploads/2018/06/ReachOut-Australia-Mission-Australia_Lifting-the-Weight-2018.pdf

Digital services can provide immediate help and support; access to alternative forms of help-seeking where on the ground options are not available or at capacity; and can get young people to the right service quickly.

Digital services also have a valuable awareness raising and education role to support children, young people and parents to understand what cyberbullying looks like and how they can navigate it, including the actions they can take such as reporting and blocking through social media platforms, making a complaint to the eSafety Commissioner, or in very serious cases, reporting to the police.

Recommendation

The eSafety Commissioner should consider opportunities to boost awareness raising, education and prevention activities through partnerships and collaborations with digital (online) services that are evidence-based, scalable and low-cost.

National social media safety accreditation standards

It is acknowledged that a number of leading social media platforms have made significant investments in ensuring the safety of their products however current evidence indicates that industry action to date has not resulted in a reduction in cyberbullying.

Social media platforms have a key role in ensuring the safety and wellbeing of young people who connect and engage on their sites. To date the industry has introduced:
- policies that prescribe how old a person must be to use services
- policies that outline what can and cannot be shared via services
- tools that allow people to flag content that may violate policies
- tools that can provide additional protections for minors, and
- reporting infrastructure to review and remove any such content.

Consideration should be given to the eSafety Commissioner leading the design of national social media safety accreditation standards, in consultation with digital platforms, their users and organisations involved in online safety, and to assist the community to assess the relative safety of online platforms.

National social media safety accreditation standards could be opt-in (not compulsory) for digital platforms and include a rating system against key criteria similar to the Australasian New Car Assessment Program (ANCAP) star rating for cars. In this way the community would have key information to assess the relative safety of a platform in a quick, easy and standardised way.

Recommendation

That the eSafety Commissioner lead the design of national social media safety accreditation standards, in consultation with digital platforms, their users and organisations involved in online safety, and to assist the community to assess the relative safety of online platforms.

Contact

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