

# Enhancing Online Safety for Children

Public consultation on key election commitments

AllA response

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**Contact for this submission:**

Sharon Kennard  
39 Torrens St  
Braddon ACT 2612  
Australia

T 61 2 6281 9400

E [info@aiia.com.au](mailto:info@aiia.com.au)

W [www.aiia.com.au](http://www.aiia.com.au)

## About AIIA

The Australian Information Industry Association (AIIA) is the peak national body representing Australia's information technology and communications (ICT) industry. Since establishing 35 years ago, the AIIA has pursued activities aimed to stimulate and grow the ICT industry, to create a favourable business environment for our members and to contribute to the economic imperatives of our nation. *Our goal is to "create a world class information, communications and technology industry delivering productivity, innovation and leadership for Australia".*

We represent over 400 member organisations nationally including hardware, software, telecommunications, ICT service and professional services companies. Our membership includes global brands such as Apple, EMC, Google, HP, IBM, Intel, Microsoft, PWC, Deloitte, and Oracle; international companies including Telstra; national companies including Data#3, SMS Management and Technology, Technology One and Oakton Limited; and a large number of ICT SME's.

We are pleased to provide this response to the Australian Government Department of Communications public consultation paper - Enhancing Online Safety for Children.

## Overview comments

The AIIA supports the need to protect children from harm while engaging in online activities (including social media). As discussed in the Government's public consultation paper, the rapid growth in online communications can also lead to anti-social behaviours occurring online, such as bullying and harassment.

The risks to children from cyber-bullying have been recognised for some time. Leading online providers have been working for a number of years developing systems to address this problem. Further, providers are working with government on the Online Safety Consultative Working Group, which provides advice on measures to improve the safety of children online. Social media providers, including Google, Microsoft, Facebook and Twitter have all developed numerous tools to manage anti-social behaviours on their sites.

The AIIA has reviewed the government's proposals under the *Enhancing Online Safety for Children* public consultation paper. We understand the government's desire to address concerns being raised within the community, however we have concerns about the proposals in the paper. These concerns are primarily related to three key issues:

1. The effectiveness of the scheme to achieve the stated objectives
2. The extent to which the proposal builds on existing initiatives where government is already partnering with industry
3. The extent to which the proposal is consistent with government's stated objectives to reduce regulatory 'red tape' and reduce the complexity of bureaucratic arrangements.

We believe that the current proposal introduces a high degree of bureaucracy and 'process' which will not lead to a reduction in harmful behaviours towards children. We support revisions to the proposal which include a collaborative approach with providers, building on existing arrangements. Further, the resources required to establish a new entity in government could be better directed towards initiatives which address the underlying causes of bullying (including cyber bullying), recognising that often cyber bullying is one element of a broader problem of bullying which occurs both online and across the community.

The following sections in this submission provide a more detailed discussion of these points.



## Specific comments

### The proposal is unlikely to be effective in reducing harm to children

A key concern we have about the proposals included in the public consultation paper are that they are unlikely to directly lead to a reduction in harm to children when participating in online activities. Our concerns over effectiveness are based on three key problems.

1. The timeliness of the process, which has a number of stages and decision points which each will require a specified timeframe to complete.
2. The capacity of the process, and the responsible agency, to accurately identify harmful content (given the vast array of information communicated across social media sites on a daily basis).
3. The scope of the proposal, in particular the risk that it will exclude smaller, emerging sites which have disproportionately higher use by young people.

#### *Timeliness of process*

The proposal for the establishment of a Children's E-Safety Commissioner includes a staged process for the removal of harmful content. Our review of this process found that it is overly bureaucratic and unlikely to lead to the rapid removal of content.

The steps identified from the paper include:

1. Offensive/'harmful' content is posted and an individual (the complainant) becomes aware of the content.
2. Complainant raises complaint to Social Media Site.
3. Social Media Site is given a reasonable time to respond and communicate to complainant.
4. Complainant complains to Commissioner because Social Media Site either responds in the negative or does not respond at all.
5. Commissioner determines that the content remains available and is deemed to be harmful (statutory test with several elements to consider).
6. Commissioner establishes Social Media Site is a 'participating large social media site'.
7. Commissioner establishes victim is an "Australian child" (unclear as to how this would be conducted, including requirements for proof of age).
8. Commissioner confirms that victim contacted Social Media Site that the Social Media Site has responded and not removed content or failed to respond (unclear how this would be conducted).
9. Commissioner contacts Social Media Site to advise of complaint and seek advice on status.
10. Commissioner provides Social Media Site time to respond *or* Commissioner is able to identify and contact the individual who posted content and directs them to remove (potentially even lengthier process).

We would consider that, at best, this process would take a week to complete, longer if the Commissioner does not have sufficient resources to consider higher volumes of complaints. This is a very long time in the instantaneous world of social media. Further, in a cyber-bullying case the harm is done the instant the content is posted so best practice policy should be focused on changing online behavior, not



removal of content after it is posted (which we discuss in more detail later in this submission).

### ***Capacity to apply Definition of harm***

A key concern we have about the proposal is the concept that the Commissioner (or, in practice, staff supporting the Commissioner) would review material (as raised by a complainant) and make determinations on what is harmful material (on a case by case basis). The definition of harmful content is highly subjective. We note that the public consultation paper lists a number of components for the Commissioner to consider when determining whether particular content is harmful, including applying a 'reasonable person' judgement to the material. Our concern about this approach is that is potentially a very blunt instrument to reducing harm to children.

The nature of what is considered harmful is highly variable, and depends on the context of the material that is the subject of the complaint, the nature of the relationship of the parties involved and the age and circumstance of the individuals involved. The proposal assumes that a government agency has the capacity to make these judgements on each case put in front of it, which is not realistic in our view. We consider this approach to potentially have a high 'error rate', thereby having limited effectiveness to reduce harm to children.

We have a further concern around resourcing of this process, and how that will impact effectiveness. The paper is silent on resourcing for the role of a Commissioner's office or secretariat, who we would assume is required to review applications and make recommendations to the Commissioner for decisions. We are concerned that the process may be 'bogged down' if the Commissioner is required to make decisions for a high volume of potentially spurious claims, and the potential impact on providers this may have (in terms of compliance requirements). This will further exacerbate the timeliness issues identified above.

Resources allocated to assessing applications could be used more effectively in partnership with industry to address the root causes of behaviours (as part of an overall government strategy to address bullying more broadly, of which cyber-bullying is one element).

### ***Scope***

We note that the public consultation paper includes details of what would be determined to be a 'participating social media site' for the purposes of compliance with Commissioner rulings and decisions.

We are concerned about the application of a threshold 'size' test that would be used to determine which are the 'participating social media sites'. While we acknowledge the need to set some parameters around the scope of the Commissioner's work, applying requirements only to large sites will exclude smaller, emerging sites, which have a disproportionately younger user base (driven by young people's faster adoption of new technologies and platforms). Established, larger sites such as Facebook are attracting an increasingly older user-base, with younger people adopting new services and platforms at an increasing rate.

Given these trends, there is the potential that government could regulate that part of the social media sphere that poses the lowest risk to children, because larger established sites have existing protocols in place, and have increasing older user base. New sites do not come under the umbrella of the Commissioner, therefore creating an uneven basis for compliance and enforcement, and gaps to protections for children online. This diminishes the effectiveness of the proposal.



## **The proposal does not effectively build on existing initiatives**

Each of the options under consideration within the public consultation paper involves the establishment of a Commissioner (with various options on the governance and legislative underpinnings of a Commissioner model). The paper, therefore, makes the assumption that the Commissioner model is the best approach to addressing the problem. Alternatives which better leverage existing industry initiatives should also be considered, primarily because these would be most efficient, given the resources already devoted to establishing these initiatives.

Further, the proposal has a strong focus on removal of content, rather than focusing on the underlying behaviours. Preventative measures should have a higher priority in any government policies to protect children, which focus on avoiding behaviours rather than removing content after it has been posted. Collaborative approaches with industry, focusing on education, research and developing codes of conduct all have a preventative rather than reactionary focus.

## **The proposal is inconsistent with current government policies to reduce compliance burden on business**

The proposal appears to be inconsistent with the current government's policies to reduce the compliance burden on business. In particular, the establishment of a new government entity is not consistent with current government measures to reduce complexity within the bureaucracy.

We strongly support measures which reduce regulatory complexity and remove unnecessary regulation. We would question whether the proposed measures would achieve a net benefit under regulation impact statement guidelines, primarily due to the lack of evidence that the measures would effectively reduce harm (as noted above).

We note that a Regulatory Impact Statement (RIS) will be prepared and include an estimated impact on business. We encourage the inclusion of compliance costs to business, which should include reporting costs, costs of consultation with government and costs to maintain compliant processes (including rapid removal process as described in the consultation paper). The RIS analysis should ensure that these costs are balanced by robust estimate of benefits from the proposal. As noted above, we currently have doubt that these can reasonably be achieved.

