



7th March, 2014

The Director
Cybersafety Policy and Programs
Department of Communications
38 Sydney Avenue
Forrest ACT 2600

By email: onlinesafety@communications.gov.au

Re: Enhancing Online Safety For Children – Discussion Paper, January 2014

Dear Director:

Facebook welcomes the opportunity to make provide input in response to the *Enhancing Online Safety For Children – Discussion Paper* (2014) (**Discussion Paper**).

Facebook shares the Australian Government's commitment to promoting the safety and well-being of all Australians, particularly young people. The safety of the people who connect and share via our platform is of the utmost importance to Facebook. It is also critical to our business and our continued growth; we know that people will only continue to share and connect when they feel comfortable and safe doing so.

Facebook is a global communications platform and our mission is to make the world more open and connected. We seek to provide a platform where people can share and surface content, messages and ideas freely, while still respecting the rights of others. To achieve this balance, our policies explicitly prohibit "bullying and harassment".¹ We are also committed to decreasing suicide globally by connecting people in need with the resources and people who can help them best. We provide more details below about our policies, tools and outreach to promote the safety of the people who connect and share via Facebook.

While we share the Government's goal of promoting the safety and well-being of young Australians, we are concerned that the measures proposed in the Discussion Paper will not be effective to do this. Legislation and regulation are an inflexible and imprecise solution to an issue that can change rapidly as technology and human behavior do. For example, the proposed legislated content removal scheme expressly states that it will not apply to smaller services which likely includes Snapchat, Ask.fm, and Whisper, despite media reports suggesting that young people experience bullying and

¹ See clause 6(3) of our *Statement of Rights and Responsibilities*: "You will not bully, intimidate, or harass any user." <https://www.facebook.com/legal/terms>. See also our Community Standards, which provide a more succinct summary of our terms, that state: "Facebook does not tolerate bullying or harassment. We allow users to speak freely on matters and people of public interest, but take action on all reports of abusive behavior directed at private individuals. Repeatedly targeting other users with unwanted friend requests or messages is a form of harassment." <https://www.facebook.com/communitystandards>

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other problems on these services.² Also, it is unclear how a legislated *content removal* scheme will improve the well-being of young people when existing services such as Snapchat are based on the content disappearing after 10 seconds.

While we welcome the Government's intention to establish a new eSafety Commissioner as a one-stop-shop at a federal level for online safety, it is not clear that this is possible given many of the safety issues that young people experience happen at school and consequently, the first point of contact for a solution is the local educational authority, which differs in each state. This is why Facebook has established an Educators Program to work directly with school authorities. As part of this program, we have reached out to Australian educators to provide Facebook safety demonstrations and to assist schools in quickly responding to and removing students' postings that violate our policies and can potentially cause a substantial disruption for schools. Adding a new bureaucratic layer, asking the schools to interface via the Commissioner, rather than directly with Facebook will simply slow this process, rather than expedite it. In addition, a Commissioner who is only focused on "eSafety" rather than the overall safety and well-being of young Australians may be limited their ability to fully respond to the issues faced by young people given how integrated and seamlessly young people use digital technologies in their daily life.

With respect to the proposed cyber-bullying offense, we note that there are already laws in place that penalise online harassment.³ We suggest that more work should be done to educate people about these laws and appropriate online behavior than introducing a new law, which has potential to be misused against young people.

Instead of using legislation and regulation to address issues of online safety, we encourage the Government to consider a public-private partnership model, similar to that adopted in the United States, in Europe and in the United Kingdom. In our experience, these multi-stakeholder models work more effectively to advance the safety and well-being of young people. It is also consistent with the Australian Government's de-regulatory agenda. The current measures duplicate the investment that companies like Facebook make in promoting the safety and well-being of Australians; a public-private partnership model allows the Government to leverage the investment by industry on online safety and work collaboratively with industry and child safety groups to enhance the well-being of all Australians.

A public-private partnership model could see the expansion of the *Co-Operative Arrangement for Complaints Handling on Social Networking Sites*⁴ that Facebook entered in to, together with other large

² See e.g., "Snapchat: social media app being used by cyber bullies to send terrifying messages of hate" <http://www.mirror.co.uk/news/uk-news/snapchat-social-media-app-being-2242166>; "Ask.fm and Teen Suicides" <http://www.businessinsider.com/askfm-and-teen-suicides-2013-9>; "Whisper cellphone app attracts teen bullies" <http://www.stalbertgazette.com/article/20130511/SAG0801/305119986/-1/SAG>.

³ See e.g., Section 474.17 of the Criminal Code: http://www.austlii.edu.au/au/legis/cth/consol_act/cca1995115/sch1.html

⁴ See e.g.: http://www.communications.gov.au/_data/assets/pdf_file/0004/160942/Cooperative_Arrangement_for_Complaints_Handling_on_Social_Networking_Sites.pdf



social media providers, with the Australian Government last year, to apply to other online services, including those not currently proposed to be covered by the legislation proposed in the Discussion Paper. This model could also involve Facebook working with the Australian Government to expand our Educators Program to reach more schools, teachers and parents around the country.

Facebook welcomes the opportunity to work with the Australian Government to promote the safety and well-being of all Australians, particularly young Australians.

Before responding to each of the topics raised in the Discussion Paper, we wish to provide some background to our policies, tools and outreach to promote the safety and well-being of the people, particularly young Australians, who engage on Facebook.

Facebook's Commitment to Safety

As we noted above, the safety of the people who connect and share via our platform is of the utmost importance to Facebook. We adopt a four-pronged approach to addressing safety generally on our platform. Firstly, we have policies that outline what people can and cannot do on the site. Secondly, we invest in a reporting infrastructure to review and action reports that we receive from the more than 1 billion people who engage via Facebook when they see something potentially harmful on our site. Thirdly, we undertake education and outreach to raise awareness around safety in general and our policies and tools in particular. Fourth and finally, we regularly engage with governments, academics and teen safety groups around the world to allow us to continually innovate in an effort to be an industry leader in promoting safety.

In addition to our four-pronged approach for general safety issues, we have specific policies, tools and initiatives designed to enhance the protection given to minors to help ensure their safety and we work to prevent suicide and the posting of self-harm content on the site. We wish to outline each of these in turn briefly, before responding to the Discussion Paper itself.

Our Policies Prohibit Bullying

Everyone who creates an account on Facebook agrees to our 'Statement of Rights and Responsibilities' (SRR) (<https://www.facebook.com/terms.php>) at the point of sign-up. Our SRR is also linked to throughout the site, and we provide a succinct summary of the key do's and don'ts with respect to the types of content which can be shared on Facebook in the Community Standards.⁵

As noted above, in our SRR we explicitly prohibit "bullying and harassment".⁶ And we state in our Community Standards expressly states: "Facebook does not tolerate bullying or harassment. We

⁵ See, Facebook Community Standards: <https://www.facebook.com/communitystandards>.

⁶ See clause 6(3) of our *Statement of Rights and Responsibilities*: "You will not bully, intimidate, or harass any user." <https://www.facebook.com/legal/terms> See also, our Community Standards, which provide a more succinct summary of our terms, that state: "Facebook does not tolerate bullying or harassment. We allow users to speak freely on matters of public interest, but take action on all reports of abusive behavior directed at private individuals."



allow users to speak freely on matters and people of public interest, but take action on all reports of abusive behavior directed at private individuals. Repeatedly targeting other users with unwanted friend requests or messages is a form of harassment.”⁷

Removing Bullying Content

To enforce our policies, our reporting infrastructure leverages the community of people who use Facebook. When people report content to us that they believe may violate our policies, we review the content and take action as appropriate, removing any bullying and harassing content.

We make it easy for people to report harmful or harassing content with “report” links on nearly every feature on Facebook.⁸ People can also report harmful content via their mobile device. Reports via these links greatly enhances safety on the service. We have created an easy-to-remember URL for people (and parents and teachers, in particular) to learn more about reporting, www.facebook.com/report.

When people report the content, we prioritize the most serious reports and a trained team of global reviewers responds to these reports. There are dedicated teams throughout Facebook working 24 hours a day, seven days a week, across 23 languages, to handle the reports made to Facebook. Structuring the teams in this manner allows us to cover our support queues for everyone, no matter where they are.

To effectively review reports, we have teams that focus on specific report types – for example, the Safety team. When a person reports a piece of content, depending on the reason for their report, it is sent to one of these teams. We provide more information about how we triage reports on the Facebook Safety Page.⁹ We also let people keep track of the reports they make to Facebook via the Support Dashboard.¹⁰

When someone’s actions violate our policies, we will remove the associated content and notify the person who posted it. In addition, we may take other actions such as to revoke the ability of that person’s account to share particular types of content or use certain features, disable the person’s account, or if need be, refer issues to law enforcement.

Our reporting infrastructure was examined as part of the audit conducted by the Irish Data Protection Commissioner (DPC) of Facebook Ireland, the company with whom Australians

Repeatedly targeting other users with unwanted friend requests or messages is a form of harassment.”

<https://www.facebook.com/communitystandards>.

⁷ See, Facebook Community Standards <https://www.facebook.com/communitystandards>.

⁸ For an overview of our reporting tools, please see: <https://www.facebook.com/report/>.

⁹ See “What Happens After You Click Report” as this Note on the Facebook Safety Page explains:

<https://www.facebook.com/notes/facebook-safety/what-happens-after-you-click-report/432670926753695>

¹⁰ For more information about our Support Dashboard, see this Help Centre question “Can I check the status of something I’ve reported to Facebook?” <https://www.facebook.com/help/338745752851127>

contract when agreeing to the terms of use on the site. As the Irish DPC explained about our reporting infrastructure:

*"Facebook provides its users with a variety of ways to report abuses on the site. Users can go to the Help Centre and find pages of information about abuses to report. [Facebook Ireland] also has contextual reporting buttons on every page and associated with every piece of content. On every profile, there is a report link; on every photo there is a report link; and on every advertisement there is a way to report it. There is a means to report abuses included on every profile, photo and advertisement."*¹¹

The Irish DPC concluded that it was straight-forward to locate the report links, specifically:

*"We examined the accessibility of options available to a user who wishes to report an issue to Facebook. It is considered that it is straight-forward for a user to locate the 'Report Abuse' options via the 'help' drop down option on the user profile page and within 2 mouse clicks is within the 'Report Abuse or Policy Violations' of the Help Centre'."*¹²

And further concluded that Facebook was committed to safety, specifically:

*"We are satisfied that [Facebook Ireland Ltd] has appropriate and accessible means in place for users and non-users to report abuse on the site. We are also satisfied from our examination of the User Operations area that [Facebook Ireland Ltd] is committed to ensuring it meets its obligations in this respect."*¹³

Online Safety Education and Outreach

Facebook has developed numerous resources to promote awareness about online safety and security, and to provide parents, educators and the community with the information to assist with those conversations. We have also undertaken considerable outreach with relevant Australian educational, law enforcement, mental health, and child safety groups.

The resources we have developed include the Family Safety Center,¹⁴ which contains specific content for parents, teens, educators, law enforcement, and the Facebook Safety Page,¹⁵ which offers dynamic safety content that people can get right to their newsfeeds (with over 1 million followers at present).

In Australia, we launched the Be Bold Stop Bullying campaign in November 2012,¹⁶ which, in the first six months after its launch, reached on average 600,000 Australians per month. We regularly share tips and information about staying safe online and standing up to bullying with Australian

¹¹ Irish Data Protection Commissioner, Report of Audit – Facebook Ireland, 21 December 2011, page 137 (<http://dataprotection.ie/viewdoc.asp?DocID=1182>).

¹² *Id.*, page 141.

¹³ *Id.*, page 139.

¹⁴ See, the Facebook Family Safety Center: <http://www.facebook.com/safety>

¹⁵ See, the Facebook Safety Page <http://www.facebook.com/fbsafety>

¹⁶ See, Be Bold Stop Bullying, Australia campaign: <https://www.facebook.com/beboldstopbullyingau?ref=hl>



teachers, students and the general public on National Day of Action Against Bullying, Safer Internet Day, Privacy Awareness Week and the former National Cyber-Security Awareness Week to promote awareness and understanding about how to have a safe experience online and stand up, including by reporting bullying and harassing content.

To assist school communities in Australia, we established an “Educator’s Program” over two years ago. As part of this program, we have reached out to Australian educators to provide Facebook safety demonstrations and to assist schools in quickly responding to and removing students’ postings that violate our policies and can cause a substantial disruption for schools. We have active relationships in place with seven different educational networks around the country and would welcome the opportunity to expand this.

Innovating to enhance online safety

How people use technology changes, just as the technology itself does, which leads to different online safety issues arising over time. For this reason, Facebook regularly engages with educators, child safety groups, academic experts and the people who use Facebook to continue to innovate our tools, resources and outreach in an effort to be an industry leader in ensuring that people have a positive and safe experience when using Facebook.

One example of this is our Compassion Research¹⁷ work as part of which we have been collaborating with social and emotion researchers at Yale University and University of California, Berkeley, in the United States, to improve our reporting tools. We have hosted four Compassion Research Days at our headquarters in Menlo Park, California, that are open to the public to discuss this work.

Through our collaboration with these researchers, we have worked to infuse these reporting options with emotional language, so the people who use Facebook, especially people aged 13-14 years old, can more clearly articulate to one another what is bothering them and resolve problems that may arise when they are sharing on Facebook.

One tool that we have developed as a result of our Compassion Research work is called “social resolution”. This tool allows minors to directly notify others of content they want removed from Facebook, such as an unflattering or embarrassing photo posted by a friend. In cases where teens may feel threatened by posted content, the social resolution feature gives them the option to report the content to Facebook, to send a copy of the content to a trusted friend or adult, and/or to block the person who posted it. By giving teens more options to address unwanted behavior, we have allowed them to resolve issues more efficiently than was previously possible.

¹⁷ See, the Facebook Livestream for Compassion Research Day 4 (December 2013): new.livestream.com/facebooktalkslive/events/2564173; see also Meet Facebook’s Compassion Czar: <http://www.fastcompany.com/1802476/meet-facebook-s-compassion-czar?mid=55>.



The social resolution tool was launched in March 2011 and recognises that taking down harassing online comments won't necessarily help people solve the underlying problem in the offline world that lead to the content being posted. The tool responds to the advice we have received from safety and child psychology experts that online issues are often a reflection of what is happening offline. Social resolution is a way for people to quickly and easily ask for help from someone they trust, allowing them to start the process for resolving an issue that is happening offline as well.

The evidence suggests that social reporting is a very useful tool and many people are using it to self-resolve concerns they have about content on the site. For content reported through our social reporting flow (either to Facebook, the content creator, or a trusted friend) that was then removed, around 80 to 85 percent of the time, the poster either took down the offending photo or had a conversation with the reporter, and 60 per cent of the people who were contacted about what they posted said they felt positive about the person who sent the request with 20 percent said they felt neutral. In addition, teens are 10 per cent more likely to use this tool than adults.

Special Protections for Minors

Facebook has a number of protections in place for young people (that is, people who are aged between 13 and 17 years old).¹⁸ Facebook is committed to creating an environment where teens can connect and share safely. To this end, we provide safety and privacy tools that take into account the unique needs of this age group.

Our policies prohibit children under the age of 13 from joining Facebook, and we take our responsibility to protect the privacy and safety of young people seriously. For example, people who sign up for a Facebook account are required to type in their age on the very first screen. When a person enters a birth date that indicates his or her age is younger than 13, our agegate technology blocks the registration and places a persistent cookie on the device used to establish the account. This persistent cookie helps prevent the child from attempting to circumvent the age screen by back buttoning and providing a different birth date.

In those instances where age gating does not prevent children from registering, we combine social verifications and reports from our community to help identify child accounts. We ask people to notify us if they believe they might have received information from a child under 13; we have a dedicated compliance channel for these reports; and we delete the accounts of children under 13 as soon as we become aware of them.

We also use privacy and visibility settings that take into account the unique needs of people between the ages of 13 and 17, and are more restrictive than the settings for adults in nearly all cases. For example, when minors join Facebook, their initial sharing setting is automatically set to friends,

¹⁸ By our terms, we prohibit users under 13 from signing up for a Facebook account. It is a violation of our policies to use a fake name or provide false information, and we regularly disable the accounts of people who do this based on reports from our users and detection of suspicious activity by our automated systems. We prevent people from signing up with a birth date that makes them under the age of 13 and use community verification tools to help make sure that people are the age they say they are.

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minors never have listings created for them in search engines off of Facebook, and the ability to share their location is automatically defaulted to “off.” Unlike adults, minors can only be “tagged” on Facebook by a maximum of their friends of friends, or those with whom they are in groups. Facebook’s “Tag Review” feature, which is a privacy option that allows people to approve or reject tags that others add to their posts, is automatically turned “on” for minors.

Facebook also employs robust tools to protect minors from unwanted contact and solicitation. For example, minors can only receive messages from a maximum of their friends of friends (or people who already have their contact information). We also use innovative technical mechanisms to flag suspicious adult behavior. For instance, if an adult sends an unusual number of friend requests to minors that are ignored or rejected, our warning systems might be triggered, which initiates a Facebook inquiry so that remedial action can be taken, if necessary.

Suicide prevention

The Discussion Paper raised the serious issue of young people who commit suicide, who have also been bullied online and off. We share the Government’s concern about this. At Facebook, we are committed to decreasing suicide globally by connecting people in need with the resources and people who can help them best. As the place where people share with their real-life friends, we have a unique opportunity to give people the tools to respond to calls for help.

As we explain in our Community Standards: “Facebook takes threats of self-harm very seriously. We remove any promotion or encouragement of self-mutilation, eating disorders or hard drug abuse. We also work with suicide prevention agencies around the world to provide assistance for people in distress.”¹⁹

We have established relationships with 33 suicide prevention and advice agencies around the world, including in Australia so that we can more easily connect people who post content, which suggests that they are in a state of distress, with these support services. If people see a post by a friend that concerns them, they can go to that person’s Timeline and click on “Report” on the upper-right corner of a post. They will then see a list of global suicide prevention resources and can either find and call their local suicide prevention hotline for advice or send the friend they are worried about a message with the contact details for their local support service. They will also have the option to directly message a trusted friend or adult for advice. If the person reports the contact directly to Facebook, the distressed friend gets a message at their next Facebook session saying that a friend is concerned about them and is provided with a list of global suicide prevention resources. For Australians, they are referred to Lifeline Australia. The friend is required to review the resources before resuming their Facebook session. The Facebook Help Center also contains information about how to find help and assistance.²⁰

¹⁹ See, Facebook’s Community Standards: <https://www.facebook.com/communitystandards>.

²⁰ See, Help Center information about help in case people post suicidal content: <https://www.facebook.com/help/216817991675637>.

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In response to feedback from Australian mental health groups, we also partnered with headspace (the National Youth Mental Health Foundation) to develop a resource to assist parents and school communities can navigate the use of social media sites such as Facebook following the tragic loss of a young person to allow it social media to be used to share memories and create a sense of community, and minimize distress and anxiety.²¹

In addition, we have worked to develop a best practice guide, together with the US-based Suicide Awareness Voice of Education (save.org), and with other mental health groups and technology companies, including Google, Microsoft and Twitter -- *Responding to a Cry for Help: Best Practices for Online Technologies*²² ("Best Practice Guide"). This guide is based on over three years of work by the world's leading internet companies that outlines how technology platforms can decrease the risk of suicide for the people who use their services.

Specific Responses to the Discussion Paper

The Discussion Paper seeks feedback on proposals to establish an eSafety Commissioner, a legislated content removal scheme and a cyber-bullying offense. As noted above, we have concerns that these proposals may not achieve their intended objective of enhancing the safety and well-being of young Australians. We outline below our specific concerns with each of these proposals, before outlining a possible alternate model.

Establishment of an eSafety Commissioner

The Discussion Paper contemplates the establishment of a single point of contact for all online safety issues for industry, young people and those charged with their welfare. We welcome the rationale underlying the Government's desire to create a single point of contact. However, we are concerned that this new Commissioner may not be able to fully promote the safety and well-being of young people but will instead add a layer of bureaucracy to existing and voluntary processes that industry undertakes out of its commitment to the safety of the people who engage via our services.

Firstly, it is not clear how the eSafety Commissioner can oversee a "rapid" content removal scheme, as contemplated by the Discussion Paper. The scheme contains multiple steps that would seemingly take at least several days, if not a week, to progress through before the Commissioner issues a content removal order.

Secondly, it is not certain that the issues of online safety can be contained within one government representative given how ubiquitously the issue of online safety is now being engaged with across all parts of government, both federal and state. As Appendix A of the Discussion Paper illustrates, more than seven different government agencies around Australia currently provide online safety programmes and resources.

²¹ See, headspace-Facebook resource to assist managing Facebook accounts after death: <http://www.headspace.org.au/parents-and-carers/find-information/facebook-accounts-after-a-death>.

²² See, Prevent the Attempt: <http://preventtheattempt.com/>.

Indeed, since the Coalition's *Enhancing Online Safety for Children* policy was released during the 2013 federal election, a further two government bodies have expressed an interest in working on online safety at a national level. One was the decision by the Council of Australian Governments (COAG) to establish a Law, Crime and Community Safety Council, which will consider "[n]ew ways to ensure cyber safety, especially for children."²³ The other was the National Children's Commissioner who said, in her *Children's Right Report* released in December 2013, "I have also been considering the benefits of a co-ordinated national response to children's e-safety, for example in the development of information and education resources for children, parents and internet providers."²⁴

In addition, as our Educator's Program has demonstrated, schools around the country are also working to address online safety concerns. Through our Educators Program, we work directly with school authorities to provide Facebook Safety demonstrations and to assist schools in quickly responding to and removing students' postings that violate our policies and can potentially cause a substantial disruption for schools. If educational authorities are to now interface via the Commissioner, rather than directly with Facebook, this will potentially slow this process, rather than expedite it.

Finally, a Commissioner who is only focused on "eSafety" rather than the overall safety and well-being of young Australians may be limited their ability to fully respond to the issues faced by young people online given how integrated and seamlessly young people use digital technologies in their daily life.

Legislated Content Removal Scheme

The Discussion Paper seeks feedback on the proposal to legislate the removal of content "from a large social media site of material that is targeted at and likely to cause harm to a specific child." The rationale for this approach is that through consultations undertaken whilst in Opposition, the Coalition identified that "there are inadequate remedies available when children are the victims of harmful, aggressive and bullying material targeted at them using the internet."

Before moving forward with this legislation, we encourage the Government to give consideration to several issues that arise in relation to the proposed scheme.

Firstly, we believe that it is important to correctly identify the problem. It is unclear based on the explanation provided in the Discussion Paper whether Australian parents, teachers and children had tried to use the reporting systems available on all of the large social media platforms and this did not work, or whether they did not know how to resolve problems that happened online. At the 2013

²³ See, Media Release from the Attorney-General for Australia "New council on law, crime and community safety" 23 December 2013:

<http://www.attorneygeneral.gov.au/Mediareleases/Pages/2013/Fourth%20quarter/23December2013Newcouncilonlawcrimeandcommunitysafety.aspx>.

²⁴ See, National Children's Commissioner "Children's Rights Report"

<https://www.humanrights.gov.au/sites/default/files/document/publication/ChildrenRightsReport2013.pdf> (page 76).

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Australian Government's Cybersafety Summit, the local industry association AIMIA DPG, of which Facebook is a member, undertook a Pop-Up Safety Quiz,²⁵ which asked how to report content on popular social media sites. The vast majority of these students did not know how to do this. If the problem is that Australians do not know that they can or how to report content on a social media site, then the solution is more education and outreach, rather than legislated content removal.

Secondly, the statutory test for removing content under the proposed scheme is broader than bullying and harassing content and could potentially see the legislative scheme misused. The proposed test is "material targeted at and likely to cause harm to an Australian child" could apply to many types of content that young people share online, tagging their friends, which their parents and the eSafety Commissioner do not consider is appropriate. It could potentially, for example, apply to a video game walk-through of Grand Theft Auto that one person posts and then tags their friend in, or it could apply to photos of planking that are shared, tagging friends. Rather than enhance the online safety of young people, the scheme has potential to legislate intergenerational conflict rather than encouraging conversations between parents and young people.

Evidence suggests that to properly educate and engage with young people about how to stay safe online, it is important that parents and educators are involved in the world that young people are experiencing and understand it. As recent Australian research has indicated, "[i]t is vital that we incorporate young people's perspective into the cyber safety debate in ways that empower young people and develop meaningful policy and programs."²⁶ Facilitating an intergenerational conversation about social platforms and cyber safety can lead to a better understanding by adults of how they can assist young people to participate online in a smart, safe and responsible way.²⁷

This research is backed up by work undertaken by the Australian Communications and Media Authority (ACMA) on the use of social media by young Australians. In its report *Like, comment, share: Young Australians experience of social media*, the ACMA found that "parents and siblings are a key influence in the way children and young people use the internet and their exposure to risk."²⁸

Thirdly, the Discussion Paper proposes that this scheme apply only to large social media sites who have assets, staff, revenue, or a disclosed Australian user base or to those sites that voluntarily choose to participate. We are concerned that this sets up perverse incentives that encourage

²⁵ See, Online Safety Pop-up Quiz: <https://www.facebook.com/beboldstopbullyingau/photos/pb.466922616686341.-2207520000.1392883580./599065063472095/?type=3&theater>.

²⁶ Intergenerational Attitudes towards Social Networking and Cybersafety: A Living Lab.

Third, A., Richardson, I., Collin, P., Rahilly, K. & Bolzan, N.

Cooperative Research Centre for Young People, Technology and Wellbeing, Melbourne (2011) (Format issue)

https://s3.amazonaws.com/yawcrc/Publications/Third-et-al_2011_YAW-CRC_Intergenerational-Attitudes-Towards-Social-Networking-Cybersafety.pdf

²⁷ *Id.*

²⁸ See

<http://www.acma.gov.au/~media/mediacomms/Report/pdf/Like%20post%20share%20Young%20Australians%20experiences%20of%20social%20media%20Qualitative%20research%20report.pdf>

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companies to choose not to disclose the number of Australians who use their services or to avoid establishing an Australian presence to assist Australian households and small businesses to enjoy the productivity benefits digital platforms enable.

Moreover, the scheme would only apply to the very sites that have explicit policies that prohibit bullying and harassment, invest in a reporting infrastructure that quickly removes reported content that violates these policies, and who have already voluntarily signed up to the *Co-operative Arrangement for Complaints Handling on Social Networking Sites*²⁹ with the Government. The scheme would not apply to newer and smaller services such as Snapchat, Ask.fm, Whisper and Secret, despite media reports suggesting that bullying occurs on these services.³⁰ Bullying behavior happens online regardless of the size of the platform.

Fourthly, given the growth of the social web and the changing nature of technology, it is difficult for a legislative scheme to clearly define which online services are covered by the scheme and which are not. The Discussion Paper suggests that “social networking sites” will be covered and contemplates a 2008 definition, which has potentially been outdated by technological advancements in the six years that have occurred since that definition was first formulated. The proposed definition refers to “web-based services that allow individuals to:

- Construct a public or semi-public profile within a bounded system;
- Articulate a list of other users with whom they share connections; and,
- View and traverse their list of connections and those made by others within the system.”

Given the widespread use of social plugins on all types of websites including media sites such as *The Australian* and *The New York Times*, the scheme could potentially apply to any website that contains social features. As McKinsey explains in its report *The social web – unlocking the value and productivity through social technologies*:

*“Social is a feature, not a product. Social features can be applied to almost any technology that could involve interactions among people (e.g. the internet, telephone, or television). A social component – a button to “like” or comment can be added to virtually any IT-enabled interaction, suggesting an almost limitless range of applications.”*³¹

Finally, online platforms such as Facebook already have a strong incentive to promote a safe experience, as is evident by our policies that explicitly prohibit bullying, our investment in reviewing

²⁹ See, Co-operative Arrangement for Complaints Handling on Social Networking Sites (Jan 2013) http://www.communications.gov.au/_data/assets/pdf_file/0004/160942/Cooperative_Arrangement_for_Complaints_Handling_on_Social_Networking_Sites.pdf.

³⁰ See, e.g., “Snapchat : social media app being used by cyber bullies to send terrifying messages of hate” <http://www.mirror.co.uk/news/uk-news/snapchat-social-media-app-being-2242166>; “Ask.fm and Teen Suicides” <http://www.businessinsider.com/askfm-and-teen-suicides-2013-9>; “Whisper cellphone app attracts teen bullies” <http://www.stalbertgazette.com/article/20130511/SAG0801/305119986/-1/SAG>.

³¹ See, McKinsey “The social web – unlocking the value and productivity through social technologies” http://www.mckinsey.com/insights/high_tech_telecoms_internet/the_social_economy.

and removing content that bullies and harasses, and our considerable outreach. As evidence of our willingness to work with Governments to promote online safety, Facebook, together with other large providers such as Google, Yahoo! and Microsoft entered in to the *Co-operative Arrangement for Complaints Handling on Social Networking Sites* in January 2013 to ensure that we were responding to Australian online safety concerns.³² In the more than 12 months since this protocol was entered in to, there has been no communication or notification from the Government suggesting that this protocol has not been effective or that there are unresolved issues or concerns around how the large sites respond to complaints about content on these sites that violates their policies. This suggests that the existing agreement is working and further collaboration on how to expand this to more industry players may be appropriate.

Cyber-bullying offense

The Discussion Paper also seeks feedback on the possibility of introducing a new cyber-bullying offense to update or amend the existing provisions in the Criminal Code that make it offense to harass or menace a person using an online service.

One of the main reasons identified in the Discussion Paper for changing the existing Section 474.17 of the Criminal Code is because the language (which refers to a “carriage service”) may not be easily understood, particularly by young people. However, there are likely many pieces of legislation that contain language that is not easily understood but that are still effectively enforced.

We suggest that a modified version of Option 1 is appropriate. The risk of introduction a new offense is that it is misused and has the unintended consequence of being applied to young people who post content that is taken out of context or is distasteful. As the Director of Public Prosecutions in the United Kingdom, who developed the *Guidelines for Prosecutions Involving Social Media Communications*, argued:

“We must recognise the fundamental right to freedom of expression and only proceed with prosecution when a communication is more than offensive, shocking or disturbing, even if distasteful or painful to those subjected to it.”³³

We suggest that leaving the existing offense unchanged and undertaking an education and awareness raising initiative is a more effective way to highlight that online misconduct can be illegal in Australia. This education and awareness raising can clearly link the law to online bullying.

We also believe that the Government should engage with law enforcement to both understand their experience in handling queries from the public in local police stations about online safety issues and

³² *ee*, Co-operative Arrangement for Complaints Handling on Social Networking Sites (Jan 2013) http://www.communications.gov.au/_data/assets/pdf_file/0004/160942/Cooperative_Arrangement_for_Complaints_Handling_on_Social_Networking_Sites.pdf.

³³ *See*, Guidelines for Prosecutions Involving Social Media Communications http://www.cps.gov.uk/news/latest_news/dpp_publishes_final_guidelines_for_prosecutions_involving_social_media_communications/.



the applicability of the offense. Law enforcement play an important role in implementing the existing legal provisions and ensuring that they are applied appropriately.

An Alternate Approach – Private: Public Partnership Model

We encourage the Government to consider adopting a private-public partnership model, rather than enact new laws and create another regulator. The partnerships that we have entered in to in the United States, in Europe and in the United Kingdom provide examples of how effective this approach can be. This model is also consistent with the Government's deregulatory agenda because it minimises red tape.

In Europe, Facebook has joined with other industry players, government agencies and nonprofits to participate and achieve real progress in online safety as part of the CEO Coalition for a Better Internet for Children.³⁴ The goal of the coalition is to bring together industry leaders from across the technology industry value chain to exchange best practices and deliver concrete actions on five objectives (reporting mechanisms, age-appropriate privacy settings, content classification, parental controls and effective take down of child abuse material).

Facebook lead the work on 'age-appropriate privacy settings', and co-lead the 'reporting mechanisms' work with Telefonica and Google. As a result of our participation in the Coalition, we rolled-out a Support Dashboard, which enables users to track the status of their reports.³⁵

In the United States, we have partnered with the National Association of Attorneys General to launch a new consumer education program designed to provide teens and their parents with tools and tips to manage their privacy and visibility both on Facebook and more broadly on the Internet.

The campaign consists of a few elements, all of which will be available on the Facebook Safety³⁶ page:

- "Ask the Safety Team" video series. Over the past few years, we have traveled around the country, teaching educators, parents and teens how to safely use our service. We've created a video series from our safety team that answers the questions we're asked most during this events.
- "What You Can Do to Control Your Information," a tip sheet that offers the 10 top tools to control your information on Facebook.
- State-specific public service announcements with participating attorneys general and our Chief Operating Officer Sheryl Sandberg.

³⁴ See, Creating a Better Internet for Kids: <https://ec.europa.eu/digital-agenda/en/creating-better-internet-kids>.

³⁵ See Facebook Help Center information about the Support Dashboard: <https://www.facebook.com/help/338745752851127>.

³⁶ See Facebook Safety Page: <https://www.facebook.com/fbsafety>.



In the United Kingdom, Facebook participates in a multi-stakeholder model that provides generally for high-trust coordination and the flexibility to prioritise resources as new needs arise. There are four main elements that make up the UK model:

- A national online safety council (UKCCIS), which provides strategy and co-ordination.
- A specialist police unit (CEOP) with educational and proactive role.
- An illegal material hotline (IWF) that is focused on disrupting the distribution of illegal content.
- An advice Centre (UK Safer Internet Centre) that provides advice and awareness raising for the public.

Together this enables all parties to cooperate in raising awareness amongst the public; creating clear and simple reporting and safety tools; and pursuing bad actors by law enforcement with cross-sector collaboration.

In our experience, these models of private-public partnership are a more effective way to enhance the online safety of young people because it allows each sector – government, industry and child safety groups – to focus on their strengths.

We look forward to collaborating with the Government and enhancing the safety and well-being of young Australians.

Please do not hesitate to contact me if you have any further questions.

Regards,

A handwritten signature in blue ink, appearing to read "Mia Garlick", is written over a light blue horizontal line.

Mia Garlick
Head of Policy, Australia and New Zealand