



The Director, Cyber Safety Policy and Programs  
Department of Communications  
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Sent by email: [onlinesafety@communications.gov.au](mailto:onlinesafety@communications.gov.au)

**"Enhancing Online Safety for Children" Discussion Paper  
Youthlaw Submission**

Youthlaw welcomes the opportunity to make this brief submission to the Department of Communications in relation to the Discussion Paper "Enhancing Online Safety for Children".

Youthlaw is Victoria's state-wide community legal centre for young people under 25 years of age. Youthlaw works to achieve systemic responses to a range of legal issues facing young people, through casework, policy development, advocacy and preventative education programs, within a human rights and social justice framework.

Our lawyers have assisted many young people experiencing cyber-bullying. While we give legal information, education and advice on ways to try and minimise the harm, we find the current system often does not help young people to achieve a satisfactory and safe outcome. This is demonstrated by Luke's case study below.

*Youthlaw provided legal assistance to 19 year old Luke, who experienced ongoing cyber-bullying for over 6 months from Ashley, a friend who he had a falling out with. Ashley sent facebook messages to Luke using an alias, calling him derogatory names and threatening to kill him. Ashley also sent messages to Luke's friends spreading rumours about Luke and telling them that if they stay friends with him they better watch out as Ashley and his friends will come after them too.*

*Luke explained that he was afraid for his safety and felt like there was nothing he could do about Ashley turning all his friends against him. Luke reported Ashley's facebook profile to facebook but they refused to delete the account.*

*Luke went to the police for help and they applied for a personal safety intervention order on his behalf, but no charges were laid.*

Youthlaw is supportive of:

1. the establishment of a Children's e-Safety Commissioner;
2. developing an effective complaints system to remove harmful material quickly from social media sites; and
3. entrenching protections from cyber-bullying with legislation.

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Youthlaw supports an e-Safety Commissioner having the power to exert pressure on social media providers to remove cyber-bullying related content quickly. Social media providers should remove the content as quickly as possible and then take the time to decide whether it is harmful (not just whether it is offensive based on community standards). The need to protect victims from harm caused by leaving the content online far outweighs the free speech curtailment on the individuals who posted the content.

### **Dealing with cyber-bullying under Commonwealth legislation**

In relation to the three options presented in the Discussion Paper for dealing with cyber-bullying under Commonwealth legislation, Youthlaw supports **option 2**, but in an amended form.

We are of the view that the creation of this type of offence would provide relief for victims of cyber-bullying. From our recent observations, police often refuse to take action because they cannot fit the behaviour within a threat to harm/kill using a carriage service (the existing offence) or forcing the victims to resort to civil remedies under harassment / stalking laws (ie. personal safety intervention orders) where they are generally not eligible for legal aid assistance. See Luke's case study above.

Additionally this new offence would give police the option of a less serious charge for young people who engage in cyber-bullying, who are currently looking at a very serious penalty (up to 3 years in prison) in situations where they did not intend to cause the level of harm they did.

However, we believe that this new offence ***should be available for all victims of cyber-bullying***, not just victims under the age of 18. Failing that, we submit that the age be raised to 25 years to cover young people like Luke, who also experience significant negative mental health consequences from cyber-bullying.

### **Appropriate penalties (criminal or civil) for young offenders**

#### ***Fines or infringement notices***

Youthlaw does not believe that a criminal penalty of a fine or a civil infringement notice issued by the proposed Commissioner of around \$1,000 (as suggested) is an appropriate penalty for cyber-bullying committed by young offenders, for the following reasons:

1. A fine of up to \$1000 is overly punitive and out of line with existing fines. A \$1,000 fine is the maximum fine that can be imposed for under 18 year olds in the Victorian Children's Court and an 'on-the-spot' fine of that amount is completely out of proportion with existing fine amounts for under 18 year olds in Victoria.
2. The vast majority of young people cannot afford to pay anything like a \$1,000 fine.
3. More fines will further burden an already stressed and under-resourced infringements system.

4. A fine penalty has an unfair effect depending on your wealth, not your culpability. A fine penalty would advantage people who are financially well-off (and able to pay the fine) while further disadvantaging people living in poverty (who cannot). In effect, this means that young people from middle and upper class families whose parents can pay the fine will not have to face any consequences, while young people from lower socioeconomic backgrounds, without parents or in child protection care will be unable to pay. Young people experiencing homelessness, struggling with substance addiction, with an intellectual disability, acquired brain injury or mental illness will end up with the offence on their criminal record if the matter is heard in the special circumstances list in Victoria.
5. Youthlaw's experience and research tells us that fines are not an effective deterrent for young people and will not decrease re-offending.

### ***Alternative cyber-bullying diversion program***

Rather than fining or charging young people for cyber-bullying, we propose a more effective alternative, namely completion of a cyber-bullying diversion program.

The program would have an educative element (possibly an online course which they have to complete) which aims to educate young people about:

- the effect of cyber-bullying on others (including potential mental health repercussions like depression, anxiety and suicidal ideation); and
- their responsibilities when using social media networks (including spreading rumours, using derogatory terms, posting embarrassing or digitally altered photographs of others or making threats against someone's safety).

Young people could be referred to the program either by the new Children's e-Safety Commissioner or police. The Commissioner could refer young people when they have not complied with a notice from the Commissioner to cease the conduct. If the young person does not engage with the program, the Commissioner may then refer the matter to police.

Police could refer young people to this program (not already referred by the Commissioner) prior to charging them with the new offence and if successfully completed, the matters will not proceed to the charge stage.

However, if a young person does not engage with the program they can be charged by police and appear before the Court, for sentencing by a magistrate.

The Commissioner or police may also require the young person who committed the cyber-bullying to write a letter of apology to the victim following completion of the course. In this way, the victim can feel safer in the knowledge that they will no longer be targeted by cyber-bullying, which can assist in their recovery from cyber-bullying.

The proposed educative diversion program will:

- limit the number of young people ultimately coming before the courts and receiving a criminal record for cyber-bullying;
- act as a more effective deterrent by educating young people about the consequences of cyber-bullying and their responsibilities in using social media; and
- reduce rates of re-offending (thereby protecting more young people from cyber-bullying related harm).

Any diversion program would require adequate resourcing and be available to all young people in Australia.

If you require any further clarification please contact Tiffany Overall on 03 9611 2422 or via email on [tiffany@youthlaw.asn.au](mailto:tiffany@youthlaw.asn.au)

Yours sincerely



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