Enhancing Online Safety for Children

AUSTRALIAN HUMAN RIGHTS COMMISSION SUBMISSION TO THE DEPARTMENT OF COMMUNICATIONS

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1   Introduction

1. The Australian Human Rights Commission (the Commission) welcomes the opportunity to make a submission to the Department of Communications as part of its public consultation into *Enhancing Online Safety for Children*, a key commitment made by the current government in the 2013 election. The Commission provides comments on the consultation paper, *Enhancing Online Safety for Children,* provided by the Department of Communications.

2   Outline of children's rights in the context of bullying, including cyber-bullying

2. Everyone has the right to be respected, safe and free from violence, harassment and bullying. A life free from violence and from cruel, degrading and inhuman treatment is a fundamental human right.[1] [2] Bullying and harassment can lead to violations of a range of other human rights. These rights include:

    *   the highest attainable standard of physical and mental health.[3] Bullying can impact negatively on physical and mental health causing harm in the form of physical injuries, stress-related illnesses, depression and other health issues. The United Nations Committee on the Rights of the Child recognises cyber bullying as a form of mental violence.[4] Mental violence is often described as psychological maltreatment, mental abuse, verbal abuse and emotional abuse or neglect.[5]

    *   freedom of expression and to hold opinions without interference.[6] Bullying can impact on a child's or young person's freedom to express her/his feelings or opinions, as he/she may no longer feel safe to do so.

    *   a child or young person's right to leisure and play.[7] Bullying often occurs where children and young people play and socialise such as in school playgrounds and on social networking sites. All children have the right to participate in leisure activities in a safe environment.

    *   the right to education. A child/young person who is experiencing bullying or cyber-bulling can feel unsafe and unwelcome at school and this can impact on their capacity to positively achieve and develop in the school environment.[8]

    *   a child's right to privacy. Children who experience cyber- bullying often have their personal information put online or sent by phone for everyone to see without their knowledge.[9]

3. This is not an exhaustive list. The examples serve to indicate the range of rights that can be violated by bullying and cyber bullying in particular. Taking a human rights approach to tackling bullying allows us to identify and address the harm to a victim's rights and encourage all of us to respect the rights of others.

Children have particular vulnerabilities and rights which are recognised in the Convention on the Rights of the Child, to which Australia is a signatory. As a nation, we have a responsibility to protect the rights of the developing child as they grow into adulthood.[10]

3 The Commission's existing work on bullying and cyber-bullying

4. A key priority of the Commission is tackling violence, harassment and bullying. The Commission believes that this is an issue that profoundly affects the lives of thousands of people living in Australia.

   With the proliferation of new communications technologies and the dramatic increase in use of the internet including social networking sites, new arenas have been created where harassment and bullying can take place.

   Cyber-bullying is often described as "an extension of 'traditional' bullying".[11] Spears, Slee, Owens and Johnson (2008) argue that:

   > what has occurred within relationships whilst at school, can be continued on-line at home or on the weekend, and any fallout in those relationships during the time on-line recurs back at school the next day or after the weekend. [12]

   Livingstone and Smith (2014)[13] in their review of relevant research between 2008 and 2013 suggest that 'those who take risks in one domain are likely to take them in others'.

   Having said this, it is important to recognise that Livingstone and Smith (2014) also acknowledge that 'opinion remains divided as to whether cyber-bulling can be considered in a similar way to traditional bullying'.[14] Notwithstanding this observation, consultations with children by the National Children's Commissioner in 2013 reveal that most children do not see a clear distinction between the on line and physical world and report that bullying usually occurs in both contexts. In this context, the solution to the bullying behaviour does not necessarily relate to the removal of harmful material alone, but to a range of conciliatory and/or protective measures. It is unclear whether this is likely to be a function taken on by the new regulatory position.

5. The Commission has released two research publications on cyber-bullying that consider some significant issues. These can be located at:

   - **Human rights and cyber-space**: http://www.humanrights.gov.au/publications/background-paper-human-rights-cyberspace
   - **Cyber-bullying and the Bystander research report (2012)**: http://bullying.humanrights.gov.au/

6. The key issues, relevant to this submission, that are canvassed in the Commission's publications include:

- balancing regulatory frameworks with freedom of expression and opinion. If the current proposal should proceed to the legislative stage, the Department of Communications will be required to lodge a statement of compatibility with human rights alongside the Explanatory Memorandum. A focus of the Commission's engagement with the Joint Parliamentary Committee on Human Rights has been on highlighting where proposed laws positively advance the promotion and protection of human rights, as well as identifying where proposed laws may limit or restrict human rights[15]. From a human rights perspective, it is clear that any limitation should be assessed against the criteria specified for permissible limitations in article 19(3) of the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. Limits on free speech can be justified in certain circumstances, particularly in the context of the protection of children's safety. The Commission welcomes that the public consultation paper on *Enhancing Online Safety for Children* recognises that 'if measures proposed have the potential to impact on freedom of expression, then it is important that they are reasonable and proportionate to the intended policy goal of improving the online safety of Australian children'.

  According to the consultation paper the Commissioner will have the power to target comments including "material targeted at and likely to cause harm to an Australia child". The Commission believes that this is fair and the emphasis should be on targeting. However the consultation paper then establishes a test which includes a series of acceptable standards, but then includes "any other matter which the Commissioner may consider relevant" (p15). The Commission considers this to be unnecessarily broad and is of concern.

- discussion on the balance between regulatory, educative and research responses to cyber-bullying and e-safety for children. Research by the Commission (2012) emphasises that the key driver of behavioural change among children and young people is peer support and educative approaches rather than simply legislative prescription.

- the appropriateness of using criminal sanctions versus civil remedies, especially where such offences are likely to criminalise the behaviour of children. The public consultation paper on *Enhancing Online Safety for Children* recognises, "many people, especially minors, may not be aware that cyber-bullying may constitute an offence". The Commission agrees with the public consultation paper that the current language in the provisions of the *Criminal Code Act 1995* (Cth) is difficult to understand. American research completed by MTV and Associated Press with 1,297 young people aged 14-24 years (489 aged 14-17; 808 aged 18-24) in late 2013 found that 69% of respondents said they had considered the possibility "only a little" or "never" that online or via text message could get them "in trouble with the police". 71% of respondents had given little or no thought to the possibility that their wireless interactions could get them into trouble at school. [16] This type of research supports the view that public education and awareness raising programs are essential. Page 22 of the public consultation

paper on *Enhancing Online Safety for Children* recognises that "it may be that more needs to be done to raise awareness about the existing law and its application to cyber-bullying. This may increase the effectiveness of the existing law in deterring growing levels of cyber-bullying. Consideration could be given to providing better education and messaging to students, parents and teachers and law enforcement agencies about the current offences and the legal consequences of cyber-bullying".

- whether federal criminal offences should be the preferred approach, given that most criminal law exists at the state and territory level and where there are potentially constitutional issues to consider. The public consultation paper on *Enhancing Online Safety for Children* acknowledges that the Communique, Standing Council on Law and Justice in October 2012 agreed that 'the current Commonwealth, state and territory laws provide appropriate coverage of serious instances of cyber-bullying'. [17]

4   Other emerging issues

7. *Enhancing Online Safety for Children* recognises that the rapid removal of harmful material is in the best interests of children and young people who are experiencing cyber-bullying. The Commission concurs with this. The paper notes that the more widely used social media sites have improved their complaints handling processes in recent years and 'most of the major social media sites have well-established complaints handling procedures that generally apply across all jurisdictions in which the sites operate'. Given this, it is not clear why the focus of the proposed scheme would only be on large social networking sites with non-large social media sites able to participate on a voluntary basis.

8. *Enhancing Online Safety for Children* acknowledges that Australia has existing arrangements for removal of on-line content. For example, the Co-operative Arrangement for Complaints Handling on Social Networking Sites, the Online Content Scheme, and Anti-discrimination legislation (administered through Human Rights Commission). The effectiveness of these arrangements is questioned on page 11 of the paper with it being argued that parents or guardians should be 'afforded the opportunity to take actions to protect their child from harm'. However the extent to which parents and guardians actually know about existing arrangements is not known. It may be that existing arrangements are sufficiently effective but parents and guardians do not know they are available.

The paper states, on page 18, that the proposed scheme will 'not replace or inhibit the operation of the current Online Content Scheme under the *Broadcasting Services Act 1992'.* No comments were made in relation to the other arrangements. It will be important to articulate how all existing arrangements will be aligned with the proposed new scheme and how they will communicate with each other in their efforts to provide cyber safety to children and young people.

On page 22 of *Enhancing Online Safety for Children*, it states that the current Attorney-General's Department is working with CrimTrac and the Australian Crime Commission to develop the Australian Cybercrime Online Reporting Network (ACORN) in consultation with law enforcement agencies. ACORN is an internet system that will receive cybercrime reports from members of the public; provide general and targeted educational advice on cybercrime; and refer certain reports to law enforcement agencies for further consideration. *Enhancing Online Safety for Children* indicates that that ACORN 'will be operational in the second half of 2014'. It is unclear how or even whether ACORN and the proposed scheme will engage with each other.

9. *Enhancing Online Safety for Children* points out that the penalties in the proposed scheme 'require further consideration'. Other than providing some examples of possible penalties, it does not explore this in depth. The Commission considers that any penalty regime should be flexible enough to ensure that appropriate penalties are applied in particular cases.

10. *Enhancing Online Safety for Children* states that one of the outcomes of its *National Bullying, Young People and Law Symposium* was a recommendation about taking into account the voices of children. The Commission welcomes the acknowledgement of the importance of children's participation as per Article 12 of the Convention on the Rights of the Child, and has agreed to assist the Department of Communications in developing the questions that it will ask its Youth Advisory Group on Cyber Safety (YAG) about the content of *Enhancing Online Safety for Children*.

11. The Commission's complaint role in anti-discrimination complaints is focused on dispute resolution rather than regulation or determination. The position of the e-safety Commissioner could arguably be placed in the Commission should the Government seek to introduce a model more centred on conciliation and dispute resolution.

5   Education and increasing public awareness

12. Fundamentally, the Commission is of the view that education and increasing public awareness is an essential part of enhancing online safety for children. This preventative approach should use research findings to educate and inform about the prevalence of particular risks and the specific contexts in which they arise. This type of knowledge will assist families and communities in early detection and intervention.

Current research conducted by the Australian Communications and Media Authority (ACMA) was released on Safer Internet Day (11 February 2014).[18]

The research involved 1,001 parents, selected as the main caregivers, 396 children aged eight to 11 years and 605 young people aged 12 to 17 years. The research found that:

> Children and young people were most likely to turn to their parents first if they needed to enquire about a potential cyber-safety issue, despite community perceptions and anecdotal evidence suggesting otherwise.

78% of children and young people reported that their likely sources of cyber-safety information sources would be parents or other trusted adults; 38% reported turning to a teacher; 31% reported turning to friends; 22% reported using search engines such as Google; 18% reported turning to siblings; 8% got information from school information sessions; 3% got information from school newsletters; 2% reported getting information from onsite advertisements; 2% got information from television or radio.

These results show that the percentage of children and young people turning to their parents for assistance, while decreasing with age, was the most common response for each age group. ACMA acknowledges that this finding highlights the importance of reaching parents as a key target audience for cyber-safety resources.

The research also indicated that 48% of parents became aware of cyber-safety issues through news or current affair shows; 47% through friends and family; 46% through newsletters from their child's school; 32% through talking to their child; 27% through a government website; 21% through face to face information sessions through their child's school; 15% through online advertisements; 15% through something at their child's school; 9% through a cyber-safety website; 8% through an internet service provider or telephone service; 3% through Facebook; 2% through stories in magazines or newsletters; 11% indicated that they had not heard about cyber-safety through any means.

Having this type of information is crucial in terms of appropriately targeting education and public awareness campaigns.

13. Future research should continue to elicit the views of children, young people and their parents but should also target evaluating the various educational and public awareness programs, including the filtering and other technologies used to minimise and control risks. This will help to make better informed choices as to what risks should be prioritised, what programs and methods will be most effective in combating those risks and how resources can be effectively targeted. Livingstone & Smith, who reviewed available research between 2008 and 2013 on harms experienced by child users of online and mobile technologies, argue that 'much needed, and still little developed, is a body of research that conducts independent evaluations of existing interventions so as to learn from mistakes and share best practice'. They also point out that in the last decade 'multiple disciplines [are] combining forces to raise awareness, produce research evidence, and initiate multi-stakeholder efforts to mitigate harm'.

14. The public consultation paper on *Enhancing Online Safety for Children* states that the Department of Communications 'will review the proposed scheme three years after implementation' (p.19). The Commission welcomes this commitment to review the proposed scheme. Guidelines on data collection (including measurable objectives and performance indicators) should be defined from the onset with public reporting procedures clearly articulated.

[1] See for example, Universal Declaration of Human Rights (UNDHR), GA Resolution 217A (III), UN Doc A/810,1948, art 5; International Covenant on Civil and Political Rights (ICCPR),1966, art 7;CRC,1989, art 19.Convention on the Rights of Persons with Disabilities, 2006, art 16; Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19 – Violence Against Women (1992), paras 4, 17, 14; Committee on the Rights of the Child, General Comment no. 13- Article 19: The right of the child to freedom form all forms of violence, UN Doc CRC/C/GC/13 (2011) para 12. At http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en_AUV.doc (viewed 3 February 2014); UDHR,1948, art 7; ICCPR, 1966, arts 7, 26.

[2] CRC, 1989, article 19.

[3] UDHR GA Resolution 217A (III), UN Doc A/810 (1948), article 25; International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, article 12(1); CRC,1989, article 24.

[4] Committee on the Rights of the Child. General Comment 13. Paragraph 21(g).

[5] Committee on the Rights of the Child. General Comment 13. Paragraph 21.

[6] UDHR GA Resolution 217A (III), UN Doc A/810 (1948), article 19; ICCPR,1966, article 19

[7] CRC, 1989, article 31.

[8] UDHR GA Resolution 217A (III), UN Doc A/810 (1948), art 26; ICESCR,1966, art 13(1); CRC, 1989, art 29; Committee on the Rights of the Child, General Comment no. 1- The Aims of Education, (2001) art 29 (1) paragraph 8.

[9] CRC, 1989, article 16.

[10] The role of the National Children's Commissioner has been fundamental in terms of implementing, promoting and educating about the Convention on the Rights of the Child.

[11] Ybarra, L., Boyd, D and Korchmaros, J.D. Defining and Measuring Cyberbullying within the larger context of bullying victimisation. *Journal of Adolescent Health,* 51 (2012) 53-58.

[12] Spears, B., Slee, P., Owens, L., and Johnson, B., 2008, Behind the Scenes: Insights into the Human Dimension of Covert Bullying: Short Report (December 2008), Hawke Research Institute for Sustainable Societies (2009). The Centre for the Analysis of Educational Futures (Flinders University) in partnership with The Coalition to Decrease Bullying, Harassment and Violence in South Australian Schools, p.16.

[13] Livingstone, S. and Smith, P.K. (2014:10). Harms experienced by child users of online and mobile technologies. *Journal of Child Psychology and Psychiatry.* Association for Child and Adolescent Mental Health. Published by John Wiley & Sons Ltd.

[14] Livingstone, S. and Smith, P.K. (2014: 4). Harms experienced by child users of online and mobile technologies. *Journal of Child Psychology and Psychiatry.* Association for Child and Adolescent Mental Health. Published by John Wiley & Sons Ltd.

[15] Children's Rights Report 2013. Australian Human Rights Commission, p.91.

[16] The Digital Abuse Study: A Survey from MTV & The Associated Press-NORC Center for Public Affairs Research (2013). A complete study report can be found at http://www.apnorc.org.

[17] Communique, Standing Council on Law and Justice, Australia, 5 October 2012.

[18] Australian Communications and Media Authority. Connected parents in the cybersafety age. June 2013. Snapshot February 2014.