



alannah & madeline  
foundation



# Response to exposure draft of a new Online Safety Bill

Alannah & Madeline Foundation

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## Introduction

The Alannah & Madeline Foundation (the Foundation) welcomes the opportunity to provide feedback on an exposure draft Online Safety Bill to improve Australia's online safety legislation.

In 2020, when the new Act was proposed, the Foundation made several recommendations to reform existing online safety legislation to ensure Australia is ready and able to deal with new and emerging issues, keep up with developing services and platforms and improve transparency and accountability of online service providers.

The Foundation is pleased to see that, as recommended, the response time for the removal of both cyber bullying and image-based abuse (IBA) material has been reduced.

The new exposure draft states that the Commissioner will have the power to issue a notice for the removal of cyber bullying and image-based abuse material targeted at an Australian child to:

- a social media service
- a relevant electronic service which allows online messaging, chat or gaming
- a hosting service provider
- an end-user ie. an individual who has posted cyber bullying material.

The social media service, electronic service, and hosting service provider will be required to remove harmful material, or take all reasonable steps to stop hosting it, within 24 hours or longer if the Commissioner permits.

An individual end-user will be required to take all reasonable steps to ensure that both cyber bullying and image-based abuse material is removed, although the exposure draft does not specify a time limit.

The Foundation would like to see **a time period specified to individual end users to avoid confusion with those stipulated for service providers and reduce the harm experienced by victims of cyber bullying and image-based abuse** and reiterates (as per our 2020 submission) **that time is of the essence when children are affected by severe cyber bullying or image-based abuse, so ideally 24 hours should be the outer limit, with shorter response times the norm.**

## Further recommendation to consider

The Foundation would like to highlight some of the recommendations made in our initial response (January 2020) that are not currently reflected in the new exposure draft which we believe would support Australians to have safe and fulfilling digital experiences, including:

### Default settings for games, apps and services

**We called for all games, apps and services developed for children to be set by default to the most restrictive safety and privacy settings from the outset.** This will better assist parents and ensure that service providers and developers act responsibly to ensure that individuals can use the service in a safe manner.

While the exposure draft does state that the Commissioner will support bodies which represent the online industry to develop their own industry codes, the Foundation does not believe that this measure would be as effective as restrictive safety and privacy settings.

### Reporting processes for image-based abuse and young people

We called for reporting processes to be made as supportive, clear and streamlined as possible, in recognition that vulnerable teens often do not report IBA, particularly Aboriginal and Torres Strait Islander young people. Through

an evaluation of our Safe Sistas\* program we learnt that young Aboriginal and Torres Strait Islander women are reluctant to report incidents of IBA due to the formal and authoritative nature of the current reporting processes. Therefore, **alternative help seeking pathways should be offered that are culturally appropriate and accessible** for this cohort of young people who disproportionately experience IBA. We suggest that a culturally appropriate review led by respected researchers working with Aboriginal and Torres Strait Islander communities of the current mechanism should be undertaken to determine and design a process that would better support helping-seeking and reporting.

\* a program designed to address young Indigenous women's general cyber safety practices to reduce and respond to the issue of image-based abuse in Indigenous communities. The program was evaluated by the Department of Indigenous Studies, Macquarie University in 2020.

### Education and prevention

We called for **greater investment in education, especially in early childhood settings**. We also called for more in-person support for parents and school staff, to build their knowledge of getting cyber bullying material removed by web platforms and the Office of the eSafety Commissioner.

These topics are not mentioned in the exposure draft. However, it is our understanding that the purpose of the Act is partly to enhance the Commissioner's role, and the exposure draft reiterates that the Commissioner's role includes:

- disseminating information about online safety to Australians
- supporting, conducting, accrediting and evaluating education and community awareness programs about online safety
- building new knowledge, innovation and best practice about online safety in the community through substantial grants programs.

We are keen to be involved in further discussions about how the Office of the Safety Commissioner will approach this valuable work and engage with other online safety providers.

### Advocacy for an XXX domain

Our submission called upon the **Australian Government to advocate for containment of pornographic content behind an age verified XXX domain** through reform at an infrastructure level that promotes the rights of children to access information without being exposed to inappropriate content or contact.

The Australian Government could advocate for the World Wide Web Consortium (w3c) to change the standardisation of technology and establish a XXX domain for all adult content to sit behind. Internet service providers could then have the XXX domain default to 'off' and individuals would have to request access and complete an age verification process to search for content.

While not a panacea, changes at an infrastructure level would remove the reliance on tech companies and service providers and allow for greater regulation through a standardisation mechanism by governments thus protecting their citizens.

This is not mentioned in the exposure draft.

The closest measures proposed in the exposure draft seem to be the following:

- The Commissioner has powers to investigate and compel the removal of Class 1 or 2 material from social media, electronic services or internet services. The Commissioner may also require a provider of an internet search engine to delete links to this material, and an app distribution service to block access to an app

which facilitates access to this material. Class 1 and 2 refers to material which has been, or is likely to be, refused classification or rated X18+.

- The Minister may determine Basic Online Safety Expectations, which may cover a provider's responsibility to take reasonable steps to minimise the extent to which Class 1 material is hosted on their service.
- Providers of services will ensure they have clear and readily identifiable mechanisms for individuals to report Class 1 and 2 material.
- The Commissioner will support the development of online industry codes, which will cover procedures for dealing with Class 1 and 2 material and giving individuals access to information and tech solutions to help them limit access to Class 1 and 2 material.

These measures place the onus on individuals to avoid and report Class 1 and 2 material, rely on industry to self-regulate and provide reactive powers to the Commissioner to investigate and remove specific Class 1 and 2 material, presumably following a complaint rather than a proactive and preventative approach.

### Forcing apologies for cyber bullying

The Commissioner will have powers to require someone who is found to have cyber bullied another person to apologise and/or undertake not to post bullying material about that person in the future.

While the Foundation views this proposal with interest, we would welcome more information about how any apology process might best be incorporated into the Commissioner's work, and which evidence-based approaches would be used to ensure that apologies are meaningful and effective in terms of ending cyber bullying behaviours and helping victimised individuals to heal. We would welcome the opportunity to be involved in any discussions about how to approach this work.

It's important to recognise that children who bully others were often bullied themselves. Efforts to require children to apologise for bullying behaviours should also include investment in building respectful behaviours and cultures. Bullying behaviours arise within groups and it is most effectively addressed through systemic interventions not just individual behaviours.

Furthermore, a lot of cyber bullying of children occurs between individuals who know each other in person. In light of this, we would welcome more interventions to address the relational side of cyber bullying. At present, much of the responsibility falls onto schools alone. Consideration should be given to better equipping communities to address cyber bullying between children who know each other in person, via evidence-based approaches such as restorative practice, the method of shared concern, and/or the support group method. Through these intensive processes, genuine and impactful apologies can be made, along with other positive outcomes.

### Definition of cyber bullying

We note the definition of cyber bullying employed within the exposure draft is material which an 'ordinary reasonable person' would conclude was likely intended to have an effect on a particular Australian child, and which would be likely to have the effect of seriously threatening, seriously intimidating, seriously harassing, or seriously humiliating that child.

We trust that evolving definitions of cyber bullying will be developed in dialogue with the Safe and Supportive School Communities Working Group, a joint initiative of Australia's government, Catholic and independent schooling sectors, and with providers of online safety interventions. For example, we note that there is currently no mention of cyber bullying as repetitious behaviour, whereas repetition has traditionally been considered a key aspect of bullying. This can be more complex in online spaces, but we would welcome ongoing work to recognise the repetitive (or potentially repetitive) nature of cyber bullying and the way this contributes to the harm and hurt caused.

### Fines for individuals and providers

The exposure draft outlines some substantial powers to be given to the Commissioner, including the ability to fine individuals and providers up to \$110,000 for non-compliance, and waiving people's right to refuse to provide information to an investigation.

Clarification on how these powers will sit in relation to the regular police and courts system, including the youth justice system, and how these powers will be used appropriately in relation to under-18s especially is needed.

The Foundation thanks the Australian Government for the ongoing open consultation process for the new Online Safety Act and for continuing to lead reform to ensure all Australians are safe online.

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