



Commissioner for Children and Young People
Western Australia

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Dear Ms Clark

Submission – Online Safety Legislative Reform Discussion Paper

As Commissioner for Children and Young People in Western Australia I have a statutory responsibility under the *Commissioner for Children and Young People Act 2006 (WA)* to monitor and review written laws, draft laws, policies, practices and services affecting the wellbeing of children and young people under the age of 18 years. It is also a statutory function of my office to promote and monitor the wellbeing of children and young people generally, and advocate for their views to be heard in decision making that affects them. In undertaking these responsibilities I must give priority to Aboriginal children and young people and those who are vulnerable or disadvantaged for any reason. I must also have regard for the United Nations Convention on the Rights of the Child (the UNCRC). It is within the context of my role as an independent, statutory office and the functions outlined above that I provide this submission in response to the Online Safety Legislative Reform Discussion Paper (the Discussion Paper) released December 2019.

In 2019 I surveyed just under 5,000 Western Australian school students from across the State as part of the first children and young people's Speaking Out Survey¹. The data from the Speaking Out Survey indicates that a significant proportion of Western Australian students in Years 4-12 have had negative online experiences in the form of cyberbullying and receiving unwanted sexual material. Across students in Years 4-12, 14 per cent had been both bullied and cyberbullied. When this data is broken down into smaller age cohorts we see the proportion of young people being cyberbullied increasing as students get older. In primary school 7.1 per cent of students in Years 4-6 report being cyberbullied, with this figure doubling to 14 per cent for secondary school students in Years 7-12. Within this secondary school cohort 20.5 per cent of students in Years 10-12 reported being subjected to cyberbullying. For Year 7-12 students a higher proportion of female students (17.2 per cent) reported being cyberbullied compared to male students (10.2 per cent). In addition

¹Available at <https://www.ccyp.wa.gov.au/our-work/projects/speaking-out-survey/>

to cyberbullying, 53.6 per cent of female students and 26.7 per cent of male student in years 9-12 reported being sent unwanted sexual material. Of these students, 92.9 per cent received unwanted sexual material through social media, 15.8 per cent via text message, and 1.7 per cent by email.

These numbers highlight for me the importance of involving children and young people in the design of not only the proposed Online Safety Act, but also the design of the policies, platforms and services that will give effect to these legislated protections. As victims, and indeed perpetrators, of cyberbullying and image-based abuse, children and young people will have particular insights into how to best confront these issues in a manner that is child-friendly, achieves a satisfactory outcome for victims and will be more likely to bring about behavioural changes in perpetrators. Such an approach to the development and implementation of the proposed Online Safety Act would be consistent with the rights afforded to children and young people under Article 12 of the UNCRC² and is strongly recommended by the United Nations Committee on the Rights of the Child³. I would suggest particular focus be placed on consulting with children and young people with regard to:

- the outcomes children and young people would like see achieved through the proposed Act and reflected in its objectives and the Statement of Regulatory Policy;
- the development of the proposed Basic Online Safety Expectations;
- how children and young people would like to see the Safety by Design Principles and the Online Safety Charter implemented by the technology sector;
- the proposed legislated responses the eSafety Commissioner will have at their disposal;
- the methods of educating children and young people about online safety that will be most effective at bringing about behavioural changes; and
- whether the reporting system employed by the eSafety Commissioner meets the needs and expectations of children and young people.

My website contains a number of resources that may assist in ensuring that any consultation undertaken with children and young people is child-friendly, effective at collecting relevant information, and meaningful for both parties⁴. I would also like to bring to your attention the European Network of Ombudspersons for Children's Position Statement on Children's Rights in the Digital Environment⁵, released September 2019. The Position Statement was informed

² Article 12 UNCRC: State Parties shall assure to the child who is capable to forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

³ United Nations Committee on Rights of the Child, 2009, *General Comment 12 The right of the child to be heard*, available at https://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf

⁴ Resources available at <https://www.cyp.wa.gov.au/our-work/resources/participation/>

⁵ European Network of Ombudspersons for Children, 2019 *Position Statement on Children's Rights in the Digital Environment*, available at <http://enoc.eu/wp-content/uploads/2019/10/ENOC-2019-Statement-on-Childrens-Rights-in-the-Digital-Environment-FV.pdf>

by recommendations made by the European Network of Young Advisors⁶, which together may provide a foundational level of understanding of the perspectives of children and young people that a local consultation process could build on.

I support the proposal outlined in the Discussion Paper to include overarching objectives and a Statement of Regulatory Policy in a new Online Safety Act. I am pleased to note that the Statement of Regulatory Policy outlined in the Discussion Paper would require particular regard be paid to the needs of Australian children in relation to the implementation of practical protection measures. However I would strongly urge that the protection of children and young people from online and digital danger be included as a specific objective of the proposed Online Safety Act. Such an objective would be consistent with the recommendations made by Lynelle Briggs AO in her 2018 review of the *Enhancing Online Safety Act 2015*⁷. It would also act to reinforce the core responsibility of the eSafety Commissioner's office in safeguarding children and young people from online harm and provide clear direction in the interpretation and application of the new Act. To support this objective I recommend that section 12 of the *Enhancing Online Safety Act* be retained within the new Act. This will ensure the eSafety Commissioner continues to be required to have regard to the UNCRC in the performance of their legislated functions.

Consistent with Article 5 of the UNCRC⁸, parents and carers should also have a central role in the design and implementation of the new Online Safety Act. The eSafety Commissioner reported in 2018 that 71 per cent of young people who had a negative online experience sought help from their informal networks, with 55 per cent of this group seeking help from their parents⁹. However in a subsequent report, only 46 per cent of parents reported that they felt confident dealing with cyberbullying, and 95 per cent of parents agreed that they needed additional information about online safety¹⁰. It is important therefore that the provisions of the new Online Safety Act empower parents, carers and the eSafety Commissioner to work together to form an effective, multi-level support network that can meet the needs of those children and young people who have negative online experiences.

⁶ European Network of Young Advisors, 2019, *ENYA Recommendations Children's Rights in the Digital Environment*, available at <http://enoc.eu/wp-content/uploads/2019/10/ENYA-recommendations-on-childrens-rights-in-the-digital-environment-FV.pdf>

⁷ Briggs L, 2018, *Report of the Statutory Review of the Enhancing Online Safety Act 2015 and the Review of Schedules 5 and 7 to the Broadcasting Services Act 1992 (Online Content Scheme)*

⁸ Article 5 UNCRC: State Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

⁹ Office of the eSafety Commissioner 2018, *State of Play – Youth, Kids and Digital Dangers*, available at <https://www.esafety.gov.au/sites/default/files/2019-10/State%20of%20Play%20-%20Youth%20kids%20and%20digital%20dangers.pdf>

¹⁰ Office of the eSafety Commissioner 2018, *Parenting in the digital age*, available at <https://www.esafety.gov.au/sites/default/files/2019-07/eSafety%20Research%20Parenting%20Digital%20Age.pdf>

In addition to the above, the development of the new Online Safety Act represents an opportunity to review the appropriateness of the level of resourcing currently available to the Office of the eSafety Commissioner. Before expanding the remit of the Office it should be a priority to determine whether the Commissioner is able to effectively carry out their existing duties within the funding available to them. If not, it is in the best interests of children and young people that an appropriate increase in resources be made available to the Commissioner. Upon the commencement of the new Online Safety Act new resources must then also be made available at a level commensurate with the expanded activities of the eSafety Commissioner. These actions will be necessary to prevent the increased level of online protection and support that will be extended to adults occurring at the expense of the protections and supports available to children and young people under the Act.

Thank you for the opportunity to provide my views in relation to this important reform. I will monitor its progress and look forward to reviewing the draft Online Safety Bill in due course.

Yours sincerely,



COLIN PETTIT

Commissioner for Children and Young People WA
20 February 2020