



## **Social Media (Anti-Trolling) Bill 2022:**

A submission by the Alannah & Madeline Foundation and Dolly's Dream to the Senate Legal and Constitutional Affairs Legislation Committee

February 2022

## Contents

Executive summary .....	3
About us.....	4
Recommendations.....	5
Grounding the Bill in its wider context for young Australians .....	7
'The best interests of the child' as a guiding principle .....	9
The Online Privacy Bill and parental consent for handling of children's data .....	9
Data minimisation and children's privacy .....	10
Timeframes for responding to a report of the defamation of a child .....	10
Recognising the special status of children under the law .....	11
Hearing the views of young Australians .....	11
Communication with school communities .....	12

## Executive summary

We welcome the news that the Social Media (Anti-Trolling) Bill 2022 will be referred to the Senate Legal and Constitutional Affairs Legislation Committee for further inquiry. This is a significant piece of legislation which warrants close review and mature consideration.

At the Alannah & Madeline Foundation and Dolly's Dream, we are passionate about bringing to life children's rights and making the online and offline worlds positive, empowering places for children and young people to learn, play, express themselves, and connect with family and friends.

Digital technologies are fully integrated into the lives of most Australian families, bringing benefits, risks, harms and opportunities. Despite the many positives of digital technologies for children and young people, the digital world was not designed originally to be safe and age-appropriate for them, and too many young Australians have had risky or harmful experiences online. These can include false and damaging claims or rumours affecting a child or young person's reputation. Negative experiences online can also involve children's personal data being collected, stored, used or shared in inappropriate ways.

The Social Media (Anti-Trolling) Bill 2022 addresses one problem: how best to respond to defamatory material posted anonymously on social media services. The Bill provides for the creation of processes whereby individuals who believe they have been defamed online can access the country location and (with the poster's consent or via a court order) the name, phone number and email address of the person who posted the material, for the purpose of pursuing a defamation claim against the poster.

We welcome and support the Government's commitment to making the digital world a safer place for all. However, we suspect the uptake of this particular option by children and young people will be low. This is not because children and young people do not experience false and damaging reputational claims online – in fact, that problem seems relatively common – but rather because resolving the problem through formal defamation proceedings is unlikely to be an accessible or appealing option for many young Australians.

In order to deal effectively with the problem of serious reputational harm caused to children and young people online, we believe there are several broad approaches which would help to deliver positive outcomes. These approaches would involve refining the terms of the Social Media (Anti-Trolling) Bill 2022, but they also go beyond that.

Broadly, we believe the following approaches would help deliver the best outcomes:

- committing to uphold the best interests of the child as a key guiding principle for reform
- aligning and coordinating effectively with other digital reform processes
- communicating clearly with end-users of social media services
- building strength in school communities.

In order to uphold the best interests of the child, we encourage the Legal and Constitutional Affairs Legislation Committee to:

- engage with the National Commissioner for Children to review the reforms through a 'child rights lens'
- support amendments to the Bill to require social media services to uphold the highest standards of protection for children's personal data and adhere to the principle of data minimisation
- support amendments to the Bill to ensure that a child who has been subjected to serious reputational damage online receives appropriate support as soon as reasonably possible

- ensure children and young people have meaningful opportunities to share their views on what this Bill could mean for them
- support the adoption of 'the best interests of the child' as a guiding principle for all reforms that affect children's lives
- support the principle that children who break the law need responses which recognise their age, vulnerability and potential for growth and focus on rehabilitation and positive behavioural change.

If a complementary instrument were developed to guide the implementation of a Social Media (Anti-Trolling) Act, that might be another place where the above commitments could be articulated.

This Bill has been released during a period of significant reform of the digital sector in Australia, with multiple pieces of legislation and industry codes being developed and implemented. In order to deliver positive results, it is vital that the work done on the Social Media (Anti-Trolling) Bill has regard to this wider context. It is especially important that the Bill aligns effectively with:

- the approaches to handling children's personal data proposed in the Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill 2021 (the Online Privacy Bill)
- the approaches to addressing serious cyber bullying planned for social media services in response to the Online Safety Act 2021
- the expectations articulated in the Online Safety (Basic Online Safety Expectations) Determination 2022 about how online services' terms of use should be communicated to their end-users
- the work being led by the Office of the eSafety Commissioner to implement 'safety by design' for digital platforms, to help anticipate and prevent harmful behaviours before they occur.

We would also welcome greater clarity as to which regulatory body(s) will be responsible for overseeing the digital industry's successful alignment with a Social Media (Anti-Trolling) Act. This would help to strengthen community confidence that the provisions of the Act were being realised successfully.

Finally, we would stress that a significant burden of preventing and responding to antisocial behaviours online continues to fall to Australia's educators and other professionals who work with children and young people. For example, in the space of online defamation, we would note that some schools are struggling to prevent and respond appropriately to defamatory material posted online by a minority of parents and carers.

Legislation to address antisocial behaviour online is welcome but it can only achieve so much. It is vital that governments invest in long-term interventions which support schools to plan for, prevent and address antisocial behaviours online and offline which affect students, staff, parents and carers.

## About us

The Foundation was established the year after the Port Arthur tragedy, by Walter Mikac AM in memory of his two young daughters, Alannah and Madeline. Our vision is that all children and young people are safe, inspired and have freedom to flourish.

Over the last 25 years our work has grown and evolved but our purpose remains the same. We have three program streams:

- **Safe and Strong:** recovering and healing from trauma. Very much linked to our origin story, we have a specialist trauma recovery and therapy service for children who have experienced significant trauma. This has grown in recent years to include working with early childcare providers, kindergartens and now primary schools to help them build their trauma informed capability and

practices. Most of our work in trauma healing and recovery is Victorian based, with our therapists and consultants working from our client's homes and places of work.

- **Safe and Strong: building positive digital citizens.** The Alannah & Madeline Foundation works with schools, families and communities nationally to help children build the digital intelligence, skills and competencies they need to stay safe online and to be active, positive digital citizens. With over 10 years' experience working in the cyber bullying and wellbeing space, as technology has become ubiquitous, our work has developed into building digital intelligence, digital ethics and media literacy for all children aged 3-18.
- **Safe and Strong: bringing children's rights to life.** As a rights-based organisation, this is our policy and advocacy work. Since inception, we have advocated for firearms safety and we convene the Australian Gun Safety Alliance. In other key policy matters related to our programs, we work closely with the Officer of the eSafety Commissioner, the Prime Minister's National Office for Child Safety and other major agencies such as the Australian Federal Police.

In 2018, we partnered with Kate and Tick Everett, after the tragic suicide of their daughter, Dolly. With them we worked to establish Dolly's Dream.

- **Safe and Strong: Dolly's Dream, changing the culture of bullying.** The purpose is the same, but the programs and services (Parent Hub, telephone help line, school and community workshops etc.) are specifically designed for remote, rural and regional families and communities, to meet their unique needs and contexts.

## Recommendations

As part of the inquiry into the Social Media (Anti-Trolling) Bill 2022 by the Senate Legal and Constitutional Affairs Legislation Committee, we encourage the Committee to take the following steps.

### Stakeholder engagement:

1. Consult with the National Commissioner for Children, as well as the eSafety Commissioner and the Information Commissioner, to ensure the design and implementation of the Social Media (Anti-Trolling) Bill 2022 have been considered through a child rights lens and function to uphold the best interests of the child.
2. Consult with young Australians to give them meaningful opportunities to contribute to this reform. Timeframes permitting, such consultations might involve the [Online Safety Youth Advisory Council](#), currently in its planning stages with eSafety. Alternatively, engagement might occur through partnerships with the National Children's Commissioner, research institutes and/or civil society organisations with expertise in child-rights practice.

### Alignment with other legislation:

1. Assess how the Bill has regard to, and aligns with, the reforms proposed in the Online Privacy Bill, an exposure draft of which was recently shared for consultation. In particular:
  - a. The exposure draft of the Online Privacy Bill proposes to enable the creation of an Online Privacy (OP) code. This code would require social media services to ensure that their collection, use or disclosure of children's personal information is fair and reasonable in the circumstances, with the best interests of the child as the primary consideration for determining what is fair and reasonable. This reform would enshrine the best interests of the child as a key guiding principle in legislation for the handling of children's personal information online. We strongly support such a move and encourage its application in relation to the Social Media (Anti-Trolling) Bill 2022. Such an approach might perhaps be articulated in a legislative instrument created to provide

guidance in carrying out a Social Media (Anti-Trolling) Act. **[See Social Media (Anti-Trolling) Bill, p.25 lines 14-28]**

- b. The exposure draft of the Online Privacy Bill proposes to enable the creation of an OP code. This code may require social media services to obtain parent or guardian consent before collecting, using or disclosing the personal information of a child. If this approach is required of the digital industry, it would impact directly on the collection and disclosure of children's contact details by social media services under the Social Media (Anti-Trolling) Bill 2022. We call for clearer articulation of how these two Bills will be aligned. **[See Social Media (Anti-Trolling) Bill, p.11 lines 31-34, p.12 lines 1-4, p.13 lines 11-20, and p.14 lines 11-20]**
  - c. The exposure draft of the Online Privacy Bill proposes to enable the creation of an OP code. This code would require social media services to ensure that individual end-users have consented to the collection, use or disclosure of their personal information and that this consent is informed, unambiguous and specific. Adoption of this definition of consent would improve the Social Media (Anti-Trolling) Bill 2022. (However, it is still highly questionable whether children have the capacity to give informed consent to their contact details being collected and shared in relation to a potential defamation case – see previous item.) **[See Social Media (Anti-Trolling) Bill, p.13 line 29 and p.14 line 14 and 17]**
2. Assess how the Bill has regard to, and aligns with, the Online Safety Act 2021 and the Online Safety (Basic Online Safety Expectations) Determination 2022. There is potential for overlap between some cases of online defamation and cases of cyber bullying or cyber abuse. If a legislative instrument were created to provide guidance in carrying out a Social Media (Anti-Trolling) Act, this might be a valuable place to articulate how individuals' rights under both pieces of legislation align and can best be communicated with end-users. **[See Social Media (Anti-Trolling) Bill, p.25 lines 14-28]**

#### **Content changes to the Social Media (Anti-Trolling) Bill:**

1. **Page 6 lines 18-24 and page 24 lines 16-20:** Articulate a clear requirement that social media services uphold the highest standards of protection for personal data – especially for children – and uphold the principle of data minimisation, as articulated by the UN Convention on the Rights of the Child General Comment No. 25, and the European Union General Data Protection Regulation. This is in recognition of the fact that the Social Media (Anti-Trolling) Bill 2022 provides social media services with a defence under defamation law provided they maintain a complaints system which involves collecting and potentially storing and sharing the names, email addresses and phone numbers of end-users.
2. **Page 12 lines 29-34, page 13 lines 1-36, and page 14 lines 1-32:** Clarify who will be responsible for assessing whether a social media service has a complaints scheme that meets the prescribed requirements, whether a social media service has complied with their own complaints scheme when handling a defamation complaint, and whether a social media service which declined to act on a defamation complaint did so out of a reasonable belief that the complaint was not genuine. Greater clarity about which regulatory body holds oversight would help to strengthen public confidence in the new legislation.
3. **Page 13 lines 7-36 and page 14 line 11:** For cases where a serious reputational attack on a child is believed to have occurred, reduce the maximum time a social media service may take to respond. At present, the Bill allows 72 hours for each step: informing the person who posted the material about a complaint of defamation, informing the complainant about the outcome of their complaint, etc. We suggest this is too long in cases where a child has been subjected to serious reputational harm. The problem might be resolved to some extent by requiring social media services to ensure that anyone who makes a complaint about defamation of a child is automatically provided with information about the child's rights under the Online Safety Act 2021. The Online Safety Act 2021 allows the eSafety Commissioner to issue a takedown notice giving a social media service 24 hours to remove serious cyber bullying material targeting a child, in instances where the social media service has not

responded within 48 hours to an end-user complaint. (Given that the Online Safety Act 2021 defines cyber bullying as including material which would be likely to have the effect of seriously harassing or seriously humiliating a child, presumably there would be some crossover with defamation.) Alternatively, the Bill might be amended to adopt the timeframes set out in the Online Safety Act 2021 as guidance for how long it should take to respond to a serious reputational attack on a child.

4. **Page 15 lines 11-16:** Include a requirement that communications from a social media service to an end-user about an allegedly defamatory post should be clear, readily accessible, and written in plain language. This would align with the expectations articulated in the Online Safety (Basic Online Safety Expectations) Determination 2022 about how online services' terms of use should be communicated to their end-users. More broadly, we encourage the development and implementation of child-friendly standards for the published terms of digital platforms.\* Published terms should be clear, child-friendly, prominent, easy to find and navigate, timely, accurate, concise, and current.
5. **Page 18 lines 13-18:** Articulate an expectation that courts will consider the best interests of the child as a guiding principle when deciding whether or not to issue an order requiring a social media service to disclose the contact details of someone alleged to have posted defamatory content, in cases where the poster is a child. This would strengthen the Bill's current provision that a court may refuse to order the disclosure of someone's contact details if the court is satisfied that the disclosure is likely to present a risk of the poster's safety. We believe a stronger provision is necessary in light of the particular vulnerabilities of children.
6. **Page 25 lines 14-28:** Recognise that children who break the law need a different response to adults due to their age and development. Children who commit defamation online warrant a response with a strong focus on rehabilitation and positive behavioural change, using, where possible, alternatives to the criminal justice system. Such an approach might perhaps be outlined in a legislative instrument to provide guidance about expectations and reasonable steps to be taken when carrying out the Act.

#### Complementary steps:

7. Support the work of the Office of the eSafety Commissioner on 'safety by design' and industry codes. Building stronger safety standards into the design of digital platforms should function to reduce children's contact with anonymous individuals online, increase the successful uptake of reporting mechanisms, and strengthen protections for children's personal data. We believe such steps would help to prevent, reduce and resolve anonymous reputational attacks on children online and would thus help to realise the public policy intent behind the Social Media (Anti-Trolling) Act 2022.
8. Invest in robust research, analysis and evaluation to assess the short- and long-term impacts of the Social Media (Anti-Trolling) Act 2022. It is especially important to identify any impacts on children and young people, and the findings should be shared with the whole community.
9. Continue to invest in initiatives which enable schools to build strong digital literacy among their students and to engage effectively with their wider parent and staff community about digital reforms, including a Social Media (Anti-Trolling) Act 2022. This is in recognition that educators are often called upon to manage and respond to antisocial behaviours online, including some cases of defamatory material posted by adults in the school community. Providers such as eSmart, who have strong, ongoing relationships with schools, are leaders of this important work.

### Grounding the Bill in its wider context for young Australians

In our experience, children and young people do not often use the term 'defamation' in relation to their own experiences. We suspect young Australians would be much less likely than older groups to take action under defamation laws.

---

\* Published terms include privacy policies, community standards, terms of service, cookie policies, and other important published documents.

This is despite the fact that many children and young people have indeed experienced false and damaging claims or reputational rumours online. A recent survey of young Australians' experiences online found that hurtful comments and the spreading of rumours were two of the most common problems experienced.<sup>1</sup> Meanwhile, the Child Online Safety Index (DQ Institute) found that while Australian children are at lower risk of suffering or inflicting reputational damage online compared to the global average, their risk is still higher than that of children in many other developed countries, including Japan, South Korea, Italy and Spain.<sup>2</sup>

It's important that people who have experienced reputational damage online can access help. Unfortunately, children and young people are relatively unlikely to report antisocial behaviour online. Surveys of young Australians, Britons and Americans showed that only 8-14% of those who'd had a negative experience online reported it to the digital platform where it happened.<sup>3</sup> And while some children and young people don't make a report because they are not upset or prefer to cope in other ways, others don't report because they don't know how or don't believe reporting will help.<sup>4</sup>

At the same time, the handling of personal data by digital platforms also poses concerns for children and young people. This must be kept in mind as we consider the expectation of the Social Media (Anti-Trolling) Bill that social media services will avoid liability for defamation by collecting and presumably storing the names, phone numbers and email addresses of their individual users, which may be released in response to a defamation claim.

Many Australians already struggle to protect their personal information online. For example, the Australian Competition and Consumer Commission has found that most Australians do not understand what digital platforms do with their personal data, and that published terms tend to be too long and complex for most adults to engage with meaningfully.<sup>5</sup> Meanwhile, research by 5Rights Foundation found that the design of many digital platforms – intended to maximise attention, spread and interaction – has had the effect of endangering children's privacy, and that many children do not understand digital platforms' published terms.<sup>6</sup>

These concerns and others have prompted significant reform of the digital sector, with multiple pieces of legislation and industry codes being developed and implemented. While we suspect children's uptake of the opportunities provided by the Social Media (Anti-Trolling) Bill 2022 will be low, there are other, related reforms in train which are likely to be much more significant to the lives of children. These reforms intend to speed up the removal of serious cyber bullying material and image-based abuse; levy civil penalties for serious cyber bullying and image-based abuse; improve the way online services communicate with individual users about their reporting mechanisms; safeguard the personal information of individual users, especially children; and build safety standards into digital platforms at a design level.

We trust the work done on the Social Media (Anti-Trolling) Bill will have regard to this wider context.

Also relevant is the 'Safety by Design' approach championed by the eSafety Commissioner to help digital platforms to anticipate, detect and eliminate harms before they occur. We suggest that building safety standards into digital platforms can help to prevent and address anonymous defamatory comments online, along with other risky and harmful behaviours. For example, the age-appropriate design code in the UK urges digital platforms to:

- provide the highest privacy settings by default, thus discouraging contact with strangers
- provide prominent, accessible tools to help children report concerns
- uphold the platform's own terms, policies and standards, including those concerning privacy and behaviour
- ensure privacy information and other published terms are clear, concise, prominent, accessible and suitable for children of different ages
- collect and retain only the minimum personal data necessary to provide the elements of the digital platform in which the child is actively and knowingly engaged

- do not disclose children's data to third parties, unless there is a compelling reason to do otherwise in the best interests of the child.<sup>7</sup>

We believe that steps like these would help reduce the risk of reputational damage by anonymous commenters, make it easier for children to report concerns about reputational damage, and ensure digital platforms use children's contact details only for legitimate purposes understood by the child. It is important the Social Media (Anti-Trolling) Bill aligns appropriately with these changes.

### 'The best interests of the child' as a guiding principle

We welcomed the ground-breaking position of the Government's recent exposure draft of the Online Privacy Bill 2021: that digital platforms operating within the proposed Online Privacy code should consider the best interests of the child as the primary principle in relation to handling children's personal data. We would welcome a similar approach in relation to the Social Media (Anti-Trolling) Bill 2022; adopting 'the best interests of the child' as a primary guiding principle for reform.

This approach would align with the United Nations Convention on the Rights of the Child, and its General Comments 14 and 25. They state that the best interests of children should be assessed and taken into account as a primary consideration in all actions that affect children in the public and private spheres. This includes all actions regarding the provision, regulation, design, management and use of digital technologies.<sup>8</sup> Determining what is in the best interests of the child can be complex and challenging. However, the commercial interests of digital platforms should not outweigh the rights of children.

To this end, we encourage the Legal and Constitutional Affairs Legislation Committee to engage with the National Commissioner for Children, as well as the eSafety Commissioner and the Information Commissioner, to place a child-rights lens over proposed reforms. These parties are well placed to comment on the implications of the Social Media (Anti-Trolling) Bill 2022 for the handling of children's personal data by digital platforms, the capacity of children to consent to this, and the responses to children who experience or perpetrate antisocial behaviour.

We hope the legislation will function to uphold all of children's rights – including to privacy, safety, dignity and expression – not further endanger them. For example, mechanisms to discourage and address defamation should not function to escalate digital platforms' collection, use and sharing of children's personal data for commercial purposes.

### The Online Privacy Bill and parental consent for handling of children's data

Under the terms of the Social Media (Anti-Trolling) Bill 2022, a social media service can protect itself from liability for defamatory material posted by individuals if the service maintains and complies with an appropriate complaints scheme. The complaints scheme would enable an individual user who believes they have been defamed by someone in Australia to request that the service release the contact details of the commenter. These contact details can only be released with the commenter's consent. However, if consent is withheld, the complainant may seek an end-user information disclosure order through the courts, which, if granted, would compel the release of the commenter's details.

The contact details collected, presumably stored, and potentially released under this model would consist of a name, phone number and email address.<sup>9</sup>

This approach raises questions about the capacity of children to give informed consent to having their personal information collected, stored, released and/or withheld. This is especially relevant in light of provisions of the Online Privacy Bill 2021. The exposure draft of the Online Privacy Bill 2021 proposed to enable the creation of an Online Privacy (OP) code for industry. This code would require social media services to obtain the consent of a parent or guardian before collecting, using or disclosing the personal information of a child under the age of 16. Social media services would be expected to take 'all reasonable steps' (as yet undefined) to verify that this parental / guardian consent is genuine.<sup>10</sup>

Thus, changes may be afoot to how social media services handle children's personal data, both in response to a future OP code under an Online Privacy Act 2022 and in response to the Social Media (Anti-Trolling) Bill 2022. Aligning these changes may present a challenge.

Work will also be needed to improve communication with parents and guardians about how digital platforms handle their children's data – including the fact that their children's contact details could hypothetically be requested and obtained in a defamation case. As many Australian parents have low digital literacy or feel overwhelmed and confused by their children's experiences online,<sup>11</sup> putting in place high-quality parent communication is very important.

(Note: in our response to the exposure draft of the Online Privacy Bill 2021, we urged that the Bill articulate that any parental consent mechanisms developed under an OP code should be designed and function to uphold the best interests of the child as their primary consideration. We believe this means that parental consent mechanisms should be straightforward, accessible and non-discriminatory; function to strengthen children's privacy online, not endanger it; have regard for all of children's rights; and should not serve to reduce children's access to beneficial, age-appropriate support services.)

### Data minimisation and children's privacy

It is important that any mechanisms intended to address defamation should not result in digital platforms intensifying their collection, storage or sharing of children's data for commercial purposes.

Any such mechanisms should align with the United Nations Convention on the Rights of the Child, General Comment No. 25: that when children's data is gathered for a defined purpose, that data should be protected and exclusive to this purpose and not retained unlawfully or unnecessarily or used for other purposes.<sup>12</sup>

A similar framing is provided by the European Union General Data Protection Regulation, which states that data should only be processed for the legitimate purposes specified explicitly to the individual when the data was collected; organisations should only collect and process as much data as absolutely necessary for the purposes specified; personally identifying data should only be stored as long as necessary for the specified purpose; and processing of data must be lawful, fair and transparent to the individual whose data it is.<sup>13</sup>

The handling of children's data by digital platforms is a topic of concern to the community. Recent surveys found that 9 out of 10 Australian adults were concerned about their children's privacy and their children's data being misused online, while 7 out of 10 felt uncomfortable about businesses tracking their children's location without permission and / or obtaining and selling their children's personal information.<sup>14</sup>

We have voiced our support for the development of an Online Privacy (OP) code for industry by the Information Commissioner, with more stringent expectations about how digital platforms will communicate with their users about data-handling and obtain meaningful consent from individuals to handle their personal data.<sup>15</sup> It is important that the Social Media (Anti-Trolling) Bill 2022 aligns with these.

### Timeframes for responding to a report of the defamation of a child

Under the terms of the Social Media (Anti-Trolling) Bill 2022, a social media service would be expected to respond to a complaint of alleged defamation within 72 hours, by informing the poster that a complaint has been made about them and notifying the complainant that the poster has been told. The social media service then appears to have a further 72 hours in which to inform the complainant about the outcome of this process – eg. if the poster deleted the offending item.<sup>16</sup>

We submit that in cases which involve a serious reputational attack on a child, 144 hours is too long to wait for a resolution. In our experience, when children experience serious cyber bullying (which may include false and harmful reputational claims, although not always), speed is of the essence. We have found that most bullied children value swift removal of the bullying material more than any punitive response against the person responsible.

As a point of comparison, under the Online Safety Act 2021, if a complaint has been made to a social media service about serious cyber bullying material targeting an Australian child, and the material has not been removed from the service within 48 hours of the complaint being made, the eSafety Commissioner may direct the service to remove the material within a further 24 hours.<sup>17</sup>

## Recognising the special status of children under the law

Children – even when they break the law – are different to adults. They need legal interventions which are appropriate to their age and recognise their vulnerability, their developing capabilities, and their potential for positive change.

Many children who behave antisocially online have also been the targets of antisocial treatment themselves.<sup>18</sup> And many experience social and psychological problems, such as poor relationships, loneliness, impulsive behaviour, low self-esteem, anger issues, and anti-social conduct offline.<sup>19</sup> Furthermore, we know that risky and harmful behaviours online tend to co-occur – eg. a young person who cyber bullies others is also more likely than their peers to be sharing nudes – so sometimes there are multiple concerns that need to be addressed.<sup>20</sup>

Therefore, we submit that antisocial actions by children online, including anonymous defamatory comments, are unlikely to be resolved by a heavily punitive approach that only addresses a single instance of bad behaviour.

Rather, we would like to see legal responses which focus on rehabilitation, address the drivers of the behaviour, and set the child up to make positive, pro-social choices in the future. We wish to see children linked to interventions that can support behavioural change and responsibility and strengthen protective factors, such as positive relationships, appropriate adult supervision, resilience, self-efficacy, and fair and consistent rules in an educational setting. Structures and services must be in place to support this approach.

We believe this approach would align with the United Nations Convention on the Rights of the Child, General Comment No.14, which underlines the importance of rehabilitation when dealing with child offenders.<sup>21</sup> We also refer to General Comment No.25, which specifies that state policymakers should consider the impacts of cybercrime laws on children, focus on preventing children's offending, and make every effort to create and use alternatives to a criminal justice response when children offend.<sup>22</sup>

## Hearing the views of young Australians

It is important that children and young people have meaningful opportunities to have their views heard on decisions which affect them.

We refer to the U.N. Committee on the Rights of the Child, General Comment No.25, which states 'When developing legislation, policies, programmes, services and training on children's rights in relation to the digital environment, States parties should involve all children, listen to their needs and give due weight to their views. They should ensure that digital service providers actively engage with children, applying appropriate safeguards, and give their views due consideration when developing products and services.'<sup>23</sup>

Hearing directly from children and young people also helps policymakers to build a clearer picture of the strengths, risks and priorities of young Australians online and offline. This helps enable the development of more effective interventions, an approach which aligns with Australia's Safety by Design principle of user empowerment and autonomy, as championed by eSafety.<sup>24</sup>

We welcomed the announcement that the Government would set up an Online Safety Youth Advisory Council in 2022. We hope the capacity of the Legal and Constitutional Affairs Legislation Committee will allow for engagement with this body and, ideally, broader consultations.

## Communication with school communities

When working with stakeholders to plan the implementation of a Social Media (Anti-Trolling) Act 2022, it is important to consider how best to communicate these reforms to school communities and help schools plan for the possible outcomes.

In our experience of working with schools through our eSmart suite of programs, parents and carers often look to trusted educators for guidance in dealing with online challenges. And when children behave antisocially online, parents tend to expect the school to lead a swift, effective response. This places stress on both schools and families. School communities need the skills, resources, capacity and supportive networks in place to deal with the increasingly complex demands they are facing.

While students themselves are relatively unlikely to get involved in legal disputes about defamation, the issue is still relevant to school communities, usually due to antisocial behaviour by a minority of parents and carers. For example, the latest Australian Principal Occupational Health, Safety and Wellbeing Survey found that 43% of principals reported that during the past 12 months they had been subjected to 'gossip and slander', which is broader than, but may include, defamation. Twenty eight percent of principals said this behaviour had come from parents, while only 5 per cent reported being slandered by students.<sup>25</sup> In our work with eSmart schools and libraries, we have learned that some of this behaviour occurs anonymously online.

We anticipate that educators will be keen to learn more about the Social Media (Anti-Trolling) Bill 2022 and what it could mean for their school communities. One model that will support them is our team of eSmart Schools advisors, who advise schools about putting in place conditions to prevent and address antisocial behaviours online and offline. This includes engaging positively with parents about behavioural expectations.

We would welcome the opportunity to discuss any of these matters further. Please contact:

Sarah Davies, CEO, [sarah.davies@amf.org.au](mailto:sarah.davies@amf.org.au)

or

Ariana Kurzeme, Director, Policy & Prevention, [ariana.kurzeme@amf.org.au](mailto:ariana.kurzeme@amf.org.au)

- 
- <sup>1</sup> Headspace, 'National Youth Mental Health Survey 2020: Experiences of cyberbullying over time', 2020, <https://headspace.org.au/our-impact/evaluation-research-reports/>
- <sup>2</sup> DQ Institute, *2020 Child Online Safety Index*, 2021, [https://live.dqinstitute.org/impact-measure/#cosi\\_page](https://live.dqinstitute.org/impact-measure/#cosi_page)
- <sup>3</sup> Ofcom, 'Online Nation: 2021 Report, UK', 2021, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0013/220414/online-nation-2021-report.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0013/220414/online-nation-2021-report.pdf); eSafety Commissioner, 'The digital lives of Aussie teens,' February 2021, <https://www.esafety.gov.au/research/digital-lives-aussie-teens>; Office of the eSafety Commissioner, 'State of Play: Youth, Kids and Digital Dangers,' 3 May 2018 <https://www.esafety.gov.au/sites/default/files/2019-10/State%20of%20Play%20-%20Youth%20kids%20and%20digital%20dangers.pdf>; Justin Patchin, 'Teens Talk: What Works to Stop Cyberbullying,' Cyberbullying Research Centre, <https://cyberbullying.org/teens-talk-works-stop-cyberbullying>
- <sup>4</sup> For example Ofcom, 'Children's Media Lives - Wave 6', 2020, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0021/190524/cml-year-6-findings.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0021/190524/cml-year-6-findings.pdf)
- <sup>5</sup> Australian Competition & Consumer Commission (ACCC), 'Digital Platforms Inquiry: Final Report', June 2019 <https://www.accc.gov.au/focus-areas/digital-platforms>
- <sup>6</sup> 5Rights Foundation, 'Disrupted Childhood: The cost of persuasive design,' 2018 <https://5rightsfoundation.com/uploads/5rights-disrupted-childhood-digital-version.pdf>; 5Rights Foundation, 'Pathways: How digital design puts children at risk,' 2021, <https://5rightsfoundation.com/uploads/Pathways-how-digital-design-puts-children-at-risk.pdf>; 5Rights Foundation, 'Tick to Agree: Age appropriate presentation of published terms', 2021, <https://5rightsfoundation.com/TicktoAgree-Age appropriate presentation of published terms.pdf>
- <sup>7</sup> U.K. Information Commissioner's Office, 'Age appropriate design: a code of practice for online services', <https://ico.org.uk/for-organisations/guide-to-data-protection/ico-codes-of-practice/age-appropriate-design-a-code-of-practice-for-online-services/>
- <sup>8</sup> United Nations Convention on the Rights of the Child, 'General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)', 29 May 2013; United Nations Convention on the Rights of the Child, General comment No.25 on children's rights in relation to the digital environment, 2 March 2021
- <sup>9</sup> Australian Government Attorney-General's Department, 'Social Media (Anti-Trolling) Bill 2022: A Bill for an Act relating to defamatory material posted on social media services, and for related purposes', 2022, [https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r6831\\_first-reps/toc\\_pdf/22001b01.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r6831_first-reps/toc_pdf/22001b01.pdf;fileType=application%2Fpdf)
- <sup>10</sup> Australian Government Attorney-General's Department, 'Explanatory paper: Privacy Legislation Amendment (Enhancing Online Privacy and Other Measure) Bill 2021', October 2021, p.11; Parliament of the Commonwealth of Australia, Exposure Draft: Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill 2021, p.14
- <sup>11</sup> Australian Centre to Counter Child Exploitation, 'Online Child Sexual Exploitation', Research Report, February 2020, <https://www.accce.gov.au/resources/research-and-statistics>
- <sup>12</sup> United Nations Convention on the Rights of the Child, General comment No.25 on children's rights in relation to the digital environment, 2 March 2021 (para 73)
- <sup>13</sup> General Data Protection Regulation, 'What is GDPR, the EU's new data protection law?', <https://gdpr.eu/what-is-gdpr/>
- <sup>14</sup> Consumer Policy Research Centre, 'CPRC 2020 Data and Technology Consumer Survey', 2020 <https://cprc.org.au/publications/cprc-2020-data-and-technology-consumer-survey/>; Office of the Australian Information Commissioner, 'Australian Community Attitudes to Privacy Survey 2020,' 2020, <https://www.oaic.gov.au/engage-with-us/research/australian-community-attitudes-to-privacy-survey-2020-landing-page>
- <sup>15</sup> Parliament of the Commonwealth of Australia, 'Exposure Draft: Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill 2021'
- <sup>16</sup> Australian Government Attorney-General's Department, 'Social Media (Anti-Trolling) Bill 2022'
- <sup>17</sup> Parliament of Australia, *Online Safety Act 2021*, p.61, <https://www.legislation.gov.au/Details/C2021A00076>
- <sup>18</sup> Office of the eSafety Commissioner, 'State of Play: Youth, Kids and Digital Dangers'
- <sup>19</sup> For example, Cyberbullying Research Centre, 'Cyberbullying Facts', <https://cyberbullying.org/facts> ; Sheryl Hemphill, Aneta Kotevski, Jessica A Heerde, 'Longitudinal associations between cyber-bullying perpetration and victimization and problem behavior and mental health problems in young Australians,' *International*

---

*Journal of Public Health*, vol.60, no.2, Feb 2015; Sara Pabian and Heidi Vandebosch, 'An investigation of short-term longitudinal associations between social anxiety and victimization and perpetration of traditional Bullying and Cyberbullying,' *Journal of Youth and Adolescence*, vol.45, 2016; Y. Rodríguez-Castro, R. Martínez-Román, P. Alonso-Ruido, A. Adá-Lameiras, M.V. Carrera Fernández, 'Intimate Partner Cyberstalking, Sexism, Pornography, and Sexting in Adolescents: New Challenges for Sex Education,' *International Journal of Environmental Research and Public Health*, vol. 18, Iss. 4, 2021; Mariya Stoilova, Sonia Livingstone and Rana Khazbak, 'Investigating Risks and Opportunities for Children in a Digital World: A rapid review of the evidence on children's internet use and outcomes,' UNICEF Innocenti Discussion Paper 2020-03, 2021

<sup>20</sup> ; Adrienne Katz and Aiman El Asam, 'Look at me: Teens, sexting and risks', Internet Matters, 2020, <https://www.internetmatters.org/about-us-3/sexting-report-look-at-me/> ; Becky Mars, David Gunnell, Lucy Biddle, Judi Kidger, Paul Moran, 'Prospective associations between internet use and poor mental health: A population-based study,' *PLoS One*, vol. 15, Iss. 7, Jul 2020; Rodríguez-Castro et al, 'Intimate Partner Cyberstalking, Sexism, Pornography, and Sexting in Adolescents: New Challenges for Sex Education'; Stoilova et al, 'Investigating Risks and Opportunities for Children in a Digital World'; Johanna M F van Oosten, Laura Vandebosch, 'Predicting the Willingness to Engage in Non-Consensual Forwarding of Sexts: The Role of Pornography and Instrumental Notions of Sex,' *Archives of Sexual Behavior*, Vol. 49, Iss. 4, May 2020

<sup>21</sup> United Nations Convention on the Rights of the Child, 'General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)', 29 May 2013

<sup>22</sup> United Nations Convention on the Rights of the Child, 'General comment No.25 on children's rights in relation to the digital environment', 2 March 2021

<sup>23</sup> United Nations Convention on the Rights of the Child, 'General comment No.25 on children's rights in relation to the digital environment', 2 March 2021

<sup>24</sup> eSafety Commissioner, 'Safety By Design: Principles and Background', <https://www.esafety.gov.au/about-us/safety-by-design/principles-and-background>

<sup>25</sup> Philip Riley, Sioau-Mai See, Herb Marsh & Theresa Dicke, The Australian Principal Occupational Health, Safety and Wellbeing Survey (IPPE Report). Sydney: Institute for Positive Psychology and Education, Australian Catholic University, 2021, <https://ieusa.org.au/australian-principal-occupational-health-safety-and-wellbeing-survey-2020/>