



## **Submission to the Senate Environment and Communications Legislation Committee Inquiry into the *Enhancing Online Safety for Children Bill***

**Thank you for the invitation to provide comment and feedback on the *Enhancing Online Safety for Children Bill*.**

**For the most part, Child Wise is pleased with the key elements of the proposed legislation and impact models as they are currently presented. We feel they capture the necessary elements to keep children safe online and the assumptions on the impact for online safety providers are sound.**

**There are a number of clauses in the bill we would suggest are altered, to further secure the safety of children online, and to ensure the efficacy of the provisions of the legislation. Our comments on these clauses, and others, are below.**

**As you would know, Child Wise has provided feedback and commentary on the both Exposure Draft of the Enhancing Online Safety Bill. Should the Committee wish to view these documents, we are happy to provide them.**

### **Proposed definitions**

**The definition of clause 4 on 'relevant electronic service' has been expanded and now covers chat rooms and online games, which are an area of often quite serious bullying and harassment, especially for girls or transgender gamers. There is some evidence that suggests a growing number of children who are bullied online experience it through online gaming.<sup>1</sup> While it may be argued that the industry is already acting through terms of service use (i.e. Xbox Live), it would seem to remain a prevalent feature of online gaming culture. An independent agency being able to respond appropriately to users of such services will be a welcome addition to the landscape.**

**The definition of clause 5, on 'cyber-bullying material targeted at an Australian child' is clear and unambiguous. Child Wise feels that this captures the necessary scope.**

### **Clause 5**

**Child Wise was pleased to see that clause 5(2)(b) extends cyber-bullying material to material accessed by others as well, where the victim doesn't directly receive or access the material. This is a powerful element in recognizing the effects of online bullying via shared material.**

### **Clause 8**

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<sup>1</sup> Beatbullying, *Virtual Violence II: Progress and Challenges in the Fight against Cyberbullying*, 2012.

The present definition of the material being removed states the material has been removed 'if the material is neither accessible to, nor delivered to, any of the end-users in Australia using the service'. Child Wise is pleased to see that this has been clarified to show that the original user who shared material cannot be held responsible if other users then share it – as long as they remove the original material, they cannot be held liable for the remaining material.

#### **Clause 18(2)**

Child Wise believes that the definition of '*responsible person*' should extend beyond the parent or guardian, and someone who has been authorised to make a complaint by the child, to include anyone with a duty of care for the child. Doing so would account for cases where the child is unable to make an informed or reasonable judgment as to a report being made, either due to their young age, disability, language barriers, etc.

Extending this clause would allow teachers and police to make reports, which is consistent with clauses 81-85 around who the Commissioner may release information to. Allowing them to make reports improves responses to children's safety online (i.e. where cyber-bullying is taking place in school and neither the child or their parents will make a report, and if no further action would prove harmful to the child). It would also strengthen other aspects of the Commission's mandate, by assisting schools to become cyber aware and protect children in their care.

#### **Clause 18(3)**

The clause relating to adults referring or making a complaint about past cyber bullying is unclear as to what is the 'reasonable time'? This could be set in line with other legislation on statutory limits for claims. For instance, a 17 year old is bullied online, but doesn't make a report until they are 18, or 19, or older. Further guidance or clarification would be worthwhile, given the lack of precedence.

#### **Clause 21(a) & (b)**

We feel that the requirement for social media services having adequate terms of use is a positive one, but it would be useful to clarify how transparent or comprehensive should these be. For instance, a clear statement on bullying and definitions of what is allowed/what constitutes bullying. Facebook's community standards are quite good, but the review and decision-making process supporting it, where they assess what should be taken down, is not transparent, and there are no alternative mechanisms for making a complaint.

The Commissioner should consider supporting social media services to develop terms of use, and perhaps even more importantly, providing them in child friendly language. Having terms of use and behavioural guidelines in easily accessible formats and with child friendly language will increase the chances of children actually reading and understanding them.

#### **Clause 36**

Refers to the civil penalty for a 'person' not complying, in relation to a social media service being served a take down notice. We are uncertain that this will include the company, not the individual, as it's not specified if it applies for social media services or end-user notices.

#### **Clause 42-44**

The provision for an end-user notice in this clause is a positive step. While not directly relevant to the legislative wording, Child Wise would suggest that guidelines be introduced stipulating how these notices are provided, and what form they take. For instance, depending on the age of the end-user, notices in child friendly language, in addition to those sent to parents or guardians, would be far more effective than if a young child were to receive a formal, legal notice.

#### **Clause 81-85**

These clauses are excellent, and will go some way to highlighting problems in communication between services, and assisting services and organisations that need to improve.

Child Wise thanks the Committee for the opportunity to respond to their Inquiry.