



information  
and privacy  
commission  
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Christine McDonald  
Secretary  
Senate Environment and Communications Legislation Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

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7 JAN 2015

Dear Ms McDonald,

**Re: Inquiry into the Enhancing Online Safety for Children Bill 2014 and the Enhancing Online Safety for Children (Consequential Amendments) Bill 2014**

I appreciate the opportunity to make a submission to the inquiry on the *Enhancing Online Safety for Children Bill 2014* and the *Enhancing Online Safety for Children (Consequential Amendments) Bill 2014*. The Inquiry's invitation for public submissions outlines the reasons for the Senate's referral of the Bills to the Committee, including the scrutiny of practical issues surrounding the implementation of the scheme and the consequences for stakeholders affected by the legislation.

On this basis, I will focus my submission on the issues that could arise during the implementation of the *Enhancing Online Safety for Children Bill 2014* (the Bill). The Bill establishes:

- a Children's e-Safety Commissioner that has the functions of promoting online safety for children, coordinating activities of Commonwealth Departments, authorities and agencies and administering the online content scheme
- a complaints system for cyber-bullying material targeted at an Australian child, to be administered by the Commissioner
- a two-tiered scheme for the rapid removal by social media services of cyber-bullying material targeted at an Australian child
- the ability for the Commissioner to issue an end-user notice.

The Bill also allows for the disclosure by the Children's e-Safety Commissioner of information in specified circumstances and to notify material to members of the Australian police force.

As NSW Privacy Commissioner, it is my role to champion and promote the privacy rights of the people of NSW with respect to both their personal and health information. The *NSW Privacy and Personal Information Protection Act 1998* (the PPIP Act) sets out protections so that individuals can be assured that the handling of personal information about them by NSW public sector agencies is appropriate in all circumstances. The explanatory memorandum of the Bill recognises the right to privacy is a human right.

Section 101 of the Bill states that it is the intention of Parliament that the Act is not to apply to the exclusion of a law of a State or Territory. In this regard, the Bill's mechanisms should be implemented in a way that is mindful of and allows for the operation of State and Territory privacy law, including the PPIP Act.

This is particularly important for circumstances where the Bill's operation involves a NSW public sector agency or law enforcement agency that has privacy obligations under the PPIP Act.

- For example, Part 9 of the Bill allows the Children's e-Safety Commissioner to disclose information to and impose conditions on entities which could fall within the definition of public sector agency or law enforcement agency under the PPIP Act.

I support the intent behind the imposition of conditions that ensure the information is handled in a way that respects the privacy rights of the individuals concerned. It is also important to consider that a NSW public sector agency or law enforcement agency could still have privacy obligations under the PPIP Act that could still apply in addition to these conditions.

- Section 92 of the Bill allows the Children's e-Safety Commissioner to notify material to an Australian police force (such as the NSW Police Force), who may then notify another law enforcement agency.

In operationalising these activities, it is important to consider that a NSW public sector agency or law enforcement agency could have privacy obligations under the PPIP Act that could still apply.

In my submission to a discussion paper on the matter in early 2014, I stated that a complaints system for children who fall victim to cyber bullying should ensure that the victim's privacy and the privacy rights of the alleged offender, particularly if they are minors, are respected and not further injured by the complaints handling process. I reiterate the importance of this approach in relation to the complaints system outlined in the Bill.

Yours sincerely

Dr Elizabeth Coombs  
**NSW Privacy Commissioner**

