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SYNOD OF VICTORIA AND TASMANIA

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Uniting Church in Australia, Synod of Victoria and Tasmania submission to the inquiry into the *Privacy and Other Legislation Amendment Bill 2024*

11 October 2024

The Uniting Church in Australia, Synod of Victoria and Tasmania, welcomes this opportunity to provide a submission on the *Privacy and Other Legislation Amendment Bill 2024*.

The Uniting Church in Australia has stated its support for international human rights instruments, which include the right to privacy. The Synod recognises that the right to privacy must be upheld in consideration of other fundamental human rights. However, the right to privacy cannot be used as a shield to conceal other human rights abuses by a person or entity.

We have also been concerned how some for-profit businesses have violated the privacy of children and other vulnerable people to harvest their data for targeted marketing to boost their profits.

The Synod welcomes that the Bill, under Part 4 of Schedule 1, will require the Commissioner to develop a Children's Online Privacy Code. We hope the Code will follow the lead set by the UK children's code, which was introduced in 2020.

We welcome the Bill's adoption of the internationally accepted definition of a child being someone below the age of 18.

We support Part 8 of Schedule 1, with reform to the penalties for interference with privacy. We welcome that in determining whether an interference with privacy is serious, a court may consider "whether the individual affected by the interference with privacy is a child or person experiencing vulnerability". However, we believe there is a need to provide guidance on what should be regarded as vulnerability, as the inherently conservative nature of courts is likely to mean "vulnerability" will be interpreted very narrowly in the absence of any legislative guidance. It should not be assumed that "vulnerability" is a term that will be well understood. Enang *et al.* (2019) found that "definitions of vulnerability are at best fragmented, while models for assessing vulnerability lack uniformity" across law enforcement and public health bodies.¹ We support a broad definition of "vulnerability" as a condition whereby a person is in danger, under threat, experiencing health challenges, at risk or requiring support or protection. Such a definition means that any person might be vulnerable at a

¹ Iniobong Enang, Jennifer Murray, Nadine Dougall, Andrew Wooff, Inga Hayman and Elizabeth Aston, "Defining and assessing vulnerability within law enforcement and public health organisations: a scoping review", *Health and Justice* (2019), 1; and Normann Witzleb, Moria Paterson, Jordan Wilson-Otto, Gabby Tolkin-Rosen and Melanie Marks, "Privacy risks and harms for children and other vulnerable groups in the online environment", Monash University and elevenM Consulting, 18 December 2020, 15, 139, 142.



point in time, as vulnerability can vary over time.² Both individual characteristics and situational factors shape our susceptibility to harm.³ A slightly more narrow definition of “vulnerability” from the UK Department of Health, which is disappointingly gender specific, is a person “who is or may be in need of community care services by reason of mental or other disability, age or illness, and who is or may be unable to take care of himself, or unable to protect him or herself against significant harm or exploitation.”⁴

The Synod supports:

- Part 9 of Schedule 1 that allows the Federal court to make orders in civil penalty proceedings where a contravention of a civil penalty provision under the *Privacy Act* has been established.
- Part 10 of Schedule 1 to allow the Information Commissioner to conduct public inquiries into specified matters relating to privacy on the direction or approval of the Minister.
- Part 11 of Schedule 1 that will allow the Information Commissioner to include in declarations requirements for a respondent to perform any reasonable act or course of conduct to prevent or reduce any reasonably foreseeable loss or damage that is likely to be suffered and to proactively identify any reasonably foreseeable consequences of a breach and take reasonable steps to mitigate these.
- Part 15 of Schedule 1 to require entities to include information about using personal information in automated decisions in their Australian Privacy Principles privacy policy.

The Synod supports Schedule 2 to offer recourse for serious invasions of privacy.

The Synod welcomes the creation of the two new offences under part 10.6 of the *Criminal Code* through Schedule 3:

- for using a carriage service to make available, publish or distribute personal data, where the person engages in the conduct in a way that reasonable persons would regard as being menacing or harassing; and
- targeting people because of their race, religion, sex, sexual orientation, gender identity, intersex status, disability, nationality or national or ethnic origin.

We request that under 474.17C (1)(c), harassing someone, especially a vulnerable person, to urge them to take their own life should be regarded as harassing or menacing the person. Doxxing someone can be used by online trolls who seek to inflict harm on people for the entertainment of the troll. As one 'troll' told journalist Ginger Gorman, "Having morals, in general, is being soft. I find that humiliating people is fun, but hurting them is hilarious."⁵ He wanted people to feel unsafe online.⁶

² Iniobong Enang, Jennifer Murray, Nadine Dougall, Andrew Wooff, Inga Hayman and Elizabeth Aston, “Defining and assessing vulnerability within law enforcement and public health organisations: a scoping review”, *Health and Justice* (2019), 2.

³ Normann Witzleb, Moria Paterson, Jordan Wilson-Otto, Gabby Tolkin-Rosen and Melanie Marks, “Privacy risks and harms for children and other vulnerable groups in the online environment”, Monash University and elevenM Consulting, 18 December 2020, 16.

⁴ Iniobong Enang, Jennifer Murray, Nadine Dougall, Andrew Wooff, Inga Hayman and Elizabeth Aston, “Defining and assessing vulnerability within law enforcement and public health organisations: a scoping review”, *Health and Justice* (2019), 6.

⁵ Ginger Gorman, ‘Troll Hunting’, Hardie Grant Books, Melbourne, 2019, 12.

⁶ *Ibid.*, 21.



Gorman spoke to trolls that were part of packs that work together to try to get vulnerable people to harm themselves. They particularly target people with autism or mental illness. “Some people should kill themselves because they are generally pieces of shit,” one troll told Gorman.⁷

They also target rape survivors and the families of people who have recently died in tragic circumstances. One troll told Gorman he was proud of having upset the family of a young girl killed by a train by calling her a “train hugger”.⁸

Under 474.17D (1)(c), we would urge the addition of people who are survivors/victims of serious crime and their immediate families. As the examples above highlight, great distress can be inflicted on victims/survivors of serious crime and their families by menacing and harassing them.

Networks of child sexual abuse perpetrators target survivors for further harassment and abuse. For example, perpetrators will post information about survivor’s current whereabouts and other identifying information online. Such information may include the school or university they attend, the name of the sports team the survivor is on, a survivor’s community involvement and images of the survivor’s friends. There have been some extreme instances where perpetrators seek images of survivors, now as adults, with their families and comment on their desire to offend against the survivor’s children.⁹

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⁷ Ibid., 21.

⁸ Ibid., 21.

⁹ Canadian Centre for Child Protection, ‘How we are failing children: Changing the paradigm’, 2019, 20.