national children's and youth law centre
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Submission

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Comments for the Joint Select Committee's

Inquiry on Cyber-Safety

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1   The National Children's and Youth Law Centre

1.1   The National Children's and Youth Law Centre (**"NCYLC"** or **"Centre"**) is the only Australian national community legal centre for children and young people. NCYLC promotes the rights and interests of all Australian children and young people through advocacy, information and education. Since its inception in 1993, NCYLC has made over 180 public submissions on law and policy affecting children and young people and handled over 150,000 inquiries. NCYLC seeks to increase children and young people's access to legal assistance and to improve the legal status of children and young people in Australia.

1.2   As Australia's only national community legal centre for children and young people, NCYLC is at the forefront of children's issues. In response to this position, NCYLC actively conducts community legal education, legal advice through email (**"Lawmails"**) and policy work aimed at increasing young people's access to legal assistance and improving the legal status of children and young people in Australia.

2   Overview

2.1   The NCYLC welcomes the opportunity to assist the Joint Select Committee's (**"Committee"**) inquiry on Cyber-safety. We extend our support to the Committee's invitation to discuss these issues publicly.

2.2   In addressing the issues related to Cyber-safety, the Centre has adopted a child rights-based approach. This reflects international consensus that children are people who have human rights – including not only the need to be protected, but the right to be consulted and heard on issues affecting them.

2.3   Cyber-safety is most commonly presented as an issue of protection of children. In order to protect children, we must first accurately examine the risks facing them. Responses must be based on the evidence of Internet use, prevalence of risk and likelihood and type of harm. Protecting children cannot occur effectively unless we have the requisite information about children and young people's actual experiences and views (as opposed to what adults fear may be their experiences).

2.4 The NCYLC welcomes any steps undertaken in Australia that advocate for and develop the rights of children and young people and implements Australia's international obligations as set out in the United Nations Convention on the Rights of the Child ("**CROC**").

2.5 Among those rights, relevant to this discussion are:

- All decisions made about children must be in their best interest (Article 3);
- Where children are capable of forming their own views they also have the right to express these views and have them heard (Article12);
- Children have the right to freedom of expression and information if it is within the legal boundaries (Article 13);
- Through the use of media children have the right to obtain information that will benefit them (Article17); and
- Children should be protected from sexual exploitation and abuse (Article 34).

2.6 These rights are indivisible – one cannot be chosen over another. In this paper, we seek to uphold all of those rights. By discussing the interactions we have had with young people, we seek to include their voices and allow them to be heard (although this is only one manner in which this must happen). We attempt to balance the benefits of access to information and media while addressing the risks of exploitation and abuse by seeking increased education. We consider that the child's best interest includes being informed and guided to make responsible and wise decisions, thereby having their own agency and the opportunity to develop into mature young adults.

2.7 This submission has two parts: discussion of the nature of children and young people's online experiences; and methods of addressing the risk.

3 *Online experiences of Children and Young People*

3.1 Australian Children today can access the online environment just about anywhere at anytime. Wi-Fi networks and broadband Internet connections are available in most schools, libraries, Internet cafes, and at home. Furthermore, 3G technology enables mobile users to quickly access the Internet simply by using their mobile telecommunications network, provided that they have an account set up for the service. Coupled with an increased demand and reliance upon a variety of mobile Wi-Fi platforms such as laptops, Mp3 players, various gaming

consoles, as well as the more recent e-readers such as Amazon Kindle and Kobo eReader, a large part of everyday life is spent in cyberspace. It is critical to recognise that children today live in a seamless and integrated online/offline world, where cyberspace is another environment, just as real as a child's schoolyard.

3.2   The Internet holds great potential for education and development of young people. This is true not only of homework resources but also of information about health and mental health, road safety, social security, consumer issues, problems in family relationships, available support services and legal information, to name a few.

3.3   Convenient and inexpensive, the Internet is also popular for young people to engage socially via social networking sites such as Facebook and Twitter, as well as various chat mediums such as MSN, Gmail chat, and Skype video calling. The Internet is an incredible medium for two-way communication with children. Spending time online is essential for young people to pick up the social and technical skills they need to be competent citizens in the digital age.[1]

3.4   However, the Internet, like any human interaction, is not risk free. Inevitably, the question arises: are the risks online greater than the risks children already face offline? Our interactions with young people in relation to their online experiences suggest that, inherently, it is not significantly so. We largely see the same issues in the schoolyard, in relationships and in the marketplace mirrored in the online world.

3.5   The NCYLC provides confidential advice and information to children and young people (under 18 years of age) throughout Australia via our Lawmail service. The NCYLC responds to about 1,000 Lawmails a year.

3.6   A number of the Lawmail enquiries received from children relate to the use of the Internet. In our experience, these Lawmails generally do not raise new issues; rather the Internet provides a new forum for familiar experiences. The most common of the questions we have received relating to the Internet relate to bullying, usually bullying that began at school and is continued online. Other internet related questions relate to threats and stalking; sex, relationships and pornography; privacy; general requests for information and consumer issues.

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[1] Mizuko Ito et al, *Hanging Out, Messing Around, Geeking Out: Kids Living and Learning With New Media*, (The MIT Press, 2010).

3.7   These Lawmails however, also reveal the unique effects and implications of these risks when played out in cyberspace. There is a misconceived sense of empowerment in the online world where cyber users adopt aliases to maintain a degree of anonymity. Anonymity encourages thoughtless misuse of the Internet, producing instantaneous and often uncontrollable effects that are comparatively more permanent, probative and pervasive than otherwise in the offline world. To minimise the level of risks children face online, education and awareness programs that exist in the offline world must be equally paralleled in the online world, and address the unique elements specific to cyberspace.

3.8   Children's positive engagement with the Lawmail service shows a yearning for information and support. In particular, there has been a growing interest in cyber-safety marked by a 50 per cent increase in Internet related questions in the past year since 2004. Interestingly, these young people have had the initiative and forethought to ask the question. This is the kind of behaviour that in our view should be encouraged in young people: thoughtfulness, critical thinking and openness to learning. This displays maturity, respect for the law and wisdom in their interactions with the world. This resourcefulness should be matched and supported by adults in providing appropriate services. This, in our view, upholds the child's rights and human dignity: treat children and young people as people capable of making decisions and provide them with the resources to do so.

3.9   Some of the common issues and examples of Lawmails are outlined below. While this is a small sample (and perhaps a self-selecting sample of those young people with the resources and maturity to contact us) it nonetheless provides some insight.

Cyber Bullying

3.10   The most common issue raised by children and young people about the Internet involves instances of cyber bullying and harassment. Of 63 Lawmails categorised as Internet related questions since 2004, 14 relate to bullying.

3.11   These cases often involve a number of other children, inflicting continued abuse through insults, spreading rumours, uploading offensive pictures and threatening victims. The incidents involve a range of mechanisms including chat sites, email and predominantly social networking

sites. Most of these Lawmails request advice on whether they have any legal recourse. In some cases the enquirer mentioned that they had already spoken to the bully or the school and the bullying was continuing.

3.11   Many of the Lawmails indicate that the bullying occurring online is an extension of the bullying occurring at school. Ten of the 14 Lawmails explicitly mention the bullying occurring at school as well as online. The online component of bullying is another medium for it to occur (as are mobile phones) and the problem needs to be addressed as part of the broader holistic response by schools, parents, counselling and support services and the relevant departments of education. The Internet itself is not the responsible agent here, just as the existence of the schoolyard is not the cause of face-to-face bullying. However, critical to implementing a more effective prevention and response mechanism, is the need to recognise the unique effects and implications cyber bullying presents in what is a pervasive 24/7 online environment.

Threats and Stalking

3.12   Five Lawmails indicated that the writer had received threats or was concerned about a stalker. Two of the emails were seeking advice on whether there was any legal protection or recourse following a threat to kill made in a chat site. Another Lawmail in this category also related to a relationship that began in an online chat room, however the question related to harassing emails and hacking into their online journal.

3.13   In the above cases, we recommended that the writer contact the police. As with any threat or harassment, whether in person, telephone, written communication or online, the police are the appropriate body to provide a response. While the Internet is a place where threats can easily be made (for example, if the offender assumes they are anonymous and therefore not accountable) it is not – nor should it be – a place out of reach of the law. Community legal education should be increased to make young people aware that such threats are not tolerated by the law and will be taken seriously by police.

Sex, Relationships and Pornography

3.14   One Lawmail we received from a young person reported an incidence of grooming by a sexual predator. In this instance, the child was confronted with invasive personal questions by an

anonymous user asking; whether he wore sheer socks and if he considered himself a master, slave or neither. Although statistically, most child sex abuse takes place within the family or social circles rather than by strangers on the Internet, it is apparent that sexual predators do exist online and both sources of risk must be seriously and comprehensively addressed.[2]

3.14   We have received 11 emails about online nudity or pornography from young people. While, again, this may be a self-selecting sample, each question exhibited a concern for criminal sanctions, assuming a respect for the law and a desire to comply with it. While this cannot be assumed for all children, education about the law is an important first step in guiding young people and assisting them to regulate their own behaviour appropriately (particularly when they are unexpectedly at risk of criminal sanction). This must occur in addition to criminal sanctions for those that produce, distribute and intentionally access child pornography material.

3.15   A number of Lawmails concern a naive young person transmitting sexually suggestive photos or videos over the Internet. For instance, two Lawmails were sent by young people who reported to have sent a sexually suggestive photo or video of themself over the Internet to another young person who then virally distributed it. If child pornography laws are rigidly applied in this context, these children will not only suffer personal consequences but also potentially very serious criminal consequences.

3.16   Another example involving the uninformed young person and the potential to attract very serious criminal consequences are present in two Lawmails sent by adults. It was revealed to these adults after online chatting had commenced – or after a sexually explicit image had been sent – that the other person was 17 years old, when it was previously suggested that they were 18. The adult contacted us to clarify the legality of the relationship and of possession of the images. From the information provided to us, in these two cases it was the young person who had been misleading, rather than the adult. While not intended to be a representative survey, it is possible that the young person may not have been aware or astute enough to realise the serious consequences of their actions. The adults had not intended to cause harm or break the law, and perhaps neither had the young person. This is an example of a gap in community legal education, which holds the potential to enable people to make informed and wise decisions.

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[2] Alister Lamont, 'Who Abuses Children' (Resource Sheet, Australian Institute of Family Studies, February 2011) 3.

3.17   The serious nature of these consequences must be explained to young people, so that they are able to make informed and reasoned decisions. Again the culprit is not the Internet itself; the cause of the problem is a lack of awareness amongst young people that child pornography laws could even apply to this type of situation. This can be addressed through education and awareness-raising (as occurs for other dangers, such as road safety and binge drinking), particularly addressing the permanent consequences and widely transmissible nature of images once published or transmitted online.

Privacy

3.18   Privacy is an area that clearly reveals the unique elements of risks that occur in the online world, often closely associated with Internet hacking. We have received six Lawmails from young people who have been the victim of someone hacking into their email or social networking account, either by strangers or suspected close friends or relatives. On another occasion, one Lawmail was sent from a young person who admitted to hacking, and another who had information about hacking but had not done so. Hacking often relates to unique complications specific to the digital age, but may also involve something as timeless as friends betraying one another's trust after sharing their passwords. Either way, the situation requires an appropriate legal, educational and policy framework to deal with these complications.

General Requests for Information

3.19   We have received several requests for general information about how the law regulates the Internet. These questions generally relate to the legality, legal consequences and avenues for complaint when it comes to online interactions. Some examples of these questions are whether schools can regulate young people's online access, whether you can be banned from using a website, the consequence of acrimonious online conversations, using unsecured wireless networks, what action can be taken about racist comments online, illegal downloads of music and movies, whether there is any law about protecting children online and use of file sharing programs.

3.20   Consumer transactions over the Internet are an area of interest with young people enquiring about the legal ramifications of use of websites such as EBay and one question about a money-making scam presented online.

4   Protecting Children from Online Risks

4.1   Whilst there are risks online, the United States Internet Safety Technical Taskforce reported in 2009 that online risks 'are not radically different in nature or scope than the risks minors have long faced offline, and minors who are most at risk in the offline world continue to be most at risk online.'[3] Risks that exist offline also exist online and must be addressed, based on evidence of causes and research into child-appropriate redress mechanisms.

4.2   The Centre acknowledges that a proportion of young Internet users may come to harm while using the Internet. There have been some tragic events, including grooming by child predators and involvement of children in pornography – and these must be dealt with by preventative policies, robust investigation and legal sanction.

4.3   However the response to cyber-safety must look at the evidence of children's experiences and ensure responses are proportionate and effective. Further evidence is required as to the degree and likelihood of young people suffering harm as a result of online use – and if harmful experiences occur in the minority of cases, the response should be suitably serious but also apply uniquely to that minority of cases.

4.4   The possibility also exists that online access to information may encourage the occurrence of other tragic events, such as suicide and serious eating disorders. However, evidence is required to elaborate on whether that risk is actually translating into an increase in those events

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[3] US Internet Safety Technical Taskforce, 'Enhancing Child Safety and Online Technologies' (Final Report to the Multi-State Working Group on Social Networking of State Attorneys General of the United States, The Berkman Centre for Internet and Society at Harvard University, 31December 2008); The Internet Safety Technical Task Force was created in February 2008 in accordance with the *Joint Statement on Key Principles of Social Networking Safety* announced in January 2008 by the Attorneys General Multi-State Working Group on Social Networking and MySpace. The scope of the Task Force's inquiry was to consider those technologies that industry and end users - including parents - can use to help keep minors safer on the Internet.

occurring, and if so, whether the Internet is the operative factor in that increase. For example, statistics from the Australian Bureau of Statistics indicate that rates of suicide have been falling since a peak in 1997.[4] In the case of suicides and eating disorder – problems which for many years have existed without the aid of the Internet – the actual cause is likely to be mental illness and/or a social issue we must face and address by providing appropriate health and other support services.

4.5   However, the reality is that adults cannot supervise or intervene at every moment and prevent every risk, and nor is that an appropriate way for young people to learn to become responsible and independent adults. The task is to empower young people to develop a personal resilience and the ability to identify and reduce their own risks. Notably, a dominant portion of Lawmails were of young people seeking information and support after already having been subject to some form of adverse online event.

4.6   Child safety advocates need to take a more proactive role in helping children and young people understand the risk of engaging in online relationships and activities and to be supported to develop the skills to deal with experiences of bullying, abuse, predation, pornography, privacy and consumer issues . Young people must also be encouraged to seek out information and be encouraged to use that information to regulate their own behaviour and that of their peers. This is consistent with the recommendations of the United States Taskforce.

4.7   In our view, this support should include providing accurate information about rights, community education and support services, effective complaints procedures and accessible dispute resolution mechanisms. Legal remedies should be a measure of last resort in most cases (although the desirability of legal mechanisms when it comes to prosecuting child pornography offences is not in question). Children also need to be active participants in this process and must be consulted both in the design of education programs and their evaluation. This lends young people a sense of ownership, and enhances the effectiveness and relevance of emerging policies and programs amongst their fellow peers.

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[4] Australian Bureau of Statistics, *3309.1 – Suicides, Australia, 2005* (14 March 2008) http://www.abs.gov.au/ausstats/abs@.nsf/PrimaryMainFeatures/3309.0?OpenDocument.

4.8   The Centre also supports an education program for children, parents and caregivers. Schools need to work with the broader school community to communicate the message, and governments need to support this cause with resources for effective communication.

4.9   A central theme in these various reform measures is the need to reinforce the notion of the Internet as an accountable forum, whereby users are identifiable through a 'digital footprint' and thus subject to the same moral, social and legal consequences as in the 'real world.'

5 Conclusion

5.1   NCYLC supports the government and the committee's decision to discuss these issues publically. There is a perceived gap in regulation of the Internet. Whether new legislation ought to be drafted or not, in any case, community education with a special focus on young people will always be necessary. As with any important issue young people face, be it alcohol, drugs, driving, career choices, employment, consumer issues, there is a need for education and awareness-raising. Young people deserve the best chance to develop into critical thinkers who are able to effectively and protectively engage with the world around them – including the online world.

5.2   Our interactions with young people suggest that they are hungry for information, willing to be law-abiding and desire easy access to services that will inform and advise them. If that is so (and there will be exceptions that will be dealt with exceptionally), then education is the most reliable and respectful method of addressing cyber-safety. Alternative draconian measures, if pursued, indicate that we do not as a society think young people capable of making appropriate decisions.

5.3   It is the view of the Centre that the best approach is one that is focused on the rights of children. To protect children from Internet harm and abuse, NCYLC advocates educating children, parents and caregivers.