



Submission to the Review of the *Enhancing Online Safety Act 2015* and the Online Content Scheme

SUBMITTED BY

Associate Professor Amanda Third (PhD)
Principal Research Fellow
Institute for Culture and Society
Western Sydney University



EXPERTISE

Thank you for the opportunity to contribute to the review of the *Enhancing Online Safety Act 2015* and the Online Content Scheme.

The comments below draw on research on children's and young people's online safety I have conducted – with colleagues across research, industry, government and community organisations – over the last ten years. My work focuses on the social and cultural dimensions of children's and young people's digital practices, with particular emphases on online safety, children's rights in the digital age, the intergenerational dynamics shaping technology practice, and vulnerable young people's technological engagements.

From 2011-2016, I was a Research Program Leader in the federally funded *Young and Well Cooperative Research Centre* (youngandwellcrc.org.au), which united young people with researchers, practitioners, innovators and policy-makers from over 75 partner organisations across the not-for-profit, academic, government and corporate sectors to explore the role of technology in young people's lives, and how technology can be used to improve the mental health and wellbeing of young people aged 12 to 25. The research program I led investigated how to better connect vulnerable young people with their communities by enhancing and leveraging their technology practices and their creative engagements. I was Lead CI on an Australian Research Council Industry Linkage project entitled "*Young People, Technology and Wellbeing Research Facility*" that examines cross-sector knowledge brokering practices (2011-2017) and am lead author of *Young People in Digital Society: Control Shift* (with Philippa Collin, Lucas Walsh and Ros Black, forthcoming 2018).

I have long participated in key, cross-sector online safety forums in Australia and internationally, including the Technology and Wellbeing Roundtable and the Digitally Connected Network. I am an Expert Advisor to: Global Kids Online (ongoing); UNESCO/Google



Asia Pacific Regional Digital Citizenship Framework (2017); and UNICEF's C4D Adolescent Digital Engagement Strategy (ongoing). I am a member of UNICEF Australia's Child Rights Task Force, an Ambassador of the 2168 Children's Parliament and, in 2017, was appointed to the Australian Federal Government's Consultative Working Group on Cybersafety. I recently co-authored a Case for a General Comment on Children and Digital Media (Livingstone, Lansdown & Third, 2017) to guide states' and NGOs' interpretation of the UN Convention on the Rights of the Child for the digital age. This General Comment is currently in production.

1. Functions and power of the eSafety Commissioner

Question 1(a): Are the current functions and powers in the Online Safety Act sufficient to allow the eSafety Commissioner to deliver on the role's mandate? If not, what additional functions could make the eSafety Commissioner more effective? Are there any of the current functions that could be removed?

Internationally, over the last twenty years, stakeholders across sectors have mobilised to address online safety concerns, producing a plethora of campaigns, resources, evidence, products and services – of varying quality and impact – designed to curtail the potential harms children, young people and others may experience as a result of engaging online (Third et al, 2014a). Even so, recent research shows that, while digital media offer new and important opportunities for children and young people (Collin et al, 2011; Swist et al, 2015), so too it exposes them to an expanding range of risks of harm, some of which have serious, deleterious effects on children, young people, their families and friendship networks (Livingstone & Third, 2017; Livingstone, Lansdown & Third, 2017). Internationally, governments, corporates, not-for-profit organisations and researchers are grappling with the question of how to most effectively protect children and young people, particularly given the rapidity of technological change and the fact the internet and affiliated products and services are designed for adults (Livingstone & Third, 2017; Livingstone, Lansdown & Third, 2017). The establishment of the Australian Office of the eSafety Commissioner (the Office) has thus been watched very closely by international policy makers and others with an investment in promoting online safety, and is upheld as an innovative initiative with broad-ranging positive impacts for the efficacy of online safety policy and practice.

Research I have led via an Australian Research Council Industry Linkage project 'Young People, Technology and Wellbeing Research Facility' (LP100100837) shows that, internationally, Australia is regarded as a leading nation on issues of online safety across the lifespan (Third et al, forthcoming 2018), and particularly as it relates to children and young people. Australia is home to a vibrant online safety sector that mobilises both within and across the boundaries between government, corporate, community and academic players. Our sector deploys a range of cutting edge online safety tools and initiatives and is also regarded as a leader in online safety research and evaluation.

My research demonstrates that, over the last decade or so, entities such as the Online Safety Consultative Working Group and the Technology and Wellbeing Roundtable have played a key role in coordinating online safety policy and practice across a complex, crowded, and sometimes

intensely political sector. The Australian online safety sector accommodates a wide range of approaches, opinions and evidence; however, there are also high levels of inter-organisational collaboration, information sharing and knowledge brokering, as well as spaces for mutual learning, debate and the development of shared languages. Even so, the sector frequently struggles to coordinate efforts, to reduce duplication of services and to ensure that limited resources are leveraged most effectively. Historically, while cybersafety has been a key focus for all levels of government, in Australia (as elsewhere), responsibility for online safety has not fallen neatly into any particular government portfolio, impeding sector coordination and, ultimately, positive impacts for the online safety of children and young people. And, despite strong relations with key private operators in the digital media space, the Australian sector has sometimes struggled to compel industry to deliver on their responsibilities to ensure children's and young people's online safety. Given the transnational dimensions of many online safety issues, the Office's role as an internationally prominent and respected liaison between regulatory bodies, NGOs, social media services and government agencies enables national oversight and effective action.

The establishment of the Office has significantly enhanced Australia's capacity to secure the online safety of children and young people. While the Australian Communication and Media Authority has long conducted research and developed high quality online safety resources, the establishment of the Office as a separate but related entity has provided a focal point for online safety issues, as well as a trusted portal for access to high quality online safety resources, and in doing so, it has played a critical role in galvanising efforts and channelling the necessary resources to address urgent online safety concerns.

The strength of the Office's work lies in its integrated portfolio of responsibilities for: coordinating action across Commonwealth Departments, authorities and agencies as well as other vested interests; generating, collating and disseminating information and current evidence; supporting the development of high quality educational and other resources and programs; promoting best practice; advising Government; ensuring compliance; and providing a user-friendly complaints system. Research I have led indicates that the current functions and powers of the eSafety Commissioner are both appropriate and necessary as they enable an ecological approach to promoting and monitoring online safety across the population. Removing or limiting existing powers would hinder the efficacy of the Office and set back Australian online safety efforts.

Question 1(d): Does the way the eSafety Commissioner's functions and powers are specified create barriers preventing, or limiting, the Commissioner from enhancing online safety for Australians or that may prevent, or limit, the Commissioner from responding to new risks in the future?

Emerging technology trends – such as artificial intelligence, big data mining, virtual and augmented reality – will potentially introduce new online safety risks of harm. As such, it is critical that the Office begin to address these issues in earnest. However, on balance, there is sufficient scope within the Commissioner's existing functions and powers to enable the Office to respond in a timely and evidence-based manner to emerging online safety challenges.

2. Administration of the eSafety Commissioner

Question 2(c): Should the Online Safety Act be amended to give the eSafety Commissioner more independence, particularly in relation to resourcing (including staffing) and funding? If so, is there other legislation that provides an appropriate model?

It may be appropriate for the Government to consider granting the Office greater independence in the resourcing of the Office's activities to enable greater flexibility to address online safety issues, both entrenched and emergent. In my experience, resources are tight and sometimes hinder the capacity of the Office to respond to the breadth of issues within their mandate. Any changes in the administrative arrangements should not result in reduced budgetary capacity. Further, given the Office has established a clear online safety agenda and program of action, it is logical that the current arrangements, whereby the eSafety Office continues to sit outside but alongside the ACMA, be preserved. This is vital to giving the issues profile and to ensuring industry accountability.

Question 2(e): Should the eSafety Commissioner consider delegating some or all functions to a body corporate?

While the provision in the Act for the eSafety Commissioner to delegate functions to a body corporate has not been exercised to date, it is appropriate that such delegation remain at the discretion of the Commissioner.

3. Effectiveness of the eSafety Commissioner

Question 3(a): Has the eSafety Commissioner been effective in enhancing online safety for Australian children since its establishment in 2015?

Given the breadth and complexity of the online safety challenges across the lifespan, three years is a very short time period in which to assess the impacts of the Office's work. Even so, the Office has achieved significant success in expanding and consolidating the work of the Australian online safety sector. In particular, I would highlight the following:

- The Office has provided a focal point for online safety issues, helping to foreground the importance of, and to facilitate, coordinated action across sectors. In doing so, it has reduced duplication of efforts and helped to ensure the more efficient allocation of resources.
- Research I have led shows that parents, educators and others often find it difficult to navigate the available resources for protecting their children's online safety (Third et al, 2012; Third et al, 2013). For children, young people, educators, parents and others, the Office provides a trusted portal to a range of high quality resources and a complaints service that, amidst a complex online safety environment, serves to minimise confusion for people seeking online safety resources and mechanisms for reporting cybersafety breaches. Indeed, the Office's cyberbullying complaints system is the first of its kind in



the world and has played a critical role in addressing cyberbullying incidents by assisting over 900 families with rapid take-down of cyberbullying materials in the three years since its implementation (see below).

- The Office has supplied timely, evidence-based guidance, which draws down of the wisdom from across the online safety sector, to the Minister for Communications and other entities with a responsibility for online safety
- Internationally, research shows that there is an urgent need to balance approaches to children's and young people's protection online with the need to encourage their participation (Third et al, 2014b; Livingstone, Lansdown & Third, 2017). The Office has taken a leadership role in promoting a more a balanced public debate and action on cybersafety issues. The Office's resources emphasise harm minimisation alongside the need to develop critical digital skills to ensure Australians feel empowered and confident to participate online. One example of the Office's achievements in nurturing a constructive environment through which to promote the online safety of Australians is via its positive contributions to the public debate. For example, research shows that parents rely heavily on the mainstream media for information about how to protect their children online. A Factiva search I conducted with colleagues for the period 2014-2018 demonstrates that coverage featuring the eSafety Commissioner since early 2017 has consistently encouraged parents to take action on their children's online safety while also underscoring the benefits for children of engaging online. It is precisely this kind of balanced commentary that is necessary to counteract extreme perspectives and create a balanced debate about online safety in Australia.
- The Office has developed a suite of high quality, evidence-based educational resources for specific target groups. These resources are widely regarded as gold standard and fill vital gaps in the online safety market that would not have been filled by the education sector.
- Research suggests that the Office's multi-pronged approach of providing a complaints system; working with social media companies to take down harmful materials; accrediting cybersafety program providers; and working with parents and schools to target the root causes of social conflict and bullying, of which cyberbullying is an extension (Spears et al, 2014), is an effective means of enhancing positive outcomes for those who directly experience these issues. The Office's record of achievement in receiving and responding to cyberbullying complaints constitutes an excellent platform from which to grow the Office's future impact.

Question 3(b): The scope of the Online Safety Act was expanded in 2017 to cover all Australians. Has it been effective in relation to groups other than children?

The expansion of the Office's functions and powers to embrace the online safety of all Australians in 2017 is a very positive development and widely supported across the sector. For too long, online safety efforts have focused primarily on children and young people, to the detriment of other population groups – such as seniors and women – who experience significant exposure to risk of potential harm online (Third et al, 2014a). Indeed, my research shows that children's and young people's online safety is often significantly impacted by the limited access and digital literacies of the adults in their lives (Third et al, 2014a; Third et al, 2014b) and that intergenerational online safety initiatives are urgently demanded (Third et al, 2011).

Given this expansion in scope is a very recent development, it is too early to make definitive judgments about the effects. However, the Office has acted very quickly to address the needs of all Australians; defined a clear strategy, targeting seniors and women in particular; mobilised a significant array of partners across sectors around this agenda; and has begun to take concrete action. For example, the Office's 'Be Connected' program focuses on empowering all Australians to build digital literacy and thrive in an online world, enhances positive online experiences based on participation, as well as protection. This action augers well for positive future benefits.

4. Regulatory Approach

Question 4(a): Is the balance right between government intervention and other measures (e.g. developing an individual's ability to identify, assess and self-manage risks) to address online safety in Australia?

Online safety is a complex social issue that requires ecological approaches (Third et al, forthcoming). My research shows that, to date, the Australian online safety sector has effectively raised children's and young people's awareness of online safety issues and given them concrete strategies for managing online risks of harm. The work of the Office has consolidated these efforts significantly, providing a trusted point of access to, for example, high quality educational resources and rigorous data to guide the development, deployment and evaluation of online safety initiatives.

However, while strategies to secure the online safety of children, young people and others should encourage behaviour change, it is equally important that private operators – not just social media companies but also private online safety experts and companies promoting online safety tools and services – be held to account for their responsibilities in protecting the public's online safety needs and promoting balanced debate and policy in ways that enable users to balance their online protection with their participation. It is also vital that we support the implementation of appropriate legislative mechanisms. The Office is uniquely positioned to ensure Australia can achieve the right balance between different forms of intervention.

5. Cyberbullying complaints system

Question 5(a): Are the Basic Online Safety Requirements in section 21 of the Online Safety Act appropriate? Should they apply to a broader range of platforms or include additional requirements?

The specified requirements are adequate for the purposes of social media service compliance. However, given that the technology landscape is rapidly transforming, there is value in revisiting these definitions to ensure that they can be applied to emerging technologies such as virtual and augmented reality.

Question 5(b): Has the Cyberbullying Complaints Scheme, including the Rapid



Removal Scheme and End-user Notice Regime, been successful in protecting Australian children from the harm caused by cyberbullying material on large social media sites?

Mechanisms such as the Rapid Removal Scheme and the End-User Notice Regime constitute a critical safety net for those who experience cyberbullying and should continue to comprise a key pillar of the Office's work. Evidence to date indicates that the reach and impact of the CCS is growing consistently and, given the relatively short period in which it has been in operation, in accordance with reasonable expectations.

There is much scope to further promote the availability of the CCS to a broader range of relevant constituents. In particular, it is recommended that the Office be resourced to enhance its current child and youth engagement strategy in order to better reach and impact those who are most vulnerable. Research consistently shows that those who are most vulnerable online are those that are most vulnerable offline (Third et al, 2014; Livignstone, Lansdown & Third, 2017). There is thus opportunity to expand the activities of the Office to better reach these children and young people and to work with them closely to ensure that the CCS is universally accessible.

At the same time, a complaints scheme is but one mechanism for ensuring the protection of children and young people from harmful content associated with cyberbullying, underscoring the need for the Office to continue working holistically (i.e. on a number of fronts) to tackle the challenges ahead.

Question 5(c): The eSafety Commissioner has not needed to use statutory powers under the Rapid Removal Scheme or the End-User Notice Scheme but has had material removed through industry cooperation. Is an industry-based approach (e.g. codes or other self-regulation) the preferred approach?

As gestured above, industry cooperation is a critical component of the online safety ecology in Australia, and internationally. This is particularly so given that many online safety risks of harm have a transnational dimension.

Indeed, research I have led or supervised (Third et al, forthcoming 2018) shows that the benefits of industry cooperative approaches extend beyond merely securing their cooperation for the specific task of rapid removal. Processes for securing industry cooperation constitute an important agenda setting mechanism for the sector. That is, negotiations provide a critical platform for foregrounding industry's online safety responsibilities, setting standards and 'bringing industry along' with strategies to increase the online safety of a broad range of users.

Nonetheless, while industry cooperation is the preferred approach, it is excellent that the Act provides the safety net of statutory powers.

Question 5(d): Does the End-User Notice Scheme provide an appropriate safety net if industry cooperation fails?

Given the outstanding track record of the Office in achieving industry cooperation for taking



down harmful content relating to cyberbullying, the efficacy of the End-User Notice Scheme has not been tried and tested. However, the End-User Notice Scheme would appear to provide an appropriate safety net should industry cooperation fail.

Question 5(e): Is the current definition of cyberbullying in paragraph 5(1)(b) of the Online Safety Act general enough to capture the main sources of cyberbullying material causing harm to Australian children

The current definition is general enough to enable case-by-case judgments to be made. The challenge is to promote broader understanding of what constitutes cyberbullying for the Australian public (as discussed above).

Question 5(f): Considering that there is a COAG Education Council work program on cyberbullying, should the definition of cyberbullying be de-coupled from the Online Safety Act (or expressed more broadly) to ensure that it can evolve as community attitudes change?

De-coupling the definition of cyberbullying from the Online Safety Act at this point might be premature. It would seem logical that this happen – if it needs to happen – after the work program has been completed.

References

Collin, P, Rahilly, K, Richardson, I & Third, A, 2011, *The benefits of social networking service: literature review*, Young and Well Cooperative Research Centre, Melbourne.

Livingstone, S, Lansdown, G & Third, A, 2017, *The case for a UNCRC General Comment on Children's Rights and Digital Media: A report prepared for the Office of the Children's Commissioner of England*. London, LSE Consulting.

Livingstone, S & Third, A 2017, 'Children and young people's rights in the digital age: an emerging agenda', *New Media & Society*, vol. 19, no. 5, pp. 657–670

Third, A, Bellerose, D, Dawkins, U, Keltie, E & Pihl, K 2014b, *Children's rights in the digital age: a download from children around the world*, Young and Well Cooperative Research Centre, Melbourne.

Swist, T, Collin, P, McCormack, J & Third, A 2015, '*Social media and the wellbeing of children and young people: a literature review*', Prepared for the Commissioner for Children and Young People, Perth.

Third, A, Collin, P, Walsh, L & Black, R, forthcoming 2018, *Young People in Digital Society: Control Shift*, London and New York: Palgrave MacMillan.

Third, A, Forrest-Lawrence, P & Collier, A 2014a, *Addressing the cyber safety challenge: from*

WESTERN SYDNEY
UNIVERSITY



risk to resilience , Telstra Corporation.

Third, A, Richardson, I, Collin, P, Rahilly, K & Bolzan, N 2011, *Intergenerational attitudes towards social networking services and cybersafety: a living lab*, Cooperative Research Centre for Young People, Technology and Wellbeing, Melbourne

Third, A, Spry, D & Locke, K 2013, *Enhancing parents' knowledge and practice of online safety: a research report on an intergenerational 'Living Lab' experiment*, Young and Well Cooperative Research Centre, Melbourne.