



Hope.
Reward.
Opportunity.

The Coalition's Discussion Paper on

Enhancing Online Safety for Children

November 2012



INTRODUCTION

The internet has immense potential to teach children, benefit society and enhance economic development. It should be as free and unregulated as possible.

But it is an unfortunate consequence that the freedom, innovation and anonymity of the internet enable insidious, malicious and illegal online activities against children.

Dangerous and harmful material directed at children cannot be excused on the basis of freedom of speech. The Coalition does not support heavy handed regulation of the internet. But we do believe that more can be done to protect children online.

Children face many inappropriate risks online. They risk being a victim of child pornography, being groomed by a paedophile, becoming exposed to violent, pornographic or other age-inappropriate content, or being a victim of malicious 'cyber-bullying.'

The community is understandably concerned about the content and experiences children are increasingly exposed to online.

Given that the Federal Government has primary responsibility for the regulation of the internet and telecommunications under the Australian Constitution, there is a compelling case for the Commonwealth to adopt measures that help protect children online.

The Howard Government recognised that one of the best ways to protect children online is to give parents more control over access to online content by children. This is why the Howard Government provided families with optional filters for individual home computers that allowed parents to determine what online content was appropriate for their children.

The Rudd-Gillard Government abandoned this approach.

Instead, the Rudd-Gillard Government trumpeted a restrictive mandatory filter system that was unworkable, costly and largely beyond the control of individual families. The Government promised this filter would be delivered and that it would guard against illegal and insidious online content directed at children.

The promise of a mandatory internet filter has since been broken.

The Howard Government also introduced a 'co-regulatory scheme' for online content administered by the Australian Communications and Media Authority. Under this scheme, internet service providers, internet content hosts and mobile service providers are required to comply with industry codes of practice, including practices and processes to remove or 'take down' illegal content. This scheme has been continued by the Rudd-Gillard Government.

While this scheme has worked, there are limitations. It can, for example, be very difficult and overly time consuming to have objectionable, offensive, or illegal material removed from the internet. Material hosted overseas is beyond its reach. Content that is detrimental or malicious to a child, but not illegal, may be near impossible to remove.

The Coalition believes that more can be done to protect children online without diminishing the freedom, innovation and individual experiences of the internet.

BACKGROUND

The importance and changing accessibility of the internet

The past few years has seen marked change in the way the internet is accessed and utilised.

According to research released by Deloitte in August 2011, internet activity contributed \$50 billion to the Australian economy (the equivalent of 3.6 per cent of GDP in 2010). The Australian Bureau of Statistics reported that at the end of June 2012 there were 12 million internet subscribers in Australia, including 5.9 million mobile wireless broadband connections, excluding mobile phone handset connections (an increase of 7 per cent since the end of December 2011). The Australian Communications and Media Authority estimated that there were 9.68 million mobile phone handset internet subscriptions in June 2011. Over two thirds of Australians aged 15 to 65 own a smartphone (internet-enabled mobile phone) according to market research company Frost & Sullivan.

Online social media domains have proliferated. Facebook, for example, has over 11 million users in Australia and some estimates suggest more than 90 per cent of Australian high school students have a Facebook account.

The changes in internet access and utilisation point to a marked reliance on more accessible internet platforms centred on wireless and mobile technologies.

These are changes that enhance national productivity. But they also make it much harder for parents, carers and educators to monitor, and advise on, the online content accessed by their children.

The Coalition's Online Safety Working Group

The Coalition's Online Safety Working Group was established by the Leader of the Opposition, the Hon Tony Abbott MHR, in January 2012. The Working Group was charged to consult with industry, the community, parents and children so as to develop policy measures to best help protect children online.

The Working Group included: Mr Paul Fletcher MP (Chair), Senator Gary Humphries (Senator for Australian Capital Territory), Mr Alex Hawke MP (Member for Mitchell), Mrs Natasha Griggs MP (Member for Solomon), Mr Wyatt Roy MP (Member for Longman), Mr Patrick Secker MP (Member for Barker), Senator Stephen Parry (Senator for Tasmania), Senator Bridget McKenzie (Senator for Victoria) and Mr Luke Simpkins MP (Member for Cowan).

The Working Group has consulted widely and received submissions from individuals, businesses and interest groups.

Release of a Discussion Paper on Enhancing Online Safety for Children

Based on the work of the Online Safety Working Group, the Coalition has produced a Discussion Paper that outlines our proposed measures to help protect children online.

The intention of the Discussion Paper is to ensure policy measures are developed that strike the best balance between maintaining freedom on the internet and harm minimisation for children online.

Contributing to the Discussion Paper

The Coalition encourages industry, the community and interested parties to participate in the Discussion Paper process.

Written submissions are invited by 29 March 2013 and can be sent electronically to:

helen.moreland@aph.gov.au

or by mail to:

Ms Helen Moreland (Secretary to the Online Safety Working Group)
C/- Office of the Hon Tony Abbott
Parliament House
Canberra ACT 2600

If interested parties have any questions or need any further information, they should not hesitate to contact Ms Helen Moreland at the email address above or by phone on **(02) 6277 4022**.

Matters for public discussion

1. Improved coordination

One of the problems confronting online safety for children is the lack of a co-ordinated approach to this issue. While there are existing information sources for parents and industry (e.g. through the Australian Communications and Media Authority) and codes of practices adopted by individual internet providers, there is an absence of co-ordinated, concerted and well-resourced processes to help parents, internet providers, educators and the broader community better protect children online.

There is an intuitive case to better protect children online through:

- improved coordination of the content and messages provided to Australian children and those charged with their welfare regarding online safety;
- better engagement with the major internet content providers, particularly social media outlets, and other elements of the industry which deliver the products and services used by children to access and communicate on the internet; and
- the establishment of a single point of contact for online safety issues for industry, Australian children and those charged with their welfare.

These measures could be particularly advantageous for tackling online content or behaviour directed at children that is malicious, but which fails to meet the criminal threshold.

There is also a need to consider whether existing resources available to police and law enforcement agencies are adequate and capable of dealing with illegal online activities directed at children.

While the Australian Federal Police, for example, devotes substantial resources to policing in an online environment, there may be scope to improve the level of coordination so as to ensure those resources are used more effectively and efficiently.

The Coalition seeks industry, community and interested party comment on:

- 1a. The benefits that might flow from establishing an independent agency or Commissioner-led body, such as a 'Children's e-Safety Commissioner,' charged with co-ordinating a national response to online safety, including the development of education campaigns and national guidelines for schools, parents, children and internet providers.
- 1b. The role, nature and operation of such an agency or Commissioner if so established, including methods to promote its existence to parents, children and educators.
- 1c. Whether or not any existing agencies are capable of performing a national, coordinated role or what may be needed to allow them to do so.
- 1d. Whether resources available to the Australian Federal Police are adequate and what additional resources may be required to ensure greater enforcement against illegal online activities directed at children.
- 1e. The extent to which existing resources available to the Australian Federal Police are used effectively and efficiently and any options available to re-direct existing resources to address emerging online priorities.
- 1f. The extent and capacity of police and law enforcement agencies to interact with relevant international organisations and whether improved global coordination could deliver better online safety outcomes for children.

2. Promoting more rapid removal of online content damaging to children

Law enforcement agencies and internet providers act when illegal content appears online.

The problem, however, is that some internet activities and content are not illegal per se, but can be nevertheless detrimental to children if used in a deliberately malevolent way. Online comments or 'posts' on Facebook, for example, can be perfectly innocent, but they can also be used as a nefarious form of bullying that subsequently contributes to psychological or physical harm to a targeted child. This can result in situations where children, schools and parents are unable to deal with offensive or objectionable content either at all or in a responsive and simple way.

Under laws made by the Howard Government, the Australian Communications and Media Authority administers a 'co-regulatory scheme' for online content. This scheme requires internet service providers, internet content hosts and mobile service providers to comply with industry codes of practice. This code stipulates that certain online content must be removed or 'taken down.'

Content that can be subject to a 'take-down' notice issued by the Australian Communications and Media Authority includes: any online content that is classified RC or X 18+ by the Classification Board, content which is classified R 18+ and not subject to a restricted access system that prevents access by children, and content which is classified MA 15+ provided by a mobile premium service or a service that provides audio or video content upon payment of a fee and that is not subject to a restricted access system.

Financial penalties can be imposed by the Australian Communications and Media Authority for non-compliance and industry codes are expected to include sanctions for failure to adhere to take-down notices (e.g. expulsion from industry associations).

This regime only applies to content that is hosted within Australia. The Australian Communications and Media Authority has no direct ability to take-down overseas content. However, it does work with its counterparts overseas to deal with some illegal material that is hosted overseas.

Box 1 overleaf provides a snapshot of the current legal position concerning online material affecting an Australian child.

Take-down notices can only be issued in relation to material hosted in Australia that is illegal or judged by the Australian Communications and Media Authority to be prohibited according to Australia's classification regime. The fact that material is considered objectionable, offensive, or defamatory is not of itself sufficient to trigger the issue of a take-down notice.

One potential approach to addressing this limitation could be to establish a co-operative regulatory scheme that applies to large online social media outlets operating in Australia. Such a scheme could be administered by the Children's e-Safety Commissioner or similar independent body.

Examples of the type of material that could be subject to the scheme include:

- a chronic case of cyber-bullying where a Facebook account has been established in the bullying victim's name and deliberately used to upload offensive, objectionable and potentially defamatory comments against that person; or
- a page established with photos or videos of an individual girl, or group of girls, taken without their knowledge that shows them in a compromising position, and where the author of the page is not readily identifiable so available means of negotiating with the author to remove the content are limited.

Box 1: The Current Legal Position Concerning Online Material about an Australian Child

Online content is subject to Australian criminal laws, including prohibition of paedophilia and using a carriage service to menace, harass or cause offence. However, enforcing these laws against material hosted overseas is often fraught with practical and jurisdictional difficulties. Online content hosted in Australia is also subject to Australia's classification scheme.

Material that is defamatory can be pursued through legal action against the person who creates the material, but it remains an open legal question as to whether a social media outlet itself is also liable for defamation. There are often practical and jurisdictional difficulties with pursuing a defamation action against the author of material that is posted outside of Australia.

If one assumes a child in Australia is the subject of material posted online (either on that child's own Facebook page, or elsewhere) on a website or social media outlet controlled in another country (and hosted on a server in another country), then:

If the material breaches Australian criminal law

Persons who breach the Commonwealth Criminal Code – such as material relating to paedophilia or the provision which makes it an offence to use a “carriage service” (that is, a telecommunications network over which internet access is obtained) to menace, harass or cause offence – are liable and can be prosecuted. This does not change because the relevant website or social media outlet is based overseas or hosted on a server overseas.

However, it may be a challenge to identify who that person is (as there is no need to verify your identity to establish an account with Facebook or most other social media outlets).

For the police to track down the identity of a person who made an illegal post on Facebook, they must arrange for a search warrant to be served (under laws of the United States of America) on Facebook, using existing intergovernmental cooperation arrangements between the Australian and US governments.

This will reveal the internet protocol address of the device used by the person who posted the material. The police can then use this to execute warrants on Australian internet service providers to identify the customer who is associated with that internet protocol address.

If the material is defamatory

Material that defames an Australian child and posted on a website or a social media outlet can be pursued through legal action in Australia brought by or on behalf of that resident.

In at least one internet defamation case (*Dow Jones & Co. v Gutnick*) it has been determined that because internet content was able to be read in the jurisdiction in which the complainant (Gutnick) lived and was best known (Australia), the case could be heard in Australia.

However, it may be a challenge to identify the person who posted the material. There is an open legal question as to whether the social media outlet itself is also liable for defamation.

The scheme would require large online social media outlets to establish and publish an approved process by which complaints can be made about specific content that is targeted at, and likely to cause harm to, an Australian child and for a further process to be established that outlines how this content will be rapidly removed.

The co-operative regulatory scheme could:

- be underpinned by legislation and limited to online social media outlets with a certain minimum threshold number of accounts or customers in Australia;
- outline specific criteria to be developed as to what constitutes material likely to cause harm to an Australian child;
- provide certainty to large online social media outlets about to what they could be required to remove and would grant them legal protection against any consequences under Australian law of removing such material; and
- establish defined financial or other penalties for failure to comply with the scheme.

The Coalition would not impose such a scheme without consultation with industry.

We also encourage industry to propose a voluntary scheme that applies to large online social media outlets and that could be monitored and enforced through an industry-funded body.

Time and consideration would need to be given to the exact process by which material could be removed and the specific criteria used to determine what material is likely to cause harm to a particular child. The criteria would be determined by a group of expert stakeholders including representatives of industry and representatives of children and those charged with the welfare of children including parents, schools, police and child welfare and youth mental health experts.

As an example of the potential scheme, the process might involve:

1. a complaint is made to a large online social media outlet by or on behalf of a child that alleges certain material meets the criteria of 'material targeted at and likely to cause harm to an Australian child';
2. there would be a short period (perhaps 48 hours) for the large online social media outlet to act;
3. if the large online social media outlet did not act to remove the material by the deadline (for any reason including because it judged that the material did not meet the criteria) the complaint would then go to the Children's e-Safety Commissioner;
4. the Children's e-Safety Commissioner would assess whether the criteria were satisfied, and if it found that they were it would direct the large online social media outlet to remove the material;
5. the large online social media outlet would be required under the scheme to remove the material upon receipt of such a direction; and
6. an interested party (including the complainant, the large online social media outlet, or the author of the material subject to the complaint) could go to court to challenge a decision by the Children's e-Safety Commissioner – this would be an important safeguard against the scheme being used as a means to suppress free speech.

Such a scheme would enable large online social media outlets to demonstrate their commitment to corporate social responsibility in protecting children from harm while not seeking to deal with online material directed at adults.

While it would be a potential threat to freedom of speech to expect large social media outlets to remove material directed at adults, expecting them to remove material posted online that is targeted at, and harmful to, a particular child is a legitimate limitation on that freedom.

The Coalition seeks industry, community and interested party comment on:

- 2a. The introduction of a co-operative regulatory scheme to apply to large online social media outlets operating in Australia with the intention of facilitating complaints and the rapid removal of content that is harmful to and targeted at a particular child or group of children.
- 2b. The administration, rules and processes of such a scheme, including consideration to the likely effectiveness of the scheme and the potential gains or detriments to children, parents, educators and internet providers or any other interested party.
- 2c. Proposals by the industry or any other interested party for a voluntary scheme that applies to large online social media outlets operating in Australia and intended to facilitate complaints and the rapid removal of content detrimental to a child or children, including details of how such a scheme would be monitored, enforced and operated in practice.

3. Support for parents and carers

Parents and others charged with the welfare of children need better support to identify devices and services that are age-appropriate for children of different ages. This requires more involvement from the vendors and service providers that sell or provide the devices that children use to access the internet, the software which operates those devices, and the content and websites which the devices enable children to access on the internet.

Many vendors and service providers offer parental controls or other tools, which can be used with a standard device to help parents manage the risks which their children face online. In addition, there are many standalone products that parents can buy, or acquire without charge, to help manage their child's online safety.

Unfortunately, parental awareness of these tools is low.

For a parent wanting to protect a child against online dangers, the purchasing decisions are complicated and generally require a lot of assumed knowledge.

The Coalition proposes that parents and schools should be able to purchase products from a range of vendors and operators that meet national standards for online safety for children. The Coalition envisages that there could be standards for two age groups: children up to the age of 12 years and teenagers aged 13 to 16 years. A key element of the standards would be to require that a product be sold with appropriate parental control tools enabled as the default setting. For example, a phone marketed at children 12 years or under could have all the parental controls turned on when the product was bought by the parent.

The Coalition would work with industry to ensure that major players offer products which meet these national standards. There would be agreed branding or symbols that could be applied to products which meet the standards.

The specific product requirements could be determined through a consultative process led by the Children's e-Safety Commissioner and involve an expert stakeholder group (including representatives of industry and representatives of groups charged with the welfare of children including schools, parents, police and youth mental health experts).

Not all vendors and operators would be required to offer such products and companies will remain free to sell products that do not meet the standards. Parents would not be required to purchase these products for their children should they wish to buy another product. However, this scheme would make it much simpler for parents to know which purchasing decisions they should make to best protect their children against online dangers.

The Coalition seeks industry, community and interested party comment on:

- 3a. The establishment of nationally agreed product requirements for smartphones and other devices to allow them to carry a brand or symbol that clearly communicates their suitability for children or teenagers.
- 3b. How such a nationally agreed product standard should be monitored and enforced, including consideration of the body best able to administer such standards.

4. Support for schools

The Coalition envisages that a major priority for a Children's e-Safety Commissioner would be to support schools in their work to assist the children in their care to be safe online.

Many different programmes and tools are used by schools to educate students about the risks of using the internet. There is considerable diversity in content, style and method, and different programmes emphasise different issues – some emphasise personal safety issues (such as the risk of online grooming by paedophiles), while others emphasise longer term digital reputation issues.

Awareness of the full range of programmes and resources is patchy and there is some risk that schools can take a 'tick a box' approach (e.g. "we've paid for a programme, we have a set of folders in the office, and so we have dealt with the cyber-safety risks").

A Children's e-Safety Commissioner could be tasked with taking a more proactive approach to ensuring online safety in schools.

The agency or body could, for example, independently assess and certify:

- education programmes for schools and children concerning online safety;
- how online safety should be included in the Safe Schools Framework; and
- software programmes and tools concerning online safety.

An additional approach could be to make online safety a more prominent feature of the school environment, for example: by expanding the emphasis on online safety and cyber-bullying in the National Safe Schools Framework.

The Coalition seeks industry, community and interested party comment on:

- 4a. The involvement of a Children's e-Safety Commissioner in independently assessing and certifying online safety programmes for schools.
- 4b. The inclusion of a stronger online safety component in the National Safe Schools Framework.

5. Australian-based research on online safety and children

There is a surprisingly large amount that is unknown about the impact of 'internet immersion' on the health and wellbeing of children – and what steps should be taken to appropriately protect young people online.

Amongst the many areas where further research would be valuable are:

- the addictive nature of technology – particularly games and social networking;
- the impact of inappropriate content on the behaviour and welfare of children, especially pornography and violent content and other health-related material, such as pro-anorexia websites;
- cyber-bullying, including consideration of its underlying causes and impacts, as well as the best ways to address it;
- the impact of the 'social media lifestyle' on children and how to address any negative consequences; and
- how social media and other online tools can be used to deliver public health and welfare programmes to children.

Better information in this area would also assist in making public education campaigns (especially relating to health and safety) targeted at children more effective.

The Coalition proposes that the Children's e-Safety Commissioner will commission ongoing research from reputable academic and other sources regarding online safety for children. It is likely that this could include the establishment of a major national tracking study with a large, diversified sample and conducted over a substantial period of time.

The Coalition seeks industry, community and interested party comment on:

- 5a. The value and possible parameters of Australian-based research (including longitudinal research) into the use of the internet by children, as well as the impact that it has on them.