

Online Safety Legislative Reform

Consultation on a new *Online Safety Act*

Discussion paper

Submission

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Background

The Queensland Family and Child Commission

The Queensland Family and Child Commission (QFCC) is pleased to provide a submission to the discussion paper 'Online Safety Legislative Reform' published by the Department of Infrastructure, Transport, Regional Development and Communications ('the Department') in December 2019 ('the discussion paper').

The QFCC was established on 1 July 2014 by the *Family and Child Commission Act 2014* (the FCC Act). Under the FCC Act, the QFCC was established:

- to promote the safety, wellbeing and best interests of children and young people
- to promote and advocate the responsibility of families and communities to protect and care for children and young people
- to improve the child protection system.¹

The QFCC's purpose is to respect, advocate for and protect young Queenslanders' rights, wellbeing and safety and to improve the services that support them. Given the high and increasing rate at which children and young people live out their lives online, the QFCC supports measures to make the internet a safer place, and to make information about online rights and responsibilities more accessible.

The QFCC's position

The discussion paper proposes to introduce a new *Online Safety Act*, bringing together a number of different pieces of policy and regulation around cyberbullying, image-based abuse, cyber abuse, and other harmful online content. The discussion paper also proposes to expand the powers of the regulator (the eSafety Commissioner) to protect Australians from harm online.

Reflecting its statutory responsibilities, the QFCC's submission will focus on the following proposed areas of reform:

1. Basic online safety expectations
2. Cyberbullying
3. Non-consensual sharing of intimate images
4. Opt-in tools to restrict access to inappropriate content.

In addition to the QFCC's submissions, this document also contains the views and opinions of the QFCC's Youth Advisory Council (YAC). The YAC is a group of 14 Queensland children and young people aged from 14 to 25 years who provide advice to the Commissioners on matters of importance to children and young people in Queensland, and work with QFCC staff to help keep the voices of young Queenslanders front and centre to the QFCC's work.

The voices of the QFCC's Youth Champions are presented in blue breakout boxes.

Note: while the views of the YAC are valued, they do not necessarily represent the recommendations of the QFCC.

¹ *Family and Child Commission Act 2014* (Qld), s 4.

Basic online safety expectations

Recommendation

The QFCC recommends:

- The basic online safety expectations (BOSE) concept as proposed by the Department should be implemented.
- In addition to the Department's proposal, the BOSE should include provisions to protect children from the use of their online content by adults without their control or consent.
- Information about the BOSE (and the proposed *Online Safety Act* generally) should be presented in a youth-friendly way.

The title and theme of the Australian Government's *National Framework for Protecting Australia's Children 2009-2020* (the National Framework) is the statement that '*protecting children is everyone's business*'.² The QFCC sees this theme as particularly relevant to Australian governments as they work to determine how best to progress the goals of the National Framework into the new decade. It means that every organisation involved in a child's online interactions, including technology firms, should take responsibility for ensuring the safety of children is paramount.

The Department proposes 'BOSE' to clearly express government's expectations of online service providers' interactions and obligations towards users. It is proposed that the BOSE will be made by a Ministerial Instrument under the authority of the *Online Safety Act* and will be based on the *Online Safety Charter*³ and the eSafety Commissioner's existing 'Safety by Design' (SbD) principles.⁴

Relevant discussion paper questions relating to the QFCC's submission include:

3. *Is there merit in the BOSE concept?*
5. *Are there matters (other than those canvassed in the Charter) that should be considered for the BOSE? Are there any matters in the Charter that should not be part of the BOSE?*
6. *Should there be sanctions for companies that fail to meet the BOSE, beyond the proposed reporting and publication arrangements?*

The QFCC sees merit in the BOSE as an effective way of:

- communicating to the community, and especially children, the obligations of online service providers

² Australian Government 2009, *National Framework for Protecting Australia's Children 2009-2020*, Department of Social Services, <https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business>, accessed 13 February 2020.

³ Australian Government 2019, *Online Safety Charter*, Department of Infrastructure, Transport, Regional Development and Communications, <https://www.communications.gov.au/documents/online-safety-charter-0>, accessed 6 February 2020.

⁴ Australian Government 2019, *Online Safety Legislative Reform Discussion Paper*, Department of Infrastructure, Transport, Regional Development and Communications, <https://www.communications.gov.au/have-your-say/consultation-new-online-safety-act>, accessed 5 February 2020, p 21.

- encouraging meaningful compliance from more online service providers in the eSafety Commissioner's existing SbD strategy and *Online Safety Charter*.

The United Kingdom government proposed a similar mechanism to the BOSE in the *Online Harms White Paper* in 2019. The white paper suggested using codes of practice as a means for the online regulator to achieve provider compliance with standards.⁵ Notably, the White Paper proposes that the regulator would be able to enforce these codes of practice in cooperation with police and other authorities. The QFCC proposes that the eSafety Commissioner should have similar power to impose sanctions on providers which fail to meet the expectations set out in the BOSE.

Youth Champions viewed online service providers as bearing a great deal of the responsibility for managing image-based abuse (and other harmful online content), and for assisting children and young people to manage their content on their platforms.

Youth Champions agreed that providers should be responsible for making the process of removing content easier and more transparent.

The QFCC supports including additional standards in the BOSE to protect young people's rights to privacy and personal security. Often, children and young people lose control of information which is posted about them online, for example by parents and schools. Parents posting their children's content in the parent's online networks may allow strangers into those networks, exposing their children to the risk of abuse or predatory behaviour. These risks may be mitigated by including further expectations in the BOSE regarding the use of children's content without their permission.

Supplemental to supporting the Department's proposals, the QFCC also supports effective communication of relevant components of the BOSE to children and young people. The QFCC has previously (in submissions regarding reviews of the *Enhancing Online Safety Act 2015* and the Online Content Scheme in 2018) advocated for the eSafety Commissioner to promote a coordinated communication strategy throughout Australia, to make sure that children and young people understand the risks of harmful online content.⁶ If the BOSE is used as a tool to promote a safer internet, children and young people, as a group particularly vulnerable to harmful online content, must have access to child-friendly information about what the BOSE sets out, and how to engage their rights.

Youth Champions believed that explicit basic standards for online service providers were an important reform, and that such standards would be less effective if they were not enforced. Youth Champions believed compliance with the standards should be compulsory for service providers.

⁵ Government of the United Kingdom, 2019, *Online Harms White Paper*, <https://www.gov.uk/government/consultations/online-harms-white-paper>, accessed 12 February 2020, pp 41-43.

⁶ Vardon, C 2018, letter to the Australian Government, Department of Communications and the Arts, 25 July 2018.

Cyberbullying

Recommendation

The QFCC recommends:

- The cyberbullying scheme should be expanded as proposed by the Department.
- The scheme should be designed and operated in such a way as to consider the circumstances of particularly vulnerable cohorts of children and young people.
- Cyberbullies should be provided with assistance to address the causes of their behaviour.
- Complaints about cyberbullying must be facilitated in a youth-friendly way.

The QFCC supports efforts to enhance the protection of children and young people online, including prevention of cyberbullying. For example, QFCC staff and Youth Champions participated in the Anti-Cyberbullying Advisory Committee to the Premier of Queensland in February 2019. The QFCC was also a key part of CONVO2019, a collaborative event held in September 2019 to help combat cyberbullying.

In addition, the QFCC's Principal Commissioner Cheryl Vardon commissioned *This Place I Call Home: the views of children and young people on growing up in Queensland* (GUIQ) in 2019, capturing the voices of more than 7,000 children and young people living in Queensland on their wants, needs, concerns and dreams.

Thirty per cent of respondents to GUIQ stated they had been cyberbullied in the past three months,⁷ and 56 per cent identified cyberbullying as a 'most important' issue for them.⁸ This indicates that cyberbullying is a pervasive and serious issue for Queensland children.

Relevant discussion paper questions relating to the QFCC's submission include:

7. *Is the proposed expansion of the cyberbullying scheme for children to designated internet services and hosting services, in addition to relevant electronic service and social media services, appropriate?*
8. *Is the proposed take-down period of 24 hours reasonable, or should this require take-down in a shorter period of time?*
10. *What other tools could the eSafety Commissioner utilise to effectively address cyberbullying in the circumstances where social media service and end-user notices are not well suited to the particular service upon which the cyberbullying has occurred?*

The QFCC supports the proposals in the discussion paper to both expand the range of online service providers who are subject to the cyberbullying scheme, and to halve the timeframe in which providers must act to remove cyberbullying material to 24 hours. This aligns with the QFCC's prior submissions on the *Online Safety Charter*, where it was noted that children and young people may experience a combination of vulnerabilities. This presents a challenge to the providers to act quickly and minimise the trauma experienced by all children, but especially

⁷ State of Queensland 2019, *This Place I Call Home: the views of children and young people on growing up in Queensland*, Queensland Family and Child Commission, https://www.qfcc.qld.gov.au/sites/default/files/This-place-i-call-home-report_FULL.pdf, accessed 7 February 2020, p 68.

⁸ State of Queensland 2019, p 67.

vulnerable cohorts such as (among others) Aboriginal peoples or Torres Strait Islanders and children with disability.⁹

Children who identify as LGBTQIA+ may experience particular vulnerability to cyberbullying content. In the United States, children who self-identified as LGBTQ were in 2017 more than twice as likely to have been cyberbullied in the past 12 months than children who did not identify as such.¹⁰ The reaction of the regulator and service providers to cyberbullying complaints must be of a seriousness and urgency which is proportionate to the particular vulnerabilities of these groups.

Youth Champions were supportive of a 24-hour takedown timeframe for cyberbullying and image-based abuse material.

Youth Champions were mindful of the administrative burden of policing the scheme for online service providers and believed that any proposal must be achievable for it to be effective.

Some young people have told the QFCC that they would like the needs of the perpetrator to be considered in the cyberbullying response. QFCC consultation has identified that many young people want harsher penalties for perpetrators of cyberbullying and image-based abuse. It is important that any cyberbullying response which the eSafety Commissioner undertakes is done in consultation with young people and their communities, to make sure that the needs of both the victim and perpetrator are addressed.

It is vital that, as with communication regarding the BOSE, communication regarding how young people can access their rights under the cyberbullying scheme must be proactive and presented in a child-friendly manner. Young people have advised the QFCC that they find the eSafety Commission website difficult to navigate, or that it is hard to locate information on how to make a complaint. Some young people were not aware of the existence of the eSafety Commissioner at all.

It is important for the *Online Safety Act*, and any new functions on the regulator's website, to be strongly promoted and communicated in clear, child-friendly language.

Youth Champions had particular concerns for the wellbeing of the employees of online service providers tasked with reviewing harmful (and potentially abhorrent) content of all types. They thought that protections for these employees should be considered if possible.

⁹ Queensland Family and Child Commission, Submission to the Department of Communications and the Arts, 3 April 2019, pp 3-4.

¹⁰ Centers for Disease Control and Prevention 2018, 'Youth Risk Behaviour Surveillance – United States, 2017', *Morbidity and Mortality Weekly Report* 67(8), <https://www.cdc.gov/mmwr/volumes/67/ss/pdfs/ss6708a1-h.pdf>, accessed 12 February 2020, p 18.

Non-consensual sharing of intimate images

Recommendation

The QFCC recommends:

- The Department's proposal to reduce the image-based abuse takedown period to 24 hours is appropriate.
- The Department should consider the findings of the QFCC's #doiknowu campaign (and similar projects in other jurisdictions) to address the connection between image-based abuse and online grooming.
- Penalties for image-based abuse should not disproportionately impact children and young people.

Discussion paper questions 16 through 18 relate to the non-consensual sharing of intimate images ('image-based abuse'):

16. *Is the proposed take-down period for the image-based abuse scheme of 24 hours reasonable, or should this require take-down in a shorter period of time?*
17. *Does the image-based abuse scheme require any other modifications or updates to remain fit for purpose?*
18. *What additional tools or processes, in addition to removal notices, could be made available to the eSafety Commissioner to address image-based abuse being perpetrated across the range of services used by Australians?*

The QFCC supports the image-based abuse scheme and agrees with the Department that the present system is up-to-date and responsive to the needs of Australians generally. The QFCC also supports changes which reduce the timeframe for the removal of image-based abuse to 24 hours and broaden the definition of image-based abuse.


However, children are a vulnerable cohort and are at particular risk of image-based abuse. In 2017, 90 per cent of young people aged 14 to 17 believed 'sexting' happened in their social groups, and five per cent reported sending an intimate image to another person.¹¹ This high prevalence of risky online behaviour means that children are exposed to great risk of their intimate material being shared without their consent.¹²

Youth Champions believed that systems to prevent perpetrators from creating fresh accounts on social media services should be implemented, in order to limit their ability to continue their abuse despite being reported by the victim.

Image-based abuse is strongly connected to the practice of online grooming, where groomers may ask their victims to send intimate images. In response to the 2015 *Queensland Organised Crime Commission of Inquiry* (Byrne Report), the QFCC established the *Out of the Dark* program to address internet-related child sexual abuse. In collaboration with State and Federal agencies and the private sector, the QFCC developed '#doiknowu': a

¹¹ Australian Government 2017, *Young people and sexting – attitudes and behaviours*, Office of the eSafety Commissioner, <https://esafety.gov.au/parents/big-issues/sending-nudes-sexting>, accessed 13 February 2020.

¹² In this context, 'consent' refers to *de facto* consent. The QFCC acknowledges that, at law, a child cannot consent to the sharing of intimate images.



community awareness campaign which aims to educate young people aged 12–14 and their parents and educators about how to recognise, prevent and respond to online child sexual grooming.

The image-based abuse scheme and response should identify and address the particular risks borne by children in this space, rather than only treating the matter as a criminal issue. The QFCC recommends that learnings from #doiknowu should be used to inform child-focused education and awareness, in order to address these risks and help combat their connection to grooming behaviour.

Youth Champions were supportive of a proposal to provide help and rehabilitative support to young people who post harmful content online. This might include cyberbullies or those who engage in image-based abuse.

Youth Champions recognised that young people engaging in this behaviour may be facing problems of their own and deserve help and attention.

The QFCC supports expanding the civil penalties scheme as a means of enforcement against perpetrators of image-based abuse. However, this raises the risk of young children suffering significant penalties due to their actions. The QFCC does not support changes which may disproportionately affect young perpetrators, as to do so would be counterproductive to their rehabilitation.

The QFCC also proposes the inclusion of standards in the *Online Safety Act* relating to how the eSafety Commissioner will communicate with complainants. It is important for the wellbeing of young people that they see the regulator is 'on their side' and is taking complaints seriously. This can be accomplished through regular and meaningful communication with the complainant throughout the complaint process.

The QFCC suggests the inclusion of communication standards in the legislation, or in policy developed and published as part of its implementation.

Opt-in tools to restrict access to inappropriate content

Recommendation

The QFCC recommends:

- Opt-in tool accreditation is a means of keeping children safe online but must be implemented thoughtfully.

The Department proposes to expand the existing accreditation scheme for opt-in parental controls, to keep pace with technological change and improve the ability of parents and carers to protect their children from harm online.

Relevant discussion paper questions relating to the QFCC's submission include:

24. To what extent would an expanded accreditation scheme for opt-in tools and services assist parents and carers in mitigating the risk of access by minors to potentially harmful content?

27. When evaluating opt-in tools and services for accreditation, what criteria should be considered?

The QFCC is generally supportive of such measures. The protection of children and their families online can be furthered by empowering parents to access user-friendly tools, which provide appropriate safeguards against their children being exposed to harmful content.

An accreditation scheme for this purpose should be operated by the eSafety Commissioner, in order to make sure that tools are designed in such a way as to not be used against the interests of vulnerable young people.

Youth Champions voiced concerns over the use of opt-in tools to control young peoples' access to harmful online content. They believed that children would be likely to circumvent such tools, limiting their effectiveness.

Youth Champions were very concerned that such tools could be used to prevent children in abusive households from accessing advice and help online.