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Senate Legal and Constitutional Affairs Committee
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eSafety Submission - Senate inquiry into current and proposed sexual consent laws in Australia

The eSafety Commissioner (eSafety) welcomes the opportunity to respond to the Senate inquiry into current and proposed sexual consent laws in Australia.

eSafety is Australia's national independent regulator for online safety. We lead, coordinate, educate and advise on online safety issues and aim to empower all Australians to have safer, more positive online experiences.

We provide a strong body of online safety education through audience-specific and research-based resources and our image-based abuse, cyberbullying and adult abuse schemes provide eSafety with powers to help protect Australians from most serious forms of online abuse.

We believe that a harmonised and holistic approach in consent education is needed to help prevent and combat serious online harms, such as image-based abuse.

Education needs to start early

It is our view that online safety education needs to start early in life and as children and young people grow and evolve, so does the content and complexity of the issues taught. It is particularly important that we seek all opportunities to help bolster young people's safety and their ability to develop and navigate healthy, respectful and consenting intimate relationships.

Our wide-ranging set of tools and resources for children, young people, schools and families are underpinned by the 'Four Rs of Online Safety' - *respect, resilience, responsibility and reasoning*. We develop scaffolded, age-appropriate educational content that is mapped to the Australian Curriculum. This includes material that intersects with respectful relationships, consent and understanding harmful sexual behaviours, and that is delivered in a number of ways – including through web content, lesson plans and other resources that help families navigate delicate and difficult conversations.

Some key examples include our [Online boundaries and consent](#) suite of resources designed to support primary school age students as they start to learn about online consent and permission, and how to define and create online boundaries. For older children (ages 13+), [The YeS Project](#) broadly address themes of harassment, consent, peer pressure and ethical decision making within the digital context.

We believe it's important to engage with young people directly so they can help shape content, programs and policies that directly impact them. Our inaugural eSafety Youth Council was established in April 2022 and provides an opportunity for 24 young people aged 13 to 24 to discuss the online issues most important to them; how they'd like to be assisted to access support and reporting services; and what their preferred method for receiving online safety information is.

Our new youth channels and social media campaign ([SCROLL](#)), run across Instagram, YouTube and TikTok and feature real stories and examples of how young people can protect themselves, where to get help, and ways to support friends. Our refreshed and new web content has also been co-designed with young people and includes [short video conversations](#) on consent.

A holistic and co-ordinated approach to online safety education is critical

Our Best Practice Framework for Online Safety Education establishes a consistent national approach that supports education systems across Australia to deliver high quality programs, with clearly defined elements and effective practices. The Framework supports the teaching of a range of online safety topics in age-appropriate circumstances, including respectful relationships and harmful sexual behaviours online.

Our Trusted eSafety Provider Program supports schools and community groups to access online safety education that aligns with eSafety's Best Practice Framework. The program includes a community of practice where providers engage in professional development, discuss new research, and share insights from the field. All 26 currently endorsed providers offer content on the topic 'respect and consent in online relationships'.

eSafety's Online Safety Grants Program has supported two projects with a particular focus on respectful relationships and consent. The Alannah and Madeline Foundation delivered 'Crushed But Okay', which aimed to reduce technology-facilitated harm of a sexualised nature, perpetrated by young males. Sexual Health Victoria was also funded to develop and deliver 'Youth Cybersafety, Relationships and Sexuality', a whole-school program that aims to increase understanding of safe online socialising and sexuality for young adolescents.

We recently established the National Online Safety Education Coordination Council (Council) to foster greater collaboration with Government, Catholic and Independent school education sectors in each state and territory. The Council will provide a forum for regular communication and cooperation between eSafety and school education organisations to support online safety education.

Image-based abuse – a mechanism to address serious online harms

Under the *Online Safety Act 2021* (Cth) (the Act), the image-based abuse scheme provides a robust mechanism to protect Australians from serious online harm where consent is the heart of the matter.

Under the Act, consent must be 'express, voluntary and informed', which means the person understands what they are being asked, and how the image will be used, and has not been tricked or forced into agreeing to their intimate image being shared online.

A person under 18 years cannot consent to their intimate image being shared, nor can a person who is in a mental or physical condition where they are not capable of giving consent or their capacity to give consent is substantially impaired.

Also, it is unlawful to share an intimate image of anyone under 18, although there are various defences/exceptions to criminal charges in some jurisdictions which apply to images of oneself and to 'similar age' sexting.

In the context of threatened, or actual, non-consensual sharing of intimate images, the idea of consent is at the core of how eSafety responds to such reports relating to image-based abuse and the enforcement options available to us. We aim to determine if a person has provided consent for an intimate image or video being posted. Even when a person has previously given consent to share their intimate image, they may later object to its continued availability online.

Our removal powers allow eSafety to issue notices to online service providers and end users requiring them to remove intimate images which are the subject of a valid complaint or objection.

Age verification roadmap for online pornography

eSafety is developing a report and roadmap with a series of holistic recommendations to address the harms associated with children's access to online pornography, including its potential to influence their understanding of consent.

This roadmap forms part of the government's response to the House of Representatives Standing Committee on Social Policy and Legal Affairs (Committee) report, '[Protecting the age of innocence](#)', which asked eSafety to consider if, and how, a mandatory age verification mechanism could practically be achieved in Australia.

In addition to considering technological responses, the Committee recommended that the roadmap set out activities for awareness raising and education for the public, as well as recommendations for complementary measures to ensure that age verification is part of a broader, holistic approach to address risks and harms associated with children's access to online pornography.

eSafety has received numerous submissions in response to a [call for evidence](#), undertaken extensive multi-sector [stakeholder consultation](#) and conducted desktop research as well as direct research with young people aged 16-18 about their views and experiences to inform the roadmap, which will be submitted to Government in March 2023. It will include an overview of relevant educational initiatives across consent, respectful relationships, sexuality and online safety and make recommendations about how pornography literacy efforts can be strengthened by building on existing curricula and resources.

Our research, the evidence that we gather through our community consultation processes, and intelligence from our investigative teams all demonstrate the critical need for eSafety's continuing work in consent education, to empower all Australians to understand what consent is and why it is important.

Sincerely,

Julie Inman Grant

eSafety Commissioner

27 February 2023