

# Chapter 5

## Committee view

5.1 Cyberbullying is a serious problem. It can cause severe harm to both victims and perpetrators, as well as their families, friends, and communities. It is critical that Australian governments, social media platforms, and broader society take action to reduce its incidence and the harm it causes.

5.2 The evidence gathered during this inquiry demonstrates that cyberbullying is extremely complex. There are myriad causes, and the consequences can vary greatly depending on context and the individuals concerned. Cyberbullying occurs in many guises, and there are major differences between cyberbullying by children and cyberbullying by adults.

5.3 A clear and agreed definition of cyberbullying, which acknowledges its complexity, would support effective policymaking. It would also make the issue clearer for the community, which is an important step in reducing the incidence of cyberbullying behaviours.

### **Recommendation 1**

**5.4 The committee recommends that the Australian Government consult state and territory governments, non-government organisations, and other relevant stakeholders, to develop and publicise a clear definition of cyberbullying that recognises the breadth and complexity of the issue.**

5.5 The committee agrees with the weight of evidence that both bullying and cyberbullying are, at their roots, social and public health issues. Government measures to reduce cyberbullying should emphasise prevention and education. They should recognise that the causes of cyberbullying are linked to broader societal issues, including schoolyard bullying and sexism. They should also appreciate that some groups experience a disproportionate amount of cyberbullying.

5.6 The committee heard encouraging evidence about education initiatives, especially for young people, delivered both by government and non-government organisations. However, it appears that not all children, and perhaps many adults, are not properly exposed to these initiatives. The continued prevalence of cyberbullying indicates that further work is required.

### **Recommendation 2**

**5.7 The committee recommends that Australian governments approach cyberbullying primarily as a social and public health issue. With this in mind, the committee recommends that Australian governments consider how they can further improve the quality and reach of preventative and early intervention measures, including education initiatives, both by government and non-government organisations, to reduce the incidence of cyberbullying among children and adults.**

## **Criminal offences**

5.8 The committee agrees that criminal offences should only be applied in the most serious cyberbullying cases. In general, other avenues to address the problem should be exhausted before criminal action is taken, particularly where the perpetrator is a child. The committee also acknowledges that criminal charges can only be applied after the damage has been done.

5.9 The committee accepts evidence that existing Commonwealth, state, and territory criminal offences adequately cover serious cyberbullying behaviours. In particular, section 474.17 of the *Criminal Code Act 1995* (Criminal Code) is a broadly framed, technologically-neutral offence.

5.10 Nonetheless, the committee is concerned by evidence implying that some cases of serious and possibly criminal cyberbullying have not been pursued in the courts. This may be due to a lack of awareness of the offences among the public. It may also be due to a lack of understanding of, or willingness to apply, these provisions by law enforcement authorities. It appears that there may be particular difficulties with how police currently investigate cyberbullying cases in which the perpetrator is anonymous, or in which multiple victims or perpetrators reside in different states or territories. The cases relayed by the National Council of Single Mothers and their Children (at paragraphs 3.43 to 3.44) were especially concerning.

5.11 The committee notes that law enforcement authorities currently do not employ adequate and consistent training across and within jurisdictions and that there is an urgent need to raise understanding and awareness of how existing criminal offences can be applied to cyberbullying behaviours. Further, it appears that the current problems may be compounded by differences between the relevant laws of states, territories, and the Commonwealth.

### **Recommendation 3**

**5.12 The committee recommends that the Senate not legislate to increase penalties for cyberbullying offences committed by minors beyond the provisions already in place.**

### **Recommendation 4**

**5.13 Noting the serious harms that cyberbullying can cause, the committee recommends that Australian governments ensure that:**

- **the general public has a clear awareness and understanding of how existing criminal offences can be applied to cyberbullying behaviours;**
- **law enforcement authorities appropriately investigate and prosecute serious cyberbullying complaints under either state or Commonwealth legislation, coordinate their investigations across jurisdictions where appropriate, and make the process clear for victims of cyberbullying, and**
- **consistency exists between state, territory and federal laws in relation to cyberbullying.**

5.14 The maximum penalties for cyberbullying should recognise the serious harm that cyberbullying can cause. This includes high levels of distress and mental health problems, and there may also be some degree of link between cyberbullying and suicide. The committee takes the view that the current maximum penalty under section 474.17 of the Criminal Code may not adequately recognise these harms, and is conscious that similar but more serious offences in the Criminal Code have maximum penalties of seven or ten years' imprisonment.

### **Recommendation 5**

**5.15 The committee recommends that the Australian Government consider increasing the maximum penalty for using a carriage service to menace, harass, or cause offence under section 474.17 of the *Criminal Code Act 1995* from three years' imprisonment to five years' imprisonment.**

### **The Office of the eSafety Commissioner**

5.16 The committee strongly supports the role of the Office of the eSafety Commissioner, including the cyberbullying complaints scheme. The committee is conscious that the eSafety Office manages a very high number of cyberbullying complaints, and the total volume appears to be increasing. The team responsible for addressing these complaints comprises just four staff members. It is critical that the Australian Government provide adequate resources for the Office of the eSafety Commissioner to fulfil all its functions.

5.17 It is also important that the general public be aware of the eSafety Commissioner's work, and that victims of cyberbullying can make complaints to the Commissioner in certain circumstances. Cyberbullying remains common, and it is plausible that the large number of complaints received by the eSafety Commissioner each year does not include all meritorious cases.

5.18 Further, the committee considers it important that the Australian Government continually evaluate whether amendments to the eSafety Commissioner's functions and procedures, including the cyberbullying complaints scheme, would be beneficial.

5.19 The committee accepts evidence from the eSafety Office that the definitions of 'social media service' and 'relevant electronic service' under the *Enhancing Online Safety Act 2015* may not adequately capture all platforms on which cyberbullying occurs. Additionally, consideration should be given to increasing the basic online safety requirements for social media services under the Act. Consideration should also be given to improving the ability of the eSafety Office to work with the Australian Federal Police to access social media account data, and other relevant data, to improve its ability to apply the end user notice scheme.

5.20 The committee notes with interest the Law Council of Australia's recommendations (at paragraph 4.14) to amend technical elements of the cyberbullying complaints scheme. The committee also notes that the complaints scheme is currently limited to cyberbullying material targeting an Australian child, and agrees with evidence that it may be appropriate to expand the scope. This expansion could encompass vulnerable adults or all adults, but would require more resources to be allocated to the eSafety Office.

5.21 Additionally, the committee sees potential merit in requiring social media platforms to name and authorise a person to receive legal service in Australia, similar to the provisions of the Network Enforcement Act in Germany. The committee notes that the *Enhancing Online Safety Act 2015* currently requires Tier 1 services to name an employee as contact person for the purposes of that Act, which is a lesser requirement and does not apply to all social media platforms.

### **Recommendation 6**

**5.22 The committee recommends that the Australian Government:**

- **ensure that the Office of the eSafety Commissioner is adequately resourced to fulfil all its functions, taking into account the volume of complaints it considers;**
- **promote to the public the role of the Office of the eSafety Commissioner, including the cyberbullying complaints scheme;**
- **consider improvements to the process by which the Office of the eSafety Commissioner can access relevant data from social media services hosted overseas, including account data, that would assist the eSafety Office to apply the end-user notice scheme, and**
- **consider whether amendments to the *Enhancing Online Safety Act 2015* relating to the eSafety Commissioner and the cyberbullying complaints scheme would be beneficial, and in particular, consider:**
  - **expanding the cyberbullying complaints scheme to include complaints by adults;**
  - **expanding the application of the tier scheme by amending the definitions of 'social media service' and 'relevant electronic service', and**
  - **increasing the basic online safety requirements for social media services.**

### **Social media platforms**

5.23 The committee acknowledges that the services provided by social media platforms are very often beneficial for individuals and society. However, these platforms are also a primary vehicle for serious cyberbullying.

5.24 The committee notes that civil penalties for social media platforms are already in place, but the eSafety Commissioner has not yet considered it necessary to apply them. This is partly due to cooperation from social media platforms. Given this, the committee does not think it is currently necessary to increase the maximum civil penalty that the eSafety Commissioner could apply.

5.25 However, the committee remains deeply concerned about the continued prevalence of cyberbullying on social media platforms. It is conscious that businesses are motivated by financial considerations, and sees merit in the proposal from Maurice Blackburn Lawyers (at paragraphs 4.18 to 4.19) to impose a statutory duty of care on social media platforms to ensure the safety of their users. It also encourages the

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Australian Government to closely monitor the recently introduced Network Enforcement Law in Germany, and apply useful lessons from Germany in Australia.

5.26 Social media platforms should play a major role in reducing cyberbullying. The eSafety Commissioner's cyberbullying complaints scheme is a safety net and its existence does not reduce the responsibilities of Facebook, Google, Twitter and their ilk. The committee is deeply concerned about cases in which social media platforms appeared to respond inadequately to complaints, and wishes to make it clear that it is up to social media platforms to make their platforms safe environments, reduce the incidence of cyberbullying, and promptly take down or otherwise manage all offending material. The committee considers 'safety by design' a useful principle here.

### **Recommendation 7**

**5.27 The committee recommends that the Australian Government place and maintain regulatory pressure on social media platforms to both prevent and quickly respond to cyberbullying material on their platforms, including through the use of significant financial penalties where insufficient progress is achieved.**

### **Recommendation 8**

**5.28 The committee recommends that the Australian Government legislate to create a duty of care on social media platforms to ensure the safety of their users.**

5.29 The committee heard evidence regarding social media platforms' data, including data on user complaints, broken down by the type of complaint and the nature of the platform's response. The committee notes that the Network Enforcement Law in Germany contains certain reporting requirements. Notwithstanding the assurances of social media platforms, the committee considers that the mandatory publication of this data would provide considerable motivation for the platforms to address cyberbullying. This data would also aid society's understanding of the nature and scale of cyberbullying, although the committee acknowledges that user-generated data may have some limitations.

5.30 Given the Office of the eSafety Commissioner's role and expertise, it may be appropriate for the eSafety Commissioner to define what data must be published, and the format in which it must be presented.

### **Recommendation 9**

**5.31 The committee recommends that the Australian Government consider requiring social media platforms to publish relevant data, including data on user complaints and the platforms' responses, as specified by the eSafety Commissioner and in a format specified by the eSafety Commissioner.**

