



29 JANUARY 2015

PROTECTING CHILDREN FROM CYBER-BULLYING PRIVACY UPDATE

THE FEDERAL GOVERNMENT'S ENHANCING ONLINE SAFETY FOR CHILDREN BILL 2014 IS A SIGNIFICANT CYBER REFORM. THE FIRST DIRECT RESPONSE TO CYBER-BULLYING IT MAY ALSO HERALD A NEW AND TARGETED APPROACH TO THE ONLINE ACTIVITY OF AUSTRALIA'S YOUTH WITH MUCH WIDER RAMIFICATIONS.

Late last year the Federal Government introduced the *Enhancing Online Safety for Children Bill 2014* (the Bill). While not specifically a privacy initiative, the Bill is aimed at attacking the growing problem of cyber-bullying directed at Australia's children. The Bill is expected to be passed into law early this year.

The key measure of the Bill is to establish the Office of the e-Safety Commissioner (Office) to take complaints regarding incidents of online cyber-bullying, initiate enforcement action to remove the offending material and issue fines to non-compliant websites/social media services (Websites).

The other main proposal of the Bill is to establish a two-tiered approach to the classification of websites within a complaints framework. A tier one website will be a site which is deemed to be compliant with all online safety initiatives published by the Office. If a website fails to comply with all online safety initiatives, it will be classified as a tier two website and will be subject to close monitoring by the Office and may be subjected to enforcement and/or penalties issued by the Office.

OFFICE OF E-SAFETY COMMISSIONER

The Office will be created with the Australian Communications and Media Authority (ACMA), not the Privacy Commissioner and will most likely be resourced with ACMA staff currently engaged in online safety matters. The e-Safety Commissioner (Commissioner) will be charged with implementing online safety initiatives focused at children, including educating minors concerning online safety.

PROCESS AND POWERS OF THE COMMISSIONER

Under the rules of the proposed complaints framework the complainant is required to approach the Website first regarding material harmful to minors online. If the complainant receives no response or an inadequate response, complainants can then complain to the Office.

The Office can then adjudicate if material posted online is "seriously intimidating, harassing or humiliating" to an Australian child, and require action be taken to remove the material from public display.

The Commissioner and the Office may:

- Issue a notice to a website requiring it to remove material determined to be in breach of the new law.
- Issue a notice to a person who posted the material, requiring the person to remove the material, refrain from posting the material and/or apologise for posting the material.

FINES

The Commissioner may impose fines of 100 penalty points per day (ie \$17,000) on Websites and/or individuals that fail to comply with the Commissioner's notices.

The Commissioner's powers will not extend to the ability to impose fines on Websites that are hosted outside Australia.

NEXT STEPS

Although the Bill has attracted some criticism from civil rights groups, the Opposition has not spoken out against the proposed legislation and the expectation is it will be passed without significant amendment or opposition. The Bill will be debated during the next sitting of parliament. It has been referred to the Senate Environment and Communications Legislation Committee, whose review is due by 3 March.

POSSIBLE FUTURE PRIVACY IMPLICATIONS

While this Bill and proposed scheme will not be supervised/enforced by the Privacy Commissioner, it marks a significant divergence from current practice in Australia by considering children in a different/special category in respect of their online presence and interactions for the first time in Australia.

The real issue is whether this is a first tentative step in establishing a wholly separate treatment of children online as a special class (eg as with COPPA in the US), which ultimately may also include specific privacy rules for children online.

MORE INFORMATION

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