



20 November 2024

Consultation for the Industry Codes of Practice (Class 1C and Class 2 Material)

Thank you for the opportunity for the **Australian Child Rights Taskforce** (the Taskforce) to make a submission to this Consultation. The Taskforce¹ is a coalition of over 100 organisations, networks and individuals committed to the protection of the rights of children in Australia.

The eSafety Commissioner has requested that industry develop these codes by the end of 2024. The draft codes will cover the online environment, including providers of social media, messaging, search engine and app distribution services, internet and hosting service providers, manufacturers and suppliers of equipment that connects to the internet, including smart devices and computers. The Codes will apply to operators of all websites that can be accessed by Australian users.

The Australian Child Rights Taskforce and its work

One of the key roles of the Taskforce is to assess the implementation of the **United Nations Convention on the Rights of the Child** (the Convention) in Australia. When Australia ratified the Convention in 1990, this was a commitment that every child in Australia should enjoy the rights set out in the Convention.

Since 2004, the Australian Child Rights Taskforce has published a series of reports (most recently 'The Children's Report')², that have examined the implementation of the Convention in Australia. These reports have assisted the **United Nations Committee on the Rights of the Child**³ in its review of Australia's child rights implementation. They have also informed the UN Committee's recommendations⁴ over a broad range of policy areas where improvements are necessary, including in health, mental health, business, services, access to justice and online safety policy and practice.

This submission has been developed based on the collaborative work of the Taskforce including our submission to the Online Safety Review. Our processes are consultative and draw on the experiences of children and young people and those who work with them across a range of sectors and communities. It is built on an understanding of the Convention and a child rights approach and on our knowledge and experience in translating this understanding and approach into policy and practice.

The Taskforce has been working with **Reset. Tech** and other civil society organisations including **Child Fund Australia, the Alannah and Madeleine Foundation, Australian Youth Affairs Coalition, Save the Children / 54 reasons** on understanding the best approach to provide for online safety for children and young people and to inform this submission.

¹ <https://childrightstaskforce.org.au/about-us/>

² <https://apo.org.au/node/200771>

³ <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

⁴ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/AUS/CO/5-6&Lang=En

Key Messages

The Taskforce believes that:

- The work of creating child safe online environments is challenging and requires ongoing and shared commitment, and an understanding of the opportunities and harms. The protection of personal information and privacy and the prevention of harm are all important features of a safe online environment for children and adults alike. **Responsibility for this should be shared by government, industry, and civil society** with appropriate emphasis on the role of government in regulation and industry in implementation.
- **Involving children and supporting their involvement** in creating and maintaining safe online environments is essential. This must include **recognition of their rights and views** and ensuring that they can participate meaningfully, safely and actively for access, use and privacy.
- Given constant developments in online environments, **evolving and ongoing scrutiny** is required to the **effectiveness of past and proposed regulatory reforms** including in protecting children, their data and privacy, and in creating child safe environments.
- Regulatory measures can and should align with international child rights principles and best practice; with existing child safety and child protection laws and obligations; with key national policies including the **National Strategy to Prevent and Respond to Child Sexual Abuse**, and the ongoing implementation of the recommendations of the **Royal Commission into Institutional Response to Child Sexual Abuse**.
- In the context of online environments, the guidance of the **UN Child Rights Committee** calls for **appropriate regulation of companies operating in Australia** including to monitor for violations of children’s rights, full disclosure of the impacts of business activities on children and measures and responses to prevent, mitigate and address adverse impacts.
- The **UN Child Rights Committee** also expects efforts to expand access to online information to children in rural or remote areas; children with disabilities; children in need of mental health services and to ensure that children and communities are supported to understand and exercise appropriate online behaviour, including **preventive strategies against online abuse and/or exploitation services**.

The Child Rights Approach

The Convention reflects a fundamental shift that occurred during the 20th Century to understanding children as autonomous human rights holders with agency and evolving capacities, who have distinct rights, views and interests to those of adults. This shift is increasingly reflected in domestic legal systems as well as international law.

The Convention sets out this understanding in a range of ways, including through its requirement that processes in law, policy, practice, and review support the implementation of the rights set out in **the Convention** for every child. The child rights approach emphasises the strengths of each child, and for adults and corporations to meet their obligations to respect, protect and uphold children’s rights.

International Best Practice

The child rights approach guides the development of international best practice in supporting children and their rights. In recent years, this has included recognising, understanding, guiding, and supporting children's online experiences. The application of the **'best interests' principle** (as set out in **article 3 of the Convention**) calls for consideration of the full circumstances of a child's experience and circumstances, as well as ongoing assessment and attention to the most effective protection and support for each child.

The **'best interests' principle** allows for balancing the rights of access to information, learning and expression with the protections for safety and privacy. It recognises that the Internet provides opportunities for information and education to children, including for those often otherwise disadvantaged in access. This includes children in rural and remote locations and children with different abilities. It recognises the evolving capacities of a child and calls for monitoring, support, guidelines and where necessary, restrictions which reflect and respect children's development.

We note that the developing body of knowledge in international child rights principles includes:

- The **UN Child Rights Committee's** [General Comment 14](#) (Best Interests)
- The **UN Child Rights Committee's** [General Comment 25](#) (Rights in a Digital World)
- The Report of the [UN Special Rapporteur on the Right to Privacy, Artificial Intelligence and Privacy, and Children's Privacy \(UN Doc A/HRC/46/37, 25 January 2021\)](#)

Areas for Attention in Australia

Among the recommendations already made by the **UN Child Rights Committee** to the **Australian Government**⁵ are the following relating to online environments:

- *Ensure the legal accountability of Australian companies ... for violations of children's rights ... and establish mechanisms for the investigation and redress of such abuses [and] require companies to undertake assessments, consultations, and to make full public disclosure of the environmental, health-related and children's rights impacts of their business activities and their plans to address such impacts (Paragraph 17)*
- *Expand access to information, including via the Internet ..., to children in rural or remote areas; promote children with disabilities' access to online information through making available audio description and captioning; ensure that children, their parents, and other caregivers are taught appropriate online behaviour, including preventive strategies, against online abuse and/or exploitation services, in particular, those under 14 years (Paragraph 27)*
- *Increase the availability of online mental health services and web-based counselling, while making in-person mental health services child-friendly and accessible to children, including those under 14 years (Paragraph 38)*

⁵ <https://www.ohchr.org/en/documents/concluding-observations/committee-rights-child-concluding-observations-combined-fifth-and>

The Current Context in Australia

The Taskforce wants monitoring and regulation to support and protect children’s rights in the digital world. This can be achieved by a consistent focus of identifying risk, addressing harms, enabling prevention of harm, and creating child-safe environments online. This should include supporting the development of ongoing and evolving capabilities to detect and report material and activities that facilitate harms including child sexual abuse and exploitation.

Given that reporting evidence of harm to children in physical environments is generally accepted in Australia (and legislated in many jurisdictions), **online environments** and social media providers **should meet the same community standards** and share this responsibility.

Standards of transparency and accountability and a duty of care should be required. Risk assessments should anticipate, review, and assess to reduce and respond to the risk of harms. We adopt an expansive concept of safety which incorporates and addresses issues of privacy and expression⁶ and the issues and experiences that can impact on the health and welfare of children and young people. There is a clear demand in the community to understand and address experiences of online bullying and harassment and mental health impacts.

We expect a proactive and preventive approach from industry. There must be enhanced community and industry awareness of and attention to the rights of children and support in balancing their participation, protection and privacy. The risks of exposure to harms to health (such as junk food, alcohol, gambling, and tobacco), the need for respect in relationships and the impacts of advertising and socialisation by commercial interests require attention.

The Australian Child Rights Taskforce and this Consultation

We support the development of codes to guide and understand the risks of harm caused by children's exposure to inappropriate, violent and overly sexualised content online. Existing guidance provided by the Online Safety Act and the Baseline Online Safety Expectations are a starting point for this work. We invite industry to proactively engage with its role to responsibly address these risks.

We support the role of regulation but encourage industry to set higher standards than those required by regulation. Otherwise, we support the role of regulators to intervene to strengthen protections for children's rights. The Codes can be a useful tool and guide but evidence of harm and the enactment of other forms of regulation and enforcement including a statutory duty of care will also be required, particularly in the absence of proactive prevention strategies by industry.

⁶ <https://fairplayforkids.org/wp-content/uploads/2022/07/design-discriminations.pdf>

More Detailed Commentary on Draft Codes

We support the extension of the codes to address violent content as well as pornography, self-harm material, and simulated gambling. We support a broad definition of online pornography such as that proposed by the eSafety Commission in its Position Paper which includes ‘realistically simulated, generated and animated sexual content; high-impact text-based sexual content, including interactive services such as chatbots and AI models providing pornographic content; and high-impact nudity.’

We support the inclusion of risk assessment mechanisms and requirements. These mechanisms must include risk of harm to users and not be limited to the functionality of devices.

We do not support the limitation of a requirement for evidence of the use by a significant number of children as users to trigger assessment and preventative action. We support the use of default settings as preliminary (but not determinative) mechanisms to reduce the risk of harm.

We remain unconvinced of the value and efficacy of age assurance mechanisms as blanket and arbitrary measures unless there is the ability to address the individual circumstances of children and young people.

We support the view that the Codes should address and acknowledge issues of privacy and prohibit invasive or unreasonable data practices.

We encourage attention to international models of best practice, and coordination with effective implementation across national boundaries. We support a systemic approach to regulation that not only captures deliberate actions and actors but also accidental or incidental harms and risks that may arise in a rapidly developing technological space.

We are unclear about children and young people’s engagement in the drafting of this Code, and would support their engagement as a way to both improve the Codes and realise children’s rights.

We support **Reset. Tech’s** proposed systemic and comprehensive approach to compliance and enforcement that imposes a duty of care which creates the requirement for risk assessment and mitigation that can be reviewed and revised to address developments and new evidence of harms.

In that regulatory context, we support the introduction of a requirement to proactively drive consideration of the rights of and protections for children and young people using internationally recognised and shared child rights principles.

We thank you for the opportunity to contribute to this Consultation. We are committed to ongoing engagement with public policy discussions to provide appropriate regulation and protection and support for the rights of children and young people online.

Yours sincerely

On behalf of the **Australian Child Rights Taskforce**

The Australian Child Rights Taskforce Policy Working Group

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