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## **STATUTORY REVIEW OF THE ONLINE SAFETY ACT 2021 – ISSUES PAPER**

Thank you for the opportunity to respond to the Issues Paper supporting the Statutory Review of the *Online Safety Act 2021* (Cth).

### **WHAT RELATIONSHIPS AUSTRALIA DOES**

Relationships Australia is an Australian federation of community-based, not-for-profit organisations with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, cultural background, lifestyle choices, or economic circumstances. Relationships Australia provides services for victims and perpetrators of domestic, family, sexual and other interpersonal violence. We aim to support all people in Australia to live with positive and respectful relationships, and believe that people have the capacity to change how they relate to others. Relationships Australia believes that violence, coercion, control and inequality are unacceptable. We respect the rights of all people, in all their diversity, to live life fully within their families and communities with dignity and safety, and to enjoy healthy relationships. Our services include:

- Specialised Family Violence Services
- services designed for men, including programs to support parenting capacities and resources, Men’s Behaviour Change Programs, and tailored programs such as the Respectful Relationships Program for Indigenous clients
- Headspace (youth mental health) services
- mental health (including suicide prevention) services and programs
- individual, couples, and family counselling
- family law counselling, mediation and dispute resolution, and post-separation services for parents and children
- Children’s Contact Services (services which provide supervised contact and changeovers for high risk families)
- therapeutic and case management services to applicants for Redress Support Services, Forgotten Australians, Forced Adoption Support Services, Intercountry Adoptee Family Support Service, and Post Adoption Support Services
- parenting capacity programs
- gambling help services
- alcohol and other drugs services
- employee assistance programs
- supporting Australians with disability through our counselling services connected with the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

- Family Mental Health Support Services, and
- a range of tailored services for older Australians, including senior relationship services, elder mediation, elder abuse case management and mediation, social connection services and mental health services in residential aged care on behalf of Primary Health Networks in South Australia.

This submission draws from previous submissions by Relationships Australia National Office concerning:

- proposed industry codes for Class 1A and 1B (submission dated 30 September 2022)
- consolidated industry codes (submission dated 22 March 2023), and
- the Stage 2 Classification Reforms (submission dated 8 May 2024).

These submissions are available at <https://www.relationships.org.au/research/#advocacy>

Development of this submission was also informed by:

- the final report of the ACCC's digital platforms inquiry (2019)
- the Report of the House of Representatives Select Committee on Social Media and Online Safety (2022), and
- the Stevens Report (2023).

## GENERAL RECOMMENDATIONS

This section sets out recommendations that are in addition to measures recommended in our responses to specific questions.

**Recommendation 1** That the Australian Government ensure that the agencies, systems and processes with functions related to online safety (including eSafety, the National Classification Scheme, and law enforcement) are culturally safe, accessible and inclusive.

**Recommendation 2** That, to promote successful implementation of Recommendation 1, the Australian Government engage meaningfully with communities, and advocates for communities, that experience exclusion and/or marginalisation online.

**Recommendation 3** That the Government fully implement the following recommendations made in the 2022 report of the House of Representatives Select Committee: Recommendations 5 (active harm prevention by service providers), 6 (resourcing of the eSafety Commissioner), 7 (inquiry into technology-facilitated abuse), 8 (funding for victim survivors of TFA), 10 (end to end encryption as enabling TFA and other serious harms), 13 and 14 (algorithms), 16 (default privacy and safety settings for end users under 18 years of age), 17 (parental control functionality), and 24 (capability of law enforcement agencies and officers to engage with victim survivors of online harm).

**Recommendation 4** As recommended in our submission about Stage 2 of the Classification Reform process - that Government simplify and clarify the existing governance and regulatory arrangements, including by:

- bringing all Commonwealth mechanisms with a primary focus on online safety<sup>1</sup> into a single national entity, as recommended by the ALRC, and conferring on that regulator:
  - a unified suite of licensing (where appropriate) and regulatory powers, as envisaged by the ALRC (see Report 118, Recommendations 16-1, 16-2, 16-3 and 16-4). Within the single entity, the Chair of the ACMA and the eSafety Commissioner, could remain independent statutory officers, similar to the governance model included in the Exposure Draft of the Aged Care Act
  - powers and functions of providing a nationally coordinated approach to community awareness and education, and
- offering the community a single reporting and help-seeking mechanism, available through an online portal and through a dedicated 1800 number, to which children, their parents and caregivers can give sufficient information to enable immediate connection with the appropriate agency.

**Recommendation 5** As recommended in our submission about Stage 2 of the Classification Reform process - that Government confer on a single national regulator the following powers and functions, supported by adequate appropriations:

- undertaking or commissioning research activities (see ALRC, Report 118, Recommendation 9-4)
- notifying Australian or international law enforcement agencies or bodies about content that is, or would be likely to be, Prohibited without having the content first classified (see ALRC, Report 118, Recommendation 12-3), and
- the functions described at Recommendation 14-1 of ALRC Report 118.

**Recommendation 6** As recommended in our submission about Stage 2 of the Classification Reform process - that whether or not sitting within a single national regulator, the ACMA be sufficiently resourced to regulate content that, while not falling within the scope of the eSafety Commissioner's powers, nevertheless is accessible and harmful to children.

## FRAMING PRINCIPLES OF THIS SUBMISSION

### Principle 1 - Commitment to human rights

Relationships Australia contextualises its services, research and advocacy within imperatives to strengthen connections between people, scaffolded by a robust commitment to human rights. Relationships Australia recognises the indivisibility and universality of human rights and the inherent and equal freedom and dignity of all. In our 29 June 2023 submission to the inquiry by the Parliamentary Joint Committee on Human Rights into Australia's human rights framework,<sup>2</sup> we

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<sup>1</sup> The ACMA, the eSafety Commissioner, the current Classification Board and Classification Review Board (if each of these is retained), and the proposed Classification Advisory Panel.

<sup>2</sup> Available at [https://www.relationships.org.au/wp-content/uploads/PJCHRhumanrightsframework.FINAL\\_.pdf](https://www.relationships.org.au/wp-content/uploads/PJCHRhumanrightsframework.FINAL_.pdf)

recommended that Government should introduce a Human Rights Act that provides a positive framework for recognition of human rights in Australia (Recommendation 2 of that submission).<sup>3</sup>

That submission offered specific and substantive recommendations to elevate recognition of children as rights bearers and improve Australia's compliance with the Convention on the Rights of the Child. That Convention has particular salience in this policy context.

Younger and younger children routinely have almost unfettered access to harmful online content. Hill & Salter noted (notwithstanding the contrary view expressed at p 24 of the Issues Paper) that

... strong evidence that children's exposure to pornography is resulting in more severely harmful sexual behaviour, as well as other sexual behaviours amongst boys and young men (like non-fatal strangulation and spitting during sex) that girls and young women often do not want or enjoy; certainly, most do not often appreciate the danger inherent to strangulation.<sup>4</sup>

There is evidence that children can be groomed to accept sexual approaches in under 20 minutes.<sup>5</sup>

Further, Hill & Salter (2024) noted the risks of younger people becoming sexual violence offenders:

While child sexual abuse by adult perpetrators ha[s] decreased significantly over previous decades, abuse by known adolescents in non-romantic relationships has in the past few years increased, to become the most common perpetrator category for victimised young people now aged 16-24. This is a significant and recent change. Historically, adults were the most common perpetrators of child sexual abuse (and still are, for people aged over 25). Now, the most common sexual offender against children is another child. These statistics are alarming on their own, but they should also raise alarm bells about the potential for future perpetration, because sexual violence in childhood is a risk factor for other violence, including domestic and family violence in adult relationships (citing ALSWH, 2022)....<sup>6</sup>

Individuals with an interest in child sexual abuse material face fewer hurdles to producing, accessing and distributing it, where the operation of algorithms (including through recommender functionality) in fact promotes and incentivises production, access and distribution, and where the pace and reach of distribution has unprecedented scope to normalise child sexual abuse among offenders and potential offenders. Salter & Whitten (2022) reported that

... significant abuse experienced by abuse material victims prior to the internet, and suggests the popularization of the internet is linked to a trend toward more serious offending against children

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<sup>3</sup> Available at [https://www.relationships.org.au/wp-content/uploads/PJCHRhumanrightsframework.FINAL\\_.pdf](https://www.relationships.org.au/wp-content/uploads/PJCHRhumanrightsframework.FINAL_.pdf)

<sup>4</sup> Hill & Salter, 2024. See also the Government's media release of 1 May: Research shows 25 per cent of teenage boys in Australia look up to social media personalities who perpetuate harmful gender stereotypes. Social media algorithms can undermine gender equality by pushing misogynistic content that normalises sexist attitudes in young people.

<sup>5</sup> Baldwin, 2016.

<sup>6</sup> See also Cahill et al, 2024; Madigan et al, 2018. For links between gambling and DFV, see Freytag et al, 2020; Hing et al, 2020, Hing et al, 2021.

in abuse material. The consistent role of the home as the major site of abuse material production poses significant challenges to prevention, early intervention, and prosecution.

In a review of empirical research about parental production of child sexual abuse material, Salter & Wong (2023) found that

... parental CSAM production is common, more likely to involve pre-pubescent victims, more severe abuse, female as well as male perpetrators, and produces high-demand illegal content with serious long-term sequelae. However, the review found that the focus of child trafficking and sexual exploitation scholarship on “commercial” and profit-driven abuse has marginalized and obscured parental CSAM production as a serious policy challenge. These findings warrant a reorientation of research, policy, and practice approaches to technology-facilitated child sexual exploitation, as well as a reflection on the resistance of researchers and policymakers to acknowledging the problem of family-based sexual exploitation.

Accordingly, Relationships Australia considers that a key object of the Online Safety Act, the Expectations, the Codes developed by industry and by the eSafety Commissioner, and the National Classification Scheme (the Scheme) must be the protection of children and young people from content that is not safe or otherwise suitable for their developmental stages. Accordingly, we support amending the Online Safety Act to ensure that the best interests of children is a primary consideration of governments, regulators and service providers (see also **Recommendation 22**).

## **Principle 2 – Accessible and inclusive regulation**

Inclusive and universally accessible services are an imperative of human rights. This is because circumstances that operate to exclude, marginalise or discriminate against individuals become barriers to full participation in economic, cultural, political, and social life through the operation of systemic and structural factors including:

- legal, political and bureaucratic frameworks
- beliefs and expectations that are reflected in decision-making structures (such as legislatures, courts and tribunals, and regulators)
- policy settings that inform programme administration, and
- biases or prejudices that persist across society and that are reflected in arts, culture, media and entertainment.

End users should be supported by regulatory frameworks that are clear, intelligible, accessible and inclusive, and that empower them in gross asymmetries of knowledge and power relative to service providers. Accordingly, Relationships Australia is committed to advocating for:

- reducing complexity of the law (including the Scheme and related legislation) and its supporting processes
- reducing fragmentation, and
- ensuring high quality and evidence-based regulation, accompanied by robust accountability mechanisms.

### *Fragmentation*

Our commitment to accessibility also underpins our advocacy for systems and processes that lift from the shoulders of those least equipped to bear them the burdens of fragmented, siloed, complex and duplicative laws, policies, programmes, and administering entities. In the context of this submission, and the 'borderless' nature of online activity, we support 'global consistency in regulating digital spaces' (Issues Paper, p 37).

### *Cultural safety and responsiveness*

The Act, and the mechanisms created by it, must be culturally safe. This includes complaints mechanisms. Cost, literacy, language, bureaucratic hurdles and lack of confidence in cultural safety can all impede the access of Aboriginal and Torres Strait Islander people, and people from Culturally and Linguistically Diverse backgrounds, to 'White' systems. Well-founded distrust of government agencies, among First Nations people, in matters relating to children is also a significant barrier. It should not be forgotten that the National Classification Scheme, which forms part of eSafety's authorising environment, had a high profile role in the Northern Territory Emergency Response. The then Government justified that Intervention by allegations, in the *Little Children are Sacred* report,<sup>7</sup> of endemic sexual violence by First Nations adults against their children.

## RESPONSES TO ISSUES PAPER QUESTIONS

### **Part 2: Australia's regulatory approach to online services, systems and processes**

1. Are the current objects of the Act to improve and promote online safety for Australians sufficient or should they be expanded?

The objects should be expanded to include objects of:

- complying with Australia's human rights obligations under:
  - the Convention on the Rights of the Child
  - the Convention of Persons with Disabilities
  - the Convention on the Elimination of all Forms of Discrimination Against Women
  - the Convention on the Elimination of all Forms of Racial Discrimination
  - the International Covenant on Economic, Social and Cultural Rights, and
  - the International Covenant on Civil and Political Rights
- preventing, responding to, and remediating serious harm to people ordinarily resident in Australia, where that serious harm arises from engagement online with or using a service within scope of the Act, and
- consistent with practices in emergency management and disaster responses - taking an 'all hazards' approach to online safety, which includes not only the kinds of content and conduct described in the Issues Paper, but also threats to online safety arising from scams, unlawful use

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<sup>7</sup> AHRC, 2007.

of personal information acquired through data breaches, and online gambling.<sup>8</sup>  
(**Recommendation 7**)

#### 4. Should the Act have strengthened and enforceable Basic Online Safety Expectations?

Yes. Relationships Australia **recommends** that the Basic Online Safety Expectations should be enforceable, and the regulator should have the power to impose commercially and operationally meaningful sanctions where the Expectations are not met. (**Recommendation 8**)

#### 5. Should the Act provide greater flexibility around industry codes, including who can draft codes and the harms that can be addressed? How can the code drafting process be improved?

Until service providers have consistently and effectively demonstrated a commitment to achieving and sustaining a safe online environment, greater trust should not be reposed on them to design the obligations to which they are subject. Such an approach does not work to promote safety – and indeed, undermines it - where there are large asymmetries of knowledge and power between service providers and end users. Relationships Australia **recommends** that the current settings be maintained for at least five years. (**Recommendation 9**)

#### 6. To what extent should online safety be managed through a service provider's terms of use?

A service provider's terms of use should promote online safety and should include means by which end users can readily contact a service provider to make a complaint. This is necessary, but not sufficient, noting the general disregard that major service providers have shown to the safety of end users, particularly end users in circumstances of particular vulnerability (including, but not only, children). Relationships Australia **recommends** that the Act should impose on service providers a statutory duty of care<sup>9</sup> framed with sufficient flexibility to take into account the relative capacities of the end user and service provider to identify, ameliorate and reduce the severity of harm inflicted by the materialisation of risks. (**Recommendation 10**) For example, a global service provider would be held to a higher standard than a small, localised provider, and an adult would be expected to take greater responsibility for their online safety than an end user who is under the age of 18. The imposition of this duty is a necessary and proportionate response, given that:

- service providers are in a far better position than end users to take reasonable steps to ameliorate risks and consequences of their materialisation, and
- current settings allow service providers to profit from harmful content and conduct.

Aggravated and exemplary damages should be available to end users and to government agencies which bring actions pursuant to a statutory duty of care.

eSafety and other relevant agencies, as well as end users, should have standing to enforce that duty. While we acknowledge that the United Kingdom's duty of care does not confer a right to remedy on end

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<sup>8</sup> In relation to online gambling harms, see, eg, AGRC 2023a, 2023b, 2023c and 2023d; Deblaquiere et al, 2018; Gainsbury, 2012; Gainsbury 2015; Gainsbury et al, 2014; Greer et al, 2022; Hing et al, 2019-2020; Hing et al, 2020; King D& Delfabbro, 2018; Kristiansen & Severin, 2020; Rockloff et al, 2020; Sakata et al, 2022; Sakata & Jenkinson, 2022; Wardle & Zendle, D, 2021.

<sup>9</sup> See Recommendation 20 of the Select Committee Report.

users, Relationships Australia considers that this is essential, and an appropriate mechanism having regard to the asymmetry of knowledge and power between end users and service providers. It is also consistent with our existing hybrid approach that enables complaints as well as system level regulatory action.

#### 7. Should regulatory obligations depend on a service provider's risk or reach?

Relationships Australia **recommends** that regulatory obligations should be calibrated according to the following principles:

- a service provider's geographic reach
- service provider's revenue – in particular, regulation should be aimed explicitly at extinguishing commercial incentives to monetise online conduct and material that causes serious harm<sup>10</sup>
- the duration of breaches
- the likelihood that serious harm will be caused or has been caused, and
- the gravity of serious harms caused by materialisation of risk of serious harms.

**(Recommendation 11)**

### Part 3 – Protecting those who have experienced or encountered online harms

#### 8. Are the thresholds that are set for each complaints scheme appropriate?

Yes.

#### 9. Are the complaints schemes accessible, easy to understand and effective for complainants?

As noted in Framing Principle 2 of this submission, Relationships Australia is committed to advocating for legal and regulatory frameworks that are clear, intelligible, accessible and inclusive, including by minimising fragmentation. We are concerned that having four complaints schemes makes it more difficult for end users to understand what they can do and from whom they can seek help, while also imposing unnecessary administrative and compliance costs both on eSafety and service providers. Relationships Australia **recommends** that eSafety establish an online single point of entry service, as recommended by the House of Representatives Select Committee on Social Media and Online Safety (the Select Committee Report).<sup>11</sup> **(Recommendation 12)** We further **recommend** that Government identify models for a single regulatory framework, consistent with Recommendation 19 of the Select Committee Report. **(Recommendation 13)**

#### 10. Does more need to be done to make sure vulnerable Australians at the highest risk of abuse have access to corrective action through the Act?

Relationships Australia **recommends** that the Australian Government ensure that the agencies, systems and processes responsible for preventing and responding to online harms (including eSafety, the National Classification Scheme, and law enforcement) are culturally safe, accessible and inclusive

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<sup>10</sup> Noting that different international jurisdictions calculate using different points of reference, as described in Table 4.1 of the Issues Paper.

<sup>11</sup> Recommendation 6.



(see **Recommendation 1**). To promote successful implementation of that Recommendation, we further **recommend** that the Australian Government engage meaningfully with communities, and advocates for communities, that experience exclusion and/or marginalisation online and who are at the highest risk of abuse (and of suffering the most serious harm). (see **Recommendation 2**)

12. What role should the Act play in helping to restrict children’s access to age inappropriate content (including through the application of age assurance)?

Should the age assurance pilot announced on 1 May proceed and be successful (noting that Government is still at the scoping stage), then Relationships Australia **recommends** that the Act be amended to implement age assurance within a statutory duty of care (as recommended above) and impose commercially and operationally significant penalties on service providers who do not comply. (**Recommendation 14**)

14. Should the Act empower ‘bystanders’, or members of the general public who may not be directly affected by illegal or seriously harmful material, to report this material to the Commissioner?

Yes, subject to eSafety being appropriately resourced (including to filter out unmeritorious or mischievous reports). Empowering online bystanders is consistent with broader Government and community expectations that ‘abuse is everyone’s business’ and that members of the community report unlawful conduct (especially conduct that causes serious harm to persons experiencing circumstances of vulnerability). Relationships Australia **recommends** that the Act be amended to broaden standing to report illegal or seriously harmful material. (**Recommendation 15**)

15. Does the Commissioner have sufficient powers to address harmful material that depicts abhorrent violent conduct? Other than blocking access, what measures could eSafety take to reduce access to this material?

Relationships Australia **recommends** that the Act be amended to confer on the Commissioner the power to issue notices requiring removal of harmful material depicting abhorrent violent conduct. (**Recommendation 16**)

16. What more could be done to promote the safety of Australians online, including through research, educational resources and awareness raising?

Relationships Australia **recommends** further research, including longitudinal research on the nature of associations between exposure to pornography and violent pornographic content and the experiences described in the first complete paragraph on p 24 of the Issues Paper. (**Recommendation 17**)

#### Part 4 – Penalties, and investigation and information gathering powers

18. Are Australia’s penalties adequate and if not, what forms should they take?

No, in light of the gravity of risks (especially to marginalised and excluded individuals and groups), the magnitude of harm that can be caused by materialisation of risk, the gross asymmetries of knowledge and power as between service providers and end users, and the commercial gains that have been made

by service providers from tolerating dangerous material and content. Relationships Australia **recommends** that financial sanctions for tolerating (and encouraging) conduct and material that endangers others should be set at whatever points are necessary to de-monetise violence, abuse and exploitation for service providers. (**Recommendation 18**)

#### 20. Should the Commissioner have powers to impose sanctions such as business disruption sanctions?

Relationships Australia **recommends** that the Act be amended to confer on the Commissioner powers to impose sanctions such as business disruption sanctions. (**Recommendation 19**) We further **recommend** that Government consider creating within the Commonwealth Criminal Code offences for officeholders, employees and agents of service providers who have a nexus with Australia. The offences should relate to acts or omissions relating to the most harmful material being accessible in Australia or targeted at a person ordinarily resident in Australia. Penalties should include both monetary penalties and the possibility of imprisonment. This would be consistent with, for example, Australia's anti-money laundering mechanisms. In some circumstances, it would be appropriate to create offences of absolute and strict liability to ensure proportionate accountability by service providers, their officeholders, employees and agents. (**Recommendation 20**)

### Part 5 – International approaches to address online harms

#### 21. Should the Act incorporate any of the international approaches identified above? If so, what should this look like?

To complement other recommendations made in this submission, Relationships Australia **recommends** that the Act be amended to:

- explicitly refer to the international human rights instruments identified in our response to Question 1 in the Issues Paper
- make the Basic Online Safety Expectations legally enforceable (see next paragraph)
- enforce Safety by Design practices among service providers whose products and services are accessed or accessible by people ordinarily resident in Australia
- as suggested in our response to Question 6 - impose a statutory duty of care on service providers, enforceable by the Commissioner (and other prescribed authorities) and by end users, (**Recommendation 10**; see also Recommendation 20 of the Select Committee Report)
- impose specific duties in relation to individuals and cohorts who are marginalised and at higher risk of more serious harm, including children, and
- allow for a penalty to be imposed for each day that a breach of any obligation imposed by the Act or by the Basic Online Safety Expectations continues. (**Recommendation 21**)

The Basic Online Safety Expectations should explicitly require that the best interests of children are a primary consideration in the design and operation of services likely to be accessed by children; this should be complemented by imposing reporting obligations that are sufficient to allow the regulator to form a view on whether a service provider is complying with the Expectations. (see Issues Paper, p 40) (**Recommendation 22**)

Relationships Australia **supports** Australia's current hybrid approach, allowing complaints from end users as well as systemic mechanisms to interrogate, prevent and respond to harm.

22. Should Australia place additional statutory duties on online services to make online services safer and minimise online harms?

See previous response to Question 6 (**Recommendation 10**), supporting a statutory duty of care.

24. Should there be a mechanism in place to provide researchers and eSafety with access to data? Are there other things they should be allowed access to?

To the extent that this not currently the case, the Act should confer on the Commissioner power to issue notices seeking data about compliance with the Act, any prescribed or industry codes, and the Expectations. Failure to comply with a notice should attract a civil penalty. (**Recommendation 23**)

25. To what extent do industry's current dispute resolution processes support Australians to have a safe online experience? Is an alternative dispute resolution mechanism such as an Ombuds scheme required? If so, how should the roles of the Ombuds and Commissioner interact?

Industry-funded (or co-funded) ombuds and dispute resolution mechanisms have proven, in a range of areas, to be ineffective in redressing imbalances of powers or delivering timely responses to sometimes egregious behaviours. Regulator capture is built in. In the context of online harm, where victim survivors can be experiencing domestic and family violence and/or technology-facilitated abuse, the common requirement of such schemes that the end user first try to solve a dispute with a provider is dangerous. It is the antithesis of trauma-informed (and, where relevant, DFV-informed) practice. We commend the considerable efforts undertaken by eSafety to make it approachable by children and young people, as well as by other end users living with circumstances creating vulnerability to harm.

Relationships Australia recommends that the Act confer on the Commissioner a dispute resolution process, accompanied by sufficient appropriations to offer a timely and responsive mechanism. (**Recommendation 24**)

26. Are additional safeguards needed to ensure the Act upholds fundamental human rights and supporting principles?

See preceding responses.

## Part 6 – Regulating the online environment, technology and environmental changes

27. Should the Commissioner have powers to act against content targeting groups as well as individuals? What type of content would be regulated and how would this interact with the adult cyber-abuse and cyberbullying schemes?

Relationships Australia supports investigation into how such powers could be constructed and exercised to empower and support groups, especially groups subjected to widespread and/or systemic abuse or who are otherwise marginalised, to engage safely with online spaces.

28. What considerations are important in balancing innovation, privacy, security, and safety?

It is commonly accepted in public international law that human rights are indivisible and cannot be positioned in a hierarchy. This should be the starting point in developing policy that will promote safety online while supporting innovation. Against that background, Relationships Australia **recommends** that the best interests of the child should be centred in developing legal, regulatory and governance frameworks for service providers (**Recommendation 25**). Full implementation of **Recommendation 21** of this submission (see the response to Question 21 above) would give appropriate weight to privacy and safety considerations. Other important considerations include, as canvassed above, the commercial gains that service providers have accrued, and continue to accrue, from enabling an online world in which serious harms are committed and their effects exponentially amplified by unprecedented geographical and temporal reach. Support for innovation must occur only within these guardrails.

29. Should the Act address risks raised by specific technologies or remain technology neutral? How would the introduction of a statutory duty of care or Safety by Design obligations change your response?

Relationships Australia **recommends** that the Act remain technology neutral, irrespective of the introduction of a statutory duty of care or Safety by Design obligations. (**Recommendation 26**)

30. To what extent is the Act achieving its object of improving and promoting online safety for Australians?

The extensive array of online threats to Australians, the frequency with which they are made, and the multiple different statutory instruments and agencies involved in online safety preclude a sensible and coherent response.

31. What features of the Act are working well, or should be expanded?

eSafety must be commended on its extensive work in education, training and awareness raising. Relationships Australia would like also to acknowledge the valuable work in this regard undertaken by the many other Government departments and agencies who have undertaken measures to protect Australians online, including the ACMA, the Classification Board, the AFP, and the ACCC.

32. Does Australia have the appropriate governance structures in place to administer Australia's online safety laws?

In our submission to Stage 2 of the Classification Reform process, Relationships Australia strongly agreed that the *status quo* is 'inefficient, fragmented and create[s] an unequal regulatory regime' (Consultation Paper, p 13) that varies according to mode of delivery. No stakeholder is well-served by such disarray, least of all community members relying on it to keep children safe and adults informed. This was recognised by the ALRC in its 2012 report.<sup>12</sup>

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<sup>12</sup> ALRC, 2012, Report 118. See especially recommendation 5-3 of that Report.

Reducing fragmentation, or at least lifting the burden of addressing it off the community and onto those better equipped to manage it, is a fundamental imperative of sound policy and programme development. Children who suffer online harms, and their parents and caregivers, should not have imposed upon them the requirement to work out whether they should report to the police, eSafety, or another organisation.

Accordingly, Relationships Australia **recommends** that the existing governance and regulatory arrangements be simplified and clarified (see **Recommendation 4**). This should be done by establishing a single national entity, as recommended by the ALRC, and conferring on that regulator a unified suite of licensing (where appropriate) and regulatory powers, as envisaged by the ALRC (see Report 118, Recommendations 16-1, 16-2, 16-3 and 16-4). Within the single entity, the Chair of the ACMA and the eSafety Commissioner, could remain independent statutory officers. This is similar to the governance model included in the Exposure Draft of the Aged Care Act.

In addition, we **recommend** offering the community a single reporting and help-seeking mechanism, available through an online portal and through a dedicated 1800 number, to which children, their parents and caregivers can give sufficient information to enable immediate connection with the appropriate agency. (see **Recommendation 4**)

Establishment of a single entity would be consistent with the ALRC's recommendations, while retaining the benefits of specialisation, reducing silos and barriers to collaboration, allowing intelligence and insights to be more readily shared, and offering administrative efficiencies. There would be a clearer delineation between the ACMA and the eSafety Commissioner, with their array of civil sanctions, and police (AFP, and state/territory), with their broader coercive powers and capacity to charge offenders.

As envisaged by the ALRC, Relationships Australia **recommends** that the Act confer on the single national regulator the following powers and functions, supported by adequate appropriations:

- undertaking or commissioning research activities (see ALRC, Report 118, Recommendation 9-4)
- notifying Australian or international law enforcement agencies or bodies about content that is, or would be likely to be, Prohibited without having the content first classified (see ALRC, Report 118, Recommendation 12-3), and
- the functions described at Recommendation 14-1 of ALRC Report 118. (See **Recommendation 5**)

Relationships Australia **supports** regulators having access to nuanced and meaningful regulatory powers, and having the resources to exercise them, as well as being able to impose graduated sanctions which reflect culpability and harm.<sup>13</sup> There is little value to the community in having regulatory arrangements and sanctions that are not pursued by regulators who are not sufficiently resourced to use them. Poorly resourced regulators are also at heightened risk of regulatory capture, undermining the efficacy and credibility of regulation.

We **recommend** that, whether or not sitting within a single national regulator, the ACMA should be sufficiently resourced to regulate content that, while not falling within the scope of the eSafety Commissioner's powers, nevertheless is accessible and harmful to children. One example of this is

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<sup>13</sup> See, eg, ACMA submission, 2020.

content promoting gambling that does not fall within scope of the recent reforms providing for mandatory minimum classification of simulated gambling and paid loot boxes. (see **Recommendation 6**)

33. Should Australia consider introducing a cost recovery mechanism on online service providers for regulating online safety functions? If so, what could this look like?

Relationships Australia **opposes** a cost recovery mechanism, on the basis that it encourages regulatory capture while also incentivising de-funding by Government, which would compromise achievement of the statutory objects.

### OTHER RELEVANT MATTERS

Relationships Australia has welcomed the Government's multiple initiatives, announced on 1 May 2024, to

address easy access to pornography for children and young people and tackle extreme online misogyny, which is fuelling harmful attitudes towards women.<sup>14</sup>

Relationships Australia **supports** in principle:

- the announced age assurance pilot<sup>15</sup>
- legislation to ban the creation and non-consensual distribution of deepfake pornography, and
- the proposed new phase of the successful Stop it at the Start campaign.

Relationships Australia is also concerned about children's exposure to harm in the form of gambling and gambling-like content. In this regard, we draw to the Committee's attention recommendations made in the Relationships Australia submission to the Department on 1 June 2023:

#### *Recommendation 3*

That the new guidelines should provide that in-game purchases linked to elements of chance and simulated gambling are not permitted in respect of the G, PG, M and MA15+ classification categories.<sup>16</sup>

#### *Recommendation 4*

The Classification Board should develop consumer advice to enable consumers (and, in respect of minors, parents) to make informed decisions about the use of computer games that include simulated gambling and/or in-game purchases linked to elements of chance, including (but not limited to) whether gambling with money or non-fiat currencies is a game feature and information about harms associated with online-gambling and gambling-like activities.<sup>17</sup>

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<sup>14</sup> Media release, 1 May 2024, Tackling online harms, <https://www.pm.gov.au/media/tackling-online-harms#:~:text=%E2%80%9CThe%20reality%20is%20that%20digital,and%20other%20age%2Drestricted%20services.> See also Coumarelos et al, 2023.

<sup>15</sup> We welcome this response to the 2019 recommendations of the eSafety Commissioner and Jaktar & Jenkinson, 2019.

<sup>16</sup> Acknowledging that this recommendation is partially implemented in the amendments to come into effect in September 2024.

<sup>17</sup> Accessible at <https://www.relationships.org.au/wp-content/uploads/Sub-Proposed-Guidelines-for-the-Classification-of-Computer-Games-2023.FINAL010623.pdf> See also our submission of 11 November 2022 to the House of Representatives Standing Committee on

To the extent that these recommendations will not be implemented in the amendments to commence in September 2024, we **recommend** that Government proceed with their implementation.  
(**Recommendation 27**)

## Conclusion

The compact implicit in democracies between government and the governed requires government to take responsibility for actions that individuals and small communities cannot. As the national government assumes responsibility for national defence, so is it obliged to prioritise combatting the insidious hazards inherent in a borderless online world. In that world, organised crime and powerful state-like actors disproportionately target and harm our most marginalised and vulnerable community members. In that world, serious harms can be inflicted from anywhere, on anyone, anywhere. Those harms can, without effective regulatory and law enforcement action, recur in perpetuity, eroding the capacity of victim survivors to participate in the economy, in education, in safe relationships and broader social and cultural life. Harms can be inflicted as part of domestic, family and sexual violence, as well as among peers, in workplaces and educational settings, and through predatory algorithms that isolate, radicalise and harmfully addict. The perpetrators come right into our homes, undetected until the damage is done. The distinction between online and offline, in terms of the capacity to endanger and harm, becomes increasingly meaningless. The potential for harms is likely to increase exponentially as emerging technologies such as immersive experiences become embedded in our homes, schools, workplaces and 'real life' social activities.

In this world, and without robust and sustained government intervention, end users have very little leverage relative to service providers.

Thank you again for the opportunity to contribute to this Inquiry. Should you wish to discuss any aspect of this submission, please do not hesitate to contact me, at [ntebbey@relationships.org.au](mailto:ntebbey@relationships.org.au), or our National Policy Manager, Dr Susan F Cochrane, at [scochrane@relationships.org.au](mailto:scochrane@relationships.org.au).

Kind regards



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