



## **SUBMISSION ON RESTRICTED ACCESS SYSTEM DECLARATION (*ONLINE SAFETY ACT 2021*) DISCUSSION PAPER**

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### **Introduction**

As the peak Australian NGO providing information and advocacy on children's engagement with the media, ACCM welcomes this opportunity to comment on the planned Restricted Access System (RAS).

ACCM's members share a strong commitment to promoting the healthy development of Australian children. Their particular interest and expertise are in the role that media experiences play in that development.

Our core business is to collect and review research and information related to children and the media; to provide information and advice on the impact on children of print, electronic and screen-based media; to provide reviews of current movies and apps from a child development perspective; to advocate for the needs and interests of children in relation to the media; and to conduct and act as a catalyst for relevant research.

ACCM has links to Australian organisations working on specific matters within our remit, including Collective Shout, whose submission we have had the benefit of reading in draft. We respectfully adopt and endorse the general thrust of that submission, and make reference to some specific points below.

This submission has been prepared by Prof Elizabeth Handsley FAAL, President of ACCM, and by Barbara Biggins OAM, Hon CEO.

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### **General observations**

Regulatory measures to protect the interests of children as media users are always welcome from this organisation's point of view, but such measures are only ever as good as their understanding of just what children's interests are. Yet we find that the Discussion Paper pays only passing attention to these, while focussing heavily on the needs and interests of industry. We hope in this submission to fill that gap to some extent, and we shall be happy to elaborate further if that would be considered helpful.

Children develop through different stages, and they have different needs as media consumers depending what stage they are at. Yet the Discussion Paper lumps all children together. Moreover, the proposed system, like the existing one, relies on the National Classification Scheme, which likewise pays no attention to the evolution of children's needs and capacities.

Moreover, we note that the Discussion Paper refers only to R18+ content, without explaining why there is no proposal to protect children even from material in the other restricted category, namely MA15+. It is worth noting that very little content is actually classified R18+, because that classification sets a very high bar. There is still a large amount of content at MA15+ –

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### **Promoting healthy choices and stronger voices in children's media**

*Australian Council on Children and the Media  
Patrons: Steve Biddulph AM Baroness Susan Greenfield CBE  
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especially in video games – that would shock many adults and is certainly considered unsuitable for children. The breadth of the MA15+ category, and the narrowness of R18+, are proved by the fact that following the introduction of the R18+ category for games, 13 of the most violent titles on the market were reassessed under the new guidelines and confirmed as MA15+. <sup>1</sup> This was in spite of the expectation that much content previously classified MA15+ would be judged to fit the higher category once it was introduced. ACCM submits that the RAS should in some way incorporate categories below R18+, at least MA15+.

Having said all that, ACCM sees this Discussion Paper and the process underlying it as yet another reminder of how deficient the National Classification Scheme (NCS) is, in that it fails to address the needs and interests of children at different ages and stages. The NCS categories centre around ‘impact’, a concept that has no basis in any research evidence regarding children’s development. Reliance on the NCS in this context, in addition to the classification of films and games, points to the urgent need to reform that scheme. A comprehensive review was commenced in 2019, and we are still waiting for news about its recommendations, let alone what the government plans to do in response. ACCM submits that if the government wishes to fix the problem of children’s access to online content, it needs to fix the criteria and processes by which content is judged to be suitable for children or otherwise. Ideally this should be done before any new regulatory scheme is introduced, before a culture grows up around the old criteria.

The Discussion Paper also suffers from a lack of subtlety as to the careful balancing process that must go on when children’s rights are at stake. To fulfill Australia’s obligations under the Convention on the Rights of the Child, the starting point must be that children’s interests are a primary consideration (article 3). In the process of determining those interests there are, broadly, two important matters that need to be weighed against each other, namely children’s right to seek, receive and impart information via the media (article 13) and the various rights that can be breached when children access inappropriate content (eg articles 6(2) (survival and development), 16 (privacy), 19 (violence), 23 (disability), 24 (health), 28 (education)).

Speaking of children’s needs or interests is no simple matter, and it requires at least the same level of attention and discussion as the needs and interests of industry. Yet the Discussion Paper persistently speaks about the latter needs and interests as if they are paramount. For example at page 4 there is a reference to consulting on the likely impact on industry, with no concomitant reference to the impact on any other group. Then at page 5 the reference to having regard to the objective of protecting children is markedly less specific than the ‘regard’ that industry gets. At page 7 the Discussion Paper goes so far as to suggest it is interested only in the views of industry and not, by implication, in those of other parts of the community, which have a huge stake in the outcome of a process like this.

Another shortcoming of the Discussion Paper – and by extension the proposed scheme as a whole – is that it focusses exclusively on the nature of the content available online, whereas a significant part of the concern regarding children’s engagement with online content is to do with the way the content is presented and delivered, that is, by persuasive design. One very clear and significant example is the use of auto-play in video platforms: it is one thing if a child sees unsuitable content, but another thing entirely if the child sees successive examples of unsuitable content, in circumstances very carefully designed to make it difficult for the child to switch off. And the problem, of course, extends even to content that, in small doses, might be

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<sup>1</sup> Elizabeth Handsley and Wayne Warburton, “‘Material likely to harm or disturb them’: testing the alignment between film and game classification decisions and psychological evidence” (2021) *Psychiatry, Psychology and Law* (in press; <https://dx.doi.org/10.1080/13218719.2021.1904446>).

innocuous. The work of the UK organisation 5Rights is very informative in this regard, and ACCM commends it to the review. It is well summarised in the submission of Collective Shout to this consultation.

As noted, ACCM is disappointed to see so much emphasis placed on the interests of industry when other interests are just as real and just as pressing (arguably more so). We have mentioned the interests of children, and their rights in international law; another set of rights and interests that come into the frame are those of parents and others who care for children. Parents have the right to be supported in their role of keeping children safe and protecting their rights (article 18 of CRC), and this should be taken into account in the formulation of the RAS. This is especially so considering that the burden is likely to fall on parents and carers to monitor children's experiences and report any difficulties. The Discussion Paper makes reference to proportionality, a concept which would normally involve a balancing of two more sets of competing interests. All relevant interests should be given appropriate weight.

### **Specific questions**

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In response to the specific questions in the Discussion Paper, ACCM has the following observations:

Question 1: the elements of an effective system include that it should be comprehensible and accessible to the average Australian parent or caregiver. This is because these are the people who will be expected to lodge complaints and make reports, to make the system effective.

Question 4: this question is evidence of the Discussion Paper's strong emphasis on the interests of service providers (industry) and it is notable that there is no mention of the benefits in children being protected.

Question 5: significant factors would be how well the systems, methods and approaches prevent access to content that is actually harmful (and known to be so based on research, not morality), and how well they support parents and families.

Question 6: ACCM agrees that 'proportionality' is an appropriate inquiry, but the 'preventing harm to children' side of the ledger is considerably more important than the Discussion Paper would tend to indicate.

Question 7: ACCM strongly supports a prescriptive RAS. These things should never be left up to industry and for brevity we refer to and adopt the observations on self-regulation in the submission by Collective Shout.

Question 8: as noted above, the review should consider the role and impact of persuasive design.

We have listed some relevant sources of information on the next page. Please do not hesitate to contact us if you would like to engage with us further on the matters raised in this submission.

## References and further information

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5Rights Foundation (2021) *Pathways: how digital design puts children at risk*  
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\*\*\*\*\*END OF SUBMISSION\*\*\*\*\*