



21 December 2023

Executive Manager  
Industry Regulation and Legal Services  
Office of the eSafety Commissioner  
By email to: [submissions@esafety.gov.au](mailto:submissions@esafety.gov.au)

**SUBMISSION ON THE DRAFT ONLINE SAFETY INDUSTRY STANDARDS FOR RELEVANT AND DESIGNATED  
ELECTRONIC SERVICES**

Thank you for the opportunity to provide input to the development of these standards.

CMA is a peak not-for-profit national community organisation whose mission is to support families, industry and decision makers in building and maintaining a media environment that fosters the health, safety and wellbeing of Australian children. CMA membership includes ECA (Early Childhood Australia), ACSSO (Australian Council of State Schools Organisations), APPA (Australian Primary School Principals Association), AHISA (Association of Heads of Independent Schools Australia), AEU (Australian Education Union), Parenting Research Centre, Council of Mothers' Union in Australia, SAPPA (South Australian Primary Principals Association), and other state-based organisations and individuals.

CMA's core activities include the collection and review of research and information about the impact of media use on children's development, and advocacy for the needs and interests of children in relation to media use.

This submission has been written by our President, Professor Elizabeth Handsley, and our Hon CEO, Barbara Biggins OAM CF. In addition to our comments below, we have seen a draft of the submission by the Australian Child Rights Taskforce, and we commend to you the points made there.

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## INTRODUCTION

In this submission, CMA comments on those questions from the Discussion Paper that are relevant to our knowledge and expertise. The remaining questions appear to be targeted more to industry; and we trust that eSafety will treat the answers provided to those questions with a healthy skepticism, considering the risk of influence from self-interest.

## BOTH STANDARDS

### Question 2

*Do the obligations on each relevant electronic service and designated internet service category appropriately reflect the above considerations? (ie risk based etc; meaningful etc; human rights) Are other considerations relevant?*

#### *Risk-based*

CMA would encourage eSafety to rethink the use of a 'risks-based' approach in relation to this class of services. It is difficult to see how one can generalise about the risk associated with a particular class of service as this would surely depend on conditions at different times. In particular, the kind of content to be regulated here will inevitably originate from bad actors, who could pop up anywhere, at any time. It may be somewhat unrealistic to attempt to make any predictions about this.

#### *Human rights*

CMA notes how the Discussion Paper separates out specific rights that are protected by documents such as the International Covenant on Civil and Political Rights (freedom of expression, privacy) but lumps 'children's rights and best interests' together (p 11). We hope that this does not serve as an indication of the importance eSafety accords to the rights of a group that should be one of the main beneficiaries – if not the main beneficiary – of this regulation.

As eSafety proceeds to finalise these Standards, CMA hopes that it will have regard to the following matters enshrined in the [UN Convention on the Rights of the Child](#):

- Children's right to survival and development (article 6)
- The obligation on governments to take measures to combat the illicit transfer and non-return of children abroad (article 11)
- Children's right to receive information (article 13)
- Children's right to protection of the law against interference with privacy (article 16)
- The obligation on governments to '[e]ncourage the development of appropriate guidelines for the protection of the child from material injurious to his or her well-being' (article 17)
- The obligation on governments to 'render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities' (article 18)
- Children's right to protection from 'all forms of physical or mental violence, injury or abuse ... including sexual abuse' (article 19)
- Children's right to education (article 28) which should be directed to 'the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and

friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin’ (article 29)

- Children’s right to rest and leisure, to engage in play and recreational activities appropriate to the ages of the child and to participate freely in cultural life and the arts’ (article 31)
- Children’s right to protection from economic exploitation (article 32)
- The obligation on governments to ‘prevent the abduction of, the sale of or the traffic in children’ (article 35)

We trust that the relationship of each of these to the matters these Standards seek to address does not need explanation, but we would also point out that they have the potential to address the position of children both as subjects of media content and as consumers of that content.

Regard should also be had to the growing consensus that, based on the rights enumerated in the Convention, children have a right to access the online world, and to do so safely. There is detailed discussion of this and other matters in the Committee on the Rights of the Child’s [General Comment 25 on Children’s Rights in Relation to the Digital Environment](#), including the statement that ‘States parties should ensure that, in all actions regarding the provision, regulation, design, management and use of the digital environment, the best interests of every child is a primary consideration.’ (para 12)

In addition to considerations based on the Convention and related documents, it would be appropriate for eSafety to have regard to the [Guiding Principles on Business and Human Rights](#) and the [Children’s Rights and Business Principles](#). These serve as a reminder that human rights are not simply something that gives governments an obligation to regulate industry, but they are coming to be seen as obligations on industry itself. We should be happy to discuss these documents further with eSafety, and their relevance to the regulation of online services.

## RELEVANT SERVICES STANDARD

### Question 6

*Are there any limitations which would prevent certain service providers from deploying systems, processes and technologies to disrupt and deter child sexual abuse material and pro-terror material on relevant electronic services? If there are limitations, how might these be overcome?*

*Is it appropriate for this requirement to apply to gaming services with communication functionality?*

This section of the Discussion Paper appears to focus heavily on the interests of the children who might experience exploitation in the making of relevant material. Naturally the devastating effect of those experiences justifies a strong emphasis on preventing them. At the same time CMA would like to point to the impact on children who encounter such material in the course of their use of online services. Just as children are vulnerable to grooming as the subjects of such content, they are also vulnerable to grooming as consumers. This is all the more reason why strong regulations are needed.

#### Question 9

*Are the end-user reporting requirements workable for the relevant service providers? Are there practical barriers to implementation?*

CMA is unable to comment on workability or practicality but, based on our experience of other areas of media self- and co-regulation, we are wary of reliance on user complaints instead of active monitoring of compliance. Busy parents and other members of the public rarely have the time to bring a complaint when they see something untoward; and indeed the more untoward and the more significant the consequences, the less likely it is that formulating a complaint will be a priority.

At the same time we recognise that the kind of independent monitoring that would be required cannot realistically be carried out by industry itself but rather requires the intervention of an independent body. Therefore our recommendation would be directed to the designers of the overall legislative scheme, rather than those charged with drafting an industry standard.

#### Question 11

*What are your views on the likely compliance costs and, in particular, the impact of compliance costs on potential new entrants?*

While it is always desirable to keep compliance costs down, one should also not lose sight of the benefits to be gained, and/or harms to be avoided, by means of the regulations to be complied with. If one bears in mind the kinds of material these Standards address, and the risks associated with its dissemination, we would venture to suggest that any business which cannot succeed financially while keeping those risks down should not be in business.

### DESIGNATED SERVICES STANDARD

#### Question 24

*Do you agree with this monthly active user threshold, or are there other thresholds which can be deployed to ensure this obligation is proportionate?*

CMA has reservations about the 'active user threshold' approach as a whole, as we can envisage it being manipulated by industry entities to avoid the associated obligation. It also seems unfair that entities with similar user numbers should have vastly different obligations, simply because the threshold falls between them.

We also have reservations as to the benefits likely to flow to the public from private investment by industry.

As an alternative we would suggest the imposition of a levy on all entities, calculated by reference to their user numbers, and with the proceeds to go to a public fund. The fund could then be used to support efforts by civil society to further the aims of the Act, for example by means of research or public information.

## CONCLUSION

We thank eSafety once again for the opportunity to comment on these draft Standards, and we should be most pleased to expand on the points made here, if that would be helpful.

Yours sincerely

A handwritten signature in cursive script that reads "Elizabeth Handsley".

Professor Elizabeth Handsley

President