

# Submission to the *Online Safety (Basic Online Safety Expectations) Amendment Determination* 2023 consultation

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## Executive Summary

Guided by the United Nations Convention on the Rights of the Child (CRC) and informed by our work in over 190 countries improving the lives of children including in digital environments, UNICEF Australia welcomes the opportunity to provide a submission to the consultation on the *Online Safety (Basic Online Safety Expectations) Amendment Determination 2023*.

The current generation of children are the first true digital natives. They will never know a world without smartphones. Constant connectivity is their norm. They will have an online presence almost immediately after birth, and they already disproportionately occupy online spaces more than any other group, meaning the design of those spaces will have a greater impact on them and for longer than any other generation before them. This is particularly so given their unique developmental vulnerability.

UNICEF Australia envisions an online world which minimises risks and harms to children's safety and wellbeing, at the same time as providing all the positive benefits that allow children to thrive in an increasingly digital world. In this regard, the amendments proposed to the *BOSE Determination* are a very welcome step in the right direction. Of particular significance is the continuation of a recent trend in Australian digital policy – the inclusion of child rights principles in our regulatory frameworks. Giving primary consideration to the best interests of children in all that we do and design will lead to better outcomes for children.

Beyond this, there are several other welcome amendments for children including a stronger emphasis on user-safety in generative artificial intelligence (AI) and recommender systems, and expanded measures for detecting and responding to child sexual exploitation and abuse material such as hash matching and using language analysis to identify patterns of harmful behaviour. The focus on reducing harmful hate speech is equally welcome.

From this strong starting point, UNICEF Australia presents several recommendations to further strengthen the *BOSE Determination*. These range from implementing best interests of the child assessments, to making generative-AI systems more child-centred, improving safety in *all* systems that children interact with, ensuring harmony across concurrent digital reforms, and throughout all of this, leveraging the voices of children and young people who understand the digital world better than anyone.

UNICEF Australia is eager to work with all involved, including by being the bridge between government and the private sector where needed, to help realise our vision and make Australia the best place in the world for children to go online.

## Summary of Recommendations

### 1. Implementing the best interests of the child principle

- *Introduce a requirement for services to conduct and publish a best interests assessment, to ensure that the best interests of the child are a primary consideration in the design and operation of any service likely to be used by children.*
- *Pursue a pilot of age assurance technologies best-suited for Australia, whilst simultaneously implementing appropriate age assurance, to ensure children are protected from age-inappropriate content as soon as possible.*

### 2. Improving generative-AI and recommender systems

- *Introduce a reasonable step that service providers assess generative-AI capabilities against a framework for child-centred AI, for all AI systems likely to be used by children.*
- *Require that service providers take reasonable steps to consider children's safety in the design, implementation and maintenance of all systems involved in the operation of their service.*
- *Require that educational and explanatory tools be provided in child-friendly formats for all systems likely to be used by children.*

### 3. Harmonisation with other concurrent reforms

- *Ensure alignment across concurrent reforms in digital policy in Australia, always opting for the highest level of protection for children possible without unduly limiting their rights*
- *Undertake genuine and meaningful consultation with children and young people across all concurrent active reforms in digital policy in Australia, to ensure solutions are effective as possible.*

## Detailed Recommendations

### 1. Implementing the best interests of the child principle

The proposed amendments to the *BOSE Determination* continue a welcome recent trend in Australian digital policy – the incorporation of child rights principles into Australian law and regulation. Requiring that the best interests of children be a primary consideration in the design and operation of digital services represents a significant step towards protecting and upholding the rights of Australia’s children in the digital age. UNICEF Australia is very supportive of the introduction of the best interests principle in the *BOSE Determination*.

As the Consultation Paper on the draft Amendment Determination rightly identifies, different functions and features of services will pose different risks to children’s safety so the best approach is to determine these risks early so they can be effectively mitigated.<sup>i</sup> Introducing an additional requirement that best interests assessments be undertaken and published can aid services in meeting this obligation, providing a set of general evaluative criteria by which to measure the design and operation of any service and its impacts on children. Publishing the assessments boosts transparency to ensure that risks and mitigations are indeed in children’s best interests. Several child-focused organisations have developed [early thinking](#) to this effect which should provide helpful guidance in this area.

#### Recommendation

*Introduce a requirement for services to conduct and publish a best interests assessment, to ensure that the best interests of the child are a primary consideration in the design and operation of any service likely to be used by children.*

Another key factor in protecting children online is preventing access to inappropriate content, and in this regard the proposal for services to implement appropriate age assurance mechanisms to help prevent access to class 2 content (like pornography) is a very welcome one.

We particularly welcome that the Consultation Paper identifies that any mechanisms should be “calibrated to the level of risk and harm of the material”.<sup>ii</sup> Proportionality is key when implementing age assurance, as is ensuring we pursue a frictionless approach to age assurance when needed, say when children’s access to certain content is crucial for their healthy development and wellbeing. Further to this, age assurance mechanisms should be privacy-preserving wherever possible, so as not to introduce new risks to children as a result of them providing sensitive information.

Finally, we note that the Government continues to consider the feasibility of conducting a pilot of age assurance technologies in Australia while the process of developing the next round of Online Safety Codes relating to class 2 content is underway. Given its importance to protecting children online and the urgency of finding an approach that works best for Australia, UNICEF Australia believes we should pursue these endeavours simultaneously.

#### Recommendation

*Pursue a pilot of age assurance technologies best-suited for Australia, whilst simultaneously implementing appropriate age assurance, to ensure children are protected from age-inappropriate content as soon as possible.*

## 2. Improving generative-AI and recommender systems

The proposed amendments relating to generative-AI which require services to minimise the risk that these technologies will contribute to harmful content or activities, including removing unlawful material from training materials and preventing prompts that can generate harmful content, are very welcome. Children are increasingly interacting with AI systems that are not designed for them and current policy frameworks do not address this,<sup>iii</sup> so this is a step in the right direction.

In the face of the AI-driven transformation that is currently underway, UNICEF has developed a [policy guidance](#) to complement efforts to promote human-centric AI, introducing a child-specific lens.<sup>iv</sup> Drawing on the CRC, the guidance presents the foundations for child-centred AI, suggesting that AI policies and systems should:

- **aim to PROTECT children** – this means protecting children from any harmful and discriminatory impacts of AI systems, but also leveraging AI systems to actively protect children from harm;
- **PROVIDE equitably for their needs and rights** – this means bringing the opportunities of AI systems to children of all ages and backgrounds, fully leveraging them when it is appropriate to do so; and
- **empower children to PARTICIPATE in an AI world** – meaning that children are given opportunities to shape AI systems, and to be able to make educated and informed decisions about their use of AI and the impact it can have on their lives.<sup>v</sup>

Building on this foundation, nine requirements for child-centred AI have been established, complementing key work already underway, but with a focus on children:<sup>vi</sup>

### **Foundation = { uphold children's rights }**

*Through the lenses of protection, provision and participation*

- 1 Support children's development and well-being**  
*Let AI help me develop to my full potential.*
- 2 Ensure inclusion of and for children**  
*Include me and those around me.*
- 3 Prioritize fairness and non-discrimination for children**  
*AI must be for all children.*
- 4 Protect children's data and privacy**  
*Ensure my privacy in an AI world.*
- 5 Ensure safety for children**  
*I need to be safe in the AI world.*
- 6 Provide transparency, explainability, and accountability for children**  
*I need to know how AI impacts me. You need to be accountable for that.*
- 7 Empower governments and businesses with knowledge of AI and children's rights**  
*You must know what my rights are and uphold them.*
- 8 Prepare children for present and future developments in AI**  
*If I am well prepared now, I can contribute to responsible AI for the future.*
- 9 Create an enabling environment**  
*Make it possible for all to contribute to child-centred AI.*

*Source: UNICEF Policy guidance on AI for children*

Our AI guidance does not claim to have all the answers and the challenge of equally balancing child rights in the digital environment is a difficult one,<sup>vii</sup> however, we believe it is not only possible but necessary to ensure the protection and wellbeing of children in an AI world.<sup>viii</sup> In the context of the *BOSE Determination*, we believe that a reasonable step for services to ensure user-safety in generative-AI capabilities should include measuring the capabilities of that system against a framework for child-centred AI like UNICEF's policy guidance.

#### **Recommendation**

*Introduce a reasonable step that service providers assess generative-AI capabilities against a framework for child-centred AI, for all AI systems likely to be used by children.*

As the Consultation Paper notes, Australians are routinely engaging with recommender systems on online platforms which can offer benefits but also present risks including by amplifying harmful content.<sup>ix</sup> Children can be particularly susceptible to the adverse effects of these risks so the move to require a greater focus on user-safety in the design and implementation of recommender systems is a welcome one.

Children may face risks from a variety of systems they interact with on any given service,<sup>x</sup> from recommender systems including friend recommender systems which may suggest a stranger adult to connect with, to content moderation systems which remove (or don't remove) harmful content, to advertising and profiling systems which can target children in ways that exacerbate their vulnerabilities.<sup>xi</sup>

To this end, it is important that *all* systems that children are likely to interact with on a given service are subject to a greater focus on their safety. This is in keeping with reforms in Europe including the UK *Online Safety Act*<sup>xii</sup> and *Digital Services Act*,<sup>xiii</sup> which place a proactive obligation on service providers to better provide for user-safety across all systems involved in the operation of their service. This broader requirement can also help ensure the *BOSE Determination* remains relevant and responsive as new systems enter the fold.

#### **Recommendation**

*Require that service providers take reasonable steps to consider children's safety in the design, implementation and maintenance of all systems involved in the operation of their service.*

Across both generative-AI and recommender systems, the proposed amendments to the *BOSE Determination* which require educational and explanatory tools to help end-users better understand their operation are very welcome. Again, children present a unique proposition within this context.

Children are generally less able to understand the long-term implications of things that are required to participate in the online world, like consenting to their data collection for example, which is often presented in notices and policies that even adults struggle to comprehend.<sup>xiv</sup> Whether it is a privacy notice or an explainer on generative-AI, presenting information in child and age-appropriate formats should help children understand their content and better enable them to make informed decisions. Similar proposals have been suggested in the review of the *Privacy Act*<sup>xv</sup> so an equivalent expectation in the *BOSE Determination* would also increase harmony across related regulatory reforms.

#### **Recommendation**

*Require that educational and explanatory tools be provided in child-friendly formats for all systems likely to be used by children.*

### **3. Harmonisation with other concurrent reforms**

The multiple active concurrent reforms on digital policy in Australia present a unique opportunity to strengthen how we govern the online world and put in place greater protections for children. Within these reforms there are already

promising proposals being put forward, for example, an equivalent incorporation of the best interests principle into Australia's *Privacy Act*,<sup>xvi</sup> which should help improve regulatory harmony with the *BOSE Determination*.

However, these concurrent reforms also present a risk that the rules that govern digital environments are disjointed and misaligned. As an illustrative example, the existing *BOSE Determination* calls on service providers to set privacy and settings to the most restrictive by default for services used by children,<sup>xvii</sup> but the recently registered Online Safety Codes for class 1A content only carry this similar requirement for children under the age of 16.<sup>xviii</sup> If we leave gaps in our regulatory frameworks, we risk children falling through them and being exposed to risk and harm. Ensuring alignment across all these concurrent reforms, and in doing so, seeking the highest level of protection for children without unduly limiting their rights, should therefore be a priority.

#### **Recommendation**

*Ensure alignment across concurrent reforms in digital policy in Australia, always opting for the highest level of protection for children possible without unduly limiting their rights.*

The CRC is the most ratified treaty in the world and its forward-looking principles remain deeply relevant today. Particularly pertinent in this space is a child's right to participation<sup>xix</sup> - to having their voice heard. Nowhere is this more relevant than in digital policy. Children know the online world better than anyone, and that innate sense for how it works is invaluable if we are designing new solutions to the challenges we face.

Young people also engage with digital environments, particularly through social media, at comparatively high rates compared to other age groups.<sup>xx</sup> Therefore changes to those environments stand to have a comparatively greater impact on them. Given this, children and young people should be afforded every opportunity to influence how digital environments are designed. Across the several concurrent reforms in digital policy active in Australia at the moment, including the *BOSE Determination* consultation, the review of the *Online Safety Act*, and the *Privacy Act* reforms, every effort should be made to undertake genuine and meaningful consultation with children and young people.

#### **Recommendation**

*Undertake genuine and meaningful consultation with children and young people across all concurrent active reforms in digital policy in Australia, to ensure solutions are effective as possible.*

#### **About UNICEF Australia**

UNICEF believes in a fair chance for every child and we are the world's leading organisation working to protect and improve the lives of children in over 190 countries. At UNICEF Australia we work to protect and promote children's rights by advocating for the rights of children in Australia and overseas.

UNICEF Australia would welcome the opportunity to expand further on the measures we have outlined in this submission.

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- <sup>iii</sup> UNICEF (2020), *Policy guidance on AI for children*, <https://www.unicef.org/globalinsight/media/1171/file/UNICEF-Global-Insight-policy-guidance-AI-children-draft-1.0-2020.pdf>
- <sup>iv</sup> UNICEF (2020), *Policy guidance on AI for children*, <https://www.unicef.org/globalinsight/media/1171/file/UNICEF-Global-Insight-policy-guidance-AI-children-draft-1.0-2020.pdf>
- <sup>v</sup> UNICEF (2021), *Policy Guidance on AI for children 2.0*, <https://www.unicef.org/globalinsight/media/2356/file/UNICEF-Global-Insight-policy-guidance-AI-children-2.0-2021.pdf>
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- <sup>ix</sup> Department of Infrastructure, Transport, Regional Development, Communications and the Arts (2023), *Amending the Online Safety (Basic Online Safety Expectations) Determination 2022—Consultation paper*, <https://www.infrastructure.gov.au/department/media/publications/amending-online-safety-basic-online-safety-expectations-determination-2022-consultation-paper>
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- <sup>xi</sup> Reset.Tech Australia (2021), *Profiling Children for Advertising: Facebook’s Monetisation of Young People’s Personal Data*, <https://au.reset.tech/news/profiling-children-for-advertising-facebooks-monetisation-of-young-peoples-personal-data/>
- <sup>xii</sup> United Kingdom Online Safety Act 2023, [https://www.legislation.gov.uk/ukpga/2023/50/enacted#:~:text=\(1\)This%20Act%20provides%20for,individuals%20in%20the%20United%20Kingdom.&text=\(b\)confers%20new%20functions%20and,powers%20on%20the%20regulator%2C%20OFCOM.](https://www.legislation.gov.uk/ukpga/2023/50/enacted#:~:text=(1)This%20Act%20provides%20for,individuals%20in%20the%20United%20Kingdom.&text=(b)confers%20new%20functions%20and,powers%20on%20the%20regulator%2C%20OFCOM.)
- <sup>xiii</sup> European Union Digital Services Act, [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act\\_en#:~:text=Digital%20Services%20Act%20\(DSA\)%20overview&text=Its%20main%20goal%20is%20to,and%20open%20online%20platform%20environment.](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act_en#:~:text=Digital%20Services%20Act%20(DSA)%20overview&text=Its%20main%20goal%20is%20to,and%20open%20online%20platform%20environment.)
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