

Submission on the Draft Industry Codes of Practice for the Online Industry (Class 1C and Class 2 Material)

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Executive Summary

UNICEF Australia welcomes the opportunity to provide a submission to the statutory review of the *Consolidated Industry Codes of Practice for the Online Industry (Class 1C and Class 2 Material)*.

UNICEF works across the globe to support the safety and wellbeing of children and young people online. We do this through several channels, including working with governments and industry to strengthen legislative and policy frameworks, delivering large-scale media campaigns and supporting educational initiatives for children, parents, carers, teachers and other professionals who work with children, so they are better prepared to keep children safe from harm.

UNICEF advocates for an online world that protects children from risk and contributes to their healthy development and wellbeing, without unduly limiting their rights. As children's lives become increasingly enmeshed with digital technologies, we envision a future in which these advancements are applied in service of children, their families, and communities.

However, there is significant evidence that exposure to pornography and other high impact material such as violence, substance use, crime, suicide and simulated gambling causes harm to children and young people. Children are uniquely vulnerable to exposure to harmful material online due to both the importance of childhood as a time for development, and because they will face greater exposure over their lifetime given their young age, creating the potential for compounding effects. Exposure to high impact materials at a young age can lead to a range of negative outcomes including poor mental health, sexism and objectification and sexual violence.¹ Among other risks, when children view pornography that portrays abusive and misogynistic acts, they may come to view such behaviour as normal and acceptable.²

UNICEF Australia is alarmed by the massive quantity of pornography available online, including increasingly graphic and extreme content that is easily accessible to children of all ages. Efforts to regulate content and restrict children's access to pornography have not kept pace with technological shifts that have profoundly altered the landscape for the consumption of pornography. This is why UNICEF Australia strongly supports the efforts undertaken by the eSafety Commissioner and industry associations under the *Online Safety Act* to develop Draft Industry Codes that protect children and young people from pornography and other harmful material.

UNICEF Australia believes the Draft Industry Codes need to go further in strengthening safety and privacy protections for children online and ensure platforms and services are transparent and accountable in their prevention and mitigation of harms to children. Without a robust, consistent and child-centered approach, the Codes risk being superfluous in guaranteeing real protections for children.

We are eager to work collaboratively with industry and other relevant actors to strengthen protections for children that support them to continue participating, engaging, connecting and learning online, ultimately creating an online world that enables every child to thrive.

¹ UNICEF. (n.d.). Protection of children from the harmful impacts of pornography. UNICEF. Retrieved November 14, 2024, from <https://www.unicef.org/harmful-content-online>

² UNICEF. (n.d.). Protection of children from the harmful impacts of pornography. UNICEF. Retrieved November 14, 2024, from <https://www.unicef.org/harmful-content-online>

Summary of Recommendations

1. Strengthen safety and privacy protections for children

- Require all platforms to introduce robust default safety settings to reduce risk of exposure to Class 1C and 2 materials, irrespective of whether the service permits Class 1C and 2 materials in their terms of use.
- Clearly outline requirement for services to take a data minimisation approach, particularly for age assurance measures which should be proportionate to risk, user-friendly, and handle only personal information essential for service delivery.

2. Ensure strong accountability and transparency mechanisms

- Apply risk assessment requirement to all online services, including requirements for companies to mitigate each risk identified and report publicly on how they have assessed and responded to risks.
- Clearly define 'a significant number of Australian children' for the purpose of risk assessments, to avoid differential interpretation and application across industries.
- Stipulate the need for all services to adopt child-friendly information and tools, including Terms and Conditions (T&Cs), to ensure transparency and accessibility for younger users.

3. Apply a child rights approach

- Adopt established guidance on upholding children's rights in digital environments when assessing and mitigating risks for children to ensure the Codes always support the highest level of protection for children possible without unduly limiting their rights.

4. Engage with children and young people

- Extend and expand the public consultation on the Draft Industry Codes to undertake genuine and meaningful consultation with children and young people.

Detailed Recommendations

1. Strengthen safety and privacy protections for children

The digital world was not originally designed for children, but it undoubtedly plays a significant role in their lives. Being able to connect online provides children valuable opportunities to learn, play and socialise with friends and peers, as well as to access information and support. However, spending time online also comes with risks for children including being exposed to potentially harmful content or having their personal data compromised or exploited. Accordingly, UNICEF Australia supports an approach to children's safety that always seeks the highest level of protection that is proportionate to the risks and without unduly limiting their rights. We see the Phase 2 development of Industry Codes for Class 1C and 2 materials as an important mechanism for this and part of key efforts to make Australia one of the safest places in the world for children to go online.

Given the intent of this second phase to *'protect and prevent children in Australia from accessing or being exposed to Class 1C and Class 2 material'* and *'provide end-users in Australia with effective information, tools and options to limit access and exposure to class 1C and class 2 material'* we believe industry associations can and should be lifting their ambition for safety in the drafted Codes. Broadly, applying a safety-by-design approach through the Codes is a key way to do this and would encourage online services to integrate children's safety in the core design, development and operation of their platforms and or devices.³ Instead of adding safety measures after issues arise, platforms should be required to anticipate, detect, and eliminate online harms from the outset. This approach pushes platform developers to be look beyond content, to the underlying systems which are within the platform's control and may, in their design and operation, be creating or amplifying risk. As currently drafted, the Codes articulate different requirements for safety measures for different platforms. We believe this creates assumptions around the level of risk different platforms pose to children based on the potential for exposure to Class 1C and 2 materials, rather than taking a systematic and holistic view of the role of all industries and services to mitigate potential harms to children online. We are concerned that this approach may deter some services from taking a proactive and comprehensive approach to child safety.

More specifically, a key opportunity to strengthen safety protections through the Draft Codes is to require all platforms to introduce default safety settings to reduce risk of exposure to Class 1C and 2 materials, irrespective of whether the service permits Class 1C and 2 materials in their terms of use. UNICEF Australia is particularly concerned about the current approach to safety settings for social media services, which limits high default protections to only services which permit high-impact pornography and/or self-harm material. This approach presumes such materials do not circulate on platforms where it is not officially permitted and therefore encourages a reactive rather than preventive approach to exposure and harms on such platforms. Not only does this deviate from a safety-by-design approach but creates for potential risk for children to be exposed to Class 1C and 2 materials on unregulated and unaccountable platforms.

Another area to strengthen the Codes relates to privacy protections for children, particularly considering age assurance measures. While we appreciate the collaborative and flexible approach to age assurance articulated in the Codes, especially as Australia anticipates the recommendations from the government-led Age Assurance Trial, we think it is essential to articulate a stronger commitment in the Codes that age assurance measures will be rights-respecting, user-friendly and proportionate to risk, with a data minimisation approach which protects children's privacy. UNICEF Australia remains concerned about the value and efficacy of age assurance mechanisms as blanket and arbitrary measures to protect children from exposure to harmful material and emphasise the additional risks that may arise through use of such mechanisms. Age assurance measures often require collecting personal data such as birth dates, identification documents, and even biometric data like facial recognition. This information, if mishandled or exposed due to data breaches, can lead to severe privacy violations and potential exploitation. Additionally, the storage and processing of such sensitive information increase the risk of data misuse by unauthorized parties. We know data is the currency of the

³ eSafety Commissioner. (2021). Safety by Design Assessment Tool Condensed Report. eSafety Commissioner. Retrieved from <https://www.esafety.gov.au/sites/default/files/2021-06/eSafety%20SbD%20Assessment%20Tool%20PIA%202021%20%281%29.pdf?v=1731897870532>

online world, and children's data - where it's collected, traded and sold on mass scales - is considered big business. The Industry Codes need to ensure online services platforms do not compromise child privacy for commercial gains.

The development of a Children's Online Privacy Code under the *Privacy Act* 1998, recently committed to by Government, will provide a legislative mechanism to hold technology companies to account and ensure children's data is only collected and used in a way that serves their best interests. Pre-empting this with stronger requirements relating to privacy in the Codes will ensure safety measures such as age assurance mechanisms do not cause unintended harms to children and encourages industry to take a proactive rather than reactive approach to protecting children's data and privacy. The Government has also recently announced they will legislate a 'Digital Duty of Care' under the *Online Safety Act 2021*⁴ which will require industry to undertake proactive safety and privacy measures to prevent foreseeable harms on their platforms.⁵ Strengthening safety and privacy measures within the Codes now is an opportunity to prepare for and align with the requirements under the forthcoming legislation and will support a systematic and preventive approach to potential harms, rather than services retrofitting safety measures or responding to harms when they've already occurred. Australia is in many ways a pioneer when it comes to online safety and the development of these Codes is another opportunity to break new ground.

Recommendation

1. *Require all platforms to introduce robust default safety settings to reduce risk of exposure to Class 1C and 2 materials, irrespective of whether the service permits Class 1C and 2 materials in their terms of use.*
2. *Clearly outline requirement for services to take a data minimisation approach, particularly for age assurance measures which should be proportionate to risk, user-friendly, and handle only personal information essential for service delivery*

2. Ensure strong accountability and transparency mechanisms

UNICEF Australia welcomes the shift towards systems-based solutions to online harms in Australia and sees a key component of this as greater transparency and accountability from industry over the systems and mechanisms that may cause harm to children and young people. The Draft Industry Codes are an important opportunity to ensure digital services carefully balance online safety and protecting privacy considerations, as well as ensuring due diligence and consistency across services when it comes to identifying and mitigating potential harms.

Risk assessments are an important tool for creating greater transparency across digital platforms and can play a crucial role in incentivising systemic change by platforms and protecting users before harm occurs.⁶ We are pleased to see requirements for platforms to conduct risk assessments on potential harms to children articulated within the Codes. However, the Draft Industry Codes currently apply different risk assessment requirements for different services, which may lead to an overly simplistic interpretation of the potential for harms to children online by services. UNICEF Australia recommends that the requirement for risk assessments be applied to all services, across each Code, to create a robust and comprehensive regulatory environment to prevent potential harms to children and ensure that platforms do not compromise on child safety for commercial gains.

In addition to this, guidance for determining if 'a significant number of Australian children' are likely to access a service is essential for keeping services accountable to risk monitoring and mitigation. The language of 'significant number' is unclear and lends itself to subjective interpretation which companies could use as rationale to avoid their obligations. Even if the Codes are able to further clarify this point, it should be noted that UNICEF Australia still finds this framing problematic. In the interest of protecting the rights and wellbeing of every child (as articulated by the UN Convention on the Rights of the Child) we would advise that industry associations consider risk assessments as minimum standards for

⁴ Rowland, M. (2021). *New duty of care obligations on platforms will keep Australians safer online*. Retrieved from <https://minister.infrastructure.gov.au/rowland/media-release/new-duty-care-obligations-platforms-will-keep-australians-safer-online>

⁵ Reset Australia (2024), A duty of care in Australia's Online Safety Act: Policy briefing, <https://au.reset.tech/news/briefing-a-duty-of-care/>

⁶ Center for Democracy & Technology. (2024). *Joint Civil Society Statement on Meaningful Transparency of Risk Assessments under the Digital Services Act*. Retrieved from <https://cdt.org/insights/joint-civil-society-statement-on-meaningful-transparency-of-risk-assessments-under-the-digital-services-act/>

all digital services. We believe all services play a role in either supporting or minimising the proliferation of Class 1C and 2 content and should consider the risks their current operating systems and services present in exposing children to harms. Addressing ambiguity and building greater transparency and accountability mechanisms into Codes will not only strengthen protections for children, but also to build trust between platforms and their users and foster a culture of safety and responsibility within the digital ecosystem.

UNICEF Australia would also like to see greater transparency requirements relating to child-friendly and accessible language built into the Draft Industry Codes. Transparent terms and conditions, privacy policies, and data usage is fundamental for ensuring children and their parents are able to make informed and safe decisions about their online activities. This is particularly pertinent for age assurance measures, where children may not fully understand the implications of sharing personal data, making them particularly vulnerable to privacy invasions. The Children's Online Privacy Code when developed will function to hold digital services to account in this respect, ensuring they are transparent with how they use children's data, and that terms and conditions of apps are clear and straightforward. Requiring platforms to adopt child-friendly language through the Draft Industry Codes enables digital services to front foot this legislation and also helps industry associations to fulfil their obligations under the *Online Safety Act* to 'provide end-users in Australia with effective information, tools and options to limit access and exposure to class 1C and class 2 material'.

Greater transparency and accountability mechanisms are not just regulatory requirements but fundamental principles that ensure the safety and well-being of children in the digital world. Strengthening these requirements of digital services within the Codes will encourage platforms to implement effective safety features, such as content moderation, age-appropriate settings, and reporting tools, and create a safer environment where children can explore, learn, and connect without fear of encountering harmful content or behaviours.

3. Apply risk assessment requirement to all online industries, including requirements for companies to mitigate each risk identified and report publicly on how they have assessed and responded to risks.
4. Clearly define 'a significant number of Australian children' for the purpose of risk assessments, to avoid differential interpretation and application across services.
5. Stipulate the need for platforms to adopt child-friendly information and tools, including Terms and Conditions (T&Cs), to ensure transparency and accessibility for younger users.

3. Apply a rights-based approach

The UN Committee on the Rights of the Child (CRC) calls for appropriate regulation of companies operating in Australia, including monitoring 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.⁷ UNICEF Australia strongly supports the efforts of government, the eSafety Commission and industry associations to create a safer online world for children and young people. We also recognise the tremendous opportunities that the digital environment provides for children's learning, play, creativity, participation, and socialization.⁸ Children should be able to access and safely engage in the digital environment without being harmed by exposure to pornography and other high impact materials.⁹ It is therefore important that the protection of children from harmful content does not unjustifiably impinge on other rights children have under the CRC.

UNICEF Australia calls for comprehensive approaches to promote children's safety online that ensure digital service providers comply with relevant guidelines and standards to enforce necessary and proportionate content moderation controls. There is an emerging but well-established understanding of how children's rights should be upheld in the digital

⁷ United Nations Committee on the Rights of the Child. (2013). General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights (CRC/C/GC/16). United Nations.

⁸ UNICEF Australia (2024), Protecting children in the online world: Reshaping the digital world for Aussie kids

⁹ Committee on the Rights of the Child, General comment No. 25 (2021) on children's rights in relation to the digital environment, 86th sess, CRC/C/GC/25 (19 November 2024)

age and we recommend that existing guidance should be drawn on to reflect child rights principles in the Draft Industry Codes. Guidance to draw from includes the Convention on the Rights of the Child, the Committee on the Rights of the Child's General Comment 14 and the Committee on the Rights of the Child's General Comment 25.

A specific example of how child rights can be applied to the Draft Industry Codes is through application of the best interests principle. The best interests principle requires that we 'have regard for all children's rights, including their rights to seek, receive and impart information, to be protected from harm and to have their views given due weight, and ensure transparency in the assessment of the best interests of the child and the criteria that have been applied.'¹⁰ For industry, in practice, this may mean making decisions in relation to children which seemingly clash with the interests of companies, such as not capturing and processing children's data in ways that are detrimental to them through means such as behavioural advertising or biometrics collection.

We acknowledge that the task of balancing children's rights to be protected and free from harm, with others such as the right to privacy and access to information, can be a difficult one. Parental consent frameworks may be in place to protect children but can at times lead to the overriding of a child's right to freedom of expression and participation. However, fundamental to a rights-based approach is an understanding that all rights are interdependent, indivisible, and non-hierarchical. In performing the difficult task of balancing children's rights, the best interests and evolving capacities principles are essential in helping to ensure our decisions promote not undermine them, and their inclusion in the Draft Industry Codes will give service providers the tools they need to do so.

Recommendation

6. Adopt established guidance on upholding children's rights in digital environments when assessing and mitigating risks for children to ensure the Codes always support the highest level of protection for children possible without unduly limiting their rights.

4. Engage children and young people

Every child and young person under 18 has the right to participate and have their opinions included in decision-making processes that relate to their lives.¹¹ Including the voices of children and young people in the development of policy isn't just the right thing to do, it's the smart thing to do – policies co-designed with children and young people are better tailored to their needs and deliver better outcomes.¹² Children and young people have also displayed a strong interest in how the digital world is designed and treats them. UNICEF Australia's own research has shown that children and young people have a keen understanding of the profound and growing impact of social media on their lives and want support to safely navigate online spaces and strengthened protections to keep them safe.¹³

Young people engage with the online world, particularly through social media, at comparatively high rates compared to other age groups, therefore changes to that world stand to have a comparatively greater impact on them. Given this, children and young people should be afforded every opportunity to influence how the online world is designed. UNICEF Australia notes that the current public consultation on the Draft Industry Codes (Phase 2) was for just over 30 days, a relatively short period of time given there are nine Codes of a technical nature requiring review. To our knowledge, there has also been little direct engagement with children and young people on the design of the Codes.

Given the importance of the Codes to ensuring the safety of children and young people (and the community more broadly), UNICEF Australia would like to see an extended and expanded public consultation process, employing genuine

¹⁰ United Nations. (1989). Convention on the Rights of the Child. Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

¹¹ United Nations. (1989). Convention on the Rights of the Child. Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

¹² UNICEF. (n.d.). Valuing young people's voices – from research to policy. Retrieved from <https://www.unicef.org/innocenti/press-releases/valuing-young-peoples-voices-research-policy>

¹³ UNICEF Australia. (2024). Protecting children in the online world: Reshaping the digital world for Aussie kids https://assets-us-01.kc-usercontent.com/99f113b4-e5f7-00d2-23c0-c83ca2e4cfa2/6cde226b-23d1-413a-bac3-7f0eafe524d4/UA_Digital-Wellbeing-Position-Paper-2024_LR_FINAL.pdf

and meaningful consultation with children, young people, organisations that work with them, and statutory bodies charged with protecting their rights such as Children's Commissioners and Guardians. Taking the time to do so now will ensure the Draft Industry Codes best meet community need and provide essential protection for some of our most vulnerable.

Recommendation

7. Extend and expand the public consultation on the Draft Industry Codes to undertake genuine and meaningful consultation with children and young people.