

30 September 2022

Proposed industry codes to be registered by the Office of the eSafety Commissioner – submission from Relationships Australia National Office to onlinesafety.org.au

Thank you for the opportunity to comment on the proposed industry codes, to be registered and enforced by the eSafety Commissioner pursuant to the *Online Safety Act 2021* (Cth).

Background - the work of the Relationships Australia federation

A commitment to fundamental human rights, to be recognised universally and without discrimination, underpins the work of Relationships Australia. We are committed to:

- Working in regional, rural and remote areas, recognising that there are fewer resources available to people in these areas, and that they live with pressures, complexities and uncertainties not experienced by those living in cities and regional centres
- Collaboration with local and peak body organisations to deliver a spectrum of prevention, early and tertiary intervention programs with older people, men, women, young people and children.
- Ensuring that social and financial disadvantage is no barrier to accessing services.
- Contributing practice evidence and skills to research projects, the development of public policy, and the provision of compassionate and effective supports to individuals, families and communities.

Relationships Australia is a 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, lifestyle choice, living arrangements, cultural background or economic circumstances.

Relationships Australia has, for over 70 years, provided a range of social services to Australian families, including individual, couple and family group counselling, dispute resolution, services to older people (including older people experiencing abuse and neglect), children's services, services for victim survivors and perpetrators of family violence, and relationship and professional education.

We respect the rights of all people, in all their diversity, to live life fully and meaningfully within their families and communities with dignity and safety, and to enjoy healthy relationships.

Context of this submission

Relationships Australia welcomes the development of norms and standards with which online industry participants must comply as crucial to enhancing the safety of the online environment for all.

An absence of effective regulation enables and encourages the perpetration of violence, including all forms of family and domestic violence, sexual violence, and abuse of older people. Perpetrators may feel that, within the online environment, they can with impunity engage in violent behaviours (including image-based abuse, surveillance, coercion, harassment and threats).

The purpose of this submission is to further inform the development of Codes that are sufficiently comprehensive to achieve their objectives and satisfy the requirements of the eSafety Commissioner.

We do not consider the extent to which the draft codes adopt the positions, meet the expectations, or follow the guidelines set out in the eSafety Commissioner's Position Paper, *Development of industry codes under the Online Safety Act*. Nor do we express views on whether proposed measures are reasonable and proportionate, given that we are not in a position to assess risk posed by services and devices.

Recommendation

Relationships Australia recommends that:

1. the draft codes expressly acknowledge that perpetrators of family domestic and sexual violence (including intimate partner violence, abuse of children and young persons, and abuse of older persons) create, share and store Class 1A and 1B materials (see below for further discussion of the use, risks, harms and other impacts of technology-facilitated abuse)
2. the draft codes provide that, where Class 1A and 1B materials are created, shared and stored within such a context, there are particular power imbalances, risk factors and vulnerabilities that may not arise in other contexts and that inherently elevate the impact and likelihood of severe and enduring harm to victim/survivors
3. if this has not already occurred – industry directly engage with children and young people, including by establishing a specialist advisory group comprised of children and young people, to further inform development of the codes, as well as to inform implementation and periodic review
4. if this has not already occurred – industry directly engage with people living with disability, and their advocates, carers and service providers, to develop tailored arrangements to deter, detect and take appropriate regulatory action against, scammers targeting people with disability in the digital ecosystem.

Technology-facilitated abuse

Technology-facilitated abuse (TFA) has emerged as a preferred instrument by which to perpetuate various forms of family, domestic and sexual violence (FDSV). For the purposes of this submission, this includes child abuse and abuse of older people, as well as conduct that can be characterised as coercive controlling behaviour, and image-based abuse.

Its appeal arises from a confluence of factors, including:

- ubiquity and ease of access by perpetrators
- the difficulties of going about contemporary everyday life without recourse to technology, creating opportunities for perpetrators
- the emerging promotion and use of technology within the family law system (eg parenting apps, property division apps etc); Relationships Australia Victoria and Relationships Australia Canberra and Region are Partner Investigators with the Australian National University and the University of Wollongong in a research project into the risks and benefits of parenting apps and app features¹
- the 'borderless' nature of the online environment, and difficulties in cross-jurisdictional enforcement, and
- the fragmented nature of government entities with overlapping roles, powers and functions of the digital ecosystem (including, for example, eSafety, the ACMA, the ACCC, the OAIC, the AFP, state and territory police services (given their primary roles in DFSV and child protection), and the Department of Home Affairs, in addition to the intelligence agencies involved in surveilling for and responding to pro-terror materials).

Our clients are affected by the exploitation of technology as a means to harass, coerce or stalk them, their family members and other contacts (such as friends, colleagues and of course new partners), to commit other online offences against them (eg swotting and identity crime), as well as to surveil them for the purposes of committing other acts of violence in the 'offline' world.

The impact of TFA on victim/survivors can be severe, profoundly debilitating and pervade all aspects of a person's life, in the present and into the future (we therefore welcome proposed measures to enforce 'blackholing' and de-indexing). It affects the ability to engage in employment, education, economic/commercial, social and cultural activities, and creates and exacerbates a sense of isolation or social exclusion.² Experiencing TFA can magnify a person's sense of imprisonment and isolation within family relationships or everyday life. This is the case

¹ See <https://csrc.cass.anu.edu.au/research/projects/post-separation-parenting-apps> .

² There is now a substantial body of evidence demonstrating that social isolation is a risk factor for adverse physical and mental health outcomes, and premature mortality: Australian Institute of Health and Welfare 2019. Social isolation and loneliness. Canberra: AIHW. Viewed 30 September 2022, <https://www.aihw.gov.au/reports/australias-welfare/social-isolation-and-loneliness-covid-pandemic> ; Calati, R., Ferrari, C., Brittner, M., Oasi, O., Olié, E., Carvalho, A. F., & Courtet, P. (2019). Suicidal thoughts and behaviors and social isolation: A narrative review of the literature. *Journal of Affective Disorders*, 245, 653-667; Heinrich L & Gullone E (2006). The clinical significance of loneliness: A literature review. *Clinical Psychology Review* 26:695–718; Holt-Lunstad J, Smith T, Baker M, Harris T & Stephenson D (2015). Loneliness and Social Isolation as Risk Factors for Mortality: A Meta-Analytic Review. *Perspectives on Psychological Science* 10:227–37; McClelland, H., Evans, J. J., Nowland, R., Ferguson, E., & O'Connor, R. C. (2020). Loneliness as a predictor of suicidal ideation and behaviour: a systematic review and meta-analysis of prospective studies. *Journal of Affective Disorders*, 274, 880-896; Mushtaq, R. (2014). Relationship Between Loneliness, Psychiatric Disorders and Physical Health? A Review on the Psychological Aspects of Loneliness. *Journal of Clinical and Diagnostic Research*; Valtorta, N., Kanaan, M., Gilbody, S., Ronzi, S., & Hanratty, B. (2016). Loneliness and social isolation as risk factors for coronary heart disease and stroke: systematic review and meta-analysis of longitudinal observational studies. *Heart*, 102(13), 1009-1016.

even after a relationship has ended; TFA can make a person feel that there is no escape from an abuser, even after a relationship has ended.

Thanks to the Internet and our increasingly smart devices (including the Internet of Things), there is a frightening range of choice for abusers who wish to control, humiliate and isolate their victims. Our practitioners report increasing prevalence of:

- sending offensive messages with small deposits of money
- monitoring bank accounts for transactions to track whereabouts
- trackers (sometimes attached to/embedded in children's toys during contact visits)
- hidden cameras
- exploitation of default settings in social media and apps
- exploitation of cookies to collect and hold information
- exploitation of compromised passwords (clients can be unaware that WiFi and routers use a generic password, and fail to change it, creating opportunities for perpetrators of DFSV)
- exploitation of smart home technology (to surveille not only usual occupants of a place, but visitors to it), and
- installing spyware and stalkerware on mobile phones, gaming consoles and baby monitors.

How Class 1A and 1B material affects our clients

People who choose to use TFA against family members may produce (including through 'deep faking' as well as other forms of image-based abuse), store, and share material that falls within the definitions of Class 1A and 1B materials. This is inherently material that will cause the most severe impacts on those depicted in, exposed to, or otherwise attributed to the material (for example, seeking to implicate a former partner (or a new partner of a former partner) in the production and distribution of CSEM or pro-terror materials, as well as in the commission of other offences. This can be used, for example, to attempt to gain leverage in contested parenting or property matters.

Relationships Australia is also aware that scammers are becoming increasingly sophisticated in deliberately targeting people living with disabilities that might affect their ability to identify and respond effectively to scam attempts.³

Provision of online services

Finally, Relationships Australia is itself an 'end user' in the digital ecosystem and has a direct stake in a safe online environment. The Covid-19 pandemic catalysed the use by Relationships

³ See, for example, the Public Advocate (Queensland), Adult Safeguarding in Queensland. Volume 1. Identifying the Gaps https://www.justice.qld.gov.au/_data/assets/pdf_file/0011/726599/202207-adult-safeguarding-issues-paper-volume-one-final.pdf [viewed 30 September 2022], pp 28-30. As a provider of universal services, Relationships Australia works people living with disabilities across a range of its programmes.

Australia of online platforms to deliver many of our service types. While most of our clients have indicated that they prefer to receive services face to face, others found online options to be appealing and practical, and we will retain and continue to innovate these capabilities. As such, our clients and our practitioners will continue to use online tools and techscapes to engage in psychologically and financially sensitive activities.

We therefore welcome measures by industry and regulators to ensure that the online environment in which we engage with our clients is safe and secure.

Conclusion

Thank you again for the opportunity to comment on the development of the draft codes. We would welcome future opportunities, through the in-built review structures, to comment on how their ultimate implementation has affected the online safety of our clients. We would also be very pleased to discuss any aspect of this submission further, if it would be of assistance. Please do not hesitate to contact me (ntebbey@relationships.org.au / 02 6162 9300) or our National Policy Manager, Dr Susan F Cochrane (scochrane@relationships.org.au).

Kind regards

A handwritten signature in black ink, appearing to read 'Nick Tebbey', with a long horizontal stroke extending to the right.

Nick Tebbey
National Executive Officer