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## Consolidated Codes of Practice for the Online Industry – Phase 2 (Class 1C and 2 Material)

Thank you for the opportunity to make a submission on the Phase 2 industry codes of practice, noting that Relationships Australia National Office previously commented on the consolidated codes of practice for the online industry and Phase 1 Codes.<sup>1</sup> Relationships Australia supports 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. Effective industry codes of practice will also contribute to ending gender-based violence, including through a broad-based perspective on prevention, and keeping children in Australia safe.<sup>2</sup>

We commend industry participants for their efforts to develop industry codes of practice that will empower and support parents, carers and children to exercise informed choices while also reflecting that the online industry, governments, communities and families must play their roles in bearing collective responsibility for a safer online world. Ineffective regulatory settings enable and encourage the perpetration of violence, including all forms of family and domestic violence, sexual violence,<sup>3</sup> abuse of older people and child maltreatment,<sup>4</sup> as well as specific kinds of criminal and civil misconduct. Perpetrators may feel that, within the online environment, they can with impunity engage in violent, abusive and exploitative behaviours. Relationships Australia welcomes obligations imposed on service providers to engage with community to inform development of measures to achieve the safety objectives of the Phase 2 codes.<sup>5</sup>

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<sup>1</sup> See our 2023 submission at <https://www.relationships.org.au/wp-content/uploads/Onlinesafetyorg-consultation-2.220323FINAL.pdf> ; our 2022 submission is available at <https://www.relationships.org.au/wp-content/uploads/Online-safety-submission-300922FINAL.pdf> .

<sup>2</sup> See, eg, the National Plan to End Violence Against Women and Children 2022-2032; Safe and Supported – the National Framework for Protecting Australia’s Children 2021-2031. See also the Rapid Review report into unlocking the prevention potential, 2024; Hill & Salter, 2024.

<sup>3</sup> See, eg, Wolbers & Dowling, 2024. The authors note that ‘Online dating platforms facilitate a high prevalence of sexual harassment, aggression and violence victimization’ (p 15) and call for ‘measures that broadly bolster guardianship within dating apps, reduce victim vulnerability and removed motivated offenders from dating apps’ (p 14).

<sup>4</sup> See, eg, Mathews et al, 2023, for the prevalence of child maltreatment in Australia. This includes exposure to DFV (which includes technology-facilitated abuse, and the subset of that abuse known as image-based abuse.

<sup>5</sup> See, eg, Discussion Paper, p 43, MCM 1.12; Schedule 4, MCM 10; Schedule 7, MCM 14; Schedule 8, MCM 18.

## The focus of this submission – the potential of Class 1C and Class 2 material to harm children and young people

Relationships Australia’s concerns with Class 1C and Class 2 material are that, while it may be lawful *per se*:

- it can be used within the context of technology-facilitated abuse (TFA) of children and young people - whether or not that abuse occurs within a familial context,<sup>6</sup> and
- children who access these materials before it is developmentally appropriate for them may experience harms arising from, for example, normalisation of online (and offline) gambling, of self-harming behaviours, and of dangerous and coercive sexual practices as commonly depicted in pornography.

### Technology-facilitated abuse

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. 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. A substantial body of evidence demonstrates that social isolation is a risk factor for adverse physical and mental health outcomes, and premature mortality.<sup>7</sup> Experiencing TFA can magnify a person’s sense of imprisonment and isolation within family relationships or everyday life. Long after a relationship has ended, TFA can make a person feel that there is no escape from an abuser. Cyberbullying is a well-documented feature in suicides of young people.

Thanks to the Internet and our increasingly smart devices (including the Internet of Things), there is an ever-expanding array of tools for abusers who wish to control, humiliate and isolate their victims. Our practitioners report increasing prevalence of:

- monitoring bank accounts for transactions to track whereabouts
- trackers (sometimes attached to/embedded in children’s toys during contact visits in which case violence is being perpetrated against the child as well as the partner whose surveillance is the primary object)
- hidden cameras
- exploitation of default settings in social media and apps<sup>8</sup>
- 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)

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<sup>6</sup> For discussion of how DFV perpetrators can involve children in TFA, including by persuading them to access and share inappropriate materials, see Dragiewicz et al, 2022; see also eSafety Commissioner, 2023.

<sup>7</sup> See, eg, AIHW, 2019; Calati et al, 2019; Heinrich & Gullone, 2006; Holt-Lunstad et al, 2015; McClelland et al, 2020; Mushtaq, 2014; Valtorta et al, 2016.

<sup>8</sup> See, eg, Markwick et al, 2019.

- exploitation of smart home technology (to surveil not only usual occupants of a place, but visitors to it), and
- spyware and stalkerware installed, without end-users being aware of it, on mobile phones, gaming consoles and baby monitors.

People who choose to use TFA may produce, store, and share material that falls within the definitions of Class 1C and Class 2, as well as Class 1A and 1B, materials. In some respects, the development of Codes in relation to Class 1C and Class 2 materials is more complex, because they are materials that are otherwise lawful and become problematic only in so far as they are accessed by children and young people at developmentally sensitive ages, or exploited to coerce, control, bully or harass. For example, self-harm material can be shared by a young person with another young person with messages that the recipient should kill or harm themselves.

Relationships Australia is also aware that scammers are becoming increasingly sophisticated in deliberately targeting people living with disabilities, including neurocognitive disabilities, that might affect their ability to identify and respond effectively to scam attempts, including through extortion.<sup>9</sup>

Finally, Relationships Australia is itself an ‘end user’ in the digital ecosystem and has a direct stake in a safe online environment. 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 support measures by industry and regulators to ensure that the online environment in which we engage with our clients is safe and secure.

Relationships Australia acknowledges the highly dynamic nature of current policy discussions about online safety (noting, for example, the recent announcements of bans on children accessing social media and of introduction of a statutory ‘digital duty of care’). This adds complexity to the task of developing industry codes.

## Contents of this submission

This submission:

- sets out our recommendations in respect of the Phase 2 Codes and explanatory materials
- describes the work of the Relationships Australia federation, and the framing principles for this submission

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<sup>9</sup> 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-issuespaper-volume-one-final-.pdf](https://www.justice.qld.gov.au/_data/assets/pdf_file/0011/726599/202207-adult-safeguarding-issuespaper-volume-one-final-.pdf) pp 28-30. As a provider of universal services, Relationships Australia works people living with disabilities across a range of its programmes.

- responds to the questions set out in the Discussion Paper accompanying the Phase 2 Codes, and
- provides recommendations relating to other aspects of the Codes and their explanatory materials.

This submission does 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 July 2024 Position Paper. 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.

## Recommendations

### **Recommendation 1**

The Head Terms, the Codes and their explanatory materials should explicitly state that they are informed by principles of harm minimisation and proportionality of risk (in terms of likelihood of occurrence and gravity of consequences of risk materialisation), as well as a principle of collective responsibility for online safety, which is shared among governments, service providers and end-users, relative to their respective capacities to minimise risk and harm.

### **Recommendation 2**

The Codes and explanatory materials should make plainer the distinction between ‘high impact classified material’ (a concept introduced for Phase 2: see, eg, Head Terms, pp 9-10; Schedule 2, clause 6.1; Discussion Paper, p 50) and ‘high priority restricted material’ (see, eg, Discussion Paper, pp 8, 11, 12, 16).

### **Recommendation 3**

To simplify the drafting and make the Codes more accessible, the words ‘technically feasible’ should be omitted; the requirement that actions be ‘reasonably practicable’ is sufficient.

### **Recommendation 4**

The Codes should expressly require industry participants to take measures to minimise risks of identity theft.

### **Recommendation 5**

The Codes (including the Codes already in force) should move away from use of ‘Australian’ as a descriptor, and refer instead to end-users in Australia who access services or use devices.

### **Recommendation 6**

For clarity and simplicity, the Codes and supporting explanatory material should refer consistently to ‘parents and carers’ of children.

**Recommendation 7**

The Codes should frame obligations using direct and active language.

**Recommendation 8**

The Head Terms should refer to where the relevant practices or fantasies are specified for paragraph (a) of the definition of class 1C material.

**Recommendation 9**

Care should be taken in developing and using facial age estimation measures for the purpose of age assurance systems, to proactively guard against contamination by implicit bias.

**Recommendation 10**

The Schedules and accompanying explanatory materials should provide clear and explicit statements as to the specific contexts in which obligations are imposed in respect of simulated gambling materials.

**Recommendation 11**

Measures such as those set out at Schedule 1, subclauses 7.1.8 and 9.3.2, should be strengthened by requiring industry participants to ensure that means of reporting, flagging or complaining about content are:

- not merely provided or published, but actively promoted, to reflect that online safety is a collective responsibility
- visible on home pages and online safety information locations established pursuant to provisions such as Schedule 1, subclause 8.2.16
- culturally sensitive
- accessible to people with disability
- accessible by children and young people (acknowledging that children and young people are rights-bearers with agency and are entitled to access reporting and complaints mechanisms, in accordance with the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights)
- as frictionless as possible (and certainly as frictionless as accessing content of the kinds to which the Phase 2 Codes apply), and
- trigger meaningful responses from service providers within reasonable timeframes, to be determined by reference to the magnitude of risk of harm to child end-users.

**Recommendation 12**

The Codes should specify appropriate timeframes, including for referral of complaints to the Office of the eSafety Commissioner, rather than referring merely to 'reasonable' timeframes.

### **Recommendation 13**

The Codes and explanatory materials should expressly define accessibility as including accessibility by First Nations people, people who identify as belonging to culturally and linguistically marginalised groups, children and young people, and people with disability.

### **Recommendation 14**

MCM 8 (Schedule 2; Discussion Paper, p 32) should require that tools and settings that enable end-users in Australia to leave a group chat should also enable that to occur without notification of the organiser of the group chat.

### **Recommendation 15**

Provisions such as Schedule 1, subclause 7.1.7, should be simplified and strengthened.

### **Recommendation 16**

Schedule 6 should require internet service providers to ensure that proprietary filtering products that it makes available are compatible with its internet service.

### **Recommendation 17**

Personnel responding to reports and complaints should receive training in trauma-informed practice.

### **Recommendation 18**

The Codes should explicitly establish minimum obligations which providers must meet, calibrated to their relative size, reach and capacities.

## **The work of Relationships Australia**

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, cultural background or economic circumstances. Relationships Australia provides a range of services, including counselling, dispute resolution, children's services, services for victims and perpetrators of family violence, services for older people, and relationship and professional education.

We aim to support all people in Australia to live with positive and respectful relationships, and believe that people have the capacity to change how they relate to others. Relationships Australia has provided family relationships services for 75 years. Our State and Territory organisations, along with our consortium partners, operate approximately one third of the Family Relationship Centres (FRCs) across the country. In addition, Relationships Australia Queensland operates the national Family Relationships Advice Line and the Telephone Dispute Resolution Service.

## Framing Principles for Submission

### Principle 1 - Commitment to human rights

Relationships Australia contextualises its services, research and advocacy within imperatives to strengthen connections between people, scaffolded by a robust commitment to human rights. Relationships Australia recognises the indivisibility and universality of human rights and the inherent and equal freedom and dignity of all.

### Principle 2 – Accessible and inclusive public institutions, regulation and service delivery

Inclusive and universally accessible public institutions, regulation (including self-regulation and co-regulation), and services are an imperative of human rights. This is because circumstances that operate to exclude, marginalise or discriminate against individuals become barriers to full participation in economic, cultural, political, and social life – online and offline - through the operation of systemic and structural factors, including:

- legal, political, bureaucratic and corporate frameworks
- beliefs and expectations that are reflected in decision-making structures
- policy settings, and
- biases or prejudices that persist across society and that are reflected in arts, culture, media and entertainment, and commercial enterprises.

Online services are essential services to individuals and communities, and components of critical national infrastructure. This is reflected in the burgeoning array of legislative and regulatory activity. Providers of such services are subject to particular obligations deriving from their criticality and from asymmetries of market power and technical capacity as between providers and end-users. In addition to accessibility and inclusivity, these obligations require acknowledgement that online safety is a collective responsibility, shared among governments, industry and end-users in proportion to their respective capacities to minimise risk and harm.

### Principle 3 - Cultural safety and responsiveness

Our commitment to upholding human rights necessarily includes a commitment to respecting epistemologies beyond conventional Western ways of being, thinking and doing. Of acute importance is a commitment to respecting epistemologies and experiences of Aboriginal and Torres Strait Islander people as foundational to policy and programme development, as well as service delivery. Centring the epistemologies and experiences of Aboriginal and Torres Strait Islander people is a necessary (although not sufficient) step in achieving the targets in the National Agreement on Closing the Gap. People who identify as belonging to culturally and linguistically marginalised groups need also to see their perspectives reflected in our political, economic, social and cultural spaces.

## Principle 4 - Accessible legal and regulatory frameworks

Legal and regulatory frameworks should be clear, intelligible, accessible and inclusive.

Accordingly, Relationships Australia is committed to advocating for:

- reducing complexity of the law and its supporting systems and processes
- reducing fragmentation, and
- high quality and evidence-based regulation, accompanied by robust and timely accountability mechanisms.

## Principle 5 - Fragmentation and siloing

Our commitment to accessibility also underpins our advocacy for systems and processes that lift from the shoulders of those least equipped to bear them the burdens of fragmented, siloed, complex and duplicative or inconsistent systems.

Relationships Australia is committed to promoting accessibility of its services, and advocating for accessibility, including by:

- reducing fragmentation
- reducing complexity of the law and its supporting processes, and
- reducing barriers to access arising from financial or economic disadvantage, as well as other positionalities and circumstances that create barriers to accessing services (including by promoting geographic equity)

## Principle 6 - Commitment to promoting social connection and addressing loneliness as a serious public health risk

Social isolation is a common consequence of TFA, including image-based abuse.<sup>10</sup> Loneliness is a complex social problem and a public health concern. It should be considered to be a social determinant of health in its own right. As a public health concern (Heinrich & Gullone, 2006; Holt-Lunstad et al, 2015; Mance, 2018; AIHW, 2019), loneliness has been linked to physical health risks such as being equivalent to smoking 15 cigarettes a day and an increased risk of heart disease (Valtorta, 2016). Loneliness is a precursor to poorer mental health outcomes, including increased suicidality (Calati et al, 2019; McClelland et al, 2020; Mushtaq, 2014).

## Responses to questions in Discussion Paper

### Question 1 – Overarching approach to the Codes for Classes 1C and 2

Relationships Australia considers that these characteristics of services are relevant to the adoption of differential regulatory approaches throughout the Codes and their Schedules. We agree that it is appropriate for the Codes to distinguish between industry participants providing services that prohibit Class 1C and Class 2 material, and those which allow Class 1C and Class 2

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<sup>10</sup> See, eg, Bates, 2017; Rogers et al, 2023.



material (eg services that have as their purpose the provision of pornography or gambling activity).

We **recommend** that the Head Terms, the Codes and their explanatory materials should explicitly state that they are informed by principles of harm minimisation and proportionality of risk (in terms of likelihood of occurrence and gravity of consequences of risk materialisation) (**Recommendation 1**).

To further promote clarity of the Codes and explanatory materials, we **recommend** that these documents make plainer the distinction between ‘high impact classified material’ (a concept introduced for Phase 2: see, eg, Head Terms, pp 9-10; Schedule 2, clause 6.1; Discussion Paper, p 50) and ‘high priority restricted material’ (see, eg, Discussion Paper, pp 8, 11, 12, 16) (**Recommendation 2**).

### Question 3 – Age assurance

Relationships Australia notes that proposed obligations to implement age assurance measures and access control measures are qualified to apply only ‘to the extent technically feasible and reasonably practicable’.<sup>11</sup> It is unclear how technical feasibility is not subsumed by ‘reasonably practicable’, and the use of both terms may give rise to unnecessary complexity of implementation. To simplify the drafting and make the Code more accessible, we **recommend** omitting references to ‘technically feasible’ (**Recommendation 3**).<sup>12</sup>

Relationships Australia is concerned that age assurance measures, if they allow for capture and storage of identity information, may create additional opportunities for identity theft. Accordingly, and in light of the serious and enduring harm that can arise from identity theft, we **recommend** that the Code should also expressly require industry participants to take measures to minimise that risk (**Recommendation 4**).

### Question 4 – Age assurance

Relationships Australia considers that only engagement with Class 1C or Class 2 material should trigger an age assurance process. We welcome the proposed default measures to minimise risk that child end-users in Australia will access or be exposed to high impact online pornography, and to empower parents and carers to implement their own measures to further manage that risk in line with their own values and expectations.<sup>13</sup>

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<sup>11</sup> See Head Term 5.2(c)(i) and, by way of example, Schedule 1, clause 7, subclauses 1.1, 1.3 and 2.2.

<sup>12</sup> This also applies to explanatory material such as that in the Discussion Paper, at p 28, paragraph 7.6.2; p 40, paragraph 7.7.5; p 45, MCM 2.1; p 51, MCM 4.4

<sup>13</sup> See, eg, Discussion Paper, p 54, MCM 4; see also Schedule 8, MCM 10 and Discussion Paper, p 56. See also Schedule 7, MCMs 1-3.

## Other comments

### Inclusive language

The draft Codes and accompanying discussion paper repeatedly use terms such as ‘Australian end-user’ and ‘Australian child’. These terms are defined in clause 2.1 of the Head Terms. Clients of Relationships Australia, especially clients who identify as belonging to culturally or linguistically marginalised groups, have told us that use of ‘Australian’ as a descriptor is alienating and is experienced by them as exclusionary. Relationships Australia **recommends** that the industry codes (including the codes already in force) move away from such approaches, and refer instead to end-users in Australia who access services or use devices (**Recommendation 5**). This approach would retain the requisite jurisdictional nexus while being more inclusive.

Relationships Australia also **recommends** that, for clarity and simplicity, the Codes and supporting explanatory material consistently refer to ‘parents and carers’ of children (**Recommendation 6**). The current drafts use a range of terms, including parent, carer, guardian and responsible adult.<sup>14</sup>

### Direct and active language

Relationships Australia notes that the language used to express obligations on industry participants tends to be indirect and reactive, and has the potential to undermine the objectives of the Codes. For example,

A service provider must, to the extent technically feasible and reasonably practicable, implement appropriate measures to prevent child end-users from accessing or being exposed to high impact online pornography and self-harm material. (Schedule 1, subclause 7.2.2)

The successful achievement of the Code’s objective is more likely by framing a direct and active obligation, along the lines of

A service provider must take all reasonably practicable measures to prevent child end-users from accessing or being exposed to high impact online pornography and self-harm material.

Similarly, obligations to enforce actions, policies, and terms and conditions should make clear that industry participants must actively enforce measures to minimise children’s access to Class 1C and Class 2 material. For example, Schedule 1, subclause 7.1.4 states that

A service provider must have, and enforce, clear actions, policies or terms and conditions relating to high-impact online pornography and self-harm material, which will include to the extent applicable terms and conditions dealing with types of high-impact

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<sup>14</sup> See, eg, Discussion paper, p 71, paragraph 7.11.2.

online pornography and self-harm material that are allowed or not allowed to be posted on their social media service. (see also Schedule subclause 7.2.1; Discussion Paper, p 30, paragraph 7.6.5(d))

The framing of this obligation leaves it open to service providers to take an entirely reactive approach to enforcement, which would undermine achievement of the safety objective.<sup>15</sup>

A further opportunity to better promote achievement of the objectives of the Codes is to be found in obligations imposed on service providers to improve systems to detect and remove material before it is accessed by end-users. For example, Schedule 1, subclauses 8.2.3 and 8.2.4 should replace ‘must invest in and aim to continuously improve’ with ‘must continuously improve’.<sup>16</sup>

Framing obligations using direct and active language would promote achievement of the objective, while allowing flexibility for industry participants. Relationships Australia **recommends** the use of direct and active language to frame obligations imposed by the Codes (**Recommendation 7**).

### Definitions of material categories (Head terms, p 9; Discussion paper, p 12)

Paragraph (a) of the definition of class 1C material refers to ‘specific fetish practices or fantasies’. Relationships Australia **recommends** that the Head Terms refer to where the relevant practices or fantasies are specified (**Recommendation 8**).

### Definitions of self-harm material and simulated gambling material (Head terms, p 11; Discussion paper, p 13)

Relationships Australia agrees that these kinds of material should be ‘subject to the most stringent measures’, and – given the borderless nature of the online world – supports harmonisation and interoperability with the United Kingdom approach. We welcome the measures, in Schedule 7 (Equipment Online Safety Code) to ensure that

...gaming devices with general internet browsing capability, and therefore the highest risk of enabling access to class 2 material by a child, are subject to the measures in this Code. (Discussion Paper, p 74)

### Examples of ‘appropriate age assurance measures’ (Head terms, sub-subparagraph 5.1(c)(vi)(B); Discussion paper, p 14) – facial age estimation

Relationships Australia **recommends** that care is taken in developing and using such measures, to proactively guard against contamination by implicit bias, especially implicit racial bias, as has occurred in other facial recognition technology, as well as in other regulatory contexts where

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<sup>15</sup> See also Discussion Paper, p 41, MCM 1.3. See also Schedule 2, paragraphs 6.1(b) and (c).

<sup>16</sup> See also, eg, Schedule 8, MCM 19.

estimators of age have not been supported by rigorous science (such as age estimation in migration matters) (**Recommendation 9**).

### Class 2 materials – simulated gambling material

Relationships Australia notes that the Schedules appear to be inconsistent in their treatment of simulated gambling materials, which are Class 2 materials.<sup>17</sup> In some places, they are mentioned;<sup>18</sup> in others, only self-harm material is mentioned in the context of Class 2 material.<sup>19</sup> Relationships Australia **recommends** that the Schedules and accompanying explanatory materials provide clear and explicit statements as to the specific contexts in which obligations are imposed in respect of simulated gambling materials (**Recommendation 10**). This will enhance the clarity, accessibility and consistent application of the codes by industry participants.

### Mechanisms for reporting, flagging and complaining about content must be inclusive, accessible and empower end-users, their parents and carers

Relationships Australia welcomes the attention given in the Phase 2 codes to empowering end-users (and, for child end-users, their parents and carers) to express concerns that Class 1C and Class 2 material is inappropriately accessible. In accordance with Framing Principles 2-5 of this submission, we **recommend** that measures such as those set out at Schedule 1, subclauses 7.1.8 and 9.3.2, be strengthened by requiring industry participants to ensure that means of reporting, flagging or complaining about content are:

- not merely provided or published, but actively promoted, to reflect that online safety is a collective responsibility<sup>20</sup>
- visible on home pages and online safety information locations established pursuant to provisions such as Schedule 1, subclause 8.2.16<sup>21</sup>
- culturally sensitive
- accessible to people with disability
- accessible by children and young people (acknowledging that children and young people are rights-bearers with agency and are entitled to access reporting and complaints mechanisms, in accordance with the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights)
- as frictionless as possible (and certainly as frictionless as accessing content of the kinds to which the Phase 2 Codes apply), and

<sup>17</sup> See Discussion Paper, p 13, which states that simulated gambling materials are treated as ‘high priority content’.

<sup>18</sup> See, eg, Discussion Paper, pp 28 (clause 7.6.4) and 29 (MCM 2); p 37, clause 7.6.7; pp 50-51, ‘Measures for high impact classified material’; MCM 4.5.

<sup>19</sup> See, eg, Schedule 1, subclause 7.1.4; Discussion Paper, p 33, MCM 10; Discussion Paper, pp 38-39, definition of ‘high impact class 2 DIS’; p 39, clause 7.7.3 (Approach to risk assessment); p 40, MCM 1.2; p 46, Schedule 7, subclause 6.1 (see also Discussion Paper, pp 59-60, section 7.9.2); MCM 2.4, 2.5.

<sup>20</sup> See, eg, Schedule 6, MCM 1; Schedule 7, MCM 11.

<sup>21</sup> See also Discussion Paper, pp 34-35, MCM 14.

- trigger meaningful responses from service providers within reasonable timeframes, to be determined by reference to the magnitude of risk of harm to child end-users.<sup>22</sup>

**(Recommendation 11)**

Relationships Australia **recommends** that the Codes should specify appropriate timeframes, including for referral of complaints to the Office of the eSafety Commissioner, rather than referring merely to ‘reasonable’ timeframes (**Recommendation 12**).<sup>23</sup>

We acknowledge that provisions such as Schedule 1, subclause 7.1.6 require service providers

[T]o the extent relevant...publish clear and accessible information to Australian end-users about the tools and settings available to reduce the occurrence of high impact online pornography and self-harm material ...<sup>24</sup>

In relation to this, and similar obligations throughout the Phase 2 Codes, we **recommend** that accessibility be defined to expressly include accessibility by First Nations people, people who identify as belonging to culturally and linguistically marginalised groups, children and young people, and people with disability (**Recommendation 13**). Relationships Australia welcomes requirements that reporting mechanisms ‘be accompanied by clear instructions on how to use them.’<sup>25</sup> These instructions should be similarly accessible as the tools and settings which they support.

We welcome obligations on industry participants to publish information about the role and functions of the Office of the eSafety Commissioner (eg Schedule 1, subclause 7.1.14; Discussion Paper, p 47, MCM 2.10). This will support greater public awareness and knowledge of both the regulatory architecture supporting online safety, and the resources that the eSafety Commission makes publicly available. We also welcome the requirement that contact mechanisms (see Discussion Paper, p 31, MCM 4) protect the identity of reporters.

Relationships Australia **recommends** that MCM 8 (Schedule 2; Discussion Paper, p 32) require that tools and settings that enable end-users in Australia to leave a group chat should also enable that to occur without notification of the organiser of the group chat (**Recommendation 14**). This would support end-user safety.

### Fostering safety and public trust and confidence in the online industry

To optimally promote achievement of the safety objective and foster public trust and confidence in the online industry, Relationships Australia **recommends** that provisions such as Schedule 1, subclause 7.1.7, are simplified and strengthened (**Recommendation 15**). For

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<sup>22</sup> See also, eg, Discussion Paper, p 31, MCM 4; p 34, MCMs 12 and 13; p 43, MCM 1.11, 1.13. We are concerned about the lack of specificity of timeframes for action by third party app providers in Schedule 4, subparagraph 6.1(c)(ii).

<sup>23</sup> See, eg, Discussion Paper, p 42, MCM 1.8; p 47, MCM 2.8.

<sup>24</sup> See also, eg, the requirements for information for end-users (eg Discussion Paper, p 55; MCM 9).

<sup>25</sup> See, eg, Schedule 4, MCMs 7 and 8.

example, rather than providing that ‘A service provider must take reasonable steps to ensure eSafety receives updates regarding significant changes....’, the provisions would be better phrased as ‘A service provider must inform eSafety of significant changes.’<sup>26</sup>

Public trust and confidence will also be enhanced by measures that empower parents and carers to make informed choices about the devices and services they use and make accessible to children. To better support this, Relationships Australia also **recommends** that Schedule 6 require internet service providers to ensure that proprietary filtering products that it makes available are compatible with its internet service (**Recommendation 16**).

## Harms

At p 30, the Discussion Paper states that

Based on eSafety’s research to-date, it is unclear to us to what extent the intentional sharing of pornographic or other class 2 material on these services between users presents a risk of harm to young people under 18.

Relationships Australia considers that there is a robust evidence base demonstrating the harms caused by children and young people accessing and/or intentionally sharing pornographic (albeit lawful) material (see, eg de Souza, 2023a; de Souza, 2023b; Pathmendra et al, 2023; Paulus et al, 2024; Quadara, El-Murr & Latham, 2017; Scott et al, 2023).

Further, it is a tragic and disgraceful reality that there are regular reports in the Australian and international media of young people who have died by suicide following cyberbullying by peers (including cyberbullying that involves directions to the victim to self-harm).<sup>27</sup> There is also research indicating that engagement with pro-suicide or pro-self harm online groups can heighten risk for children and young people (see, eg, Balt et al, 2023).

Even when cyberbullying does not lead to active self-harming, suicidal ideation and suicidality, the evidence base establishes that children and young people who are cyberbullied are also more likely to experience loneliness and social isolation, with the morbidities that attach to those circumstances (see the research base canvassed at Principle 6, above).

These circumstances must be taken into account in developing and implementing measures that are reasonably practicable and proportionate to both the magnitude of the risks and the gravity of harms arising from materialisation of those risks.

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<sup>26</sup> Other instances meriting similar changes are at Schedule 1, clause 8.2.5; Schedule 7, MCMC 16; Discussion Paper, p 32, MCM 9; p 42, MCM 1.9.

<sup>27</sup> See also academic research on this topic: eg John et al, 2018; Dorol-Beauroy-Eustache & Mishara, 2021; Hallmark, 2023; Schonfeld et al, 2023. For a broader discussion of the effect of bullying on children in Australia, see AIHW, 2020. See also Coumarelos, 2023, which deals with experiences of university students.

## Trauma-informed responses

Relationships Australia welcomes the imposition of obligations to provide information about how end-users in Australia can contact third party services that may provide counselling and support.<sup>28</sup> We **recommend** that obligations to ensure that personnel responding to reports and complaints are trained to respond effectively, should also include training in trauma-informed practice (**Recommendation 17**).<sup>29</sup> In addition to improving the quality of service responses, this will support the health, safety and wellbeing of personnel, and minimise their risks of experiencing vicarious trauma in the workplaces. In a similar vein, Relationships Australia welcomes obligations to ensure that service providers have sufficient numbers of personnel (whether employed or contracted) to support compliance with the Code.<sup>30</sup>

## Continuous industry-wide improvement

The Codes impose obligations of continuous improvement (see, eg, MCM 11, Discussion Paper, pp 33-34),<sup>31</sup> and provide examples of activities that providers may engage in to comply with that measure. Relationships Australia supports the imposition of such obligations, which reflect the collective nature of the responsibility of building and maintaining a safer online environment. We would, however, **recommend** that the Codes explicitly establish minimum obligations which providers must meet, calibrated to their relative size, reach and capacities (**Recommendation 18**). In the absence of such explicit obligations, there is a risk that participation in these activities will become merely ritualistic, and diminish public trust and impair social licence.

## Conclusion

Thank you again for this opportunity; we look forward to working further with you to support a safe and robust online environment. Please do not hesitate to contact me at [ntebbey@relationships.org.au](mailto:ntebbey@relationships.org.au) or on 0422 415 987; if I am unavailable, Dr Susan Cochrane, our National Policy Manager, would be pleased to assist. She can be contacted at [scochrane@relationships.org.au](mailto:scochrane@relationships.org.au) or on 0477 778 659.

Kind regards



Nick Tebbey  
National Executive Officer

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<sup>28</sup> See, eg, Discussion Paper, p 48, MCM 2.11.

<sup>29</sup> See, eg, Schedule 8, MCM 13; Discussion Paper, pp 56-57.

<sup>30</sup> See, eg, Discussion Paper, p 50, MCM 4.2; Schedule 8, MCM 20.

<sup>31</sup> See also, eg, Schedule 4, MCM 6.

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