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Committee Secretary
Joint Select Committee on Social Media and Australian Society
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SUBMISSION ON SOCIAL MEDIA AND AUSTRALIAN SOCIETY

Thank you for the opportunity to provide input to this very important inquiry.

Children and Media Australia (CMA) has a long history of engaging with, analysing and critiquing laws and regulations intended to protect the child media consumer, and is pleased that a Joint Select Committee has been established to look at one of the most important forces shaping the media landscape today. Social media platforms have shown themselves unwilling to act unilaterally to protect the rights and interests of children, and it has become abundantly clear that government action is needed.

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

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

In its work, CMA is always guided by child development research and by the *UN Convention on the Rights of the Child (CRC)*. We discuss the CRC in more detail below, but for now we draw attention

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to article 18, which recognises the role of parents, and places an obligation on States to support them in their child-rearing:

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall *render appropriate assistance* to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children. (emphasis added)

The provision of an effective system for protecting children’s online safety is an important aspect of this assistance, especially in the current era when the role of online engagement in children’s lives is bigger than ever, and continuously growing.

This submission has been written by CMA’s President, Professor Elizabeth Handsley, and Hon CEO, Barbara Biggins OAM in consultation with our Board. We would be happy to be consulted further on the views put forward here.

Introduction

CMA sets out below its views on specific aspects of social media, within the context of the Committee’s Terms of Reference. Our overall stance is one of supporting children’s right to access the online world safely, and for their parents to have governmental support in realising that right. The empowerment of parents to take action in their own families can only go part-way in achieving this. The playing field between parents and social media companies is uneven, and parents cannot be expected to be able to be around, and to mitigate the impacts, whenever a company manages to attract their children’s attention. As a matter of practicality, not to mention fairness and equity, we need robust governmental regulation that puts maximum pressure on tech companies to design their products with children’s rights and developmental needs in mind.

CMA proposes **a combination of strategies** to protect children’s rights and interests in relation to social media. These include:

- a stronger focus on the requirements of the UN Convention on the Rights of the Child and the Business and Human Rights Principles;
- restrictions on platforms’ use of persuasive or addictive design techniques that attract and keep children’s attention;
- restrictions on platforms’ ability to access, store and share children’s data;
- age verification to reduce children’s exposure to risky or harmful content;
- an expansion of the legal definitions of harmful content;
- warnings that age-inappropriate use of social media can be risky;
- the introduction of a general duty of care; and

- the allocation of resources to support parents directly in their role of managing children’s online access and activities.

In the rest of this submission we provide comments on some of the matters referred to in the Terms of Reference. We have addressed only those matters on which we have an informed view.

ToR (a): Age verification

CMA understands that age verification is a controversial matter, raising a need to balance privacy and safety. However, looking at all relevant considerations from a practical perspective, we conclude that age verification is a challenge that can and must be met.

This is not just for the purposes of deciding whether a child can have a social media account at all, it is also because age will be significant for the workings of the algorithms within that account. That is, the content the algorithms direct to the child will (hopefully) be considered appropriate for the child’s age – or whatever the platform *thinks* is the child’s age. If a child has been able to give a higher age, and have that accepted, that raises a significant risk of the child being exposed to age-inappropriate content, be it violent or scary, or sexual in nature, or in the form of advertising for unhealthy products such as alcohol, tobacco or gambling. It is important to bear in mind that this effect persists over time: if a 10-year-old is believed to be 13, then by the time he or she is 15, the platform will have no reason not to serve up the full range of material that is available to adults.

The significance of the effect could be further deepened if new regulations were to be introduced to protect the interests of children, for example on persuasive design.

In many cases, social media platforms will already have enough data points on existing users to determine whether they are above an age threshold or not. For new accounts, it is possible to design a system where an appropriate piece of identification is shown to the provider once, and then records are destroyed. Strong penalties for unlawful retention of this information could reinforce the message about the importance of protecting users’ data privacy in this context.

The only remaining possible concern regards children’s privacy vis-à-vis their parents. Children who are of age to have an account, but not old enough to have their own photo ID, may well require parental assistance in setting up an account. However, in the vast majority of cases there should be no concern about a parent knowing that a child or young person has an account on any given social media platform (as distinct from the content of that account, which the child or young person should be able to keep private if the parent agrees). Indeed, it would normally be considered part of a parent’s responsibility to keep abreast of such a thing.

There may be circumstances where a person who is too young to have photo ID justifiably wishes to keep even the existence of an account a secret, but we expect that this would be rare – certainly not sufficiently prevalent to reject the whole idea of age verification.

By hypothesis, we would suggest that a child who is under an age to have photo ID, and whose parents would not agree to the establishment of a social media account, should not have such an account. In other words, we should trust parents to make the call in those circumstances, according to their own values and their own view of their children's interests. In those rare cases where a child or young person would feel unable even to ask his or her parents for assistance in setting up an account, we suggest that something is amiss within that family, and it is not the role of legislation or regulations to correct it.

CMA acknowledges that some children and young people will find ways to circumvent age verification systems. However, this is not a reason not to have such systems. No law or regulation achieves 100% compliance, and yet laws and regulations remain an important way of stating societal values and expectations – in this case not just to children and young people but to their families, as well as to industry. Moreover, CMA expects that even the existence of an age assurance procedure will slow down and deter some users who would otherwise have a free pass to inappropriate content and contact.

ToR (d): Algorithms, recommender systems and corporate decision making

Recommender systems amplify misinformation and certain types of content that may be harmful. Consistent with article 29 of the *CRC* (see below), social media companies should be required to prioritise certain content over other types, for example age-appropriate content from authoritative sources and local/Australian content, rather than harmful content, including mis- and disinformation, and content from non-authoritative sources). This is needed for children and young people especially, as they often lack the skills and scientific literacy to critically evaluate sources and determine what is and isn't trustworthy.

Recommender systems can also interfere with the concept of an open childhood, which holds that children should be exposed to a range of content and ideas. Because algorithms typically continue to reinforce a connection to subject-matters that might otherwise only have been a passing interest to the user, even content that is not obviously inappropriate or harmful in a single instance can be picked up by an algorithm in a way that closes off other possible avenues of exploration which should be open as part of a child's natural development.

In addition to direct regulation of recommender systems, there should be transparency rules to require social media companies to disclose information about the workings of their algorithms.

ToR (e): Harmful or illegal content

Australian law could do a good deal more to regulate harmful or illegal content on social media. The category of 'harmful' would include violent and scary content, self-harm content (including 'thinspo' content), exploitative sexual content, applications that create a risk of body dysmorphism and content that advertises or promotes unhealthy products such as alcohol, tobacco, non-core foods and gambling. In light of article 29 of the *CRC* (see below), it should also extend to material that vilifies or perpetuates stereotypes on the basis of protected characteristics such as race and sex.

One form of illegal content that needs to be addressed, but has not featured much in the debate in Australia, is advertising for illicit drugs, particularly in view of the number of children and young people in the US who have suffered fatal overdoses of substances they acquired through social media (for which there is [litigation pending](#)). Social media has also enabled the rapid and explosive growth of the vaping industry to epidemic proportions in children and young people in just a few years.

CMA does not have a concluded view on the precise legal measures that should be adopted to limit children's exposure to harmful or illegal content, other than to say that they should constitute real regulation with 'teeth', not industry self-regulation or even co-regulation. There should be real penalties, and a well-resourced regulator to monitor the platforms' behaviour – that is, the regulation should not rely solely on complaints from the public. CMA should welcome the opportunity to participate in further public discussion and debate about the precise rules to be adopted.

ToR (f): Other relevant matters

Children's rights

CMA submits that the *CRC* should be considered central to all deliberations about the place of social media and its regulation. The *CRC* has widespread acceptance throughout the international community, with more signatories than any other international agreement. Australia has obligations as a signatory to the *CRC* in any case, but CMA submits that the strong acceptance of the norms it embraces should provide a further impetus for the Commonwealth to weave them into all government action regarding social media.

One of the fundamental principles of the *CRC* is found in article 3(1):

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Considering the attractions of social media to children and young people, and the risks and harms attendant upon its use, the formulation and application of laws and regulations on it are clearly ‘actions concerning children’. CMA notes that a ‘best interests’ principle has been adopted in some overseas regulatory regimes for online services, and the same is currently being considered under the review of the *Online Safety Act* here in Australia. CMA would support the introduction of such a principle into Australian law.

Giving content to the concept of ‘best interests’ is not necessarily straightforward, but two comments can be made confidently: first, decisions need to be based on a robust foundation of research evidence about children’s developmental needs, and second, it is necessary to have regard to the rest of the *CRC* and the rights it lays down. These rights may not give the full picture as to the best interests of children, but they are certainly a starting point.

Regarding media use, article 17 is most obviously salient:

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 13 lays down the child’s right to freedom of expression, and to seek and impart information, subject to certain limits; and as we saw above, article 18 addresses the role of parents. Article 29 refers to the matters that should guide children’s education, including for example the preparation of the child for life in a free society.

CMA draws the Committee’s attention particularly to the requirement in article 17 to encourage the development of guidelines to protect children from injurious content (para (e)). There is ample evidence to suggest that ‘injurious’ in this context should be read to include the matters referred to above for inclusion in the category of ‘harmful’ (violent and scary content, self-harm content (including ‘thinspo’ content), exploitative sexual content, applications that create a risk of body dysmorphism and content that advertises or promotes unhealthy products such as alcohol, tobacco, non-core foods and gambling). It is also arguable that the term should be seen as

encompassing content that is delivered as part of a system designed to maximise engagement, and make disengagement difficult – that is, what is known as ‘persuasive design’.

Article 17 is known to have been the subject of a complicated negotiation process, where some states parties wanted stronger protection and some wanted weaker.¹ CMA suggests that if the *CRC* had been negotiated in the 2020s instead of the 1980s, article 17 would have looked significantly different, due to the massive growth in significance and complexity of information and communication technology over the intervening years. (For example, the concept of ‘mass media’ would have given way to one that more clearly includes social media, user-generated content and online influencers.) In any case, the Committee on the Rights of the Child has recently gone some way towards filling the gap with its *General comment No. 25 on children’s rights in relation to the digital environment* (GC25). CMA commends that document to the Committee, and urges you to look closely at all that it has to say. We draw your attention, in particular, to:

- the need to have regard to up-to-date research from a range of disciplines in designing age-appropriate measures in keeping with the principle of evolving capacities;
- the discussion of the role of the business sector (especially significant given the way article 17 is phrased); and
- the link to other rights such as health and welfare, education, and leisure and play.

In short, children have a right to access digital services, but to do so safely – that is, in ways which do not undermine their healthy development. The Australian Government should adopt measures to make this a reality, including the allocation of resources to support parents and carers in maximising the benefits to them of regulatory and other measures.

There are a number of relevant articles in the *CRC* that could be incorporated into any measures addressed to social media companies, for example:

- Children’s right to survival and development (article 6)
- The obligation on governments to take measures to combat the illicit transfer and non-return of children abroad (article 11)
- Children’s right to receive information (article 13)
- Children’s right to protection of the law against interference with privacy (article 16)
- The obligation on governments to ‘[e]ncourage the development of appropriate guidelines for the protection of the child from material injurious to his or her well-being’ (article 17(e), discussed above)
- The obligation on governments to ‘render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities’ (article 18)

¹ John Tobin and Elizabeth Handsley, ‘Article 17. The Mass Media and Children: Diversity of Sources, Quality of Content, and Protection Against Harm’ in John Tobin and Philip Alston (eds), *Commentary on the Convention on the Rights of the Child* (Oxford University Press, 2019) ISBN 9780198262657.

- Children’s right to protection from ‘all forms of physical or mental violence, injury or abuse ... including sexual abuse’ (article 19)
- Children’s right to education (article 28) which should be directed to ‘the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin’ (article 29)
- Children’s right ‘to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts’ (article 31)
- Children’s right to protection from economic exploitation (article 32)
- The obligation on governments to ‘prevent the abduction of, the sale of or the traffic in children’ (article 35)

These do not form part of Australian law unless and until they are incorporated into legislation. Therefore, at a minimum, there should be a legislative statement requiring those exercising power in relation to social media to take the above articles into account in their actions and decision-making. Among other benefits, this could give additional meaning and content to a best interests principle.

While the rights laid down by the *CRC* are binding on signatory governments, they are now coming to be recognised as general norms for appropriate behaviour by private corporations and individuals where children’s interests are concerned. In particular, the *Children’s Rights and Business Principles* provide that businesses should:

1. Meet their responsibility to respect children’s rights and commit to supporting the human rights of children;
4. Ensure the safety and protection of children in all business activities and facilities; and
5. Ensure that products and services are safe, and seek to support children’s rights through them.

As any government action regarding social media companies would necessarily require the compliance of those businesses for the protection of children’s rights and interests, any developments in that field should be informed by these norms.

Duty of care

CMA supports the introduction of a general duty of care for social media companies. This has the potential to future-proof the government response to social media, by requiring companies to consider their obligations whenever technological (or other) developments bring about new risks, or where existing risks extend to new harms. If there is a general duty of care, social media companies cannot sit and wait for specific rules relating to those new risks or harms, rather they are expected to extrapolate from existing rules to determine the expectations on them.

The duty of care should expressly incorporate important principles, such as the best interests of the child.

CMA acknowledges that a duty of care is only a first step. There would need to be a system for identifying and investigating possible breaches, and for accountable decision-making at the end of that process. Such a system could be built along the lines of what we currently have for breaches of the *Broadcasting Services Act* (and of licence conditions under that Act).

Warning labels

CMA recommends the use of warnings on social media platforms as one of a combination of strategies to reduce the risks of children being exposed to age-inappropriate content and other harms.

CMA notes the recommendations of the US Surgeon-General regarding the value of warnings (see <https://www.nytimes.com/2024/06/17/opinion/social-media-health-warning.html>).

Warning labels can serve several purposes:

- they can remind users that what they see on social media is not always representative of real life, thereby helping to reduce the negative effects of online social comparisons;
- they can help make social media platforms more accountable, as users are made more aware of how these platforms profit from their usage;
- they can present parents with evidence of risk, thereby encouraging greater parental oversight and limit-setting

(See <https://www.nzherald.co.nz/lifestyle/social-media-warning-labels-and-school-cellphone-bans-do-they-unlock-better-youth-mental-health/DC4BFCZILBB45AV2AARPQWUB3E/>)

However, it is crucial that they be implemented as part of a comprehensive package of measures. Evidence from tobacco regulation indicates that warning labels have low effectiveness as a stand-alone strategy.

Towards a holistic approach

As a concluding observation, CMA would like to draw attention to the unfortunately fragmented way in which current Australian law regulates matters which co-exist and are interdependent in the real lives of children and families. We are referring to at least five things:

1. privacy and data protection;
2. content classification;
3. the matters that the *Online Safety Act* covers (especially cyberbullying and online content);

4. child protection and children's rights; and
5. public health issues such as overuse and addiction.

If we were starting from scratch, we would be recommending a legislative and regulatory structure where government interventions into these matters form a cohesive whole. This is especially the case given the tendency of agencies, which we have observed over many years, to pass the buck when issues and problems don't fit neatly into one regulatory regime. At other times, even with the best will the world, such problems simply fall through the cracks in the overall governmental scheme. A topical example that might illustrate this dynamic is the Commonwealth's recent development of an Early Years Strategy that makes no mention of the role of digital and screen-based media in young children's lives. CMA remains mystified as to how this could have happened, though one possible explanation might be that those responsible for that Strategy took the view that the digital world is addressed elsewhere.

This Inquiry represents an opportunity for a holistic look at the five areas, and to make advances towards joining them up. CMA very much hopes that the Committee will make the most of that opportunity. For example, statutory and regulatory reform could smooth the way for various regulators and agencies to talk to each other. Better still would be measures to mandate active cooperation between them.

This Inquiry and the current statutory review of the *Online Safety Act*

Committee members would be aware that this Inquiry is coinciding with a statutory review of the *Online Safety Act*. As many of the matters covered in the latter are also germane to the former, we trust that the Committee will be having an eye to the submissions to that review – our own, but also those of other important public-interest organisations such as Reset.Tech, the Alannah and Madeline Foundation and Collective Shout.

Another consequence of the coincidence between the Inquiry and the review is that CMA has been able to produce only a relatively concise submission here. We should be very happy to expand on it at a hearing.

Please contact president@childrenandmedia.org.au with any inquiries.

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