



2 March 2023

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SUBMISSION TO THE SENATE ECONOMIC REFERENCES COMMITTEE INQUIRY ON THE INFLUENCE OF INTERNATIONAL DIGITAL PLATFORMS

Thank you for the opportunity to provide a submission to the Inquiry as it prepares its report on the influence of international digital platforms.

Children and Media Australia (CMA) strongly urges the Committee to use this opportunity to make robust recommendations to keep children safe online, to protect their privacy, and to stop their exposure to age-inappropriate content.

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), AEU (Australian Education Union), Parenting Research Centre, 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.

This submission has been written by our President, Professor Elizabeth Handsley, in consultation with our Hon CEO, Barbara Biggins OAM.

CMA is pleased at the prospect of the Australian government's power being brought to bear in the interests of consumers in this field; and we hope and trust that the special needs of the child consumer will receive special attention. Only a robust government regulation program has the capacity to institute the 'safety by design' approach that is needed, to remove or at least drastically minimise relevant risks without shifting responsibility onto already overburdened parents and teachers.

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CMA has had the advantage of reading in draft the submission to this Inquiry by Reset Australia, and commends that submission to the Committee. In particular, CMA echoes Reset Australia's points regarding:

- the need to ensure regulation creates accountability and transparency, and is strong and enforced (that is, the case for government regulation over industry self-regulation);
- targeting risks created across systems and processes, rather than issue-by-issue or sector-by-sector action;
- placing duties on the platforms rather than on individuals (especially children and parents);
- the range of risks to which children and young people are exposed when they use digital platforms (content, contact, conduct and contract), all exacerbated by privacy abuses and data exploitation; and
- children's special needs and vulnerability regarding advertising.

Expanding on the last two points above, while CMA is pleased to see that this Inquiry has singled children's concerns out for special attention, we note that the section of the *Issues Paper* dealing with these is brief and, with respect, fairly superficial. We hope that the Committee will make a point of paying special attention to the needs, interests and rights of children, young people and families throughout the rest of the Inquiry. In this connection, once again, we commend Reset Australia's submission which sets out a significant amount of factual information and analysis.

In the rest of the submission, CMA offers responses to those Consultation Questions in the *Issues Paper* that are germane to our mission.

Algorithm transparency

Question 1

Such regulatory activities should be undertaken by the ACCC (Australia's counterpart to the FTC). The ACCC already has a good track record in consumer protection and a demonstrated interest in resolving the issues that digital platforms raise. Perhaps most importantly, it understands the significance of the power imbalances that lie at the heart of all of these issues. There is no need to create a new agency; and in our view such an agency would risk capture by the industry.

Question 2

There are certainly some useful ideas in the US proposals, for example involving the ACCC in much the same way as the Biden administration is by asking FTC to use its powers. The challenge will be to determine which US regulations will become global by default, with the benefits flowing automatically to Australia and other countries, and which need to be replicated at the national level here. In the former cases, there will remain opportunities for Australia to build on US regulations and a need to avoid cutting across these.

Data and privacy

Question 1

CMA can see the advantage of a statutory tort in that companies would be forced to take the risk of litigation into account when determining their practices, which means a significant chance of potential accountability shaping those choices. This means of deterring undesirable behaviour would be a useful addition to mechanisms such as market forces and negative publicity; and may be all the more helpful considering that under the digital platform business model there is no particular need to please the user/consumer. (Rather the true customers are the advertisers, whose

very interest is in getting the deepest possible insight into users' lives.) Moreover, this is all exacerbated by the role of persuasive design, which means it is no simple matter for users to 'vote with their feet' if they ever learn of undesirable practices.

On the other hand, there are risks associated with relying entirely on aggrieved consumers to undertake litigation: it can lead to significant burdens on individuals to prosecute the common good, and windfall gains at the other end. Therefore CMA submits that the ACCC should be empowered and resourced to bring representative actions under any statutory tort.

Question 2

Government regulation certainly has a role to play in this field. However, the size and scope of any penalties would have to be huge in order to be an effective deterrent to companies of this size, and there may be a point at which such would become politically unacceptable. This suggests the desirability of having a court-based option as per Question 1, and/or some level of potential criminal sanctions.

Question 3

Privacy laws can always be improved, and we would hope this would be an ongoing process for the foreseeable future. Meanwhile if attitudes are to be changed, CMA suggests a clear articulation of the reasons the government is concerned about the actions and power of international digital platforms. This should link to matters such as human rights and dignity, abuse of and accountability for power, and children's healthy physical, cognitive, social and emotional development.

Children's safety

In response to discussion in this section of the Issues Paper (which, as previously noted, is significantly lacking in detail and depth), CMA can make the following general points:

- There is reference to 'illicit materials' but not to developmentally inappropriate material, which is something else again, and perhaps a greater concern, at least for younger children.
- There is also reference to child sexual exploitation; while this matter is very serious and needs very serious attention, it has been CMA's experience that such attention sometimes nudges out the kinds of risks listed in the previous paragraph of the *Issues Paper*, that is, risks to the child user (rather than to children who are the subject of content being consumed by others). CMA urges the Committee to bear in mind that these are two separate issues, which both need to be addressed.

To answer the questions in this section of the Issues Paper:

Question 1

Here once again we refer the Committee to Reset Australia's submission, which identifies the shortcomings of the current system in some detail. CMA would like to note in particular that the current system fails to address persuasive design, which is one of the most profound and troubling aspects of the current platforms from the perspective of children's developmental needs. The Issues Paper makes reference to addiction and mental health in the following section, but the Committee should bear in mind, and be willing to address, the fact that this is an issue right now, and moreover, one does not need to be addicted to technology for persuasive design to have a negative impact in one's life.

One major gap in the current regulatory system is that few if any decisions are expected to be informed by child development research and principles. This is a matter in urgent need of rectification, throughout our whole media regulation sphere.

Question 2

As intimated in response to Question 1, online safety protection for children can be greatly enhanced by limiting, or preventing, the use of persuasive design on these platforms. Another key concept is that of safety by design – that is, the principle that children’s (and others’) safety should be treated as a serious concern right from the beginning point at which platforms are designed. If that is not possible for platforms already on foot, the next best thing is to determine what would have been decided under a safety by design approach, and to encourage or require changes that would at least go some way to replicating the effects of such decisions.

In CMA’s view, the success of a regulatory system depends heavily on the body tasked with enforcement. Elsewhere in this submission we have advocated for putting the regulation of online platforms in the hands of the ACCC; we would also support a greater involvement by the National Children’s Commissioner, who would normally have the best appreciation of children’s rights, interests and developmental needs. We should be very pleased to see these two bodies work together, for example to develop a community education campaign about the risks associated with engagement in digital platforms, what the government is doing to reduce these, and how others (for example parents and teachers) can help.

At the same time, CMA can see a role for criminal law here, for example making it an offence to collect children’s details. Hopefully there would never need to be a prosecution under such a law, but it could be a powerful way for the government to communicate the seriousness with which it regards such matters.

The Metaverse

The Issues Paper states that ‘it is unclear what the Metaverse will look like’, but we do know that it will most likely be dominated by the same data-dependent business model as the internet, and have the same exploitative tendencies as a result. It is also likely to evolve rapidly, posing challenges for law and regulation in keeping up. This is all the more reason to craft regulations that strike at the heart of the risks posed, rather than addressing particular platforms or practices.

In answer to the Questions:

Question 1

CMA suggests starting now, to address fundamental issues such as persuasive design, as such regulations should stand users in good stead when any new technologies take shape.

Question 2

CMA suggests using the ACCC and all its tools to address the risks associated with the Metaverse. Such risks come about as a result of business decisions, so it should be the primary business regulator that is tasked with mitigating them.

Big tech disinformation

Question 1

This question refers to ‘community expectations and industry’. With respect, CMA submits it is more important to consider the effectiveness of regulations in protecting the rights and interests of

consumers. This is an objective matter, separate from the subjective expectations of individuals and groups.

As to the balance referred to in the second part of the question, CMA submits that any such balancing should take into account children's needs, based on their credulity, trusting nature and lack of critical faculties. Such concerns should be front and centre of thinking about these matters, and not an afterthought (as has so often been the case to date).

In summary, CMA would like to see:

1. children's rights, interests and developmental needs placed front and centre, with maximum reference to child development research and principles both in shaping and in implementing regulations;
2. clear articulation and broad communication of the risks associated with digital platforms and what is being done about these;
3. laws and regulations structured to address risks rather than particular platforms, sectors or practices;
4. laws and regulations to limit or eliminate persuasive design, and enforce safety by design;
5. laws and regulations that address all of the risks to children (using the 4 Cs as a starting point, but extending to privacy abuses and data exploitation);
6. a focus on platform accountability and transparency, with regulations that are strong and enforced;
7. the ACCC empowered to administer any regulations, with some involvement by the National Children's Commissioner as appropriate; and
8. a range of enforcement processes, including regulation, civil litigation and criminal penalties.

Thank you once again for the opportunity to make this submission. We should be happy to answer any questions on it, at your convenience.