

# Response to the Statutory Review of the Online Safety Act 2021

20 June 2024

## About Allies for Children

The Allies for Children is a committed partnership of chief executives working across the child, youth and family sector to ignite long term, positive outcomes for vulnerable children, young people, and families. We believe through collective wisdom and genuine collaboration, our organisations and the child, youth, and family services sector can drive real and sustained change to benefit generations now and into the future. The following organisation have come together to form the Allies for Children:

- Act for Kids
- Barnardos Australian
- Benevolent Society
- Key Assets
- Life Without Barriers
- MacKillop Family Services
- OzChild

Allies for Children advocates for better policies and systems to ignite genuine reform to protect the best interests of children and move service responses towards early intervention. We share knowledge, resources, and evidence-based practice across the sector so that each child, young person, and family can have the best of support and the greatest opportunity for a positive future.

### A focus on the safety of children

The Allies for Children welcomes the Statutory Review of the Online Safety Act 2021 and the opportunity to make comment on the Issues Paper. Our response to the Issues Paper focuses on our key concern – the safety and wellbeing of children. The Issues Paper recognises the rapid and profound changes occurring in the online environment and the need for government to maintain policy settings that harness the benefits of these changes while establishing a framework to better protect children (and other Australians) from the current and emerging harms.

Australian children have benefitted greatly in recent years from a focus on child safety. The National Principles for Child Safe Organisations (Australian Human Rights Commission, 2018) have carried forward the work of the Royal Commission into Institutional Responses to Child Sexual Abuse to embed a focus on the protection of children. The attention to safety in institutions and environments where children live, play and learn is necessary and welcome. We support an equivalent focus on the safety of children in the online environment – a space where children are increasingly connecting, learning and playing.

The view of the Allies for Children is that the current approach to online safety for children is not working. The weak expectations and regulation of technology companies sit in stark contrast to the requirements of childcare agencies, schools, sporting clubs, child and family services organisations, churches and others to proactively and continuously identify and manage risk and take concrete action to protect children.

Our experience reinforces many of the themes highlighted in the Issues Paper – of the abuse of children that is facilitated, magnified or coerced due to the lack of accountability in the online environment and uneven levels of responsiveness to clear risks. The arguments put forward of maximum online freedom with minimal state regulation do not, and cannot, accommodate the

pronounced differences in vulnerability between children and adults, the moral prerogatives to protect children or children’s internationally recognised and acclaimed human rights (Salter & Hanson, 2021). Of course, perpetrators need to be held to account but more needs to be done to address the conditions where harm to children can flourish.

As providers of out-of-home care services, we know that the children we work with are at elevated risk of child sexual exploitation. Each of the organisations that form the Allies for Children is acutely aware of the risk of child sexual exploitation for the children and young people with whom we work, particularly in out-of-home care. We see first-hand the evolving use of technology to facilitate this crime. It results in not-for-profit organisations like the Allies for Children taking on the responsibility to try to mitigate substantial risk for children in a grossly unregulated environment, a responsibility that is unfunded and not supported by legislation. The Allies for Children share the concern of Levine (2022:1):

Nothing in history has transformed the character and practice of child sexual exploitation more than the internet. Never before has a technology offered support for these crimes that is, in the worst way possible, more reliable, effective, and innovative. Individuals committing these crimes use internet services, platforms, and apps to meet minors in ways they cannot in person, and to deceive, coerce, and sexually extort victims.

The experience of sexual exploitation is far too common, especially in residential care. In many jurisdictions, such as NSW and Victoria, excellent multiagency work with child protection, police and community agencies occurs to disrupt child exploitation. However, this work can swim against a tide of inaction and unaccountability from the online platforms that are so often used to connect and reconnect perpetrators with children.

#### **Case study: child sexual exploitation**

A 16-year-old currently in out-of-home care has experienced a high level of sexual exploitation. The child has an intellectual disability and a pronounced history of trauma and abuse which impacts of their understanding of safe interactions. Since the child was 13-years-old child they have been approached by men through the app Scout. On multiple occasions these online connections have led to physical and online sexual abuse. The child’s account has been shut down and reopened on multiple occasions. There is limited evidence that the platform has responded proactively to the risk of child sexual exploitation being facilitated on the platform.

Such examples are not rare. Internet technology is not only pervasive and inexpensive, it is multifaceted – the technology-driven child exploitation is not happening in a single way or on a single type of platform (Levine, 2022). We are working with children in circumstances where platforms including Only Fans, YouTube, Facebook, Youbo, Wink, Discord, Instagram, Snapchat, Tik Tok, X and Tinder have been of are being used to facilitate child sexual exploitation.

Allies for Children also acknowledges the evidence that indicates significant increases in the phenomena of ‘self-produced’ child sexual exploitation material posted online (Internet Watch Foundation, 2022). That is, material that is produced by children themselves. A criminal justice reaction to the children is not appropriate to this issue. Children would benefit from legal frameworks that disenable a child from being the offender of a crime, when they are also the victim.

## Response to the Issue Paper questions

We have not addressed all the question in the Issues Paper. We have only responded to those questions that relate to our primary area of concern – amendments to the Act that will improve the safety of children.

**1. Are the current objects of the Act to improve and promote online safety for Australians sufficient or should they be expanded?**

The Allies for Children note the objects of the Act are to (a) to improve online safety for Australians; and (b) to promote online safety for Australians. We believe the objects could be strengthened through greater attention to the accountability of online service providers. The United Kingdom’s Online Safety Act 2023 has an explicit focus on content and activity that is harmful to children and expectation of that service regulated by the Act are “safe by design” and designed and operated in such a way that “a higher standard of protection is provided for children than for adults”. We support equivalent emphasise in the Australian Act.

**10. Does more need to be done to make sure vulnerable Australians at the highest risk of abuse have access to corrective action through the Act?**

While the Allies for Children support greater access to corrective actions through the Online Safety Act, we believe that further action needs to be included that mandates a preventative approach to address the online harm of children.

No single agency can be responsible for protecting children online. The Act and associated regulation could establish a comprehensive framework to address online harm. As outlined by Quayle:

“an approach is required that supports the efforts of law enforcement, government and non-profit agencies through sharing key technical and operational data, to share technology that tackles child sexual abuse imagery, to share operational data about those abusing their networks, to improve the verification of customer identity when new domains are registered or renewed and to proactively identify threat actors and vulnerable users...such changes, along with the technical solutions that flow from them, offer the only scalable interventions” (2021 :44).

Consideration should be given to making the Basic Online Safety Expectations enforceable. The effectiveness of the current approach whereby the service provider is essentially named and shamed for not meeting expectations in changing the conduct of service providers should be examined – do service providers heed the notifications and amend their ways? Attaching a more substantial penalty to not meeting expectations may be more of a deterrent.

**11. Does the Commissioner have the right powers to address access to violent pornography?**

The existing approach to limiting access of children to violent pornography has failed. That children can access or are confronted with violent pornography online is beyond dispute. As highlighted in the Issues Paper, the ubiquity of pornography is impacting negatively on the health, wellbeing and relationships of children (Crabbe et al, 2024; see also Hilton, 2021). The Allies for Children support measures to address the access and availability of pornography, including violent pornography.

**12. What role should the Act play in helping to restrict children’s access to age inappropriate content (including through the application of age assurance)?**

More needs to be done to limit online access to harmful material and harmful interactions for children. We note recent advocacy and commentary in the media regarding limiting social media access for children under the age of 16 (Rose, 2024). The Allies for Children support restricting access to material via the application of age assurance mechanism. We believe that this initiative alone will not be

sufficient to limit access to harmful material online and will need to be supported by measures that apply greater accountability to platforms to support child safety.

**14. Should the Act empower ‘bystanders’, or members of the general public who may not be directly affected by illegal or seriously harmful material, to report this material to the Commissioner?**

The approach adopted should accommodate complaints being made by ‘bystanders’ and the need for the affected individual to report the concern to the service provider before making a complaint to the Commissioner should be removed. Enabling ‘bystanders’ to make complaints will support problematic material being dealt with sooner; recognises that people affected by online bullying can face barriers to making complaints; recognises children may seek help from an adult who is not their parent or guardian; and reinforces the principle that online safety is the responsibility of the whole online ‘community’.

**16. What more could be done to promote the safety of Australians online, including through research, educational resources and awareness raising?**

The Allies for Children acknowledges the excellent work of the eSafety Commissioner in conducting research, supporting community education and awareness raising. We recognise that parents and carers can often feel challenged when supporting and monitoring children to engage safely online. The eSafety Commissioner continues to publish up to date resources and research to support parents and carers.

Our member organisations have drawn on resources produced by the eSafety Commissioner to inform practice in our organisations. For example:

- eSafety Commissioner (2022). Cool, beautiful, strange and scary: The online experiences of Aboriginal and Torres Strait Islander children and their parents and caregivers
- eSafety Commissioner (2023). Accidental, unsolicited and in your face. Young people’s encounters with online pornography: a matter of platform responsibility, education and choice.
- eSafety Commissioner (2023). A New Playground: The Digital Lives of Young People
- eSafety Commissioner (2021) The digital lives of Aussie teens.
- eSafety Commissioner (2020) Online safety for young people with intellectual disability, eSafety Research.

The Allies for Children also acknowledge the work of the eSafety Commissioner’s initiative *Safety by Design*. The initiative provides an excellent framework for online platforms and services to incorporate, assess and enhance user safety. The guiding principles of ‘Service provider responsibility’, ‘User empowerment and autonomy’ and ‘Transparency and accountability’ provide a sound direction for improving safety. We believe the Vision for Young People could be strengthened by an explicit point on intervening earlier to address exploitation online.

**17. Does the Act need stronger investigation, information gathering and enforcement powers?**

The Allies for Children strongly supports greater investigation, information gathering and enforcement powers for authorities to identify and respond to harmful action online.

**18. Are Australia’s penalties adequate and if not, what forms should they take?**

The penalties for corporations are not adequate given the size and resources of the larger service providers. Penalties need to be higher to have a meaningful deterrent effect and recognise the power imbalance between service providers and users affected by their failure to act protectively. The penalties applicable in Australia are low when compared to regimes in other countries. The Allies for Children notes the international comparisons of online safety penalties included in the Issues Paper (p.34). We acknowledge that penalties in other jurisdictions are significantly higher than in Australia. We support aligning Australian penalty regime with jurisdictions such as Ireland, Canada and the United Kingdom.

**19. What more could be done to enforce action against service providers who do not comply, especially those based overseas?**

The Allies for Children notes that other jurisdictions can level significantly larger penalties than those available to regulators in Australia (e.g. eSafety Commissioner). We support increasing the penalties in a manner incentivises proactive approaches to child safety and encourages swift remedial action when compliance obligations are not fulfilled.

**20. Should the Commissioner have powers to impose sanctions such as business disruption sanctions?**

We support the ability of the eSafety Commissioner to impose sanctions such as business disruption sanctions to improve online safety. The Issues Paper summarises aspects of the United Kingdom’s Online Safety Act 2023, that empower regulator in the United Kingdom (Office of Communications) to require payment providers, advertisers, and internet service providers to stop working with a Service. This prevents the service from generating money or being accessed from the United Kingdom (p.65). The Allies for Children support similar powers for the eSafety Commissioner.

**22. Should Australia place additional statutory duties on online services to make online services safer and minimise online harms?**

The Allies for Children support the introduction of a statutory duty of care framework which includes proper recognition of the best interests of the child principle. We support shifting the onus for the protection of children on online platforms from the children themselves to the designers and owners of the platforms. We note the concept of a statutory duty of care outlined in the Issues Paper (p.37-38). The Issues Paper outlines the approach in the United Kingdom’s Online Services Act that imposes a duty on services to identify, mitigate and manage risk of harm from illegal content and activity and content and activity that is harmful to children. The Allies for Children support the establishment of a statutory duty of care in the Act.

**24. Should there be a mechanism in place to provide researchers and eSafety with access to data? Are there other things they should be allowed access to?**

The Allies for Children acknowledges that the development and use of the online environment is a rapidly changing context. We support initiative that open data to support research and evaluation in this area.

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