

Submission

2 October 2022

Via online portal: <https://onlinesafety.org.au/>

Re: Consolidated Industry Codes of Practice for the Online Industry (Class 1A and Class 1B Material)

The Australian Communications Consumer Action Network (ACCAN) thanks The Steering Committee of industry associations for the opportunity to provide feedback on the *Consolidated Industry Codes of Practice for the Online Industry (Class 1A and Class 1B Material)* (the Draft Codes). As Australia's key communications consumer representative body, ACCAN is keen to ensure consumer interests are taken into consideration in the development of any new legislation and other regulations that affect communications consumers. The *Online Safety Bill* is relevant to ACCAN's advocacy work because it addresses the potential consumer harms that arise from one of the uses of telecommunications technology.

In general, ACCAN welcomes measures that contribute to a safe online environment, empower consumers and provide transparency and accountability.

While we appreciate the opportunity to comment on the Draft Codes, ACCAN wishes to reiterate our concern over the Draft Codes constricted time frame and limited public consultation. According to a recent ABC article, "consultation [on the Draft Codes] has been fractious and many civil society groups think the consultation window is too small and unrealistic".¹ As ACCAN has stated in the past,

One of the key challenges of developing effective self-regulatory codes is the need to have a broad range of expertise and perspectives involved. Issues pertaining to technology, security, privacy, human rights, digital inclusion, communications, and community interests all need to be considered.²

To address this challenge ACCAN always recommends that consultation processes facilitate early participation of a broad cross-section of stakeholders who will be impacted by the regulation. Public consultation can result in more effective codes and can build community trust in the successful implementation of self-regulatory codes.³ We are concerned that

¹ Bogle, A 2022. *Australia's changing how it regulates the internet — and no-one's paying attention*. Available at: <https://www.abc.net.au/news/science/2022-09-21/internet-online-safety-act-industry-codes/101456902>

² Williams, A 2021. *The role of consumers in building trust in digital platforms*. Available at: <https://accan.org.au/media-centre/hot-issues-blog/1932-netthing-2021-the-role-of-consumers-in-building-trust-in-digital-platforms>

³ See for example: ACMA 2015. *Guide to Developing and Varying Telecommunications Codes Registration 2015*. Available at: <https://www.acma.gov.au/publications/2015-09/guide/guide-developing-and-varying->

insufficient public consultation of the Draft Codes could lead to ineffective codes and harms to consumers.

An example of an issue in the Draft Codes that would benefit from more public consultation is the lack of clarity around dispute resolution and redress processes. While the eight draft codes each contain instructions to provide consumers with mechanisms to flag content or complain about lack of code compliance there is little detail about processes for users to appeal decisions or seek redress for loss of content or account access. It is not clear whether the Draft Codes instructions for services to provide consumers with tools to complain about code compliance would cover the eSafety Commission acting as an external avenue for appeal.

ACCAN has concerns about the lack of information regarding how innocent users might appeal false positives or incorrectly applied policies and avoid undue disruption to their accounts and content. Experts warn that The National Classification scheme is difficult to “apply at any sort of 'internet scale', because you very clearly run up into all of the grey areas”.⁴ ACCAN is worried that the scale of content covered by the scheme and detection through automated scanning and crowd sourced flagging could lead to false positives where innocent consumers may lose access to crucial means of communication. For example, a consumer in the United States recently lost access to his Google email account, cloud storage and mobile phone number because of a false positive of an image sent to a doctor. Even after the consumer was cleared by police, he was unable to have his services reinstated by Google.⁵ While the example differs in some respects from the proposed Draft Codes it does illustrate the compounding effects losing access to communication can have on consumers, even with human review. Given the range of crucial services under the scope of the Draft Codes, consumers will require clarity about how they can appeal decisions and seek redress.

Digital communication requires clear avenues for consumer complaints and redress. The Draft Codes should be amended to explicitly place the eSafety Commission as an effective avenue of appeal for consumers. For example, research at the University of Technology Sydney has found that there are a collection of existing bodies, including the eSafety Commission, that contribute to assisting consumers of online platforms and this could be confusing for consumers. The researchers note that the “need for one point of entry to address consumer confusion and frustration was an emphatic recommendation of the community and consumer representatives we consulted as part of this research.”⁶ While that recommendation regards the related question of a digital platforms ombudsman scheme, it underlines the importance of understanding that digital communications decisions can go wrong and consumers require effective means of appeal and redress. In the case of the Draft Codes, we feel that the eSafety Commission should be explicitly included as an avenue for consumers to appeal decisions made under the codes and minimise consumer harm from incorrect decisions.

[telecommunications-codes-registration-2015](https://www.accc.gov.au/publications/guidelines-for-developing-effective-voluntary-industry-codes-of-conduct) and ACCC 2011. *Guidelines for developing effective voluntary industry codes of conduct*. Available at: <https://www.accc.gov.au/publications/guidelines-for-developing-effective-voluntary-industry-codes-of-conduct>

⁴ Bogle, A 2022. *Australia's changing how it regulates the internet — and no-one's paying attention*. Available at: <https://www.abc.net.au/news/science/2022-09-21/internet-online-safety-act-industry-codes/101456902>

⁵ Hill, K (2022) *A Dad Took Photos of His Naked Toddler for the Doctor. Google Flagged Him as a Criminal*. New York Times (21 August). Available at: <https://www.nytimes.com/2022/08/21/technology/google-surveillance-toddler-photo.html>

⁶ H Raiche, D Wilding, K Lee & A Stuhmcke, 2022, p.50. *Digital Platform Complaint Handling: Options for an External Dispute Resolution Scheme*. Available at: <https://www.uts.edu.au/sites/default/files/2022-08/CMT%20DPCH%20Report%20-%20electronic%20version.pdf>

In summary, the Draft Codes represent a significant undertaking in internet regulation and for them to be effective in their aims and to minimise consumer harm, consumer consultation cannot be an afterthought. Of particular concern to ACCAN is the lack of explicit mechanisms for consumer appeals and redress in the Draft Codes. Online communications are fundamental to people's lives and disruption without the means of swift redress could lead to serious consumer harms.

Yours sincerely,

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Australian Communications Consumer Action Network (ACCAN)

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