



Online Safety Act 2021

Restricted Access System (RAS)

Draft Declaration submission by the Australian Communications Consumer Action Network to the eSafety Commissioner

23 November 2021

About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards communications services that are trusted, inclusive and available for all.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

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ACCAN thanks the eSafety Commissioner for the opportunity to contribute to its RAS draft Declaration 2021.

As stated in our submission to the RAS Declaration Online Safety Act 2021 Discussion Paper, ACCAN supports the introduction of the Online Safety Act 2021. This updated Act creates a modern, fit for purpose regulatory framework that builds on the strengths of the existing legislative scheme for online safety. The inclusion of increased consumer protections in the Act are a positive extension of the existing regime.

ACCAN is pleased to note that several of our recommendations have been incorporated into the Draft Declaration. However, we make the following comments in response to the Draft Declaration and accompanying Explanatory Notes.

1. ACCAN reiterates our recommendation in response to the RAS discussion paper that there is a need for an Age Checking Code of Practice in Australia, similar to the PAS 1296¹ published by the British Standards Institute in March 2018. Given the draft Restricted Access Systems' reliance on services taking "reasonable steps" to verify age, a mandatory Code of Practice would assist age-verification providers to comply with requirements under the RAS using similar 'vectors of trust' in the PAS 1296.
2. Ensuring access to sex educational materials was a recommendation made by ACCAN in its submission which has been adopted in the draft RAS and ACCAN welcomes this move. Similarly, the fact that content must be classified taking into account whether the material is medical or scientific is consistent with ACCAN's submission that a 'blunt' ratings system should be avoided to prevent regulatory overreach. However, ACCAN reiterates our recommendation that a robust review mechanism must be in place to reverse any misclassification, either through human error or AI-enabled ratings classification.
3. ACCAN is concerned that the "scope for providers to consider a range of age-confirmation methods" may leave too much flexibility to the extent that the age verification techniques will be inadequate. One of the "reasonable steps" proposed in the Explanatory Memorandum is age verification based on transaction type – for example, use of a credit card where content is fee-based. But, as ACCAN submitted in its submission to the RAS

¹ <https://www.dpalliance.org.uk/pas-1296-online-age-checking-code-of-practice/>

discussion paper, a credit-card based verification system trialled in the UK was scrapped because it could be easily bypassed; demonstrating that credit cards are not an effective method of age verification.

4. Flexibility in technologies was a recommendation made by ACCAN in its submission, which has been adopted in the draft RAS. ACCAN also recommended a benchmark of technical standards to ensure adequate protections were put in place by services. This has not been included in the RAS. Rather, 'reasonable steps' to be determined by a service provider, with guidance contained in the explanatory statement, is proposed to allow for differences in revenue and business type of the various services subject to the RAS. ACCAN is concerned that 'reasonable steps' allow for broad interpretation for services which may provide minimal consumer protections. As ACCAN submitted in response to the RAS discussion paper, there is a need to buttress RAS systems for age verification with other measures to ensure the system is effective, secure and protects consumer privacy.

ACCAN considers that with the adoption of these proposed remedies the RAS Declaration will provide the robust consumer safeguards needed to protect minors from online harm.

Sincerely

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Director of Inclusion