



28 February 2023

Senator Andrew Bragg  
Chair  
Senate Economics References Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

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Dear Senator Bragg,

## Inquiry into the influence of international digital platforms

The Association of Heads of Independent Schools of Australia (AHISA Ltd) appreciates the opportunity to contribute to the Senate Economics References Committee's inquiry into the influence of international digital platforms ('the Inquiry').

AHISA's submission to the Inquiry relates to items (c) and (d) of the Inquiry's terms of reference:

- c) Whether algorithms used by such international digital platforms lack transparency, manipulate users and user responses, and contribute to greater concentrations of market power and how regulating this behaviour could lead to better outcomes in the public interest; and
- d) The collection and processing of children's data, particularly for the purposes of profiling, behavioural advertising, or other uses.

As it is the interests of children and young people which are AHISA's primary focus in making this submission, we will address both items (c) and (d) in combination.

AHISA welcomes any inquiries the Committee may have about this submission.

Yours sincerely,

**Dr Chris Duncan**

AHISA Chief Executive Officer



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## ABOUT AHISA

AHISA Ltd is a professional association for Heads of independent schools.

The primary object of AHISA is to optimise the opportunity for the education and welfare of Australia's young people through the maintenance of collegiality and high standards of professional practice and conduct amongst its members.

AHISA's 460 members lead schools that collectively account for over 450,000 students, representing 70 per cent of Australia's independent sector enrolments and over 11 per cent of total Australian school enrolments. AHISA members' schools also educate a significant proportion of senior secondary students: 20 per cent of Australia's Year 12 students attend AHISA members' schools.

AHISA's members lead a collective workforce of over 44,000 teaching staff and almost 30,000 support staff.

AHISA believes that a high-quality schooling system in Australia depends on:

- Parents having the freedom to exercise their rights and responsibilities regarding the education of their children
- Students and their families having the freedom to choose among diverse schooling options
- Schools having the autonomy to exercise educational leadership as they respond to the emerging needs of their communities in a rapidly changing society.

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## RECOMMENDATIONS

### Recommendation 1

If the Australian Government is to protect Australian children in the digital world, it must keep pace with technological change and its impact on children's wellbeing. AHISA recommends that the Government establish a research program to be developed and conducted by the Australian Communications and Media Authority (ACMA) and eSafety – either singly or collaboratively – to gather evidence on the use of digital media by young Australians to inform regulatory and legislative measures.

### Recommendation 2

AHISA recognises that ACMA and eSafety already undertake research on aspects of consumers' use and experience of various media. We recommend, however, that a schedule of research be established in consultation with key stakeholders – including the national and state and territory commissioners of children and young people and the Australian Institute of Family Studies as well as ACMA and eSafety – to ensure research effort is both targeted and coordinated.

### Recommendation 3

AHISA supports the online safety measures suggested by eSafety's Youth Advisory Council and recommends they be augmented by adoption of recommendations for online provider codes from the Office of the Australian Information Commission's (OAIC) report, *Privacy risks and harms for children and other vulnerable groups in the online environment*.

### Recommendation 4

AHISA supports a right of erasure. Young people should not be burdened throughout their lifetime by a public profile generated by the malice of others or their own immaturity.

### Recommendation 5

Further to Recommendation 1, AHISA suggests that the Australian Government commission eSafety or ACMA to undertake regular surveillance of education technology products available to Australian schools and students for any breaches of privacy.

Further detail on these recommendations is found in the following sections.

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## 1. THE DIGITAL RIGHTS OF CHILDREN

AHISA members are deeply concerned by the capacity of digital technologies to become agents of harm among children and young people at a critical time in their development, through exposure to extreme violence, drug use, pornography and potentially harmful or addictive behaviours such as gambling. Further, the ease with which young people can engage in cyberbullying via digital technologies puts them at risk of becoming not just victims but aggressors, in ways that may have long-term negative effects on themselves and others.

AHISA commends enactment by the Australian Government of the *Online Safety Act 2021*. This has set ground rules for industry and promises a safety net for users. Most recently, we have seen the Act at work in the serving of legal notices by the Office of the eSafety Commissioner (eSafety) on social media platforms Twitter, TikTok and Google about their response to online child sexual abuse.<sup>1</sup>

First, we would like to draw the Committee's attention to Australia's obligations under the United Nation Convention on the Rights of the Child.

In March 2021 the United Nations Office of the High Commissioner on Human Rights (OHCHR) issued its General Comment on children's rights in relation to the digital environment.<sup>2</sup> In explaining the obligations of parties to the Human Rights Convention under the General Comment, the OHCHR notes:

States parties should ensure that, in all actions regarding the provision, regulation, design, management and use of the digital environment, the best interests of every child is a primary consideration. (Page 3)

Further, the General Comment states (pages 4-5) that:

States parties should review, adopt and update national legislation in line with international human rights standards, to ensure that the digital environment is compatible with the rights set out in the Convention and the Optional Protocols thereto. Legislation should remain relevant, in the context of technological advances and emerging practices. They should mandate the use of child rights impact assessments to embed children's rights into legislation, budgetary allocations and other administrative decisions relating to the digital environment and promote their use among public bodies and businesses relating to the digital environment.

States parties should ensure that national policies relating to children's rights specifically address the digital environment, and they should implement regulation, industry codes, design standards and action plans accordingly, all of which should be regularly evaluated and updated. Such national policies should be aimed at providing children with the opportunity to benefit from engaging with the digital environment and ensuring their safe access to it.

AHISA asks the Committee to note particularly the obligation relating to data collection and research (pages 5-6):

Regularly updated data and research are crucial to understanding the implications of the digital environment for children's lives, evaluating its impact on their rights and assessing the effectiveness of State interventions. States parties should ensure the collection of



robust, comprehensive data that is adequately resourced and that data are disaggregated by age, sex, disability, geographical location, ethnic and national origin and socioeconomic background. Such data and research, including research conducted with and by children, should inform legislation, policy and practice and should be available in the public domain.

While it is important that the Australian Parliament seeks research-based information from a wide range of sources through its inquiries, as the United Nation's General Comment makes clear, it is also incumbent on governments to ensure the collection and resourcing of 'robust, comprehensive data'.

AHISA recommends that the Australian Government establish a research program to be developed and conducted by the Australian Communications and Media Authority (ACMA) and eSafety – either singly or collaboratively – to gather evidence on the use of digital media by young Australians to inform regulatory and legislative measures. If the Government is to protect Australian children in the digital world, it must keep pace with technological change and its impact on children's wellbeing.

AHISA recognises that ACMA and eSafety already undertake research on aspects of consumers' use and experience of various media. We recommend, however, that a schedule of research be established in consultation with key stakeholders – including the national and state and territory commissioners of children and young people and the Australian Institute of Family Studies as well as ACMA and eSafety – to ensure research effort is both targeted and coordinated.

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## 2. EMPOWERING CHILDREN AND YOUNG PEOPLE

AHISA recognises and commends eSafety's progress in giving young Australians a voice on their digital engagement. Earlier in February, the media reported that eSafety's Youth Advisory Council 'called on US tech giants to take urgent action to stop popular online platforms becoming a "haven for trolls, haters and predators"'.<sup>3</sup> *The Sunday Telegraph's* report further notes that '[the Advisory Council's] ideas for tech companies include placing privacy settings at the highest level by default on their platforms; investing in systems that flag unsafe behaviour in private messages; establishing community rules that discourage toxic callout culture and using human moderators – not just algorithms'.

AHISA supports these suggestions and recommends they be augmented by adoption of recommendations for online provider codes from the Office of the Australian Information Commission's (OAIC) report, *Privacy risks and harms for children and other vulnerable groups in the online environment*,<sup>4</sup> published in December 2020, specifically:

*Recommendation 11*

The Code should require digital platforms to conduct a Privacy Impact Assessment (PIA) for all online products and services, and for all new products and services prior to launch.

*Recommendation 12*

The Code should require that platforms and services are set to the highest privacy settings by default. High-privacy default settings should cover both user-to-user privacy settings (such as who can see activity or posts) and user-to-platform privacy settings (such as profiling, location tracking, or targeted advertising).

*Recommendation 13*

The Code should prohibit the use of 'nudge' techniques which lead or encourage children to provide unnecessary personal data or turn off privacy protections.

*Recommendation 15*

The Code should establish a presumption that profiling of children for advertising or other commercial purposes is not fair or reasonable.

*Recommendation 16*

The Code should provide for a right to withdraw consent for processing and set specific requirements for digital platforms to action such requests. For example, to cease any processing and to delete any information collected or retained on the basis of consent or reasonable expectation of the individual, unless another permissible purpose applies.

*Recommendation 18*

The Code should require that location data is subject to additional protection. Unless necessary to provide elements of a service in which a child is actively and knowingly engaged and except as required by law or for a defined public interest: location tracking must be off by default; and options which make a child's location visible to others should default back to 'off' at the end of each session.

*Recommendation 19*

Services should also be required to provide an obvious indication when location tracking is active and every time the child's location is used or disclosed to others.



*Recommendation 21*

The Code should require that children's data must not be disclosed except as necessary to provide the elements of a service in which a child is actively and knowingly engaged, or as required by law or for a defined public interest. This restriction should apply the same standard to restrict information collection directly by third parties via cookies or other tracking technologies.

AHISA also supports a right of erasure. Young people should not be burdened throughout their lifetime by a public profile generated by the malice of others or their own immaturity.

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### 3. HOW YOUNG PEOPLE ARE MANIPULATED IN THEIR DIGITAL SPACE

When it is understood that young people's online behaviours are subject to manipulation by stealth advertising, such as influencer marketing, advergames and sponsored content, as well as by platform algorithms which drive the presentation of content and advertising, right of erasure – as recommended in the previous section – can be understood as a reasonable form of recompense.

While erasure can address a crippling digital footprint, it cannot address serious psychological harms such as body image issues or trauma resulting from cyberbullying. It cannot address financial loss through addiction to gambling or even counter the impact of addiction to digital games themselves. The latter is often achieved by what has been termed 'persuasive design', which aims to retain consumer loyalty to the game or app and create a captive market for advertisers. As Deakin University academics have observed<sup>5</sup>:

If persuasive design can influence the screen-use behaviours of adults – who have supposedly developed regulatory skills and self-control – then toddlers and kids don't stand a chance. This aspect of the screen-time debate is rarely scrutinised with the seriousness it deserves.

In its position statement on content curation systems, *Recommender systems and algorithms*<sup>6</sup>, eSafety notes that 'children and young people in particular face risks from recommender systems', including:

- Exposing children to heightened risks of online sexual exploitation through friend/follower suggestions that pressure them to interact with potentially dangerous adults
- Drawing children into content loops such as those on video-sharing services, which can limit their exposure to diverse content, deliver increasingly problematic content and contribute to negative mental health impacts
- Encouraging dangerous viral challenges, such as the 'blackout challenge' seen on TikTok which has led to multiple deaths of children, or viral memes that constitute cyberbullying
- Promoting 'ideals' of body types and beauty stereotypes or normalising the sexualisation of young people
- Recommending content that may be appropriate for adults but harmful to children who are not developmentally ready for it, such as violent or sexually explicit material.

AHISA discussed risk of harm to young people from content curation systems in its 2022 submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into Online Gambling and Its Impacts on Those Experiencing Gambling Harm.<sup>7</sup> Evidence presented in the submission on risk of harm and actual harm included a research review funded by the Victorian Responsible Gambling Foundation<sup>8</sup>, which found that young people are not only exposed to online gambling advertising, they are actively engaged with the marketing efforts of gambling companies. The review references UK research which found that 10 per cent of 11-16 year-olds in Britain followed gambling companies on social media platforms such as Facebook, YouTube and Instagram. The review notes: 'This is the first generation to be exposed to saturation marketing of online betting products.'





The results of this exposure can be seen in the prevalence of gambling addiction in young people aged under 18. The 2020 NSW Youth Gambling Study<sup>9</sup> found that the past-year problem-gambling rate among those participating in the study was 1.5 per cent, and another 2.2 per cent of adolescents were at-risk gamblers. Analysis of responses to gambling-related questions that were added to the triennial Australian Secondary Students Alcohol and Drugs Survey (ASSAD) in 2017<sup>10</sup> found that, while 1.4 per cent of all students participating in the survey were classified as problem gamblers, 5 per cent of students who had ever gambled, and 13 per cent of students who had gambled in the last month, were classified as problem gamblers.

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#### 4. MINING CHILDREN'S DATA FOR COMMERCIAL GAIN

Of particular concern to AHISA is research that has found evidence of mining for commercial gain data generated by students' use of education-related technology.

In 2022, the UK's Digital Futures Commission, in conjunction with 5Rights Foundation, released a report, *Problems with data governance in UK schools: The cases of Google Classroom and ClassDojo*.<sup>11</sup> The report found that both Google Classroom and ClassDojo were operating 'according to opaque privacy policies and legal terms that are inconsistent with data protection laws and that could result in the commercial exploitation of children's education data'. A key issue identified by the research was that, when following links to sites such YouTube or Google Maps, students lost the data protection provided by Google Classroom or ClassDojo and were unaware their personal data was then being harvested.

Also issued in 2022 was the report of research undertaken by Human Rights Watch<sup>12</sup>, on government-endorsed education technology products. The research covered 49 countries, including Australia. Products found to be problematic in Australia included Minecraft: Education Edition and the Adobe Connect app for videoconferencing and screen sharing.

Further to its earlier recommendation, Recommendation 1, AHISA suggests that the Australian Government commission eSafety or ACMA to undertake regular surveillance of education technology products available to Australian schools and students for any breaches of privacy. ■

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## NOTES

- <sup>1</sup> eSafety (2023) Media release, 23 February 2023, accessed at <https://www.esafety.gov.au/newsroom/media-releases/twitter-tiktok-and-google-forced-answer-tough-questions-about-online-child-abuse>.
- <sup>2</sup> United Nations OHCHR (2021) General Comment No. 25. Accessed at <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation>.
- <sup>3</sup> Wachsmuth L (2023) Aussies want Big Tech to take responsibility for safety of young users. *The Sunday Telegraph*, 5 February 2023. Accessed at <https://www.heraldsun.com.au/news/nsw/aussies-want-big-tech-to-take-responsibility-for-safety-of-young-users/news-story/b93af81549dc36496f5535646dee0859?btr=76651881b3d481e3f7673516965a25ee>
- <sup>4</sup> OIAC (2020) *Privacy risks and harms for children and other vulnerable groups in the online environment*. Accessed at [https://www.oaic.gov.au/\\_data/assets/pdf\\_file/0012/11136/Report-Privacy-risks-and-harms-for-children-and-other-vulnerable-groups-online.pdf](https://www.oaic.gov.au/_data/assets/pdf_file/0012/11136/Report-Privacy-risks-and-harms-for-children-and-other-vulnerable-groups-online.pdf).
- <sup>5</sup> Mallawaarachchi S & Horwood 2 (2022) 3 ways app developers keep kids glued to the screen – and what to do about it. *The Conversation*, 18 October 2022. Accessed at <https://theconversation.com/3-ways-app-developers-keep-kids-glued-to-the-screen-and-what-to-do-about-it-191672>.
- <sup>6</sup> eSafety (2022) *Recommender systems and algorithms*. Position statement, 7 December 2022, accessed at <https://www.esafety.gov.au/industry/tech-trends-and-challenges/recommender-systems-and-algorithms>.
- <sup>7</sup> AHISA (2022) Submission to House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into Online Gambling and Its Impacts on Those Experiencing Gambling Harm. Posted at [https://www.ahisa.edu.au/AHISA/Advocacy/Submission\\_Resources/Submissions\\_2022/Inquiry\\_into\\_Online\\_Gambling.aspx](https://www.ahisa.edu.au/AHISA/Advocacy/Submission_Resources/Submissions_2022/Inquiry_into_Online_Gambling.aspx).
- <sup>8</sup> Duffy L (2021) *Gen bet: a plain English summary of research into gambling and young people*. Victorian Responsible Gambling Foundation, Melbourne. Accessed at <https://responsiblegambling.vic.gov.au/resources/publications/gen-bet-a-plain-english-summary-of-research-into-gambling-and-young-people-990/>.
- <sup>9</sup> Hing N, Russell, A, King D, Rockloff M, Browne M, Greer N, Newall P, Sproston K, Chen L & Coughlin S (2021) *NSW Youth Gambling Study 2020*. Prepared for the NSW Responsible Gambling Fund. Accessed at <https://www.gambleaware.nsw.gov.au/resources-and-education/check-out-our-research/published-research/nsw-youth-gambling-study-2020>.
- <sup>10</sup> Freund M, Noble N, Hill D, White V, Evans T, Oldmeadow C & Sanson-Fisher R (2019) *The prevalence and correlates of gambling in secondary school students in Victoria, Australia, 2017*. Victorian Responsible Gambling Foundation, Melbourne. Accessed at <https://responsiblegambling.vic.gov.au/resources/publications/the-prevalence-and-correlates-of-gambling-in-secondary-school-students-in-victoria-australia-2017-680/>.
- <sup>11</sup> Hooper L, Livingstone S & Pothong K (2022) *Problems with data governance in UK schools: The cases of Google Classroom and ClassDojo*. Digital Futures Commission, 5Rights Foundation report. Accessed at <https://digitalfuturescommission.org.uk/wp-content/uploads/2022/08/Problems-with-data-governance-in-UK-schools.pdf>.
- <sup>12</sup> Human Rights Watch (2022) “How Dare They Peep into My Private Life?” *Children’s Rights Violations by Governments that Endorsed Online Learning During the Covid-19 Pandemic*. Accessed at <https://www.hrw.org/report/2022/05/25/how-dare-they-peep-my-private-life/childrens-rights-violations-governments>.