13 November 2020

To the Committee on the Rights of the Child,

Thank you for the opportunity to make a submission on the Draft General Comment on the Rights of the Child in the digital environment (DGC).

This submission is made on behalf of the Wellbeing Health & Youth (WH&Y) NHMRC Centre of Research Excellence in Adolescent Health. WH&Y is an Australia-wide network of interdisciplinary researchers working alongside clinicians, administrators, policy-makers, families and young people to transform how youth healthcare is researched and designed so that all young people have the opportunity to experience the best possible wellbeing and health.

A key pillar of our work is to partner with young people to establish the conditions for a collaborative approach to adolescent health research and translation. At the heart of WH&Y is a Commission of talented young people who contribute to setting adolescent health research agendas, exploring ethical issues in health research design and advocating and advising to support effective research translation in policy and service design. The WH&Y Commissioners come from diverse cultural and socio-economic backgrounds and have a wide range of capacities and experiences including migration and seeking asylum, of non-binary sexual orientation and gender identity, living with disability or chronic illness. All share a commitment to improving health and wellbeing of young people in digital society. Accordingly, this submission is made through the lens of health, considers the intersections of the digital and social determinants of health, and reflects the lived experiences and aspirations of the Commissioners and the communities they represent.

We praise the Committee on the DGC. It is an outstanding document that does testimony to the considerable resources and effort that has gone into the consultation and drafting process. We particularly commend the Committee for extensive consultation with diverse young people and experts from around the globe. The inclusion of young people’s voices in the first paragraph powerfully grounds the DGC from the perspective of those who stand to gain the most from the digital environment - if their rights are respected, protected and fulfilled by States and other parties.

This is already a strong document, and below we offer the following comments and recommendations for the Committee’s consideration in the belief this will enhance the receptivity and utility of the final General Comment in different country contexts.

**Introduction**

We agree with the Committee at (**IV)** that the category of ‘child’ should be nuanced given the extreme range of evolving capacities and different contexts and cultural expectations of ‘childhood’. We recommend the committee clarify at the beginning of the DGC what terms are used throughout to disaggregate age groups - noting there are limitations of such an approach. On the basis of current definitions in most supra-national and national level policies, we suggest ‘newborn’ (0 - 2yrs), ‘child’ (3 - 9yrs), ‘young adolescent’ (10 - 13yrs), ‘older adolescent (14-17 years) (eg. **IV.21**).

Children’s perspectives bring to life what is at stake for their rights. We therefore recommend including their voices throughout this DGC - not only in the first paragraph. We encourage stronger recognition of the validity and value of children’s knowledge for identifying and responding to the challenges and opportunities of the digital environment. We recommend that the DGC explicitly direct organisations across all sectors - academia, government, corporate, non-government - to embed mechanisms for involving and supporting young people as part of ongoing design, development and decision-making processes.

As the world increasingly adopts and prioritises advancement of the Sustainable Development Goals (SDGs), there is opportunity to connect and enhance recognition of child rights via the SDGs (UNICEF n.d). Supporting child rights in the digital environment should advance the achievement of the SDGs and with many organisations and actors already committed to SDG monitoring and progress, integrating child-rights in this process can ensure that forces are combined to both progress goals and uphold rights. To this end we recommend the DGC reference the SDGs in the introduction and note how achieving the goals with children, such as SDG 3: Good Health and Wellbeing, will rest on respecting, protecting and fulfilling child rights in the digital environment.

At (I.3) the DGC makes an important point about the importance of digital access. However, the terms disadvantage and vulnerability do not fully capture intersectionality and the ways compounding forms of discrimination and disadvantage will be exacerbated by differential access to and experiences in digital environments. We recommend the committee explicitly include “existing *and intersecting* inequalities are likely to be exacerbated” at (I.3)and the adoption of “existing *and intersecting* inequalities” wherever possible throughout the document.

This is particularly important given the digital environment is increasingly characterised by autonomous and intelligent digital systems which can, and do, reproduce and deepen biases based on the gendered, racialised and ablist design of these technologies and the data they learn from. We urge the committee to make an overall point about the potential for the digital environment to reproduce a range of inequalities if states and other parties are not required to review and ensure diversity and equity by design.

**General Principles**

* 1. **Non-discrimination**

**Paragraph 10**. Children living in detention are some of the most marginalised and disadvantaged. We suggest adding ‘children in onshore and offshore detention’ to ‘children of lower income families and children living in rural and remote areas’.

* 1. **Best interests**

**Paragraphs 13 & 14**. The concept of a child’s ‘best interests’ is complex given the potentially competing interests of various stakeholders (e.g. the child, parents/carers, teachers, religious leaders, states), their evolving nature and the role of individual and local context (such as health conditions, war, social unrest). A strong mediating factor is for children to contribute to determining their best interests, which should include reference to thriving, equity and health. Thus, ‘involve children’ could be added to both paragraphs.

* 1. **Life, survival and development**

**Paragraph 16**. According to WH&Y Commissioners, the wording should be strengthened: *“Safety from harmful content should be first and foremost, there is no benefit to digital media that outweighs the irreversible harm that may be caused from exposure to explicit, hateful or derogatory materials that can undermine the psychological health of a child or cause them to engage in risky behaviours.” (Female, 22)*

**Paragraph 17**. Although ‘adolescence’ is included as the final word, the general purport of this paragraph is specific to younger children. An additional paragraph recognising the cognitive, social and emotional developmental stages and characteristics of children over 10 should be included and related to the design, purpose and use of digital technology. It should be noted that there are specific considerations for children in the second decade of life that are not relevant to those under 10 and vise versa.

* 1. **The right to be heard**

**Paragraph 18**. Young people strongly believe the best way to include children and young people in the decision making process is via direct consultation with children and young people wherever possible. This paragraph should explicitly state that consultation should extend beyond design of policies and services to data governance - to ensure that young people are involved in decision-making about how their data are collected, as well as shared or linked with other agencies.

**Paragraph 19**. Designers and providers of digital technologies and services must also take into consideration disability and developmental and intellectual delay so that children with these conditions are still heard.

**Evolving capacities**

**Paragraph 21.** Achieving an appropriate balance between protection and emerging autonomy has special pertinence in adolescence, for example, young people exploring their sexuality; and, young people seeking medical advice/treatment independently of their parents/carers. States should require digital providers to offer or make available services to children that are appropriate for their evolving capacities, including empowering adolescents to manage their own access to information, services and the personal and digital data that this generates.

**General Measures of Implementation by States**

**Data Collection and Research**

**Paragraph 31.** We strongly support the sentiment of this paragraph with the following additions:

* We agree that research is vitally important in this context, particularly to inform better decision-making.
* Research from all sectors should verifiably adhere to the highest standards of ethical practice, including involving children in the design of research. The default position of most Health Ethics Research review committees is that research with children (particularly adolescents) is inherently high risk. This contributes to less research with and on adolescents which is inequitable. A common sticking point is committees’ judgements that young people are incapable of providing informed consent to

research, thus requiring parents/carers to provide this consent. This is out of step with many other age-based milestones (in Australia) such as taking control of health records (14 years) and consenting to medical treatment (16 years). It also places marginalised young people at further disadvantage, for example homeless young people who do not have a carer available to consent on their behalf, young people experiencing family-based abuse, and young people who do not wish to ‘come out’ to parents on issues such as sexuality, drug use, truancy etc.

* This paragraph states that research data should be in the public domain. This should explicitly state ‘in non-identifiable formats’ to protect the privacy of individuals. Further, to address points made above we recommend that this section explicitly state that children should be involved from the outset in making decisions about what data are collected, and how they are used (beyond ticking predetermined T&Cs).
* While recognising there are commercial interests at play, technology providers should be expected to have their research and development processes (including data-sets about children and young people) subjected to scrutiny by an independent child rights-focused body.

**Commercial advertising and marketing**

**Paragraph 41**. WH&Y Commissioners highlight the concerning role of algorithms as well as human ‘influencers’ on social media that advertise/market particular bodies, products and services that have a negative impact on teenage health and wellbeing: *I don't think the market will regulate itself, so systemic change needs to be pushed from governments too.” (Female, 23)* We ask that this paragraph recommend requirements for technologies to explicitly identify where content is advertising and explain the role of their algorithms for user experience.

**Paragraph 42.** Data brokers should be subject to a periodic review by an independent child rights body to ensure that illegal targeting of children is not taking place.

**Paragraph 43.** The majority of Terms and Conditions are complicated and dense to read, this paragraph could specify the need for more visual and engaging consent processes to ensure improved accessibility for guardians and children themselves. The development of dynamic consent models for the commercial sector could be explored - so that there is ongoing and clear communication between children and young people, their parents/guardians, and technology providers about how their data is being collected, used and shared over time.

**Remedies**

**Paragraph 44**. States should expand human rights education in all areas of the public sector, particularly for those working with children and in the administration of justice and places of detention; and incorporate human rights more fully within national school curricula (Recommendation from AHRC - Australian Human Rights Commission). There is potential (actual or unintended) abuse of state power with regards to digital technologies and data that compromises children’s rights. States should be wary about the possible power imbalances that exist between businesses and children/ young people. We suggest being explicit that states should be transparent about the legal and non-legal remedies that are available to young people and the processes involved when seeking justice.

**Paragraph 46**. Should include the requirement that states be compelled to provide opportunities for children and young people to appeal these remedies if disproportionate to the harm that they have incurred.

**Paragraph 49**. States should compel companies to take a minimum level of action if their sites or services and third parties (including other users) cause harm to children and young people. States should also ensure that children/young people’s data are not exploited for secondary purposes.

**Civil Rights and Freedoms**

**Paragraph 52.** Efforts to create child-friendly, age-appropriate digital content for children is important. As children become increasingly peer-oriented with age, some of the negative aspects of digital content include: self-comparison to others (resulting in unrealistic expectations, unrealistic body image, jealousy); distractions from responsibilities; fatigue and stress from constant notifications; and, fear of missing out. This highlights the need for states to ensure provision of critical digital literacy and other support to children.

**Paragraph 54**. Compelled by the COVID-19 pandemic and ‘infodemic’, States should continue to encourage social media platforms to partner with institutions and expert bodies (e.g. WHO) to prioritise trusted and authoritative content. The importance of evidence-based information could be underscored in this paragraph by including ‘evidence-based’ (after ‘good quality’ information).

**Paragraph 56**. The meaning of “the principle of data minimization” is unclear. We recommend clarifying this to indicate guidance against arbitrary collection of non-essential information. The health implications of data collection and use mean children should have more say on what is collected, how it is managed and secured, and who has access to it and what it is used for.

**Paragraph 66.** Add ‘gender’ to ‘social, religious, sexual and political identities’.

**Paragraph 74**. Provisions for the transfer of data from one setting to another must address conflicts of consent between parents/carers and children, particularly adolescents. Consent by parents/carers should not automatically override dissent from children, or vice versa. Moreover, the statement “where possible the right to object to such surveillance” should be strengthened to indicate that the right to object should be the default position.

**Violence against children**

**Paragraph 83.**  Advanced technologies including deep fakes should be included here.

**Children with Disabilities**

**Paragraph 97.** States should legislate accessibility standards for all digital-based technologies, services and strategies.

**Basic Health and Welfare**

**Paragraph 102.** We strongly agree that it is important for adolescents to have access to high-quality information on all aspects of health and well-being including sexual health and sexuality information and recommend this paragraph include reference to the co-design of services with children and adolescents. In the absence of this, alternative avenues may be sought that do not necessarily consider appropriateness. This is a complex issue, particularly taking into account multiple cultures. Equally as important is the recommendation that States *not* move to online delivery *only* which will exacerbate existing inequalities and intersectionality.

**Paragraph 105.** Should include gambling. Statement can also be strengthened through identifying potential positive impacts.

**Education, Leisure and Cultural Activities**

The connection between education and disadvantage is strongly emphasised by the WH&Y Commission: *“We should prioritise education because it promotes social mobility, allowing young people to break intergenerational disadvantage.”* *(Female, 22)* Thus, this section may be further strengthened by highlighting the importance of education about digital literacy, critical data literacy and children’s human rights aimed at both children and adults. Education that assembles these key areas should be co-designed with children and experts and available to children formally through education settings. Youth-friendly content should also be available for children to use informally with family and peer networks. Education should include a health literacy component addressing screen use, in the context of balancing the positive impact that technology can have (e.g. promoting physical activity, tracking sleep cycle), its importance in daily life, and the potential harms of sedentary behaviour (raisingchildren.net.au). Adults caring for and working with children should be educated about these issues through their children’s education settings, health settings, education campaigns, and as part of their professional training and development.

**Special Protection Measures**

**Paragraph 122.** We recommend that the GDC include the need for special protection measures to protect children from harms arising through exploitation of their data (e.g. commercial targeting, data brokers). Explicit reference to the dark web should be considered and States responsibilities to ensure children’s rights are not exploited in any and all digital environments.

**Paragraph 126.** Given that the word ‘sanction’ can mean both ‘a threatened penalty’ and ‘official permission or approval’, we suggest “sanctioning” in this paragraph be replaced by a less ambiguous word.

**International and Regional Cooperation**

**Paragraph 127.** A key way to advance international and regional cooperation about children’s rights in the digital environment is to encourage States to embed child rights as part of the SDG agenda. We recommend that this paragraph note that organisations and actors already committed to SDG monitoring and progress should integrate child rights in this process so as to ensure that forces are combined to both progress goals and uphold rights. The development of local and regional tools and resources can also advance knowledge sharing and collective action with a place-based approach.

**Paragraph 128**. Children must be included in the design and development of governance architecture for ‘global digital cooperation’ (UN 2019) so that proposed models and mechanisms for digital economy/society are inclusive of their diverse needs and aspirations. We recommend this is explicitly stated: that children be engaged in future scenario planning activities about emerging technologies and systems - so that their ideas about long-term possibilities and impacts are integrated into present day designs and developments.

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