



Chair, Senate Standing Committee on Environment and Communications  
Committee Office, Department of the Senate  
By email: [ec.sen@aph.gov.au](mailto:ec.sen@aph.gov.au).

November 22, 2024

Dear Chair,

The Digital Industry Group Inc. (DIGI) thanks the Environment and Communications Legislation Committee (the Committee) for the opportunity to submit to its inquiry into the *Online Safety Amendment (Social Media Minimum Age) Bill 2024 [Provisions]* (the Bill).

By way of background, DIGI is a non-profit industry association that advocates for the digital industry in Australia. DIGI brings leading technology companies together with Government in efforts to address online harms, data and consumer protection online and to grow the digital economy, through code development, partnerships and advocacy for effective and implementable approaches to technology policy. Some examples of our efforts to address harmful content online include:

- DIGI has taken a leading role in the development of mandatory codes required under the Online Safety Act, working with our members, the wider industry and the eSafety Commissioner. The Phase 1 codes cover Class 1 material under the National Classification Scheme, including child sexual exploitation material, pro-terror content and other extremely harmful materials (Class 1 Codes). These industry-led codes are now in force for social media companies and other industries, and are accompanied with penalties for breaches.
- DIGI is currently developing the second tranche of codes that are specifically aimed at protecting young people from adult content, self-harm content, and pro-eating disorder content, covering Class 2 materials under the National Classification Scheme (Class 2 Codes). These codes are still under development as they are due to the Commissioner on December 19, 2024. The drafts recently released for public consultation require different service providers online to implement best practice measures to protect children and young people under 18 that are using their services. They include age-gating of pornography, suicide, eating disorder and self harm material on many websites and apps, including social media services.
- Recognising that regulatory solutions need to be accompanied by broader social interventions, DIGI has a longstanding programme called *DIGI Engage* aimed at fostering young people's digital literacy, building their skills to promote social cohesion in their online and offline communities, and to counter hate online. Past partners have included the Department of Home Affairs and the Attorney General's Department, and our current partner in this effort is Multicultural NSW.

With our extensive experience addressing online harms, DIGI acknowledges community concerns relating to social media. Rather than an age restricted ban as contemplated by the Bill, DIGI considers that the focus should be on ensuring that online platforms offer safety and privacy through *The Online Safety Act* and *The Privacy Act*. In particular, the Phase 2 codes described above have been drafted to provide safeguards regarding the kinds of material that Minister Rowland referenced in the second reading of the Bill.<sup>1</sup> We also note that the accelerated statutory review of the Online Safety Act has recently been completed and handed to the Government, which may provide other opportunities to ensure this Act remains future-proof. Additionally, DIGI welcomes the Children's Online Privacy Code being considered by the Parliament in the *Privacy and Other Legislation Amendment Bill 2024*.

While concerns about online harms are valid, DIGI is concerned about the warnings from a range of experts about the harms of a widespread ban:

---

<sup>1</sup> *Online Safety Amendment (Social Media Minimum Age) Bill 2024 - Second reading speech*, <https://minister.infrastructure.gov.au/rowland/speech/online-safety-amendment-social-media-minimum-age-bill-2024-second-reading-speech>



- More than 100 reputable experts with direct experience working with young people, known as the Australian Child Rights Taskforce, have noted that *"The online world is a place where children and young people access information, build social and technical skills, connect with family and friends, learn about the world around them and relax and play"* and that *"that a 'ban' is too blunt an instrument to address risks effectively."*<sup>2</sup>
- A coalition of mental health organisations have expressed concerns, noting that *"Social media can be protective in facilitating connectedness, storytelling, engagement, creativity and sense of community. These protective effects can be even greater for young people living in regional and remote areas, and populations at higher risk of mental health conditions such as neurodivergent or LGBTQIA+ youth, but there is emerging evidence to suggest those protective factors can extend to young people who use social media to seek information, connect with friends and find inspiration."*<sup>3</sup>
- The eSafety Commissioner has noted that: *"Even if social media could be demarcated and separated from other media, a primary concern is that children would migrate to other services and platforms with fewer safeguards"*.<sup>4</sup>

Consistent with these experts, DIGI's view is that this Bill carries a risk of unintended negative consequences for young people, as well as raising issues about privacy and data security that affect all Australian users of the broad range of services in scope. In DIGI's experience working directly with major digital platforms, there is extensive and ongoing safety work to support safe use (e.g. mute, block, report or other features to control your experience), as well as strong privacy protections for minors, and family controls and tools for parents. DIGI is concerned that this Bill could push young people onto darker, less safe online spaces that do not have the safety guardrails present on mainstream platforms.

This submission outlines several high level concerns with Bill, including a lack of necessary detail regarding technical implementation that makes the accurate assessment of its privacy, security, human rights, or regulatory cost implications possible. In place of necessary detail on implementation, the Bill contains extensive discretionary powers for the Minister and eSafety Commissioner.

While DIGI is concerned about the impact and overarching design of the Bill, for the purposes of the Committee's inquiry, we offer the following short-term recommendations:

1. **Recommendation 1:** As drafted, the Bill only requires that the Minister seek advice from the eSafety Commissioner before making legislative rules. In order to ensure any rule is fit for purpose, DIGI suggests amendments to the Bill to contain a requirement for a minimum 30 days of industry consultation before making legislative rules. DIGI would strongly recommend a more extensive consultation than our recommended minimum.
2. **Recommendation 2:** To better assess the impact of any legislative rules, DIGI also recommends a minimum 30 day public consultation takes place so that civil society and the community, including young people, can contribute views on the appropriate design, as well as impacts on privacy, human rights and other relevant areas. Again, DIGI would strongly recommend a more extensive consultation than the recommended minimum.
3. **Recommendation 3:** Given the significant privacy implications of implementing age assurance technologies, DIGI recommends the Bill be amended so that the Minister must seek advice from the Australian Privacy Commissioner. The Privacy Commissioner should have a role in determining privacy violations.
4. **Recommendation 4:** Noting that the final report of the Joint Select Committee on Social Media and Australian Society pointedly did not include the ban in its recommendations<sup>5</sup>, DIGI recommends the

<sup>2</sup> Open letter regarding proposed social media age bans for children, <https://apo.org.au/sites/default/files/resource-files/2024-10/apo-nid328608.pdf>.

<sup>3</sup> Youth Mental Health and Social Media, A Joint Position Statement by Australian mental health focused organisations working with young people: <https://apo.org.au/sites/default/files/resource-files/apo-nid327813.pdf>

<sup>4</sup> The Guardian (23/6/2024), Social media age restrictions may push children online in secret, Australian eSafety commissioner says, <https://www.theguardian.com/australia-news/article/2024/jun/23/social-media-age-restrictions-may-push-children-online-in-secret-australia-regulator-says>

<sup>5</sup> Social media: the good, the bad, and the ugly – Final report - November 2024,



Environment and Communications Legislation Committee consult with the Joint Select Committee members to understand their views.

While we appreciate the Committee's consideration of issues raised by the Bill, DIGI is also concerned about the Government's approach to consultation on this proposal. The legislation was released publicly on Thursday November 21, with invitations to submit sent to stakeholders that afternoon, and submissions due the next day on Friday November 22. This is an inadequate timeframe for interested parties such as young people, academics and experts to meaningfully engage and provide feedback on this significant legislative proposal. With hearings to be held on Monday November 25 and the Committee's report due on Tuesday November 26, this does provide the Committee with adequate time to consider stakeholder views. Further, we are also concerned that the invitation to submit that DIGI received was not extended to all parties that have expressed concerns on this proposal. The truncated process signals to stakeholders that the Government intends to pass this legislation next week.

We thank the Committee for their important work to scrutinise this Bill, albeit in a short timeframe, and we hope that our views can be duly considered along with those of other stakeholders. DIGI and our members will continue to constructively engage with each stage of this process. I look forward to appearing before the Inquiry on Monday, and please do not hesitate to contact me should you have any questions about this submission.

Yours faithfully,

Sunita Bose  
Managing Director  
Digital Industry Group Inc. (DIGI)

## Concerns regarding the the *Online Safety Amendment (Social Media Minimum Age) Bill 2024*

Bill lacks detail on technical implementation and age assurance expectations	3
Discretionary powers lead to complexity and uncertainty	4
Industry consultation is essential in drafting of legislative rules	4
Privacy implications remain unclear	5
Regulatory and human rights impact analyses have questionable bases	5

### Bill lacks detail on technical implementation and age assurance expectations

DIGI understands the Government intends to determine a significant level of detail about how the Bill would be implemented through subsequent consultation, provision of guidance from the eSafety Commissioner, and the results of the Age Assurance Trial that has only just commenced and will not be complete until mid 2025.<sup>6</sup> For example, the Bill amends the functions of the eSafety Commissioner to include "*formulat(ing), in writing,*

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Social\\_Media/SocialMedia/Final\\_report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Social_Media/SocialMedia/Final_report)

<sup>6</sup> November 2024, Tender awarded for age assurance trial,

<https://www.infrastructure.gov.au/departments/media/publications/tender-awarded-age-assurance-trial>



*guidelines for the taking of reasonable steps to prevent age-restricted users having accounts with age-restricted social media platforms.”* While guidance is welcome to reduce uncertainty for regulated services, this detail is crucial to the substance of the Bill that is currently before the Australian parliament. Without this detail, the Bill makes it unclear what actions a company can take to comply with the obligation to verify that users are at least 16 years of age. The absence of this important detail does not enable evaluation of the privacy, security, human rights, or regulatory cost implications of the Bill.

The definition of ‘social media’ extends to a large and vaguely defined category of apps and websites that have a ‘significant purpose of enabling social interaction between ‘two or more end users’ – regardless of the risk these pose to young users – including community forums, product review forums, business forums or any app or website that enables users to post, and comment on, online content. In addition to the impact this breadth of services will have on young people, the capability of these services to comply with the requirements of the Bill will vary widely. The Bill implies that the common method of ‘self declaration’ (where a user volunteers their age) is insufficient, yet it is unclear if such methods are considered ‘reasonable steps’. If the implication of the Bill is for in scope services to more verifiably know the age of their users, then all Australians will need to take regular privacy-intrusive actions like providing an ID, an image of their face, or link to a digitalID, or alternative technologies that have not yet been developed. Only last year, the Australian Government concluded that “age assurance technologies are immature, and present privacy, security, implementation and enforcement risks”<sup>7</sup>; we are unclear about any major developments in relation to these technologies that may have changed this view. We also emphasise that the likely passage of this Bill will come before the conclusion of the Government’s age verification trial.

## Discretionary powers lead to complexity and uncertainty

As drafted, the implementation of the Bill is largely determined at the discretion of the Minister and eSafety Commissioner. These discretionary powers add complexity, subjectivity, and uncertainty into Australia’s online safety regime.<sup>8</sup> For example, the Class 2 Codes under the Online Safety Act also deal with age assurance measures and safeguards for age-inappropriate content. Should the eSafety Commissioner register the draft codes, they will use a different definition of social media than that proposed under the Bill. This would add to the increasing complexity of the OSA regulatory framework that has intensified since it was introduced.

The Government has stated its intention to ensure Australians under the age of 16 continue to have access to certain types of services. This is an intention outlined in the explanatory memorandum and is not incorporated into the design of the Bill.<sup>9</sup> To account for this, the Bill contains discretionary powers for the Minister for Communications to make significant decisions regarding the scope of the definition of social media. As noted, the Bill’s definition of social media appears to cover a broad range of services that are used by young Australians for everyday communications with friends and family. There is immense discretionary power for the Minister to make future determinations on the scope of this Bill which creates additional uncertainty as to the services in scope.

## Industry consultation is essential in drafting of legislative rules

As drafted, the Bill only requires that the Minister seek advice from the eSafety Commissioner before making legislative rules. Through DIGI’s extensive code development work with the eSafety Commissioner on codes concerning these services, and in relation to matters concerning children, we have learned that early and ongoing consultation iteratively throughout the process of code development has been essential for both the

<sup>7</sup> Australian Government (August 2023), Government response to the Roadmap for Age Verification, <https://www.infrastructure.gov.au/sites/default/files/documents/government-response-to-the-roadmap-for-age-verification-august2023.pdf>

<sup>8</sup> The Parliamentary Joint Committee on Human Rights has recently commented that there is a high level of subjectivity in online safety regulation, [https://www.apf.gov.au/-/media/Committees/Senate/committee/humanrights\\_ctte/reports/2024/Report\\_9/Report\\_9\\_of\\_2024.pdf?la=en&hash=EF746677861E0150E8C922090ED131F9ED85098C](https://www.apf.gov.au/-/media/Committees/Senate/committee/humanrights_ctte/reports/2024/Report_9/Report_9_of_2024.pdf?la=en&hash=EF746677861E0150E8C922090ED131F9ED85098C)

<sup>9</sup> November 2024, Online Safety Amendment (Social Media Minimum Age) Bill 2024 Explanatory Memorandum, [https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r7284\\_ems\\_b9c134ac-a19a-47b2-9879-b03dda6e3c1a/upload\\_pdf/JC014726.pdf;fileType=application%2Fpdf#search=%22legislation/ems/r7284\\_ems\\_b9c134ac-a19a-47b2-9879-b03dda6e3c1a%22](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r7284_ems_b9c134ac-a19a-47b2-9879-b03dda6e3c1a/upload_pdf/JC014726.pdf;fileType=application%2Fpdf#search=%22legislation/ems/r7284_ems_b9c134ac-a19a-47b2-9879-b03dda6e3c1a%22)



Commissioner and industry participants in ensuring that the codes are fit for purpose and technically feasible. Industry experience is essential in ensuring the Bill's requirements can be technically implemented and operationalised.

**Recommendation 1:** In order to ensure any rule is fit for purpose, DIGI suggests amendments to the Bill to contain a requirement for a minimum 30 days of industry consultation before making legislative rules. DIGI would strongly recommend a more extensive consultation than our recommended minimum.

**Recommendation 2:** To better assess the impact of any legislative rules, DIGI also recommends a minimum 30 day public consultation takes place so that civil society and the community, including young people, can contribute views on the appropriate design, as well as impacts on privacy, human rights and other relevant areas. Again, DIGI would strongly recommend a more extensive consultation than our recommended minimum.

## Privacy implications remain unclear

This short parliamentary consultation does not enable Members of Parliament to explore the propensity of Australians to take the aforementioned actions to verify their age, which require the regular provision of sensitive information to a range of digital platforms. While this is globally unprecedented legislation, it is worth the Committee being aware that the UK abandoned a plan to introduce age verification for adult sites after privacy concerns emerged.<sup>10</sup>

Division 3 outlines privacy protections under the Bill, including that 'personal information about an individual collected for the purpose of taking reasonable steps to prevent age-restricted users having accounts with an age-restricted social media platform must be destroyed after using or disclosing it for the purposes for which it was collected.' While DIGI welcomes the inclusion of privacy protections in the Bill as the potential privacy implications in implementing age assurance technologies are significant. However, as drafted, the privacy provisions raise several questions:

- How to reconcile destruction requirements with the fact that personal information collected by a service for age assurance might need to be retained by a service in order to deliver age-appropriate content or an age-appropriate product experience.
- How to reconcile destruction requirements with the fact information collected for age assurance may need to be retained by a service to demonstrate compliance with the regulatory regime.
- It remains unclear if the definition of personal information under the Privacy Act 1988 will be expanded, in line with the government's in-principle acceptance of this recommendation in the 2023 Privacy Act review report.<sup>11</sup>

**Recommendation 3:** Given the significant privacy implications of implementing age assurance technologies, DIGI recommends the Bill be amended so that the Minister must seek advice from the Australian Privacy Commissioner. The Privacy Commissioner should also have a role in determining privacy violations. DIGI recommends further industry consultation is undertaken to ensure an iterative and thorough assessment of privacy implications posed by the Bill.

## Regulatory and human rights impact analyses have questionable bases

The regulatory impact analysis conducted for the Bill is predicated on 'reasonable steps' that are yet undefined and a scope of services that will be determined by future decisions made at the Minister's

<sup>10</sup> 2019, UK Parliament Hansard: Online Pornography, Age verification, <https://hansard.parliament.uk/commons/2019-06-20/debates/FEB4CA3E-3F17-4E1C-803A-7194ECB996FF/OnlinePornographyAgeVerification>

<sup>11</sup> 2023, Government Response to Privacy Act Review response, <https://www.ag.gov.au/sites/default/files/2023-09/government-response-privacy-act-review-report.PDF>



discretion.<sup>12</sup> We question whether adequate impact analysis can be undertaken without details on how the 'reasonable steps' threshold will be determined or implemented.

The Government's impact analysis of the Bill provides a key source to support its recommendation of a minimum age of 16 with no parental consent, a 2022 study co-authored by Professor Andrew Przybylski and the US Surgeon General's advice which cites the same 2022 study<sup>13</sup>. This week, Professor Przybylski posted that the Government has 'misunderstood the purpose and findings of (our) research'<sup>14</sup>, and offered to consult with the Australian Government on his research to better illustrate its conclusion. DIGI also notes that the Joint Select Committee on Social Media and Australian Society pointedly did not include the ban in its recommendations<sup>15</sup>; the Environment and Communications Legislation Committee may wish to consult with the Joint Select Committee to understand their views.

DIGI notes that the Australian Human Rights Commissioner has expressed serious reservations about the human rights impact of the Bill<sup>16</sup>, as well as the short period of time for community and expert consultation.<sup>17</sup> The Commissioner has stated there is not enough detail currently available in the Bill to assess the full human rights impact of the proposal both for young people and adults in Australia.<sup>18</sup> We question how these reservations from the Australian Human Rights Commission align with the human rights impact assessment accompanying the Bill that concludes it is compatible with human rights.<sup>19</sup> DIGI considers that this Bill will have enormous gravity on Australians young and old, their safety and privacy – these impacts must be properly assessed.

<sup>12</sup> Impact Analysis Equivalent Supplementary Analysis,

<https://oia.pmc.gov.au/sites/default/files/posts/2024/11/Supplementary%20Analysis%20-%20Social%20Media%20Age%20Limit.pdf>

<sup>13</sup> The impact analysis contains the 2022 UK study, and a section of the US Surgeon General's advice on youth mental health and social media. DIGI notes that it the US Surgeon General's advice cites this same 2022 UK study as the basis for this section of its advice.

<sup>14</sup> LinkedIn, Andrew Przybylski's Post (19/11/2024),

[https://www.linkedin.com/posts/akprzybylski\\_the-communications-minister-cited-a-study-activity-7264917864673861632-9KZK?utm\\_source=share&utm\\_medium=member\\_desktop](https://www.linkedin.com/posts/akprzybylski_the-communications-minister-cited-a-study-activity-7264917864673861632-9KZK?utm_source=share&utm_medium=member_desktop)

<sup>15</sup> *Social media: the good, the bad, and the ugly – Final report - November 2024*,

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Social\\_Media/SocialMedia/Final\\_report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Social_Media/SocialMedia/Final_report)

<sup>16</sup> November 2024, Australian Human Rights Commission, *Proposed social media ban for under-16s in Australia*,

<https://humanrights.gov.au/about/news/proposed-social-media-ban-under-16s-australia>

<sup>17</sup> Lorraine Finlay, Human Rights Commissioner,

[https://www.linkedin.com/posts/lorrainejfinlay\\_a-social-media-ban-has-serious-implications-activity-7265210161324003328-m6Gg?utm\\_source=share&utm\\_medium=member\\_desktop](https://www.linkedin.com/posts/lorrainejfinlay_a-social-media-ban-has-serious-implications-activity-7265210161324003328-m6Gg?utm_source=share&utm_medium=member_desktop)

<sup>18</sup> November 2024, *'Being rushed through': Human rights commissioner sounds alarm on teen social media ban*,

<https://www.crikey.com.au/2024/11/22/teen-social-media-ban-being-rushed-human-rights-commissioner-lorraine-finlay/>

<sup>19</sup> November 2024, *Online Safety Amendment (Social Media Minimum Age) Bill 2024 Explanatory Memorandum*,

[https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r7284\\_ems\\_b9c134ac-a19a-47b2-9879-b03dda6e3c1a/upload\\_pdf/JC014726.pdf;fileType=application%2Fpdf#search=%22legislation/ems/r7284\\_ems\\_b9c134ac-a19a-47b2-9879-b03dda6e3c1a%22](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r7284_ems_b9c134ac-a19a-47b2-9879-b03dda6e3c1a/upload_pdf/JC014726.pdf;fileType=application%2Fpdf#search=%22legislation/ems/r7284_ems_b9c134ac-a19a-47b2-9879-b03dda6e3c1a%22)