



22 September 2025

To the Environment and Communications References Committee

**Re: Internet Search Engine Services Online Safety Code Implementation**

Thank you for the opportunity to provide input into the implementation of regulations aimed at protecting young people online, with particular reference to the Internet Search Engine Services Online Safety Code (Schedule 3 of the Phase 2 Industry Codes) and the under-16 social media ban.

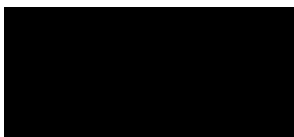
Formed in 1989, Scarlet Alliance is Australia's national peak sex worker organisation. Our membership includes sex worker organisations and individual sex workers across uncensored Australia. We advocate for equality, justice and better health outcomes for sex workers, using evidence-based best practices including peer education, community development and engagement.

Through our work and the work of our member organisations, Scarlet Alliance has more contact with sex workers and access to sex industry workplaces than any other organisation in Australia. We also represent sex workers on a number of government and non-government committees and advisory mechanisms.

Scarlet Alliance has consistently engaged throughout the development and implementation of the *Online Safety Act 2021* and its associated regulations. Our advocacy has focused on:

- **Stigmatising sexual content online:** treating sexual content as inherently 'harmful' positions sex workers and other marginalised communities as perpetrators of harm. This undermines our rights to participate online and access digital services.
- **Erosion of privacy and anonymity:** privacy is an essential aspect of online safety for young people, LGBTQI+ people, sex workers and other marginalised communities.
- **Sex workers' rights:** this includes our rights to work and to participate in public and political life.
- **Mandating under-tested technologies:** under-tested age-assurance mechanisms collect and store personal information from both young people and adults.
- **Content overcapture:** filters may block or restrict important content, such as health information, news and political discussion. Attempts at compliance may also create a chilling effect where content disappears altogether.

Yours faithfully,



Mish Pony  
Chief Executive Officer



## Background - Scarlet Alliance's advocacy for online safety

Since 2019, Scarlet Alliance has expressed that the Online Safety Act 2021 and its associated regulations generate significant risks for marginalised communities. Alongside other human rights and advocacy organisations, we have sought to engage with government, Digi, and the eSafety Commissioner to raise these concerns, especially during Phase 2 Industry Code development.

This ongoing engagement has placed significant strain on the limited resources of not-for-profit organisations. Despite more than six years of consultation and input, nearly all concerns raised by these organisations have been ignored and left unaddressed.

This submission is based on existing advocacy, first-hand experiences of sex workers in Australia and internationally, and networking with human rights organisations who have also expressed concerns about the *Online Safety Act* and associated regulations.

Our earlier work on the public record includes:

- Submissions and evidence to Senate Standing Committees on *Online Safety Act* development and implementation,<sup>1</sup>
- Individual and joint submissions on *Online Safety Act* age assurance mechanisms and industry codes and standards,<sup>2</sup>

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<sup>1</sup> Scarlet Alliance, [Submission to the Department of Communication and the Arts on \*Online Safety Legislative Reform\*](#) (December 2019);  
[Submission to the Department of Infrastructure, Transport, Regional Development and Communications, \*Consultation on a Bill for a New Online Safety Act\*](#) (14 February 2021);  
[Submission No 36 to the Senate Standing Committees on Environment and Communications, \*Online Safety Bill Inquiry\*](#) (3 March 2021);  
[Evidence to Senate Standing Committees on Environment and Communications](#), Canberra, 5 March 2021, 19-22 (Jules Kim and Gala Vanting, Scarlet Alliance);  
[Evidence to Senate Standing Committees on Environment and Communications \(answers to questions taken on notice\)](#), Canberra, 9 March 2021 (Jules Kim and Gala Vanting, Scarlet Alliance);  
[Submission to the Department of Infrastructure, Regional Development and Communications on the \*Draft Basic Online Safety Expectations\*](#) (15 November 2021);  
[Submission to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts on the \*Online Safety \(Basic Online Safety Expectations\) Amendment Determination 2023\*](#) (16 February 2024);  
[Submission to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts on the \*Statutory Review of the Online Safety Act 2021\*](#) (21 June 2024).

<sup>2</sup> Scarlet Alliance, [Submission to the eSafety Commissioner on the \*Restricted Access System Declaration \(Online Safety Act 2021\)\*](#) (20 September 2021);  
[Submission to the eSafety Commissioner on the Call for Evidence on Age Verification for Online Pornography](#) (20 September 2021);  
[Submission to the eSafety Commissioner on the Draft Consolidated Industry Codes of Practice for the Online Industry \(Class 1A and Class 1B Material\)](#) (23 March 2023);  
[Submission to the eSafety Commissioner on the Draft Online Safety Industry Standards 2024 - \(Relevant Electronic Services – Class 1A and 1B Material\) and \(Designated Internet Services – Class 1A and 1B Material\)](#) (21 December 2023);  
[Submission to the Online Safety Act Industry Associations Steering Group on the Consolidated Industry Codes of Practice for the Online Industry \(Class 1C and Class 2 Material\)](#) (22 November 2024);  
Scarlet Alliance et al., [Group submission from peer organisations, digital rights organisations, adult industry bodies, sexuality educators and academics to the Online Safety Act Industry Associations Steering Group on the Consolidated Industry Codes of Practice for the Online Industry \(Class 1C and Class 2 Material\)](#) (22 November 2024).



- Individual and joint submissions on deepfake material and safe and responsible AI,<sup>3</sup>
- Networking with sexual health, harm reduction and community services organisations on Phase 2 Codes and their potential impacts,
- A recent 2025 [Briefing Paper on the impacts of Phase 2 codes](#) for new federal government members and other stakeholders,
- September 2025 [postcard campaign](#) asking the Commissioner to establish an oversight body for the protection of sexual assault support, health promotion, political commentary and family planning and abortion information online in Australia.

In relation to the Internet Search Engine Services Online Safety Code and under-16 social media ban, we reiterate to this Committee that:

- **Age assurance technologies are not fit-for-purpose.** Mandating under-tested technology generates significant privacy and data security concerns.
- **The Phase 2 Codes significantly expand the scope and enforcement of internet regulation in Australia.** Drafting, implementation and enforcement have been delegated to an unelected regulator, without sufficient oversight or scrutiny.
- **The Phase 2 Codes represent a significant change in internet regulation.** Australian internet users have not been provided with sufficient information on their impacts.<sup>4</sup>
- **There are no protections to ensure access to information and education** on sexual and reproductive health, consent and respectful relationships, harm reduction, sexual violence or identity-affirming connections for LGBTQI+ people.
- **The Phase 2 Codes fail to recognise sex workers' right to work.** The Phase 2 Codes will likely lead to the down-ranking of lawful advertising for in-person sex work services, and impede Australian sex workers' ability to lawfully distribute content to local audiences via global platforms. Excluding Australian workers from meaningful input into regulations impacting our livelihood and safety is unacceptable.

## Age assurance - privacy and data protection implications

While the recent Age Assurance Technology Trial claimed success, it did not find 'a single ubiquitous solution that would suit all use cases.'<sup>5</sup> No solutions were 'guaranteed to be effective in all deployments.'<sup>6</sup> Specifically:

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<sup>3</sup> Scarlet Alliance, [Submission to the Department of Industry, Science and Resources on Safe and Responsible AI in Australia](#) (26 July 2023);

Scarlet Alliance and New South Wales Council of Civil Liberties, [Submission 29 to the Senate Standing Committees on Legal and Constitutional Affairs on the Criminal Code Amendment \(Deepfake Sexual Material\) Bill 2024](#) (19 July 2024).

<sup>4</sup> Ange Lavoipierre, ['Australia is quietly introducing "unprecedented" age checks for search engines like Google.'](#) ABC (11 July 2025).

<sup>5</sup> Age Check Certification Scheme, [Age Assurance Technology Trial - Part A: Main Report](#) (August 2025) 15.

<sup>6</sup> Ibid.



### Age verification<sup>7</sup>

- Requires providers to collect 'full biometric or document data' (e.g. photo of passport or driver's licence). Some providers store and retain data, leading to 'significant privacy risks'.<sup>8</sup>
- May be highly inaccurate for users close to age thresholds (e.g. 19-year-olds verifying that they are over 18).<sup>9</sup>

### Age estimation<sup>10</sup>

- Can only estimate age within a particular range. Users who are close to the age threshold will likely need to use a different method.<sup>11</sup>
- Less accurate for older adults, non-Caucasian users and female-presenting individuals, and lacks sufficient training data from First Nations peoples.<sup>12</sup>

### Age inference<sup>13</sup>

- Involves tech companies engaging in 'continuous behavioural monitoring' that 'may lead to digital profiling'.<sup>14</sup>

The Phase 2 Codes require tech companies to implement these flawed methods by mid-2026.<sup>15</sup> While the social media ban does not mandate any specific form of age assurance, regulatory guidance indicates that companies will be expected to use a combination of methods, and be heavily reliant on age inference.<sup>16</sup>

The privacy and data protection implications of the Internet Search Engine Services Code and the social media ban are that:

- All search engines operating in Australia must deploy a combined system of flawed and undertested technologies to verify whether an account holder is over the age of 18.<sup>17</sup> These technologies involve:
  - collection (and possible storage) of personal identity documents<sup>18</sup> (age verification)

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<sup>7</sup> Technology that confirms a person's age by verifying their date of birth.

<sup>8</sup> Age Check Certification Scheme, [Age Assurance Technology Trial - Part C: Age Verification](#) (August 2025) 12.

<sup>9</sup> Up to 50% in one case study: *ibid* 31.

<sup>10</sup> Technology that guesses a person's age by comparing a photo of their face against datasets of other people's faces.

<sup>11</sup> Age Check Certification Scheme, [Age Assurance Technology Trial - Part D: Age Estimation](#) (August 2025) 44.

<sup>12</sup> *Ibid* 9.

<sup>13</sup> Technology that guesses a person's age by finding other 'known facts' about that person, e.g. whether their name is on an electoral roll or the person's other online behaviours.

<sup>14</sup> Age Check Certification Scheme, [Age Assurance Technology Trial - Part E: Age Inference](#) (August 2025) 9.

<sup>15</sup> See e.g. [Schedule 3 – Internet Search Engine Services Online Safety Code \(Class 1C and Class 2 Material\)](#) (27 June 2025) 7.2.

<sup>16</sup> eSafety Commissioner, [Social Media Minimum Age: Regulatory Guidance](#) (September 2025); Ange Lavoipierre, ['Only Social Media Companies Know For Sure How the Teen Ban Will Work'](#), ABC (17 September 2025).

<sup>17</sup> Schedule 3 (n 15) 7.2.

<sup>18</sup> This may include photo identification, credit card information, digital identity or third-party age verification.



- collection (and possible use)<sup>19</sup> of biometric information (age estimation)
- behavioural surveillance (age inference).
- All search engines in Australia must conduct behavioural surveillance (age inference) of non-account holders to determine whether the user is likely to be under the age of 18.<sup>20</sup>
- All social media services operating in Australia must take reasonable steps to ensure that people under the age of 16 are not account holders. This will likely necessitate behavioural surveillance (age inference).<sup>21</sup>

The eSafety Commissioner notes that tech platforms already collect behavioural data, and many estimate user ages.<sup>22</sup> However, the Internet Search Engine Code and social media ban *legally require* age inference and tie it directly to account and content access decisions. This marks a significant escalation in both scope and enforcement.<sup>23</sup>

The Age Assurance Technology Trial confirmed the well-understood flaws in currently available technologies.<sup>24</sup> Given this, implementation of the Codes should be delayed until satisfactory technologies become available.

## Expanded data collection and surveillance

The Phase 2 Codes and social media ban provide little guardrails to prevent tech businesses from using age assurance requirements as justification for expanded data collection and surveillance.<sup>25</sup> There is a clear need for:

- stronger guidance for tech industry on conducting age inference that complies with Australian law
- clear and accessible information for internet users of all ages on what data is collected through online activity, how it is used, and for what purposes.

## Content filtering mechanisms

Similar to other Phase 2 Codes, Schedule 3 requires search engines to utilise 'ranking systems and algorithms designed to reduce the risk of online pornography and high-impact violence material appearing

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<sup>19</sup> See *Part D: Age Estimation* (n 11) 54. Importantly, there is currently no guidance or public information about potential expanded use of age estimation. See also Adam Schwartz ['Face Scans to Estimate Our Age: Harmful and Creepy AF'](#), *Electronic Frontier Foundation* (23 January 2025).

<sup>20</sup> Ibid 7.3.

<sup>21</sup> *Social Minimum Age: Regulatory Guidance* (n 16); Ange Lavoipierre (n 16).

<sup>22</sup> Ange Lavoipierre (n 16).

<sup>23</sup> And also stands in stark contrast to earlier recommendations from the Australian Competition and Consumer Commission (ACCC) on regulating platform collection and strengthening privacy laws, see: Nassim Khadem, ['Crackdown on Facebook, Google looms as ACCC hands down its final report into digital platforms'](#), *ABC* (26 July 2019).

<sup>24</sup> Alexia Maddox et al., ['A trial is testing ways to enforce Australia's under-16s social media ban. But the tech is flawed'](#), *The Conversation* (16 May 2025).

<sup>25</sup> For example, the Internet Search Services Code notes that search engines should 'use the age information made available to the service as the basis for establishing knowledge of whether an end-user is an Australian child': Schedule 3 (n 15) 7.3.

eSafety has also outlined young peoples' privacy rights in relation to the social media ban: eSafety Commissioner, [Statement of Commitment to Children's Rights](#) (September 2025) 5.



in search results.<sup>26</sup> The Codes do not contain carve-outs for health or educational content: all content is subject to filtering.

Algorithmic technologies designed to capture adult content also capture a range of informational materials, including news, political discourse and sexuality education.<sup>27</sup> This overcapture disproportionately impacts marginalised communities, including LGBTQI+ people, sex workers, sexuality educators and political activists.<sup>28</sup>

The real-world impacts of legislation leading to content overcapture are already apparent. In the United Kingdom (which arguably has a *less* restrictive *Online Safety Act* than Australia), internet users of all ages have been restricted from news content relating to Gaza and Ukraine, as well as coverage of parliamentary debates about sexual violence.<sup>29</sup>

The Codes mandate approaches that are likely to overcapture and restrict access to consent and relationships education, sexual assault information, and sexual health, family planning and abortion information, for both young people and adults. This is at odds with Australia's goals for health promotion and preventing gender-based violence.

## Appropriate oversight mechanisms

Concerns raised by Scarlet Alliance and other human rights and advocacy organisations have been largely ignored throughout the development of Australia's eSafety framework<sup>30</sup> and social media ban.<sup>31</sup>

Implementation of the Phase 2 Codes and social media ban requires the establishment of an independent oversight body with representatives from public health and sexuality education organisations, LGBTQI+ organisations, peer and harm reduction organisations and other human rights stakeholders to monitor the impact of the Codes and social media ban. This monitoring and oversight will be essential to minimise the risks of overcapture and restriction of sexuality, LGBTQI+, health promotion, harm reduction and other public interest content for internet users of all ages.

<sup>26</sup> Schedule 3 (n 15) 7.7(a).

<sup>27</sup> See, e.g. Lisa Garwood-Cross et al., '[Sex education against the algorithm: the algorithmically enforced deplatforming of YouTube sex edutainment](#)' [2023] *Journal of Gender Studies* 1; Giselle Woodley et al., '[Sexual health info online is crucial for teens. Australia's new tech codes may threaten their access](#),' *The Conversation* (29 May 2025).

<sup>28</sup> See, e.g. Chanté Joseph, '[Instagram's murky "shadow bans" just serve to censor marginalised communities](#),' *The Guardian* (9 November 2019); Salty Algorithmic Bias Collective, '[Censorship of Marginalised Communities on Instagram](#)' (University of Michigan, 27 September 2021); Caroline Are, '["Dysfunctional" appeals and failures of algorithmic justice in Instagram and TikTok content moderation](#),' (2025) 28(11) *Information, Communication and Society* 1997.

<sup>29</sup> Ned Davies et al., '[Some Gaza and Ukraine Posts Blocked Under New Age Checks](#),' *BBC* (1 August 2025).

<sup>30</sup> Josh Taylor, '[Fears adult content and sex workers will be forced offline under new Australian tech industry code](#),' *The Guardian* (24 September 2021); John Buckley and Julie Fenwick, '[Sex Workers Say They're Being Silenced by the Government on Age Verification Plans](#),' *Vice* (15 February 2022);

<sup>31</sup> Cam Wilson, '["Being rushed through": Human rights commissioner sounds alarm on teen social media ban](#),' *Crikey* (22 November 2024).



## Recommendations and ways forward

1. **Refer** all Phase 2 Codes to the Senate Standing Committee for the Scrutiny of Delegated Legislation and/or Parliamentary Joint Committee on Human Rights to consider whether the Codes comply with relevant human rights obligations.
2. **Delay** implementation of all Phase 2 Codes and social media ban until satisfactory age assurance technologies become available.
3. **Develop** guidance for the tech industry on conducting age assurance in compliance with Australian law.
4. **Develop** public education material for internet users of all ages on age assurance mechanisms and data collection rights.
5. **Establish** an oversight body made up of public health and sexuality educators, LGBTQI+ organisations, peer and harm reduction organisations and other human rights stakeholders to monitor the impact of the Codes and social media ban and ensure that sexuality, LGBTQI+, health promotion, harm reduction and other public interest content is not restricted for young people or adults.

