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Committee Secretary
Senate Standing Committees on Environment and Communications

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By submission:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/OnlineSafetyCode48P

RE: Internet Search Engine Services Online Safety Code

The Internet Association of Australia Ltd (**IAA**) thanks the Environment and Communications References Committee (**Committee**) the opportunity to respond to its inquiry on the implementation of regulations aimed at protecting children and young people online (**Inquiry**).

IAA is a member-based association representing Australia's Internet community. Our membership is largely comprised of small to medium sized Internet service providers (**ISPs**), and are thus subject to Schedule 2 of the Phase 2 Industry Codes on Class 1C and Class 2 Material. Moreover, as a not-for-profit association that supports the general well-being of the Internet, and its operators and users, we are also interested in this Inquiry as it pertains to the public benefit of the Internet.

From the outset, we support the regulatory intent of the Phase 2 Industry Codes (**the Codes**), and the Online Safety Amendment (Social Media Minimum Age) Act 2024 (**the Act**) as legislative measures being introduced to better protect children and young people online. As more and more daily activity happens online, it is imperative that as a society, all stakeholders play a role in ensuring online and digital platforms can be used safely. To that end, we are concerned at the rapid implementation of these regulations and the lack of meaningful public consultation which raises significant concerns about efficacy and proportionality. As an industry representative within the overarching telecommunications sector, we are concerned about the trend towards hasty regulation that can have unintended consequences when it comes to privacy and undue burdens on industry.

SCOPE OF REGULATION

Firstly, we take this opportunity to emphasise the need for clear distinction between the types of services within the Internet and digital ecosystem and support the approach taken in the Codes and the Act to delineate the service providers that should be subject to the Codes and the Act. Specifically, we recommend that ISPs in their role as providers of network connectivity and their limited control over the content distributed or available over the Internet be regulated accordingly.

We thus support the limited compliance measures in place under Schedule 2 to the Codes for Internet carriage services. Any further regulation introduced as part of the online safety regulatory framework should similarly consider the various players in the overall industry to develop proportionate regulation.

However, given our membership also includes other service providers within the Internet sector and in representation of the public benefit of the Internet, we make the further comments below.

LACK OF EVIDENCE-BASED POLICY DEVELOPMENT

Overall, it is our view that the Codes and the Act have been developed and introduced without sufficient consultation or evidence. We are particularly concerned that the development of the Codes and the Act took place alongside the Age Assurance Technology Trial (**Trial**)¹ as led by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, prior to the Trial being completed or its findings fully assessed. We note that the Final Report of the Trial was only published very recently on 1 September 2025, while the some of the Codes were registered as early as June 2025, and the Act being passed in December 2024.

According to the eSafety Position Paper on the development of the Codes, though the Trial does not specifically inform the creation of the Codes, eSafety considered the outputs from the Trial to inform and support the development of the Codes.² We are concerned there wasn't opportunity to do so thoroughly given the development and registration of some of the Codes prior to the finalisation of the Trial, including Schedule 3 affecting Internet Search Engine service providers which we understand is one of the key focuses for the Committee in this Inquiry. The remainder of the Codes were registered less than 10 days after the publication of the Trial on 9 September 2025. Furthermore, it is unclear why the Trial should not specifically and directly inform the creation of the Codes given it is highly relevant to the nature of the Codes.

This timeline undermines public and industry confidence that the regulatory obligations have been designed based on evidence of practical efficacy, and risks embedding untested and potentially flawed approaches into legislation. Indeed, although the Final Report of the Trial found that overall, age assurance technology is capable of working, it also found significant shortfalls that are inherently relevant to the implementation of the Codes and the Act. Especially as the Codes and the Act leaves open what methods industry may take to ensure certain platforms and content are only made available to adults, it is our view that further analysis and consideration of the Trial's findings is required.

This is exacerbated by the short timeframe for implementation. The registration of the Codes in June 2025 means that age assurance measures must be implemented by certain industry members from 27 December 2025. Similarly, the Act commences from 10 December. This means that many entities will have likely already started designing, developing and implementing certain measures, without the benefit of the final outcome of the Trial and its findings on the accuracy or privacy implications of specific technologies and measures, thereby resulting in potentially inefficient and ineffective measures that are not in the best interest of end-users, including children and young

¹ Department of Infrastructure, Transport, Regional Development, Communications and the Arts, [Age Assurance Technology Trial: Part A – Main Report](#), August 2024.

² eSafety Commissioner, [Development of Phase 2 Industry Codes under the Online Safety Act: Position Paper](#), July 2024, p.35.

people. We further note that as the Trial was not conducted in a live environment, there is still further work to be done to ensure the usability and effectiveness of technologies.

We therefore recommend the Committee to recommend to the Minister for Communications to direct eSafety to suspend the enforcement of the Codes until further analysis of the Trial's findings has been completed, with further industry consultation to be held to discuss the implications of the findings on the implementation of the Codes.

Similarly, we recommend that the Committee recommends to the Minister for Communications that the Act, be repealed or at least amended to delay the commencement of the requirements to allow for thorough consideration of the Trial's findings.

PRIVACY IMPLICATIONS

The privacy implications of the Codes and the Act are of key concern for IAA. We understand and appreciate that the Codes and Act address the associated privacy risks, making specific references to the *Privacy Act 1988* and the Australian Privacy Principles (**APPs**). We further note the Act explicitly prohibits entities from the collection of government issued identification as the sole means of fulfilling its obligations under the Act. However, we note that platforms are permitted to collect such information if it is being offered alongside other measures. The Act is then vague as to the retention periods for such information that have been collected. We are thus not convinced that the provisions relating to privacy are sufficient and believe that as it pertains to age verification measures, there should be no collection or retention of any identification material by the entities themselves.

This is exacerbated by and further contributes to the overly complex and convoluted data retention regime in Australia that gives rise to privacy concerns. We note that the data retention legislative framework in Australia is already very complicated due to different obligations under different legislative instruments, entities tend to over-collect and retain data longer than is necessary, often due to confusion and fear of non-compliance. We further note the data retention review that is being undertaken by the Department of Home Affairs and the Attorney General in recognition of these complex laws. In IAA's view, a core contributor to over retention of data by businesses is uncertainty as to how long data should be preserved for the purposes of defending against litigation or enforcement actions. Indeed, one of the Trial findings was a trend among some providers to over collect or retain data based on this intent to assist regulators with their investigatory functions.³ This raises a serious concern as such repositories become 'honeypots' for malicious actors in an era where we are seeing an increasing number of data breaches.

We appreciate that the Social Media Minimum Age: Regulatory Guidance published by the eSafety Commissioner clearly states that it does not expect platform providers to retain personal information as a record of age verification.⁴ However, we believe there should be clearer guidance on what eSafety does expect by way of examples of evidence it may request of providers in order to prove compliance so as to reduce confusion and uncertainty.

We also recommend that the Committee recommends to eSafety the development and publication of guidance material to assist industry with their compliance with the Codes that

³ *Age Assurance Technology Trial: Part A-Main Report*, p. 64.

⁴ eSafety Commissioner, [Social Media Minimum Age: Regulatory Guidance](#), September 2025, p. 25.

similarly states that service providers are not expected to retain any personal information as a record of age verification.

COSTS FOR INDUSTRY

As expressed above, the rushed introduction of the Codes and the Act prior to the completion of the Trial leaves uncertain the appropriateness of certain age assurance methods. This increases the compliance burden for industry that now face a short timeframe to properly and thoroughly assess the findings of the Trial to implement effective measures in accordance with the Codes and Act. We are concerned about the increasing regulatory burden being faced by the overall telecommunications sector and the impact this is having on competition in the sector in what is already a market with high barriers to entry and competition is limited.

There is also a lack of communications from eSafety to industry to ensure all industry players are kept informed of new Codes. Even for ISPs who face reduced compliance requirements, we do not consider sufficient communication has been made with regard to industry via the appropriate channels. **As the ACMA is the overarching regulator for the telecommunications sector which also closely supports eSafety, we strongly encourage better coordination between eSafety and the ACMA to do all that is reasonably practicable to ensure all entities are being made aware of regulatory changes by sending direct communications to industry participants.**

We further note that the structure of the Codes comprising of the Head Terms and the Schedules makes it confusing for providers, particularly those that may provide multiple applicable services. **We therefore reiterate our recommendation that the Committee recommends eSafety to develop guidance material for industry to comply with its obligations under the Code, and that enforcement of the Codes should be delayed until entities have sufficient time to thoroughly engage with such material, and implement changes to their processes and systems to ensure compliance.**

CONCLUSION

Once again, IAA appreciates the opportunity to contribute to the Environment and Communications References Committee for the opportunity to respond to the inquiry on the implementation of regulations aimed at protecting children and young people online. Again, we express our support for regulatory measures to ensure the safety of children and young people online and consider online safety fundamental as more and more of daily life happens on the Internet. We therefore strongly hold that such regulation must be well thought out and supported by research and practical testing to ensure a fit-for-purpose online safety framework that best serves Australians.

ABOUT THE INTERNET ASSOCIATION OF AUSTRALIA

The Internet Association of Australia (IAA) is a not-for-profit member-based association representing the Internet community. Founded in 1995, as the Western Australian Internet Association (WAIA), the Association changed its name in early 2016 to better reflect our national membership and growth.

Our members comprise industry professionals, corporations, and affiliate organisations. IAA provides a range of services and resources for members and supports the development of the

Internet industry both within Australia and internationally. Providing technical services as well as social and professional development events, IAA aims to provide services and resources that our members need.

IAA is also a licenced telecommunications carrier and provides the IX-Australia service to Corporate and Affiliate members on a not-for-profit basis. It is the longest running carrier neutral Internet Exchange in Australia. Spanning seven states and territories, IAA operates over 30 points of presence and operates the New Zealand Internet Exchange on behalf of NZIX Inc in New Zealand.

Yours faithfully,
Internet Association of Australia