



# Online Safety Amendment (Social Media Minimum Age) Bill 2024 [Provisions]

Tech Council of Australia Submission

November 2024



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## Tech Council Submission

The Tech Council of Australia (**TCA**) is Australia's peak industry body for the tech sector. The TCA represents over 150 tech companies from a diverse cross-section of Australia's tech sector, including start-ups, scale-ups, venture capital funds, Australian unicorns, and multinational tech companies. Across our membership, over 70% of companies are Australian founded or managed. Our members strongly oppose the misuse of online platforms for illegal and harmful activities, especially for young people and children, and we support the Government's intent in ensuring Australians of all ages can access and engage with the internet safely.

The TCA does not represent major social media platforms like X, Facebook, Instagram, TikTok, or Snapchat; nor do we oversee the industry codes related to online safety.

However, we are deeply invested in regulations that affect the broader Australian tech industry. The tech sector is a key pillar of the Australian economy, employing over 935,000 people and contributing \$167 billion per annum making it equivalent to the third biggest industry in Australia behind mining and banking. Good legislative design is crucial to supporting Australia's tech sector, which is essential for sustaining growth and maintaining Australia's leadership in a competitive global digital economy. Regulations affecting Australia's tech sector must be thoughtfully crafted to foster responsible innovation and tech adoption, avoid unintended consequences, and promote long-term national competitiveness.

The TCA is concerned that the broad scope of the *Online Safety Amendment (Social Media Minimum Age) Bill 2024* ('**the Bill**') as currently drafted, will extend to non-social media platforms outside the Government's intent, particularly as the Bill delegates key definitional and operational aspects to legislative rules. This creates considerable uncertainty and regulatory risk for the broader Australian tech sector.

We are also deeply concerned that technology-focused legislation is being rushed through Parliament, without meaningful consultation and without the usual Parliamentary review processes. This adds to existing perceptions among investors and entrepreneurs that the Australian technology sector operates in an uncertain regulatory environment that can be subject to rapid legislative change without due consideration.<sup>1</sup> In the short time that we have had to review the legislation, we have identified a range of concerns which include the lack of technical details on how the ban will be operationalised.

The TCA has consistently recommended best practice principles for technology regulation (see **Appendix A**) which should not be abrogated for the purpose of parliamentary expediency. Given the significant penalties and broader social ramifications that attach to

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<sup>1</sup> These perceptions have been fostered by previous legislative processes involving similarly rushed Parliamentary deliberations including the *Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019* and the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018*.

the Bill, we urge the Government and Parliament to proceed with far broader consultation than the 24-hour window that this submission allows.

### **1. Scope of 'age-restricted social media platform' definition and legislative instruments**

The Bill introduces a new definition of 'age-restricted social media platform'. This definition draws from a similar definition of 'social media platform' in the existing *Online Safety Act 2021*. Introducing yet another additional definition for technology providers is likely to further complicate Australia's already complex regulatory landscape for the tech sector.

It is unclear whether the limbs of 63C(1)(a) are cumulative or alternative. In either case, the breadth of the definition is such that it could encompass aspects of any technology product or service that allows interaction between users. There are many low-risk services that allow for communication or collaboration for any purpose, including the creation or management of content and data, that may fall within the drafted definition.

We are concerned about the uncertainty surrounding the potentially expansive scope of the Bill which will be delegated to subsequent legislative instruments and regulatory determinations. This includes the potential unintended consequences of forcing tech companies in Australia to apply to a regulator for exemptions from the regime. Not only will this introduce a new and onerous regulatory burden felt disproportionately by Australian startups and scaleups, there are flow-on effects including the lock-in of major platforms, inadvertently creating barriers to entry, and reducing competition for digital products and services in Australia.

We urge the Government to allow for thorough consultation with the tech sector on this issue. We also strongly recommend that the Government introduce a requirement in legislation for the Minister to consult with industry and affected stakeholders on the legislative rules, and provide that any such rules be disallowable instruments to ensure adequate parliamentary oversight.

### **2. Complexity of age assurance technologies**

The Bill places a heavy onus on technology providers to verify age, which would need to be done for every user of a platform.

While we understand the Government is in the process of implementing a trial of age-assurance technology, it is not expected to complete before mid-2025. It remains unclear what age-assurance technologies will be used to enforce the ban. It is uncertain when or how these technologies will be implemented, and whether they will be ultimately effective in preventing under-16 access to social media platforms. We note the Government's finding in its response to the Roadmap for Age Verification that "age assurance technologies are immature, and present privacy, security, implementation and enforcement risks".<sup>2</sup>

The Bill also introduces severe penalties for platforms that fail to comply with a 'reasonable steps' threshold - this remains undefined in the Bill. Given the wide potential scope of these reforms and significant penalties – ranging up to \$49.5 million – the Bill

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<sup>2</sup> Australian Government (2023), Department of Infrastructure Transport, Regional Development Communications and the Arts, 'Government response to the Roadmap for Age Verification', p2.

imposes significant uncertainty and compliance risks for Australian technology providers. We also note the financially crippling risks for Australian startups and scaleups who may be inadvertently swept up in the Bill's broad scope; such risks have a chilling effect on innovation and hamstringing the growth of Australian tech companies. We strongly encourage the Government to provide clarification and further guidance on what constitutes reasonable steps.

### **3. Overlap with existing measures and current reforms**

We caution against the introduction of additional complex regulation for the Australian tech sector in light of other reform processes that are already underway. These include reforms to the Privacy Act, mis/disinformation reforms, cybersecurity reforms, consumer law reforms and AI guardrails. While these reforms are essential for developing trust and confidence in our digital economy, we recommend against introducing additional legislative complexity and burdens for the tech sector at a time where Australian innovation, economic growth, and competitiveness is needed more than ever.

We also understand that several social media platforms are already working with the Government to develop industry codes within the framework of the *Online Safety Act*, aimed at addressing harms from both illegal, and legal but harmful, content online. There are also broader reform efforts underway in online safety, including the statutory review of the Online Safety Act and the Government's recent announcement to introduce a new "duty of care". These should be carefully coordinated to ensure a cohesive and effective regulatory framework in Australia.

### **Conclusion**

In light of these concerns, and given the lack of adequate consultation with the tech sector to ensure the parameters of these measures are appropriate, the TCA cannot recommend that the Bill be passed as drafted. Fundamental changes are required for the Bill to meet the government's objectives without creating wide-ranging deleterious impacts on Australian tech companies that fall outside the government's intended scope. We urge the Government to conduct due consultation on these issues, and welcome the opportunity for the TCA and its members to assist.

## Appendix A: Tech Council's guiding principles for regulatory design

The TCA recommends the following five guiding principles for best practice regulation in the digital economy:

1. **Informed and coordinated** – technology regulation and policy development inherently addresses novel concepts and issues. For this to be effective, it requires us to have sufficient time, stakeholder input, and expertise to make informed policy decisions. Rigorous analysis and industry engagement, with thoughtful consideration of the interrelationships with other policies and regulation, helps us avoid the pitfalls of technical infeasibility and enhances regulatory compliance.
2. **Proportionate** – a risk-based approach targeted at clearly defined problems enables regulation to achieve the objectives that are sought, while also avoiding unintended consequences such as increasing barriers to entry for others, or inadvertently capturing other parts of the tech sector.
3. **Timely** – premature regulatory intervention can disproportionately impact emerging startups, business models, and technologies. To ensure Australia maintains a competitive place in the global market, we should be proactive in considering a range of potential policy levers, ensure that industry is given appropriate clarity and guidance, while enabling the appropriate opportunity and space for innovation.
4. **Consistent and interoperable** – the technology industry is global by nature and few policy questions are unique to Australia. Regulation should consider and align, where appropriate, with domestic and global regulation to strive towards harmonisation and interoperability.
5. **Supports innovation and growth** – becoming a leading digital economy means that Australia should aim to encourage the responsible and early introduction and deployment of technology, this means avoiding prescriptive technical requirements that may become quickly outdated or inhibit innovation.