

19 June 2025

CC25-0016

Hon. Anika Wells MP  
PO Box 6022  
Parliament House  
Canberra ACT 2600

Sent by email via [REDACTED]

Dear Minister Wells

Thank you for your letter on 12 June 2025 seeking my advice on the draft *Online Safety (Age Restricted Social Media Platforms) Rules 2025* (draft Rules) to carve out certain services from the social media minimum age obligation (SMMA obligation).

As requested, please find attached my independent advice, which eSafety has prepared as quickly as possible to facilitate the timely finalisation of the Rules. I support your intention to make the Rules by mid-year so we can begin educating the public about which platforms will be covered, and working with those platforms to ensure they are prepared to comply.

My advice has been informed by a broad evidence base, including:

- eSafety's understanding of the policy intent of Part 4A of the *Online Safety Act 2021* (the Act), the risks and harms the SMMA obligation seeks to address, and the key benefits and rights that the draft Rules seek to preserve for Australian children.
- Regulatory insights derived from eSafety's complaints schemes, the Basic Online Safety Expectations, Industry Codes and Standards, and our understanding of how these existing regulatory schemes can serve to support the SMMA obligation.
- Findings from domestic and international research on children's use of online services, including eSafety's recent youth survey, and the emerging literature on the risks and harms associated with particular social media design features and functionalities.
- eSafety's understanding of how those design features and functionalities operate across services, and our ongoing commitment to promoting Safety by Design.
- The approaches of international jurisdictions that have introduced age restrictions and other regulatory requirements designed to address online harms to children.

Drawing on that evidence, I have identified five options for your consideration. I believe the options would make the draft Rules clearer, less likely to be disallowed, subject to fewer compliance and enforcement challenges, and most importantly, more capable of promoting the safety, wellbeing and rights of children.

In light of time constraints, in having regard to this advice, I recommend you consider prioritising options 1 and 2, noting we have provided alternatives to options 3 and 4, and option 5 is prospective.

In summary, the options are:

1. **That YouTube is removed from the draft Rules.** The reason for this is two-fold. First, our evidence shows that children are experiencing the types of harms which we understand the SMMA obligation seeks to address on YouTube. Second, as a matter of principle, eSafety suggests the Rules should avoid naming any specific platform(s) given the rapidly evolving nature of technology and the continuously shifting risk profile of online services. We note that children will continue to have access to YouTube without holding an account.
2. **That the explanatory statement to the Rules provide guidance to support a shared understanding of the Government’s intention and avoid future enforcement challenges.** This includes confirming the harms and design features the Act seeks to address, and how eSafety should apply the different purpose tests in the draft Rules, in particular what constitutes ‘primary’ and ‘significant’ purpose in this context.
3. **That consideration is given to amending the draft Rules so they reflect both the purpose of the service, as well as its risk of harm.** Currently, the draft Rules are framed entirely around the purpose of a service, and do not consider the service’s level of risk. This creates a danger that the Rules may not achieve their intention of minimising harm. To address this, the Rules could add a ‘second prong’ to the test which considers the presence of safety measures to mitigate the risk of certain design choices, features, and functionalities associated with harm to children. Alternatively, in light of complexity and the need to finalise the Rules promptly so they are in place before the minimum age obligation takes effect, this is an issue that could be partially addressed under recommendation 2 and monitored under recommendation 5.
4. **That consideration is given to introducing a new Rule to exclude lower-risk services that are appropriate for young children.** This would ensure that services which do not meet any of the proposed purpose/use tests, but are nonetheless safer and potentially beneficial for children, are carved out from the SMMA obligation. Absent such a rule, eSafety would likely exercise discretion not to enforce compliance with the SMMA obligation for lower-risk services that are appropriate for young children in the absence of identified harm.
5. **That implementation is monitored to identify any emerging challenges which should be addressed through further Rules.** This may include monitoring the potential

migration of children and harms to services which the Rules have carved out from the SMMA obligation, and how the obligation intersects with forthcoming developments, such as Industry Codes, and proposed reforms, such as the Digital Duty of Care.

I trust this advice will assist in finalising the Rules and ensuring they are effective in supporting the safety, wellbeing and rights of children online. I would welcome the opportunity to discuss the advice and the broad evidence on which it is based.

Yours faithfully,

A handwritten signature in black ink that reads "Julie Inman Grant". The signature is written in a cursive style with a large initial 'J'.

Julie Inman Grant  
eSafety Commissioner