

26 February 2024

Ms Bridget Gannon  
Online Safety, Media & Platforms  
The Department of Infrastructure, Transport, Regional Development, Communications and the Arts  
Canberra ACT 2600

By email: [BOSEreform@communications.gov.au](mailto:BOSEreform@communications.gov.au)

Dear Ms Gannon

### **Amending the Online Safety (Basic Online Safety Expectations) Determination 2022**

Thank you for the opportunity to provide our views on the proposed amendments to the *Online Safety (Basic Online Safety Expectations) Determination 2022* (BOSE Amendments) and accompanying Consultation Paper (CP).

#### **About IAB**

The Interactive Advertising Bureau (IAB) Australia Limited is the peak trade association for digital advertising in Australia. IAB Australia was established in 2005 and is one of over 45 IAB offices globally.

Locally there is a financial member base of approximately 180 organisations that includes media owners, platforms, media agencies, advertising technology companies as well marketers. The board has representation from the following organisations: Seven West Media, Nine, Guardian News & Media, News Corp Australia, Google, Meta, Yahoo, Carsales, REA Group, Domain.

#### **Key concerns in relation to the proposed BOSE Amendments**

IAB Australia supports the Government's commitment to protecting Australians online and improving the operation of the BOSE. However, we would like to raise the following three issues with the BOSE Amendments for your consideration, related to the current breadth of scope of the additional obligations:

##### **1. Recommender systems**

The BOSE Amendments propose additional expectations in relation to taking reasonable steps regarding 'recommender systems', including to consider end-user safety, to incorporate safety measures in design, and to minimise amplification of unlawful or harmful activity.<sup>1</sup>

While the Consultation Paper suggests that this expectation is aimed at reducing online harm arising from the role of recommender systems in amplifying harmful or hateful user-generated content (UGC), the expectation is not limited to UGC as currently drafted, and the definition of 'recommender system' is very broad. The CP provides that it captures '*systems that prioritise content or make personalised content suggestions to users of online services. A key element of the system is the recommender algorithm, a set of computing instructions that determines what a user will be served based on [a range of] factors.*'<sup>2</sup>

Recommender systems as defined are commonly used by businesses online in a range of contexts, including on both websites and apps. They are commonly used across the web, in search functions, on shopping sites, streaming services, news sites, weather apps and many others. For example, members of IAB Australia or the public can go onto the IAB Australia website and search for content they are interested in, which is served to them based on an algorithm.

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<sup>1</sup> CP, 8.

<sup>2</sup> Ibid.

We seek clarification in relation to whether this obligation is intended to apply to the broad range of contexts in which recommender systems are used. In our view, this obligation should be substantially narrowed to cover the circumstances set out in the CP (recommender systems used to amplify UGC), or circumstances where there is significant likelihood of harm. We note that jurisdictions such as the EU and UK appear to have taken a more targeted approach to regulating online safety than what is proposed in the CP.<sup>3</sup>

However, if it is intended that this obligation apply more broadly than recommender systems used to amplify UGC, we seek clarification in relation to the safety concerns that are intended to be addressed, as well as what steps would need to be taken to consider end-user safety.

We note that, to the extent that recommender systems are used in targeted advertising, the Government has indicated this will be regulated under the Privacy Act. We therefore do not think that additional obligations under the BOSE are required in relation to targeted advertising.

We also note that, as pointed out in the CP, there is already an expectation that service providers consider safety impacts of recommender systems and mitigate risks throughout the design, development, deployment and post-deployment stages of the service.<sup>4</sup> In our view further clarification is needed in relation to the scope of the additional requirement over and above the existing requirements.

## **2. Transparency reporting**

The BOSE Amendments propose to require online service providers to publish regular transparency reports in relation to a range of safety measures adopted on their services.<sup>5</sup>

In-line with our comments above, we think further clarification in relation to the extent of the services that are intended to be captured by this obligation is warranted, as suggested in the CP.<sup>6</sup> On our reading, this obligation currently applies to all online service providers, regardless of the nature of the service, or whether or not the service poses or is likely to pose any safety risk to end users. We would support narrowing of this obligation so that it is only triggered where service providers meet specific conditions, or they pose a material risk to online safety in Australia. This should be clarified in the instrument.

We note that there are also transparency reporting obligations under the OSA Codes, as well as powers for the e-safety commissioner to request non-periodic reports on their compliance with the BOSE. We would caution against unclear or overlapping reporting obligations.

## **3. Safety impacts of business and resourcing decisions**

The BOSE Amendments propose that online service providers will need to consider safety impacts on end-users in Australia when making business decisions *'that are likely to have a significant adverse impact on the ability of end-users to use their service in a safe manner'*,<sup>7</sup> and that it is intended that the Explanatory Statement to the Amendment Determination will provide guidance on this, through non-exhaustive examples.

Given the broad range of online service providers that the BOSE applies to, and the significant uncertainty that such an obligation may create, further guidance is required and should include guidance on the types of business decisions that are intended to be captured, the nature of the safety concerns intended to be captured, and the required nexus between the relevant business decision and the impact on the end-user.

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<sup>3</sup> For example see <https://www.legislation.gov.uk/ukpga/2023/50/contents/enacted> ; <https://www.legislation.gov.uk/ukpga/2023/50/contents/enacted>

<sup>4</sup> CP, 20.

<sup>5</sup> CP, 15.

<sup>6</sup> CP, 16.

<sup>7</sup> CP, 12.

**Contact**

Please contact me on [REDACTED] if you have any questions or would like to discuss any of the issues raised.

Yours sincerely,

[REDACTED]

Sarah Waladan  
Director of Policy & Regulatory Affairs  
IAB Australia