

22 November 2021

Executive Manager, Investigations
Office of the eSafety Commissioner
PO Box Q500
Queen Victoria Building
NSW 1230

Email: submissions@esafety.gov.au

Dear Executive Manager, Investigations

Response to the Draft Restricted Access System Declaration 2021

Overview

The Interactive Games & Entertainment Association (IGEA) appreciates the opportunity to respond to the draft Restricted Access System Declaration 2021 prior to it coming into effect.

Overall, we agree with the Commissioner's view, outlined in the Explanatory Statement, that the draft Declaration provides a flexible instrument that meets the policy objective of protecting young people from exposure to age in-appropriate material, while giving flexibility to service providers to implement appropriate measures, taking into account the nature of their service.

In our previous submission, we highlighted the fact that the 2014 Declaration provided flexibility to how service providers can comply, rather than prescribing specific steps, and recognised that there will be no single approach to content restriction that will necessarily work best or most effectively across the vast variety of different apps, services, and platforms that exist or will exist. We support the draft Declaration's adoption of the 2014 Declaration's flexible approach.

Recommended amendments to the Explanatory Statement

While we are generally comfortable with the wording of the draft Declaration, we strongly recommend that two important changes be made to the Explanatory Statement. Both of our suggested changes relate to the third paragraph of the notes for section 8 in Attachment 1, provided on page 8 of the Explanatory Statement.

Determining what reasonable steps may be required

We ask that the following sentence be amended as follows (our suggested additions in red):

"In determining what reasonable steps may be required when confirming age, consideration should be given to the type and size of the relevant service, the size and composition of its user base **in Australia**, the type of content, **the level of risk of the content, whether the content has been classified**, as well as whether additional functionality, such as parental controls and metatags, are employed."

The level of risk of the content, which is not necessarily the same as the type of content, and whether the content has been classified, are clear and obvious factors that should be included in the list of factors that will help to determine what reasonable steps may be required.

Sole trader vs larger service

We also ask that the following two sentences be removed in their entirety:

"Whereas a sole trader operating an adult website might implement a restricted access system using a credit card to confirm age (along with the other access control steps prescribed by the instrument), more will likely be expected of a larger, better-resourced and more technically sophisticated service. Such services may be expected to employ multiple measures working in concert, rather than relying on a single method".

While the draft Declaration and the rest of the Explanatory Statement generally provide clear, yet flexible, expectations for service providers, these two sentences, while well-intentioned, provide examples that are overly simplistic and potentially misleading, and do not necessarily reflect the intent or legal effect of the draft Declaration.

First, while we doubt it was the intention of the Commissioner to do so, these paragraphs could be interpreted as suggesting the use of a credit card to be a baseline or minimum requirement for age confirmation, which the draft Declaration does not suggest is the case. Second, a larger or better resourced service will not necessarily require a higher standard of age confirmation compared to a smaller service. For example, a larger service may host more highly curated and lower impact material than a smaller service. The example given in the Explanatory Statement only considers service size, being only one of many relevant factors.

We think it is more than sufficient that the preceding sentences already list specific examples of the kinds of age confirmation steps that may be considered reasonable, as well as commentary around the array of factors that will help to determine what reasonable steps may be required.

Conclusion

Subject to the above, we support the approach taken by the draft Declaration and we thank the Commissioner for listening to us and our members. We look forward to a continuation of our strong and productive relationship with the Commissioner following the finalisation of the Declaration, as we have enjoyed with the Commissioner during the life of the 2014 Declaration.

Should you wish to discuss our response further, please contact me at ben@igea.net.

Regards

Ben Au
Director of Policy & Government Affairs