

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Group 3

Program 1.6

Question No. 160

Senator McKenzie asked the following question at the hearing on 16 October 2012:

Cyber safety

1. Are there any legislative or other restrictions in Australia which correspond to the restrictions in the USA on the collection of data for children under a certain age which dictate the terms and conditions for users of sites like Facebook and Youtube?
2. What advice, if any, have you given to the Attorney General regarding age limits to use social media (ie. Facebook/Youtube and kids under 13 years of age) and any possible laws and/or action that could be taken to restrict use?
3. What advice, if any, has the Department provided to the Attorney General about taking action to deal with trolling and/or online bullying?
4. What engagement has the Department had with social networking sites (Facebook, Twitter, Omegle, Tumblr, etc) about online safety as well as trolling in relation to both children and adults.
5. Could you please advise the committee what progress has been made in relation to the recommendations from the Joint Select Committee on Cyber Safety's High Wire Act.
6. What advice have you provided to the Attorney-General about the ability to take action including legal action against social media outlets for carrying defamatory material, illegally using a carriage service to menace, harass or cause offence or hosting material that may be considered illegal?
7. In your view, can action including legal action be taken against social media outlets for defamation, illegally using a carriage service to menace, harass or cause offence or any other illegal act?
8. In your view, are social media outlets "publishers" for the purposes of defamation law?
9. Are there practical impediments to taking such action?
10. What advice have you provided to the Attorney-General about the impediments if any of pursuing social media outlets which are hosted overseas, for defamation, criminal acts and other breaches of the law? Under what circumstances can these sites, as distinct to the content creators, be pursued under Australian law?
11. What is the AG's Department's understanding of the answer to the following question: If content on social media sites is defamatory or in breach of the law, who is liable? The social media outlet, or the individual account holder or both?

The answer to the honourable senator's question is as follows:

1. No.

Many sites like Facebook and Youtube restrict access to their sites. For example, Youtube and Facebook do not grant access to children who state they are under 13, and so cannot collect their personal information. Facebook also takes measures to protect the safety and privacy of teenagers who state they are under 18, for example by restricting the ability of adults and children to become 'friends' and share content.

2. No advice has been provided.

3. The Department has provided advice.

4. These questions should be directed to the Department of Broadband, Communications and the Digital Economy.

5. A number of the Committee's recommendations are relevant to the Attorney-General's portfolio. The Government response is available online.

6. No advice has been provided by the Department to the Attorney-General on this issue.

7. The Attorney-General's Department is unable to give legal advice. Defamation law is the responsibility of the States and Territories.

8. See the Department's response to question 7.

9. See the Department's response to question 7.

10. No advice has been provided by the Department to the Attorney-General on this issue.

11. See the Department's response to question 7.