



Australian Government
Office of the Australian Information Commissioner

Our reference: D2024/032339

Environment and Communications Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

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

Dear Committee

I welcome the opportunity to make a short submission to the Committee's inquiry into the Online Safety Amendment (Social Media Minimum Age) Bill 2024 (the Bill).

The Bill would introduce a minimum age for social media use and establish an obligation on social media platforms to take reasonable steps to prevent users under the minimum age from holding an account.

The introduction of a minimum age for access to social media will have privacy impacts for all Australian users of social media. While the Bill does not dictate what 'reasonable steps' social media platforms must take to ensure users below the minimum age are prevented from holding an account, the inevitable outcome is that age assurance checks will need to be conducted for all Australian social media users (not just children). This is a significant departure from the status quo, and is likely to incentivise the collection, use and storage of additional personal information about all users of the service, which increases privacy risks and impacts.

Privacy safeguards

Social media platforms carrying on a business in Australia must comply with the *Privacy Act 1988* (Privacy Act) and the Australian Privacy Principles (APPs). However, as principles-based law, the requirements of the APPs are not prescriptive. I am supportive of section 63F in the Bill, which would introduce specific privacy protections that would operate in addition to the Privacy Act for personal information collected for the purpose of, or for purposes including the purpose of, taking reasonable steps to prevent users below the minimum age from having an account on the platform.

The privacy safeguards would prohibit platforms from using personal information collected for age assurance purposes for any other purpose unless the individual has consented or APPs 6.2(b), (c), (d) or (e) applies.

Importantly, the Bill would introduce a definition of consent for the purposes of s 63F(1)(b)(iii) that is consistent with proposals agreed-in-principle by Government in its response to the Privacy Act Review report. The inclusion of the definition of consent in this Bill is critical to preclude platforms seeking broad consents from individuals through practices like bundled consents and preselected settings to use information collected for age assurance for wider commercial purposes.

The Bill would also introduce an obligation on platforms to destroy information collected for age assurance purposes after using or disclosing it for the purposes for which it was collected.

A breach of the privacy safeguards in s 63F in the Bill would be an interference with privacy under s 13 of the Privacy Act, which enlivens the Information Commissioner's investigation and enforcement powers.

Platform provider notifications

Section 63J of the Bill would enable the eSafety Commissioner to prepare a 'platform provider notification' if satisfied the provider of an age-restricted social media platform has, amongst other matters, used, disclosed or failed to destroy information in a way that is taken to be an interference with privacy under ss 63F(1) or (3). If the eSafety Commissioner is satisfied these circumstances apply, the Commissioner may prepare a statement to that effect, give a copy of the statement to the provider of the platform, and if considered appropriate, publish the statement on the Commissioner's website.

Given the Bill provides the Information Commissioner with regulatory oversight of the privacy safeguards in s 63F, we recommend that the Bill is amended to provide the Information Commissioner, rather than the eSafety Commissioner, with the ability prepare a platform provider notification once satisfied that the social media platform has interfered with the privacy of an individual by contravening s 63F.

The ongoing need for privacy reform

There are a number of reforms contemplated for the Privacy Act that would help to shape the online environment into a better place for children. For example, the Privacy and Other Legislation Amendment Bill 2024 currently before parliament would enable my office to develop a Children's Online Privacy Code, which would

particularise the requirements of the Privacy Act for social media platforms and other tools likely to be used by children.

While I have welcomed the Privacy and Other Legislation Amendment Bill 2024 as an important first step in strengthening Australia's privacy framework, wholesale reform of the Privacy Act is the most effective way of tackling the most harmful aspects of the digital ecosystem. In particular, the introduction of a fair and reasonable test for the collection, use and disclosure of personal information would dramatically increase the ability of the OAIC to address harmful and unfair data practices in the online environment.

I continue to urge Government to progress the next tranche of privacy reforms as a matter of urgency.

Yours sincerely

Carly Kind
Privacy Commissioner

22 November 2024