

21 November 2024

Dear Secretary,

Re: Online Safety Amendment (Social Media Minimum Age) Bill 2024

It is beyond disappointing that the government has allowed a mere 24 hours for submissions to this inquiry. It demonstrates a level of contempt for both the Parliament and the Australian people that is most unedifying.

Given the state of the Bill, and the policy it attempts to enact, this is unsurprising. This is a deeply unserious Bill written by deeply unserious people. It is fractally bad: the closer one looks, the worse it is.

There seems little point in highlighting the myriad ways this is a policy failure, given the contempt the government has shown for democratic processes. Yet I will try. I refuse to let the mediocre be the enemy of the actually good.

Many people have already pointed out that this policy is an unworkable mess. In *The Mandarin* Zoë Rose notes, correctly, that:

It can't be done.

*That is the first thing you need to know about the under-16s social media ban. It is impossible. It cannot be implemented. It can't be done.*¹

This has been explained repeatedly and in multiple ways. The people affected have tried to patiently explain that it won't help them and what should be done instead.² Experts have patiently explained why it will make things worse, not better. With every attempt, at every stage, they have been ignored.

We have also tried to highlight that what is being proposed is actually a social-media ID check for adults, not children. Any system that performs an age check must, *must*, check the age of every Australian adult. There is simply no way to ban under-16s from any space without checking to see if a person is under or over 16. The government knows this.

The government likes to use the analogy of alcohol and tobacco regulation, as it does in the Explanatory Memorandum accompanying the Bill, while carefully sidestepping the fact that adults must show a government-issued ID whenever they attempt to purchase these goods. Government spokespeople dance around this question whenever it is put to them.³ They should be pressed for detail on how they imagine this scheme will work in practice. The

¹ Zoë Rose, 'Digital ID Policy Fails You, Your Kids, and the Country', *The Mandarin* (21 November 2024) <<https://www.themandarin.com.au/281972-digital-id-policy-fails-you-your-kids-and-the-country/>>.

² 'Teens Say Social Media Literacy Key to Online Safety, Not Age Restrictions', *ABC News* (online, 4 August 2024) <<https://www.abc.net.au/news/2024-08-04/students-say-social-media-literacy-key-not-age-restrictions/104170166>>.

³ See, e.g. Josh Butler and Josh Taylor, 'Australia to Ban Under-16s from Social Media – but Can't Say How TikTok, Instagram and Others Will Enforce It', *The Guardian* (online, 7 November 2024) <<https://www.theguardian.com/australia-news/2024/nov/07/australian-government-to-legislate-social-media-age-limit-of-16-but-cant-say-how-platforms-will-enforce-it>>.

government should not be allowed to hide behind vague assertions that the very platforms they say are too dangerous for children will be able to simply “nerd harder” and create some magic age checking technology that does not actually check one’s age.

Clearly the government is aware that Australians do not want to give yet more personal and private information to the platforms that we already want greater protection from. Forcing us to submit to yet more surveillance is a mind-boggling approach to addressing our desire for greater privacy. While the government rushes through this hasty and unworkable mess of a Bill, it is squandering the opportunity to finally provide the increased privacy protections Australians have been demanding for over a decade.⁴ We deserve so much better.

Rather than engage seriously with what are complex and challenging issues, the government is once again rushing through poorly-considered legislation in the final sitting days before the Christmas break.⁵ This pattern of behaviour is so well-established that it is a running joke within technology circles. It is insulting and contemptuous behaviour and should be condemned as such.

I have personally attempted to engage with multiple governments on this and other related technology policies over a number of years. I have found it to be a frustrating experience where conclusions are foregone and outside expert opinion is dismissed where it does not align with pre-existing views. Decisions are not evidence-based. Simplistic, techocratic options that make things worse crowd out other approaches that evidence shows would improve matters. Nuance and complexity are not something those with power to effect change seem interested in engaging with.

There appears to be little point engaging with the government on this issue. We are better off working around the government, not with it, as we attempt to protect people from the harm this policy will cause as well as the harm that it will not, cannot, address.

I worry that the government is teaching people that going through official channels is a pointless waste of time. I fear people will increasingly believe that more direct action through unofficial channels is their only alternative. That is not the kind of country I, nor most other Australians, wish to live in. We have seen too many examples of what that looks like in other notionally democratic nations in recent years.

Surveillance is not safety. Excluding our children from society is no way to build a better one. Paternalistic use of power by unelected bureaucrats ruling by fiat is not how we build the liberal democracy I want Australia to be. Neither is ceding sovereign power to massive multi-national corporations because our government is technically inept.

This Bill should be rejected in totality. We deserve so much better than this.

Yours sincerely,

Justin Warren FOUNDER & PRINCIPAL ANALYST

PivotNine Pty Ltd

⁴ See, e.g. ‘A Statutory Cause of Action for Serious Invasion of Privacy’, *ALRC* <<https://www.alrc.gov.au/publication/serious-invasions-of-privacy-in-the-digital-era-dp-80/4-a-new-tort-in-a-new-commonwealth-act/summary-138/>>.

⁵ Chris Duckett, ‘Australia Now Has Encryption-Busting Laws as Labor Capitulates’, *ZDNet* (6 December 2018) <<https://www.zdnet.com/article/australia-now-has-encryption-busting-laws-as-labor-capitulates/>>.