

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

By email: ec.sen@aph.gov.au

RE: Submission on Online Safety Amendment (Social Media Minimum Age) Bill 2024

Dear Secretary,

We, the undersigned, are writing today to address some concerns with the above Bill and we thank the Committee for the opportunity to provide a submission.

The latest amendments to the Bill delegate the powers to the Minister to decide which platforms would be subject to being classified as an age-restricted social media platform and which would not. We also understand the Government has made media comments that YouTube, online gaming and WhatsApp would not be classified as an age restricted social media platform.

While we welcome the comments that would allow teenagers to at least access news from YouTube, we critique whether the Bill is then useful as most teenagers use Roblox and Minecraft as a way of communicating with friends and very little use platforms such as Facebook. There are already teen accounts on Instagram that have a variety of safety features such as automatically being set to private, block and moderation controls for content and sleep modes. Having teenagers unable to access these platforms will mean they would be more likely to create adult accounts and miss out on the value of these safety features as well as the parental oversight these platforms have set up. It could also send them to unregulated sites that don't have safety moderation at all.

To roll this law out without a proper trial of age verification techniques and the applicability to VPNs both undermines the utility of the law at addressing bullying and harmful content and creates greater privacy and data issues. Age assurance rather than verification including biometric data and mapping of profiles and information pose similar risks. Simply having the platforms agree to protect privacy in no way reduces this as backdoor actors are given more valuable information to put Australian citizens at risk. Without meaningful privacy reform this leaves little recourse if that data is breached and compromised. It also makes it harder for some citizens, in particular older adults, that may not have the ability to use any verification methods to chat with their loved ones. It will also encourage platforms to de-centre safety if they believe only adults are accessing them.

Apart from the impact on the population generally we also have concerns on what this means for young people's ability to interact with society, access education and relevant news, and get help, especially in terms of LGBTQIA+ teens who may not have parent support.

We are also very saddened that the French report lacked proper consultation with the community it most affects – preferring advocacy groups of parents to actually speaking to children under 16. Moreover, the recent senate inquiry only spoke to one teen. In the absence of engaging with teens, the Bill risks further alienation and disenfranchisement amongst young people, who often already report feelings of being isolated from politics or devalued as genuine social contributors. Compounding this alienation, is a lack of communication regarding plans to address underlying causes of the expressed concerns such as resources to support youth mental and physical health; education around social media usage and literacy when young people age out of the ban.

It is important when considering the rights of children to understand their rights as full human beings including their autonomy and emerging autonomy. While children are relational and belong to a community, we cannot determine what their best interests are without consultation.

Australia is committed to the human rights of children under many treaties. The Convention on the Rights of the Child makes it clear that any limitations must be lawful, necessary, and proportionate. The French Report acknowledges this and refers to it extensively but in a very curated manner. Notably in the French report, the influential voices in the children's rights community - i.e. children's commissioners and guardians - are not in favour of a ban or at least are very cautious, acknowledging the positive aspects of social media for children. These are the state institutions that are most attuned to what children need, know, and want. This suggests that there is a rift between what the government wants to do and what the children may think or do about a ban. That really calls for a wide consultation with young people, and the commissioners should be the ones to be tasked with a national consultation with children on this. Consulting with children can lead to better legislation and also more compliance with the law. Consultation with children on matters concerning them is something highly favoured by most Human Rights Committees.

In the second reading speech, Ms Rowland stated, 'I amended the Basic Online Safety Expectations to make clear the government's expectation that platforms must place the *best interest of the child* [italics mine] at the centre of their products and services.' [Thursday, 21 November 2024 Page: 6] This term has a long legal history in the Australian context and currently has a specific legislative meaning in matters of family law, an area of federal jurisdiction where considerations of protecting or acting on behalf of children is business as usual. The 'best interest of the child' includes, inter alia, 'any views expressed by the child;'. It is a pity that parliament in framing up legislation to protect children has not followed what it has elsewhere considered to be best practice and binding on courts when making decisions about children. Nor has parliament appeared to consider the impact of these laws on the additional protections afforded to Aboriginal or Torres Strait Islander children under the Family Law Act to enjoy their culture which specifically includes the child's right to ...'connect with, and maintain their connection with, members of their family and with their community, culture, country and language;'.(Family Law Act 1975 – s60CCC (2) and (3))

Children and teenagers will of course find ways to get around these bans and will continue to have a social life online. Those children and teenagers who have found a way around will be more secretive and less likely to seek help from adults if they experience negative behaviours online out of fear of repercussions, including possibly misunderstanding whether they are breaking the law. This puts them at additional risk. Those that miss out will be the ones that are already vulnerable – those without access to VPNs or have disengaged or disapproving parents or guardians. These vulnerable children are most likely going to be further ostracised as they are excluded from participation in culture and friend groups.

We ask the Government to pause this Bill until further consultation can be sought and avoid the risk of making citizens even more vulnerable in terms of privacy, access to information, and the ability to communicate with each other, which are all freedoms that should be given priority.

We again thank the Committee for the opportunity to make a submission.

Sincerely

Western Sydney University School of Law
Social Media Working Party

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