

Infrastructure, Transport, Regional Development, Communications and the Arts

Committee Inquiry Question on Notice

Environment and Communications

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

IQ24-000101

Division/Agency: DIV - Digital Platforms Safety and Classification

Hansard Reference: Written (25 November 2024)

Topic: Written Questions on Notice (D. Pocock) - Online Safety Amendment (Social Media Minimum Age) Bill 2024 [Provisions]

David Pocock asked:

1. Has the government undertaken consultation with the United Kingdom or European Union in relation to the efficacy of the proposed legislation? If so, what were their views?
 - a. What is the evidence that this has worked/not worked anywhere else?
2. The Government's recent announcement of a Digital Duty of Care has presumably been modelled from the EU's Digital Services Act. I note that the DSA does not have age-based mechanisms, because instead their regulatory framework shapes platforms into being safer over time. With a Duty of Care framework in force, in what ways may this legislation be superseded/made redundant? Would the legislation then be repealed? What is the government's timeframe on its Duty of Care legislation?
3. Can the department clarify why a grandfathering clause (i.e., not applying to 13-16 year olds who already have accounts) wasn't included in this legislation? Has the government studied the disruptive impact of taking social media away from a 13-16yo user into whose life it has already become entrenched? How does the government suggest that parents manage that process?
4. How does the government justify legislating this without even knowing how it will be done? What risks are there in leaving it up to the platforms?
5. What if the methodology the platforms come up with erodes privacy protections, how will the government deal with that?
6. How does the government respond to concerns that this is an erosion of free speech/human rights for teenagers?
7. Given that research shows that teenagers get the vast majority of their news from social media, what risks are there to creating a "generation of the unaware" which is locked out of the information loop?
8. Would the government consider an exemption framework if platforms were able to demonstrate effective risk mitigation?
9. Would social media platforms be exempt if they remove the use of algorithm-driven functions, such as SnapChat removing the TikTok-like Spotlight feature and YouTube removing YouTube Shorts?
10. Unlike YouTube Shorts, YouTube long-form content can have educational benefits for under 16s. Is the intention that long-form content would still be restricted?

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11. Given that social media that is watchable without an account (such as YouTube) still uses algorithmic suggestions for the duration of the watch-time, does the ban intend to cover this as well? If so, how?
12. What measures would be put in place to prevent under 16s from migrating to unregulated or underground social media channels?

Answer:

1. The legislation is informed by the Hon Robert French AC's *Report of the Independent Legal Examination into Banning Children's Access to Social Media*, which is modelled on the Florida law.

The Department of Infrastructure, Transport, Regional Development, Communications met with counterparts from the United Kingdom to discuss the age assurance trial.

The department has worked closely with the Department of Foreign Affairs and Trade and the Office of International Law to understand the impact of the legislation on Australia's international obligations and relations.

2. The Australian Government has committed to legislate a Digital Duty of Care. The duty of care model is a key recommendation of the independent statutory review of the Online Safety Act 2021 undertaken by Ms Delia Rickard PSM. Aligned with United Kingdom and European Union approaches, digital platforms will be required to take reasonable steps to prevent foreseeable harms on their platforms and services, with the framework to be underpinned by risk assessment and risk mitigation, and informed by safety-by-design principles.

A legislated duty of care will place proactive obligations on platforms under the Online Safety Act, and work with the existing complaint and removal schemes for illegal and harmful material that currently exists under the Act.

The Bill includes a requirement that an independent review will be conducted within 2 years of the minimum age obligation taking effect. This review may present an opportunity to consider how a minimum age interacts with any duty of care obligations that are introduced in future.

3. The government carefully considered the issue of grandfathering, noting it formed part of former Chief Justice French's draft law, prepared for the South Australian Government.

It was determined that there would be no grandfathering for accounts created by age-restricted users prior to the day the obligation takes effect. Instead, the obligation will require platforms to take reasonable steps to remove and deactivate all accounts for young Australians under 16 years, regardless of the date on which the account was established.

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The Bill allows, at minimum, a one-year implementation timeframe, allowing for an adequate transition while preserving an equitable treatment for all users below the minimum age.

4. The government is currently undertaking an age assurance technology trial, which will examine available technologies and methods against a range of criteria. The requirement to implement 'age assurance' encompasses a range of methods for estimating or verifying the age or age range of users. The outcomes of the trial are therefore likely to be instructive for regulated entities, and will form the basis of regulatory guidance issued by the Commissioner, in the first instance.

Providing a 12-month lead-in time for the commencement of the obligation sets a realistic timeframe for the regulated sector and the regulator to adapt. In addition to allowing time for the development of technology and systems, it affords time for both the eSafety Commissioner and the Office of the Australian Information Commissioner to develop internal policies and onboard the necessary resources to provide effective oversight and enforcement of the new framework.

5. The legislation establishes robust privacy protections, placing limitations on the use of information collected by platforms for the purposes of satisfying the minimum age obligation, and requiring the destruction of information following its use.

Any additional data gathered by platforms in order to age assure users in compliance with the minimum age obligation will be subject to strong privacy protections in the Bill, beyond those already in place under the Privacy Act 1988.

Social media platforms already collect data which may be used to determine the age of the user. This information is subject to protections under the Privacy Act 1988.

6. The Explanatory Memorandum for the Online Safety Amendment (Social Media Minimum Age) Bill 2024 includes a detailed Statement of Compatibility with Human Rights. The Statement outlines where the Bill engages rights, including the right to freedom of opinion and expression. Notably the Bill has a positive effect on some rights, including the right to the highest attainable standard of physical and mental health, enshrined in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
7. This Bill does not restrict young people under 16 years old from accessing the internet at large, including news websites and podcasts, nor traditional news media such as television and radio broadcasting services.
8. Consideration was given to including an approach to harm minimisation in the form of an exemption framework in the Online Safety Amendment (Social Media Minimum Age) Bill. However, the government's commitment to legislate a digital duty of care will see a more comprehensive and effective approach to harm minimisation.

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A digital duty of care is a shift towards systems-based prevention. It will drive behavioural change across the industry and result in safer digital products and services for all Australians.

The government will legislate enduring categories of harm and, under a digital duty of care, platforms will be required to identify and mitigate the risks against these harms, which include harms to young people and harms to mental wellbeing.

The Bill includes a requirement that an independent review will be conducted within 2 years of the minimum age obligation taking effect. This review presents an opportunity examine whether the measures are effective and delivering the desired outcomes for Australians.

9. The Bill provides flexibility to reduce the scope or further target the definition of ‘age-restricted social media platforms’ through legislative rules.

A rule-making power is available to exclude specific classes of services from the definition. Before making a Rule, the Minister for Communications must seek advice from the eSafety Commissioner, and must have regard to that advice; and may seek advice from any other authorities or agencies of the Commonwealth that the minister considers relevant, and may have regard to any such advice.

10. The obligation under proposed section 63D would not affect the current practice of users viewing content on YouTube without first signing into an account. Further, the obligation does not preclude a parent or carer from allowing their child to use an account held by that parent or carer, or preclude an educator from showing educational content on YouTube to students under 16 years.

The Bill provides flexibility to reduce the scope or further target the definition of ‘age-restricted social media platforms’ through legislative rules. A rule-making power is available to exclude specific classes of services from the definition. The Minister for Communications has stated that, in the first instance, this power will be used to carve out services that operate with a significant purpose to enable young people to get the education and health support they need, like ReachOut’s PeerChat, Kids Helpline ‘MyCircle’, Google Classroom, YouTube, and other apps.

11. No. The obligation under proposed section 63D would require platforms from preventing users under the age of 16 years from having an account, which is distinct from ‘access’ more generally. While algorithmic suggestions may still affect ‘logged out’ users of some platforms, the Bill seeks to mitigate the harms that arise from addictive features largely associated with the ‘logged in’ state of most major social media platforms, such as algorithms tailoring content, infinite scroll, persistent notifications and alerts, and ‘likes’ to activate positive feedback neural activity.
12. The Bill includes a new, tailored definition of social media. Specifically, it provides that platforms that have the sole or significant purpose of enabling online social interaction

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will be in scope of the obligation. This is intentionally broader than the existing definition in the Online Safety Act, to allow for the obligation to include a broad set of existing, and future, services.

In addition to the Bill, the Australian Government is developing an Australia-specific 'digital duty of care' regulatory approach which will place greater requirements on industry to protect the public from online harms. Implementing a well-designed duty of care for all Australians is important to ensure that young Australians are accessing platforms that are built and run with safety in mind, not unregulated spaces.

The Australian Government has also invested \$6 million to ensure digital literacy tools, developed by the Alannah & Madeleine Foundation (AMF), are freely available for all schools across Australia. These include:

- The eSmart Media Literacy Lab to equip secondary school students aged 12 to 16 with critical skills to interpret what they read and view online;
- The eSmart Digital Licence+, for students aged 10 to 14 to learn how to meet the demands and challenges of the digital world; and
- A new eSmart Digital Licence for lower primary school students aged 4 to 9 years. This will support the increasing number of young children who are active online.

AMF's products cover a range of online contexts and activities, not just those related to social media – for example, balancing online activities with real life ones, and protecting against scams. This type of skill building and education is important for bolstering against the potential harms of online engagement and becoming an effective 'digital citizen'.