

22 November 2024

Online Safety Amendment (Social Media Minimum Age) Bill 2024

Due to the extremely brief consultation period (24 hours), the Alannah & Madeline Foundation (the Foundation) is only able to provide high level comments on the Online Safety Amendment (Social Media Minimum Age) Bill 2024 introduced to Parliament, on 21 November 2024.

The Foundation is a leading national not-for-profit charity dedicated to keeping children and young people free from violence and trauma. We support young Australians to recover and heal from trauma; we empower them to become positive digital citizens and change the culture of bullying; and we advocate for their right in digital environments.

We welcome and support the Government's call for social media platforms to take meaningful responsibility for the safety of their users, encapsulated in the recent promise of a Digital Duty of Care. For too long, children, parents and teachers were held individually responsible for avoiding and dealing with harms in the digital environment – an unreasonable and unfair expectation.

The Government observes that there is a growing expectation in the Australian community 'that platforms operate under a social licence and have a social responsibility for the safety of their users, particularly children and young people'. This is an important expectation and one which we support.

However, as we have stated previously, the Foundation has serious reservations about attempting to prevent and address harms to children online through social media age-gating. Risks include:

- Exploitation of children's personal information (including intimate data like biometrics) by unscrupulous age assurance providers.
- Missed opportunities for children to participate positively in social and civic life through social media.
- Neglect of other safety measures by social media platforms, whose decision-makers may assume, having formally excluded under-16s, that they have done enough. In consequence, children aged 16 and 17 (and any younger children who 'slip through') may enter social media platforms which remain, in many ways, very unsafe.

We note that the Australian Human Rights Commission has expressed serious reservations about the Bill, urging that less restrictive alternatives to a blanket ban be considered.

Given the complexity of the issues involved (acknowledged in the Explanatory Memorandum accompanying the Bill) and its major ramifications for children and young people), we recommend that this Bill be referred to a parliamentary committee to subject it to full and appropriate scrutiny.



In particular, we have reservations about the approach to age assurance. At present, the Bill provides little detail on how age assurance will be undertaken. We appreciate that more guidance will be produced over time, informed by the learnings of the current trial. However, the Privacy and Other Legislation Amendment Bill 2024, which would enable the creation of a Children's Online Privacy Code, is still before Parliament. Meanwhile, many other long-awaited reforms to the Privacy Act 1988 have yet to be introduced.

We hold grave concerns about wide-ranging new age assurance systems being implemented before those promised protections are in place.

For example, this Bill includes a provision that personal information collected for age assurance purposes may be used in other ways with the 'consent' of the individual. Digital platforms have a history of monetizing children's personal information ruthlessly and of making a mockery of consent by urging their users to agree to T&Cs which the average adult cannot understand, with no meaningful option to refuse. (This is sometimes called the 'take it or leave it' approach.) We urge Government to proceed with extreme caution and vigilance in this area.

That said, there are several aspects of the Bill and the accompanying Memorandum which we do consider positive, namely:

- The focus on systems solutions and locating accountability with social media platforms, for example, the levying of fines for systemic breaches to platforms, not to individual children or adults.
- The tasking of the eSafety Commissioner to create and promote guidelines for age assurance, informed strongly by the current trial.
- The signal of a likely 'carve-out' for messaging services, gaming services and health/education services, recognising young people's message to government that such services are especially important to their social connections and wellbeing.
- The requirement that personal information collected for age assurance purposes be destroyed afterwards.
- The 12-month period set aside between the Bill's passage into law and the expected implementation.

We understand the Government will undertake further public consultation on draft rules following the passage of the Bill through Parliament, and we look forward to taking part.

We would be glad to discuss this matter further with you.

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