

Submission to the Environment and Communications Legislation Committee

regarding the

Online Safety Amendment (Social Media Minimum Age) Bill 2024

22 November 2024



Who we are

Digital Rights Watch is a charity organisation founded in 2016 to promote and defend human rights as realised in the digital age. We stand for privacy, democracy, fairness and freedom. Digital Rights Watch educates, campaigns and advocates for a digital environment in which rights are respected, and connection and creativity can flourish. More information about our work is available on our website:

www.digitalrightswatch.org.au

Acknowledgement of Country

Digital Rights Watch acknowledges the Traditional Owners of Country throughout Australia and their continuing connection to land and community. We acknowledge the Aboriginal and Torres Strait Islander peoples as the true custodians of this land that was never ceded and pay our respects to their cultures, and to elders past and present.

Contact

Elizabeth O'Shea | Chair |



Shortcomings of this Senate committee inquiry

Digital Rights Watch has been involved in many Senate committee consultations since our founding in 2016. Never before have we witnessed such a shocking display of misusing the committee inquiry process as a sham consultation for the purposes of “box-ticking” community engagement.

We are dismayed to see the government prioritise the theatre of policy-making in the lead-up to a federal election over meaningful legislation over the long-term. It is particularly egregious to expect a Senate committee inquiry to provide adequate analysis with such short timescales as in the terms of reference. We do not have any confidence that this inquiry can return anything of use in the time available other than to insist upon a longer period of consultation and analysis for this important policy issue.

It is a gross disservice to the children of Australia and the Senate to use this committee inquiry to distract from the evidence that the government has failed to do adequate policy development in this area, yet is determined to push through this amendment despite expert advice from many relevant fields.

We apologise to the committee for exceeding the desired length of submission, but we have simply not had the time to make this one shorter.

Prioritise privacy reform

We note the swiftness of this legislation moving through parliament, while Australia’s Privacy Act, which has not seen meaningful reform in several decades, has been through a years long process of review, which has yet to resolve.

Without a robust Privacy Act, or a federally enforceable human rights framework, people in Australia are particularly vulnerable to legislation that inadequately safeguards privacy and data protection. This lack of safety means our media and technology ecosystem can be filled with platforms and tools that do not contain appropriate safeguards and protections. If a social media ban is imposed, people would be expected to hand over *even more* sensitive information, ranging from birth dates to faceprints, to platforms and third party services without appropriate protections for privacy and security.

If we want to do something about the harmful impacts of online life, and improve the cybersecurity of all Australians engaging with online platforms, the first and most important step is comprehensive privacy protections for everyone, including young people.

We suggest that this amendment is shelved until such time it can align with, and give effect to, relevant legislation currently under review, including the Privacy Act.

Shortcomings of the Online Safety Amendment (Social Media Minimum Age) Bill 2024

Digital Rights Watch strongly opposes the amendment to the *Online Safety Act 2021* to introduce new restrictions around “age-restricted social media platforms”.

There is little evidence to suggest implementing a ban will improve the lives of children, but it will introduce new privacy and security risks for all people in Australia, including young people.

Most complex real-world problems require complex real-world solutions. Mental health organisations ReachOut, Beyond Blue and Black Dog Institute have called for a range of evidence-based measures to help improve the safety of social media platforms, rather than a blanket age ban¹. These measures include verifying mental health information, and addressing the predatory models that underpin social media platforms, like the infinite scroll feature.

In their joint letter, these mental health organisations drew attention to the evidence that social can benefit young people:

Recent research from Black Dog Institute has found that using social media actively—mostly to communicate with in-person friends and peers - was associated with lower levels of depression and anxiety. This tells us that online interactions with in-person peers and friends can enhance mental well-being by improving these connections. However, using social media mostly to scroll or passively view other people's content was linked to higher levels of depression and anxiety.

Social media is crucial for learning, community-building and connecting with mental health services, and cutting young people off from access to these spaces will have serious and negative consequences.

The consultation process appears to have overwhelmingly canvassed the opinions of parents and other adults, but left children – the people directly affected by a ban – out of the conversation.² Young people are advocating for their right to participate in society and access vital spaces, as Jess Travers-Wolf writes for The Guardian: “A ban will not only isolate a generation facing increased loneliness, but also undermine their personal and political agency, limiting their capacity to learn vital future skills.” This is particularly pertinent given the delay in implementing bold privacy reform, as the effect of prioritising the ban will mean young people will be thrown into a toxic environment at 16 years of age, shaped by the data extractive economy. We are failing young people by prioritising draconian, ineffective proposals at the expense of meaningful, evidence based reform.

In their final report, the Joint Select Committee on Social Media and Australian Society recommended a co-design approach to drafting any regulatory framework that will affect young people, as well as a statutory duty of care onto digital platforms for the wellbeing of Australian users and to prioritise Privacy Act reform³. We call on the government to pay respect to these well-drafted recommendations. Notably, this committee did *not* call for any age ban on social media.

¹Mental health organisations collaborate to call for changes to social media platforms. (2024, July 18). <https://www.beyondblue.org.au/about/media/media-releases/mental-health-organisations-collaborate-to-call-for-changes-to-social-media-platforms>

² Instead of banning young people from social media Anthony Albanese needs to listen to them. (2024, November 14). *The Guardian*. <https://www.theguardian.com/commentisfree/2024/nov/14/australia-social-media-ban-anthony-albanese-government>

³Social media: the good, the bad, and the ugly – Final report', Joint Select Committee on Social Media and Australian Society. Retrieved November 21, 2024, from https://www.aph.gov.au/Parliamentary_Business/Tabled_Documents

Instead of implementing a blanket age ban, we recommend the government engage in meaningful co-design with experts and young people to create a regulatory framework that effectively addresses the harms of social media.

63C Age-restricted social media platform definition

This bill does not adequately define “social media platforms” as targets for this policy. While there are some platforms that would obviously fall into scope, the entire Internet is a medium upon which people perform social activity. Email would meet the definition of 63C, as would most messaging services.

The bill also fails to address the existence of the “fediverse”, where social media is not centred around a single organisation running a platform, but a network of systems that coexist and cross-publish data. In these federated systems, there is no single platform that can be targeted with this legislation, but a plethora of entities that form the network. Different entities could (and do) have different standards for sign-up and participation. It is neither reasonable nor possible to expect them all to participate in an Australian age verification scheme to restrict access to adults.

Internet access and communication is a necessity for participation in modern life and society. To remove this from children and young people is to cut them off from societal participation and the obvious benefits that accrue from this, both for them as individuals and for Australian society as a whole.

An age ban does not ameliorate the shortcomings of existing Internet policy

We are not unaware of the fact that there are many issues relating to the way that young people experience the Internet and social media. However, by simply blocking children from accessing social media, the government is “solving” the problem in a way that leaves the underlying issues completely unaddressed.

The business model of social media platforms is to invade users’ privacy to know more about them so that content can be micro-targeted at them, regardless of the truth or validity of that content. This micro-targeting, combined with the “heat” of engaging content is used to hold a user’s attention and repeatedly push adverts at them.

This underlying business model is what drives many of the issues that all Australians, regardless of age, experience on the Internet: invasion of privacy, proliferation of misinformation, promotion of addiction, and the spread of hate speech and extremist content. This legislation does absolutely nothing to address this fundamental problem and will leave Australians worse off: not only will platforms continue to drive their profits through attention-based advertising, they will also be disincentivised to act on moderation as they will now have a reasonable expectation that their platforms will be an adults-only space. As leading researchers in this field have identified, ‘most specific age restrictions set by providers represent a business decision to exclude children rather than

invest in designing services appropriate for them.⁴ Of course, given the acknowledged unworkability of the ban, we note with grim disappointment that there will still be children using the platforms regardless of this legislation, and their experience will have become more dangerous as a result of this bill.

The ineffectiveness of age assurance technologies

We note that the bill makes provision for fining social media companies for non-compliance while at the same time government pilots of age-assurance technologies accept that they are immature and not fit-for-purpose.

While the amendment does not stipulate how a platform will implement the age ban, the explanatory memorandum states: “it is expected that at a minimum, the obligation will require platforms to implement some form of age assurance, as a means of identifying whether a prospective or existing account holder is an Australian child under the age of 16 years.” Digital Rights Watch and other experts have consistently brought attention to the shortcomings of age assurance technology as well as the privacy and security risks they introduce. We especially do not think it is appropriate to call for the implementation of such methods before the outcome of the recently awarded trial into age assurance technologies, which may find that there are *no* suitable technologies on the market that work effectively or sufficiently safeguard people’s privacy.

For the government to be passing a law where organisations will be expected to use non-functional technologies yet fined when those technologies fail would be laughable were it not so serious. “This won’t work but it’s better than nothing” is not a serious way to make policy.

Despite its numerous technical failings, age assurance won’t just be required for young people to access social media. It will be required for *all* Australians to prove their age to social media platforms. This will inevitably present as an “ID check”, which poses a plethora of risks to Australians. Anonymous or pseudonymous access to Internet platforms is vital for large numbers of Australians, such as those experiencing domestic violence or other forms of abuse, LGBTQ+ people, those who are engaging in whistleblowing, or people who have a completely benign desire to keep their private online conversations distinct from their public identity. By normalising the “age check” on the Internet, this bill increases the risk that these cohorts will have a loss of privacy online, either through accidental security breaches or deliberate identity theft.

⁴ Maddern, K. (2024, October 29). Age assurance online needs to be child rights respecting, new study says. News. <https://news.exeter.ac.uk/faculty-of-humanities-arts-and-social-sciences/age-assurance-online-needs-to-be-child-rights-respecting-new-study-says/>