

22 November 2024

Submission to the Inquiry into the *Online Safety Amendment (Social Media Minimum Age) Bill 2024* [Provisions]

Overall, [Children and Media Australia](#) (CMA) strongly supports this Bill and commends the Government on its introduction. The Explanatory Memorandum (EM) explains very clearly that this will be nuanced and balanced regulation, formulated in full recognition of a range of interests and considerations, including the potential benefits to children and young people of some forms of social media. We note in particular the proposed rule-making powers that will enable the granting of exemptions to specific types of services, and the expectation that content and information will continue to be available in the ‘logged-out’ state.

In spite of ongoing debate about the evidence base, CMA sees this intervention as soundly justified by the precautionary principle, a well-known and well-accepted precept of public health.

The systemic nature of the regulation is underlined by the fact that it requires only ‘reasonable steps’ – which will change over time – and by the absence of ‘intention [to] punish a platform for individual instances’ (p 3). The Bill also incorporates effective future-proofing mechanisms, so that the regulation can keep up with technological developments.

The commencement plan and penalties proposed are appropriate, for the reasons given in the EM. We agree wholeheartedly with the EM’s observations on the impossibility of 100% compliance (p 3). Still we would hope that recognition of this fact would open a door to further social media regulations to protect those children and young people who do ‘slip through’. This would avoid the common difficulty of the public being lulled into a false sense of security, when they believe a risk has been dealt with comprehensively but that is not possible in practice. The recently announced online duty of care could be very helpful in this regard.

CMA accepts the Government’s reasons for settling on the age cutoff of 16 years, and notes that it is broadly in keeping with social and legal norms for other activities where a degree of maturity is needed, for example driving and sexual activity. We are satisfied with the proposals for protecting data privacy when users comply with any age assurance mechanisms.

CMA supports the ‘significant purpose’ test for age-restricted social media platforms (p 3); and while in general we support the availability of a rule-making power to introduce further nuance, we would hope that any exemption based on a platform ‘predominately [providing] beneficial experiences’ (p 3) would be subject to ongoing monitoring to ensure that remains the case over time. The experiences a platform provides are likely to evolve, like everything else.

CMA notes further the availability of many of the benefits of social media through other means (for

Children and Media Australia

 PO Box 1240, Glenelg South SA 5045

 61 8 83762111  61 8 83762122

 info@childrenandmedia.org.au

 www.childrenandmedia.org.au

example helplines, news and information sites (which are generally more reliable), messaging apps and curated sources of entertainment content). It is only natural that the young people who have been consulted at various times have not necessarily had high awareness of these alternatives, if social media is all they have ever known. We hope that the Government will be looking for, and supporting, ways of strengthening the alternatives.

CMA appreciates the Government's candour in alerting the public to the services it currently intends to exclude, and looks forward to participating in further consultation prior to those exclusions taking effect, as we would not necessarily support all of them.

CMA agrees with the observations in the EM about children's rights, especially under Articles 31 and 17 of the UN Convention the Rights of the Child (CRC; pp 15-16).

To the observations on the right to protection from exploitation (p 14) we would add that advertising to children can be seen as a form of economic exploitation (article 32), and it can operate in especially pernicious ways on social media, eg through targeting and persuasive design.

To the list of relevant rights in the CRC discussed in the EM, we would add: children's right to survival and development (article 6); the obligation on governments to 'render appropriate assistance to parents and legal guardians' (article 18); and children's right to protection from 'all forms of physical or mental violence, injury or abuse' (article 19).

Article 18 is especially important, and frequently overlooked. It provides a way out of the endless debate we seem to have about parental responsibility: nobody believes that parents don't have a responsibility, but rather the question is what support and assistance the Government should provide them. Parents cannot manage the risks of social media on their own, not least because of the need to resist pressure from peers and other families, and the risk that young people will miss out on social and other opportunities if they are the only ones who are not on social media (the 'collective action problem'). Far from being an example of the 'nanny state', this legislation is clearly in keeping with the requirements of article 18.

Having said that, this regulation is not enough. There is still a need for effective, accessible and ongoing parental education about how best to fulfil their role, and CMA hopes that the Government will allocate significant resources to this for the foreseeable future. The coming generation of parents, even as 'digital natives', will be no better equipped to face the challenges of new technologies than previous generations were, precisely because technological advances show no signs of slowing down.

Although the internet was not thought of at the time the CRC was being drafted, children's right to access it safely is now broadly recognised, for example in [General comment No. 25 \(2021\) on children's rights in relation to the digital environment](#). It's important to note that this right combines two elements – access and safety – which are in tension and need to be balanced. We believe this Bill gets the balance right.

Please contact our President, Professor Elizabeth Handsley, for any further information about this submission: [president\[at\]childrenandmedia.org.au](mailto:president[at]childrenandmedia.org.au).