

Inquiry into the Online Safety Amendment (Social Media Minimum Age) Bill 2024

22 November 2024

Human Rights Law Centre.

David Mejia-Canales
Senior Lawyer

Human Rights Law Centre
Level 17, 461 Bourke Street
Melbourne VIC 3000

T: + 61 3 8636 4450
F: + 61 3 8636 4455
E: admin@hrlc.org.au
W: www.hrlc.org.au

Human Rights Law Centre

The Human Rights Law Centre uses strategic legal action, policy solutions and advocacy to support people and communities to eliminate inequality and injustice and build a fairer, more compassionate Australia. We work in coalition with key partners, including community organisations, law firms and barristers, academics and experts, and international and domestic human rights organisations.

We acknowledge the lands on which we work and live, including the lands of the Wurundjeri, Bunurong, Gadigal, Ngunnawal, Darug and Wadawurrung people. We pay our respect to Elders of those lands, both past and present.

We recognise that Aboriginal and Torres Strait Islander people and communities were the first technologists and innovators on this continent, with deep knowledge systems that continue to shape our understanding of innovation, sustainability, land stewardship, and community care. We recognise that this land always was and always will be Aboriginal and Torres Strait Islander land because sovereignty has never been ceded.

We acknowledge the role of the colonial legal system in establishing, entrenching, and continuing the oppression and injustice experienced by First Nations peoples and that we have a responsibility to work in solidarity with Aboriginal and Torres Strait Islander people to undo this.

We support the self-determination of Aboriginal and Torres Strait Islander peoples.

Follow us at <http://twitter.com/humanrightsHRLC>

Join us at www.facebook.com/HumanRightsLawCentreHRLC/

Contents

- 1. Executive Summary4**
- 2. Key concerns5**
 - 2.1 The Bill undermines the human rights of children and young people5
 - 2.1.1 The freedom of expression and the right to information5
 - 2.1.2 The freedom of association and of peaceful assembly5
 - 2.1.3 The right to privacy6
 - 2.1.4 Constitutional concerns.....6
- 3. Lack of meaningful consultation7**
- 4. Recommendations.....8**

1. Executive Summary

The *Online Safety Amendment (Social Media Minimum Age) Bill 2024* (**the Bill**) proposes an age restriction for social media accounts to protect young people.

However, the Human Rights Law Centre opposes this Bill and urges the Committee to recommend that it not proceed. This Bill is a flawed response to a serious issue, diverting attention from the real problem: the failure of digital platforms to prioritise safety for *all* users.

This Bill undermines the human rights of young people in unacceptable ways, including their rights to freedom of expression, access to information, and privacy.

Instead of penalising young people for failures that they did not create, the Government should prioritise introducing an overarching duty of care on digital platforms to ensure platforms have a legal responsibility to create safer products for all.

Recommendations:

1. The Human Rights Law Centre urges the Committee to recommend that this Bill not pass.
2. Future legislative inquiries must ensure adequate consultation and public engagement. Rushed processes undermine good governance, human rights, and the legitimacy of our laws.
3. The Committee should recommend that the Government instead prioritise legislation to establish an overarching duty of care for digital platforms to ensure the safety of all users online.

2. Key concerns

2.1 The Bill undermines the human rights of children and young people

The Bill imposes sweeping age-based restrictions on social media access, unjustly infringing on the rights of children and young people as protected under international human rights law.

2.1.1 The freedom of expression and the right to information ¹

The United Nations Committee on the Rights of the Child (**Committee on the Rights of the Child**) has highlighted that the digital environment plays a vital role in enhancing young people's rights.

Young people's freedom of expression includes the right to seek, receive, and share information and ideas of all kinds, using the media of their choice.² While this right is not absolute and can be limited, any restrictions on these rights must be lawful, necessary, and proportionate.

Importantly, the Committee on the Rights of the Child also requires that such restrictions be clearly communicated to young people in language appropriate to their age and understanding.³

The Bill fails to meet these requirements. By imposing an outright ban on social media access for under-16s, it severely limits young people's ability to seek and receive information and to express themselves on social media. Such a blanket, untailored prohibition is disproportionate and unjustified.

Instead of narrowly tailoring measures to address specific risks, the Bill opts for a broad and punitive approach that contradicts established human rights principles. This approach not only undermines young people's rights, but also disregards the requirement for balanced, rights-compliant solutions.

2.1.2 The freedom of association and of peaceful assembly ⁴

Digital platforms are critical spaces for young people to form communities, advocate for their rights, and engage in activism.⁵

The Committee on the Rights of the Child has explicitly recognised that children and young people can be, and are, human rights defenders and that the digital environment empowers them to exercise this role by communicating, advocating, and forming associations online.⁶ The Committee further states that young people's activism and advocacy should be supported, including through the facilitation of safe, specific digital spaces.⁷

By imposing a blanket ban on social media access for under-16s, the Bill denies those young people the ability to exercise their rights to freedom of association and peaceful assembly in the digital environment.

This is particularly significant for young human rights defenders, who rely on digital platforms to mobilise, connect, and amplify their voices. The Bill's sweeping approach fails to take the proportionate measures

¹ See Article 19 of the *International Covenant on Civil and Political Rights (ICCPR)*, and Article 13 of the *Convention on the Rights of the Child (CRC)*.

² Committee on the Rights of the Child, *General Comment No. 25 (2021) on children's rights in relation to the digital environment*, CRV/C/GC/25, 2 March 2021 [58].

³ Ibid [59].

⁴ See Article 22 of the ICCPR; Article 15 of the CRC.

⁵ Committee on the Rights of the Child, *General Comment No. 25 (2021) on children's rights in relation to the digital environment*, CRV/C/GC/25, 2 March 2021 [66].

⁶ Ibid.

⁷ Ibid.

required by international human rights law, which mandates that any restrictions on these rights must be narrowly tailored, made by a law of sufficient precision, are necessary, and proportionate.

A blanket prohibition isolates young people from these opportunities and unjustly restricts their ability to participate in civic and social life.

2.1.3 The right to privacy⁸

The Bill mandates age verification measures that pose significant risks to privacy.

The Committee on the Rights of the Child has noted that any interference with the privacy of young people must be lawful, necessary, and proportionate, with robust safeguards implemented to protect their data.⁹ States are also required to observe principles of data minimisation and ensure that privacy-by-design approaches are integrated into digital products and services.¹⁰

The Bill fails to meet these international human rights law standards. Its approach to age verification risks excessive data collection, creating a disproportionate and intrusive framework. Furthermore, it is not out of the question that all users—not just children—may need to verify their identity to access social media platforms. That will impact the privacy rights of all people in Australia.

The Government has indicated that the outcome of its Age Assurance Trial will help determine what constitutes "reasonable steps" to verify a user's age for the purposes of the Bill.¹¹ According to the tender announcement, the trial will explore methods to estimate a user's age, including using biometric markers or digital usage patterns. This raises serious privacy concerns, as such methods may involve harvesting sensitive information about Australians, including sensitive biometric data.¹²

Collecting biometric markers or analysing digital behaviours to infer age constitutes a significant breach of privacy. Harvesting this type of information risks creating new vulnerabilities for individuals, particularly young people, whose data security and autonomy should be paramount. While some companies are already engaging in similar practices to feed their algorithms or real-time bidding ad systems, the normalisation of such intrusive methods under the guise of compliance with the Bill would set a dangerous precedent.

Furthermore, the Committee on the Rights of the Child explicitly prohibits routine or indiscriminate digital surveillance and mass data collection, highlighting the importance of narrowly tailored and rights-respecting measures.¹³

Instead of aligning with these requirements, the Bill proposes a broad and invasive regime that undermines privacy rights across the board. Its failure to adopt a proportionate and rights-compliant approach renders it incompatible with Australia's international human rights obligations.

2.1.4 Constitutional concerns

Given the limited timeframe for consultation, we have not had the opportunity to fully consider the potential constitutional implications of the Bill. However, on its face, the Bill burdens the implied freedom of political communication protected by the *Australian Constitution*. It imposes a blanket prohibition on those under 16 from accessing various social media platforms. In the modern era, social media platforms

⁸ See Article 17 of the ICCPR and Article 16 of the CRC.

⁹ Committee on the Rights of the Child, *General Comment No. 25 (2021) on children's rights in relation to the digital environment*, CRV/C/GC/25, 2 March 2021 [69]–[71].

¹⁰ Ibid.

¹¹ Explanatory Memorandum, Online Safety Amendment (Social Media Minimum Age) Bill 2024 (Cth) 5.

¹² Department of Infrastructure, Transport, Regional Development, Communications and the Arts, 'Tender awarded for Australian Government's age assurance trial' (Website, 15 November 2024) <<https://www.infrastructure.gov.au/departments/media/news/tender-awarded-australian-governments-age-assurance-trial>>.

¹³ Committee on the Rights of the Child, *General Comment No. 25 (2021) on children's rights in relation to the digital environment*, CRV/C/GC/25, 2 March 2021 [75].

are one of the primary tools for political communication. It is likely to also burden the ability of all people in Australia to communicate, by potentially requiring any user of a social media platform to undertake age verification. Those over 16 may have legitimate reasons for being concerned about consenting to age verification.

There are real questions about whether such a burden is proportionate to the purpose of protecting children from online harm. We would encourage the Committee to seek further input regarding the constitutional validity of the Bill.

3. Lack of meaningful consultation

The Government's approach to this Bill is deeply concerning. By allowing just 24 hours for public submissions to this inquiry, the inquiry process fails to meet basic standards of public consultation and transparency.

Meaningful participation is a cornerstone of human rights law.¹⁴

Young people, indeed all people, have the right to be consulted on legislative decisions that affect them, particularly when their rights are at stake.

The lack of consultation is also contrary to the principles of good law-making. Rushing this inquiry suggests a disregard for meaningful engagement with experts, advocates, and the community. What is the Government seeking to avoid by limiting consultation?

The rushed process undermines public confidence in the Bill and raises serious questions about its merits. If the Government is confident in the necessity of this legislation, it should welcome robust consultation, not evade it.

The Bill is a distraction that punishes young people for systemic failures caused by digital platforms. This piecemeal approach fails to address the broader issues of safety and accountability in the digital environment.

¹⁴ Committee on the Rights of the Child, *General Comment No. 25 (2021) on children's rights in relation to the digital environment*, CRV/C/GC/25, 2 March 2021 [17].

4. Recommendations

The Bill's approach of restricting access for under-16s is poorly targeted and unlikely to achieve its intended outcomes.

Young people are likely to seek to bypass age restrictions by the use of technology, by falsifying their age, or through myriad other ways, rendering the legislation ineffective in its practical application.

Moreover, the Bill fails to address the root causes of harm, such as harmful content or platform design practices that exploit users, including those aged 16 and over.

Rather than holding social media platforms accountable for creating safer digital environments, the Bill shifts the burden onto young people and their families, perpetuating a system that prioritises superficial fixes over meaningful solutions.

The Committee should not recommend that this Bill pass. Its passage would disproportionately impact the human rights of young people, fail to protect them from harm, while demonstrating a disregard for proper consultation processes. The Bill does not effectively address the issues it seeks to resolve. The Bill is contrary to international human rights law.

Instead, the Government should prioritise the introduction of an overarching duty of care framework for digital platforms. Such a framework would hold platforms accountable for the safety of all users, not just the youngest.

A duty of care would require platforms to design their services with safety-by-design principles, mitigating risks posed by harmful content and addictive features. It could also mandate greater transparency about algorithms and data practices, while protecting user privacy through robust safeguards.

This approach would deliver meaningful reform and better align Australia's digital regulation with its human rights obligations.

Additionally, we strongly recommend that future legislative inquiries allow for adequate consultation and public engagement, consistent with the principles of good governance and human rights. Rushing this process does a disservice to all Australians and risks undermining the legitimacy of the laws that govern our digital lives.

Recommendations:

1. The Human Rights Law Centre urges the Committee to recommend that this Bill not pass.
2. Future legislative inquiries must ensure adequate consultation and public engagement. Rushed processes undermine good governance, human rights, and the legitimacy of our laws.
3. The Committee should recommend that the Government instead prioritise legislation to establish an overarching duty of care for digital platforms to ensure the safety of all users online.