

ONLINE SAFETY REFORMS - A DUTY OF CARE

Issue: *Online services are not doing enough to prevent Australians from being harmed online.*

Headline Talking Points:

- *The Albanese Government is committed to legislating a digital duty of care model, to put the onus back on industry to prevent online harms at a systemic level.*
- *A systems-based approach, alongside important complaint and takedown schemes, will ensure Australia remains world leading in online safety regulation.*

Key points

- Online interactions have brought many advantages to Australians and are part of our everyday lives. But Australians continue to experience serious harms online.
- Online services are simply not doing enough to prevent Australians from being harmed online.
- This is why the Albanese Government is committing to legislate a **digital Duty of Care** for online services operating in Australia.
- It is time to shift away from reacting to harms and move towards **systems-based prevention**, to stop the harms occurring in the first place.
- A duty of care will require the online industry to take reasonable steps to prevent foreseeable harms.

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SES Cleared by: Sarah Vandenbroek

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ONLINE SAFETY

- A duty of care will require online services to **design their systems with safety at the forefront**, and to quickly identify and remediate any problems when they emerge.
- We understand the pace at which technology and online services change and evolve. A duty of care does not mean services can ‘set and forget.’ This model will require online services to undertake **ongoing risk assessment and management** to ensure their services remain safe for all Australians.
- A duty of care model will build on the existing strengths of the Online Safety Act. These include eSafety’s take down powers and their ability to request transparency reports from industry on what actions they are taking to keep users safe.
- It will also bring Australia into line with international efforts to move towards systems-based regulation, such as in the United Kingdom and European Union.
- A duty of care will complement the Government’s decision to legislate a minimum age of 16 for access to social media and head towards a safer and healthier online ecosystem.

Related topics

Response to Review of the Online Safety Act 2021

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ONLINE SAFETY

- Last month I was pleased to receive Delia Rickard's review of the *Online Safety Act*.
- We are working through this comprehensive report, which made over 60 recommendations.
- A response will be provided after the report has been carefully considered. We want to make sure that the reforms we take forward are effective and deliver the best outcomes for Australians.
- One message that stood out in the report is that a duty of care is fundamental.
- Conceptually, this draws on duties of care embedded in our work, health and safety regimes. It is a proven, workable and flexible model.

Implementation

- The Government will work carefully but quickly to develop a duty of care model that can be adopted in Australia.
- The shift towards a duty of care will be a fundamental change to our online safety regulatory framework.
- Though we are clear that this is the right approach, the design and implementation of an appropriate framework will need careful consideration, including transitional arrangements for industry and eSafety.

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ONLINE SAFETY**Background**Online Safety Act Review

- In November last year, I announced the appointment of Ms Delia Rickard PSM, former deputy chair of the Australian Competition and Consumer Commission, to lead a comprehensive independent review of the Online Safety Act.
- The Government brought forward the statutory review by one year to ensure the eSafety Commissioner has the right powers to keep Australians safe in a rapidly evolving online world.
- Ms Rickard completed a thorough examination of Australia’s existing online safety laws, met with more than 100 stakeholders, hosted seven themed roundtables, and received more than 2,200 public consultation responses.
- The review considered:
 - Current provisions in the Act and whether additional protections are needed to combat online harms, including new harms from emerging technologies such as generative artificial intelligence, end-to-end encryption and algorithms
 - The operation and effectiveness of investigation and enforcement arrangements, complaint schemes and approaches for assisting individuals who have experienced online harms
 - The Commissioner’s functions and governance arrangements;
 - Introducing a more systems-based and preventative approaches to online safety regulation, such as a duty of care for users, as adopted overseas.
- On 31 October, I received Ms Rickard’s final report of the review. The report acknowledges the difficult and challenging work undertaken by the Commissioner, and the need for further reforms to ensure our online safety laws keep pace with changes in the online environment.
- The Government will consider the extensive recommendations made by Ms Rickard and respond in due course.

Key Media

Media	Summary
Digital ‘duty of care’ for tech titans , The Australian, Rosie Lewis (14 November 2024)	Summary of announcement of digital duty of care on 13 November 2024.
Platforms must bear harm duty , Australian Financial Review, Sam Buckingham-Jones (14 November 2024)	Summary of announcement of digital duty of care on 13 November 2024, including examples of what a duty of care might mean in practice.
“Safer online spaces for all” – Human Rights Law Centre calls for more online regulation , LSJ Online , Francisco Silva (8 August 2024)	The HRLC recommends the Albanese Government implement a regulatory regime similar to the EU’s Digital Services Act, centred on duty of care, risk assessment, risk mitigation, and transparency and accountability measures.

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<p>Facebook whistleblower Frances Haugen says Australia has a 'once-in-a-decade chance' to fix its social media law, ABC, Ange Lavoipierre (7 August 2024)</p>	<p>Australia has a "once-in-a-decade opportunity" to regulate social media and should look to the EU's DSA as a north star for online safety regulation, as it focuses upstream, at the source of online harms, rather than at the harms themselves.</p>
<p>How getting big tech platforms to care for their users could mean a better online experience for everyone, ABC, Esther Linder (8 October 2024)</p>	<p>Experts from the Human Rights Law Centre and Reset.Tech Australia endorse the introduction of a duty of care obligation, providing insights into how a duty of care model might work in Australia.</p>

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Questions:

What privacy protections are in place?

- The Bill contains robust privacy protections, over and above what is set out in existing privacy laws.
- Under the proposed legislation, platforms will be required to destroy data collected for age assurance purposes when the age assurance process is complete.
- Not destroying data would be a breach of the Privacy Act, with penalties of up to \$50 million.
- The Government will also provide funding for eSafety and the Information Commissioner, to support strong oversight.

Will Government Digital ID be used for age assurance?

- No. We have no interest in government digital identification being used.
- The only Party which has proposed Australians being required to upload 100 points of ID is the Liberal Party.
- On June 3, the Liberal Member for Fisher said

In order to open or maintain an existing social media account, customers should be required by law to identify themselves to a platform using 100 points of identification, in the same way as a person must provide identification for a mobile phone account, or to buy a mobile SIM card.

- We do not support this approach. It is respectfully a matter for the Opposition to explain their position.

What social media platforms are captured? Snapchat?

- The definition is broad to enable the law to capture what is commonly accepted to be social media of most concern.
- It is intended this be at least Instagram, X, Facebook, Snapchat, and TikTok.
- The Minister will have the power to determine a particular service in scope, subject to appropriate Parliamentary oversight. In doing so the Minister would need to seek advice from the eSafety commissioner, and have regards to harms.

What is exempt?

- The Bill and associated rules will ensure continued access to messaging and online gaming and continued access to services which are health and education related, such as headspace, Kids Helpline, Google Classroom, and YouTube.

Is YouTube captured or exempt?

- The Bill and associated rules will allow access to YouTube.
- The use of YouTube will continue in classrooms, as it provides important educational benefits.

What powers does the Minister have to determine what services are in or out?

- The Minister will have the power to determine a particular service in scope, subject to appropriate Parliamentary oversight. In doing so the Minister would need to seek advice from the eSafety commissioner, and have regard to harms.
- Services not within scope are messaging and gaming apps, or health and education services. We will also be ensuring families can continue to access YouTube.

Will the legislation pass this year?

- We have made a commitment to introduce legislation this year.
- We are working constructively to seek the support of the Parliament and note the Opposition have put on the record they wish to pass it this year.

The Joint Select Committee on Social Media did not endorse this age-limit policy?

- This policy has been subject to significant consultation with young people, parents, mental health professionals, legal professionals, community and civil society groups, state and territory first ministers and industry representatives.
- It has the support of National Cabinet.
- The Social Media Inquiry hearings brought forward a range of views and we thank the Committee for their work.

Pushback on the \$50m fines by the Trump administration / Musk?

- Penalties of this value are not out of the ordinary for similar laws in Australia, including in relation privacy and competition.
- We expect all companies to comply with Australian law.

What age assurance technology will be used? Why legislate if trial not complete?

- There is a 12-month implementation period.
- The age assurance technology trial will be assessing, testing and providing a report to government on what types of technologies exist, that are effective while ensuring security and privacy of users.
- The legislation doesn't need to prescribe technologies and the Government expects that the trial will deliver solutions for consideration and implementation by the end of the financial year.

Is there an exemption framework in the Bill to encourage safe innovation?

- This is an important Bill that will deliver benefits to children and parents.
- Health and education apps are excluded from the legislation, to support those benefits for young people.
- Our broader duty of care is well placed to progress safety-by-design principles, including for social media, and other digital services not captured by the legislation.

Will this policy isolate vulnerable children?

- Our law seeks to protect, not isolate children – we want them and those who care for them to feel empowered and safe to engage in digital environments that are age appropriate for them and minimise their exposure to harms their developing brains just may not be ready for.
- We are ensuring messaging apps like Facebook Messenger Kids, iMessage, WhatsApp and those types of services remain as channels for communication and participation for a young person’s digital inclusion and connection to family and friends.

How will children prove their age? Will face recognition be used instead?

- The Bill does not dictate how platforms must comply with the minimum age obligation.
- Social media platforms will be required to implement reasonable steps to ensure a person under 16 cannot have an account.
- The outcomes of the Australian Government’s age assurance trial are likely to be instructive for regulated entities, and will inform the regulatory guidance issued by the Commissioner, in the first instance.
- Under the proposed legislation, there are strong privacy protections. Platforms will be required to destroy data collected for age assurance purposes when the age assurance process is complete.

Is “reasonable steps” a strong enough standard?

- ‘Reasonable steps’ is a standard that has been imposed for the purpose of demonstrating compliance and features in national security legislation, privacy law, and elsewhere in the Online Safety Act.

Will social media companies store identity data of Australians?

- Under the proposed legislation, there are strong privacy protections.
- Platforms will be required to destroy data collected for age assurance purposes when the age assurance process is complete.
- Not destroying data would be a breach of the Privacy Act, with penalties of up to \$50 million.
- Our regulators, including the Information Commissioner, will be funded to oversee this.

Where will age assurance data be stored? How long will data be stored?

- Under the proposed legislation, there are strong privacy protections.
- Platforms will be required to destroy data collected for age assurance purposes when the age assurance process is complete.
- Not destroying data would be a breach of the Privacy Act, with penalties of up to \$50 million.

Our regulators, including the Information Commissioner, will be funded to oversee this.

Can data collected for age assurance purposes be used for any other purpose?

- Platforms will be required to destroy data collected for age assurance purposes when the age assurance process is complete.
- Not destroying data would be a breach of the Privacy Act, with penalties of up to \$50 million.
- This also applies to any third-party providers of age assurance technology used by a social media service.
- Our regulators, including the Information Commissioner, will be funded to oversee this.

Principals want YouTube available in the classroom?

- The Bill and associated rules will allow access to YouTube.
- The use of YouTube will not be constrained in classrooms, as it provides important educational benefits.

OFFICIAL

BACKPOCKET BRIEF – DIGITAL PLATFORMS, SAFETY AND CLASSIFICATION DIVISION

ALANNAH AND MADELINE FOUNDATION GRANT

Key Points

- In October 2022, the Government committed to provide **\$6 million over three years** to the Alannah and Madeline Foundation (AMF) to deliver its digital and media literacy education products free in Australian schools.

Underlying cash (\$ millions) (excluding GST)	2023-24	2024-25	2025-26	Total paid to date	Total grant
	1.88	2.08	2.04	3.96	6.0
	PAID	PAID			

- **eSmart Media Literacy Lab:** Since 1 July 2023 all secondary schools across Australia have had free access to the eSmart Media Literacy Lab for students from 12 to 16 years old.
 - This is an online learning tool helping secondary students to develop and apply critical thinking skills to media and online civic engagement.
- **eSmart Digital Licence+:** Since Term 1 2024 all primary schools across Australia have had free access to the eSmart Digital Licence+ digital and media literacy program for students aged from 10 to 14.
 - This is an educational program for students which teaches them about the challenges of the digital world through a gamified experience of content, stories and reflections.
- **eSmart Digital Licence for lower primary schools:** Since Term 4 2024 for all primary schools have had access to this the eSmart Digital Licence for lower primary schools for students aged from 4 to 9.
 - This product teaches children how to meet the demands and challenges of the digital world.
- **If asked about uptake:** The total number of schools and students using the products since becoming freely available through Government funding, are included at [Attachment A](#).

OFFICIAL**BACKPOCKET BRIEF – DIGITAL PLATFORMS, SAFETY AND CLASSIFICATION DIVISION****Background**

- One further payment (\$2.04 million) will be made to AMF in the 2025-26 financial year. This is contingent on:
 - The department being satisfied with AMF's progress delivering its grant obligations, and
 - Delivery of an independent evaluation report in December 2025.

Under the grant agreement AMF will receive a total of \$6.0 million over three years (2023-24 to 2025-26).

Funding breakdown per product:**eSmart Media Literacy Lab (for 12 to 16-year olds) AVAILABLE NOW**

(\$ millions)	2023-24	2024-25	2025-26	Total
(excluding GST)	0.53	0.53	0.54	1.6

- Of the \$6 million, \$1.6 million over three years (2023-24 to 2025-26) is for AMF to deliver and evaluate the Media Literacy Lab product.

eSmart Digital Licence+ (for 10 to 14-year olds) AVAILABLE NOW

(\$ millions)	2023-24	2024-25	2025-26	Total
(excluding GST)	0.0	0.4	0.4	0.8

- Of the \$6 million, \$0.8 million over two years (2024-25 to 2025-26) is for delivery and evaluation of the Digital Licence+ product for 10 to 14-year olds.
 - No government funding is being provided in 2023-24, as the delivery and evaluation of the digital licence is being funded through a grant arrangement with Accenture.
- The Digital Licence+ program for 10 to 14-year olds has been available to all schools across Australia since Term 1, 2024 for two years.

eSmart Digital Licence for lower primary schools (for 4 to 9-year olds) AVAILABLE NOW

(\$ millions)	2023-24	2024-25	2025-26	Total
(excluding GST)	1.35	1.14	1.11	3.6

OFFICIAL**BACKPOCKET BRIEF – DIGITAL PLATFORMS, SAFETY AND CLASSIFICATION DIVISION**

- Of the \$6 million, \$3.6 million over three years (2023-24 to 2025-26) is for the development, delivery and evaluation of the Digital Licence+ product for 4 to 9-year olds.
 - \$1.35 million in 2023-24 for AMF to design and develop the product, and then \$2.25 million over two years (2024-25 to 2025-26) for AMF to deliver and evaluate the product.
- The eSmart Digital Licence for lower primary schools for 4 to 9-year olds has been available since 14 October 2024 and will be available for two years.
 - It is a new product to equip students aged 4 to 9 with foundational digital and media literacy skills.

OFFICIAL**BACKPOCKET BRIEF – DIGITAL PLATFORMS, SAFETY AND CLASSIFICATION DIVISION**

Attachment A

Data provided by AMF as at 31 August 2024:

eSmart Digital Licence+ (for 10 to 14-year olds) - available free for schools from 31 January 2024

	Since commencement of government funding ¹ 31 Jan 2024 to 31 Aug 2024
Total schools connected	186
Total students connected	16,771
Total students completed 1 module	9,555

eSmart Digital Licence for lower primary schools (for 4 to 9-year olds) - available free for schools from 14 October 2024

This product became available to schools from 14 October 2024 – data on uptake is not yet available.

eSmart Media Literacy Lab – available free for schools from 1 July 2023

	Developed with support of government funding ²
Total students connected	1,780
Total schools connected	50
Total students completed 1 module	179

The Grant Agreement with AMF includes an obligation for AMF to engage in and report on ongoing promotional and engagement activities to encourage increased uptake of products by schools. Some promotional activities undertaken by AMF to date include promotional launches of products attended by Minister Rowland, mainstream media (7News) coverage, promotion on social media channels (including paid advertising), and email distributions to mailing lists.

¹ The eSmart Digital Licence+ for upper primary school (Years 4-6) existed prior to the government funding. Figures reflect uptake since government funding commenced in Term 1, 2024.

² The eSmart Media Literacy Lab (Years 6-9) existed prior to government funding. Figures reflect uptake since the start of government funding in Term 3, 2023.

Platform	Public launch year	Total years since launch
Facebook	2006	18 years
Instagram	2010	14 years
X (formerly Twitter)	2006	18 years
Tiktok	2017	7 years
Snapchat	2011	13 years
Reddit	2005	19 years

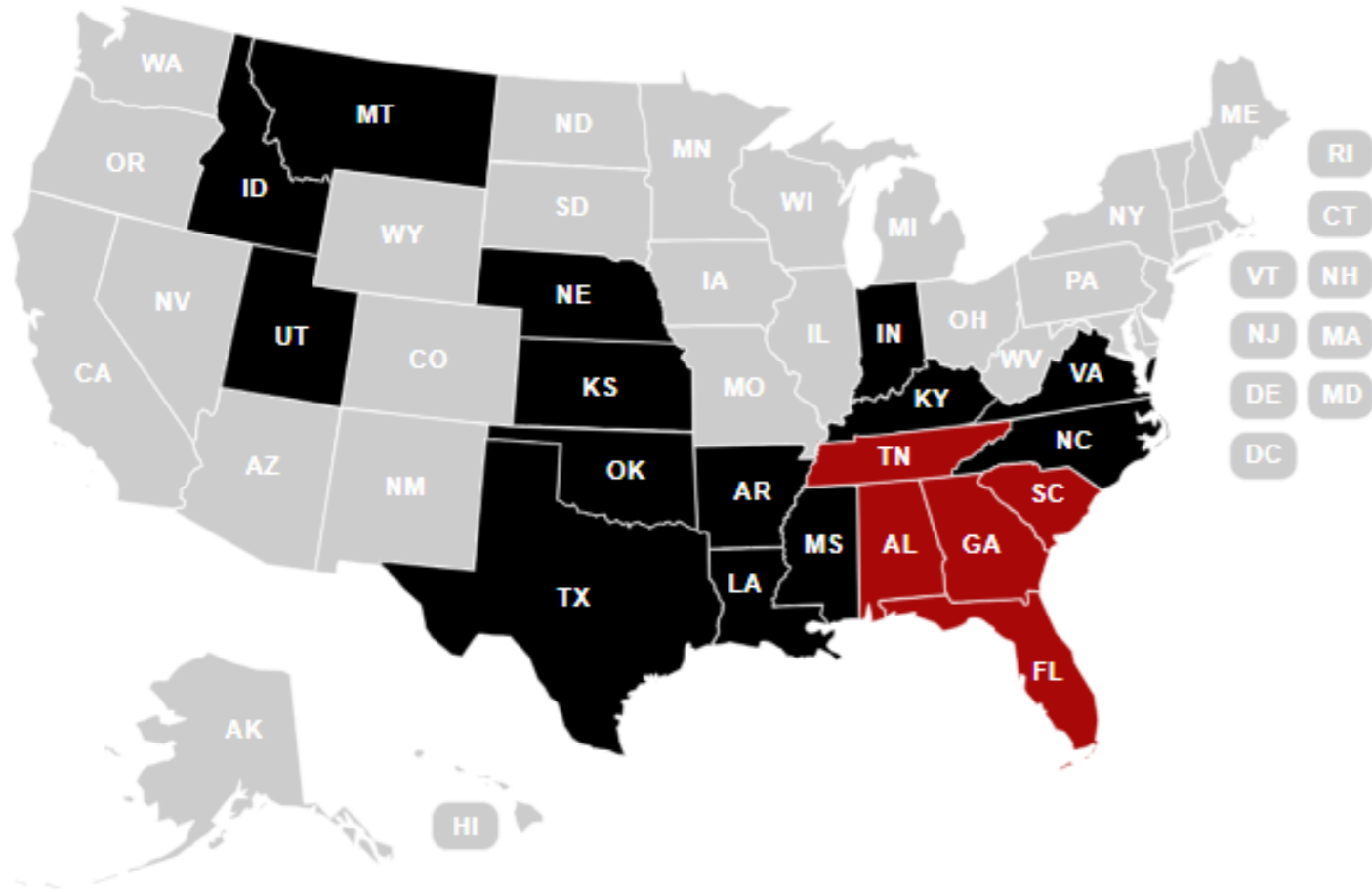
Social Media Age Limits – Enforcement by Country

Key	Act in force	Guidelines in force	In progress	Repealed
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Country/ Jurisdiction	Legislation	Age limit	Method
Australia	Online Safety Amendment (Social Media Minimum Age) Bill - 2024	16+	<ul style="list-style-type: none"> -Bill introduced. Will require social media platforms to take reasonable steps to prevent under 16s from having accounts.
Canada	Protecting Young Persons from Exposure to Pornography Act (S-210) - 2023	U18	<ul style="list-style-type: none"> Makes it an offence for organizations to make sexually explicit material available to young persons on the Internet and enables a designated enforcement authority to take steps to prevent sexually explicit material from being made available to young persons on the Internet in Canada. Platforms must use a prescribed age assurance method that is private, reliable, purpose specific, destroys personal data after verification and otherwise complies with best practice in the field of age verification.
Canada	Protection of Minors in the Digital Age Act (C-412) - 2024	U18	<ul style="list-style-type: none"> Requires platforms to use reliable, privacy preserving age verification to impose default safeguards on the accounts of children
China	Guidelines for the Establishment of Minors’ Modes for the Mobile Internet - 2023	U17	<ul style="list-style-type: none"> Minor mode activated by default on device level, with daily time restrictions varying by age, content filters and parental exemption.
China	Regulations on the Protection of Minors Online - 2023	U18	<ul style="list-style-type: none"> Software and devices intended for use by minors must come functionality for identifying illegal information and information harmful to minors
China	Measures for the Administration of Internet Information Services - 2000	U18	<ul style="list-style-type: none"> Platforms legally operating in China must register as an internet content provider, with requirements for a local office and meeting content guidelines.
EU	Digital Services Act	U18	<ul style="list-style-type: none"> EU Digital Wallet being considered as a method of age verification under the Act; Spain is also considering a digital wallet.
EU	Audiovisual Media Services Directive (AVMSD) under the Digital Services Act (DSA)	U18	<ul style="list-style-type: none"> The DSA establishes a regulatory framework for online safety in the EU; the AVMSD obliges VLOPs and VLOSEs to assure age when there is risk to children Austria, Belgium, Czech Republic, Denmark, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Slovak Republic, Slovenia, Spain have related laws. Differences in how they describe content harmful to minors; mostly require age assurance, but note it as a possible measure rather than mandatory.
France	Law No. 2020-936 of 30 July - 2020	U18	<ul style="list-style-type: none"> -Authorizes Arcom to block websites that do not comply with Law No. 92-684 (1992) banning the exposure of minors to pornographic content and utilize age verification established under SREN to prevent dissemination of pornographic content to minors.
France	Security and Regulation of the Digital Space law (SREN) Law - 2024	U18	<ul style="list-style-type: none"> -Prevent under 18s participating in online games; regulator ARCOM established technical standard for age verification in October 2024
France	Law no. 2023-566 – June 2024	15+	<ul style="list-style-type: none"> -Parental consent required to access online services; aimed to establish digital age of majority in France. ARCOM approved age verification required.
Germany	Interstate Treaty on the Protection of Minors in the Media (JMStV) - 2002, modified by AVMSD		<ul style="list-style-type: none"> -Legislating under the DSA AVMSD; advanced age verification system
Norway	Proposed amendment to the Personal Data Act – October 2024	15+	<ul style="list-style-type: none"> -Aims to amend the Personal Data Act from 13 to 15 and introduce age verification controls -Norway’s Digital ID system being considered as a method
Republic of Korea	Youth Protection Act (Cinderella legislation/Shutdown Law) – Enacted 2011, parental exemption introduced 2014, repealed 2021	U16	<ul style="list-style-type: none"> -Forbade users under the age of 16 to play online video games between the hours of midnight to 6AM; did not restrict mobile or console games.
Singapore	Code of Practice for Online Safety – 2023 (under Online Safety (Miscellaneous Amendments) Act – 2023)	U18	<ul style="list-style-type: none"> -Children must be restricted access from services or provided accounts with default child-friendly settings and content.
UK	Online Safety Act - 2021	13+	<ul style="list-style-type: none"> Companies must confirm the age of users using highly effective age assurance, prevent children from encountering legal but harmful content, such as self-harm or eating disorder content, as well as restricted content such as pornography and extreme violence. Must also enforce their own terms of service, which generally restrict users from under 13 from creating an account (based on the US COPPA) Under the Act, OnlyFans and other adult sites have introduced age verification; OnlyFans is using Yoti’s facial age estimation In January 2025 Ofcom will finalise guidance on children’s access and age assurance; in July 2025 platforms must implement safety measures.
USA	Children’s Online Privacy Protection Act (COPPA) - 1998	13+	<ul style="list-style-type: none"> -Requires online services to seek parental consent when collecting personal data for u13s.
USA	Children's Internet Protection Act (CIPA) – 2000, updated 2011	U18	<ul style="list-style-type: none"> Requires schools receiving discounted internet access filter internet for inappropriate content and monitor activities of minors on school networks.
USA	Preventing Rampant Online Technological Exploitation and Criminal Trafficking (PROTECT) Act - S.3718 - 2024	18+	<ul style="list-style-type: none"> Would mandate that pornographic websites verify the age, identity and consent of content uploaders.
USA	Shielding Children’s Retinas from Egregious Exposure on the Net (SCREEN) Act - H.R.6429 / S.3314 - 2024	18+	<ul style="list-style-type: none"> Would require pornographic websites to implement robust age verification technology to bar children from accessing their content and implement data security and minimization standards.
Vietnam	147/2023/ND-CP – In Effect December 25 2024	16+	<ul style="list-style-type: none"> All users of social networking platforms must authenticate their identities using their verified phone numbers Parents or guardians of children under 16 must use their personal information to register and supervise the content their children post or share.

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USA



■ law in effect ■ law scheduled to take effect

In 2024, Laws have been passed in: Idaho, Indiana, Kansas, Kentucky, Nebraska, Alabama, Oklahoma, Florida, South Carolina, Tennessee, and Georgia. In previous years, laws have been passed in: North Carolina, Montana, Texas, Arkansas, Virginia, Mississippi, Utah, Louisiana. For USA State Age Verification Laws, refer to: [AV Mandate Effective Dates – Action Center](#)

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Online Safety Amendment (Social Media Minimum Age) Bill 2024

Talking points and detailed questions

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TALKING POINTS

Note if asked about legal advice or whether the Bill is consistent with the constitution or international law: *I am satisfied the Bill properly addresses legal issues and it is not appropriate to comment further.*

Bill overview

- Keeping Australians safe online is a top priority for the Albanese Government. We are focused on positive solutions to issues of national concern, and the issue of harms to children and young people from social media is right up the top of that list.
- Social media has become a ubiquitous and a normal part of life for many young Australians. It is a source of entertainment, education and connection with the world – and each other. But we also know social media is causing harm.
- Until now, the incentive structure for social media companies has been to optimise user engagement and time spent on platforms. This was illustrated by the comments from the chief executive of a major video streaming service: “we’re competing with sleep, on the margin”. While this impacts all users of social media, it is particularly detrimental to young people, who are generally more vulnerable to the harms associated with platforms.
- In 2022 a group of UK psychologists and neuroscientists, analysing longitudinal data on 17,400 young people, found that young girls experience a negative link between social media use and life satisfaction when they are 11 to 13 years-old and young boys when they are 14 to 15 years old.
- In the United States, the American Psychological Association found significant links between excessive social media use and poor sleep quality and poor mental health outcomes. In particular, the use of algorithms may increase the likelihood of exposing young people to content that is inappropriate or negatively influential, such as glorifying eating disorders, self-harm or extremist content.
- Research conducted by eSafety found that that 95% of Australian caregivers find online safety to be one of their toughest parenting challenges.
- The Government has heard the concerns of parents, young people and experts. Social media has a social responsibility. We know they can – and should – do better to address harms on their platforms. But they haven’t. That’s why we’re making big changes to hold platforms to account for user safety.
- The Online Safety Amendment (Social Media Minimum Age) Bill 2024 will amend the *Online Safety Act 2021* (OSA) to introduce greater protections for young Australians at a critical stage of their development.
- The Bill will:
 - Require age-restricted social media platforms to take reasonable steps to prevent under 16s from having accounts.

- Introduce a new definition for ‘age-restricted social media platform’ to which the minimum age obligation applies, alongside rule-making powers for the Minister for Communications to narrow or further target the definition.
 - Provide for the delayed effect of the minimum age obligation of at least 12 months after Royal Assent.
 - Establish 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.
 - Provide powers to the eSafety Commissioner to seek information relevant to monitoring compliance, and issue and publish notices regarding non-compliance.
 - Impose maximum penalties of up to 150,000 penalty units (equivalent to \$49.5 million), for breach of the minimum age obligation by corporate actors.
 - Increase maximum penalties of up to 150,000 penalty units for breaches of industry codes and standards, to reflect the seriousness of the contravention, consistent with community expectations.
 - Incorporate a range of other minor measures and consequential amendments to give effect to the above.
- The Bill puts the onus on social media platforms, not parents or young people, to take steps to ensure fundamental protections are in place. This is about letting parents know we’re in their corner when it comes to supporting their children’s health and wellbeing.

Consultation and feedback informing the Bill

- The Government conducted a targeted consultation process with key stakeholders on the measures in the Bill, including with mental health organisations and relevant industry stakeholders.
- Mr Robert French AC, former Chief Justice of the High Court, was also consulted and provided considered feedback on the Bill, drawing particularly on his experience preparing the Independent Legal Examination into Banning Children’s Access to Social Media.
- Insights from state and territory governments helped inform the age, legislative model and supporting activities for the social media minimum age. Feedback from states was obtained through ongoing engagement with my Department, and responses to the letter the Prime Minister sent to premiers and chief ministers on 4 October 2024.
- The Bill also incorporates extensive feedback received through the consultation phase of the age assurance trial, where the government held 9 roundtable discussions with young Australians, parenting groups, academics and child development experts, the digital industry (including social media companies, app stores and hardware providers), community organisations, civil society groups, First Nations youth and age assurance providers.

Setting a minimum age for social media

- There is robust evidence suggesting that social media is exposing young Australians to a range of harms, many stemming from the addictive features of platforms. At the same time,

there are differing views amongst experts about the ‘right age’ – at the NSW Government’s Social Media Summit expert opinions ranged from 14 to 16 years.

- The Bill specifies a minimum age of 16 years for access to age-restricted social media platforms. Setting the bar at 16 balances the expectations of Australians to minimise the harms experienced by young people on social media, while supporting their rights to participate in beneficial online activities, including connections with friends, accessing community and support services, and participating in public life.
- The decision follows extensive consultation with young people, parents and carers, academics and child development experts, community, industry and civil organisations, and First Nations youth and state and territory governments. The age was endorsed by National Cabinet on 8 November 2024.

Establishing a minimum age obligation

- The Bill introduces an obligation on providers of an age-restricted social media platform to take reasonable steps to prevent age restricted users from having an account with the platform.
- The onus is on platforms to demonstrate that they have introduced systems and processes to ensure that people under the minimum age cannot create and hold a social media account. It is not the intention that the Bill would punish a platform for individual instances where young people circumvent any reasonably appropriate measures put in place by the platform – however, a systemic failure to take action to limit such circumventions could give rise to a breach.
- As the onus is on platforms, there are no penalties for young Australians, or for their parents, carers or educators.

Defining the regulated entities and regulated activity

Regulated entities

- The Bill introduces an obligation on ‘age-restricted social media platforms’, which is a new term being introduced into the Online Safety Act. A condition of the definition is that a significant purpose of the platform is to ‘enable online social interaction between 2 or more users’.
- The definition casts a wide net, to ensure the minimum age obligation applies broadly to the range of services we know and understand to be social media.
- At the same time, there is flexibility to reduce the scope or further target the definition through legislative rules. In making rules to reduce the scope, the Minister must seek and have regard to the advice of the eSafety Commissioner, and may also seek the advice of other relevant Commonwealth agencies. Achieving this through disallowable instruments, rather than primary legislation, allows the Government to be responsive to changes and evolutions in the fast-moving social media ecosystem.
- In the first instance, the Government proposes to make a legislative instrument to exclude the following services from the definition of age-restricted social media platforms:
 - messaging (which allow connections, including within families)

- online gaming services (which are already subject to classifications that give parents clear messages about age suitability)
- services that primarily function to support the health and education of end-users.

Regulated activity

- Age-restricted social media platforms must be able to demonstrate having taken ‘reasonable steps’ to prevent age-restricted users from ‘having an account’.
- ‘Reasonable steps’ is a standard that has been imposed for the purpose of demonstrating compliance and features in national security legislation, privacy law, and elsewhere in the Online Safety Act. It was recommended by Mr French in his report.
- In the context of the Bill, it is expected the ‘reasonable steps’ will mean that platforms must put in place some form of age assurance. Whether an age assurance method meets the ‘reasonable steps’ test is to be determined objectively, having regard to the suite of methods available, their relative efficacy, costs, and privacy implications on users, amongst other things.
- Regulating the act of having an account will prevent age-restricted users from accessing the content and features that are available to signed-in account holders on social media platforms. This will help to mitigate the risks arising from harmful features that are largely associated with user accounts (the ‘logged-in’ state), such as persistent notifications and alerts which have been found to have a negative impact on sleep, stress levels, and attention.

Commencement

- While the Bill specifies a minimum lead-in period of 12 months for the minimum age obligation to be activated, it is otherwise open-ended and allows for the Minister to determine the day the obligation takes effect. This flexibility reflects the novel nature of the Bill, and the inherent uncertainties with taking forward world-leading legislation.
- It is the Government’s intention to give effect to the minimum age obligation as soon as practicable, balancing the need to act quickly to minimise risks of harm to young Australians online, with realistic timeframes for regulatory compliance.
- The deferred commencement will provide industry and the eSafety Commissioner with sufficient time to develop and implement appropriate systems, to ensure both the regulator and the regulated sector are set up for success.
- It would also allow for the outcomes of the Government’s age assurance technology trial to inform Government and the eSafety Commissioner on implementation and enforcement of the minimum age.

Penalties

- In making these reforms, it is critical we send a clear signal to platforms about the importance of their social responsibilities to all Australians.
- As such, the Bill will impose significant penalties for breaching the minimum age obligation. This will be as high as 150,000 penalty units (equivalent to \$49.5 million) for bodies

corporate, consistent with serious offences set out in the *Privacy Act 1988* and *Competition and Consumer Act 2010*.

- The Bill also increases penalties for breach of industry codes and industry standards to up to 150,000 penalty units for bodies corporate. This addresses the current low penalties in the OSA, which were identified as an issue in the course of the independent review of the Act.
- Maximum civil penalties of \$49.5 million for bodies corporate will also bring Australia in line with the online safety maximum financial penalties in Ireland, the European Union and the United Kingdom.
- The penalty amounts are intentionally large, which reflects the significance of the harms the Bill is intended to safeguard against. It will also strongly signal the expectation that age-restricted social media platforms treat the minimum age obligation seriously.
- Penalties do not apply to young people who may gain access to an age-restricted social media platform, or to their parents, carers or educators.

Privacy protections

- In practice, platforms will be required to undertake some form of age assurance on account holders, as a means of satisfying the 'reasonable steps' element of the minimum age obligation. While assurance techniques vary, many involve the capture of new information or data for the purposes of age assessment.
- Australians are – rightfully – increasingly concerned about the vast collection, storage and misuse of their personal data by digital services. Strong privacy protections are critical to building the security, confidence and trust necessary to drive innovation and economic growth.
- The Bill incorporates strong protections for personal information collected by platforms for age assurance purposes. These privacy safeguards impose robust obligations on platforms to ringfence and destroy any information collected, with serious penalties applicable for breach of these requirements.
- Importantly, platforms must not use information collected through age assurance methods for any other purpose, unless explicitly agreed by the user. This agreement must be voluntary, informed, current, specific and unambiguous – this is an elevated requirement that precludes platforms from seeking consent through preselected settings or opt-outs.
- The approach taken in the Bill builds on Australia's existing privacy framework, taking a heightened approach to information protection that is informed by the 2022 review of the Privacy Act.
- Serious and repeated breaches of these privacy provisions could result in penalties of up to \$50 million under section 13G of the Privacy Act.

Review

- The Bill incorporates a review of the legislation within two years from effective commencement – the clock starts ticking when the minimum age obligation takes effect.

TALKING POINTS

- The review provides the Government with an opportunity to recalibrate policies, if required, to be proportionate to changed behaviours – of both social media platforms and young people.
- It will allow time to recognise any technological advancements since commencement, to reconsider the definition of an age-restricted social media platform, consider if any alternative forms of access should be in place, and to consider whether other digital platforms such as online games or additional social media platforms that can be viewed without an account, should be captured within scope.

QUESTIONS & ANSWERS

Minimum age obligation

Why has the minimum age been set at 16 years?

- Young people's use of social media is a complex issue and there is currently no clear and agreed age at which young people can safely use social media. No two people's experiences on social media are the same. Social media services vary greatly in their primary purpose and design features, and therefore present a different level of risk to end-users. Young people also vary substantially in how they use social media, including which platforms they access, the content and communities they engage in, and the digital features they are exposed to.
- However, there is a growing body of evidence to suggest that at 16, young people are generally outside the most vulnerable adolescent stage.
- For example: in 2022 a group of UK psychologists and neuroscientists, analysing longitudinal data on 17,400 young people, found that young girls experience a negative link between social media use and life satisfaction when they are 11 to 13 years-old and young boys when they are 14 to 15 years old.
- Community sentiment in New South Wales (NSW) aligns with this finding. The NSW Government conducted a Have Your Say survey with more than 21,000 responses in relation to social media use and impacts in August and September 2024.
 - 87 per cent of respondents expressed support for a minimum age for social media.
 - 16 years was the most commonly suggested minimum age (40 per cent) and 18 years the second most common (25 per cent).
 - The average suggested age was 16.2 years old.
- Setting the bar at 16 balances the expectations of Australians to minimise the harms experienced by young people on social media, while supporting their rights to participate in beneficial online activities, including connections with friends, accessing community and support services, and participating in public life.
- The decision follows extensive consultation with young people, parents and carers, academics and child development experts, community, industry and civil organisations, and First Nations youth and state and territory governments. The age was endorsed by National Cabinet on 8 November 2024.

Who is responsible for enforcing the minimum age? Will young people, parents or educators be punished if a person under 16 years gains access to social media?

- The Bill puts the onus on platforms, not parents, educators or young people, to take reasonable steps to ensure that users under the minimum age cannot create or hold an account.
- As the onus is on age-restricted social media platforms, there are no penalties for Australians under 16 years who gain access to an age-restricted social media platform, or for parents or educators who may provide such access.
- Additionally, platforms will not be penalised for individual instances where under 16s circumvent any reasonably appropriate measures put in place by the platform to prevent this. However, a systemic failure to take action to limit such circumventions could give rise to a breach.
- It is impossible for governments to completely stop young people from accessing harmful products or content. Australia should be prepared for the reality that some people will break the rules, or slip through the cracks.
- However, the Bill will set clear parameters and norms for our society and assist in ensuring the right outcomes – much like other age-based laws, such as for the sale of alcohol and cigarettes.
- This is about protecting young people – not punishing or isolating them – and letting parents know we’re in their corner when it comes to supporting their children’s health and wellbeing.

Does that mean that people under 16 can’t view social media at all?

- In practice, the Bill would mean that young Australians under 16 years will be unable to have an account with an age-restricted social media platform in their own right. However, they will not be prevented from accessing content on an age-restricted social media service in a ‘logged out’ state (i.e. without logging into an account or profile).
- As an example, Facebook offers users the ability to view some content, such as the landing page of a business or service that uses social media as their host platform, without logging in – the obligation would not affect this practice.
- In honing in on account holding, the obligation seeks to mitigate the risks arising from harmful features that are largely associated with user accounts, or the ‘logged-in’ state, such as persistent notifications and alerts which have been found to have a negative impact on sleep, stress levels, and attention.
- It also seeks to strike a balance between protecting young people from harm, while limiting the regulatory burden on the broader population.

If a young person under the minimum age already has a social media account, will they be allowed to keep it under the new laws?

- No, there will be no grandfathering for accounts created by age-restricted users prior to the day the obligation takes effect.
- 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.
- 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 decided that grandfathering would be very difficult to administer, and could incentivise the mass creation of accounts for young people ahead of the Bill's implementation. It would also lead to more information being collected by platforms from those new accounts.
- Instead, 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.

Scope – regulated services

Which types of services will the minimum age obligation apply to?

- The Bill introduces an obligation on 'age-restricted social media platforms', which is a new term being introduced into the Online Safety Act. A condition of the definition is that a significant purpose of the platform is to 'enable online social interaction between 2 or more users'.
- This is a robust definition that includes services that are commonly understood to be social media. While the definition casts a wide net of services that may be captured, the Bill includes flexibility to reduce the scope or further target the definition through legislative rules made by the Minister for Communications, who must have regard to the advice of the eSafety Commissioner.
- This will ensure that users under the minimum age retain access to platforms that predominately provide beneficial experiences that are grounded in connection, education and support, as these platforms will not fall within scope of the obligation.
- In the first instance, this power will be used to carve out messaging services, online games, and services that primarily function to support the health and education of users.
- The Bill also makes it clear that online social interaction does not include online business interaction. For example, it is not intended the definition would capture a platform that primarily operates as a marketplace for goods and services, but which features online social interaction (e.g. product reviews and customer feedback) as an insignificant component of its service offer.

Are online games in scope?

- While some online games may be captured by the definition of ‘age-restricted social media platform’, the Government’s intention is to use a rule-making power available under the Bill to take online games out of scope.
- This means that practically, the law will not impact the way Australians, including young people, play and interact with online games.
- Online games are currently regulated under the National Classification Scheme. The Scheme provides information on the age suitability of online games through a combination of the classification and relevant consumer advice. There are two legally restricted classifications under the Scheme of MA15+ (legally restricted to persons 15 years of age or older, unless accompanied by a responsible adult) and R18+ (legally restricted to adults).
- As a result, imposing additional age-based regulation to online games would create unnecessary regulatory overlap.

Are messaging apps in scope?

- The definition of ‘age-restricted social media platform’ is likely to include messaging services. However, the Government’s intention is to use a rule-making power, available under the Bill, to take messaging services out of scope.
- This means that practically, the law will not impact the way Australians, including young people, use messaging services.
- While messaging services can still expose users to harmful content from other users, they do not face the same addictive features as other forms of social media. These services will still be subject to the broader Online Safety Act, and the proposed digital duty of care. Further, including messaging apps could have wider consequences, such as making communication within families harder and more expensive.
- To be clear, this exclusion will apply to ‘core’ or ‘standalone’ messaging apps. Services that incorporate other features and allow users to interact in other ways, may not fall into this exclusion. The minimum age obligation will therefore apply to them.

What else is out of scope?

- The Minister for Communications intends to use a rule-making power, available under the Bill, to exclude from the definition services that primarily function to support the health and education of end-users.

Is it right that Snapchat will not be captured because they’re a messaging service?

- The Government considers Snapchat to offer features beyond those of a standalone messaging app. Users are able to share photos and videos to the world at large, as well as find and follow other users online. As such, it likely they would be within scope of the minimum age obligation.

- The exclusion for messaging apps will apply to ‘standalone’ messaging apps. Services that incorporate other features and allow users to interact in other ways, are unlikely to fall into this exclusion.

Is YouTube in scope? What about YouTube kids?

- While YouTube may fall within the definition of ‘age-restricted social media platform’, 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..
- YouTube Kids is unlikely to fall within scope of the definition of ‘age-restricted social media platform’ as it operates more like a video streaming service, without the same interactive features as YouTube (for example, comments and likes). This means it is unlikely to satisfy the ‘online social interaction’ limb of the definition.

Which other platforms are in scope? Which are out of scope?

- Refer to the table at **Attachment A**.
- When referring to a platform, it would be preferable to avoid definitive statements about whether it is in or out of scope, noting this would be subject to legal interpretation.
- Suggest instead using the words: “we consider it likely, based on the conditions specified in the definition of ‘age-restricted social media platform’ and the proposed Rules to be made under the Bill, that the platform is [in scope / out of scope] of the definition”.

Will the age limit affect the ability for users to view social media content embedded in a website (for example, a YouTube clip or social media post included in an online news article)?

- The minimum age obligation will not impact the ability for websites to embed or link to social media content, unless those links require the user to hold an account with a specific social media service in order to view the content.

Why is there no exemption framework?

- 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.
- 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.

Age assurance

How will the minimum age obligation be implemented?

- 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 under the age of 16 years.
- 'Age assurance' encompasses a range of methods for estimating or verifying the age or age range of users. Whether an age assurance technology meets the 'reasonable steps' test is to be determined objectively, having regard to the suite of methods available, their relative efficacy, costs associated with their implementation, and data and privacy implications on users, amongst other things. The degree and method of assurance required may also vary depending on the nature of the platform in question.
- The Government is currently undertaking an age assurance technology trial, which will examine available technologies and methods against a range of criteria. The outcomes of the trial will provide guidance to the Government, the eSafety Commissioner and industry about where the market is currently situated, to inform what the reasonable steps could be. The trial outcomes 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.

Will all Australians need to provide social media companies with Government ID to be able to use their platforms?

- Age assurance is an umbrella term that incorporates age verification (including through identification) and estimation (such as through user interaction or facial age estimations). It does not necessarily involve 'hard' identification, and the privacy implications of such identification would be a key balancing element in considering what a 'reasonable step' would be.
- 'Age assurance' encompasses a range of methods for estimating or verifying the age or age range of users. While some basic methods may require referencing against identification documents (e.g. a licence or credit card), others can estimate age or an age range based on user interaction.
- The Government is currently undertaking an age assurance technology trial, which will examine available technologies and methods against a range of criteria. The outcomes of the trial will provide guidance to the Government, the eSafety Commissioner and industry about where the market is currently situated, to inform what would be reasonable to implement.

How does the age assurance trial relate to the implementation of the minimum age?

- The age assurance trial will assess the availability and maturity of different age assurance technologies that might be employed by social media services to satisfy the reasonable steps obligation.

- The Government's age assurance trial, funded to take place throughout 2024-25, will inform guidance to industry on what age assurance technologies would be considered 'reasonable' and consistent with the minimum age obligation.

Privacy safeguards

Why is the Government making social media platforms collect more of users' data?

- In practice, social media platforms will be required to use some form of age assurance on prospective and existing account holders, in order to satisfy the 'reasonable steps' element of the minimum age obligation.
- While assurance techniques vary, many involve the capture of new information or data for the purposes of age assessment. The Bill incorporates strong protections for personal information collected by platforms for age assurance purposes. These protections are critical to building the security, confidence and trust necessary to drive innovation and economic growth.
- Australians are – rightfully – increasingly concerned about the vast collection, storage and misuse of their personal data by digital services.
- This is an important measure to ensure critical protections are in place for those who are more vulnerable to the harms associated with social media platforms – young Australians.

What privacy protections will be in place?

- The Bill imposes robust obligations on platforms to ringfence and destroy any information collected, with serious penalties applicable for breach of these requirements.
- Importantly, platforms must not use information collected through age assurance methods for any other purpose, unless explicitly agreed by the user. This agreement must be voluntary, informed, current, specific and unambiguous – this is an elevated requirement that precludes platforms from seeking consent through preselected settings or opt-outs.
- In addition, once the information has been used for age assurance or any other agreed purpose, it must be destroyed by the platform (or any third party contracted by the platform).
- Serious and repeated breaches of these privacy provisions could result in penalties of up to \$50 million under section 13G of the Privacy Act.
- The approach taken in the Bill builds on Australia's existing privacy framework, taking a heightened approach to information protection that is informed by the 2022 review of the Privacy Act.

Penalties

What penalties will exist for breach of the minimum age penalty?

- The Bill will create new civil penalty provisions and require age-restricted social media platforms to take reasonable steps to prevent age-restricted users from having an account.

- A failure by the provider will be subject to 30,000 civil penalty units (currently equivalent to \$9.9 million).
- This increases to 150,000 penalty units (currently equivalent to \$49.5 million) if the provider is a body corporate, due to the application of section 82 of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act).
- Penalties do not apply to age-restricted users who may gain access to an age-restricted social media platform, or to their parents, carers or educators.

Why are the penalties so high?

- The penalty amounts are intentionally large, which reflects the significance of the harms the Bill is intended to safeguard against.
- It will also strongly signal the expectation that age-restricted social media platforms treat the minimum age obligation seriously.
- These penalties in the Bill are consistent with the maximum penalties currently available for contravention of the Australian Consumer Law under the *Competition and Consumer Act 2010*, and for serious and repeated interferences with privacy under the *Privacy Act 1988*.
- Maximum civil penalties of \$49.5 million for bodies corporate will also bring Australia in line with the online safety maximum financial penalties in Ireland, the European Union and the United Kingdom.

Who will determine penalties?

- This will be a matter for the courts.
- The penalty provisions will operate consistently with Part 10 of the Online Safety Act and Part 4 of the Regulatory Powers Act. These provide that in determining penalties, a court must take all relevant matters into account, including:
 - the circumstances of the contravention
 - the nature of the contravening conduct
 - the size of the organisation involved, and
 - whether the entity has previously been found to have engaged in similar conduct.
- A court will therefore have discretion to consider the seriousness of the contravention and impose a penalty that is appropriate in the circumstances.

Powers of the eSafety Commissioner

What powers will the eSafety Commissioner have to enforce the new framework?

- The eSafety Commissioner will be given appropriate powers to ensure the framework is effective. This includes the ability to seek information relevant to monitoring compliance, and issue and publish notices regarding non-compliance.

- The Commissioner's powers are modelled off, and consistent with those that are currently available in the Online Safety Act.

Operationalisation of the Bill

When will the Bill come into effect?

- All provisions of the Bill commence the day after Royal Assent.
- In practice, this enlivens the powers to make the legislative instruments that will establish any carve-outs to the definition of an age-restricted social media service. Work can therefore begin on these instruments straight away.
- However, the Bill provides for a delayed effect of at least 12 months for commencement of the obligation on providers of age-restricted social media platforms to take reasonable steps to prevent age-restricted users from having accounts.
- While the Bill specifies a minimum lead-in period of 12 months for the minimum age obligation to be activated, it is otherwise open-ended and allows for the Communications Minister to determine the day the obligation takes effect. This flexibility reflects the novel nature of the Bill, and the inherent uncertainties with taking forward world-leading legislation.

Why are you giving the digital platforms this amount of time to transition?

- Providing a 12-month minimum lead-in time for the commencement of the obligation sets a realistic timeframe for the regulated sector and the regulator to adapt.
- It affords time for the eSafety Commissioner to develop internal policies and onboard the necessary resources to provide effective oversight and enforcement of the new framework.
- Further, it provides opportunity to educate young people and parents about what is coming, when, and why.
- Allowing for discretion on the effective date also allows the Government's age assurance trial, funded to take place throughout 2024-25, to inform guidance to industry on what age assurance technologies would be considered 'reasonable' and consistent with the minimum age obligation.

Regulatory burden

What will it cost platforms to implement these requirements?

- The minimum age obligation will require platforms to change the way they operate, including by implementing age assurance. There will be a cost, borne by platforms, associated with this.
- Until now, the platforms' cost of doing business has failed to fully account for the social impacts of their business models. The regulatory burden imposed by this Bill is therefore appropriate and proportionate to the harms the Bill seeks to protect against.
- Based on available estimates, it is likely to cost social media companies approximately \$1 per user to put in place age assurance technology and check the age of each existing user. This means that the cost for each company will be proportionate to the number of users on their social media platform.

Other

How are you addressing concerns that the Bill will simply delay exposure to the harms on social media platforms, rather than teaching young people to safely navigate them?

- The Australian Government is putting considerable effort and resources toward making social media safer for all users, including 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 particularly important to ensure that when young Australians can access all social media at the age of 16, they arrive on platforms that are built and run with safety in mind, not on 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'.

How will you ensure that at-risk youth who rely on social media for essential connection, community and mental health support are not negatively impacted by this Bill?

- The intent of the Bill is to protect young people from the harms currently present on social media, not to completely block young people from all forms of online social connection.
- The Bill will ensure young people continue to have access to healthy connections with family and peers, learn and explore, express their creativity, and access support services by allowing for the making of legislative rules that carve out certain types of services from the definition of ‘age-restricted social media platform’. In the first instance, this power will be used to carve out messaging and gaming services, and services that primarily function to support the health and education of users.

There are concerns that a ban could result in young people moving onto more unregulated platforms - how will these proposed laws prevent that from happening?

- The Bill intentionally does not ‘cut off the internet’ for under 16s. Instead, it is focussed on social media platforms, where the vulnerabilities of young users are exploited to keep them endlessly engaged. The legislative rules to carve out health, education, messaging and gaming will provide for safe spaces for under 16s to connect and communicate.
- The Bill also incorporates a review of the legislation two years after effective commencement. This provides the Government with an opportunity to recalibrate policies, if required, to be proportionate to changed behaviours – of both social media platforms and young people.

Does this Bill undermine the statement under the UN Committee on the Rights of the Child that ‘national policies should be aimed at providing children with the opportunity to benefit from engaging with the digital environment and ensuring their safe access to it’?

- The Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, because it promotes the protection of human rights, particularly in consideration of the best interests of the child.
- This includes the right to security of the person, the right not to be subject to arbitrary or unlawful interference with privacy nor to unlawful attacks on one’s honour or reputation, and the right to protection from exploitation.
- Any interference with human rights occasioned in this Bill is in pursuit of a legitimate objective. To the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate to achieve the legitimate aims of the Bill.

What is the interaction between the Industry Codes and the minimum age obligation?

- The Online Safety Act has been a crucial tool for incentivising digital platforms to remove illegal content, and the industry codes and standards regime is fundamental to this.
- The Industry Codes will continue to operate alongside the minimum age framework. This will be important to maintain existing protections for all users.

- The next step will be to develop a digital duty of care regulatory model to keep users safe and help prevent online harms. This, as part of a growing global effort, will deliver a more systemic and preventative approach to making online services safer and healthier.
- Where platforms seriously breach their duty of care – where there are systemic failures – we will ensure the regulator can draw on strong penalty arrangements.

Why is the Bill increasing penalties for breach of Industry Codes and Standards?

- Increased penalties for breaches with these codes and standards can provide important protections against specific and serious forms of online harm, ahead of the minimum age taking effect.

ATTACHMENT A

Assessment of ‘age-restricted social media platform’ scope – major platforms

Note: This table provides an assessment of whether a platform will be subject to the minimum age obligation, based on the definition of an ‘age-restricted social media platform’ and the draft Rules. Note that this applies to having an account, and therefore does not cover viewing content in a logged-out state.

Note: This table is an initial assessment by the Department only, it does not constitute legal advice on the definition or status of platforms.

Key: Green platforms are likely subject to minimum age obligation (‘in scope’); Orange is uncertain; Red are likely not subject to minimum age obligation (out of scope, after considering the ‘carve outs’ in the proposed rules)

	Platform	What is the sole or significant purpose(s) of the service?	Does the service allow end users to link to, or interact with, some or all of the other end users?	Does the service allow end users to post material on the service?	Key design features e.g. infinite scroll, recommender systems, image sharing, etc.	In scope of definition? Yes / no / uncertain	Is the service specified in the draft Rules? i.e. s42	If uncertain whether the service is in scope, what are the factors contributing to this uncertainty?
Major platforms	BlueSky	s47C			Image/video sharing, messaging, location sharing, online relationships, recommender systems	s47C		
	Facebook				Image sharing, location sharing, live streaming, messaging (via Messenger), comments			
	Instagram				Recommender systems, ‘likes’, image sharing, infinite scroll			
	Lego Play (formerly Lego Life)				Image/video sharing, gaming, explore feed, anonymous communication			
	LinkedIn				Recommender systems, ‘likes’, infinite scroll, messaging, image/video sharing			
	Mastodon				Image/video sharing, anonymous communication, location sharing, messaging			
	Pinterest				Recommender systems, likes, image sharing, infinite scroll, messaging			
	Reddit				Anonymous communication, messaging, image/video sharing			

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	Platform	What is the sole or significant purpose(s) of the service?	Does the service allow end users to link to, or interact with, some or all of the other end users?	Does the service allow end users to post material on the service?	Key design features e.g. infinite scroll, recommender systems, image sharing, etc.	In scope of definition? Yes / no / uncertain	Is the service specified in the draft Rules? i.e. s42	If uncertain whether the service is in scope, what are the factors contributing to this uncertainty?
s47C	Snapchat	s47C			Image/video sharing, location sharing, messaging	s47C		
	Threads				Location sharing, messaging			
	TikTok				Live streaming, messaging, image/video sharing, recommender systems, infinite scrolling			
	Tumblr				Messaging, image/video sharing, infinite scroll (?), recommender systems (?)			
	Twitch				Auto play, recommender system, infinite scrolling, algorithms based on popularity, 'trophies' incentivising engagement, live streaming			
	WeChat				Messaging, image/video sharing, money transfers, voice chat, location sharing, on 'moments' includes likes and comments.			
	X (Twitter)				Recommender system, infinite scrolling, live streaming			
	Online dating (e.g. Tinder, Grindr)				'Swipes'/likes, messaging, image sharing coupled with ranking algorithms.			
	Discord				Live streaming, messaging, image/video sharing, video calling			
Telegram	Messaging, E2EE, money transfers, image/video sharing, voice chat, broadcasting channels, groups of 200,000							

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	Platform	What is the sole or significant purpose(s) of the service?	Does the service allow end users to link to, or interact with, some or all of the other end users?	Does the service allow end users to post material on the service?	Key design features e.g. infinite scroll, recommender systems, image sharing, etc.	In scope of definition? Yes / no / uncertain	Is the service specified in the draft Rules? i.e. §42	If uncertain whether the service is in scope, what are the factors contributing to this uncertainty?
s47C	Messaging platforms	FB Messenger (Meta)*	s47C		Messaging, image/video sharing, video calling	s47C		
		Messenger Kids			Requires a parent to sign up on a child's behalf, can be monitored via parent dashboard, does not require Facebook account			
		Signal			Messaging, image/video sharing, video calling, E2EE			
		WhatsApp			Messaging, image/video sharing, video calling, E2EE, only approved contacts can direct message			
	Online gaming platforms	Fortnite			Gaming, messaging			
		Minecraft			Gaming, messaging			
		PlayStation Network			Gaming, messaging, VR spaces, live streaming			
		Steam			Gaming, messaging, live streaming			

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	Platform	What is the sole or significant purpose(s) of the service?	Does the service allow end users to link to, or interact with, some or all of the other end users?	Does the service allow end users to post material on the service?	Key design features e.g. infinite scroll, recommender systems, image sharing, etc.	In scope of definition? Yes / no / uncertain	Is the service specified in the draft Rules? i.e. s42	If uncertain whether the service is in scope, what are the factors contributing to this uncertainty?
s47C	Other	Xbox Network	s47C		Gaming, messaging, live streaming	s47C		
		YouTube			Auto play, recommender system, infinite scrolling, algorithms based on popularity, live streaming			
		YouTube Kids			Requires a parent to sign up on a child's behalf, parental controls and monitoring, recommender system			
		Online marketplaces (e.g. Amazon, eBay)			Limited – users can leave ratings for products or sellers, and can mark reviews as 'helpful'			

For reference: Definition of Age-restricted social media platforms

The Online Safety Amendment (Social Media Minimum Age) Bill 2024 establish an obligation on 'age-restricted social media platforms' to take reasonable steps to prevent people under 16 years old from having an account. The Bill includes the following definition:

13B Age-restricted social media platform

- (1) For the purposes of this Act, *age-restricted social media platform* means:
 - (a) an electronic service that satisfies the following conditions:
 - (i) the sole purpose, or a significant purpose, of the service is to enable online social interaction between 2 or more end-users;
 - (ii) the service allows end-users to link to, or interact with, some or all of the other end-users;
 - (iii) the service allows end-users to post material on the service;
 - (iv) such other conditions (if any) as are set out in the legislative rules; or
 - (b) an electronic service specified in the legislative rules;
 but does not include a service mentioned in subsection (5).

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Note 1: Online social interaction does not include (for example) online business interaction.

Note 2: An age-restricted social media platform may be, but is not necessarily, a social media service under section 13.

(2) For the purposes of subparagraph (1)(a)(i), online social interaction includes online interaction that enables end-users to share material for social purposes.

Note: Social purposes does not include (for example) business purposes.

(3) In determining whether the condition set out in subparagraph (1)(a)(i) is satisfied, disregard any of the following purposes:

- (a) the provision of advertising material on the service;
- (b) the generation of revenue from the provision of advertising material on the service.

(4) The Minister may only make legislative rules specifying an electronic service for the purposes of paragraph (1)(b) if the Minister is satisfied that it is reasonably necessary to do so in order to minimise harm to age-restricted users.

Services that are not age-restricted social media platforms

(5) A service is not an **age-restricted social media platform** if:

- (a) none of the material on the service is accessible to, or delivered to, one or more end-users in Australia; or
- (b) the service is specified in the legislative rules. [see draft Rules below]

s42



~~PROTECTED CABINET~~

Summary of Minister's instrument-making powers – Social Media Minimum Age Bill

Section	Description of instrument	Purpose	Conditions for use of power	Disallowable?
63E	A notifiable instrument specifying the day the minimum age obligation will come into effect . This day cannot be earlier than 12 months after Royal Assent.	Gives flexibility to the Minister to extend the day the obligation commences. For example, this can afford additional time to the eSafety Commissioner to implement administrative systems to oversee minimum age obligation	Nil	No – notifiable instruments are not disallowable.
63C(1)(iv)	Legislative rules that impose additional conditions for the purposes of the definition of 'age-restricted social media platform'.	Allows the Minister to further target or narrow the definition, including in response to any inadvertent capture. For example, a condition could specify a minimum user-base before the platform is captured.	Nil	Yes
63C(1)(b)	Legislative rules that specify a service or classes of services as in scope of the definition of 'age-restricted social media platform'.	Allows the Minister to capture specified services that might not be captured by the definition of 'age-restricted social media platform'. This could be used in response to new forms of social media that might not be envisaged by the definition, and therefore not automatically captured.	<ul style="list-style-type: none"> • Must be satisfied it is reasonably necessary to minimise harm (63C(4)) • Must seek and have regard to advice from Commissioner (63C(5)(a)) • May seek and have regard to advice from other Commonwealth agencies (63C(5)(b)) <p>Generally, in the exercise of executive powers, Minister should have regard to object of Part 4A - reduce the risk of harm to age-restricted users from certain kinds of social media platforms.</p>	Yes

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63C(6)(b)	Legislative rules that specify a service or classes of services out of scope of the definition of 'age-restricted social media platform'.	Allows the Minister to rule out classes of platforms (or named services) from the definition, thereby releasing them from the minimum age obligation. This is being used to rule out messaging and online games.	<ul style="list-style-type: none"> • Must seek and have regard to advice from Commissioner (63C(5)(a)) • May seek and have regard to advice from other Commonwealth agencies (63C(5)(b)) <p>Generally, in the exercise of executive powers, Minister should have regard to object of Part 4A - reduce the risk of harm to age-restricted users from certain kinds of social media platforms.</p>	Yes
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Age Assurance Trial - Timeline

Date	Event	Notes
1 May 2024	The Australian Government committed \$6.5 million to conduct a trial of age assurance technologies.	
14 May 2024	Budget 2024-25: Budget measure with funding committed in 2024-25	
23 May 2024	Cross Government Working Group Meeting 1	
19 June 2024	Cross Government Working Group Meeting 2	
1 August 2024	Cross Government Working Group Meeting 3	
13 August 2024	Literature review – Protecting young Australians from social media harms - Behavioural Economics Team of the Australian Government (BETA) literature review commenced	
14 August 2024	Youth Stakeholder Roundtable: Office for Youth – Youth Steering Committee	12 youth attendees
16 August 2024	Parents/carers and child-development experts Stakeholder Roundtable	23 attendees from 13 organisations
16 August 2024	Consumer Research – Tender released to market. Consumer research into Australian’s attitudes towards the use of age assurance technologies for access to online services.	Outcomes of this research will inform advice to Government on the level of awareness and the key concerns about age assurance technologies.
22 August 2024	Youth Stakeholder Roundtable: eSafety Youth Advisory Council	12 youth attendees
23 August 2024	Academia Stakeholder Roundtable	15 attendees from 12 institutions
27 August 2024	Industry Stakeholder Roundtable: digital platforms and hardware providers	23 attendees from 12 organisations
28 August 2024	Consumer Research – contract commenced	Social Research Centre
3 September 2024	Cross Government Working Group Meeting 4	
10 September 2024	The Prime Minister announced that the Government will introduce legislation to enforce a minimum age for access to social media by the end of 2024	
10 September 2024	Technology Trial Request for Tender released to market	
12 September 2024	Community Organisations Stakeholder Roundtable	15 attendees from 10 organisations

16 September 2024	Civil Society Organisations Stakeholder Roundtable	7 attendees from 5 organisations
17 September 2024	Protecting young Australians from social media harms - Behavioural Economics Team of the Australian Government (BETA) literature review completed	
18 and 24 September 2024	Technology Trial - Industry briefings for prospective tenderers	29 attendees from 16 organisations
2 October 2024	Age Assurance Cross Government Working Group Meeting 5	
3 October 2024	PM writes to First Ministers seeking inputs to the minimum age, parental consent, grandfathering, and exemptions.	
8 October 2024	Age Assurance Technology Trial tender closed	
8 October 2024	Age Assurance Technology Providers Stakeholder Roundtable	9 attendees from 8 organisations
10-11 October 2024	NSW – SA Social Media Summit – Minister delivers public address on behalf of the PM at Social Media Summit on the 11 October	
15 October 2024	First Nations Youth Stakeholder Roundtable: Office for Youth – First Nations Youth Network	6 youth attendees
16 October 2024	Meeting with UK on their request to provide an update on the age assurance trial and legislation	
31 October 2024	Minister met with Mr Robert French, eSafety Commissioner and several mental health organisations to consult on legislative principles/draft Bill	
1 November 2024	The department met with platforms to consult on legislative principles	
8 November 2024	Age Check Certification Scheme awarded technology trial contract	
21 November 2024	Online Safety Amendment (Social Media Minimum Age) Bill 2024 introduced	
22 November 2024	Age Assurance Consumer Research – preliminary results due	
13 December 2024	Age Assurance Consumer Research – final report due	

Age Assurance Technology Trial RFT – TPs and Timeline for Trial

- The department received 7 tenders when the RFT closed on 8 October.
- The department has awarded the contract to Age Check Certification Scheme.

If asked: Why has it taken so long?

- The tenders were of very high quality and detailed, as expected.
- A key consideration in the evaluation of the tenders was an assessment of their value for money to the Australian taxpayer. Other considerations included operational and technical capability and risk. This necessitated a thorough evaluation process, which can take time.

Indicative timeline for the trial

Date	Event	Notes
8 November	Age Check Certification Scheme awarded technology trial contract	
8 November 2024	Project Plan provided to the department	<p><i>If Asked: How was the Project Plan provided on the same day as the contract was signed?</i></p> <p>Answer: While the contract was signed on 8 November, ACCS was advised of the outcome before that, which gave them enough time to finalise the Project Plan.</p>
28 November 2024	Stakeholder Engagement Event	
Q1 2025	Preliminary Report	
Q2 2025		