Statutory Review of Online Safety Act 2021

Curtin community submission

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21 June 2024

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Introduction

I am hearing more and more from constituents and other parents in Curtin about the need to protect children better online.

I welcome the Government bringing forward a statutory review of the Online Safety Act 2021 so the Act can keep pace with the evolving online environment.

This submission is based on input from 574 Curtin constituents who responded to our Curtin Online Safety Survey, focused on testing the level of support for an age limit ban and obtaining feedback on current and emerging harms and better regulation.

I thank each of those constituents for participating.

The key themes that emerge from the survey are:

- The protection of children is paramount.
- There is broad support for a minimum age for social media use, with 16 being the most popular age proposed.
- There is broad support for ensuring the Act can cover emerging harms and technologies.
- Platforms should be responsible for protecting users through a statutory duty of care.

I look forward to this submission assisting the development of recommendations to the Minister as part of the statutory review.

Kate Chaney MP
Federal Member for Curtin

Statutory Review

The Government is currently undergoing a review into the operation of the Online Safety Act, with a report due to the Minister by 31 October 2024.

The Review will consider optimal regulatory settings and how best to support eSafety in reducing Australians' exposure to harm. This includes responding to new and emerging technologies and harms.

The Review is broad ranging and the Terms of Reference are attached in **Appendix 1**.

Views of the Curtin community

This submission is based on the views of 574 Curtin constituents who responded to our Curtin Online Safety Survey, focused on testing the level of support for an age limit ban and obtaining feedback on current and emerging harms and better regulation.

Online safety is an issue of deep concern in my community. The survey showed that 31% of respondents had either suffered online harm or had a family member suffer online harm. Child safety is at the forefront of community responses.

One respondent urged greater measures to protect children as "*a family member was sexually abused as a child stemming from online predatory behaviour*". We had a number of responses along the line of "*online bullying and abuse is out of control*" and "*my 12 year old girl was threatened with rape*".

A number of responses were focused on protecting mental health, such as "*I am a teacher at a local Curtin high school and the impact social media has on our young people is really terrifying. We have a chance to stand up and do something now.*"

Results of the survey show that there is strong support for:

(a)   the protection of children being paramount including an age limit ban (with the age of 16 clearly being the most popular proposed age);

(b) emerging harms risks and emerging technologies risks being covered by the Act; and

(c) imposing a statutory duty of care on platforms to protect users is a key part of better regulation of online harm.

The full results of the survey are set out in **Appendix 2**.

1. Age limit for accessing social media

There is overwhelming support for an age limit ban on accessing social media, with 86% of respondents in favour, 7% neutral and 7% against.

Constituent responses referred to protection and helping support parents as motivators for an age limit ban. "*We need a ban to protect children and let them concentrate at school*", "*This social media addiction is leading to mental health issues*" and "*Help me out as a parent, ban social media*" among more common responses.

Of the people who supported an age limit ban, 86% would like to see an age limit of 16 or younger.

45% preferred a minimum age of 16, with 41% preferring a lower age and 14% preferring a higher age, as illustrated below.
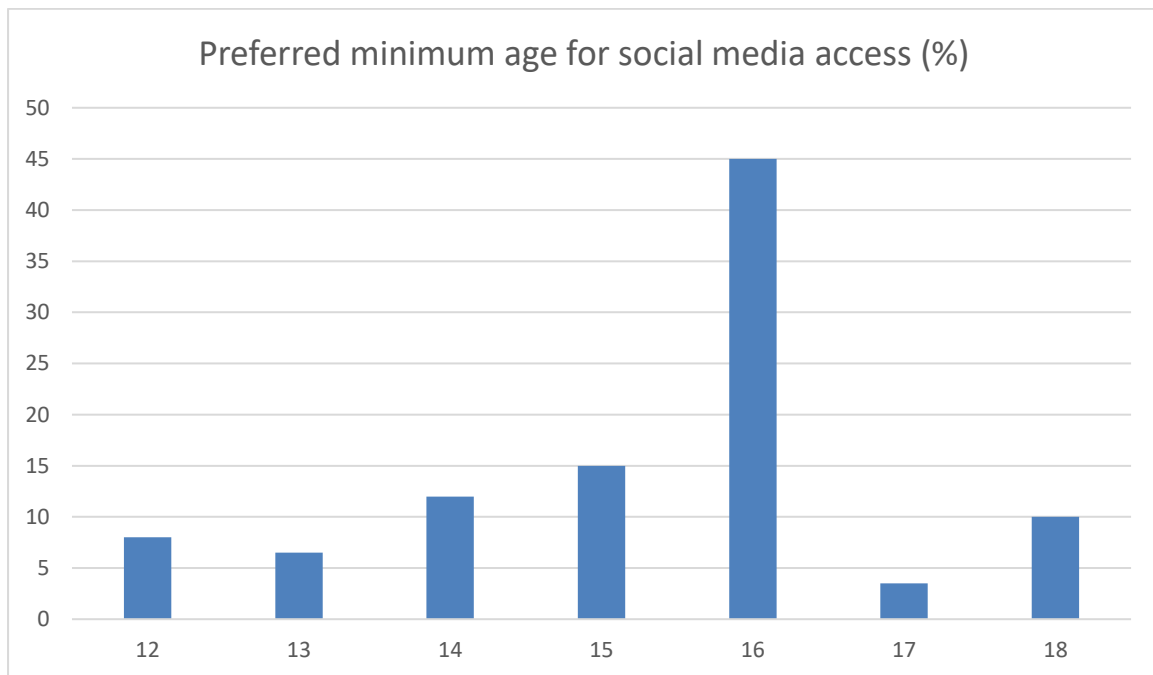

Figure 1: Curtin Online Safety Survey (n=574)

Many constituents who supported an age limit ban also provided comment that mobile phones and digital devices should be banned from schools.

The data show that despite broad support for a minimum age for social media use, there will be significant challenges with age verification, with 43% of respondents saying they would not be prepared to share personal data for age verification.

This support for an age limit but significantly lower support for sharing personal data to enforce that age limit demonstrates that extensive community consultation will be required if the sharing of personal data is the only way to enforce a minimum age for social media access. For example, one respondent said "*Providing ID to set up access just gives these huge tech companies more personal data*".

It is suggested that all approaches to enforcing a minimum age be considered to find an approach that minimises perceived invasion of privacy. Concern was expressed by some that any further invasion of privacy would be more government overreach.

2.   Current categories of harm under the Act

Of the categories of harm currently covered by the Act, Curtin respondents are most concerned about child cyber-bullying.

The second highest concern is access to illegal and restricted online content.

Image-based abuse and abhorrent violent conduct material were identified as the next concerns, with adult cyber-bullying the lowest concern.

Constituent responses included:

- *"A minimum age will lessen peer pressure on teens to have a social media presence and limit opportunities for bullying and other behaviours that negatively impact self confidence"*;
- *"Children do not have the emotional intelligence or resilience to withstand this harm at a critical time in their development when they should be safe at home"* and
- *"I am particularly concerned with young people being exposed to online porn. The negative repercussions are vast and it is likened to a cultural virus damaging young minds forever."*

3.   Emerging risks and technologies

The Curtin community is very aware that new areas of harm are emerging, which urgently need to be regulated.

Nearly 80% of respondents would like to see greater regulation of body image harms and self-harm promotion. Many Curtin constituents have shared traumatic experiences of this harm promotion including their young daughter struggling with an eating disorder being bombarded with extreme dieting and body content.

Regulation of doxxing, technology-facilitated abuse and online hate speech all had more than 70% support for inclusion in the Act.

A majority of respondents also supported regulation of online hate speech and pile-on attacks.

Only 43% of respondents were in favour of regulating online abuse of public figures in the Act.

As well as new types of harms, technology is changing rapidly and the Curtin community broadly supports the Act having the ability to respond nimbly to new technologies to keep kids safe, with 86% saying the Act should be address emerging technology risks.

Response from constituents included:

- *"Social media is facilitating terrible harms to the mental health of girls and young women. It exaggerates and preys on vulnerabilities that are disproportionately represented in girls"*;
- *"Access to online content is one of the causes of body image issues"*; and
- *"Regulation is the only way to prioritise and rebuild children's mental health. Please start before it is too late"*.

4.   Duty of care on platforms

There is broad community support for shifting responsibility onto platforms for keeping users safe, with 81% of respondents in favour of additional statutory duties on platforms towards users.

Comments supporting additional statutory duties included:

- "*It's not the child's fault that algorithms and tech work in this way, but the owners/coders of the algorithms*";
- "*Deliberately designed addictive algorithms should be banned practice*"; and
- "*The tech companies have a social obligation to protect consumers from exploitation*".

There is also broad support for greater penalties for offences and greater investigation and enforcement powers for the Commissioner, to ensure that platforms are incentivised to act in the best interests of users.

Consistent with my constituent feedback, I support the Review exploring and developing a statutory duty of care on platforms with a paramount focus on protecting children. Such a "systemic" protection to make the internet safer rather than simply episode-based interventions for content is an opportunity for more effective results.

I support examining the effectiveness of international approaches such as the United Kingdom's Online Safety Act 2023, the European Union's Digital Services Act 2022 and Canada's proposed Online Harms Act.

A statutory duty in Australia should incorporate the following principles:

- Duties are placed on entities who control and are responsible for a hazardous environment (i.e. providers of online platforms).
- The objective is to prevent harm by an overarching obligation to exercise care in relation to user harm.
- The obligation should include the need to continually assess hazards and the risk of harm, including changing technology and behaviour.
- The protection of children should be expressed to be a primary consideration in framing the duty of care and aligning with the "best interests of the child" principle in the United Nation's Convention on the Rights of the Child.
- The addiction of children to social media platforms and their privacy should be accounted for in framing the duties of care.
- There needs to be transparency and accountability by platforms and services as part of the regulatory framework.

- There are real and effective enforcement powers and penalties.
- As far as possible, there should be global consistency in the regulation of digital spaces.

I look forward to this input being incorporated into the recommendations to the Minister.

Kate Chaney MP
On behalf of the Curtin community
21 June 2024

Appendix 1: Terms of Reference, Statutory Review of the Online Safety Act 2021

The Act does not prescribe particular provisions to be examined by the Review. Accordingly, the Review will be broad ranging and include consideration of:

1. The overarching objects in section 3 of the Act, including the extent to which the objects and provisions of the Act remain appropriate to achieve the Government's current online safety policy intent.
2. The operation and effectiveness of the following statutory schemes and whether the regulatory arrangements should be amended:

   - cyber-bullying material targeted at an Australian child
   - non-consensual sharing of intimate images
   - cyber-abuse material targeted at an Australian adult
   - the Online Content Scheme, including the restricted access system and the legislative framework governing industry codes and standards, and
   - material that depicts abhorrent violent conduct.

3. The operation and effectiveness of the Basic Online Safety Expectations regime in the Act.
4. Whether additional arrangements are warranted to address online harms not explicitly captured under the existing statutory schemes, including:
   a. online hate
   b. volumetric (pile-on) attacks
   c. technology-facilitated abuse and technology-facilitated gender-based violence
   d. online abuse of public figures and those requiring an online presence as part of their employment
   e. other potential online safety harms raised by a range of emerging technologies, including but not limited to:

      - generative artificial intelligence

- immersive technologies
- recommender systems
- end-to-end encryption
- changes to technology models such as decentralised platforms

5. Whether the regulatory arrangements, tools and powers available to the Commissioner should be amended and/or simplified, including through consideration of:

    a. the introduction of a duty of care requirement towards users (similar to the United Kingdom's Online Safety Act 2023 or the primary duty of care under Australia's work health and safety legislation) and how this may interact with existing elements of the Act

    b. ensuring industry acts in the best interests of the child

6. Whether penalties should apply to a broader range of circumstances.

7. Whether the current information gathering powers, investigative powers, enforcement powers, civil penalties or disclosure of information provisions should be amended.

8. The Commissioner's functions and governance arrangements, including:

    a. the Commissioner's roles and responsibilities under the Act

    b. whether the current functions and powers in the Act are sufficient to allow the Commissioner to carry out their mandate.

9. Whether the current governance structure and support arrangements for the Commissioner provided by the Australian Communications and Media Authority (ACMA) are fit for purpose for both the Commissioner and the ACMA.

10. Whether it would be appropriate to cost recover from industry for eSafety's regulatory activities.

Appendix 2: Curtin Online Safety Survey

The results of the Curtin Online Safety Survey (with 574 respondents) were as follows.

1. Age limit

- 86% support an age limit ban on accessing social media
- 7% are neutral
- 7% are against an age limit ban

2. Age limit suggestion

Of the people who supported an age limit ban:

- 8% support an age ban of 12 years or under
- 6.5% support an age ban of 13 years
- 12% support an age ban of 14 years
- 15% support an age ban of 15 years
- 45% support an age ban of 16 years
- 3.5% support an age ban of 17 years
- 10% support an age ban of 18 years or over

3. Verification Obligation

- 57% are prepared to share personal data to prove verification
- 43% are not prepared to share personal data to prove verification

4. Current categories of harm under the Act

People ranked the current categories of harm they were most concerned about in the following order:

(a) Child cyber-bullying

(b) Access to illegal and restricted online content

(c) Image-based abuse

(d) Abhorrent violent conduct material

(e) Adult cyber-bullying

5. Emerging areas of harm

A majority of people wanted the following emerging areas of harm to be regulated under the Act:

(a) Body image harms/self-harm promotion – 79% in favour

(b) Doxxing – 77% in favour

(c) Technology-facilitated abuse – 75% in favour

(d) Online hate speech – 71% in favour

(e) Pile-on attacks – 56% in favour

(f) Cyber-flashing – 55% in favour

A majority of people did not want the following emerging area of harm to be regulated under the Act:

(g) Online abuse of public figures – 43% in favour of regulating

6. Emerging technology risks

- 86% want the Act to address emerging technology risks
- 9% are neutral
- 5% do not want the Act to address emerging technology risks

7. Experience of online harm

- 31% have either suffered or had a family member suffer online harm
- 69% have not suffered or had a family member suffer online harm

8. Better regulation

People are in favour of better regulation for each of the suggestions put forward:

(a) Additional statutory duties on platforms towards users – 81% in favour

(b) Greater penalties for offences – 71% in favour

(c) Greater investigation and enforcement powers for the Commissioner – 68% in favour

(d) Promotion of safety through research, education and awareness – 61% in favour