



GRIFFITH JOURNAL OF
LAW & HUMAN DIGNITY

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Volume 13 Issue 1
2025

Published on 21 May 2026, Gold Coast, Australia by the *Griffith Journal of Law & Human
Dignity*

ISSN: 2203-3114

FAST LAW, FRAGILE RIGHTS: THE HUMAN RIGHTS CONSEQUENCES OF AUSTRALIA'S RAPID SOCIAL MEDIA REFORMS

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Over the last two decades, social media has become a digital town square for people to share ideas, discuss politics or comment on recent events. For many younger people it represents a bedrock of their day-to-day lives. However, the Australian Federal Government has recently passed legislation to ban the use of social media by people under 16 years of age. The Federal Government justified its decision on the basis that social media is causing serious harm to the physical and mental wellbeing of children and young people across the country. Unfortunately, this social media ban was rushed through critically important democratic processes, which has led to poor drafting decisions and unintended consequences for all people online. Importantly the ban will have serious implications for several human rights, including the right to privacy, rights of the child and freedom of expression. While serious action is needed to address the harms associated with social media, a blanket ban is not the answer.#

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Authors' note: This article reflects the legislative and policy landscape as at March 2025, shortly after the passage of the *Online Safety Amendment (Social Media Minimum Age) Act 2024* (Cth). At the time of publication, the social media minimum age regime has been in operation for over six months. While some practical developments have since occurred, the core legal and human rights concerns identified in this article remain relevant.

CONTENTS

I INTRODUCTION..... 2

II LACKING SCRUTINY..... 4

III LEGAL DRAFTING..... 6

 A AGE-RESTRICTED SOCIAL MEDIA PLATFORM..... 7

 B DISALLOWABLE INSTRUMENTS..... 8

 C EFFECTIVENESS OF AGED VERIFICATION 10

 D A BLUNT TOOL FOR COMPLEX ISSUES 11

IV HUMAN RIGHTS IMPLICATIONS..... 12

 A BEST INTERESTS AND THE RIGHT TO HEALTH..... 12

 B FREEDOM OF EXPRESSION 15

 C RIGHT TO PRIVACY 20

V CONCLUSION..... 21

I INTRODUCTION

Social media is an integral part of everyday life for many Australians, especially young people who go online for entertainment, gaming or to socialise. More than half of Australian children visit a social media platform at least weekly.¹ In 2024 alone, 95% of surveyed 13-to-15-year-olds used social media,² while 80% of surveyed 8-to-12-year-olds used social media.³ Children and young people are digital natives having grown up in an age of advanced technologies, where online communications are essential. The online world is ever-present to young people as social media has become the ‘digital town square’ where people come together to meet, connect and share ideas. The online world is as important to young people as the offline world – and the two are often interconnected, as what happens online can impact a person offline. These two worlds are indivisible and both are integral to the foundation of childhood in the 21st century.

Yet the impact of social media on young people is not clear, as the Australian Human Rights Commission recognises that social media can result in both negative and positive

¹ Office of the eSafety Commissioner (‘eSafety’), *Mind the Gap Parental Awareness of Children’s Exposure to Risks Online* (Report, February 2022) 19.

² eSafety, *Behind the Screen: The Reality of Age Assurance and Social Media Access for Young Australians* (Report, February 2025) 16.

³ *Ibid* 11.

outcomes.⁴ Children and young people are more likely than not to have negative experiences online,⁵ which may support a correlation between social media use and mental health complications.⁶ However for other young people, especially those from vulnerable or marginalised communities, it can provide them with a sense of community and self-exploration. Being online allows children and young people to find their 'community' with similar values and interests – even though they may not live in the same physical location.⁷ Social media is a highly complex digital space which requires equally nuanced regulatory responses to allow people to engage safely.⁸

Whether social media has a positive or negative impact for users is neither black nor white – but rather shades of grey. Social media should be viewed as being morally neutral; whether it has a positive or negative impact depends on how people use it and what protections are put in place by platforms, regulators and the government. Discourse presented in binaries is rarely useful in legislative and policy decision-making. Yet it is policy decisions presented in such stark terms which often characterise populist law making by governments.

It is this kind of discourse which propelled the Federal Government to introduce and pass the *Online Safety Amendment (Social Media Minimum Age) Act 2024* (Cth) ('Social Media Ban') in late 2024. The Social Media Ban amended the *Online Safety Act 2021* (Cth) ('OS Act') to require that 'age-restricted social media platforms'⁹ must take 'reasonable steps to prevent'¹⁰ children and young people under 16-years-of-age from having accounts.¹¹ Relevant social media platforms that fail to stop such action, will be liable for a civil penalty of 30,000 penalty units.¹²

⁴ Australian Human Rights Commission, *Explainer: Social Media Ban for Under-16s in Australia* (Webpage) <<https://humanrights.gov.au/about/news/proposed-social-media-ban-under-16s-australia>>.

⁵ See generally eSafety, *Mind the Gap Parental Awareness of Children's Exposure to Risks Online* (Report, February 2022).

⁶ Marilyn Campbell, 'Australia's Social-media Ban won't Work - There are Better ways to Keep Kids Safe' (2025) 637(8046) *Nature* 519, 519.

⁷ *Ibid.*

⁸ Joint Select Committee on Social Media and Australian Society, *Social Media: The Good, The Bad, and The Ugly* (Final Report, 18 November 2024) 116 [5.119].

⁹ *Online Safety Act 2021* (Cth) s 63C.

¹⁰ *Ibid* s 63D.

¹¹ *Ibid* s 63D.

¹² *Ibid* s 63D. At the time of publication this was \$9,900,000.

While it is unclear whether social media is good or bad, what is clear is that bans can be blunt tools when used to address complex challenges in a society, and the Social Media Ban is no exception.¹³ This article applies a legal and human rights lens to critique the Social Media Ban to determine its impact on people in Australia. Foremost this requires an important examination of the truncated consultation process undertaken to pass the Social Media Ban, before considering the shortcomings of the legal drafting. Thereafter the article will consider how the legislation may impact human rights in Australia. Finally, it will be asserted that the ban was poorly drafted and rushed legislation which will have an adverse impact on several human rights.

II LACKING SCRUTINY

The Social Media Ban is a world first aimed at addressing the claim by Prime Minister Anthony Albanese that, '[t]here is a clear causal link between the rise of social media and the harm to the mental health of young Australians.'¹⁴ Despite the Social Media Ban being a world first for untested legislation, the Federal Government practically abandoned any meaningful consultation in a truncated process – which some have characterised as an attempt to rush legislation and avoid legitimate scrutiny.¹⁵ Upon examination, there may be some merit to this characterisation.

In early November the Federal Government announced its plan to legislate a Social Media Ban for under-16s.¹⁶ Then on 21 November 2024, the Senate Standing Committees on Environment and Communications provided stakeholders just one day to review the legislation and provide submissions.¹⁷ During that one-day period it was reported that

¹³ Campbell (n 6) 519.

¹⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 25 November 2024, 8387 (Anthony Albanese, Prime Minister).

¹⁵ Max Mason, 'Big tech's warning on rushing teen ban on social media', *Australian Financial Review* (online, 24 November 2024) <<https://www.afr.com/companies/media-and-marketing/big-tech-s-warning-on-rushing-teen-ban-on-social-media-20241124-p5kt2o>>; Maani Truu, 'Social media age ban inquiry flooded with 15,000 submissions after Elon Musk weighs in', *ABC News* (online, 25 November 2024) <<https://www.abc.net.au/news/2024-11-25/social-media-age-ban-inquiry-flooded-with-submissions/104644208>>.

¹⁶ Anthon Albanese and Michelle Rowland, 'Minimum age for social media access to protect Australian kids' (Media Release, 8 November 2024).

¹⁷ See, eg, Parliament of Australia, *Online Safety Amendment (Social Media Minimum Age) Bill 2024 [Provisions]* (Webpage) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/SocialMediaMinimumAge>.

over 15,000 submissions were provided,¹⁸ yet only 117 submissions were individually published and presumably considered by the committee at the time of hearing (making up less than 1% of all submissions provided).¹⁹ Having only closed submissions on Friday 22 November 2024, the committee proceeded to hold a single, three-hour hearing on Monday 25 November 2024.²⁰ The hearing could be described as farcical, with committee members stating it was a 'rushed process and a very, very inadequate process'.²¹ Surprisingly, many key stakeholders were not invited to provide evidence including the Office of the eSafety Commissioner ('eSafety') who is the regulator of the OS Act, nor any youth-led groups or human rights advocates. The next day, on Tuesday 26 November 2024, the committee tabled its final report before the legislation was ultimately passed.²²

Of the 117 submissions published at the time of the hearing, almost all were critical of the truncated consultation process,²³ with the Law Council of Australia making a separate statement that this truncated process undermined, 'Australia's standing as a democratic global leader'.²⁴ In any democratic country consultation and scrutiny of legislation is essential to a democratic legislative process, and yet the Federal Government provided minimal opportunity for input or willingness to listen to stakeholders and experts. While the Social Media Ban is contentious, what is clear is that the majority of individually published submissions did not support it. Based on our analysis of those submissions, only 9% provided express support, compared to 70% who did not support the Social Media Ban (21% did not clearly state their position, often due to the limited time available to consider evidence and legislation). This lack of support for legislation that was rushed through parliament is staggering.

¹⁸ Truu (n 15).

¹⁹ See, eg, Parliament of Australia, *Online Safety Amendment (Social Media Minimum Age) Bill 2024 [Provisions]* (Webpage)

<https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/SocialMediaMinimumAge>.

²⁰ See, eg Parliament of Australia, *Public Hearings* (Webpage)

<https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/SocialMediaMinimumAge/Public_Hearings>.

²¹ Evidence to the Senate Environment and Communications Legislation Committee, Parliament of Australia, Canberra, 25 November 2024, 11 (Sarah Hanson-Young, Senator).

²² Senate Standing Committee on Environment and Communications, *Online Safety Amendment (Social Media Minimum Age) Bill 2024 [Provisions]* (Final Report, 26 November 2024) ('Senate Committee Report').

²³ *Ibid* 26 [2.86].

²⁴ Greg McIntyre, 'Online Safety Amendment (Social Media Minimum Age) Bill 2024' (Letter, Law Council of Australia, 26 November 2024) 1.

Both the Senate Standing Committee on Environment and Communications and the Parliamentary Joint Committee on Human Rights ('PJCHR') were also critical of the truncated process. The PJCHR stated that in normal circumstances it would write to proponents of proposed legislation, 'seeking a response to any questions it has about the compatibility of proposed legislation with human rights.'²⁵ It was, however, unable to do so due to the brief timeframe.²⁶ Additionally, the Senate Standing Committee on Environment and Communications recognised that the process was extremely short with almost all submitters and witnesses expressing grave concerns that, 'a bill of such import was not afforded sufficient time.'²⁷

In the rush to pass the Social Media Ban not only did the Federal Government appear unwilling to listen to experts and stakeholders, it also relied upon evidence which it mistakenly viewed as favouring its agenda. In both the Explanatory Memorandum and during Question Time, a United Kingdom research paper was cited as evidence to support the Social Media Ban.²⁸ The University of Oxford professor and co-author of that research then publicly stated that the government had misinterpreted the study, noting that it was 'frustrating to see nuanced scientific findings oversimplified to support binary policy positions'.²⁹ This context helps to frame the legal and human rights analysis below and may explain why the legislation appears to be poorly drafted and unduly restricts human rights.

III LEGAL DRAFTING

The drafting of the Social Media Bill leaves much to be desired as it casts an incredibly wide net, effectively capturing any website, service or app which allows people to communicate. It then relies heavily on the Minister for Communications to decide what

²⁵ Parliamentary Joint Committee on Human Rights, *Human Rights Scrutiny Report* (Report 11 of 2024, 27 November 2024) 67 [1.176].

²⁶ *Ibid.*

²⁷ Senate Standing Committee on Environment and Communications (n 22) 26 [2.86].

²⁸ See, eg, Commonwealth, *Parliamentary Debates*, House of Representatives, 18 November 2024, 7843-7844 (Michelle Rowland, Minister for Communications); Explanatory Memorandum, Online Safety Amendment (Social Media Minimum Age) Bill 2024 [Provisions] 1-2; See also Cam Wilson, 'The communications minister cited a study in support of a teen social media ban. Its co-author disagrees', *Crickey* (online, 20 November 2024) <<https://www.crikey.com.au/2024/11/20/teen-social-media-ban-michelle-rowland-study-question-time/>>.

²⁹ Andrew Przybylski, (LinkedIn, November 2024) <https://www.linkedin.com/posts/akprzybylski_the-communications-minister-cited-a-study-activity-7264917864673861632-9KZK>.

is, and is not, regulated by the legislation (rather than setting this out in the legislation itself). Finally, the legislation is ambiguous, requiring age-restricted social media platforms to take ‘reasonable steps’³⁰ to prevent under-16s from having an account online. Poorly drafted and rushed legislation is rarely the answer to complex issues like online safety for children and young people.

A Age-restricted Social Media Platform

The Social Media Ban takes a ‘shoot first, ask questions later’ approach to legislative drafting with a shotgun like definition of ‘age-restricted social media platform’³¹ which hits a vast array of websites, online services and apps. Under the legislation, an electronic service is considered an ‘age-restricted social media platform’ where the following are satisfied:

- the sole purpose, or a significant purpose, of the service is to enable online social interaction between two or more end-users;³²
- the service allows end-users to link to, or interact with, some or all of the other end-users;³³
- the service allows end-users to post material on the service;³⁴
- such other conditions (if any) as are set out in the legislative rules.³⁵

The pre-existing definition of ‘social media service’ already contained in s 13 of the OS Act is nearly identical to the above definition of ‘age-restricted social media platform’ with one key difference. This key definitional problem is created by changing the wording of the definition of a social media service from serving the ‘sole or primary purpose’ to serving a ‘significant purpose’ of enabling online social interaction.³⁶ Thus, significantly lowering the threshold of what constitutes a social media platform.³⁷ The problem is that many websites and platforms could be said to have a *significant purpose* of enabling online social interaction. Unfortunately, ‘significant purpose’ is not defined in the Social

³⁰ *Online Safety Act 2021* (Cth) s 63D.

³¹ *Ibid* s 63C.

³² *Ibid* s 63C(1)(a)(i).

³³ *Ibid* s 63C(1)(a)(ii).

³⁴ *Ibid* s 63C(1)(a)(iii).

³⁵ *Ibid* s 63C(1)(a)(iv).

³⁶ *Ibid* s 13.

³⁷ *Ibid*.

Media Ban, the OS Act nor in Industry Codes or Standards. For example, it is possible that community and business forums could be captured, in addition to fitness apps or even music streaming services.

For illustrative purposes, Strava is a popular workout app that allows users to record their running, hiking and biking activity and share it with other fitness enthusiasts.³⁸ Under the legislation, under-16s will be banned from using Strava because the Social Media Ban deems it an age-restricted social media platform. This is because Strava allows users to record workout activity which goes into a feed that friends can follow, give 'kudos' and leave comments on.³⁹ Therefore, Strava has a significant purpose of enabling online social interaction between two or more end-users; users can interact with one another via comment and 'kudos' functions; and users can post their workout information as a form of content. It is bizarre that legislation aimed to make social media safe, would capture a fitness app which promotes health and wellbeing (however, it is likely future rules will be made to exclude apps like Strava from being captured).⁴⁰

The legislation attempts to mitigate this broad and poorly drafted definition by allowing the Minister of Communications to exclude certain platforms from being captured by the legislation.⁴¹ The Explanatory Memorandum states that online gaming, messaging apps and health and education services will all be subject to rules which exclude them from the Social Media Ban.⁴² However, the legislation should have been more carefully drafted to capture genuine social media platforms either with better definitions or via the use of non-exhaustive lists.

B Disallowable Instruments

Instead of providing clarity to young people, parents and industry about which platforms under-16s can, and cannot use, in the legislation – the Social Media Ban relies exclusively on the Minister for Communications to determine what is out of scope via disallowance instruments. Disallowance instruments are generally rules or decisions made by a

³⁸ Strava has over 135 million users globally. See Strava, *About* (Webpage) <<https://www.strava.com/about>>.

³⁹ *Ibid.*

⁴⁰ Explanatory Memorandum, Online Safety Amendment Bill 2024 (n 28) 2.

⁴¹ *Online Safety Act 2021* (Cth) s 63C(4)-(7).

⁴² Explanatory Memorandum, Online Safety Amendment Bill 2024 (n 28) 4.

designated Minister under primary legislation (in this case the Minister for Communications under the OS Act). It is arguably a form of supplementary law-making which occurs without legislation being passed by both Houses of Parliament. That is not to say there is no democratic checks and balances – the Senate Standing Committee for the Scrutiny of Delegated Legislation is tasked with assessing such rule-making ‘against a set of scrutiny principles that focus on statutory requirements, protection of rights and liberties and principles of parliamentary oversight’.⁴³ Section 42 of the *Legislation Act 2003* (Cth) sets out the procedures by which either House of Parliament can veto any instrument (unless exempted by law).⁴⁴ Regardless, these disallowable instruments are still not subject to the ‘full range of parliamentary scrutiny inherent in bringing forward proposed legislation in the form of a bill’.⁴⁵ This is concerning given the immense discretion provided to the Minister for Communications under the Social Media Ban.

The Explanatory Memorandum claims the Minister’s rule-making power will ensure that under-16s retain access to platforms that provide beneficial experiences in connection with ‘education, health and support.’⁴⁶ The difficulty here is that what is beneficial in relation to education, health and support may vary greatly from person-to-person, or Minister-to-Minister. For example, the Federal Government first stated that YouTube would not be captured due to its educational content.⁴⁷ Yet, Communication Department officials conceded that YouTube is not primarily an educational service, and for a period YouTube remained unbanned due to a specific direction from the Minister for Communications. Shortly after this, YouTube was then re-classified as an ‘age-restricted social media platform’ and is now captured by the ban.⁴⁸ Therefore, rule-making could

⁴³ Parliament of Australia, *Senate Standing Committee for the Scrutiny of Delegated Legislation* (Web Page) <[https://www.aph.gov.au/Parliamentary Business/Committees/Senate/Scrutiny of Delegated Legislation](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation)>.

⁴⁴ *Ibid.*

⁴⁵ Senate Standing Committee for the Scrutiny of Bills, *Online Safety Amendment (Social Media Minimum Age) Bill 2024* (Scrutiny Digest 1 of 2025, 05 February 2025) 36 [1.108].

⁴⁶ Explanatory Memorandum, *Online Safety Amendment Bill 2024* (n 28) 3.

⁴⁷ Anthony Albanese and Michelle Rowland, ‘Albanese Government delivers world-leading legislation to protect children online’ (Media Release, 21 November 2024).

⁴⁸ Office of the eSafety Commissioner, ‘Which platforms are age-restricted?’ (Web Page) <<https://www.esafety.gov.au/about-us/industry-regulation/social-media-age-restrictions/which-platforms-are-age-restricted>>; Amelia McGuire, ‘YouTube’s social media ban exemption under fire as rivals see the’, *Australian Financial Review* (online, 20 February 2025) <<https://www.afr.com/technology/youtube-s-social-media-ban-exemption-under-fire-as-rivals-see-the-20250219-p5ldch>>.

lead to inconsistency in applying, or not applying, the Social Media Ban based on an unclear definition of education, health and support.

Although the heavy reliance on the Minister's rule-making power is deeply troubling, there is a legitimate purpose for utilising disallowance instruments in the digital ecosystem. All legislation concerning online environments must be flexible enough to respond to new and emerging technologies to ensure relevance and applicability.⁴⁹ However, the Social Media Ban is too reliant on opaque rule-making powers. The legislation ought to have taken greater care to capture age-restricted social media platforms – and then used the rule-making power to broaden its ambit.

C Effectiveness of Aged Verification

Where a platform, website, app or service is captured by the definition of age-restricted social media platform it will be obliged to take reasonable steps to stop under-16s from having an account.⁵⁰ Although compliance is not prescriptive (as 'reasonable steps' is not defined), the Explanatory Memorandum states:

at a minimum, the obligation will require platforms to implement some form of age assurance, as a means of identifying whether a prospective or existing account holder is an Australian child under the age of 16 years.⁵¹

It is clear that the Social Media Ban will rely upon age assurance technologies to enforce the ban, which is deeply troubling.

While the exact form that age assurance may take is still unclear, it could involve facial or vocal recognition technologies to determine a person's age. Under the Social Media Ban all people in Australia (including those over 16 years-of-age) could be required to provide incredibly sensitive biometric information to social media platforms (discussed further below in respect of the right to privacy). This is especially concerning as in 2023 the Federal Government found that 'age assurance technologies are immature, and present privacy, security, implementation and enforcement risks'.⁵² The age assurance trial that the government is seeking to rely upon, only announced the successful tender on 15

⁴⁹ Explanatory Memorandum, Online Safety Amendment Bill 2024 (n 28) 3-4.

⁵⁰ *Online Safety Act 2021* (Cth) s 63D.

⁵¹ Explanatory Memorandum, Online Safety Amendment Bill 2024 (n 28) 3.

⁵² Department of Infrastructure, Transport, Regional Development, Communications and the Arts, *Government response to the Roadmap for Age Verification* (Government Response, August 2023) 2.

November 2024 and will not provide its outcome report until mid-2025.⁵³ Additionally, eSafety has been given jurisdiction under the Social Media Ban to create and promote guidelines for the taking of reasonable steps.⁵⁴ However, this guidance will be non-binding and need not expressly consider the protection or balancing of human rights.

D A Blunt Tool for Complex Issues

The Explanatory Memorandum, which relies on age assurance has not even considered if this solution is reasonable or effective. Outright bans are blunt instruments for complex issues, and the Social Media Ban is only likely to push children onto unregulated and dangerous platforms.⁵⁵ Such unregulated spaces are not designed with child safety in mind, and may expose young people to material they are not developmentally ready for, or equipped to manage.⁵⁶ The ban may also mean that children, in accessing these other spaces, feel unable to ask parents for help about what they see or hear online when using it during a ban.⁵⁷ Even if young people do not migrate to unregulated digital spaces, many will find work arounds – with eSafety’s Youth Council already expecting young people to use VPNs or generative AI tools to get around age assurance systems.⁵⁸ These practical realities in conjunction with ambiguity in respect of ‘reasonable steps’ will create uncertainty and may at best be ineffectual – and at worst expose young people to even more harm.

The legal drafting of the Social Media Ban raises a variety of concerns about enforcement, discretionary rule-making and industry uncertainty for compliance. In combination with the minimal consultation process, it could lend legitimacy to claims that the legislation was poorly drafted due to the rush to pass legislation before it could be properly

⁵³ Department of Infrastructure, Transport, Regional Development, Communications and the Arts, ‘Tender awarded for Australian Government’s age assurance trial’ (Media Release, 15 November 2024).

⁵⁴ *Online Safety Act 2021* (Cth) ss 27(1)(qa)–(qb).

⁵⁵ Josh Taylor, ‘Social media age restrictions may push children online in secret, Australian eSafety commissioner says’, *The Guardian* (online, 23 June 2024) <<https://www.theguardian.com/australia-news/article/2024/jun/23/social-media-age-restrictions-may-push-children-online-in-secret-australia-regulator-says>>.

⁵⁶ eSafety, *Behind the Screen: The Reality of Age Assurance and Social Media Access for Young Australians* (Report, February 2025) 13.

⁵⁷ Campbell (n 6) 519.

⁵⁸ Joint Select Committee on Social Media and Australian Society, *Social Media: The Good, The Bad, and The Ugly* (n 8) 97 [5.54] quoting eSafety Youth Council, *Submission No. 60 to the Inquiry into Social Media and Australian Society* (Submission, 2024) 3.

considered. When legislative decisions are made without consultation and scrutiny, it can often lead to unintended human rights violations.

IV HUMAN RIGHTS IMPLICATIONS

The Social Media Ban will have negative impacts on the protection and promotion of human rights and will limit the rights of young people.⁵⁹ Despite this, an overall focus on human rights was lacking in the public hearing held by the Senate Standing Committees on Environment and Communications. The subsequent human rights Statement of Compatibility produced as a legislative requirement was criticised by Flinders University as being ‘underdeveloped and fail[ing] to engage with all of Australia’s obligations’.⁶⁰ The Australia Human Rights Commission submitted that the Social Media Ban will have ‘unintended consequences and negative human rights impacts’,⁶¹ yet the Explanatory Memorandum concluded the Social Media Ban is compatible with human rights.⁶² With this in mind, it is important to provide a level of rigour in analysing the human rights impacts in a more substantive manner, and test the validity of this claim.

The Social Media Ban may restrict and limit the rights of children in respect of health, freedom of expression and privacy (all of which are discussed below). However, there are several other rights (eg rights to education,⁶³ culture, leisure and play,⁶⁴ freedom of association and peaceful assembly⁶⁵) which will also be negatively impacted by the Social Media Ban – but are beyond the scope of this article.⁶⁶

A Best Interests and the Right to Health

Although the International Covenant on Civil and Political Rights (‘ICCPR’) and the International Covenant on Social, Cultural and Economic Rights (‘ICESCR’) cover all

⁵⁹ See generally Australian Human Rights Commission, Submission No 96 to the Senate Standing Committees on Environment and Communications, *Online Safety Amendment (Social Media Minimum Age) Bill 2024* (22 November 2024).

⁶⁰ Flinders University, Submission No 69 to the Senate Standing Committees on Environment and Communications, *Online Safety Amendment (Social Media Minimum Age) Bill 2024* (22 November 2024) 1.

⁶¹ Australian Human Rights Commission, Submission No 96 (n 59) 3 [3].

⁶² Explanatory Memorandum, *Online Safety Amendment Bill 2024* (n 28) 9-16.

⁶³ *International Covenant on Economic, Social and Cultural Rights* (‘ICESCR’) art 13; *Convention on the Rights of the Child* (‘CRC’) arts 28-29.

⁶⁴ CRC art 30.

⁶⁵ CRC art 15; *International Covenant on Civil and Political Rights* (‘ICCPR’) art 22.

⁶⁶ PJCHR, *Human Rights Scrutiny Report* (n 25) 68 [1.183].

people, certain groups also receive protection under specific human rights instruments. For children and young people, the Convention on the Rights of the Child ('CRC') is the foundational human rights instrument. Digital environments can both promote and challenge the rights of children and young people under these instruments. It can enable children to form social, cultural, political, religious and sexual identities and facilitate participation in those communities.⁶⁷ Yet social media platforms can also allow racism, violence and discrimination to proliferate, influencing children and young people.⁶⁸ Accordingly it is important to ensure that any ban primarily considers the best interests of children.

1 Best Interests

With both positive and negative human rights impacts facilitated by social media, it is essential that digital policy be grounded in the best interests of children.⁶⁹ Article 3 CRC requires the best interests of children to be a primary consideration in all decisions which concern them, and is one of the four guiding principles of the CRC.⁷⁰ This requires considerations for all rights including 'their right to seek, receive and impart information, to be protected from harm and to have their views given due weight',⁷¹ as well as ensuring transparency in respect of how best interests are determined.⁷² Importantly, best interest considerations should never be based on assumptions about what is in a child's interest.⁷³ However, statements by Prime Minister Albanese demonstrate how assumptions were made about the Social Media Ban as he noted that he wanted 'get our kids off their devices and on to the footy fields or the netball courts, to get them interacting with real people, having real experiences'.⁷⁴ This statement is not only out of touch with modern living, as all people are capable of having real experiences with real people online, it appears to

⁶⁷ Committee on the Rights of the Child, *General Comment No 25: Children's Rights in Relation to the Digital Environment*, UN Doc CRC/C/GC/25 (2 March 2021) 11 [64]-[66].

⁶⁸ *Ibid* 9-10 [54].

⁶⁹ Australian Human Rights Commission, Submission No 79 to the Joint Select Committee on Social Media and Australian Society, *Influence and Impacts of Social Media on Australian Society* (28 June 2024) 4-5 [4]-[7]; Australian Human Rights Commission, Submission No 461917447 to the Attorney-General's Department, *Privacy Act 1988 (Cth) Discussion Paper* (05 April 2023) 30 [148]-[150].

⁷⁰ *General Comment No 25: Children's Rights in Relation to the Digital Environment*, UN Doc CRC/C/GC/25 (n 67) 2-3 [12]-[13].

⁷¹ *Ibid* 2 [13].

⁷² *Ibid*.

⁷³ *Ibid* 3-4 [16]-[18].

⁷⁴ Interview with Anthony Albanese (Natalie Barr, Television Interview – Sunrise, 10 September 2024).

make assumptions that being offline and playing sports is in the best interest of all children and young people – which is not always true. This gives the appearance that the best interests of children have been determined by politicians reminiscing about their own childhoods in an era without modern technology.⁷⁵

These apparent assumptions are more concerning given that it does not appear that children and young people were extensively consulted. The only evidence of consultation is in the Explanatory Memorandum which simply states that it happened – providing little other evidence.⁷⁶ The need for consultation is reinforced by the PJCHR’s recommendation that the Federal Government ‘meaningfully engage young people in the implementation of the legislation.’⁷⁷ Instead the Statement of Compatibility simply asserts that a ban would support the best interests of children because it protects them from the health-related harms associated with social media.⁷⁸

2 Right to Health

The Statement of Compatibility claims that the Social Media Ban is intended to ‘enhance the safety and wellbeing of young people online, and to address the proliferation of harms to children and young people.’⁷⁹ This may range from preventing exposure to dangerous or harmful content to preventing cyberbullying which can have serious mental and physical health impacts. For example, ‘11% of children have sent a photo or video of themselves at least weekly to someone they have never met offline’.⁸⁰ In addition, ‘62% of young people (14-17) have been exposed to negative content, of which 37% were exposed to gory or violent images’.⁸¹ Girls are also more likely to have been exposed to harmful content such as discussions about unhealthy eating and ways to be thin (35%), while 28% view content about physically harming themselves.⁸² The Statement of Compatibility notes that by restricting exposure to such content, the Social Media Ban

⁷⁵ Catherine Archer, ‘Coming of age with, in and on social media: A critique of how politicians are responding to children’s social media engagement’ (2024) 19(1) *Journal of Children and Media* 58, 59.

⁷⁶ Explanatory Memorandum, Online Safety Amendment Bill 2024 (n 28) 2.

⁷⁷ Senate Standing Committee on Environment and Communications (n 22) 9.

⁷⁸ Explanatory Memorandum, Online Safety Amendment Bill 2024 (n 28) 10.

⁷⁹ *Ibid.*

⁸⁰ eSafety, *Mind the Gap Parental Awareness of Children’s Exposure to Risks Online* (n 5) 42.

⁸¹ *Ibid.* 46.

⁸² *Ibid.*

would promote the right to enjoy the highest attainable standard of physical and mental health.⁸³

However, the Explanatory Memorandum rightly notes that social media can also promote physical and mental health (which is why the rule-making power allows exemptions).⁸⁴ For example, an eSafety report showed that 48% of children have looked online for physical health information – while 36% had looked for mental health information in the past year.⁸⁵ However this assumes that the Minister for Communications will fairly and consistently utilise their rule-making power to ensure children and young people can access the full suite of health and wellbeing related websites, apps and services. Accordingly, the Social Media Ban may have a positive impact on the right to health, provided the Minister uses their discretion appropriately and before the ban commences.

B Freedom of Expression

Freedom of expression is ‘the foundation stone for every free and democratic society’,⁸⁶ and is protected under several instruments including art 13 CRC and art 19 ICCPR amongst others.⁸⁷ However the right is not absolute and may be subject to restrictions, but only if those restrictions are provided by law and are necessary – most relevantly for public health purposes.⁸⁸ Even where restrictions are determined to be legal and necessary, they must also meet strict tests of necessity and proportionality – requiring the restriction to:

- pursue a legitimate aim;
- be proportional to that aim; and
- be no more restrictive than is necessary to achieve that aim.⁸⁹

⁸³ Explanatory Memorandum, Online Safety Amendment Bill 2024 (n 28) 14; ICESCR art 12(1); CRC art 24.

⁸⁴ Explanatory Memorandum, Online Safety Amendment Bill 2024 (n 28) 2.

⁸⁵ eSafety, *Mind the Gap Parental Awareness of Children’s Exposure to Risks Online* (n 5) 26,

⁸⁶ Human Rights Committee, *General Comment No 34 on Article 19: Freedoms of Opinion and Expression*, 102nd sess, UN Doc CCPR/C/GC/34 (12 September 2011) 1 [2].

⁸⁷ See, eg, *Universal Declaration on Human Rights* art 19; *Convention on the Rights of Persons with Disabilities* art 21; CRC art 12.

⁸⁸ CRC art 13(2)(b); ICCPR art 19(3)(b).

⁸⁹ Frank La Rue, *Annual Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, UN Doc A/HRC/14/23 (20 April 2010) 13-15 [79]-[81]; See also Human Rights Committee, *General Comment No 34 (Article 19: Freedom of opinion and expression)* UN Doc CCPR/C/GC/34 (12 September 2011) 6 [22].

1 *Restrictions on Freedom of Expression*

The UN Committee on the Rights of the Child ('CRC Committee') has previously found that digital environments, like social media platforms, perform an essential role in enhancing the rights of young people.⁹⁰ Exercising freedom of expression online includes the ability to seek, receive and share both information and ideas via any form of media.⁹¹ The CRC Committee also recognises that social media provides public visibility and networking opportunities that support child-led activism and can empower young people as advocates to communicate with like-minded people and pursue their rights.⁹² The Social Media Ban prohibits under-16s from using social media to engage in any form of democratic exercise of free expression. For example, social media was instrumental in the global 'School Strike 4 Climate' actions which called for action on climate change.⁹³ Without access to social media it is questionable if this global movement would have ever happened (although it is of note that only a minority of children engage in civic participation online).⁹⁴ Accordingly, it can be concluded that the Social Media Ban places very serious restrictions on freedom of expression.

2 *Lawful Restriction*

Although the restriction is provided for by law, whether the Social Media Ban is legal is an open question. An implied freedom of political communication is protected by the Australian Constitution.⁹⁵ This is not a right conferred directly on individuals (unlike the protection of free speech in the United States), but instead places a restriction on the

⁹⁰ *General Comment No 25: Children's Rights in Relation to the Digital Environment*, UN Doc CRC/C/GC/25 (n 67) 10 [58].

⁹¹ *Ibid*; ICESCR art 19(2); CRC art 15.

⁹² *General Comment No 25: Children's Rights in Relation to the Digital Environment*, UN Doc CRC/C/GC/25 (n 67) 11 [64]–[66].

⁹³ See generally Shelley Boulianne, Mireille Lalancette and David Ilkiw, "'School Strike 4 Climate': Social Media and the International Youth Protest on Climate Change' (2020) 8(2) *Media and Communication* 208.

⁹⁴ eSafety, *Mind the Gap Parental Awareness of Children's Exposure to Risks Online* (Report, February 2022) 22: Three in ten (31%) use the internet to look at news online weekly or more often, with young people aged 14–17 more likely to do so (46% compared to 19% of children aged 8–10 and 28% of children aged 11–13). A smaller proportion of children discuss political or social problems with other people online (13%), with those aged 14–17 more likely to do so (20% compared to 8% of children aged 8–10 and 11% of children aged 11–13).

⁹⁵ See generally *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1; *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106; *Theophanous v Herald & Weekly Times Ltd* (1994) 182 CLR 104; *Stephens v West Australian Newspapers Ltd* (1994) 182 CLR 211; *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 560; *Coleman v Power* (2004) 220 CLR 1, 81–82 (Kirby J).

government's power.⁹⁶ Notably the freedom includes non-verbal communications in respect of political and government matters.⁹⁷ As noted in a submission by the Human Rights Law Centre, in the digital age social media is often the centre for political communication and discourse.⁹⁸ By imposing an outright ban on under-16s from accessing and participating in the digital town square, it places a burden on their implied freedom of political communication. Additionally, all people in Australia may have the freedom of political communication restricted due to the requirement for age assurance measures to access social media (as those over 16 must also prove their age).⁹⁹ The use of age assurance measures are seriously concerning and may force people away from social media and the ability to engage in political communication (due to concerns about facial recognition raised below). The UN Special Rapporteur on the right to freedom of expression (which includes expressing views and opinions on political matters) has previously held that restrictions on anonymity can have a chilling effect on free expression.¹⁰⁰

However, a law will not be invalid simply because it infringes the freedom of political communication, it must fail to be

reasonably appropriate and adapted to serve a legitimate end the fulfilment of which is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government and the procedure prescribed by s 128 for submitting a proposed amendment of the Constitution to the informed decision of the people ...¹⁰¹

Whether the Social Media Ban is constitutionally valid remains an open question to be considered by the courts – but there is doubt about its constitutionality.

⁹⁶ *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 561-2 (Brennan CJ, Dawson, Toohey, Gaudron, McHugh, Gummow and Kirby JJ); Kris Walker, 'It's a Miracle! High Court unanimity on free speech' (1997) 22 *Alternative Law Journal* 179, 180.

⁹⁷ *Levy v Victoria* (1997) 189 CLR 579, 594-5 (Brennan CJ), 613 (Toohey and Gummow JJ), 622-4 (McHugh J), 638-41 (Kirby J); See also Adrienne Stone, 'Case Note: Lange, Levy and the Direction of the Freedom of Political Communication Under the Australian Constitution' (1998) 21 *University of New South Wales Law Journal* 117, 128.

⁹⁸ Human Rights Law Centre, Submission No 104 to the Senate Standing Committees on Environment and Communications, *Online Safety Amendment (Social Media Minimum Age) Bill 2024* (November 2024) 6-7.

⁹⁹ PJCHR, *Human Rights Scrutiny Report* (n 25) 59 [1.152].

¹⁰⁰ Frank La Rue, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, UN Doc A/HRC/23/40 (17 April 2013) 13 [49].

¹⁰¹ *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 567.

3 Proportional Restrictions

Prima facie, the Social Media Ban pursues a legitimate aim of protecting children and young people's physical and mental health and wellbeing from the harms associated with social media. However, the restriction must be proportional to that aim, an issue that the PJCHR has raised about the Social Media Ban.¹⁰² The UN Human Rights Committee has previously highlighted that when a country imposes a restriction on free expression, the restriction may not jeopardise the right itself.¹⁰³ Given the central role that social media plays in free expression, the Social Media Ban curtails the ability of under-16s to express themselves freely, organise and peacefully assemble. While Australia should be commended and supported for any initiative which seeks to create safer digital spaces for young people, under the CRC State parties should ensure such laws protect the rights of children to participate in organisations which operate partially or exclusively online.¹⁰⁴ Balance must be found to protect children from online content which can effect their physical and mental health, without unduly limiting their right to free expression. Although the negative impacts of social media can be severe and commonplace (as discussed throughout this article), an outright ban for all people aged under-16 is disproportionate given alternative measures that could be taken.

4 No more Restrictive than Necessary

Australia should protect children from harmful content, but such measures cannot be more restrictive than is necessary. A key measure to determine this is whether a less rights-restrictive approach could achieve the same aim of protecting the health and wellbeing of children and young people online. The CRC Committee have cautioned against content controls, which restrict a child's access to information in the digital world,¹⁰⁵ and instead focus should be on preventing the flow of harmful content.¹⁰⁶ The Final Report of the Joint Select Committee on Social Media and Australian Society supported this approach when it recommended that Australia legislate a digital duty of

¹⁰² PJCHR, *Human Rights Scrutiny Report* (n 25) 66 [1.171].

¹⁰³ Human Rights Committee, *General Comment No 34 (Article 19: Freedom of opinion and expression)* UN Doc CCPR/C/GC/34 (12 September 2011) 5-6 [21].

¹⁰⁴ *General Comment No 25: Children's Rights in Relation to the Digital Environment*, UN Doc CRC/C/GC/25 (n 67) 11 [64]-[66].

¹⁰⁵ *Ibid* 10 [56].

¹⁰⁶ *Ibid* 10 [54].

care to prevent the harms associated with social media.¹⁰⁷ It is important to highlight that the Joint Select Committee on Social Media and Australian Society also did not recommend a ban – which provides further evidence that it is not a proportionate measure.

On 14 November 2024 the Communications Minister announced the Federal Government's plan to introduce a digital duty of care to 'keep Australians safe'.¹⁰⁸ As noted in the 2024 statutory review of the OS Act, which also recommended a duty of care, a responsibility would be placed on social media platforms to take reasonable steps to address and prevent foreseeable harms.¹⁰⁹ This would ultimately shift the current approach of online safety from discussions about bans or downstream solutions, to requiring platforms to be safe to begin with.

A digital duty of care requires social media companies to make their platforms safe for all users, which currently includes under-16s. However, it is possible that due to the Social Media Ban, under-16s would no longer be able to use social media – thus companies would not need to take action to make their platforms safe for those children and young people. This may have the unintended effect of absolving technology companies from making their platforms truly safe for all young people (including those who circumvent the ban). A duty of care will only have the effect of mitigating the most serious harms associated with social media if under-16s are protected by the duty of care. By excluding under-16s from accessing social media, the Federal Government is weakening its own attempt to make social media safe via a digital duty of care.

It is difficult to conclude that the Social Media Ban is no more restrictive than necessary when the Federal Government has already announced a digital duty of care to make platforms safe for all users. This proposed solution would allow under-16s to exercise their right to free expression if the Social Media Ban were abandoned. Accordingly, the Social Media Ban is not a necessary or proportionate restriction on freedom of expression.

¹⁰⁷ Joint Select Committee on Social Media and Australian Society, *Social Media: The Good, The Bad, and The Ugly* (n 8) Recommendation 2, 119 [5.141].

¹⁰⁸ Michelle Rowland, 'New Duty of Care Obligations on Platforms Will Keep Australians Safer Online' (Media Release, 14 November 2024).

¹⁰⁹ Delia Rickard, Department of the Prime Minister and Cabinet, *Report of the Statutory Review of the Online Safety Act 2021* (Report, October 2024) 50.

C Right to Privacy

The right to privacy is often considered a cornerstone human right as it underpins several other rights, such as freedom of association, thought and expression in addition to freedom from discrimination (amongst others).¹¹⁰ However in the 21st century technology companies increasingly believe that ‘privacy may actually be an anomaly’.¹¹¹ Under the Social Media Ban people in Australia will be given little choice between using age assurance technologies, such as facial recognition technology (‘FRT’), or not communicating via social media – which has become an everyday aspect of modern living. As noted by the Australian Human Rights Commission, digital participation should not come at the expense of privacy.¹¹²

The use of biometric information collected by FRT (or other means, such as vocal recognition technology) to determine age raises serious concerns as it would require the harvesting of sensitive information. Although privacy safeguards were expressly included in the Social Media Ban legislation,¹¹³ submitters to the relevant inquiry raised concerns. UNSW’s Human Technology Institute was particularly critical of provisions relating to privacy, going so far as to provide evidence that a loophole under s 63F of the legislation could enable government and social media companies access to the information provided in the course of age assurance – acting as a ‘backdoor to increased surveillance of all Australians who access social media sites’.¹¹⁴ Discussion of the shortcomings of s 63F OS Act is beyond the scope of this section of human rights analysis, but it does raise serious concern. This apprehension is worsened by the poor state of privacy protection in Australia, as the widescale collection of biometric information is introduced at a time when the *Privacy Act 1988* (Cth) has only just begun its reform journey.¹¹⁵ Equally concerning, the Federal Government has only just agreed to develop

¹¹⁰ Australian Human Rights Commission, Submission No 461917447 to the Attorney-General’s Department, *Privacy Act 1988 (Cth) Discussion Paper* (05 April 2023) 6 [15].

¹¹¹ Jacob Kastrenakes, ‘Google’s chief internet evangelist says “privacy may actually be an anomaly”’ *The Verge* (online, 21 November 2013) <<https://www.theverge.com/2013/11/20/5125922/vint-cerf-google-internet-evangelist-says-privacy-may-be-anomaly>>.

¹¹² Australian Human Rights Commission, Submission No 461917447 (n 110) 6 [18].

¹¹³ See especially *Online Safety Act 2021* (Cth) s 63F.

¹¹⁴ Human Technology Institute, Submission No 108 to the Senate Standing Committees on Environment and Communications, *Online Safety Amendment (Social Media Minimum Age) Bill 2024* (22 November 2024) 1-2.

¹¹⁵ Following the introduction and passing of *Privacy and Other Legislation Amendment Act 2024* (Cth).

a Children's Online Privacy Code, which is unlikely to be implemented before the Social Media Ban.¹¹⁶

The negative privacy impacts of utilising FRT or other age assurance processes that rely on biometric information not only restricts privacy but can also have negative downstream impacts on rights. FRT has persistently had problems with fairness and accuracy, as it has proven to be less accurate identifying women or people from minority racial groups¹¹⁷ – possibly leading to bias and discrimination in determining who can access social media.

V CONCLUSION

The Social Media Ban is unwieldy, inaccurate and will result in unintended and messy consequences for all people in Australia. The protection and promotion of the health and wellbeing of children and young people online is of the utmost importance – and Australia should take action to mitigate the harms associated with social media. However, social media is now part of everyday life for nearly all people in Australia – especially those who grew up in an era of Facebook and Instagram being a default way to communicate with friends and family not in proximity. The Social Media Ban fails to acknowledge the reality of the world in which children and young people live and mistakenly views social media as a zero-sum game.

The rush to draft and pass the Social Media Ban has resulted in serious criticism by many experts, rights advocates and young people. It also weakens the democratic integrity of Australia's law-making process as poorly contemplated legislation is passed which creates confusion and hurdles to digital participation. This has downstream impacts for human rights which will substantially be impacted in respect of freedom of expression and privacy. To address the harms associated with social media, nuanced and proactive responses that make digital spaces safe for young people are what is needed – not bans.

¹¹⁶ *Privacy and Other Legislation Amendment Act 2024* (Cth) s 26GC.

¹¹⁷ See, eg, Joy Buolamwini and Timnit Gebru, 'Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification' (2018) 81 *Proceedings of Machine Learning Research* 77; KS Krishnapriya, et al., 'Characterizing the Variability in Face Recognition Accuracy Relative to Race' (Conference Paper, IEEE/CVF Conference on Computer Vision and Pattern Recognition Workshops, 2019); Inioluwa Deborah Raji and Joy Buolamwini, 'Actionable Auditing: Investigating the Impact of Publicly Naming Biased Performance Results of Commercial AI Products' (Conference on Artificial Intelligence, Ethics, and Society, 2019).

REFERENCE LIST

A Articles/Books/Reports

Archer, Catherine J, 'Coming of age with, in and on social media: A critique of how politicians are responding to children's social media engagement' (2024) 19(1) *Journal of Children and Media* 58-64

Boulianne, Shelley, Lalancette, Mireille and Ilkiw, David, "'School Strike 4 Climate": Social Media and the International Youth Protest on Climate Change' (2020) 8(2) *Media and Communication* 208-218

Buolamwini, Joy and Gebru, Timnit, 'Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification' (2018) 81 *Proceedings of Machine Learning Research* 77-91

Campbell, Marilyn, 'Australia's Social-media Ban won't Work - There are Better ways to Keep Kids Safe' (2025) 637(8046) *Nature* 519, DOI: [10.1038/d41586-025-00051-0](https://doi.org/10.1038/d41586-025-00051-0)

Joint Select Committee on Social Media and Australian Society, *Social Media: The Good, The Bad, and The Ugly* (Final Report, 18 November 2024)

La Rue, Frank, *Annual Report of the Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion*, UN Doc A/HRC/14/23 (20 April 2010)

La Rue, Frank, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc A/HRC/23/40 (17 April 2013)

Office of the eSafety Commissioner, *Mind the Gap Parental Awareness of Children's Exposure to Risks Online* (Report, February 2022)

Office of the eSafety Commissioner, *Behind the Screen: The Reality of Age Assurance and Social Media Access for Young Australians* (Report, February 2025)

Parliamentary Joint Committee on Human Rights, *Human Rights Scrutiny Report* (Report 11 of 2024, 27 November 2024)

Rickard, Delia, Department of the Prime Minister and Cabinet, *Report of the Statutory Review of the Online Safety Act 2021* (Report, October 2024)

Griffith Journal of Law & Human Dignity

Senate Standing Committee on Environment and Communications, *Online Safety Amendment (Social Media Minimum Age) Bill 2024 [Provisions]* (Final Report, 26 November 2024)

Stone, Adrienne, 'Case Note: Lange, Levy and the Direction of the Freedom of Political Communication Under the Australian Constitution' (1998) 21 *University of New South Wales Law Journal* 117-134

Walker, Kris, 'It's a Miracle! High Court unanimity on free speech' (1997) 22(4) *Alternative Law Journal* 179-181

B Cases

Australian Capital Television Pty Ltd v Commonwealth (1992) 177 CLR 106

Coleman v Power (2004) 220 CLR 1

Lange v Australian Broadcasting Corporation (1997) 189 CLR 520

Levy v Victoria (1997) 189 CLR 579

Nationwide News Pty Ltd v Wills (1992) 177 CLR 1

Stephens v West Australian Newspapers Ltd (1994) 182 CLR 211

Theophanous v Herald & Weekly Times Ltd (1994) 182 CLR 104

C Legislation

Online Safety Act 2021 (Cth)

Online Safety Amendment (Social Media Minimum Age) Act 2024

Privacy and Other Legislation Amendment Act 2024 (Cth)

D Treaties

Convention on the Rights of Persons with Disabilities

Convention on the Rights of the Child

International Covenant on Economic, Social and Cultural Rights

International Covenant on Civil and Political Rights

Universal Declaration of Human Rights

E Other

Albanese, Anthony and Rowland, Michelle, 'Albanese Government delivers world-leading legislation to protect children online' (Media Release, 21 November 2024)

Albanese, Anthony and Rowland, Michelle, 'Minimum age for social media access to protect Australian kids' (Media Release, 8 November 2024)

Australian Human Rights Commission, *Explainer: Social Media Ban for Under-16s in Australia* (Web Page) <<https://humanrights.gov.au/about/news/proposed-social-media-ban-under-16s-australia>>

Australian Human Rights Commission, Submission No 461917447 to the Attorney-General's Department, *Privacy Act 1988 (Cth) Discussion Paper* (05 April 2023)

Australian Human Rights Commission, Submission No 79 to the Joint Select Committee on Social Media and Australian Society, *Influence and Impacts of Social Media on Australian Society* (28 June 2024)

Australian Human Rights Commission, Submission No 96 to the Senate Standing Committees on Environment and Communications, *Online Safety Amendment (Social Media Minimum Age) Bill 2024* (22 November 2024)

Committee on the Rights of the Child, *General Comment No 25: Children's Rights in Relation to the Digital Environment*, UN Doc CRC/C/GC/25 (2 March 2021)

Commonwealth, *Parliamentary Debates*, House of Representatives, 18 November 2024, 7843-7844 (Michelle Rowland, Minister for Communications)

Commonwealth, *Parliamentary Debates*, House of Representatives, 25 November 2024, 8387 (Anthony Albanese, Prime Minister)

Department of Infrastructure, Transport, Regional Development, Communications and the Arts, *Government response to the Roadmap for Age Verification* (Government Response, August 2023)

Department of Infrastructure, Transport, Regional Development, Communications and the Arts, 'Tender awarded for Australian Government's age assurance trial' (Media Release, 15 November 2024)

Evidence to the Senate Environment and Communications Legislation Committee, Parliament of Australia, Canberra, 25 November 2024, 11 (Sarah Hanson-Young, Senator)

Explanatory Memorandum, Online Safety Amendment (Social Media Minimum Age) Bill 2024 [Provisions]

Flinders University, Submission No 69 to the Senate Standing Committees on Environment and Communications, *Online Safety Amendment (Social Media Minimum Age) Bill 2024* (22 November 2024)

Human Rights Committee, *General Comment No 34 (Article 19: Freedom of opinion and expression)* UN Doc CCPR/C/GC/34 (12 September 2011)

Human Rights Law Centre, Submission No 104 to the Senate Standing Committees on Environment and Communications, *Online Safety Amendment (Social Media Minimum Age) Bill 2024* (November 2024)

Human Technology Institute, Submission No 108 to the Senate Standing Committees on Environment and Communications, *Online Safety Amendment (Social Media Minimum Age) Bill 2024* (22 November 2024)

Interview with Anthony Albanese (Natalie Barr, Television Interview – Sunrise, 10 September 2024)

Kastrenakes, Jacob 'Google's chief internet evangelist says "privacy may actually be an anomaly"' *The Verge* (online, 20 November 2013)

<<https://www.theverge.com/2013/11/20/5125922/vint-cerf-google-internet-evangelist-says-privacy-may-be-anomaly>>

Krishnapriya, KS, et al, 'Characterizing the Variability in Face Recognition Accuracy Relative to Race' (Conference Paper, IEEE/CVF Conference on Computer Vision and Pattern Recognition Workshops, 27-28 January 2019)

Vol 13(1) 2025

Mason, Max, 'Big tech's warning on rushing teen ban on social media', *Australian Financial Review* (online, 24 November 2024)

<<https://www.afr.com/companies/media-and-marketing/big-tech-s-warning-on-rushing-teen-ban-on-social-media-20241124-p5kt2o>>

McGuire, Amelia, 'YouTube's social media ban exemption under fire as rivals see the', *Australian Financial Review* (online, 20 February 2025)

<<https://www.afr.com/technology/youtube-s-social-media-ban-exemption-under-fire-as-rivals-see-the-20250219-p5ldch>>

McIntyre, Greg, 'Online Safety Amendment (Social Media Minimum Age) Bill 2024' (Letter, Law Council of Australia, 26 November 2024)

Parliament of Australia, *Public Hearings* (Web Page)

<https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/SocialMediaMinimumAge/Public_Hearings>

Parliament of Australia, *Online Safety Amendment (Social Media Minimum Age) Bill 2024 [Provisions]* (Web Page)

<https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/SocialMediaMinimumAge>

Parliament of Australia, *Senate Disallowable Instruments List* (Web Page)

<https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/leginstruments/senate_disallowable_instruments_list>

Parliament of Australia, *Senate Standing Committee for the Scrutiny of Delegated Legislation* (Web Page)

<https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation>

Parliament of Australia, *Submissions Received by the Committee* (Web Page)

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/SocialMediaMinimumAge/Submissions

Przybylski, Andrew, (LinkedIn, November 2024)

<<https://www.linkedin.com/posts/akprzybylski-the-communications-minister-cited-a-study-activity-7264917864673861632-9KZK>>

Raji, Inioluwa Deborah and Buolamwini Joy, 'Actionable Auditing: Investigating the Impact of Publicly Naming Biased Performance Results of Commercial AI Products' (Conference on Artificial Intelligence, Ethics, and Society, 2019)

Rowland, Michelle, 'New Duty of Care Obligations on Platforms Will Keep Australians Safer Online' (Media Release, 14 November 2024)

Rowland, Michelle, 'Question Time Response - Social media age limit legislation' (Speech, 18 November 2024)

Senate Standing Committee for the Scrutiny of Bills, *Online Safety Amendment (Social Media Minimum Age) Bill 2024* (Scrutiny Digest 1 of 2025, 05 February 2025)

Strava, *About* (Web Page) < <https://www.strava.com/about>>

Strava, *Record. Sweat. Share. Kudos* (Web Page) <<https://www.strava.com/features>>

Taylor, Josh, 'Social media age restrictions may push children online in secret, Australian eSafety commissioner says', *The Guardian* (online, 23 June 2024) <<https://www.theguardian.com/australia-news/article/2024/jun/23/social-media-age-restrictions-may-push-children-online-in-secret-australia-regulator-says>>

Truu, Maani, 'Social media age ban inquiry flooded with 15,000 submissions after Elon Musk weighs in', *ABC News* (online, 25 November 2024) <<https://www.abc.net.au/news/2024-11-25/social-media-age-ban-inquiry-flooded-with-submissions/104644208>>

Wilson, Cam, 'The communications minister cited a study in support of a teen social media ban. Its co-author disagrees', *Crickey* (online, 20 November 2024) <<https://www.crickey.com.au/2024/11/20/teen-social-media-ban-michelle-rowland-study-question-time/>>