Statutory Review of the Online Safety Act 2021 Issues Paper

A submission to the Australian Government Department of Infrastructure, Transport, Regional Development, Communication and the Arts

yourtown is a trusted provider of services for young people, with a focus on mental health and wellbeing, parenting and early childhood development, long-term unemployment, prevention of youth suicide, child protection, and support for those experiencing domestic and family violence. **yourtown** has evolved to helping hundreds of thousands of young people each year through a range of service offerings, supporting them through many difficult challenges.

Our services

- Employment, education, and social enterprise programs to help long term unemployed young people re-engage with education and/or employment
- Domestic and family violence refuge, accommodation, and therapeutic supports for women and their children, including post-refuge support
- Accommodation and therapeutic supports for young parents and their children at high risk
- Parentline, a telephone and online counselling and support service for parents and carers in the Northern Territory and Queensland
- Expressive Therapy interventions for young children and infants who have experienced trauma and abuse, or been exposed to violence
- Young Parents Program providing parenting support to help with child development, life skills and health and wellbeing activities in safe, supportive environments.
- Kids Helpline, providing professional counselling and support to 5–25-year-olds across Australia since 1991
- Kids Helpline @ School and Kids Helpline @ High School, which delivers early intervention and prevention programs through primary and secondary schools
- My Circle, a confidential, private, online peer support network for 13–25-year-olds to share information and build coping skills, and
- Mental health service/s for children aged 0-11 years old and their families, with moderate mental health needs.

Kids Helpline

yourtown's Kids Helpline is Australia's only free and confidential 24/7 phone and online counselling service for any young person aged 5 to 25. It offers children and young people a range of care options that are right for their needs and circumstances. Our commitment to being there anytime, and for any reason, has meant that we have responded to more than 8.7 million contacts from children and young people nationally in the 33 years since our service was first established, whilst also providing tens of millions of self-help interactions via our website and social channels. In 2022, our Kids Helpline counsellors responded to nearly 122,000 contacts from children and young people across Australia, including 3,893 crisis responses for children and young people at imminent risk of harm.

Family and Domestic Violence Refuge and Transitional Housing

yourtown's refuge offers supported accommodation for up to 12 weeks. A specialised team provides women and children with a safe and welcoming environment and creates opportunities for mothers to re-build self-concept and experience control and empowerment over their lives. The wrap-around care also includes linking with transitional housing and community outreach programs for women and children exiting refuges. Transitional housing is a vital steppingstone for women and children moving towards long term, safe and sustainable independent living in the community. **yourtown's** transitional housing offers a safe and supportive environment for 6 – 12 months, with support for legal and financial matters, accessing pre-employment support, and helping children into school. In 2022-23, we supported 73 mothers and their young children in our refuge and 14 families in our transitional housing.

Children and Families

yourtown provides accommodation and intensive individualised support to vulnerable young parents and their children through our San Miguel service. For over 40 years, San Miguel has provided a place to call home for vulnerable and at-risk families. In 2022/23, San Miguel supported 35 parents and 38 infants and young children.

Early Childhood Development Programs

We support vulnerable pre-school aged children to make a successful transition to school by using prevention and early intervention approaches to create health families and strong, child-friendly communities. This includes working with parents to better understand their child's barriers to reaching social development milestones, how to help them thrive at school, collaborative case management and support, and in-home help. In 2022/23, we supported 179 families in Queensland and Tasmania.

Employment Services

For over 20 years **yourtown** has been delivering specialist youth employment services. Our employment services programs, including Transition to Work, Skilling Queenslander for Work, Get Back in the Game, and ParentsNext, provide young people with training to expand their options and help them find sustainable employment. Over the last seven years we have secured more than 37,000 job placements for young people. During 2022/23 there were more than 4,000 commencements in our employment services in Queensland, New South Wales, and South Australia.

Social Enterprises

yourtown has worked with young people and employers to break down barriers to sustainable employment for more than 20 years. As a leader in work-based enterprises we provide young people at risk of long-term unemployment paid jobs in the following areas: construction, landscaping, and asset maintenance to help their transition to open employment. In 2022/23, 201 young people were employed in our social enterprises across Queensland, New South Wales, South Australia, and Tasmania, with 90% transitioning into longer term employment in the open labour market or progressing into education.

ParentsNext

We provide specialised support for parents with children under six years of age, to plan and prepare for their future employment in regional South Australia, from Port Pirie. Our primary goal for ParentsNext is to empower parents to embrace life changes, improve their skills and self-confidence, and achieve their education and employment goals. More than 1,200 young parents participated in our ParentsNext program since it commenced in July 2018.

Parentline

Parentline offers free confidential phone and webchat counselling and support for parents and carers of children in Queensland and the Northern Territory. It offers a safety net for families by providing support when it is most needed. This includes after hours and weekends, where families feel isolated and where local services are unavailable. In 2022/23, parents and carers in Queensland and the Northern Territory attempted to contact Parentline over 12,000 times.

yourtown welcomes the opportunity to respond to the Statutory Review of the Online Safety Act 2021 Issues Paper (the Issues Paper). Online safety issues and the online environment are constantly evolving, and new safety and technological issues have arisen since the *Online Safety Act 2021* (the Act) came into force. Hence, we are pleased to see that the Australian Government has brought forward the statutory review (the review) by one year to ensure the Act can keep pace with the dynamic online environment.

We support the broad-ranging examination of the operation and effectiveness of the Act, particularly regarding: Australia's regulatory approach to online services, systems and processes; and protecting those who experienced or encountered online harms. **yourtown's** submission answers select questions from the Issues Paper**.** The key themes we are advocating for include:

- a child rights approach reflecting international best practice in supporting children and their rights, including their right to guide and support their online experiences
- implementation of Safety by Design principles, i.e., placing user safety and rights at the centre of the development and use of online services
- education of children, young people, and parents about online safety and harmful privacy practices rather than regulation of young people's online behaviour
- involvement of young people in any proposed policy and legislation amendments that impact them, and
- commitment by Government, industry, and community to work directly with young people in developing educational content, and where appropriate, building the capacity of young people to engage in this process.

Are additional safeguards needed to ensure the Act upholds fundamental human rights and supporting principles?

Social media is an important source of information, connection, and communication for young people. It also provides an outlet for expression and the ability to engage with other young people. There are risks associated with children and young people accessing/or being targeted by inappropriate content via social media, particularly in relation to bullying, grooming and sextortion, and the impacts that can occur as a result. In addition, early exposure by children and young people to harmful experiences and content can take a toll on their development, wellbeing, and mental health. Ideally, children and young people should be able to gain the benefits of digital technology (e.g. education and development, social connection, help-seeking) while their exposure to online risks (e.g. harmful tracking) is minimised through safe online environments.

Mandating arbitrary age access requirements would result in injustice against young people, particularly those who are most disadvantaged, and will create discriminatory barriers when needing to access online help, support, and information. We query the practicality of enforcing age access restrictions. In addition, we question how identification information that is collected for verification purposes will be stored securely given the extent of cyber-security issues the community already experiences. An alternative to age access requirements is the government adopting a best interests approach that would enable re-direction of safety responsibilities towards online platforms and place the obligation upon the platform (rather than the young person) to make genuine assessments of the risks of harm, and take reasonable steps to prevent harm (in terms of content and access) regardless of the age of the young person accessing the platform. For this approach to work, the government must be able to enforce global social media companies to undertake these safety responsibilities. It is worrying to see that regulating some global social media companies has proven difficult, particularly if these companies do not have a base or office in Australia.

yourtown supports an approach to online safety for children and young people that aligns with the 'best interests' principles under Article 3 of the United Nations Convention on the

Rights of the Child as the preferred framework for regulation of online environments. This child rights approach reflects international best practice in supporting children and their rights[1], including their right to guide and support their online experiences.

yourtown endorses the Institute of Child Protection Studies, Australian Catholic University position that:

> 'The application of the 'best interests' principle (as set out in the Convention) calls for consideration of the full circumstances of a child's experience and circumstances and calls for ongoing assessment and attention to the most effective protection for each child. It would allow for balancing the rights of access to information, learning and expressions with the protections for safety and privacy. It recognises the evolving development of a child across the ages and stages of development in childhood and adolescence and calls for guidelines and restrictions to allow for exceptions and special circumstances to address issues of disadvantage and discrimination.'

Recommendation:

- **That the government and providers of online platforms work directly with young people in the review of the Act to be consistent with the 'best interests' principles of child rights and achieve the appropriate balance safety and rights regarding use of social media services and online platforms.**

Where young people are impacted by policy or legislative change, they have the right to be involved and heard in how their rights and interests should be protected, promoted, or limited. The voices of young people have been missing in the recent prominent discourse on young people's access of social media and online platforms. We must ensure that the voices of young people, particularly those who face multiple barriers, are heard in this discussion as they are the ones experiencing this challenge. Where the Act and any proposed changes impact the rights of young people, it is critical that the government take steps to ensure young people are engaged meaningfully throughout the drafting and implementation process and are supported to engage by experienced facilitators. The government should actively engage with the eSafety Youth Council which was established to provide advice to government about issues that young people experience online and explore ways of supporting them to have positive online experiences. Further, government should engage widely with young people by utilising the Office for Youth (a dedicated unit within government to listen to young people and their advocates) that provide opportunities for young people to share their ideas, and therefore, be included in the review of the Act.

Recommendation:

- **That the government utilise established youth agencies to gather and actively listen to young people's views regarding any amendments in the Act that impact them.**

Should the Act address risks raised by specific technologies or remain technology neutral? How would the introduction of a statutory duty of care or Safety by Design obligations change your response?

Technologies and user behaviours change so quickly in this dynamic online environment, which means there is a strong risk that detailed legislation on specific technologies can

---

[1] United Nations Child Rights Committee's General comment No. 25 (2021) on children's rights in relation to the digital environment | OHCHR

become redundant very quickly. The introduction of a statutory duty of care and Safety by Design obligations would allow the Act to remain technology neutral while enforcing obligations for online platforms and services to address risks associated with their specific technologies.

Australia's regulatory models do not adequately protect users from online harm. **yourtown** believes the responsibility for creating safe online spaces cannot just sit at an individual level with parents and their children. Providers and government, along with parents and community all have a role in making a safer online environment. **yourtown** appreciates that eSafety works with industry and technology companies to promote the importance of embedding Safety by Design[2] principles in the development and deployment of products and services to prevent online harms. However, the Act needs to go further and adopt a statutory duty of care approach[3] where services demonstrate that they can minimise online harm and meet the best interests of the child principles. This places a regulatory burden on online platforms and services to ensure the safety of its users. Currently, the Act has no enforceable requirement to ensure that safety and duty of care is at the centre of thinking for current online platforms or as new technologies and services are developed. It currently sits as a core expectation of the Basic Online Safety Expectations 'that the provider of the service will take reasonable steps to ensure that end-users are able to use the service in a safe manner'; however, this does not create a legally enforceable duty.

The Act should require online platforms and services to implement Safety by Design principles. In addition, the Act should be enhanced with a statutory duty of care approach that includes an overarching obligation to exercise care in relation to user harm (through risk assessments and implementing mitigation measures). This would also include an obligation to continually assess the effectiveness of those measures. These duties should be enforceable, and penalties should apply to services that fail to comply. The Act should provide a regulator such as eSafety with stronger enforcement powers. This could be similar to the United Kingdom's Online Safety Act that provides its regulator with a range of enforceable powers, including a provisional notice of contravention (that either provides steps required to remedy the non-compliance or provides an opportunity to object to a proposed penalty), confirmations of contravention with associated remedial actions required, or penalties imposed.

Recommendations:

- **That the Act include enforceable requirements for online platforms to implement Safety by Design principles placing user safety and rights at the centre of the development and delivery of online services.**

- **That the Act include a formal statutory duty of care framework that incorporates penalties for non-compliance and is modelled on the best interests of the child principle.**

- **That the Act provide eSafety or a designated regulator with stronger enforcement powers.**

---

[2] Safety by Design focuses on the ways that technology companies can minimise online threats by anticipating, detecting and eliminating online harms before they occur.

[3] A statutory duty of care approach places duties on the entities who control and are responsible for a hazardous environment to achieve a desired outcome (harm prevention). This places a regulatory burden on the entity controlling the regulated environment, and can increase a regulatory framework's capacity to adapt to unique features and changes in the environment.

What more could be done to promote the safety of Australians online, including through research, educational resources and awareness raising?

Setting an overall blanket ban based on age should not be prioritised before providing support and education as there could be unintended consequences and impacts, including loss of connection, access to support, and social interaction. The risks and impacts related to social media use, such as bullying, grooming, and financial abuse do not just disappear once someone reaches 16 years of age. We need to prepare young people and give them the skills and understanding to manage online interactions appropriately and navigate online environments safely. There needs to be safe spaces for young people to interact online and opportunities provided to assist in the development of the skills and abilities to use social media safely and appropriately. Further, access to social media for young people should always include ensuring that safety principles are understood and set up accordingly, and that parents are well equipped to provide support and supervision.

While mental ill health for young people has been increasing over the years,[4] there are differing views about the cause. Older generations are more likely to attribute the decline in young people's mental health to social media use and substance misuse, while young people are more likely to talk about cost of living (experienced by themselves or their families) impacting on their mental health.[5] Moreover, parents are highly concerned about their children's social media use and its impact[6], whereas young people are more concerned about cost of living, loneliness and future stress. [7] This younger cohort use social media to cope with their worries. The current discourse around young people's social media use fails to look at the complex personal and societal factors that influence young people's mental health.[8]

yourtown recently surveyed young people on Kids Helpline's website about advocacy issues of interest. The data was collected before the recent media reporting on the detrimental effects of social media and moves to ban children under 16 years of age from accessing social media. Ninety-nine young people wanted to see the government take more action on technology, including social media, privacy, security, and access. This topic did not rank in the top 10 issues where young people wanted to see change. Mental health was the top issue that young people wanted to see meaningful change. Young people told us that they are aware of the risks associated with social media usage, but also highlight the benefits. They want to see social media platforms provide safe spaces for them to interact online, support around understanding the risks, help with skills, and guidance on staying safe.

Quotes from young people about changes they would like to see regarding technology

"Greater safety protocols and awareness for online safety and greater counselling support for those worried regarding technology"

"Better security and freedom"

"Being able to use it when we want"

"Feeling safer to use it and not to be cyber bullied or harassed online"

---

[4] See National Study of Mental Health and Wellbeing, 2020-2022 | Australian Bureau of Statistics (abs.gov.au) and melbourneinstitute.unimelb.edu.au/__data/assets/pdf_file/0008/4841909/HILDA_Statistical_Report_2023.pdf
[5] Youth-mental-health-in-crisis-Public-and-generatio.aspx (orygen.org.au)
[6] Parenting on the digital age: Navigating concerns about the online world of young people
[7] What are you worried about? Young people's stress burdens and its impacts on their wellbeing
[8] Maidment, K. Tonna, Z., Houlihan, M. & Carbone, S. (2024). The impact of screentime and social media on the mental health of young Australians. Melbourne: Prevention United.

"I'd like to see more information about how social media works, why it's so addictive and information about the negative and positive aspects of using technology especially in high school"

In June 2024, media attention on restricting social media use for young people under 16 years was widespread. At this time, 134 young people responded to a snap poll on Kids Helpline's Instagram about this issue. Of these young people, 57 per cent voted that young people under 16 should be allowed to use social media, and 43% voted against this notion. The most common theme from these young people was that there should be some regulation of the online environment so that young people, particularly those under 16 years, can be safe. Others thought that young people under 16 years should not access social media because they do not have the skills to navigate online environments safely or the resilience to deal with the negative effects of social media. The young people also wanted adults to know that their experiences with social media are not all negative. The main positives include connecting and socialising, keeping informed and learning new things, finding entertainment, and using social media as a distraction from life's stresses. On the other hand, the negatives of social media, include bullying, feeling the need to compare themselves to what they see on social media, and harmful content (e.g. racism, sexism, homophobia).

Quotes from young people about under 16s using social media

"The current status quo in regard to age is ok, but companies need to do more"

"Under that age we should not be able to expose ourselves like that"

"There should be more filters on content so that young people don't see bad things"

"There should be more privacy and controls, but they shouldn't be banned"

"It isn't all bad. It can be helpful for people to reach out to friends and relate to others"

"We do know how to protect ourselves and we're not all so easily influenced"

"Social media can be very yucky towards people who express themselves differently"

"You end up getting so caught up in other people's lives and start comparing yourself"

"I'm finding a community and learning new things"

"For some youth social media is the only support network they can access"

"Banning social media won't stop kids from finding ways to use it. Maybe teach us better"

"It is more important to teach how to use the internet responsibly than to restrict"

Industry and the Government both need to hear from and work with young people and model the development of resources following Safety by Design principles. By listening to the experiences of young people, industry can be proactive and deliberate in minimising online harm. Educating children and young people about online safety and harmful privacy

practices is likely to be more beneficial than regulating their online behaviour. In keeping with Safety by Design principles, online service providers should have the responsibility of educating children, young people, parents, and the wider community about the risks involved in using their services.

Parents need to be included in any education model. In a recent study by ReachOut, findings show that parents cope with their concerns about their children's online safety by turning to other parents, the internet, school, and professional health services.[6] Less than 15 per cent of parents feel that their need for support has been completely met. Moreover, three in five want more access to quality, trusted information. Educating children and young people about online safety will not be effective without consistent messaging, practices, and support in the home environment.

> **Recommendation:**
>
> **That the Government, providers of online platform, and community commit to working directly with young people in developing educational content, and where appropriate, build the capacity of young people to engage in this process**

Should Australia consider introducing a cost recovery mechanism on online service providers for regulating online safety functions?

The Issues Paper makes note of how various international jurisdictions charge very large online service providers an annual fee to cover the cost of regulatory activities. **yourtown** is not opposed to the government introducing a similar cost recovery mechanism. We would, however, advocate for the government to look beyond cost recovery mechanisms and explore ways to fund: education of young people, parents, and the community about online safety; and supports that build resilience among young people from negative experiences in online environments. The statutory review is an ideal opportunity for the government to explore ways for cost recovery and funding for supports that prepare young people for online environments and build knowledge, awareness, and resilience among young people using social media and online services.

We would welcome the opportunity to explore these ideas with you in further detail. Should you require further information about any issues raised in the submission, please do not hesitate to contact Tracy Adams, CEO of **yourtown** via email at advocacy@yourtown.com.au.