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Won't Somebody Please Think of the Children: A Human Rights
Analysis of Legislation in Australia and the European Union
Relating to Children's Usage of Social Media

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Abstract

This thesis examines an emerging legislative trend toward the restriction of children's access to the digital world by comparing Australia's under-16s social media ban with the European Union's ('EU's') existing legislative framework. Specifically, it contrasts Australia's November 2024 amendments to the Online Safety Act 2021 (Cth) against the EU's existing scheme, consisting of the General Data Protection Regulation, the Audiovisual Media Services Directive, the e-Commerce Directive, and the Digital Services Act. Additionally, it examines European momentum towards adopting a similar ban. Australia and all EU Member States are parties to the United Nations Convention on the Rights of the Child and other key human rights instruments, obliging these governments to give the best interests of the child primary consideration in all actions concerning minors. This requires States to engage in a delicate balancing act, ensuring that any measures designed to protect children also respect their provision and participation rights. Although youth social media bans are aimed at protecting children from online harms this thesis argues that there are serious limitations in their ability to do so. Furthermore, social media bans represent a significant risk to children's full participation in virtual society, limiting several rights including freedom of expression, the right to peaceful assembly, and the right to play, among others. An exploration of alternative measures which also seek to protect children in the digital age, including a risk-based regulatory approach, education, and the increased role of parents and carers, is used to support the argument that less restrictive methods are also available which have greater potential to promote children's enjoyment of their full range of rights and therefore their best interest.

Deutscher Abstract

Diese Arbeit untersucht einen aufkommenden legislativ Trend zur Einschränkung des Zugangs von Kindern zur digitalen Welt, indem sie das Social-Media-Verbot für unter 16-Jährige in Australien mit dem bestehenden legislativen Rahmen der Europäischen Union ('EU') vergleicht. Insbesondere werden die im November 2024 vorgenommenen Änderungen des Online Safety Act 2021 (Cth) in Australien dem bestehenden System der EU gegenübergestellt, das aus der Datenschutz-Grundverordnung, der Richtlinie über audiovisuelle Mediendienste, der e-Commerce Richtlinie und dem Gesetz über digitale Dienste besteht. Zusätzlich wird die europäische Entwicklung hin zur Einführung eines ähnlichen Verbots untersucht. Australien und alle EU-Mitgliedstaaten sind Vertragsparteien der UN-Konvention über die Rechte des Kindes sowie anderer wichtiger Menschenrechtsinstrumente und damit verpflichtet, das Kindeswohl bei allen Maßnahmen, die Minderjährige betreffen, vorrangig zu berücksichtigen. Dies erfordert von den Staaten ein sensibles Ausbalancieren, wobei gewährleistet werden muss, dass Schutzmaßnahmen für Kinder auch deren Rechte auf Bereitstellung und Teilhabe respektieren. Obwohl Kinder- und Jugend-Social-Media-Verbote darauf abzielen, Kinder vor Online-Schäden zu schützen, argumentiert diese Arbeit, dass es ernsthafte Einschränkungen hinsichtlich ihrer Wirksamkeit gibt. Darüber hinaus stellen Social-Media-Verbote ein erhebliches Risiko für die vollständige Teilhabe von Kindern an der virtuellen Gesellschaft dar und beschränken mehrere Rechte, darunter die Meinungsfreiheit, das Recht auf friedliche Versammlung und das Recht auf Spiel, unter anderem. Die Untersuchung alternativer Maßnahmen zum Schutz von Kindern im digitalen Zeitalter, darunter ein risikobasierter Regulierungsansatz, Bildung sowie die verstärkte Rolle von Eltern und Betreuern, untermauert die Argumentation, dass auch weniger restriktive Methoden verfügbar sind, die ein größeres Potenzial haben, die volle Ausübung kindlicher Rechte und somit das Kindeswohl zu fördern.

Table of Contents

List of Abbreviations.....	5
Table of Cases	6
Table of Legislation	6
Table of Australian Government Documents.....	9
Table of European Union Documents.....	10
Table of UN Documents	13
1 Introduction.....	15
1.1 Background.....	15
1.2 Research Gap.....	16
1.3 Research Aims, Questions and Expected Outcomes	17
1.4 Methodology.....	18
1.5 Thesis Structure	18
2 The Australian Model	19
2.1 Establishing the children’s online safety regime in Australia.....	19
2.2 Elements of the Australian Social Media Ban	22
2.2.1 ‘Age-restricted social media platforms’	22
2.2.2 ‘Age-restricted user’	25
2.2.3 Age-verification	26
2.2.4 Privacy Protections.....	30
2.2.5 Enforcement and compliance	34
3 Regulatory Framework within the EU	36
3.1 GDPR	36
3.1.1 Requirements under the GDPR.....	36
3.1.2 Enforcement	38
3.2 AVMSD	39
3.2.1 Relationship with the ECD.....	41
3.2.2 Relationship with the GDPR	45
3.3 DSA	45
3.3.1 Child-specific provisions.....	46
3.3.2 General provisions	51
3.3.3 Enforcement	52
3.4 Regulation at the Member State level.....	55
3.4.1 France	55
3.4.2 Spain.....	57
3.4.3 Portugal	57

3.4.4	Greece	58
3.4.5	Other European jurisdictions.....	58
3.5	Calls for reform at the EU level.....	59
4	Children’s rights considerations in the regulation of social media	60
4.1	Children’s rights as a distinct category of human rights law.....	61
4.2	The guiding principles of the CROC.....	63
4.2.1	Best interests of the child	63
4.2.2	The right of the child to express their opinion and for appropriate weight to be given to these views.....	65
4.2.3	Non-discrimination	67
4.2.4	The right to life, survival and development	67
4.3	Protection rights.....	67
4.3.1	Protection from abuse or exploitation	68
4.3.2	Protection of privacy	69
4.4	Provision rights.....	70
4.4.1	Education and the role of the mass media.....	70
4.4.2	Rights of children with disabilities.....	71
4.4.3	Rights of children belonging to a minority or Indigenous group	72
4.4.4	The right to rest, leisure and play	73
4.5	Participation rights.....	74
4.6	The balancing act.....	76
5	Child Rights Analysis	77
5.1	The ability of social media bans to protect children.....	77
5.2	Development of the child vs the bright-line approach.....	79
5.3	The restriction of other rights	82
5.4	Alternative measures	84
5.4.1	A risk-based approach	84
5.4.2	Parental involvement.....	86
5.4.3	Education.....	87
5.5	Proportionality assessment	88
6	Conclusion	89
	Bibliography	91

List of Abbreviations

APP	Australian Privacy Principle
AVMSD	Audiovisual Media Services Directive
BOSE	Basic Online Safety Expectations
CJEU	Court of Justice of the European Union
CROC	United Nations Convention on the Rights of the Child
CROC Committee	United Nations Committee on the Rights of the Child
DSA	Digital Services Act
DSC	Digital Services Coordinator
ECD	E-Commerce Directive
ECFR	European Charter of Fundamental Rights
ECHR	European Court of Human Rights
EDPB	European Data Protection Board
EU	European Union
GDPR	General Data Protection Regulation
JSCSMAS	Joint Select Committee on Social Media and Australian Society
LGBTQIA+	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual
PJCHR	Parliamentary Joint Committee on Human Rights
SSCEC	Senate Standing Committee on Environment and Communication
UDHR	Universal Declaration of Human Rights
VLOP	Very Large Online Platform
VSP	Video Sharing Platform

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International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

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1 Introduction

1.1 Background

Social media has become a part of many people's everyday lives. It can provide a source of entertainment, connection or education, but there are also growing concerns around the risks associated with children (persons under the age of 18 years)¹ utilising these platforms being exposed to harmful content, such as that relating to suicide or self-harm, violent behaviour, misogynistic material, misinformation, or cyberbullying, as well as issues of addictive use and poor mental health outcomes. In November 2024, in response to these concerns, the Australian Government amended the Online Safety Act 2021 (Cth) (herein the 'Online Safety Act') to create a world-first obligation for providers of designated social media platforms to take 'reasonable steps' to prevent Australian users under the age of 16 from holding an account with them.² Governments from around Europe have eagerly observed the early effects of this legislative change with several European Union ('EU') Member States taking steps to introduce similar laws at the national level while also calling on the EU to do the same.³ Australia and all Member States of the EU are party to the United Nations Convention on the Rights of the Child (the 'CROC') and other key human rights instruments which oblige these governments to give the best interests of the child primary consideration in all actions taken by the state concerning minors.⁴ While it is agreed that the best interests of the child must form the backbone of laws relating to young people, there is not yet consensus as to the method by which this can be most appropriately achieved in the digital age, although this must be done by a delicate balancing act ensuring that children can enjoy their full range of rights.

While laws banning children below a certain age from using social media are aimed at protecting them from online harms, this legislation also represents a significant risk to children's full participation in virtual society, limiting several rights including freedom of expression, the right to peaceful assembly, and the right to play, among others. Children who have grown up in the digital age offer a wealth of knowledge and understanding as to how these policies and laws will operate in practice, and they have the right to participate in decision-making processes affecting their lives. This thesis therefore examines an emerging legislative

¹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 'CROC', art 1

² Online Safety Act 2021 (Cth) s 63D.

³ 'Weiter Debatte über Mindestalter' (*ORF*, 2 February 2026) <<https://orf.at/stories/3418946/>> accessed 14 February 2026.

⁴ CROC, art 24(1).

trend, comparing the Australian Government's social media ban with the current legislative regime in the EU governing social media providers' obligations to their young users (consisting of the General Data Protection Regulation ('GDPR')⁵, the Audiovisual Media Services Directive ('AVMSD')⁶, the e-Commerce Directive ('ECD')⁷, and the Digital Services Act ('DSA'))⁸, and calls within Europe to move towards a model based on the Australian ban. It does so from a children's rights perspective, analysing whether social media bans can be said to be in the best interest of the child by successfully protecting children from online harms without unnecessarily restricting their other rights and freedoms.

1.2 Research Gap

This research relates to a new and rapidly evolving area of regulation. The Australian social media ban for children under 16 years of age only came into force in December 2025 and its effects are not yet fully known. This is a topic of global interest, however, most analysis to date has been provided by the press,⁹ with only limited academic discussion, largely from the health perspective,¹⁰ with fewer papers focusing on children's rights.¹¹ Within the EU, there

⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L119/1 (GDPR).

⁶ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities [2018] OJ L303/69 (AVMSD).

⁷ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') [2000] OJ L178/1 (ECD).

⁸ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) [2022] OJ L227/1 (DSA).

⁹ Victoria Kim, 'Australia Wants to Bar Children From Social Media. Can It Succeed?' *The New York Times* (New York, 6 July 2025) <www.nytimes.com/2025/07/06/world/australia/kids-social-media-ban.html> accessed 27 August 2025; Josh Taylor, 'As Australia's Teen Social Media Ban Looms, Here's How the Platforms Are Lobbying for an Exemption' *The Guardian* (29 July 2025) <www.theguardian.com/media/2025/jul/29/social-media-ban-australia-tiktok-snapchat-youtube-meta-instagram-ntwnfb> accessed 27 August 2025; 'Australia Adds YouTube to Social Media Ban for under 16s' (*dw.com*, 30 July 2025) <www.dw.com/en/australia-adds-youtube-to-social-media-ban-for-under-16s/a-73459548> accessed 27 August 2025; Stuart Braun, 'Will Australia's Youth Social Media Ban Work?' (*dw.com*, 31 July 2025) <www.dw.com/en/australia-youth-social-media-ban-mental-health-will-it-work/a-73230182> accessed 27 August 2025.

¹⁰ Marilyn Campbell, 'Social-Media Bans Won't Work — There Are Better Ways to Keep Kids Safe' (2025) 637 *Nature* 519 <<https://doi.org/10.1038/d41586-025-00051-0>> accessed 27 August 2025; Tamoor Mirza, 'Balancing Risks and Resilience: Evaluating the Impact of Australia's Social Media Ban on Adolescent Mental Health' (2025) 0(0) *Australas Psychiatry* 1 <<https://doi.org/10.1177/10398562251325728>> accessed 27 August 2025.

¹¹ Vedat Menderes Özçiftci and Müge Demir, 'Digital Paternalism and Adolescent Autonomy: Ethical Reflections on Australia's under-16 Social Media Ban' [2026] *BMC Med Ethics* <<https://doi.org/10.1186/s12910-026-01473-9>> accessed 12 June 2026.

is some academic discussion of children's rights under the existing legislative framework,¹² although the law in this area is still developing. For example, it was only in July 2025 that the European Commission released its 'Guidelines on measures to ensure a high level of privacy, safety and security for minors online' under the DSA.¹³ Furthermore, the question of whether a social media ban should be introduced at the EU level is still live, with many Member States taking steps to implement laws within their own jurisdiction. This thesis is therefore one of the first legal analyses of the Australian and EU regimes as well as the proposals from within EU Member States, considering most recent developments. It is the first to compare these jurisdictions, and particularly to do so from a fundamental rights perspective and is informed by relevant human rights instruments and guidance as to their application in the digital age.¹⁴

1.3 Research Aims, Questions and Expected Outcomes

This thesis has the broad aim of investigating whether banning young people from utilising social media can be said to uphold the principle of the best interests of the child, considering the full range of rights that children hold. It seeks to examine the current and proposed regulatory approaches in Australia and the EU, and evaluate the ability of these laws to balance the aim of reducing harm while also respecting children's fundamental rights and freedoms in an online age.

This aim is supported by an investigation of the following questions:

- I. What are the approaches to regulating the use of social media by children in Australia and the EU?
- II. What new measures are being proposed by the Member States and at the EU level?
- III. What are the relevant rights and freedoms of children in relation to their use of social media?
- IV. What are the (positive and negative) impacts of social media on young people and how do these correlate with children's rights?

¹² Eva Lievens and Valerie Verdoodt, 'Looking for Needles in a Haystack: Key Issues Affecting Children's Rights in the General Data Protection Regulation' (2018) 34 Computer Law & Security Review 269 <<https://doi.org/10.1016/j.clsr.2017.09.007>> accessed 16 May 2026; Valerie Verdoodt, Eva Lievens and Argyro Chatzinikolaou, 'The EU Approach to Safeguard Children's Rights on Video-Sharing Platforms: Jigsaw or Maze?' (2023) 11 MaC <<https://doi.org/10.17645/mac.v11i4.7059>> accessed 14 May 2026.

¹³ Commission, 'Guidelines on Measures to Ensure a High Level of Privacy, Safety and Security for Minors Online, Pursuant to Article 28(4) of Regulation (EU) 2022/2065' (Communication) C(2025) 6826 final.

¹⁴ UN Committee on the Rights of the Child, 'General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment' (2 March 2021) UN Doc CRC/C/GC/25.

- V. Can social media bans be said to be in the best interests of the child, considering their ability to balance the various rights possessed by children as well as alternative methods of achieving the same goal?

It is hypothesised that this examination will reveal that social media bans for minors fail to adequately balance the rights of children to participate online while also protecting them from harm.

1.4 Methodology

To address the above questions, this thesis utilises doctrinal legal research, by means of a comparative analysis of the relevant legislative regimes in Australia and the EU. These regimes are evaluated in light of the best interests of the child. It is recognised that understanding the best interests of the child requires input from and collaboration with children themselves. Therefore, although there is no scope for direct engagement with children in the writing of this thesis, it seeks to rely upon previous consultation where publicly available. The thesis therefore undertakes a proportionality assessment and evaluates the degree to which the laws may achieve their aim of reducing harms faced by children online while also respecting their fundamental rights. The international comparison will help to identify strengths and weaknesses in each jurisdiction's approach to regulation.

1.5 Thesis Structure

The structure of this thesis in the subsequent chapters is as follows. The second chapter introduces the Australian social media ban. It provides a background to the introduction of the legislation and breaks down the obligations imposed on social media platform providers under the law. It outlines the range of age-assurance methods available to platform providers and examines the privacy protections available to personal data collected during this process. Finally, it discusses early enforcement of the legislation since its entry into force in December 2025.

The third chapter begins with an examination of the current regulatory framework addressing children's safety on social media platforms at the EU level. It outlines the ways in which the GDPR, AVMSD, ECD, and DSA aim to protect children, and describes enforcement steps taken by the European Commission under this framework. Next, a range of proposals from Member States to amend their domestic laws to introduce a social media ban are explored, followed by the calls for reform at the EU level.

The fourth chapter introduces the children's rights framework, explaining the general principles under the CROC (the best interests concept, the right of the child to participate in decisions around their life, non-discrimination, and the right to life, survival and development) and the so-called 'three Ps' of protection, provision and participation. This chapter discusses how these rights apply to children's usage of social media and demonstrates the conflict that may arise between these rights, highlighting the difficulty facing policymakers in navigating this tension.

The fifth chapter applies the child rights framework to the concept of youth social media bans, looking at the Australian example as well as proposals within Europe to introduce the same. It assesses whether these bans are effective tools to protect children, explores bans' compatibility with the notion of the evolving capacity of the child, and conducts a proportionality assessment to determine whether the restriction of children's rights may be justified. It does so by examining alternative measures available, including risk-based models, increased parental involvement, and education.

Finally, the sixth chapter provides conclusory remarks and answers the research questions.

2 The Australian Model

In late 2024, in response to concerns about the potential harms of social media for young people, the Australian Government passed its Online Safety Amendment (Social Media Minimum Age) Act 2024 (Cth), introducing a new Part 4A to the Online Safety Act and creating its 'Social Media Minimum Age' scheme. While the pre-existing legislation was aimed at targeting instances of cyberbullying and harmful online content, the amending act took a different approach. Rather than focusing on specific content or services that might be harmful to children, the new Part 4A aims at preventing children from utilising social media altogether. This chapter will examine the process leading up to the introduction of this law and provide a breakdown of the obligations imposed on social media platform providers.

2.1 Establishing the children's online safety regime in Australia

The social media ban for children in Australia follows on from a series of laws regulating the online world. In 2015, the Australian Government introduced the predecessor to the Online Safety Act, the Enhancing Online Safety for Children Act 2015 (Cth) which established the role of the Children's e-Safety Commissioner whose key function was to

administer a complaints system for cyber-bullying material targeted at Australian children, defined as material likely to seriously threaten, intimidate, harass or humiliate an Australian child.¹⁵ Following a statutory review into the operation of this legislation in 2018,¹⁶ the Australian Government introduced the Online Safety Act 2021 (Cth), combining the cyberbullying scheme from the Enhancing Online Safety for Children Act with the Online Content Scheme from the Broadcasting Services Act 1992 (Cth).¹⁷ Underpinning this reform was the idea that ‘the digital industry must step up and do more to keep their users safe’.¹⁸

The Online Safety Act was subject to mandatory review within three years after its commencement.¹⁹ The resulting report, written by Delia Rickard PSM, was provided to the Government on 1 November 2024.²⁰ Ms Rickard noted that while the Australian regime had helped many, it had ‘not been able to cope with the scale of problems in the online world.’²¹ To address this, she made 67 recommendations to the Government. None of these recommendations included the implementation of an age-based restriction on the use of social media. Instead, the biggest priority for reform was the implementation of a new duty of care, encompassing due diligence and ‘underpinned by safety by design principles, risk assessment, risk mitigation and measurement.’²² One of the harms to be highlighted for attention under this duty was ‘harms to young people, including child sexual exploitation and abuse (including grooming), bullying and problematic internet use’.²³ The best interests of the child was also to be a ‘primary consideration for online service providers in assessing and mitigating the risks arising from the design and operation of their services’.²⁴ Furthermore, it was recommended that the objects of the Act be replaced, with explicit reference made to ‘promoting human rights

¹⁵ Enhancing Online Safety for Children Act 2015 (Cth) s 3.

¹⁶ Lynelle Briggs, ‘Report of the Statutory Review of the Enhancing Online Safety Act 2015 and the Review of Schedules 5 and 7 to the Broadcasting Services Act 1992 (Online Content Scheme)’ (Commonwealth of Australia 2018) <www.infrastructure.gov.au/sites/default/files/briggs-report-stat-review-enhancing-online-safety-act2015.pdf> accessed 5 March 2026.

¹⁷ Commonwealth of Australia, Parliamentary Debates, House of Representatives, 24 February 2021, 1785/pinpoint (Paul Fletcher).

¹⁸ *ibid*, 1786.

¹⁹ Online Safety Act, s 239A.

²⁰ Delia Rickard, ‘Report of the Statutory Review of the Online Safety Act 2021’ (Commonwealth of Australia 2024) <www.infrastructure.gov.au/sites/default/files/documents/report-of-the-statutory-review-of-the-online-safety-act-2021-february-2025.pdf> accessed 5 March 2026; Nell Fraser and Owen Griffiths, Parliament of Australia, *Bills Digest: Online Safety Amendment (Social Media Minimum Age) Bill 2024* (Digest No 39 of 2024-5, 25 November 2024) 3.

²¹ Rickard (n 20) 7.

²² *ibid* 21.

²³ *ibid*.

²⁴ *ibid*.

and safety’ and ‘promoting the best interests of the child’, among others.²⁵ This change did not occur.

In May 2024, the Australian Government appointed a Joint Select Committee on Social Media and Australian Society (‘JSCSMAS’) to investigate ‘the influence and impacts of social media on Australian society’.²⁶ The terms of reference included investigation into ‘the use of age verification to protect Australian children from social media’, ‘the algorithms, recommender systems and corporate decision making of digital platforms in influencing what Australians see, and the impacts of this on mental health’, and ‘other issues in relation to harmful or illegal content disseminated over social media, including scams, age-restricted content, child sexual abuse and violent extremist material’, among other matters.²⁷ In its final report, tabled in Federal Parliament on 18 November 2024, the JSCSMAS recognised the inherent difficulty in regulating social media, with policy makers faced with the task of promoting and protecting the benefits that digital platforms can bring while also minimising harm.²⁸ The JSCSMAS did not call for the introduction of a minimum age for the use of social media. Rather, it echoed Ms Rickard’s findings, recommending that the Government ‘introduce a single and overarching statutory duty of care onto digital platforms for the wellbeing of their Australian users’ supported by the requirement that these platforms ‘implement digital risk assessments and risk mitigation plans.’²⁹ The JSCSMAS recommended introducing measures ‘that allow users greater control over what user-generated content and paid content they see by having the ability to alter, reset, or turn-off their personal algorithms and recommender systems’³⁰ and that safety-by-design principles become mandatory.³¹ Significantly, the JSCSMAS recommended that any reform affecting children be ‘co-designed with young people.’³²

Rather than prioritising the recommendations of these reports, the Australian Government introduced its Online Safety Amendment (Social Media Minimum Age) Act 2024. The draft law was introduced to the Australian House of Representatives (the lower house of Parliament) on 21 November 2024 by the Honourable Michelle Rowland, Minister for

²⁵ *ibid* 35.

²⁶ Joint Select Committee on Social Media and Australian Society, Parliament of Australia, *Social Media: The Good, the Bad, and the Ugly* (Report, November 2024) para 1.1.

²⁷ *ibid* para vii (Terms of reference (a), (d) and (e)).

²⁸ *ibid* para 2.2.

²⁹ *ibid* para 5.141 (Recommendation 2).

³⁰ *ibid* para 5.143 (Recommendation 4).

³¹ *ibid* para 5.149 (Recommendation 10).

³² *ibid* para 5.145 (Recommendation 6).

Communications at the time, only days after the above two reports were provided to the Government.³³ Within only eight days, the bill had successfully passed both houses of Parliament, and on 10 December 2024, received royal assent (the final stage of the Australian legislative process) transforming it from a bill into an act.³⁴ The speed at which this reform occurred was noted by the Senate Standing Committee on Environment and Communication ('SSCEC') which was tasked with reviewing the draft bill.³⁵ Furthermore, at the time that the SSCEC was considering the draft act, the Parliamentary Joint Committee on Human Rights ('PJCHR') had not yet had opportunity to comment on the bill.³⁶ The PJCHR is the body responsible for independently assessing the compatibility of proposed laws with Australia's human rights obligations and reporting these non-binding findings to Parliament.³⁷ Therefore, the SSCEC could not incorporate the PJCHR's expertise with specific reference to the best interests of the child into its recommendations to the Government. The way in which the social media ban was introduced was therefore highly problematic.

2.2 Elements of the Australian Social Media Ban

Under the Online Safety Act, 'a provider of an age-restricted social media platform must take reasonable steps to prevent age-restricted users having accounts with the age-restricted social media platform.'³⁸ This includes any accounts that pre-dated the introduction of the legislation.³⁹ Although the bill received royal assent in late 2024, this obligation did not come into effect until 10 December 2025 to allow the Government time to determine how the law would be implemented.⁴⁰ The exact obligations are broken down below.

2.2.1 'Age-restricted social media platforms'

Under the Online Safety Act, 'age-restricted social media platforms' are defined as follows:⁴¹

- (a) an electronic service that satisfies the following conditions:

³³ Commonwealth of Australia, *Parliamentary Debates*, House of Representatives, 21 November 2024 8270 (Michelle Rowland).

³⁴ Online Safety Amendment (Social Media Minimum Age) Act 2024 (Cth).

³⁵ Senate Committee on Environment and Communications, Parliament of Australia, *Online Safety Amendment (Social Media Minimum Age) Bill 2024 [Provisions]* (Report, November 2024) para 2.86.

³⁶ *ibid*, para 1.11

³⁷ Human Rights (Parliamentary Scrutiny) Act 2011 (Cth) pt 2.

³⁸ Online Safety Act, s 63D.

³⁹ *ibid*, s 63E(4).

⁴⁰ Online Safety (Day of Effect of Social Media Minimum Age) Instrument 2025.

⁴¹ Online Safety Act, s 63C(1).

- (i) the sole purpose, or a significant purpose, of the service is to enable online social interaction between 2 or more end-users;
 - (ii) the service allows end-users to link to, or interact with, some or all of the other end-users;
 - (iii) the service allows end-users to post material on the service;
 - (iv) such other conditions (if any) as are set out in the legislative rules; or
- (b) an electronic service specified in the legislative rules...

Here, ‘online social interaction’ is said to include an ‘online interaction that enables end-users to share material for social purposes’.⁴² The Minister for Communications is empowered to make legislative rules designating platforms as age restricted if ‘satisfied that it is reasonably necessary to do so in order to minimise harm to age-restricted users.’⁴³ An electronic service is not considered to be age-restricted where ‘none of the material on the services is accessible to, or delivered to, one or more end users in Australia’ or where the Minister has explicitly excluded that platforms or class of platforms, from the operation of Part 4A.⁴⁴ The definition within the statute is incredibly wide and captures a much larger range of platforms than may traditionally be considered social media, including messaging platforms. The Minister for Communications indicated at the time of passing the legislation that messaging platforms, such as WhatsApp, would be exempted from the scheme.⁴⁵ As a matter of law, however, these types of platforms are caught by the definition until a discretionary decision (a legislative rule) is made to exclude them.

One such discretionary decision was made in July 2025 in the form of the Online Safety (Age-Restricted Social Media Platforms) Rules 2025 (Cth). These rules explicitly *excluded* the following classes of services from the definition of an ‘age-restricted social media platform’:⁴⁶

- (a) services that have the sole or primary purpose of enabling end-users to communicate by means of messaging, email, voice calling or video calling;
- (b) services that have the sole or primary purpose of enabling end-users to play online games with other end-users;

⁴² *ibid*, s 63C(2).

⁴³ *ibid*, s 63C(4).

⁴⁴ *ibid*, s 63C(6), 63C(1)(b); Legislation Act 2003 (Cth) s 13(3).

⁴⁵ Parliamentary Joint Committee on Human Rights, Parliament of Australia *Human Rights Scrutiny Report* (Report 11 of 2024, 27 November 2024) para 1.158.

⁴⁶ Online Safety (Age-Restricted Social Media Platforms) Rules 2025 (Cth) r 5(1).

- (c) services that have the sole or primary purpose of enabling end-users to share information (such as reviews, technical support or advice) about products or services;
- (d) services that have the sole or primary purpose of enabling end-users to engage in professional networking or professional development;
- (e) services that have the sole or primary purpose of supporting the education of end-users;
- (f) services that have the sole or primary purpose of supporting the health of end-users;
- (g) services that have a significant purpose of facilitating communication between educational institutions and students or students' families;
- (h) services that have a significant purpose of facilitating communication between providers of health care and people using those providers' services.

This complex definition led to the e-Safety Commissioner publishing two lists on their website, confirming which platforms they considered were age-restricted and those that were not, with the proviso that this list should not be considered a formal declaration of which services the law applies to.⁴⁷ The eSafety Commissioner advised that they considered the following platforms to be age-restricted: Facebook, Instagram, Kick, Reddit, Snapchat, Threads, TikTok, Twitch, X, and YouTube.⁴⁸ Platforms that the eSafety Commissioner explicitly understood *not* to be age-restricted include: Discord, GitHub, Google Classroom, LEGO Play, Messenger, Pinterest, Roblox, Steam and Steam Chat, WhatsApp, and YouTube Kids.⁴⁹ The guidance from eSafety notes that 'inclusion in the lists does not necessarily mean that each service agrees with eSafety's views', further reinforcing the level of uncertainty.⁵⁰ Snap Inc, the operator of Snapchat, for example, expressed its position that it was primarily a messaging service and thus should be excluded from the operation of the Act.⁵¹ Despite this, Snap Inc indicated that it would comply with the law.⁵² Therefore, the complex definition and categorisation of services may lead to an overly wide scope of application of the Act as even

⁴⁷ eSafety Commissioner, 'Which Platforms Are Age-Restricted?' (10 February 2026) <www.esafety.gov.au/about-us/industry-regulation/social-media-age-restrictions/which-platforms-are-age-restricted> accessed 20 March 2026.

⁴⁸ *ibid.*

⁴⁹ *ibid.*

⁵⁰ *ibid.*

⁵¹ Snap Inc, 'Australia's under 16 Social Media Minimum Age Parliamentary Testimony' (*Snap Values*, 28 October 2025) <<https://values.snap.com/news/au-u16-parliamentary-testimony?lang=en-US>>.

⁵² *ibid.*

companies that may actually be legally excluded from its scope choose to opt into it, out of fear of legal repercussions.

In March 2026, the Minister for Communications further altered the definition of an ‘age-restricted social media platform’ by way of amendment to the legislative rules. Currently, a platform is to be considered age-restricted if it meets the cumulative list set out in s 63C(1)(a) of the Online Safety Act (i.e. if it enables social interaction, allows end-users to interact with others, and to post material on the service), as well as having either or both of a ‘recommender feature’ or a ‘logged-in feature’.⁵³ A ‘logged-in’ feature is defined as a service with certain features that are not able to be accessed without an account.⁵⁴ That includes an ‘endless-feed’ (where a feed of material has no endpoint or an end to which material is added in certain circumstances), a ‘feedback feature’ (information as to the extent to which other users have engaged with a user’s content) or a ‘time-limited feature’ (enabling the viewing of material only within a limited period of time).⁵⁵ A ‘recommender feature’ refers to features that can select material by reference to information associated with the user’s account and the ability to display this to that end-user.⁵⁶ This change was made to ‘better target the law to ensure it is protecting children from the harm driven by platforms that have addictive or otherwise harmful design features’.⁵⁷ Following the amendment of the legislative rules, eSafety confirmed that it had re-assessed its guidance and had not changed its position as to the platforms that fall within the scope of the Act.⁵⁸

2.2.2 ‘Age-restricted user’

An ‘age-restricted user’ is defined in the Online Safety Act as ‘an Australian child who has not reached 16 years’.⁵⁹

⁵³ Online Safety (Age-Restricted Social Media Platforms) Amendment Rules 2026 (Cth) schedule 1 cl 1; Online Safety (Age-Restricted Social Media Platforms) Rules 2025 r 4A.

⁵⁴ Online Safety (Age-Restricted Social Media Platforms) Amendment Rules 2026 (Cth) schedule 1 cl 1; Online Safety (Age-Restricted Social Media Platforms) Rules 2025 r 4A(3).

⁵⁵ Online Safety (Age-Restricted Social Media Platforms) Amendment Rules 2026 (Cth) schedule 1 cl 1; Online Safety (Age-Restricted Social Media Platforms) Rules 2025 r 4A(3).

⁵⁶ Online Safety (Age-Restricted Social Media Platforms) Amendment Rules 2026 (Cth) schedule 1 cl 1; Online Safety (Age-Restricted Social Media Platforms) Rules 2025 r 4A(2).

⁵⁷ eSafety Commissioner, ‘Social Media Minimum Age: Compliance Update’ (Commonwealth of Australia 2026) 28 <www.esafety.gov.au/sites/default/files/2026-03/SocialMediaMinimumAgeComplianceUpdateMarch2026.pdf?v=1774905032806> accessed 20 April 2026.

⁵⁸ *ibid* 7.

⁵⁹ Online Safety Act, s 5 definition of ‘age-restricted user’.

2.2.3 Age-verification

Section 63D of the Online Safety Act is aimed at preventing young people under 16 from ‘having accounts’ with social media platforms. The Government has stressed that this was designed to seek to ‘mitigate the harms that arise from addictive features largely associated with the ‘logged in’ state of social media platforms, such as algorithms tailoring content, infinite scroll, persistent notifications and alerts, and ‘likes’ to activate positive feedback neural activity’.⁶⁰ The Act does not define what ‘reasonable steps’ might entail, although the Australian Government clarified in the explanatory memorandum to the bill that ‘at a minimum’ this obligation would require the implementation of some form of age assurance;⁶¹ a broad term referring to ‘a range of processes and methods used to verify, estimate or infer a person’s age or age range.’⁶² All Australian users of ‘age-restricted social media platforms’ are subject to this requirement as platforms must determine a user’s age to avoid sanction. Whether an age assurance method is said to meet the requirement of ‘reasonable steps’ is to be ‘determined objectively, having regard to the suite of methods available, their relative efficacy, costs associated with their implementation, and data and privacy implications on users, amongst other things’.⁶³ Despite the Government having commissioned a trial into age assurance technologies, this trial had not yet concluded at the time the Online Safety Amendment Act was passed by both houses of Parliament. The Government introduced this legislation without concrete knowledge as to the readiness of age assurance technologies’ effectiveness or readiness for the Australian context or the ability to assess these against the best interests of the child.

The Final Report of the Age Assurance Technology Trial was published in August 2025.⁶⁴ The authors of the report emphasised that the trial was ‘not an exercise in conformity assessment with Australian law or international standards’ and their findings were ‘policy neutral’ and did ‘not relate to a specific regulatory regime’.⁶⁵ Instead, the report aimed at providing ‘factual and validated observations about the practical capabilities, limitations and

⁶⁰ Explanatory Memorandum, Online Safety Amendment (Social Media Minimum Age) Bill 2024 (Cth) 21.

⁶¹ *ibid.*

⁶² eSafety Commissioner, ‘Social Media Minimum Age: Regulatory Guidance’ (September 2025) 11 <<https://www.esafety.gov.au/industry/regulatory-guidance>> accessed 5 May 2026.

⁶³ Explanatory Memorandum, Online Safety Amendment (Social Media Minimum Age) Bill 2024 (Cth) 21.

⁶⁴ Age Check Certification Scheme, *Age Assurance Technology Trial: Part A – Main Report* (Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts 2025) <www.infrastructure.gov.au/sites/default/files/documents/aatt_part_a_digital.pdf> accessed 30 March 2026.

⁶⁵ *ibid.*

potential of age assurance technologies based on structured evaluation processes.’⁶⁶ The report concluded that age assurance could be implemented in Australia, but that there was not a ‘single ubiquitous solution that would suit all use cases’ nor ‘solutions that were guaranteed to be effective in all deployments’.⁶⁷ The report examined a range of age assurance methods, each with their own considerations in relation to privacy. Methods of age-assurance explored in the trial included age verification, age estimation, age inference, successive validation, technology stacking, parental control systems and parental consent (the latter two of which would not meet the requirements of the obligations of social media platform providers under the Online Safety Act). The findings of the trial formed the basis of the eSafety Commissioner’s Regulatory Guidance, a non-binding document intended to assist providers of age-restricted social media platforms to meet their obligations under the Online Safety Act, published in September 2025.⁶⁸ The eSafety Commissioner stressed that the Act itself and eSafety did not require a specific type of age-assurance to be utilised and explored the methods outlined in the trial.⁶⁹

Age verification is a ‘high-assurance method that determines whether an individual is above or below a specified age threshold by comparing a verified date of birth...with a point in time – typically the current date.’⁷⁰ This method therefore relies on the collection of information, such as government identity documents, that can verify a person’s age. Providers of age-restricted platforms must not collect government-issued identification material (or digital identification) as their only means of age assurance.⁷¹ This is further emphasised in the eSafety Commissioner’s Regulatory Guidance.⁷² This condition was included to ensure that Australians were not forced to provide identity documents to social media platforms for age verification.⁷³ A breach may lead to a penalty of up to AU\$49.5 million (approximately €29.5 million).⁷⁴ This is a positive addition to the Act, but it does prevent identification from being utilised as *one* of the options for age verification, so the associated privacy risks do not fall away entirely. The trial also found that although most providers of age-verification followed ‘privacy-by-design and data minimisation’ principles there were instances of some providers

⁶⁶ *ibid*, para A.1.6.

⁶⁷ *ibid*, para A.3.1 (Finding 4).

⁶⁸ eSafety Commissioner, ‘Social Media Minimum Age: Regulatory Guidance’ (n 62) 2–3.

⁶⁹ *ibid* 11.

⁷⁰ Age Check Certification Scheme, *Age Assurance Technology Trial: Part A – Main Report* (n 64) para A.19.1.

⁷¹ Online Safety Act, s 63DB.

⁷² eSafety Commissioner, ‘Social Media Minimum Age: Regulatory Guidance’ (n 62) 14.

⁷³ Supplementary Explanatory Memorandum, Online Safety Amendment (Social Media Minimum Age) Bill 2024 (Cth) 1.

⁷⁴ Online Safety Act, ss 63DA, 63DB, 162; Regulatory Powers (Standard Provisions) Act 2014 (Cth) s 82(5).

pre-empting regulatory investigations or forensic requests, leading to the retention of full biometric or document data, ‘even when such retention was not required or requested.’⁷⁵ Although the privacy requirements outlined in the section 2.2.4 below would prohibit such behaviour this nevertheless highlights the privacy risks associated with this method in practice.

The next method explored in the trial and the Regulatory Guidance was age-estimation. This method assesses ‘observable characteristics such as facial features, voice or behavioural patterns’ of a user to estimate their age without identifying them.⁷⁶ Although users are not identified by the provider itself, this nevertheless highlights the need for privacy safeguards to protect users against this information being retained or used for other purposes. Although it was found that this method was able to be ‘deployed effectively’ in Australia, it was acknowledged that a margin of error must be accepted in relation to this technology, and that ‘false negatives will then be inevitable and alternative methods will be required to protect them’.⁷⁷ This was particularly the case for ‘non-Caucasian users and female presenting users near policy thresholds’.⁷⁸ There was also an underrepresentation of Aboriginal and Torres Strait Islander peoples in the training data for the providers of this method studied.⁷⁹ The eSafety Commissioner commented that this ‘highlights the need for careful configuration and fallback mechanisms within age assurance systems and providing options and review pathways for end-users’.⁸⁰ This highlights that inaccuracies in this method may force some children to utilise alternative methods of age assurance, such as age-verification, resulting in them having to share even more personal information with platforms or their age-assurance providers.

The third method of age assurance explored was age inference. This method utilises ‘behavioural patterns, contextual data, digital interactions or metadata’ to infer a user’s likely age, without reliance on identification documents or biometric information.⁸¹ The trial described this method as ‘a flexible, scalable and privacy conscious tool for digital age assurance’.⁸² Despite this, there were concerns that inference could become persistent or platform-wide, resulting in continuous monitoring.⁸³ Furthermore, its accuracy near age

⁷⁵ Age Check Certification Scheme, *Age Assurance Technology Trial: Part A – Main Report* (n 64) para A.19.4, A.19.8.

⁷⁶ *ibid*, para A.25.1.

⁷⁷ *ibid*, para A.25.3.

⁷⁸ *ibid*, para A.25.5.

⁷⁹ *ibid*.

⁸⁰ eSafety Commissioner, ‘Social Media Minimum Age: Regulatory Guidance’ (n 62) 13.

⁸¹ Age Check Certification Scheme, *Age Assurance Technology Trial: Part A – Main Report* (n 64) para A.31.1.

⁸² *ibid*, para A.31.7.

⁸³ *ibid*, para A.31.5.

thresholds was often less precise than age verification, and users were often escalated towards age-verification or estimation methods in the trial due to conservative buffers, which had the risk of creating unreasonable restrictions on users.⁸⁴ The Regulatory Guidance noted that in light of the lower levels of precision associated with age inference, social media platform providers ‘should take care to ensure there is a logical and evidence-based connection between the inference and the age result’ in order to meet their obligations.⁸⁵

Technology stack refers to ‘the layers of technologies that work together to deliver a digital service’, ranging from device to app to browser, in which each layer performs its own distinct but interconnected role to confirm the user’s age.⁸⁶ The trial explored whether this method of age-assurance could ‘move beyond fragmented, service-by-service implementation’ and be effectively and safely deployed.⁸⁷ App store-based models which may seek to restrict the download of apps based on age were found to be better conceptualised, but relied on self-declaration or information provided by parents.⁸⁸ Network or device-level systems were less developed and faced privacy and control considerations, while interoperability systems were still in the early stages of development.⁸⁹ Additional issues identified in the trial included implementation challenges, determining responsibility and liability within the layers of the stack, and proximity to risk in the sense of how close the age-assurance mechanism was to the risk with app-level services having narrower coverage.⁹⁰ The Regulatory Guidance notes that regardless of where age assurance occurs in the technology stack and whether it is implemented in-house by a platform or by a third party, the obligation to take reasonable steps remains on the social media platform provider.⁹¹

While eSafety does not mandate one particular method, it does recommend social media platforms utilise a successive validation approach to age assurance.⁹² Successive validation, or the ‘waterfall method’, is a type of age-assurance incorporating various other methods, such as age inference and age-verification, ‘used sequentially to reach a confident age assurance

⁸⁴ eSafety Commissioner, ‘Social Media Minimum Age: Regulatory Guidance’ (n 62) 13–14.

⁸⁵ *ibid* 13.

⁸⁶ Age Check Certification Scheme, *Age Assurance Technology Trial: Part A – Main Report* (n 64) para A.54.1-A.54.2.

⁸⁷ *ibid*, para A.53.1.

⁸⁸ *ibid*, para A.53.2.

⁸⁹ *ibid*, para A.56.3-A.56.4.

⁹⁰ *ibid*, para A.56.6-A.56.8.

⁹¹ eSafety Commissioner, ‘Social Media Minimum Age: Regulatory Guidance’ (n 62) 15.

⁹² *ibid*.

result’.⁹³ In practice, social media platforms have adopted a range of methods (often utilising the successive validation approach) from a range of age assurance providers.⁹⁴ For example, to access Snapchat in Australia, users are required to verify their age using various options from Snap Inc’s external provider, k-ID.⁹⁵ These include the use of a government-issued photo identification document, a facial scan or the verification of age in connection with an Australian bank account.⁹⁶

2.2.4 Privacy Protections

To address some of these privacy concerns, the Government also introduced additional privacy safeguards into Australian law. The Online Safety Act adopts the definition of ‘personal information’ from the Privacy Act 1988 (Cth) (herein: the ‘Privacy Act’): ‘information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether it is true or not, and whether it is recorded in a material form or not.’⁹⁷ The Privacy Act does not generally apply to ‘small business operators’ whose company has an annual turnover of less than AU\$3 million (around €1.8 million),⁹⁸ with some limited exceptions.⁹⁹ Importantly here, one of these exceptions includes companies that disclose ‘personal information about another individual to anyone else for a benefit, service, or advantage’.¹⁰⁰ Therefore providers of age assurance and social media platform providers will be subject to the regime of the Privacy Act.

An entity holding personal information collected for the purpose of, or including the purpose of, taking reasonable steps to prevent a person under 16 from having an account with an age-restricted social media platform may not use or disclose of this information other than for the purpose of age verification or where:¹⁰¹

⁹³ Age Check Certification Scheme, *Age Assurance Technology Trial: Part A – Main Report* (n 64) para A.35.1.

⁹⁴ See, eg, Snap Inc, ‘Account Restrictions for Australia Users’ (*Snapchat Support*) <<https://help.snapchat.com/hc/en-us/articles/42550358600084-Account-Restrictions-for-Australia-Users?lang=En>>; Reddit, ‘How Does Age Verification Work in Australia?’ (*Reddit Help*, 21 March 2026) <<https://support.reddithelp.com/hc/en-us/articles/47163443918228-How-does-age-verification-work-in-Australia>> accessed 29 March 2026; Google, ‘Access Age-Restricted Content & Features’ (*Google Account Help*) <<https://support.google.com/accounts/answer/10071085?hl=en#zippy=%2Cuse-an-id-for-age-verification%2Cuse-a-selfie-for-age-verification%2Cuse-an-email-address-for-age-verification>> accessed 29 March 2026.

⁹⁵ Snap Inc (n 94).

⁹⁶ *ibid*.

⁹⁷ Privacy Act 1988 (Cth) s 6 definition of ‘personal information’; Online Safety Act, s 63F(4).

⁹⁸ Privacy Act 1988 s 6 definitions of ‘agency’, ‘organisation’ ‘small business’, s 6C, 6D.

⁹⁹ *ibid*, s 6E.

¹⁰⁰ *ibid*, s 6D(4)(c).

¹⁰¹ Online Safety Act, s 63F(1)(b)(ii).

1. disclosure is authorised by a court order (Australian Privacy Principle ('APP') 6.2(b));
2. a 'permitted general situation' exists (APP 6.2(c)), such as where the entity has reason to suspect unlawful activity, to assist in the location of a missing person, and other scenarios;¹⁰²
3. a permitted health situation exists relating to disclosure (APP 6.2(d)), including where the disclosure is necessary for research and it is impracticable to obtain the individual's consent to the use or disclosure, or to prevent a serious threat to the life or safety of a genetic relative of that person, and other scenarios;¹⁰³
4. disclosure is required by an enforcement body (APP 6.2(e)); or
5. with the consent of the individual.¹⁰⁴

Consent must be voluntary, informed, current, specific, and unambiguous, and must be able to be withdrawn by the individual in a manner that is easily accessible to them.¹⁰⁵ There are therefore a range of circumstances in which a provider would be able to use and disclose the personal information collected, including potentially to disclose to law enforcement bodies without the consent of the individual.¹⁰⁶

The unauthorised use or disclosure by an entity is taken to be an interference with privacy for the purposes of the Privacy Act and covered by s 13 of that Act.¹⁰⁷ This may result in a civil penalty in instances of 'serious' interferences with privacy.¹⁰⁸ In determining whether a breach is serious, a court may have regard to a series of matters, including the kinds of information involved, the sensitivity of that information, the consequences, and importantly, whether the individual affected is a child, among other matters.¹⁰⁹ If the contravention is committed by a company, then the maximum penalty for such a breach is limited to an amount not more than AU\$50 million (approximately €30 million), three times the value of the benefit the obtained due to the contravention, or 30% of the adjusted turnover of the company during the breach turnover period for the contravention.¹¹⁰

¹⁰² Privacy Act 1988 s 16A.

¹⁰³ *ibid*, s 16B.

¹⁰⁴ Online Safety Act, s 63F(1)(b)(ii).

¹⁰⁵ *ibid*, s 63F(2).

¹⁰⁶ Parliamentary Joint Committee on Human Rights (n 45) para 1.164.

¹⁰⁷ Online Safety Act, s 63F(1)(c)-(d).

¹⁰⁸ Privacy Act 1988 s 13G.

¹⁰⁹ *ibid*, s 13G(1B).

¹¹⁰ *ibid*, s 13G(3).

The Online Safety Act also includes the obligation of deletion. If an entity holds personal information about an individual collected for the purpose of, or for purposes including taking reasonable steps to prevent a person under 16 from having an account with an age-restricted social media platform, the entity must destroy this information after using or disclosing it for the purposes for which it was collected.¹¹¹ Failure to do so will also be considered an interference with privacy for the purposes of the Privacy Act,¹¹² and serious and repeated offences could result in maximum penalties of at least AU\$50 million (approximately €29.8 million).¹¹³ Additionally, if the Information Commissioner (established under the Privacy Act) believes that either the disclosure or deletion obligations have been breached they may prepare a statement to that effect, give a copy to the platform provider, and if appropriate, publish the statement on the Information Commissioner's website.¹¹⁴ The deletion obligation is significant in reducing the risk of data breaches or vulnerability to cyber-attacks.

The privacy protections afforded to all Australians were also strengthened by the Government through the Privacy and Other Legislation Amendment Act 2024 (Cth), passed in November 2024. This legislation enacted the first tranche of reforms to the Privacy Act that were agreed to by the Australian Government in September 2023 in its response to the Privacy Act Review of February that year.¹¹⁵ One of the key strengthening features of the reform was to include a new Schedule 2 in the Privacy Act, creating a statutory tort for serious invasions of privacy.¹¹⁶ Unlike the rest of the Privacy Act which is enforced by the Information Commissioner against entities, this reform has created an avenue for individuals to take legal action in their own name. An individual has a cause of action in tort against another person if that person invades their privacy by misusing information relating to them where: a person in the plaintiff's position would have a reasonable expectation of privacy in those circumstances; the invasion of privacy was intentional or reckless, the invasion was serious; and where the invasion was not outweighed by the public interest.¹¹⁷ It appears likely that this tort would

¹¹¹ Online Safety Act, s 63F(3).

¹¹² *ibid*, s 63F(1)(c)-(d).

¹¹³ Privacy Act 1988 s 13G.

¹¹⁴ Online Safety Act, s 63K.

¹¹⁵ Attorney General's Department, *Privacy Act Review Report* (Commonwealth of Australia 2023) <https://www.ag.gov.au/sites/default/files/2023-02/privacy-act-review-report_0.pdf> accessed 15 April 2026; Attorney-General's Department, *Government Response: Privacy Act Review* (Commonwealth of Australia 2023) <<https://www.ag.gov.au/sites/default/files/2023-09/government-response-privacy-act-review-report.PDF>> accessed 30 April 2026.

¹¹⁶ Explanatory Memorandum, Privacy and Other Legislation Amendment Bill 2024 (Cth) s 10; Privacy Act 1988 Schedule 2.

¹¹⁷ Privacy Act 1988 schedule 2 cl 7.

therefore apply in this scenario to young users of age assurance technology. Defences are similar to that in the rest of the Privacy Act and include where the invasion was required or authorised by law, where the plaintiff consented, if the defendant reasonably believed the invasion was necessary to prevent a serious threat to life or safety, or where the invasion was proportionate, amongst other defences.¹¹⁸ Courts may award damages to the plaintiff if successful, although these are limited to a maximum of AU\$478,550 (approximately €285,000), and/or a series of other remedies, including an account of profits, injunction, order requiring the defendant to apologise to the plaintiff, correction order, order that the material be destroyed or delivered to the plaintiff, and a declaration of the serious invasion.¹¹⁹ This reform may act as a deterrent against invasions of privacy of young internet users, and at the very least provides a redress system in instances of breaches of this right, but relies on young people and their carers to expend their own resources to engage in potentially costly litigation.

A second particularly relevant reform was the inclusion of a new requirement for the Information Commissioner to develop the Children's Online Privacy Code setting out how one or more of the APPs (the standards that govern the collection, use and disclosure of most personal information in Australia) apply or are to be complied with in relation to children.¹²⁰ This was introduced with the explicit aim of enhancing children's right to privacy.¹²¹ The new document will codify existing guidance material, 'elevating protections by imposing specific enforceable obligations with respect to privacy in the handling of children's personal information than would otherwise exist under prevailing law.'¹²² APP codes may provide differently for different classes of entities, personal information or activities of entities.¹²³ The Government clarified that this may include, for example, specification that particular requirements under the code only apply to social media services bound by it.¹²⁴ The Information Commissioner is to develop and register the code within 24 months after the Privacy and Other Legislation Amendment Act 2024 received royal assent (i.e. before 10 December 2026).¹²⁵

A significant limitation to the legislation requiring the development of the code is that there was no legal requirement to consult children in designing it. The Information

¹¹⁸ *ibid*, schedule 2 cl 8.

¹¹⁹ *ibid*, schedule 2 cl 11-12.

¹²⁰ Explanatory Memorandum, Privacy and Other Legislation Amendment Bill 2024 (Cth) schedule 1 clause 32; Privacy Act 1988 s 26GC.

¹²¹ Explanatory Memorandum, Privacy and Other Legislation Amendment Bill 2024 (Cth) paras 115–117.

¹²² *ibid* para 117.

¹²³ Privacy Act 1988 s 26C(4A).

¹²⁴ Explanatory Memorandum, Privacy and Other Legislation Amendment Bill 2024 (Cth) para 82.

¹²⁵ Privacy Act 1988 s 26CG(10).

Commissioner is obliged to consult with the eSafety Commissioner and the National Children's Commissioner before registering the code, with the law stipulating that the Information Commissioner 'may' consult with children in this process.¹²⁶ While the draft code must be made available to the public and the public must be invited to make submissions and therefore may implicitly include children, there is no explicit obligation to involve them in its design.¹²⁷ Despite a lack of legal requirement, the Information Commissioner has seemingly worked to respect the rights of the child to participate in decisions affecting them in the development of the code. The initial phases of the development of the code involved consultation with children, young people, carers and parents, and children's welfare organisations (phase one), consultation with industry stakeholders, civil society and academia (phase two).¹²⁸ The code is currently in the third phase in which feedback on the draft will be sought from these groups.¹²⁹ The Office of the Information Commissioner has commented that 'the aim of the Code is not to prevent children from engaging online, but to ensure their personal information is protected within that space', noting that it operates separately to the social media restrictions under the Online Safety Act.¹³⁰ Therefore, without access to the draft itself, it appears that the Code will be a positive step towards protecting the safety of children online, particularly those aged between 16-18 who are still legally permitted to access social media, but also younger Australians who might be utilising age assurance methods to try to utilise social media.

2.2.5 Enforcement and compliance

The maximum penalty for non-compliance with the obligation to take 'reasonable steps' to prevent users under 16 from holding accounts with social media is AU\$49.5 million (approximately €29.5 million).¹³¹ Additionally, if the eSafety Commissioner is satisfied that a platform has failed to take reasonable steps, the Commissioner may also prepare a statement to that effect, provide a copy to the platform provider, and if the Commissioner considers it appropriate to do so, publish this statement on the Commissioner's website.¹³² The eSafety Commissioner has stressed, however, that the question of what is 'reasonable' is 'ultimately a

¹²⁶ *ibid*, s 26CG(9).

¹²⁷ *ibid*.

¹²⁸ Office of the Australian Information Commissioner, 'Children's Online Privacy Code' (16 April 2026) <www.oaic.gov.au/privacy/privacy-registers/privacy-codes/childrens-online-privacy-code> accessed 22 June 2026.

¹²⁹ *ibid*.

¹³⁰ *ibid*.

¹³¹ Online Safety Act, ss 62D, 162; Regulatory Powers (Standard Provisions) Act 2014 (Cth) s 82(5); Crimes Act 1914 (Cth) s 4AA(1).

¹³² Online Safety Act, s 63J.

question for the courts to determine on the evidence in the context of the platform's service, technological feasibility and the regulatory landscape.'¹³³

The Australian Government reported in January 2026 that more than 4.7 million accounts for users under 16 years of age had been deactivated across various social media platforms.¹³⁴ Despite this, it was also reported in the media that age-assurance methods had not worked consistently, and Australian users under the age of 16 commented anecdotally that only around 10% of their friends have been banned from 'age-restricted social media platforms' since the operation of the legislation.¹³⁵ This was reflected in eSafety's report into the level of compliance with the regime up to March 2026.¹³⁶ It was found that 'a substantial proportion' of children under the age of 16 'continue to retain accounts, create new accounts or pass platforms' age assurance systems.'¹³⁷ Around seven out of 10 parents and carers with children aged between eight and 15 reported that their child still had a social media account with Facebook, Instagram, Snapchat or Tiktok.¹³⁸ Preliminary observations from eSafety included that some platforms had utilised messaging to prompt users to attempt age verification, even where their declared age prior to the implementation of the law was under 16, that some platforms had enabled children under 16 to repeatedly attempt the same age assurance method until they were 'verified' as over 16, and that pathways for reporting accounts by users under 16 were not accessible or effective.¹³⁹ In light of this, eSafety confirmed it was actively investigating potential compliance issues regarding Facebook, Instagram, Snapchat, TikTok and YouTube with the goal of coming to a decision about enforcement action by mid-2026.¹⁴⁰ The eSafety Commissioner also revealed that within the first three months of the scheme's operation there had not been a significant decrease in the overall number of children aged under 16 who reported harm to eSafety.¹⁴¹ Therefore, at least in these early stages, the ban is facing significant practical challenges.

¹³³ eSafety Commissioner, 'Social Media Minimum Age: Compliance Update' (n 57) 7.

¹³⁴ Anthony Albanese and Anika Wells, '4.7 Million Accounts Deactivated, Removed or Restricted' (*Prime Minister of Australia*, 16 January 2026) <www.pm.gov.au/media/4-7-million-accounts-deactivated-removed-or-restricted> accessed 30 April 2026.

¹³⁵ Cale Matthews, 'Two Months since the Social Media Ban Began and Teens Say It Isn't Working' (*ABC News*, 4 February 2026) <www.abc.net.au/news/2026-02-05/social-media-ban-do-under-16s-think-it-is-working/106304064>.

¹³⁶ eSafety Commissioner, 'Social Media Minimum Age: Compliance Update' (n 57).

¹³⁷ *ibid* 5.

¹³⁸ *ibid* 13.

¹³⁹ *ibid* 18.

¹⁴⁰ *ibid* 7.

¹⁴¹ *ibid* 15.

3 Regulatory Framework within the EU

Within the EU, the GDPR, AVMSD, ECD, and the DSA are the main instruments regulating social media platforms' obligations with regard to the safety of children utilising their services. This chapter will begin by exploring the specific duties imposed on platform providers under this framework. It will be demonstrated that two approaches exist: first, the approach under the GDPR which functions at least in theory similarly to a social media ban and the approach under the AVMSD and the DSA, seeking to identify and mitigate specific risks to children arising from content and platform design. This chapter will then examine the proposed laws in Member States which would introduce social media bans domestically, as well as calls for the same at the EU level, raising the question of which level of government is competent to do so.

3.1 GDPR

The GDPR was adopted by the EU in 2016 and became applicable after 25 May 2018,¹⁴² replacing the former Data Protection Directive of 1995.¹⁴³ The GDPR sets out rules protecting natural persons with regard to the processing of personal data ('information relating to an identified or identifiable natural person')¹⁴⁴ and relating to the free movement of this data.¹⁴⁵ It also seeks to protect natural persons' right to the protection of personal data.¹⁴⁶ While the Data Protection Directive of 1995 did not distinguish between children and adults, recital 38 to the GDPR recognises explicitly that 'children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data.'

3.1.1 Requirements under the GDPR

The GDPR contains both child-specific and general obligations that may provide particular protection for children and their data whilst using social media.¹⁴⁷ Similarly to adults, a lawful purpose must exist in order to process the personal data of children.¹⁴⁸ Unlike adults, however, a social media platform provider may only rely on consent as a basis for processing

¹⁴² GDPR, art 99(2).

¹⁴³ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L281/31; *ibid*, art 94.

¹⁴⁴ *ibid*, art 4(1).

¹⁴⁵ *ibid*, art 1(1).

¹⁴⁶ *ibid*, art 1(2); Charter of Fundamental Rights of the European Union [2012] OJ C 326/391 art 8.

¹⁴⁷ Verdoodt, Lievens and Chatzinikolaou (n 12) 155.

¹⁴⁸ GDPR, art 6.

a child's data when that young person is at least 16 years old or if the consent was given or authorised by their parent or guardian.¹⁴⁹ The data controller (the natural or legal person which 'determines the purpose and means of the processing of personal data')¹⁵⁰ is obliged to take reasonable efforts to verify that consent is given or authorised by the parent or guardian, 'taking into consideration available technology'.¹⁵¹ Member States may provide for a lower age of consent for these purposes, provided it is not lower than 13.¹⁵² This requirement creates a legal barrier to children between the ages of 13 and 16, depending on the age chosen by the Member State, from creating an account with a social media platform. It therefore operates, at least in theory, similarly to a social media ban with the opportunity for authorisation by a parent or guardian.

Where children do hold social media accounts they are entitled to further child-specific protections. Data controllers are obliged to provide certain information to data subjects both when the data was obtained from the subject themselves and when it was obtained from a third party, including, but not limited to the identity of the controller, the purpose and legal basis for processing of the data, and recipients of the personal data.¹⁵³ Data subjects also have the right to access their personal data that is being processed by a data controller,¹⁵⁴ and to control this data through rectification, erasure, the restriction of processing, data portability, objection, and the right not to be subject to a decision based solely on automated processing.¹⁵⁵ Where the data subject exercising these rights is a child, the information or communication must be provided in 'a concise, transparent, intelligible and easily accessible form, using clear and plain language.'¹⁵⁶ Children may therefore be better equipped to exercise these rights and protect their best interests online.

In addition to the above rights of data subjects, the GDPR creates further obligations for social media platforms seeking to process the data of individuals, including children. Data controllers must implement 'appropriate technical and organisational measures...which are designed to implement data-protection principles, such as data minimisation' while processing this data and to ensure that 'by default personal data are not made accessible without the

¹⁴⁹ *ibid*, art 8(1).

¹⁵⁰ *ibid*, art 4(7).

¹⁵¹ *ibid* 8(2).

¹⁵² *ibid*, art 8(1).

¹⁵³ *ibid*, art 13–14.

¹⁵⁴ *ibid*, art 15.

¹⁵⁵ *ibid*, art 15–22.

¹⁵⁶ *ibid*, art 12(1).

individual's intervention to an indefinite number of natural persons.'¹⁵⁷ The GDPR also obliges data controllers that engage in processing that is 'likely to result in a high risk to the rights and freedoms of natural persons' to carry out an impact assessment prior to carrying out this processing, thereby including elements of a risk-based approach to regulation.¹⁵⁸

3.1.2 Enforcement

Each Member State is to designate a public authority or authorities as responsible for monitoring the application of the GDPR.¹⁵⁹ National supervisory authorities are responsible for the performance of tasks assigned to them in accordance with the GDPR within the territory of its Member State.¹⁶⁰ These tasks include, among other things, to monitor and enforce the GDPR, promote public awareness of processing risks, advise national governments as to the protection of personal data.¹⁶¹ National supervisory authorities are empowered to investigate potential breaches of the Regulation, issue infringement warnings and impose administrative fines.¹⁶² Fines under the GDPR can be significant, with infringement for certain provisions, including, for example, 'the basic principles for processing, including conditions for consent' reaching up to €20,000,000, or up to 4% of a company's total worldwide turnover from the previous financial year, whichever penalty is higher.¹⁶³ In 2024, for example, the Irish Data Protection Commission fined Meta €251 million following data breaches affecting approximately three million users within the EU.¹⁶⁴

Where data processing occurs across borders, the supervisory authority of the establishment of a data controller or processor is competent to act as the lead supervisory authority.¹⁶⁵ Given that Ireland is the seat of many technology companies in Europe, its Data Protection Commission often acts as the lead regulator in matters under the GDPR. The lead supervisory authority is to cooperate with other authorities concerned to share information and attempt to reach consensus.¹⁶⁶ Furthermore, supervisory authorities are obliged to provide

¹⁵⁷ *ibid*, art 25(1).

¹⁵⁸ *ibid*, art 35(1).

¹⁵⁹ *ibid*, art 51(1).

¹⁶⁰ *ibid*, art 55(1).

¹⁶¹ *ibid*, art 57(1).

¹⁶² *ibid*, art 58.

¹⁶³ *ibid*, art 83(5).

¹⁶⁴ Data Protection Commission (Ireland), 'Irish Data Protection Commission Fines Meta €251 Million' (17 December 2024) <<https://www.dataprotection.ie/en/news-media/press-releases/irish-data-protection-commission-fines-meta-eu251-million>> accessed 6 July 2026.

¹⁶⁵ GDPR, art 56(1).

¹⁶⁶ *ibid*, art 60(1).

mutual assistance to ensure the GDPR is enforced in a consistent manner across the EU.¹⁶⁷ These authorities are also empowered to conduct joint investigations and enforcement, for instance ‘where a significant number of data subjects in more than one Member State are likely to be substantially affected by processing operations’.¹⁶⁸

The GDPR also mandated the establishment of the European Data Protection Board (EDPB), composed of the head of one supervisory authority from each Member State and of the European Data Protection Supervisor.¹⁶⁹ The EDPB’s role is to ensure the consistent application of the GDPR by monitoring its application, providing advice to the Commission, and issuing guidelines and opinions, among other things.¹⁷⁰ The EDPB may adopt binding decisions where a supervisory authority has raised an objection to a draft decision of the lead authority on a matter.¹⁷¹ The EDPB has done so in several cases involving data protection matters relating to children in which the Irish Data Protection Commission acted as lead authority, demonstrating its important role in keeping lead authorities accountable and in reinforcing consistent application of the GDPR for children across Europe.¹⁷²

3.2 AVMSD

The AVMSD came into force on 5 May 2010.¹⁷³ The Directive sets out sector-specific rules, regulating traditional audiovisual media services, like television, as well as on-demand services. In 2018 it was amended to address the changing audiovisual media services market and the rise of new types of content outside of traditional television, such as user-generated content. The scope of the Directive was extended to ‘video-sharing platform providers’, widely defined as a ‘natural or legal person who provides a video-sharing platform service’.¹⁷⁴ Recital 5 of the Directive explicitly recognises that the AVMSD captures social media services when the ‘provision of programmes and user-generated videos constitute an essential functionality of that service’. An ‘essential functionality’ refers to situations in which the ‘audiovisual content

¹⁶⁷ *ibid*, art 61(1).

¹⁶⁸ *ibid*, art 61(1)-(2).

¹⁶⁹ *ibid*, art 68.

¹⁷⁰ *ibid*, art 70(1).

¹⁷¹ *ibid*, art 65(1)(a).

¹⁷² European Data Protection Board, ‘Binding Decision 2/2022 on the Dispute Arisen on the Draft Decision of the Irish Supervisory Authority Regarding Meta Platforms Ireland Limited (Instagram) under Article 65(1)(a) GDPR’ <https://www.edpb.europa.eu/documents/edpb-binding-decisions/binding-decision-22022-on-the-dispute-arisen-on-the-draft-decision_en> accessed 6 July 2026; European Data Protection Board, ‘Binding Decision 2/2023 on the Dispute Submitted by the Irish SA Regarding TikTok Technology Limited (Art. 65 GDPR)’ <https://www.edpb.europa.eu/documents/edpb-binding-decisions/binding-decision-22023-on-the-dispute-submitted-by-the-irish-sa_en> accessed 6 July 2026.

¹⁷³ AVMSD, art 35.

¹⁷⁴ *ibid*, art 1(da).

is not merely ancillary to, or does not constitute a minor part of, the activities of that social media service'.¹⁷⁵ The updated AVMSD notes the increasing use by young people of video-sharing platforms ('VSPs') and social media services, the latter of which was said to be 'an important medium to share information and to entertain and educate' as well as 'facilitate the possibility for users to shape and influence the opinion of others', justifying the application of the directive to these services to 'protect minors from harmful content'.¹⁷⁶

The amended AVMSD includes a new article 28b which created the obligation for Member States to ensure that VSP providers established within their territory 'take appropriate measures to protect minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development in accordance with article 6a(1)'.¹⁷⁷ The latter article requires Member States to:¹⁷⁸

take appropriate measures to ensure that audiovisual media services provided by media service providers under their jurisdiction which may impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see them.

Article 28b(1) of the AVMSD notes that the obligation on Member States to regulate VSP providers acts without prejudice to articles 12-15 of the ECD, which establish a limited liability scheme for intermediary services. Article 14(1) of the ECD notes that platforms that host user content enjoy limited liability for this content where they lack actual knowledge of illegal activity or information, or where they act expeditiously to block access or remove this content upon becoming aware of its existence. Article 15 of the ECD clarifies that this does not impose a general obligation on information society services to monitor the information they store. The Court of Justice of the European Union ('CJEU') has, however, confirmed that where a platform utilises an algorithm to determine 'under what conditions, how and in which order of priority that information is or is not broadcast as part of that service, it exercises control over that information, with the result that' it cannot benefit from the limited liability scheme under

¹⁷⁵ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities [2018] OJ L303/69 recital 5; Commission, 'Guidelines on the Practical Application of the Essential Functionality Criterion of the Definition of a "Video-Sharing Platform Service" under the Audiovisual Media Services Directive' (2020) (Communication) C(2020) 223/02.

¹⁷⁶ AVMSD, recital 4.

¹⁷⁷ *ibid*, art 28b.

¹⁷⁸ *ibid*, art 6a(1).

the ECD.¹⁷⁹ Therefore, in the case of VSPs utilising algorithmic recommender systems, this limited liability scheme does not apply.

Furthermore, the AVMSD recognises while that a significant portion of the content on VSPs fall outside the editorial responsibility of the provider, ‘those providers typically determine the organisation of the content, namely programmes, user-generated videos and audiovisual commercial communications, including by automatic means or algorithms’ therefore justifying these new obligations.¹⁸⁰ Therefore ‘appropriate measures’ to protect children ‘should relate to the organisation of the content and not the content itself’.¹⁸¹ These measures may include ‘selecting the time of the broadcast, age verification tools or other technical measures’ and must be ‘proportionate to the potential harm of the programme’.¹⁸² It is further stipulated that ‘the most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures’.¹⁸³ The Directive does not, however, define the concept of harm, or content which ‘may impair’ the development of children, leaving this categorisation to Member States.¹⁸⁴ In practice, only a few Member States have imposed ‘certain specific measures from the list, adopting stricter rules or setting up co-regulatory frameworks’ with the majority instead staying close to the wording of the AVMSD, with the effect that the interpretation of what measures may be ‘appropriate’ is left to the VSP providers themselves.¹⁸⁵

3.2.1 Relationship with the ECD

The obligations of Member States under the AVMSD to regulate VSPs exist alongside those under the ECD, raising the question of competency. The ECD was introduced in 2000 and is concerned with the regulation of ‘information society services’, defined as ‘any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services’ and therefore includes VSPs and other social media platform

¹⁷⁹ Joined Cases C-188/24 and C-190/24 *WebGroup Czech Republic v Ministre de la Culture* [2026] ECLI:EU:C:2026:492 para 122.

¹⁸⁰ AVMSD, as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities [2018] OJ L303/69 (Directive 2010/13/EU) recital 47.

¹⁸¹ *ibid*, recital 48.

¹⁸² *ibid*, art 6a(1).

¹⁸³ *ibid*.

¹⁸⁴ Verdoodt, Lievens and Chatzinikolaou (n 12) 154.

¹⁸⁵ *ibid* 155.

providers.¹⁸⁶ The ECD has the goal of contributing ‘to the proper functioning of the internal market by ensuring the free movement of information society services between the Member States’ by harmonising national provisions relating to intermediaries’ liability, among other areas.¹⁸⁷ One of the key means of achieving this goal is through the so-called country-of-origin principle, which stipulates that:¹⁸⁸

each Member State shall ensure that the information society services provided by a service provider established on its territory comply with the national provisions applicable in the Member State in question which fall within the coordinated field.

Coordinated fields include the provision of the service, such as the provider’s behaviour, and the quality or content of services.¹⁸⁹ This principle is also reflected in article 28b of the AVMSD. In practice, this responsibility therefore often falls upon Ireland as the Member State in which several large social media platforms are established within the EU. Other Member States may not implement measures to ‘restrict the freedom to provide information society services from another Member State’ unless certain conditions set out in article 3(4) of the ECD are fulfilled.¹⁹⁰ These include relevantly where a measure is necessary for ‘public policy...including the protection of minors’, where that measure is taken against a platform which prejudices or risks prejudicing this public policy goal, and where that measure is proportionate to the objective.¹⁹¹ Furthermore, a Member State can only implement this measure after it has asked the other Member State in which the platform is established to act, the other Member State did not do so or its actions were inadequate, and where the Commission and other Member State has been notified of the intention to take these measures.¹⁹²

This principle has been explored in the caselaw of the CJEU. The case of C-376/22 concerned Austrian legislation requiring domestic and foreign providers of communication platforms to establish mechanisms to process notifications relating to allegedly illegal content on their platform.¹⁹³ Google Ireland, Meta Platforms Ireland and TikTok Technology sought a

¹⁸⁶ ECD, art 2(a); Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification) [2015] OJ L241/1 art 1(1)(b).

¹⁸⁷ ECD, art 1(1)-1(2).

¹⁸⁸ *ibid*, art 3(1).

¹⁸⁹ *ibid*, art 2(h).

¹⁹⁰ *ibid*, art 3(2).

¹⁹¹ *ibid*, art 3(4)(a).

¹⁹² *ibid*, art 4(b).

¹⁹³ Case C-376/22 *Google Ireland Limited v Kommunikationsbehörde Austria (KommAustria)* [2023] ECLI:EU:C:2023:835 para 13.

declaration from the Kommunikationsbehörde Austria (‘KommAustria’ or the Austrian communications authority) that they did not fall within the scope of this law, because of their seat of establishment in Ireland.¹⁹⁴ KommAustria refused to make this declaration which led the three companies to bring proceedings before the Verwaltungsgerichtshof (Supreme Administrative Court, Austria), arguing that since Ireland and the European Commission were uninformed of the adoption of the Austrian law under the ECD, the ECD could not be relied upon as a basis for introducing the domestic legislation.¹⁹⁵ The Verwaltungsgerichtshof referred the matter to the CJEU for preliminary ruling.¹⁹⁶ The CJEU reiterated that the aim of the ECD is to create a legal framework ensuring the free movement of information services within the EU, seeking to eliminate legal obstacles posed by differing national rules through the introduction of the country-of-origin principle.¹⁹⁷ While Member States are entitled to exemptions from this principle, including for the pursuit of public policy or public health,¹⁹⁸ Member States, other than the one in which a company has its establishment, may not adopt measures ‘of a general and abstract nature which apply without distinction to any provider of a category of information society services’.¹⁹⁹ To do so would undermine mutual trust between Member States, create legal uncertainty, and infringe the freedom of platform providers to provide their services across the internal market.²⁰⁰

The CJEU has considered the question of exceptions to the country-of-origin principle under both the ECD and the AVMSD as recently as June 2026 in its judgment in the joined cases of C-188/24 and C-190/24.²⁰¹ The first case arose in response to measures introduced in France, requiring publishers of pornographic websites to implement age verification mechanisms to prevent minors from accessing their service on the basis of articles 6(a)(1) and 28(b) of the AVMSD.²⁰² These French laws criminalise the broadcast of pornographic content via any medium likely to be seen by minors, and empower the relevant administrative body to bring legal proceedings ensuring the adoption of technical measures intended to prevent this broadcasting.²⁰³ The complainant companies, registered in the Czech Republic, were subject of

¹⁹⁴ *ibid*, para 16.

¹⁹⁵ *ibid*, para 20.

¹⁹⁶ *ibid*, para 24.

¹⁹⁷ *ibid*, para 55–56.

¹⁹⁸ ECD, art 3(4)(a); *Google Ireland* (n 193) para 32.

¹⁹⁹ *Google Ireland* (n 193) paras 34, 36.

²⁰⁰ *ibid*, para 44, 47–57.

²⁰¹ *WebGroup Czech Republic* (n 179).

²⁰² *ibid*, para 29.

²⁰³ *ibid*, para 85–86.

a formal notice pursuant to this law.²⁰⁴ The complainants brought proceedings in the Conseil d’Etat (Council of State, France), seeking annulment of the decree, arguing that it breached the country-of-origin principle in the ECD.²⁰⁵ The Conseil d’Etat referred the matter to the CJEU for preliminary ruling.²⁰⁶

The Court found that the general prohibition against any person from distributing pornographic material likely to be seen by minors was general and abstract in nature.²⁰⁷ The CJEU noted that the French law, however, also empowered the administrative body to give individual formal notices to platform providers to take measures to prevent minors from accessing pornographic content via their service.²⁰⁸ While this was a restriction of the free movement of service providers established in a different Member State,²⁰⁹ this particular measure was aimed at protecting minors which falls within the scope of the exemptions to the country-of-origin principle under the ECD, was proportionate to this goal, and was individualised in nature.²¹⁰ The CJEU ultimately held that the ECD precludes ‘a Member State from applying a general and abstract obligation under criminal law, intended to prevent access by minors to pornographic content, to information society service providers established in other Member States’ but does *not*:²¹¹

preclude, subject to compliance with the conditions laid down in Article 3(4) of Directive 2000/31, read in the light of Articles 1 and 24 of the Charter, and without prejudice to the application of Article 3(5) of that directive, a Member State from making provision for the adoption of measures requiring providers of a given service, established in other Member States, to establish a system for verifying the age of users of pornographic sites, where those providers have not taken the appropriate measures referred to in Article 28b of Directive 2010/13.

Therefore, in instances where the Member State in which a VSP provider is established has not taken steps to ensure that the VSPs protect minors from harmful content online, other Member States may be empowered to impose their own measures provided they follow the above conditions set out by the CJEU. While Member States may not be entitled to impose

²⁰⁴ *ibid*, para 29.

²⁰⁵ *ibid*, para 30–31.

²⁰⁶ *ibid*, para 33.

²⁰⁷ *ibid*, para 85.

²⁰⁸ *ibid*, para 86.

²⁰⁹ *ibid*, para 74.

²¹⁰ *ibid*, para 82, 87, 91–97.

²¹¹ *ibid*, para 103.

general and abstract measures, such as social media bans for example, utilising the AVMSD as their source of competence, they may be able to implement alternative individualised measures, directed at specific companies. The question would also remain as to the proportionality of those measures.

3.2.2 Relationship with the GDPR

The AVMSD also fills a gap in the GDPR in relation to social media services' obligations toward young users. The Article 29 Working Party (the predecessor to the European Data Protection Board, established under the Data Protection Directive of 1995), had noted in its guidelines that 'organisations should, in general refrain from profiling [children] for marketing purposes', because children 'can be particularly susceptible in the online environment and more easily influenced by behavioural advertising' subject to their age and level of maturity.²¹² The recitals to the GDPR also argue that children merit specific protection which should apply to the use of their personal data for the purposes of direct marketing or profiling, however, no strict obligation to refrain from doing so arises in the Regulation.²¹³ The AVMSD addresses this gap, prohibiting VSP providers from processing the personal data of minors 'for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising' when this data was collected for the purpose of protecting children from harmful content, such as through age-verification.²¹⁴ It has been argued that the monitoring and enforcement of this prohibition highlights the need for coordination between national media regulators (the bodies entrusted with assessing the measures that video-sharing platform services take to protect children) and data protection authorities (with experience in this field) to ensure that this provision functions effectively.²¹⁵

3.3 DSA

The next relevant instrument regulating social media platforms' obligations towards children in the EU is the DSA. The DSA was introduced to foster the 'development of electronic commerce within the information society' of the EU by creating legal certainty and

²¹² Article 29 Data Protection Working Party, 'Guidelines on Automated Individual Decision-Making and Profiling for the Purposes of Regulation 2016/679' (2018) 17/EN WP251 29.

²¹³ GDPR, recital 38.

²¹⁴ AVMSD, as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities [2018] OJ L303/69 art 28b(3).

²¹⁵ Verdoodt, Lievens and Chatzinikolaou (n 12) 156.

confidence amongst consumers.²¹⁶ It was adopted in October 2022 and on 17 February 2024 became fully applicable across Member States.²¹⁷ The DSA sets out to create ‘harmonised rules for a safe, predictable and trusted online environment that facilitates innovation and in which fundamental rights...are effectively protected’ through rules relating to the provision of intermediary services.²¹⁸ Social media platforms fall within the scope of the DSA as ‘online platforms’: hosting services that store and disseminate information to the public at the request of a user of the service, where their services are provided to recipients in the EU.²¹⁹

3.3.1 Child-specific provisions

Like the GDPR, the DSA contains a number of provisions that are aimed specifically at the protection of children and other more general provisions that may nevertheless provide particular protection for young social media users. The DSA explicitly recognises that ‘the protection of minors is an important policy objective of the Union’.²²⁰ Several of these provisions aim to protect children from contract-related or commercial risks. The DSA stipulates that where an intermediary service ‘is primarily directed at minors or is predominantly used by them’ it must explain its terms and conditions in a manner that can be understood by children.²²¹ Platform providers are prohibited from presenting personally profiled advertisements to users of their profile where they are aware ‘with reasonable certainty’ that the user is a child.²²²

3.3.1.1 *Article 28(1)*

Article 28(1) states that providers of online platforms which are accessible by children are required to ‘put in place appropriate and proportionate measures to ensure a high level of privacy, safety, and security of minors, on their service’.²²³ An online platform is considered ‘accessible to minors when its terms and conditions permit minors to use the service, when its service is directed at or predominantly used by minors, or where the provider is otherwise aware that some of the recipients of its service are minors’.²²⁴ Research has shown that while the terms and conditions of many online platforms state that their services are not to be used by children below a certain age, in reality many children (including very young ones)

²¹⁶ DSA, recital 2, 4.

²¹⁷ *ibid* art 94.

²¹⁸ *ibid*, recital 109.

²¹⁹ *ibid*, art 2(1), 3(i).

²²⁰ *ibid*, recital 71.

²²¹ *ibid*, art 14(3), recital 46.

²²² *ibid*, art 28(2).

²²³ *ibid*, art 28(1).

²²⁴ *ibid*, recital 71.

nevertheless do.²²⁵ The European Commission has therefore indicated that it does not consider that an online platform provider can solely rely on its terms and conditions excluding young users to argue that it is not accessible to minors.²²⁶ The DSA explicitly warns that compliance with this obligation and with the prohibition on profiled advertising ‘does not oblige providers of online platforms to process additional personal data’ to assess whether the user of the service is a minor.²²⁷

The Commission is empowered by article 28(4), after consulting with the European Board for Digital Services, to issue guidelines to assist social media platforms in the application of their obligation to ensure a high level of privacy, safety and security, as per article 28(1) of the DSA.²²⁸ The Commission exercised this power and published guidelines in July 2025 (hereafter the ‘Article 28 Guidelines’).²²⁹ While these guidelines act as a benchmark against which the Commission bases its enforcement actions and impose limits on the exercise of the Commission’s discretion under the DSA, they do not form an authoritative interpretation of article 28(1), which is left to the CJEU.²³⁰ The Commission clarifies in the Article 28 Guidelines that any measures utilised to comply with the DSA must be proportionate and appropriate (to be determined on a case-by-case basis), must protect children’s rights as recognised in international law and the law of the EU, should include privacy-, safety- and security-by-design, and should be based upon age-appropriate design aligned with the evolving needs of children.²³¹

The Commission confirmed in the guidelines that it considers restricting access to certain services or content based on a user’s age to comply with the obligations under article 28(1), and that age-assurance methods can be used to assist the age-appropriate design of a service.²³² A risk assessment should always guide the platform provider as to whether age restrictions supported by age assurance methods are appropriate.²³³ This assessment should include consideration of the extent to which fundamental rights and freedoms would be

²²⁵ Lievens and Verdoodt (n 12) 390.

²²⁶ Commission, ‘Guidelines on Measures to Ensure a High Level of Privacy, Safety and Security for Minors Online, Pursuant to Article 28(4) of Regulation (EU) 2022/2065’ (n 13) para 6.

²²⁷ DSA, art 28(3), recital 71.

²²⁸ *ibid* art 28(4).

²²⁹ Commission, ‘Guidelines on Measures to Ensure a High Level of Privacy, Safety and Security for Minors Online, Pursuant to Article 28(4) of Regulation (EU) 2022/2065’ (n 13).

²³⁰ *ibid*, para 12–13.

²³¹ *ibid*, para 17.

²³² *ibid*, para 25, 27.

²³³ *ibid*, para 31.

restricted in implementing these measures, and children themselves should be involved in the design, implementation and evaluation if these methods are chosen.²³⁴ If only part of a platform accessible to minors is assessed as posing a risk to young users (such as adult-restricted content), then the Commission advises restricting only those sections, rather than the service as a whole.²³⁵

The Commission provides guidance as to which circumstances may justify the use of a particular age-assurance method. Age-verification is considered to be appropriate where services pose a high risk to minors and those risks cannot be mitigated in less-restrictive ways due to national or EU laws (e.g. access to gambling content) or otherwise, where the terms and conditions of use require the user to be over 18, where EU law prescribes a minimum age to access certain products or services, and in any other circumstances where risks have been identified.²³⁶ Similarly to the Online Safety Act, the Commission confirms that ‘age-verification should be treated as a separate, distinct process that is not connected with other data collection activities’.²³⁷ The Commission refers to its EU Digital Identity Wallet, which was still in development at the time of writing the guidelines, suggesting that it would be a ‘safe, reliable, and private means of electronic identification’ and therefore an age-verification solution.²³⁸

The Article 28 Guidelines confirm that the Commission considers age estimation methods that have been audited for security and data protection compliance to be appropriate where a platform’s terms and conditions require users to be above a minimum age that is below 18 years or where there are medium risks to minors that have been identified.²³⁹ The Commission considers that platforms should offer users more than one age assurance method if utilising this technology, and a redress system for users to complain about incorrect age assessments.²⁴⁰ The EDPB has also added that when using age assurance methods, platform providers should avoid mechanisms ‘that enable unambiguous online identification of their users’ for example, by asking them to submit government-issued identification documents, and should not ‘permanently store the age or age range’ of users who have been through the

²³⁴ *ibid*, para 32, 35.

²³⁵ *ibid*, para 36.

²³⁶ *ibid*, para 37.

²³⁷ *ibid*, para 39.

²³⁸ *ibid*, para 42, 43.

²³⁹ *ibid*, para 47.

²⁴⁰ *ibid*, para 48.

assurance process.²⁴¹ In deciding which method to utilise, the Commission advises platform providers to consider the accuracy, reliability, robustness, non-intrusiveness, and non-discrimination of the method.²⁴² Self-declaration cannot meet all of this criteria and therefore cannot be deemed appropriate and proportionate.²⁴³ If an age-assurance method can be easily circumvented then it should not be considered to be compliant with article 28(1) obligations.²⁴⁴

In addition to age-assurance methods, the Commission provides guidance as to other methods that will assist platform providers in meeting their obligations under article 28(1). Accounts held by minor should have the highest level of privacy, safety and security by default, including for example, that the young user's account only allows for interactions with accounts they have previously accepted.²⁴⁵ The Commission advises that platforms may wish to remove settings, features or functionalities completely from young users' accounts depending on the age and evolving capacity of these children, such as preventing minor's accounts from being suggested as a contact to adults.²⁴⁶ Platforms are further encouraged to implement measures allowing minors to 'take control of their online experiences', such as by ensuring young users 'are not exposed to persuasive design features that are aimed predominantly at engagement and that may lead to extensive user or overuse of the platform or problematic or compulsive behavioural habits'.²⁴⁷ Platforms utilising recommender systems are encouraged to regularly test and adapt these systems to enhance children's safety, taking into account the specific needs and characteristics of children, and ensuring that the systems do not rely on the collection of behavioural data from minors.²⁴⁸ In addition, platforms should provide children with the ability to completely reset their recommended feeds.²⁴⁹ The Commission considers that content moderation can reduce young people's exposure to harmful content or behaviour and provides guidance as to how this should be implemented to ensure a high-level of transparency and effectiveness.²⁵⁰ Reporting, feedback and complaint mechanisms should support children to

²⁴¹ European Data Protection Board, 'Guidelines 3/2025 on the Interplay between the DSA and the GDPR' paras 93–94 <www.edpb.europa.eu/system/files/2025-09/edpb_guidelines_202503_interplay-dsa-gdpr_v1_en.pdf> accessed 6 July 2026.

²⁴² Commission, 'Guidelines on Measures to Ensure a High Level of Privacy, Safety and Security for Minors Online, Pursuant to Article 28(4) of Regulation (EU) 2022/2065' (n 13) para 49.

²⁴³ *ibid*, para 50, 52.

²⁴⁴ *ibid*, para 51.

²⁴⁵ *ibid*, para 57.

²⁴⁶ *ibid*, para 59.

²⁴⁷ *ibid*, para 60–61.

²⁴⁸ *ibid*, para 65.

²⁴⁹ *ibid*, para 66.

²⁵⁰ *ibid*, para 70.

comment on features contrary to their privacy, safety and security,²⁵¹ and guardians should be empowered to accompany their minor's online activity while also respecting the child's autonomy and privacy.²⁵² Finally, the Commission notes that good governance practices can also contribute to compliance with article 28(1), including for example, raising awareness of how the provider upholds children's rights, and having a dedicated person or team responsible for promoting the privacy, safety and security of minors on the platform.²⁵³

3.3.1.2 *Very large online platforms*

The DSA imposes additional obligations on services that have a minimum average of 45 million active users per month within the EU and which have been deemed by the Commission to be 'Very Large Online Platforms' ('VLOPs').²⁵⁴ Designated platforms include Pinterest, Snapchat, TikTok, Facebook and Instagram, among others.²⁵⁵ These platforms are singled out on the basis of their potential ability to 'cause societal risks' in comparison to smaller counterparts.²⁵⁶ Providers of VLOPs are required to 'diligently identify, analyse and assess any systemic risks' that arise 'from the design or functioning of their service and its related systems, including algorithmic systems, or from the use made of their services'.²⁵⁷ They must carry out yearly risk assessments investigating 'actual or foreseeable negative effects' relating to the protection of minors, as well as risks to public health, gender-based violence, wellbeing, civic discourse, and the potential dissemination of illegal content.²⁵⁸ In determining potential risks to children, providers of VLOPs are advised to 'consider for example how easy it is for minors to understand the design and functioning of the service, as well as how minors can be exposed through their service to content that may impair minors' health, physical, mental and moral development'.²⁵⁹ Risks may stem from the design of the platform, including features that 'intentionally or unintentionally exploit the weaknesses and inexperience of minors or which may cause addictive behaviour'.²⁶⁰ The risk assessment must also investigate 'any actual

²⁵¹ *ibid*, para 75.

²⁵² *ibid*, para 79.

²⁵³ *ibid*, para 84.

²⁵⁴ DSA, art 33(1), 33(4).

²⁵⁵ Commission, 'Supervision of the Designated Very Large Online Platforms and Search Engines under the DSA' (28 May 2026) <<https://digital-strategy.ec.europa.eu/en/policies/list-designated-vlops-and-vloses>> accessed 2 June 2026.

²⁵⁶ DSA, recital 76.

²⁵⁷ *ibid*, art 34(1).

²⁵⁸ *ibid*.

²⁵⁹ *ibid*, recital 81.

²⁶⁰ *ibid*.

or foreseeable negative effects for the exercise of fundamental rights’ including specifically children’s rights under article 24 of the European Charter of Fundamental Rights (‘ECFR’).²⁶¹

Providers of VLOPs must analyse the impact of recommender or algorithmic systems, content moderation systems, terms and conditions, the selection and presentation of advertisements, and data-related practices.²⁶² They must put in place reasonable, proportionate and effective mitigation measures’ to address the specific risks that were identified in this process.²⁶³ A wide range of potential measures are identified in the DSA, including ‘adapting the design, features or functioning of their services’, ‘adapting content moderation processes’, adapting algorithmic or recommender systems, and ‘taking targeted measures to protect the rights of the child, including age verification and parental control tools, tools aimed at helping minors signal abuse or obtain support, as appropriate’.²⁶⁴ Changes to the recommender system may include ‘measures to prevent or minimise biases that lead to the discrimination of persons in vulnerable situations’.²⁶⁵ The recitals to the DSA clarify that providers of VLOPs must ensure that their risk mitigation strategies are based upon ‘the best available information and scientific insights and that they test their assumptions with the groups most impacted’ by these measures, thereby encouraging social media providers to engage with children in this process.²⁶⁶ Providers of VLOPs are to be subject to yearly independent audits assessing their compliance with these obligations.²⁶⁷

3.3.2 General provisions

There are a number of other provisions in the DSA which, although not aimed specifically or exclusively at protecting children, nevertheless have particular potential to shield them from some of the potential harms of social media. Dark patterns, ‘practices that materially distort or impair, either on purpose or in effect, the ability of recipients of the service to make autonomous and informed choices or decisions’ are prohibited in the DSA.²⁶⁸ These practices may include ‘presenting choices in a non-neutral manner, such as giving more prominence to certain choices through visual, auditory, or other components, when asking the recipient of the service for a decision’ or repeatedly requesting a recipient of a service to make

²⁶¹ *ibid.*, art 34(1).

²⁶² *ibid.*, art 34(2).

²⁶³ *ibid.*, art 35(1).

²⁶⁴ *ibid.*, art 35(1)(a) (d), (j).

²⁶⁵ *ibid.*, recital 94.

²⁶⁶ *ibid.*, recital 90.

²⁶⁷ *ibid.*, art 37, recital 92.

²⁶⁸ *ibid.*, art 25, recital 67.

a choice where one has already been made, such as in the process of cancellation.²⁶⁹ In recognition of the impact of recommender systems (algorithmic suggestions, ranking or prioritisation of information) on the ability of users to find and interact with information, as well as in amplifying certain messages and stimulating online behaviour, the DSA requires providers of online platforms to set out in their terms and conditions ‘in plain and intelligible language the main parameters used in their recommender systems, as well as any options for the recipients of the service to modify or influence those main parameters’.²⁷⁰ In addition to this rule, providers of VLOPs utilising recommender systems are required to provide at least one option for their recommender systems that is not based on profiling, such as a chronological feed.²⁷¹

3.3.3 Enforcement

The DSA envisages enforcement by both national authorities and the European Commission within their designated competence. Article 56(1) of the DSA follows the country-of-origin principle, stipulating that ‘the Member States on which the main establishment of the provider of intermediary services is located shall have exclusive powers to supervise and enforce this Regulation’ with some exceptions. For instance, the European Commission has ‘exclusive powers to supervise and enforce’ matters relating to professional secrecy, information sharing systems and representation.²⁷² While the Commission is empowered to supervise and enforce the DSA against providers of VLOPs, this is not an exclusive right and Member States in which a VLOP has its main establishment are also entitled to supervise and enforce these platform providers’ obligations, where the Commission has not initiated proceedings for the same infringement.²⁷³ In exercising their powers of supervision and enforcement, the Commission and Member States are to act in ‘close cooperation’.²⁷⁴ Member States are required to designate one or more authorities responsible for the supervision of service providers in accordance with the DSA, one of which is to be designated as their Digital Services Coordinator (‘DSC’), responsible for supervision and enforcement of the regulation.²⁷⁵ Member States must also lay down the rules on penalties applicable to

²⁶⁹ *ibid*, recital 67.

²⁷⁰ *ibid*, art 27, recital 70.

²⁷¹ *ibid*, art 38.

²⁷² *ibid*, art 56(2), 84–86.

²⁷³ *ibid*, art 56(3)-(4).

²⁷⁴ *ibid*, art 56(5).

²⁷⁵ *ibid*, art 49(1)-(2).

infringements by service providers within their competence.²⁷⁶ These penalties are to be ‘effective, proportionate and dissuasive’ with the maximum amount of fines that may be imposed capped at 6% of the annual worldwide turnover of the service provider in the preceding financial year.²⁷⁷

In February 2024, the Coimisiún na Meán was designated as the DSC in Ireland.²⁷⁸ As the Member State hosting the European seat of establishment of many major social media platforms, including Meta, TikTok and X, the effectiveness of the DSA’s enforcement (apart from the managing of VLOPs, shared with the Commission) rests largely on the Coimisiún na Meán.²⁷⁹ In its annual report to the European Commission summarising its activities under the DSA in 2024, the Coimisiún na Meán outlined its risk-based approach to supervision, focusing on entities which posed the greatest risk to users.²⁸⁰ The Irish DSC listed its supervisory activities as including sending official requests for information to platforms established in Ireland, reviewing risk assessments and audits from VLOPs, and establishing engagement with other national bodies in relation to supervision, including the national Data Protection Commission, among other measures.²⁸¹

Providers of VLOPs are subject to a specific enforcement regime. The Commission is empowered to investigate the compliance of VLOP providers with their obligations under the DSA,²⁸² and to launch proceedings which may result in the adoption of a non-compliance decision. Before the Commission may adopt such a decision, it must first communicate its preliminary findings to the VLOP provider, explaining its proposed next steps and what it considers the provider may do to address these findings.²⁸³ The provider of the VLOP is then required to provide the Commission with a description of the measures it has taken to ensure compliance in the form of a detailed action plan.²⁸⁴ Where the Commission finds that these were insufficient, it may make a finding of non-compliance.²⁸⁵ Such a finding allows the

²⁷⁶ *ibid*, art 52(1).

²⁷⁷ *ibid*, art 52(2)-(3).

²⁷⁸ Coimisiún na Meán, ‘Annual Activity Report Pursuant to Art. 55 of the Digital Services Act’ (2025) 3 <www.cnam.ie/app/uploads/2025/04/20250319_Art-55-DSA-report_VFfinal.pdf> accessed 6 July 2026.

²⁷⁹ Johnny Ryan, ‘Ireland Is Big Tech’s Lapdog – and That Compromises Its EU Presidency’ *The Guardian* (30 June 2026) <<https://www.theguardian.com/commentisfree/2026/jun/30/ireland-big-tech-lapdog-eu-presidency-digital-sovereignty>> accessed 6 July 2026.

²⁸⁰ Coimisiún na Meán (n 278) 7.

²⁸¹ *ibid* 7–8.

²⁸² ECD, art 65.

²⁸³ *ibid*, art 73(2).

²⁸⁴ *ibid*, art 73(4), recital 145.

²⁸⁵ *ibid*, art 73(5).

Commission to impose fines on the non-compliant VLOP, also capped at 6% of the provider's annual worldwide turnover, having regard to the 'nature, gravity, duration and recurrence of the infringement'.²⁸⁶

The Commission has now conducted several of these investigations. In February 2024, it opened formal proceedings to analyse whether TikTok was in breach of the DSA due to non-compliance with its risk assessment and mitigation obligations.²⁸⁷ In particular, it focused on whether TikTok's system design and algorithms may cause addiction, whether age-verification tools to protect minor's from harmful content were 'reasonable, proportionate and effective', and whether a high-level of privacy, safety and security for minors had been implemented.²⁸⁸ In April 2024, the Commission similarly opened formal proceedings against Meta regarding Facebook and Instagram's possible implementation of deceptive advertising, visibility of political content, and the mechanism to flag illegal content,²⁸⁹ and in October 2025, preliminarily found Meta to be in breach of these obligations.²⁹⁰

In May 2024, following a preliminary analysis of Meta's risk assessment, the Commission opened formal proceedings against Meta relating to the protection of children on Facebook and Instagram.²⁹¹ The proceedings focused on possible breaches of articles 28, 34 and 25 of the DSA, examining whether the online interface of Instagram and Facebook may 'exploit the weaknesses and inexperience of minors and cause addictive behaviour, and/or reinforce so-called "rabbit hole" effect', as well as age-verification tools used by Meta, and Meta's compliance with its duty to ensure a high level of protection for minors.²⁹² Two years later, in April 2026, the Commission preliminarily found Instagram and Facebook in breach of the DSA 'for failing to diligently identify, assess and mitigate the risks of minors under 13 years old accessing their service', despite their terms and conditions setting this as the

²⁸⁶ *ibid.*, art 66, 73–74.

²⁸⁷ Commission, 'Commission Opens Formal Proceedings against TikTok under the Digital Services Act' (19 February 2024) <https://ec.europa.eu/commission/presscorner/detail/en/ip_24_926> accessed 25 May 2026.

²⁸⁸ *ibid.*

²⁸⁹ Commission, 'Commission Opens Formal Proceedings against Facebook and Instagram under the Digital Services Act' (30 April 2024) <https://ec.europa.eu/commission/presscorner/detail/en/ip_24_2373> accessed 23 May 2026.

²⁹⁰ Commission, 'Commission Preliminarily Finds TikTok and Meta in Breach of Their Transparency Obligations under the Digital Services Act' (24 October 2025) <https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2503> accessed 23 May 2026.

²⁹¹ Commission, 'Commission Opens Formal Proceedings against Meta under the Digital Services Act Related to the Protection of Minors on Facebook and Instagram' (16 May 2024) <https://ec.europa.eu/commission/presscorner/detail/en/ip_24_2664> accessed 23 May 2026.

²⁹² *ibid.*

minimum age to utilise these platforms.²⁹³ It was found that children could enter false birth dates without any effective control, and that Meta’s tool for reporting users under the age of 13 was difficult to use and ineffective.²⁹⁴ The Commission found that Meta’s risk assessment was ‘incomplete and arbitrary’, contradicting large bodies of evidence indicating that around 10% of children under 13 were accessing Instagram or Facebook, and considered that Meta must change its risk assessment methodology.²⁹⁵ Following this preliminary finding, Instagram and Meta have the right to reply and may also take measures to remedy the alleged breaches.²⁹⁶ Therefore while enforcement steps are being taken by the Commission, their impact is yet to be determined.

3.4 Regulation at the Member State level

Most recently, several Member States have taken inspiration from the Australian legislation and are considering or in the process of introducing similar measures restricting access by minors to social media. Whether they are legally competent to do so is an open question, based upon consideration of the exact form of the ban and any reference to EU legislation. For instance, if introduced with reference to the AVMSD, Member States other than those in which a social media platform is established will need to closely assess whether they meet the requirements of the ECD set out in 3.2.1 above. Alternatively, the European Commission expressed its belief in June 2025 that it is the prerogative of Member States to implement social media bans in accordance with article 8 of the GDPR.²⁹⁷ Whether this remains the position of the Commission is unclear.

3.4.1 France

France has become one of the first EU Member States to move towards a social media ban for minors at the national level. There is, however, dispute as to the means of ban. In January 2026, draft legislation passed through the French National Assembly which would create a general prohibition for users under 15 from holding social media accounts, requiring platforms to delete accounts belonging to children under 15 and to refuse the creation of new

²⁹³ Commission, ‘Commission Preliminarily Finds Meta in Breach of Digital Services Act for Failing to Prevent Minors under 13 from Using Instagram and Facebook’ (29 April 2026) <https://ec.europa.eu/commission/presscorner/detail/en/ip_26_920> accessed 23 May 2026.

²⁹⁴ *ibid.*

²⁹⁵ *ibid.*

²⁹⁶ *ibid.*

²⁹⁷ Commission, *Midday Press Briefing from 11/06/2025* <<https://audiovisual.ec.europa.eu/en/media/video/I-273594>> accessed 6 July 2026.

accounts for those users.²⁹⁸ This age was chosen to align with the French national law of consent for the processing of personal data, and the age of entry into higher secondary school.²⁹⁹ In March 2026, the French Senate adopted a different version of the bill, based upon a two-tiered system, separating social media platforms into two categories.³⁰⁰ The first category relates to services that have been deemed to be detrimental to the physical, mental or moral development of children due to the content available or the recommendation systems utilised which are said to justify their total prohibition to users under 15.³⁰¹ Unlike the Australian model which creates general criteria for the classification of restricted social media platforms, under the French Senate draft law, the minister responsible for digital affairs is to establish a list of prohibited services after consulting with the audiovisual and digital communication regulatory authority.³⁰² Social media platforms that are not included on the list form the second category of service and would be allowed to be accessible to minors under 15 with the consent of at least one legal guardian.³⁰³ The consent, which can be revoked, must specify the conditions and limits of the child's access, including the nature of the content and the maximum permissible daily duration of use.³⁰⁴ The Senate's draft also explicitly excludes certain types of services from its scope, including online encyclopaedias, educational directories, and platforms enabling the development or sharing of free software.³⁰⁵ It is currently not clear what final form the draft law will take.

²⁹⁸ Pascale Davies, 'France Moves Closer to Social Media Ban for Children under 15 — but Houses Divided on Details' (*Euronews*, 1 April 2026) <www.euronews.com/next/2026/04/01/france-moves-closer-to-social-media-ban-for-children-under-15-but-houses-divided-on-detail> accessed 31 May 2026.

²⁹⁹ Sénat, *Proposition de loi visant à protéger les mineurs des risques auxquels les expose l'utilisation des réseaux sociaux*, Texte n° 79 (2025-2026) (31 mars 2026).

³⁰⁰ Commission, 'Notification Number: 2026/0185/FR (France) – Legislative Provisions Aimed at Protecting Minors from the Risks to Which They Are Exposed by the Use of Social Networks' (2026) <<https://technical-regulation-information-system.ec.europa.eu/en/notification/27828>> accessed 31 May 2026.

³⁰¹ *ibid*, Sénat, *Proposition de loi visant à protéger les mineurs des risques auxquels les expose l'utilisation des réseaux sociaux*, Texte n° 79 (2025-2026) (31 mars 2026).

³⁰² Commission, 'Notification Number: 2026/0185/FR (France) – Legislative Provisions Aimed at Protecting Minors from the Risks to Which They Are Exposed by the Use of Social Networks' (n 300); Sénat, *Proposition de loi visant à protéger les mineurs des risques auxquels les expose l'utilisation des réseaux sociaux*, Texte n° 79 (2025-2026) (31 mars 2026).

³⁰³ Commission, 'Notification Number: 2026/0185/FR (France) – Legislative Provisions Aimed at Protecting Minors from the Risks to Which They Are Exposed by the Use of Social Networks' (n 300); Sénat, *Proposition de loi visant à protéger les mineurs des risques auxquels les expose l'utilisation des réseaux sociaux*, Texte n° 79 (2025-2026) (31 mars 2026).

³⁰⁴ Commission, 'Notification Number: 2026/0185/FR (France) – Legislative Provisions Aimed at Protecting Minors from the Risks to Which They Are Exposed by the Use of Social Networks' (n 300); Sénat, *Proposition de loi visant à protéger les mineurs des risques auxquels les expose l'utilisation des réseaux sociaux*, Texte n° 79 (2025-2026) (31 mars 2026).

³⁰⁵ Commission, 'Notification Number: 2026/0185/FR (France) – Legislative Provisions Aimed at Protecting Minors from the Risks to Which They Are Exposed by the Use of Social Networks' (n 300); Proposal for a law to protect minors from the risks arising from the use of social networks.

3.4.2 Spain

In early 2025, the Spanish Government registered a draft Organic Law on the Protection of Minors in Digital Environments (Proyecto de Ley Orgánica de protección de los menores en entornos digitales).³⁰⁶ The draft law proposes to, among other things, increase the minimum age at which a minor can provide consent to the processing of personal data without parental consent to 16 from 14, create an obligation on manufacturers to ensure that devices include parental control functionality which should be activated by default, ensure that education authorities promote digital competence, and introduce age-verification requirements for video-sharing platform providers to prevent access to harmful content.³⁰⁷ In February 2026, Spanish Prime Minister Pedro Sánchez separately announced his government's intention to introduce five measures aimed at digital platforms, including banning children under the age of 16 from accessing social media and relying on age-verification systems to enforce this age-restriction.³⁰⁸ Neither law has yet been finalised.

3.4.3 Portugal

In Portugal, Draft Bill no. 398/XVII/1^a was approved by the Parliament in February 2026.³⁰⁹ The bill proposes to increase the age at which children can provide consent for the processing of their personal data without parental consent from 13 to 16, create a minimum digital age of 16 for accessing social media services with parental consent possible from the age of 13 via the Digital Mobile Key system, and introduce an obligation on platform providers to implement age-verification mechanisms in their services.³¹⁰ The bill seeks to introduce a guarantee that all social media accounts for users under the age of 16 be configured to the highest privacy settings by default, and to ban certain features on accounts belonging to children under the age of 16, including autoplay and infinite scroll.³¹¹ The draft bill has not yet received final approval from the Portuguese Government.

³⁰⁶ Proyecto de Ley Orgánica de protección de los menores en entornos digitales [Draft Organic Law on the protection of minors in digital environments], BOCG (Congreso de los Diputados) Ser A, No 14-1, 21 June 2024.

³⁰⁷ *ibid*, s 13, 18, 20, 34.

³⁰⁸ Aitor Hernandez-Morales, 'Spain Moves to Ban Under-16s from Social Media' (*Politico*, 3 February 2026) <www.politico.eu/article/spain-pedro-sanchez-moves-ban-under-16-social-media/> accessed 4 June 2026.

³⁰⁹ 'Portugal Approves Restrictions on Social Media Access for Children' (*Reuters*, 12 February 2026) <www.reuters.com/world/europe/portugal-approves-restrictions-social-media-access-children-2026-02-12/> accessed 4 June 2026.

³¹⁰ Projeto de Lei n.º 398/XVII/1.ª, 'Estabelece medidas de proteção de crianças em ambientes digitais' (Exposição de Motivos) (Assembleia da República 2026) art 3, 5–7.

³¹¹ *ibid*, art 10–11.

3.4.4 Greece

In April 2026, the Greek Prime Minister Kyriakos Mitsotakis announced his government's intention to introduce legislation banning children under 15 from accessing social media from 1 January 2027, citing addictive platform design and health problems caused by excessive use as motivation for this amendment.³¹² A draft version of the law was published on the European Commission's Technical Regulation Information System database in May 2026.³¹³ In its notification to the Commission of the draft, the Greek Government noted that the age of 15 had been chosen to align with the existing data protection framework in Greece where the age limit for parental consent is also 15.³¹⁴ The draft law requires social media platform providers to 'apply appropriate, proportionate and reliable age-verification methods' to implement the ban, with the Greek Government asserting that this requirement is linked to article 28(1) of the DSA.³¹⁵ The Greek Prime Minister has also called for reform at the EU-level, pushing for an EU-wide 'digital age of majority' to be set at 15.³¹⁶

3.4.5 Other European jurisdictions

In late January 2026, the Austrian Government announced its plans to introduce new legislation at the domestic level, banning children under the age of 14 from using social media by the start of the new school year in September 2026, noting that it would 'naturally look to Australia' in designing any reform.³¹⁷ The Government hosted a round table in April with experts and representatives from politics, education and civil society to discuss the legal form and technical implementation of a ban, and a draft law was expected by the end of June 2026, although has yet to be published.³¹⁸ The Danish Government announced in November 2025 that it had reached an agreement to implement an age-restriction of 15 years to access social media platforms, with the possibility for parents to provide consent to their child's access from

³¹² Helena Smith and Jon Henley, 'Greece Announces Social Media Ban for Under-15s, Citing Anxiety and Sleep Problems' *The Guardian* (8 April 2026) <www.theguardian.com/world/2026/apr/08/greece-proposes-social-media-ban-under-15s-anxiety-sleep-problems> accessed 30 May 2026.

³¹³ Commission, 'Notification Number: 2026/0233/GR (Greece) - Notification to the European Commission of the Draft Provisions on the Establishment of an Age Limit for the Use of Online Social Networking Services, in Accordance with the Procedures Laid down in Presidential Decree 81/2018' (2026) <<https://technical-regulation-information-system.ec.europa.eu/en/notification/27936>> accessed 30 May 2026.

³¹⁴ *ibid.*

³¹⁵ *ibid.*, para 4.

³¹⁶ Nektaria Stamouli, 'Greece Proposes Law to Keep Kids off Social Media' (*Politico*, 8 April 2026) <www.politico.eu/article/greece-proposed-social-media-ban-movement/> accessed 30 May 2026.

³¹⁷ 'Regierung Will Social-Media-Verbot Unter 14' (*ORF*, 27 January 2026) <<https://orf.at/stories/3418359/>>.

³¹⁸ Österreichisches Bundeskanzleramt, 'Bundesregierung Lädt Expertinnen Und Experten Zum Social-Media-Verbot Ins Bundeskanzleramt' (21 April 2026) <www.bundeskanzleramt.gv.at/bundeskanzleramt/nachrichten-der-bundesregierung/2026/04/bundesregierung-laedt-expertinnen-und-experten-zum-social-media-verbot-ins-bundeskanzleramt.html> accessed 31 May 2026.

the age of 13.³¹⁹ In February 2026 both the Slovenian Deputy Prime Minister, Matej Acron, and the Polish Minister for Education, Barbara Nowacka, announced their respective governments' plans to prepare legislation banning children under 15 from utilising social media.³²⁰

In Germany, the Sozialdemokratische Partei Deutschlands currently supports a tiered model with children under 14 banned entirely from the use of social media and youth versions of platforms available for those between the ages of 14 and 16 which exclude certain features, such as push notifications.³²¹ The party's coalition partner, the Christlich Demokratische Union Deutschlands instead supports a differentiated age requirement depending on the risk associated with the relevant platform.³²² Despite these positions, the June 2026 report of an independent expert commission into this matter appointed by the Federal Government argued that a social media ban would be contrary to article 6 of the German constitution (Grundgesetz) which states that the care and raising of children is the natural right and obligation of parents.³²³ The expert commission further recommended that rather than banning children from social media at the national level, the German Government should focus its efforts on calling for the further development of the DSA, a unified approach to age-assurance, as well as investment in age-appropriate design and service-specific age-restrictions.³²⁴ The exact form that any reform in Germany will take is therefore not yet known.

3.5 Calls for reform at the EU level

There has also been a push for a unified approach to this issue at EU level. In September 2025, Ursula von der Leyen, President of the European Commission, announced her intention to appoint a panel of experts to provide advice as to the best approach to protecting children from the harms of social media, explicitly noting that she was watching the example of

³¹⁹ Dmytro Hubenko, 'Denmark to Ban Social Media for Children under 15' (*DW*, 7 November 2025) <www.dw.com/en/denmark-to-ban-social-media-for-children-under-15/a-74666210> accessed 4 June 2026.

³²⁰ 'Slovenia Prepares Legislation to Ban Social Media for Under-15s' (*Reuters*, 5 February 2026) <www.reuters.com/world/europe/slovenia-preparing-law-ban-access-social-media-minors-under-15-2026-02-05/>; Barbara Erling, 'Polish Ruling Party Plans Social-Media Ban for Children under 15' (*Reuters*, 27 February 2026) <www.reuters.com/business/media-telecom/poland-plans-social-media-ban-children-under-15-bloomberg-news-reports-2026-02-27/> accessed 4 June 2026.

³²¹ Sarah Beham, 'Kommt Jetzt Eine Altersgrenze Für Social Media?' (*Tagesschau*, 24 June 2026) <<https://www.tagesschau.de/inland/gesellschaft/social-media-bericht-kommission-100.html>> accessed 7 July 2026.

³²² *ibid.*

³²³ Unabhängige Expertenkommission 'Kinder- und Jugendschutz in der digitalen Welt', 'Entwicklung Stärken, Verantwortung Übernehmen' (Bundesministerium für Bildung, Familie, Senioren, Frauen und Jugend, 24 June 2026) 79 <<https://www.bmbfsfj.bund.de/bmbfsfj/expertenkommission-veroeffentlicht-handlungsempfehlungen-290226>> accessed 7 July 2026.

³²⁴ *ibid.* 70.

Australia.³²⁵ In October 2025, under the Danish Presidency of the Council of the EU, ministers from 27 European countries signed the ‘Jutland Declaration’, expressing support for pinpointing an age of digital majority ‘at which minors should be allowed access to social media’.³²⁶ The declaration was signed by 27 ministers from each EU Member States (excluding Estonia and Belgium) plus Norway and Iceland.³²⁷ In November 2025, in light of the emerging fragmented approach to this issue within the EU, the European Parliament called upon the European Commission to establish a harmonised digital age limit of 16 under which social media platforms should not be allowed to provide access children without the consent of a parent or guardian, and a limit of 13 under which no minor should be able to access social media at all.³²⁸ In April 2026, President von der Leyen announced that the EU’s age-verification app was technically ready and would soon be available for use across Europe.³²⁹ The app was described as ‘user-friendly’ and said to respect high privacy standards, operating anonymously so that users reveal their age, but not any other personal information after having set up the app with their identification document.³³⁰ The app will be trialled in France, Denmark, Greece, Italy, Spain, Cyprus and Ireland.³³¹ In May 2026, there were 10 Member States calling for the introduction of an EU-wide minimum age to access social media.³³² It remains unclear as to how the law will develop in this area and at which level of government.

4 Children’s rights considerations in the regulation of social media

Before assessing whether social media bans promote the best interests of the child, it is necessary to establish the child-rights framework in which these laws exist. Governments are

³²⁵ Ursula von der Leyen, ‘2025 State of the Union Address’ (Speech at the European Parliament, Strasbourg, 10 September 2025) <https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_25_2053> accessed 16 February 2026.

³²⁶ Digital Ministers of Europe, ‘The Jutland Declaration: Shaping a Safe Online World for Minors’ 2 <www.digmin.dk/Media/638956829775203140/DIGMIN_The%20Jutland%20Declaration%20Shaping%20a%20Safe%20Online%20World%20for%20Minors%20101025.pdf>.

³²⁷ *ibid.*

³²⁸ European Parliament, ‘Resolution of 26 November 2025 on the Protection of Minors Online’ (2025) P10_TA (2025) 0299 para 28 <www.europarl.europa.eu/doceo/document/TA-10-2025-0299_EN.pdf> accessed 2 May 2026.

³²⁹ Commission, ‘Statement by President von der Leyen with Executive Vice-President Virkkunen on the Digital Age Verification App’ (*European Commission*, 15 April 2026) <https://ec.europa.eu/commission/presscorner/detail/en/statement_26_817> accessed 4 June 2026.

³³⁰ *ibid.*

³³¹ *ibid.*

³³² Ursula von der Leyen, ‘Keynote Address’ (Speech at the European Summit on Artificial Intelligence and Children, Copenhagen, 12 May 2026) <https://ec.europa.eu/commission/presscorner/detail/en/speech_26_1060> accessed 4 June 2026.

obliged to take the best interests of the child as a ‘primary consideration’ in all actions concerning children.³³³ When making decisions affecting children collectively, legislators must determine these children’s best interests in light of their circumstances, with full respect for the rights contained within the CROC and other human rights instruments.³³⁴ This chapter seeks to explore the opportunities and risks that social media poses to children, within the context of their rights. The following discussion will demonstrate the complexity of regulating social media usage by young people given its potential for both positive and negative influence on the best interests of the child, illustrating the challenge facing lawmakers.

4.1 Children’s rights as a distinct category of human rights law

In addition to benefiting from the rights contained in other international treaties, such as the Universal Declaration of Human Rights, (‘UDHR’),³³⁵ the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights,³³⁶ children benefit from their own human rights instrument: the CROC. Like the UDHR, the CROC focuses on a broad range of rights which are ‘universal, indivisible, interdependent and interrelated’.³³⁷ There is, however, a key difference between these two instruments. Although the UDHR applies to ‘all members of the human family’,³³⁸ and therefore implicitly includes children, it only briefly *explicitly* mentions them twice: first, noting that ‘motherhood and childhood are entitled to special care and assistance’³³⁹ and second, in giving parents a ‘prior right to choose the kind of education that shall be given to their children’.³⁴⁰ In this way the UDHR assumes an adult-centric and gendered bias in how rights for children are prescribed.³⁴¹ The introduction of the CROC in 1989 was therefore vital

³³³ UN Committee on the Rights of the Child, ‘General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, Para 6)’ (27 November 2003) UN Doc CRC/GC/2003/5 para 3(1); UN Committee on the Rights of the Child, ‘General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para. 1)’ (29 May 2013) UN Doc CRC/C/GC/14 para 6.

³³⁴ UN Committee on the Rights of the Child, ‘General Comment No. 14’ (n 333) para 32.

³³⁵ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR).

³³⁶ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

³³⁷ UN Committee on the Rights of the Child, ‘General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para. 1)’ (n 333) para 16.

³³⁸ UDHR Preamble.

³³⁹ *ibid*, art 25(2).

³⁴⁰ *ibid*, art 26(3).

³⁴¹ Katrina Lee-Koo, ‘The Universal Declaration of Human Rights at 70: Children’s Rights’ (2019) 73 Australian Journal of International Affairs 326, 327 <<https://doi.org/10.1080/10357718.2019.1631251>> accessed 16 October 2025.

for recognising children as independent holders of rights and not as charitable objects,³⁴² a point which the United Nations Committee on the Rights of the Child (‘the CROC Committee’) makes clear.³⁴³ The Convention explicitly confirms that human rights also apply to children, calls for child-specific mechanisms to ensure these rights are respected, and includes specific rights that apply only to children, such as the right to play.³⁴⁴ In 2021, the CROC Committee adopted General Comment No. 25, affirming that these rights apply equally in the digital world.³⁴⁵

The CROC Committee has identified four general guiding principles contained in the Convention:³⁴⁶ the best interests of the child, the child’s right to be heard, the right to non-discrimination, and the right to life, survival and development. The remainder of the rights contained in the CROC can be divided into three categories, collectively described as the ‘three Ps’:³⁴⁷

1. those that *protect* children against neglect or abuse;
2. those that ensure the *provision* of basic needs and development to full potential; and
3. those supporting children’s *participation* in society.

Within the European context, additional rights instruments, including the European Convention on Human Rights³⁴⁸ and ECFR also reflect the content of the CROC.³⁴⁹ Article 24 of the latter makes reference to the rights of the child, including the right to protection and care,³⁵⁰ the right for children to express their views and for these to be taken into consideration on matters concerning them according to their age and level of maturity,³⁵¹ and the primary

³⁴² Sonia Livingstone, John Carr and Jasmina Byrne, *One in Three: Internet Governance and Children’s Rights*, Paper Series No 22 (Global Commission on Internet Governance) 9
<www.cigionline.org/static/documents/no22_2.pdf> accessed 20 February 2026.

³⁴³ UN Committee on the Rights of the Child, ‘General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, Para 6)’ (n 333) para 11; Commission, ‘Towards an EU Strategy on the Rights of the Child’ (2006) COM(2006) 367 final 3.

³⁴⁴ Sonia Livingstone, ‘Children’s Rights in the Digital Age’ in Howard Tumber and Silvia Waisbord (eds), *The Routledge Companion to Media and Human Rights* (Routledge 2017) 105.

³⁴⁵ UN Committee on the Rights of the Child, ‘General Comment No. 25 (2021) on Children’s Rights in Relation to the Digital Environment’ (n 14).

³⁴⁶ UN Committee on the Rights of the Child, ‘General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, Para 6)’ (n 333) para 12.

³⁴⁷ See, eg, Sonia Livingstone and Brian O’Neill in Simone van der Hof, Bibi van den Berg and Bart Schermer (eds), ‘Children’s Rights Online: Challenges, Dilemmas and Emerging Directions’ *Minding Minors Wandering the Web: Regulating Online Child Safety* (TMC Asser Press 2014) 1.

³⁴⁸ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR).

³⁴⁹ Charter of Fundamental Rights of the European Union [2012] OJ C 326/391 art 24.

³⁵⁰ *ibid*, art 24(1).

³⁵¹ *ibid*.

nature of the best interests of the child.³⁵² The ECFR has been integrated into the EU legal framework, giving it ‘the same legal value as the Treaties’³⁵³ and the protection of children’s rights has also been recognised as an objective of the EU in the Treaty on European Union.³⁵⁴ Similarly to the CROC Committee’s General Comment No. 25, the European Parliament, the Council and the Commission jointly proclaimed a European Declaration on Digital Rights and Principles for the Digital Decade in December 2022, explicitly recognising that rights traditionally afforded to children apply equally in the digital age.³⁵⁵ As the CROC has been ratified by Australia and all Member States of the EU, this chapter will focus mainly on the expression of children’s rights in this instrument as the point of commonality between these jurisdictions.³⁵⁶

4.2 The guiding principles of the CROC

4.2.1 Best interests of the child

Article 3(1) of the CROC stipulates that:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.³⁵⁷

The CROC Committee has described the child’s best interests as a ‘threefold concept’, consisting of:³⁵⁸

1. A substantive right (an intrinsic obligation on states to ensure that the child’s best interests are assessed and form a primary consideration in matters concerning children);
2. An interpretive legal principle (in the event of multiple possible interpretations of a legal provision, the interpretation most favourable to a child’s best interests should be chosen); and
3. A rule of procedure (decision-making processes that will affect children should involve an evaluation of the possible impacts on those children).

³⁵² *ibid*, art 24(2).

³⁵³ Treaty on European Union (Maastricht Treaty) [1992] OJ C191/1 art 6.

³⁵⁴ *ibid*, art 3.

³⁵⁵ European Declaration on Digital Rights and Principles for the Digital Decade [2023] OJ C23/1 2023 ch V.

³⁵⁶ CROC, ratified by Australia on 17 December 1990, ratified by the United Kingdom on 16 December 1991, and ratified by all 27 Member States of the EU between 7 August 1990 and 6 February 1995.

³⁵⁷ *ibid*, art 3(1).

³⁵⁸ UN Committee on the Rights of the Child, ‘General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para. 1)’ (n 333) para 6.

State parties to the CROC are obliged to ensure that children's best interests are 'appropriately integrated and consistently applied' in actions taken by public institutions, to ensure that the best interests of the child are a primary consideration in the creation of legislation and policies, and to ensure that the interests of children have been assessed and form a primary consideration in decisions of actors in the private sector as well.³⁵⁹ This requires a rights-based approach 'to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote' their human dignity.³⁶⁰

Determining the best interests of the diverse array of children within a jurisdiction is not an easy task and the question of the best interest of the child has been likened to asking the meaning of life.³⁶¹ The CROC Committee has advised that both assessing and determining the best interests of the child are two distinct steps that must be taken by decision-makers. The assessment phase should ideally be carried out with the assistance of a multi-disciplinary team with participation of children to find out what the relevant elements are and assign weight to them.³⁶² There are many elements that should be taken into account in assessing the best interests of children. These include but are not limited to children's views, their identity, their care and protection, any situation of vulnerability, their right to health, and their right to education.³⁶³ In the event of conflict between these elements, decision-makers must bear in mind that the purpose of the assessment and determination of the best interests of the child is to ensure their full enjoyment of their rights.³⁶⁴

The second step outlined by the CROC Committee is the best interests determination which is a 'formal process with strict procedural safeguards designed to determine the child's best interests on the basis of the best-interests assessment'.³⁶⁵ The following safeguards and guarantees should be given special attention in decision-making affecting children: the right of the child to express their views, the establishment of facts by well-trained professionals, avoiding delays, involvement of persons trained in child psychology, legal representation for children where appropriate, the justification and explanation of decisions, mechanisms to

³⁵⁹ *ibid*, para 14.

³⁶⁰ *ibid*, para 5.

³⁶¹ Helen Stalford, 'The Broader Relevance of Features of Children's Rights Law: The "best Interests of the Child" Principle' in Eva Brems, Ellen Desmet and Wouter Vandenhoe (eds) *Children's Rights Law in the Global Human Rights Landscape: Isolation, inspiration, integration?* (1st edn, Routledge 2017) 37.

³⁶² UN Committee on the Rights of the Child, 'General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para. 1)' (n 333) paras 46–47.

³⁶³ *ibid*, para 53–79.

³⁶⁴ *ibid*, para 82.

³⁶⁵ *ibid*, para 47.

review decisions, and the use of child-rights impact assessments.³⁶⁶ Governments should follow the above two-step process in designing laws regulating children's use of social media to ensure that the best interests of the child are respected in the law-making and application processes.

Under article 3(1) of the CROC, the best interests of the child are to be given 'primary consideration'. This is justified by the position that children hold within society, often faced with less chances to make a strong case for their interests, resulting in these interests being overlooked if they are not explicitly highlighted.³⁶⁷ When making decisions affecting children collectively, legislators must determine these children's best interests in light of their circumstances, with full respect for the rights contained within the CROC.³⁶⁸ Potential conflicts between the best interests of children in general should be resolved on a case-by-case basis, balancing the interests of parties and coming to a compromise where possible.³⁶⁹ As will be seen in the discussion below, this is particularly relevant to the regulation of social media which can have both positive and negative influences on the interests of children.

4.2.2 The right of the child to express their opinion and for appropriate weight to be given to these views

Closely related to the best interests concept is the right to be heard. Children have the right to be active participants in the 'promotion, protection and monitoring' of their rights.³⁷⁰ Article 12 of the CROC stipulates that State parties to the Convention:

shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

This establishes not only a right in itself, but a guiding principle to assist in the interpretation and implementation of all other rights.³⁷¹ It is similarly reflected in the ECFR. Article 24(1) stipulates that children 'may express their views freely' and obliges Member States to take these views into consideration on matters concerning children 'in accordance with their age and maturity.'³⁷² The wording of this right leaves no discretion to State parties:

³⁶⁶ *ibid*, para 89–99.

³⁶⁷ *ibid*, para 70.

³⁶⁸ *ibid*, para 32.

³⁶⁹ *ibid*, para 39.

³⁷⁰ UN Committee on the Rights of the Child, 'General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, Para 6)' (n 333) para 12.

³⁷¹ UN Committee on the Rights of the Child, 'General Comment No. 12 (2009): The Right of the Child to Be Heard' (29 July 2009) UN Doc CRC/C/GC/12 para 2.

³⁷² Charter of Fundamental Rights of the European Union [2012] OJ C 326/391 art 24(1).

they are obliged to take measures to implement it and to consult children as appropriate.³⁷³ The CROC Committee has clarified that State parties should begin with the assumption that children have the capacity to form their own views and have the right to express them, without having to ‘prove’ their capacity first.³⁷⁴ Article 12 requires consistent and ongoing consultation and cooperation with children, and governments should develop direct relationships with children, rather than relying on non-government organisations or human rights institutions to facilitate this dialogue.³⁷⁵

Respecting the views of the child is a key component to understanding their best interests and article 12 and article 3(1) of the CROC should be read together.³⁷⁶ While art 3(1) aims at ensuring the best interests of the child, article 12 provides the methodology for listening to children to help identify what is in their best interests.³⁷⁷ Although the article 3(1) recognises the position of the State in regard to decisions relating to children’s welfare, sometimes the concept of the best interests of the child has been used to justify protectionist measures or policies at the expense of the participation of the child. Involving children in decisions regarding their own lives can help to avoid such situations. The CROC Committee has further noted that there is no hierarchy between the rights in the CROC, and reiterated that no rights should ‘be compromised by a negative interpretation of the child’s best interests.’³⁷⁸

Despite the huge significance of the right to participate, young people often report feeling left out of decision-making processes. Recent survey data from children aged 10-18 in the EU found that 70% of children thought that adults should give children more opportunities to participate in decision-making and 48% believed that adults should work with children as equal partners in trying to find solutions.³⁷⁹ The CROC Committee has encouraged State parties

³⁷³ UN Committee on the Rights of the Child, ‘General Comment No. 12 (2009): The Right of the Child to Be Heard’ (n 371) para 19.

³⁷⁴ *ibid*, para 20.

³⁷⁵ UN Committee on the Rights of the Child, ‘General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, Para 6)’ (n 333) para 12.

³⁷⁶ Aisling Parkes, *Children and International Human Rights Law: The Right of the Child to Be Heard* (Routledge 2013) 58.

³⁷⁷ UN Committee on the Rights of the Child, ‘General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para. 1)’ (n 333) para 43; UN Committee on the Rights of the Child, ‘General Comment No. 12 (2009): The Right of the Child to Be Heard’ (n 371) para 74.

³⁷⁸ UN Committee on the Rights of the Child, ‘General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para. 1)’ (n 333) para 4.

³⁷⁹ ChildFund Alliance and others, *Our Rights. Our Future. The Europe We Want: Children’s Recommendations to European Union Decision Makers* (2024) 25
<<https://eurochild.org/uploads/2024/04/EuropeWeWantReport2024.pdf>> accessed 15 February 2026.

to utilise the digital environment to consult with children on legislative proposals and ensure their views are seriously considered.³⁸⁰

4.2.3 Non-discrimination

States are obliged to ensure children may enjoy the full range of rights within their jurisdiction without discrimination of any kind.³⁸¹ In the context of the digital age, this requires State parties to ensure children have ‘equal and effective access to the digital environment in ways that are meaningful to them’.³⁸² At the same time, the risk of discrimination online also poses a challenge. Children may engage with or be exposed to potentially harmful content,³⁸³ including hateful, harmful, or illegal content.³⁸⁴ This content may be mass produced or user-generated, including by children themselves.³⁸⁵ Inequalities and discrimination can arise from algorithmic bias, exclusion, or the exploitation of vulnerabilities.³⁸⁶

4.2.4 The right to life, survival and development

State are obliged to recognise that each child has the inherent right to life and are obliged to ensure the survival and development of children to the maximum extent possible.³⁸⁷ The CROC Committee has clarified that ‘development’ should be interpreted ‘in its broadest sense as a holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development’.³⁸⁸

4.3 Protection rights

Social media can act as a double-edged sword for governments who may wish to protect children from discrimination received through hateful comments or unfair treatment online, without implementing discriminatory regulation excluding children from the right to use digital

³⁸⁰ UN Committee on the Rights of the Child, ‘General Comment No. 25 (2021) on Children’s Rights in Relation to the Digital Environment’ (n 14) para 18.

³⁸¹ CROC, art 2; UDHR, art 7; Charter of Fundamental Rights of the European Union [2012] OJ C 326/391 art 21.

³⁸² UN Committee on the Rights of the Child, ‘General Comment No. 25 (2021) on Children’s Rights in Relation to the Digital Environment’ (n 14) para 9.

³⁸³ Sonia Livingstone and Mariya Stoilova, *The 4Cs: Classifying Online Risk to Children*, CO:RE Short Report Series on Key Topics, Leibniz-Institut für Medienforschung and the Hans-Bredow-Institut (2021) 3 <doi.org/10.21241/ssoar.71817> accessed 15 February 2026.

³⁸⁴ OECD, ‘Children in the Digital Environment: Revised Typology of Risks’ (2021) OECD Digital Economy Papers 302, 7 <<https://doi.org/10.1787/9b8f222e-en>> accessed 24 October 2025.

³⁸⁵ Livingstone and Stoilova (n 383).

³⁸⁶ *ibid* 12.

³⁸⁷ CROC, art 6; UDHR, art 3; ICCPR, art 6; Charter of Fundamental Rights of the European Union [2012] OJ C 326/391 arts 1, 2, 3.

³⁸⁸ UN Committee on the Rights of the Child, ‘General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (Arts. 4, 42 and 44, Para 6)’ (n 333) para 12.

services.³⁸⁹ Social media can be used to develop new or maintain pre-existing relationships, particularly useful for adolescents in a period where peer support is critical.³⁹⁰ While social media offers opportunities for the development of children it also can also create risks to their life, survival and development, ranging from cyberbullying to abuse to access to harmful content.³⁹¹ Physical and mental health risks may include the risk of a sedentary lifestyle, excessive screentime, isolation, and depression or anxiety,³⁹² although it has also been argued that more longitudinal research is ‘urgently needed’ to determine ‘whether social media causes poor mental health in youth, or whether the association is bi-directional or influenced by other factors’.³⁹³ This further reiterates the complexity of regulating social media to protect children from harm while allowing them to reap the potential benefits.

4.3.1 Protection from abuse or exploitation

Closely related to the right to life, survival and development are children’s rights to protection from all forms of violence, abuse and neglect,³⁹⁴ including sexual exploitation or sexual abuse,³⁹⁵ child trafficking,³⁹⁶ or other forms of exploitation.³⁹⁷ These rights are relevant to efforts to prevent the creation and distribution of online child abuse content, as well as sexual grooming or child trafficking.³⁹⁸ Exposure to illegal content online confronts children with concepts that may be difficult to manage and can breach cultural or social norms, such as images of child sexual abuse or content inciting violence or advocating for terrorist attacks.³⁹⁹ Children utilising social media may also be exposed to risks when they witness, participate in or are victims of potentially harmful conduct arising out of peer-to-peer exchanges, such as

³⁸⁹ UN Committee on the Rights of the Child, ‘General Comment No. 25 (2021) on Children’s Rights in Relation to the Digital Environment’ (n 14) para 10; UDHR, art 3.

³⁹⁰ Yalda T Uhls, Nicole B Ellison and Kaveri Subrahmanyam, ‘Benefits and Costs of Social Media in Adolescence’ (2017) 140 *Pediatrics* S67, S68 <<https://doi.org/10.1542/peds.2016-1758E>> accessed 23 January 2026; Paul Best, Roger Manktelow and Brian Taylor, ‘Online Communication, Social Media and Adolescent Wellbeing: A Systematic Narrative Review’ (2014) 41 *Children and Youth Services Review* 27, 28 <<https://doi.org/10.1016/j.chilgyouth.2014.03.001>> accessed 23 January 2026.

³⁹¹ UN Committee on the Rights of the Child, ‘General Comment No. 25 (2021) on Children’s Rights in Relation to the Digital Environment’ (n 14) para 14.

³⁹² Livingstone and Stoilova (n 383) 12.

³⁹³ Katrina E Champion and others, ‘Debate: Social Media in Children and Young People – Time for a Ban? Beyond the Ban – Empowering Parents and Schools to Keep Adolescents Safe on Social Media’ (2025) 30 *Child Adolesc Ment Health* 411, 411 <<https://doi.org/10.1111/camh.70032>> accessed 13 June 2026.

³⁹⁴ CROC, art 19.

³⁹⁵ *ibid*, art 34.

³⁹⁶ *ibid*, art 35.

³⁹⁷ *ibid*, art 36.

³⁹⁸ Sonia Livingstone and Monica Bulger, ‘A Global Research Agenda for Children’s Rights in the Digital Age’ (2014) 8 *Journal of Children and Media* 317, 320 <<https://doi.org/10.1080/17482798.2014.961496>> accessed 18 January 2026.

³⁹⁹ OECD (n 384) 8.

‘bullying, hateful peer activity, trolling, sexual messages, pressures or harassment, or [are] exposed to potentially harmful user communities (e.g. self-harm or eating disorders)’.⁴⁰⁰

Contact risks arise when a child experiences or is targeted by potentially harmful contact from an adult-initiated interaction, such as ‘harassment (including sexual), stalking, hateful behaviour, sexual grooming, sextortion or the generation [or] sharing of child abuse material’.⁴⁰¹ Sextortion refers to a situation in which a perpetrator threatens to share a sexual image to blackmail a victim.⁴⁰² Combatting these risks clearly falls into the fulfilment of children’s right to protection. Furthermore, when engaging in social media, the risk also arises that children may be party to or exploited by potentially harmful contracts or commercial interests, such as gambling or age-inappropriate marketing, such as for alcohol or tobacco products.⁴⁰³ Poorly designed digital services may leave children open to identity theft or scams.⁴⁰⁴ Although these risks may not all eventuate to harm, they highlight the factors that governments generally seek to address in regulating social media for youth.

4.3.2 Protection of privacy

Children have the right to protection against arbitrary or unlawful interference with their privacy, family, home or correspondence, or against unlawful attacks on their honour and reputation.⁴⁰⁵ The CROC Committee has given strict guidelines as to this right, noting that any interference with a child’s privacy must be ‘provided for by law, intended to service a legitimate purpose, uphold the principle of data minimisation, be proportionate and designed to observe the best interests of the child and must not conflict with the provisions, aims or objectives of the Convention.’⁴⁰⁶ Additionally, at the EU level, children have the right to the protection of their personal data which must be ‘processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law’.⁴⁰⁷ Children have the right to access this data and to have it rectified.⁴⁰⁸

⁴⁰⁰ Livingstone and Stoilova (n 383) 11.

⁴⁰¹ *ibid.*

⁴⁰² OECD (n 384) 10.

⁴⁰³ Livingstone and Stoilova (n 383) 11.

⁴⁰⁴ *ibid.*

⁴⁰⁵ CROC, art 16; UDHR, art 12; Charter of Fundamental Rights of the European Union [2012] OJ C 326/391 art 7.

⁴⁰⁶ UN Committee on the Rights of the Child, ‘General Comment No. 25 (2021) on Children’s Rights in Relation to the Digital Environment’ (n 14) para 67.

⁴⁰⁷ Charter of Fundamental Rights of the European Union [2012] OJ C 326/391 art 8(1).

⁴⁰⁸ *ibid.*, art 8(2).

The right to privacy has been described as ‘vital to children’s agency, dignity and safety and for the exercise of their rights.’⁴⁰⁹ Threats to privacy may on social media arise from data collection and processing from public or private bodies, as well as from criminal activities.⁴¹⁰ Privacy concerns may be interpersonal, institutional or commercial.⁴¹¹ Data shared in an interpersonal context includes that shared by children themselves, but also by friends or family.⁴¹² For example, the practice of parents sharing content of their children online has been termed ‘sharenting’.⁴¹³ This practice may raise long-term implications for children who do not feel comfortable with the breadth of content shared before they were able to consent or discuss the topic with their parents. This highlights the conflicting interests that may be at stake when the rights of children are involved.

4.4 Provision rights

4.4.1 Education and the role of the mass media

In addition to the right to their development, children have the right to education to fulfil their full potential.⁴¹⁴ States are to ensure that this education is directed to facilitating the development of the child’s ‘personality, talents and mental and physical abilities’, prepare the child for ‘responsible life in a free society’, and to develop respect for human rights.⁴¹⁵ This is also reflected in the European Declaration on Digital Rights and Principles for the Digital Age which stresses that ‘everyone has the right to education, training and lifelong learning and should be able to acquire all basic and advanced digital skills’.⁴¹⁶ Children’s use of social media can positively support the development of their civic and political identities through greater access to information and education. Social media has been linked with improved and tailored information to children, enabling targeted and local messages to be disseminated through peers, increasing awareness of different issues and current affairs, as well as of resources for assistance.⁴¹⁷ Education from the State can also help to combat any of the potential risks of

⁴⁰⁹ UN Committee on the Rights of the Child, ‘General Comment No. 25 (2021) on Children’s Rights in Relation to the Digital Environment’ (n 14) para 67.

⁴¹⁰ *ibid.*

⁴¹¹ Livingstone and Stoilova (n 383) 12.

⁴¹² OECD (n 384) 14.

⁴¹³ Nur Hafidah Abd Kadir, Safinaz Mohd Hussein and Zinatul Ashiqin Zainol, ‘Balancing Conflicting Interests in “Sharenting”: The Corporate Social Responsibility of Social Media Platforms’ (2024) 30 Australian Journal of Human Rights 316 <<https://doi.org/10.1080/1323238X.2024.2435687>> accessed 22 January 2026.

⁴¹⁴ CROC, art 28; UDHR, arts 26, 30; Charter of Fundamental Rights of the European Union [2012] OJ C 326/391 art 14.

⁴¹⁵ CROC, art 29.

⁴¹⁶ European Declaration on Digital Rights and Principles for the Digital Decade [2023] OJ C23/1 art 4.

⁴¹⁷ Teresa Swist and others, *Social Media and the Wellbeing of Children and Young People: A Literature Review* (Commissioner for Children and Young People Western Australia 2015) 26

social media to children, including those arising from mis- or disinformation shared online. The CROC Committee has clarified that State parties must include digital literacy in school curricula, beginning as early as the pre-school level.⁴¹⁸ Curricula should include ‘the knowledge and skills to safely handle a wide range of digital tools and resources’, ways to develop critical thinking and ‘guidance on how to find trusted sources of information and identify misinformation’, and promote awareness of potential risks online.⁴¹⁹

States are to recognise the ‘important function performed by the mass media’ to encourage the provision of diverse material to the child to promote their well-being, including for children from culturally or linguistically diverse backgrounds, Indigenous children, children with a disability or members of the LGBTQIA+ community.⁴²⁰ This right supports the ‘effort to provide public and commercial educational, civic, science, cultural and heritage content online in an equitable way’.⁴²¹ A 2023 study from UNICEF in which individuals from 55 countries were surveyed revealed that 60% of 15–24-year-olds participants primarily used social media to stay informed, with only 19% primarily relying traditional media, such as radio, television and newspapers.⁴²² Despite this, only 23% of participants in this age bracket had a lot of trust in the reliability of sources on social media.⁴²³ As disinformation increases online, children require strong digital literacy skills to critically analyse the content they consume. This demonstrates the strong interrelation between the right to education, and the duty of States to promote access to a wide range of sources.

4.4.2 Rights of children with disabilities

While all of the rights in the CROC apply equally to children, the CROC also makes explicitly clear that children with mental or physical disabilities have the right to ‘enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community’.⁴²⁴ Similarly, the ECFR recognises the right of persons with disabilities ‘to benefit from measures designed to ensure their independence,

<<https://researchers.westernsydney.edu.au/en/publications/social-media-and-the-wellbeing-of-children-and-young-people-a-lit/>> accessed 20 January 2026.

⁴¹⁸ UN Committee on the Rights of the Child, ‘General Comment No. 25 (2021) on Children’s Rights in Relation to the Digital Environment’ (n 14) para 104.

⁴¹⁹ *ibid.*

⁴²⁰ CROC, art 17.

⁴²¹ Livingstone and Bulger (n 398) 320.

⁴²² Moira Herbst, *A Tumultuous World through Children’s Eyes* (UNICEF 2023) 18

<www.unicef.org/innocenti/reports/tumultuous-world-through-childrens-eyes> accessed 24 January 2026.

⁴²³ *ibid* 21.

⁴²⁴ CROC, art 23.

social and occupational integration and participation in the life of the community.⁴²⁵ Social media platforms can offer space for children with disabilities to connect with their peers, form new connections, access information, and participate in public life.⁴²⁶ Research from the United Kingdom shows that children with an ‘impacting condition’ are more likely than their counterparts to have seen online content that they found ‘worrying/nasty’,⁴²⁷ highlighting that children will experience risks differently to each other and giving weight to the concept of tailored risk mitigation strategies. Consultation with children with disabilities and their families or carers is particularly important in developing an understanding of their needs and best interests as these children may not follow the same developmental timeline as others.⁴²⁸ States must take care to ensure that *all* children have the power to use their rights.

4.4.3 Rights of children belonging to a minority or Indigenous group

A child belonging to an ethnic, religious or linguistic minority or Indigenous group shall not be denied the right to enjoy their own culture, practise their religion or use their own language.⁴²⁹ Research in Australia has shown that content sharing platforms provide opportunities for Indigenous young people to ‘perform’ their identities online.⁴³⁰ There is a cultural compatibility with the multimedia format of social media, lending itself well to an oral and visual culture, also allowing for the transmission of this culture to non-Indigenous groups, thereby promoting better understanding between cultures.⁴³¹ These benefits may also need to be balanced against the risk in changes to the way that Indigenous groups traditionally communicate. For instance, generational gaps in knowledge may mean that community Elders are unable to fulfil their traditional mediator role within society, highlighting the importance of the inclusion of digital literacy in education curricula.⁴³²

⁴²⁵ Charter of Fundamental Rights of the European Union [2012] OJ C 326/391 art 26.

⁴²⁶ UN Committee on the Rights of the Child, ‘General Comment No. 25 (2021) on Children’s Rights in Relation to the Digital Environment’ (n 14) para 109.

⁴²⁷ Office of Communications, *Children and Parents: Media Use and Attitudes Report* (2025) 5 <www.ofcom.org.uk/media-use-and-attitudes/media-habits-children/children-and-parents-media-use-and-attitudes-report-2025> accessed 22 January 2026.

⁴²⁸ Meryl Alper and Gerard Goggin, ‘Digital Technology and Rights in the Lives of Children with Disabilities’ (2017) 19 *New Media & Society* 726, 729 <<https://doi.org/10.1177/1461444816686323>> accessed 21 January 2026.

⁴²⁹ CROC, art 30.

⁴³⁰ Emma S Rice and others, ‘Social Media and Digital Technology Use among Indigenous Young People in Australia: A Literature Review’ (2016) 15 *Int J Equity Health* 81, 84 <<https://doi.org/10.1186/s12939-016-0366-0>> accessed 23 January 2026.

⁴³¹ *ibid* 90.

⁴³² *ibid* 92.

4.4.4 The right to rest, leisure and play

Children have the right to rest, leisure and ‘to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts’.⁴³³ Each element of this right is ‘mutually linked and reinforcing’, and together, ‘describe the conditions necessary to protect the unique and evolving nature of childhood.’⁴³⁴ Rest refers to the right to ‘sufficient respite from work, education or exertion’ and includes the ‘opportunity for adequate sleep.’⁴³⁵ Leisure is the time in which children play or participate in recreational activities, and should be free and largely discretionary time.⁴³⁶ The concept of ‘play’ is unique to children’s rights and is defined as ‘any behaviour, activity or process initiated, controlled and structured by children themselves’, involving ‘the exercise of autonomy, physical, mental or emotional activity’ with the key characteristics of ‘fun, uncertainty, challenge, flexibility and non-productivity.’⁴³⁷ Similarly, ‘recreation’ is also used to define a broad range of voluntary activities, including ‘participation in music, arts, crafts, community engagement, clubs, sports, games, hiking and camping, pursuing hobbies.’⁴³⁸ The use of social media therefore may fall within either or both definitions. Article 31 of the CROC recognises the importance of cultural life and the arts in the development of children as avenues to build community, express identity and give meaning to life.⁴³⁹ The CROC Committee has commented that children’s right to participate ‘freely’ in these activities requires that States ‘respect and abstain from interfering in the child’s access to, choice of and engagement in such activities, subject to the obligation to ensure the protection of the child and the promotion of the child’s best interests.’⁴⁴⁰ The CROC Committee further emphasised that the realisation of the child’s right to play is by definition in their best interests.⁴⁴¹

Children have the right to these activities when they are ‘appropriate to the age of the child’.⁴⁴² The age of the child should impact ‘the amount of time afforded; the nature of spaces and environments available; forms of stimulation and diversity; the degree of necessary adult

⁴³³ CROC, art 31; see also UDHR, art 24.

⁴³⁴ UN Committee on the Rights of the Child, ‘General Comment No. 17 (2013) on the Right of the Child to Rest, Leisure, Play, Recreational Activities, Cultural Life and the Arts (Art. 31)’ (17 April 2023) UN Doc CRC/C/GC/17, 2.

⁴³⁵ *ibid* 3.

⁴³⁶ *ibid*.

⁴³⁷ *ibid*.

⁴³⁸ *ibid*.

⁴³⁹ *ibid*.

⁴⁴⁰ *ibid* 3–4.

⁴⁴¹ *ibid* 4.

⁴⁴² CROC, art 31.

oversight and engagement to ensure safety and security’ when exercising this right.⁴⁴³ This element may be used to justify restrictions on children’s usage of social media based on what is age appropriate. The question of what is appropriate is highly individual and consideration of this question should be done in collaboration with children, rather than on their behalf.

The use of social media can be a recreational activity and provide access to cultural life and the arts, where children are both creators and consumers of online entertainment. The CROC Committee has explicitly confirmed that access to social media is ‘central to the realisation of article 31 rights in the globalised world’ while also noting concern at the ‘potential risk and harm to children’ that may also arise from their use.⁴⁴⁴ The CROC Committee notes that ‘measures should be introduced to promote online access and accessibility, as well as safety for children’.⁴⁴⁵ These measures should ‘include action to empower and inform children to enable them to act safely online, to become confident and responsible citizens of digital environments and to report abuse or inappropriate activity when it is encountered.’⁴⁴⁶

4.5 Participation rights

In addition to the right to be heard, children hold a range of other participation rights. Children have the right to freedom of expression,⁴⁴⁷ including ‘the right to seek, receive and impart information and ideas of all kinds regardless of frontiers’⁴⁴⁸ and extending to ‘all forms of audio-visual as well as electronic and internet-based modes of expression.’⁴⁴⁹ By ‘acting as a catalyst’ for users to exercise their right to freedom of expression, ‘the Internet also facilitates the realisation of a range of other human rights.’⁴⁵⁰ Children also have the right to freedom of thought,⁴⁵¹ and freedom of association and peaceful assembly.⁴⁵² Social media platforms can

⁴⁴³ UN Committee on the Rights of the Child, ‘General Comment No. 17 (2013) on the Right of the Child to Rest, Leisure, Play, Recreational Activities, Cultural Life and the Arts (Art. 31)’ (n 434) 3.

⁴⁴⁴ *ibid* 7–8.

⁴⁴⁵ *ibid* 10.

⁴⁴⁶ *ibid*.

⁴⁴⁷ CROC, art 13; ICCPR, art 19; Charter of Fundamental Rights of the European Union [2012] OJ C 326/391 art 11.

⁴⁴⁸ UN Human Rights Committee, ‘General Comment No. 34 - Article 19: Freedoms of Opinion and Expression’ (12 September 2011) UN Doc CCPR/C/GC/34 para 11.

⁴⁴⁹ *ibid*, para 12.

⁴⁵⁰ UN Human Rights Council, ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue’ (2011) UN Doc A/HRC/17/27 para 22.

⁴⁵¹ CROC, art 14; UDHR, art 18; ICCPR art 18; Charter of Fundamental Rights of the European Union [2012] OJ C 326/391 art 10.

⁴⁵² CROC, art 15; UDHR art 20; ICCPR, art 21,22; Charter of Fundamental Rights of the European Union [2012] OJ C 326/391 art 12.

provide digital environments for children to form their identities and public spaces for them to participate in associated communities.⁴⁵³ States are also obliged to ensure that children have access to information online,⁴⁵⁴ and that the exercise of this right is only restricted in the ways stipulated in the Convention.⁴⁵⁵ The Committee has clarified that State parties should ‘support the creation of age-appropriate and empowering digital content for children in accordance with children’s evolving capacities,’⁴⁵⁶ encourage the production and dissemination of content from a diverse range of sources, and ensure children can find diverse and good quality information online.⁴⁵⁷ Communication rights enable other rights as children are able to express their basic wants and needs, to interact with their peers, and to participate in society to a fuller extent,⁴⁵⁸ and research has shown that children use online social interactions to support their offline friendships.⁴⁵⁹

Social media has the potential to provide a platform for children to explore their gender or sexual orientation and connect with other young people who may identify in similar ways to them or it may reinforce gender differences. Results from a pilot study completed by 16-27 year olds in Australia who identified as ‘gender variant or sexually diverse’ in 2012-2013 revealed that 85% of participants had used the internet (including social media) to explore their gender or sexual identity, and that 78% described the internet as a place ‘where they felt accepted’.⁴⁶⁰ There were, however, still concerns by some participants of the need to mediate their identifies online, depending on the accessibility of their social media profiles to their families or wider group of friends who were not aware of their sexuality.⁴⁶¹ Similarly, a survey conducted in the lead up to the 2024 election of the Members of the European Parliament, involving children aged between 10-18 from across Europe found that only 33% of children who identified as LGBTQIA+ felt that they could be themselves in public spaces, while 64%

⁴⁵³ UN Committee on the Rights of the Child, ‘General Comment No. 25 (2021) on Children’s Rights in Relation to the Digital Environment’ (n 14) para 64.

⁴⁵⁴ CROC, art 17.

⁴⁵⁵ UN Committee on the Rights of the Child, ‘General Comment No. 25 (2021) on Children’s Rights in Relation to the Digital Environment’ (n 14) para 50.

⁴⁵⁶ *ibid*, para 51.

⁴⁵⁷ *ibid*, para 52–53.

⁴⁵⁸ Sharynne McLeod, ‘Communication Rights: Fundamental Human Rights for All’ (2018) 20 *International Journal of Speech-Language Pathology* 3, 3 <<https://doi.org/10.1080/17549507.2018.1428687>>.

⁴⁵⁹ Amanda Third and others, ‘Children’s Rights in the Digital Age: A Download from Children around the World’ (Young and Well Cooperative Research Centre 2014) 37.

⁴⁶⁰ Kerry H Robinson and others, *Growing up Queer: Issues Facing Young Australians Who Are Gender Variant and Sexuality Diverse* (Young and Well Cooperative Research Centre 2014) 31 <<https://researchers-admin.westernsydney.edu.au/ws/portalfiles/portal/341433084/Open+Access.pdf>> accessed 21 January 2026.

⁴⁶¹ *ibid* 35.

of these young people felt they could be themselves online most of the time.⁴⁶² Other research, however, has demonstrated that the online world may simply reflect offline challenges faced by children, for example through the reinforcement of negative stereotypes for girls.⁴⁶³ Furthermore, boys may be less risk-averse than girls, and are often found to engage in behaviour that may expose them to more inappropriate or distressing content.⁴⁶⁴ This highlights the interplay of the right to protection from discrimination with participation rights, and the importance of fostering spaces for young people to authentically express themselves.

4.6 The balancing act

The above discussion demonstrates the extreme complexity facing policy- and lawmakers when designing obligations on social media providers. As can be seen in the discussion above, children's rights do not always exist harmoniously, with clashes commonly occurring between protection and participation rights in particular in the digital age.⁴⁶⁵ It has been noted that attempts to protect children from online harms, particularly in the more conservative and risk-averse global north, often result in lost opportunities to participate more fully within society.⁴⁶⁶ Livingstone and Stoilova stress the distinction between risk and harm, with risk being the possibility of harm, and harm including a range of negative consequences to children's wellbeing.⁴⁶⁷ They utilise the example of exposure to pornography which may pose a risk children, but not necessarily lead to harmful consequences.⁴⁶⁸ It has also been argued that most children will benefit from exposure to some degree of risk as this enables them to develop the resilience to deal with subsequent risks online.⁴⁶⁹ Online opportunities and risks are often positively correlated in the same way that offline risks and opportunities are, such as allowing children to climb trees.⁴⁷⁰ So-called 'risky opportunities' on social media may also provide teenagers with the chance to explore their identities and relationships.⁴⁷¹ The CROC

⁴⁶² ChildFund Alliance and others (n 379) 14.

⁴⁶³ Rezvan Kaseb and Elizabeth Milovidov, 'Digital Technologies and the Rights of Children in Europe' in Liam Grealy, Catherine Driscoll, Anna Hickey-Moody (eds), *Human Rights Responsibilities in the Digital Age* (Bloomsbury 2021) 221.

⁴⁶⁴ Peter JR Macaulay and others, 'Subjective versus Objective Knowledge of Online Safety/Dangers as Predictors of Children's Perceived Online Safety and Attitudes towards e-Safety Education in the United Kingdom' (2020) 14 *Journal of Children and Media* 376, 379 <<https://doi.org/10.1080/17482798.2019.1697716>> accessed 7 July 2026.

⁴⁶⁵ Livingstone (n 344) 107.

⁴⁶⁶ *ibid* 108.

⁴⁶⁷ Livingstone and Stoilova (n 383) 4.

⁴⁶⁸ Sonia Livingstone and Mariya Stoilova, 'The 4Cs: Classifying Online Risk to Children' [2021] CO:RE Short Report Series on Key Topics 14 S., 4 <<https://doi.org/10.21241/SSOAR.71817>> accessed 22 January 2026.

⁴⁶⁹ Third and others (n 93).

⁴⁷⁰ Livingstone and Bulger (n 398) 323.

⁴⁷¹ *ibid* 322.

Committee has noted that balance must be struck between ‘taking action to reduce unacceptable hazards’ while also ‘empowering children to take the necessary precautions to enhance their own safety.’⁴⁷² Ultimately the best interests of the child and listening to the lived experience and ideas of children themselves should guide determinations as to the level of tolerable risk.⁴⁷³ The following chapter will assess the ability of social media bans to achieve this balance.

5 Child Rights Analysis

Any measure implemented to regulate children’s usage of social media must attempt this balancing act, respecting children’s rights to protection, provision and participation. This chapter analyses whether social media bans can be said to be in the best interest of the child by successfully protecting children from harm without restricting fundamental freedoms more than strictly necessary.

5.1 The ability of social media bans to protect children

Social media bans are primarily aimed at upholding children’s right to life, survival and development and to protection from abuse or exploitation. Ms Michelle Rowland MP, Minister for Communications at the time the Australian Government introduced the Social Media Minimum Age Scheme, cited the Government’s desire to protect ‘young Australians at a critical stage of their development’ as the main motivation for updating the Online Safety Act.⁴⁷⁴ Discussions around the implementation of similar bans within Europe have also revolved around the same goal. While calling for the implementation of an EU-wide social media ban, the European Parliament relied upon figures as to the widespread ‘problematic’ or ‘dysfunctional’ use of smartphones displayed by many minors, as well as the potential for misinformation to spread online.⁴⁷⁵

In theory, social media bans have the potential to protect young people from harm by simply removing their access to a technology that has been deemed too high risk for their use. The reality is not so simple. First, this theory relies upon effective enforcement. As discussed in section 2.2.5 of this thesis, the Australian Government is facing significant challenges in enforcing its social media ban with high percentages of children retaining access to their social

⁴⁷² UN Committee on the Rights of the Child, ‘General Comment No. 17 (2013) on the Right of the Child to Rest, Leisure, Play, Recreational Activities, Cultural Life and the Arts (Art. 31)’ (n 434) 6–7.

⁴⁷³ *ibid.*

⁴⁷⁴ Commonwealth of Australia, *Parliamentary Debates*, House of Representatives, 21 November 2024 8270 (Michelle Rowland).

⁴⁷⁵ European Parliament (n 328) para B, C.

accounts despite the legal reform. Although the ban is still relatively new and it may be argued that these are teething issues, difficulties enforcing the law undermine its ability to protect children. Second, it has been noted that children who circumvent the ban may be pushed into less regulated spaces online or be even less likely to approach parents or guardians in relation to harmful or unsettling content or in relation to instances of cyberbullying if they are concerned about being punished for breaching government restrictions.⁴⁷⁶ Furthermore, by preventing children from holding accounts with social media platforms, these bans prevent utilisation of safety features that would otherwise be available to young users. For instance, the Australian eSafety Commissioner argued that YouTube should be subject to the ban, partly because of its ‘persuasive design features and functionality’ that may lead to excessive use, including ‘infinite scroll, auto-play, qualitative social metrics, and tailored and algorithmically recommended content feeds.’⁴⁷⁷ The infinite scroll and auto-play features are, however, still present in the logged-out state of YouTube. As the Commissioner admitted, there are some safety functionalities offered to accounts registered to children which are not available in the logged-out state, such as being part of a supervised account in which parents can set viewing restrictions based on the age of their child.⁴⁷⁸ Furthermore, for users aged 13-17 on YouTube, the autoplay feature is turned off by default.⁴⁷⁹ If children are prevented from holding accounts with YouTube these protections are not available to them. Rather than targeting the specific features that have been identified as posing risks to children, blanket social media bans are at best only able to delay children’s exposure to them.

Finally, the obligation on social media platforms to utilise age assurance technology to implement social media bans also brings associated risks to the protection of children’s privacy and personal data. In Australia, both the text of the Online Safety Act and the eSafety Commissioner’s Regulatory Guidance leave the choice of age assurance method open to the platform provider, however, as the results of the Age Assurance Technology Trial highlighted, the level of risk will depend on the method of age assurance that is utilised.⁴⁸⁰ This law therefore

⁴⁷⁶ Giselle Woodley and others, ‘Australian Teen Voices on Age Verification and Age Assurance Measures’ (2025) 17 Policy & Internet e70019, 7 <<https://doi.org/10.1002/poi3.70019>> accessed 13 June 2026; Australian Child Rights Taskforce, ‘Submission to the United Nations Committee on the Rights of the Child on the List of Issues Prior to Reporting’ (Australian Child Rights Taskforce 2025) para 100.

⁴⁷⁷ eSafety Commissioner, ‘Advice to the Minister for Communications’ 5 <www.infrastructure.gov.au/sites/default/files/documents/esafety-commissioner-advice-on-draft-online-safety-rules-19-june-2025.pdf> accessed 26 August 2025.

⁴⁷⁸ *ibid* 6; Google, ‘What’s Changing for under 16s and Parents on YouTube in Australia’ (*Google Australia Blog*) <<https://blog.google/intl/en-au/products/whats-changing-on-youtube-in-australia/>>.

⁴⁷⁹ Google, ‘Autoplay Videos’ (*YouTube Help*) <<https://support.google.com/youtube/answer/6327615?hl=en>>.

⁴⁸⁰ eSafety Commissioner, ‘Social Media Minimum Age: Regulatory Guidance’ (n 62) 11.

affords platform providers a great deal of discretion and may see inconsistent levels of data protection or security amongst providers, depending on the method/s chosen. Although the Australian Government implemented legislative changes aimed at ameliorating some of these risks, such as by preventing platform providers from relying solely upon government-issued identification documents as a means of age verification, platform providers are not prevented from relying on this as *one* of the methods employed.⁴⁸¹ Therefore, despite additional changes to the Privacy Act outlined in section 2.2.4 aimed at reducing some of the risks associated with the collection of this personal information, the possibility of non-compliance or a data breach cannot be removed entirely. It is for this reason that the Deutscher Ethikrat (German Ethics Council) has recommended that where age assurance technology is utilised, it should be clearly regulated, and the law should clearly set out which type is to be utilised and when.⁴⁸² As discussed above at section 3.5, within the European context, the EU is trialling its age-verification app partly with the view to implementing it in a potential social media ban at EU or Member State level.⁴⁸³ Although the app shows potential in protecting young users' data by offering a system in which their age is confirmed to the platform provider without revealing their personal details, controversy surrounding the app's vulnerability to hacking has highlighted the challenges in implementing this technology in practice.⁴⁸⁴ Therefore, social media bans relying on age assurance technology may introduce new risks to children online, undermining the very purpose of a social media ban.

5.2 Development of the child vs the bright-line approach

Although State parties to the CROC have the obligation to respect the evolving capacities of the child, blanket social media bans based operate contrarily to this duty.⁴⁸⁵ The evolving capacities concept places an obligation on adults to take the necessary steps to support children in realising all of their rights and to gradually allow them to exercise these independently from their parents.⁴⁸⁶ According to this principle, children's agency should be

⁴⁸¹ Online Safety Act, s 63DB.

⁴⁸² Deutscher Ethikrat, 'Schutz, Teilhabe Und Befähigung von Kindern Und Jugendlichen in Der Digitalen Welt' (2026) 40 <www.ethikrat.org/publikationen/stellungnahmen/kinder-und-jugendliche-in-der-digitalen-welt>.

⁴⁸³ Commission, 'Statement by President von der Leyen with Executive Vice-President Virkkunen on the Digital Age Verification App' (n 329).

⁴⁸⁴ Émile Marzolf, Ellen O'regan and Eliza Gkritsi, 'Brussels Launched an Age Checking App. Hackers Say It Takes 2 Minutes to Break It.' (*Politico*, 17 April 2026) <www.politico.eu/article/eu-brussels-launched-age-checking-app-hackers-say-took-them-2-minutes-break-it/>.

⁴⁸⁵ CROC, art 5.

⁴⁸⁶ Sonia Livingstone and Kim R Sylwander, 'There Is No Right Age! The Search for Age-Appropriate Ways to Support Children's Digital Lives and Rights' (2025) 19 *Journal of Children and Media* 6, 8 <<https://doi.org/10.1080/17482798.2024.2435015>> accessed 18 January 2026. CITING Varadan 2019

enabled as young as possible, while they are protected from harm for as long as possible.⁴⁸⁷ According to Livingstone and Sylwander:⁴⁸⁸

the principle of evolving capacities acknowledges that children develop in diverse, non-linear ways, with the significance of ‘age’ varying across cohorts, individuals and rights. The principle respects both the child's present state (of ‘being’) and their future development (of ‘becoming’), ensuring neither is overshadowed and resisting privileging protection over freedom, a common tendency in regulating the digital environment.

Despite this, the difference between ‘Digital Natives’ (children, growing up fluent in the digital language) and ‘Digital Immigrants’ (adults who grew up in the pre-digital age and had to acquire these ‘language’ skills)⁴⁸⁹ can discourage lawmakers, businesses and parents from considering children’s online lives in practice.⁴⁹⁰ Many young people are at the ‘cutting edge of the digital and social media environments, which form an increasingly central role in their education, culture and social networks, and hold potential in terms of political engagement and monitoring accountability.’⁴⁹¹ Children do not all develop at the same rate and ‘vary enormously in their physical, intellectual, social and emotional capacity.’⁴⁹² Many policies that are designed for children ‘often fail to address adolescents in all their diversity and are inadequate to guarantee the realisation of their rights.’⁴⁹³

While so-called ‘bright-line approaches’ to regulating sensitive topics can help ‘to produce legal certainty and to maintain public confidence in the law’,⁴⁹⁴ the concept of evolving capacities ‘challenges bright-line rules that impose an age limit in a manner that cannot allow for children’s freedoms while simultaneously protecting their vulnerabilities.’⁴⁹⁵ Blanket bans have been criticised as treating ‘adolescents as a homogenous group, without distinguishing

⁴⁸⁷ Gerison Lansdown, ‘The Evolving Capacities of the Child’ (Innocenti Research Centre 2005) <<https://digitallibrary.un.org/record/556609?ln=en&v=pdf>> accessed 30 January 2026.

⁴⁸⁸ Sonia Livingstone and Kim R Sylwander, ‘Conceptualizing Age-appropriate Social Media to Support Children’s Digital Futures’ (2026) 44 British J of Dev Psycho 300 <<https://doi.org/10.1111/bjdp.70006>> accessed 12 June 2026.

⁴⁸⁹ Marc Prensky, ‘Digital Natives, Digital Immigrants Part 1’ (2001) 9 On the Horizon 1 <<https://doi.org/10.1108/10748120110424816>> accessed 26 February 2026.

⁴⁹⁰ Aiman El-Asam and others, ‘The Glaring Gap: Practitioner Experiences of Integrating the Digital Lives of Vulnerable Young People into Practice in England’ (2023) 26 Information, Communication & Society 1122, 1124 <<https://doi.org/10.1080/1369118X.2021.1991976>> accessed 18 January 2026.

⁴⁹¹ UN Committee on the Rights of the Child, ‘General Comment No. 20 (2016) on the Implementation of the Rights of the Child during Adolescence’ (6 December 2016) UN Doc CRC/C/GC/20 para 2.

⁴⁹² UN Human Rights Council, ‘Artificial Intelligence and Privacy, and Children’s Privacy: Report of the Special Rapporteur on the Right to Privacy, Joseph A. Cannataci’ (2021) UN Doc A/HRC/46/37 para 96.

⁴⁹³ UN Committee on the Rights of the Child, ‘General Comment No. 20 (2016) on the Implementation of the Rights of the Child during Adolescence’ (n 491) para 3.

⁴⁹⁴ *Evans v The United Kingdom App no 6339/05* [2007] I ECHR 321 para 60.

⁴⁹⁵ Livingstone and Sylwander (n 486) 8.

between their levels of maturity, digital literacy, and purposes of use'.⁴⁹⁶ The United Nations Special Rapporteur on Privacy has similarly commented that.⁴⁹⁷

As a generic threshold, age appropriateness poses inequities for children of differing capacity and is a crude measure of their evolving capacities, potentially constraining the development of their personalities and the autonomous exercise of their rights, and is possibly discriminatory.

The Australian Social Media Minimum Age Scheme can be characterised as a form direct and hard paternalism, seeking to steer behaviour by restricting individuals' choices, overriding individual and parental decision-making.⁴⁹⁸ Blanket bans are unable to address the nuances of the best interests of the child on an individual basis and thereby prioritise protection over agency.

A secondary model of social media ban, seen for example in the proposal from the European Parliament or the French draft law, imposes a minimum age for the usage of social media, but provides for parental consent as an exception to the ban within a certain age-range. On one hand, this model allows for greater flexibility and the possibility for decision-making to be tailored to the specific child and their context, including the risks and support available, their experiences, the rights affected and their capacity for understanding theirs and others' actions.⁴⁹⁹ However, it has been reported that many parents find this task burdensome and consider themselves ill-equipped and under-resourced to address this issue and to empower children online.⁵⁰⁰ Legally requiring parents to consent to their child's use of social media may not only place a burden on them to understand this technology, but also enables stricter parents to hinder their children from the potential benefits of social media.⁵⁰¹ This may be felt more distinctly by children living in remote areas or LGBTQIA+ young people otherwise facing isolation. Furthermore, this approach somewhat undermines the reality of children as right-bearers, who should be regarded not as the property of their parents, but rather as individuals

⁴⁹⁶ Özçiftci and Demir (n 11) 8.

⁴⁹⁷ UN Human Rights Council (n 492) para 112.

⁴⁹⁸ Özçiftci and Demir (n 11) 3.

⁴⁹⁹ UN Human Rights Council (n 492) para 114.

⁵⁰⁰ Sonia Livingstone and Brian O'Neill, 'Children's Rights Online: Challenges, Dilemmas and Emerging Directions' *Minding Minors Wandering the Web: Regulating Online Child Safety* (TMC Asser Press 2014) 31.

⁵⁰¹ Christophe Olivier Schneble and others, 'Social Media Terms and Conditions and Informed Consent From Children: Ethical Analysis' (2021) 4 JMIR Pediatr Parent <<https://pediatrics.jmir.org/2021/2/e22281>> accessed 21 January 2026; see also Jenna Gillett-Swan and Jonathon Sargeant, 'Assuring Children's Human Right to Freedom of Opinion and Expression in Education' (2018) 20 International Journal of Speech-Language Pathology 120, 121.

capable of exercising agency, particularly as they mature.⁵⁰² The GDPR also adopts a similar approach and has been criticised for seeking to protect minors without supporting their development into adults required to make decisions regarding their own information autonomy.⁵⁰³ It has been commented that this method ‘seems to distort the balance between empowerment and protection towards the latter, especially for teens’.⁵⁰⁴ This method therefore may not achieve the correct balance between protection and participation rights for children.

5.3 The restriction of other rights

Social media bans also limit a range of other rights of the child. As explored in chapter four, social media can be utilised by children as a form of leisure and play, and as an opportunity for education. In the Joint Declaration on Freedom of Expression and the Internet, signed by representatives of key human rights institutions, concern was expressed that even when executed in good faith, efforts by governments to regulate the online world may ‘fail to take into account the special characteristics of the Internet, with the result that they unduly restrict freedom of expression.’⁵⁰⁵ By banning children’s access to key public forums, governments also interfere with their right to peaceful assembly.⁵⁰⁶

Although promoting the best interests of the child involves respecting the full range of their rights from protection to provision to participation, human rights law recognises that there may be times in which trade-offs between rights are necessary. Any limitation on the right to freedom of expression for instance must satisfy a cumulative, three-part test:⁵⁰⁷

1. The limitation must be predictable and transparent (provided by law which is clear and accessible and formulated with sufficient precision);

⁵⁰² JC Buitelaar, ‘Child’s Best Interest and Informational Self-Determination: What the GDPR Can Learn from Children’s Rights’ (2018) 8 International Data Privacy Law 293, 298 <<https://doi.org/10.1093/idpl/ipy006>> accessed 12 June 2026.

⁵⁰³ Mateusz Kupiec, ‘Is Prohibiting Targeted Ads for Minors under the Digital Services Act Proportionate? The Need for a Child-Rights-Based Approach to Protecting Children’s Personal Data Online’ in Jan Czarnocki and Przemysław Pałka (eds), *Proportionality in EU Digital Law: Balancing Conflicting Rights and Interests* (1st edn, Hart Publishing 2024) 280 <<https://doi.org/10.5040/9781509974542>> accessed 27 August 2025.

⁵⁰⁴ Milda Macenaite, ‘From Universal towards Child-Specific Protection of the Right to Privacy Online: Dilemmas in the EU General Data Protection Regulation’ (2017) 19 New Media & Society 765, 774 <<https://doi.org/10.1177/1461444816686327>> accessed 14 June 2026.

⁵⁰⁵ UN Special Rapporteur on Freedom of Opinion and Expression and others, ‘Joint Declaration on Freedom of Expression and the Internet’ 1 <<https://rfom.osce.org/fom/78309>> accessed 12 March 2026.

⁵⁰⁶ See, eg, *Yıldırım v Turkey* App no 3111/10 (ECtHR 18 December 2012) para 55.

⁵⁰⁷ CROC, art 13; ICCPR, art 19; Convention for the Protection of Human Rights and Fundamental Freedoms (opened for signature 4 November 1950, entered into force 3 September 1953) ETS 5/CETS 005 (ECHR) art 10; UN Human Rights Council (n 451) para 24.

2. It must be legitimate (with the aim of upholding or respecting the rights of others or for the protection of national security, public order or public health or morals); and
3. The measure must be necessary and proportionate (utilising the least restrictive means to achieve this aim).⁵⁰⁸

Restrictions on the right to freedom of assembly must pass the same test.⁵⁰⁹

In the case of social media bans, the first two steps of the test can be relatively easily satisfied. In Australia, the Social Media Minimum Age Scheme is provided for in Part 4A of the Online Safety Act. Within Europe, several Member States have drafted legislation providing for their own version of this measure. The grounds invoked by these governments in restricting social media access fall within the categories of protecting public interest and public health or morals. Once a ground has been invoked, governments must establish that intervention was necessary. That is, they must establish ‘a direct and immediate connection’ between children’s use of social media and the threat to public interest, health and/or morals.⁵¹⁰ It is reiterated that, although there is evidence as to the risks of social media for children, whether this will result in harm seems to vary widely depending on the young person. Nevertheless, it is still justifiable to argue that the gravity of the potential harm to children warrants some form of government intervention. As the right to protection and rights to participation enjoy equal status, the key question is therefore whether social media bans strike a balance retaining the essence of each of these rights.⁵¹¹ A key component to this question is whether other measures are available that are also capable of achieving the aim of protection with less restriction of children’s other rights.

The UN Human Rights Committee has stressed that permissible restrictions to the operation of ‘websites, blogs or other internet-based’ systems of communication ‘should be content-specific’ and that ‘generic bans on the operation of certain sites and systems’ are generally not able to be considered necessary and proportionate.⁵¹² In *Kharitonov v Russia*, the European Court of Human Rights (‘ECHR’) expressed concern about legislation empowering authorities to block access to entire websites on the basis of them containing allegedly illegal

⁵⁰⁸ UN Human Rights Committee (n 448) paras 33–34.

⁵⁰⁹ CROC, art 15; ICCPR, arts 21, 22; ECHR art 11; UN Human Rights Committee, ‘General Comment No. 37 on Article 21 (Right of Peaceful Assembly)’ (23 July 2020) UN Doc CCPR/C/GC/37.

⁵¹⁰ UN Human Rights Committee (n 448) para 35.

⁵¹¹ *Delfi AS v Estonia* App no 64569/09 [2015] II ECHR 319. [110].

⁵¹² UN Human Rights Committee (n 448) para 43.

content, without distinguishing between the hosted content that was legal or not.⁵¹³ Similarly, social media bans for children do not seek to target specific content that has been categorised as potentially harmful, nor do they address harmful features, such as infinite scrolling. Instead, like website blocking, they may be seen as ‘an extreme measure’.⁵¹⁴ In *Cengiz v Turkey*, a case that discussed the legality of a government measure blocking access to YouTube, the ECHR noted that YouTube is ‘undoubtedly an important means of exercising the freedom to receive and impart information and ideas’.⁵¹⁵ In that instance, the Court focused particularly on the political content that can be shared on YouTube, making it a ‘unique platform on account of its characteristics, its accessibility and above all its potential impact’, and the fact that ‘no alternatives were available to the applicants.’⁵¹⁶ While the social media ban in Australia is not as extreme, with children still able to access platforms like YouTube in a logged-out state, they are nevertheless prevented from actively engaging with or sharing their own content. Furthermore, the extremely broad definition of ‘age-restricted social media platform’ and the eSafety Commissioner’s interpretation of its scope have severely restricted the range of alternatives available to children. The proposed two-tiered definitional approach in France may in contrast offer a less harsh version of the law, subject to the discussion above around the limitations of parental consent. Depending on their final scope, social media bans in the remainder of Europe or at the EU level run the risk of being similarly broad like the Australian model.

5.4 Alternative measures

The following section explores the range of alternative measures available to governments seeking to protect children from online harms.

5.4.1 A risk-based approach

A risk-based model to the regulation of social media offers a strong alternative to the use of social media bans. Under this approach, risks to children associated with social media are identified and assessed in collaboration with children, parents and other stakeholders, and tailored measures are introduced to mitigate these risks, such as by disabling infinite scroll features or push notification. Within the Australian context, one of the key recommendations of Ms Delia Rickard PSM’s review of the Online Safety Act, completed prior to the addition

⁵¹³ *Kharitonov v Russia* App no 10795/14 (ECtHR, 23 June 2020).

⁵¹⁴ *ibid.*, para 38; See also *Yıldırım* (n 506).

⁵¹⁵ *Cengiz and Others v Turkey* App nos 48226/10 and 14027/11 (ECtHR, 1 December 2015) para 52.

⁵¹⁶ *ibid.*

of the social media ban in Part 4A, was the introduction of a risk-based approach to improving the safety of platforms for all users, similar to the model currently in place under the DSA and AVMSD.⁵¹⁷ Ms Rickard recommended that:⁵¹⁸

Australia adopt a singular and overarching duty of care that encompasses due diligence, and is underpinned by safety by design principles, risk assessment, mitigation and measurement. An overarching duty of care would place responsibility on service providers to take reasonable steps to address and prevent foreseeable harms on their services.

It was recommended that ‘enduring categories of harm’, including harms to young people, be included in the Online Safety Act to complement the duty of care imposed on platform providers.⁵¹⁹

The logic behind such a model is simple and was summarised in the Article 28 Guidelines to the DSA: ‘creating a privacy preserving, safe and secure online environment for all users will inherently result in more privacy, safety and security for minors online’.⁵²⁰ Rather than excluding young people from the digital world, platforms providers under the risk-based model are obliged to address the issues at the core of many to the risks to children. This logic was also repeated by the independent expert commission ‘Kinder- und Jugendschutz in der digitalen Welt’ in its report to the German Government in June 2026, arguing that children should be protected, rather than punished or held responsible for platforms that are inadequately safe.⁵²¹ By holding platforms accountable and targeting the specific harmful features of social media, the risk-based approach offers the potential for real change and inclusivity.

This approach is not, however, without its potential limitations. Platform providers are required to determine appropriate and proportionate measures in response to any identified risks, potentially leading to either overly weak or restrictive action. Platform providers are expected to implement measures that balance children’s rights with the provider’s freedom to conduct business, and may be required to implement measures that are not in their commercial

⁵¹⁷ Rickard (n 20) 7.

⁵¹⁸ Rickard (n 20) 12.

⁵¹⁹ *ibid.*

⁵²⁰ Commission, ‘Guidelines on Measures to Ensure a High Level of Privacy, Safety and Security for Minors Online, Pursuant to Article 28(4) of Regulation (EU) 2022/2065’ (n 13) para 11.

⁵²¹ Unabhängige Expertenkommission Kinder- und Jugendschutz in der digitalen Welt (n 323) 70.

interest, resulting in children’s rights losing out in this balancing act.⁵²² As explored in section 3.2 for example, in transposing the AVMSD, most Member States have merely adopted the wording of the Directive which does not define the harmful content that measures taken to protect children should address. The use of children’s rights impact assessments are one method that may assist in reducing the likelihood of this occurring.⁵²³ To reduce instances of platforms defining the concept of ‘harm’ in vastly different ways and thereby potentially limiting the effectiveness of regulatory insight, Nyhan et al have also suggested introducing ‘mandatory standardised quarterly reporting...using a set of predefined categories with definitions and classifications of “harmful” content’.⁵²⁴ This may therefore offer more uniformity and less room for discretion on the part of platform providers. The mandatory reporting obligations imposed by the DSA also provide a possible solution, requiring platform providers to actively outline their efforts to protect children to enable better regulatory oversight and enforcement.⁵²⁵ Overall, the risk-based model offers the opportunity for ongoing dialogue with children in order to understand and support their best interests.

5.4.2 Parental involvement

A second alternative to the use of social media bans is the encouragement of parents and carers to be more involved in their children’s usage of social media. A distinct feature of children’s rights law is the role of parents and carers. Although human rights instruments traditionally regulate the relationship between State parties and individuals, the CROC is also concerned with ‘an intermediary level’.⁵²⁶ State parties are required to respect the ‘responsibilities, rights and duties of parents’ and carers ‘to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of’ their rights under the CROC.⁵²⁷ In the context of the use of social media, it has been queried whether rules regarding the appropriate usage are best left to parents. As discussed

⁵²² Simone Van Der Hof and others, ‘The Child’s Right to Protection against Economic Exploitation in the Digital World’ (2020) 28 Int J Child Rights 833 <<https://doi.org/10.1163/15718182-28040003>> accessed 19 June 2026.

⁵²³ Sonia Livingstone and Kruakae Pothong, ‘Child Rights Impact Assessment: A Policy Tool for a Rights-Respecting Digital Environment’ (2025) 17 Policy & Internet e70008 <<https://doi.org/10.1002/poi3.70008>> accessed 19 June 2026.

⁵²⁴ Megan Nyhan and others, ‘Algorithmic Transparency: The EU Digital Services Act and Young People’s Experiences of Online Platforms’ (Proceedings of Fourth European Workshop on Algorithmic Fairness, Eindhoven, 2025) 3 <<https://proceedings.mlr.press/v294/nyhan25a.html>> accessed 3 March 2026.

⁵²⁵ ECD, art 33(2).

⁵²⁶ Wouter Vandenhoe, ‘Distinctive Characteristics of Children’s Human Rights Law’ in Eva Brems, Ellen Desmet and Wouter Vandenhoe (eds) *Children’s Rights Law in the Global Human Rights Landscape* (1st edn, Routledge 2017) 29.

⁵²⁷ CROC, art 5.

in section 5.2, there are risks to leaving this decision solely to parents. The concept of increased parental involvement, however, can be distinguished from the parental-consent version of social media bans. Rather than a parent's consent acting as a legal entry point to their child's online participation, the parental involvement model is voluntary, with parents being encouraged to take steps to better understand the specific needs of their own children and their evolving capacities. There are already a wide array of methods available to parents to become more involved in regulating their child's social media usage. These include parents opting to limit their own screen time, discussing this decision openly with their child, and choosing to participate in activities not involving a phone.⁵²⁸

Greater parental involvement may also include the use of parental control systems, which 'are established in advance of the encounter by a child of age-restricted' platforms, and differ from parental consent 'which arises as a result of an age assurance process that then requires a decision by a parent' about whether to grant permission.⁵²⁹ Parental control systems have the advantage of providing a privacy-friendly way to protect children and 'are particularly effective for younger children in lower-risk settings'.⁵³⁰ They tend to be static, however, and therefore do not adapt well to children's evolving capacities or their right to participate in decisions affecting their own lives, and a lack of opportunity for graduated autonomy may lead to more restriction than warranted.⁵³¹ The Australian Age Assurance Technology Trial noted that in utilising parental control methods, a balance between protection and participation should be sought, involving parental control 'as a guidance framework rather than a blunt restriction model' helping children to participate in age-appropriate ways.⁵³² If these issues are addressed, parental controls may provide a viable alternative to social media bans imposed by governments.

5.4.3 Education

Education is also a useful tool to assist in empowering children, teachers, and other stakeholders in navigating the possible risks associated with social media, and is a method that enjoys wide support.⁵³³ Despite the wide range of parental control methods available, it is

⁵²⁸ Champion and others (n 393) 412.

⁵²⁹ Age Check Certification Scheme, *Age Assurance Technology Trial: Part A – Main Report* (n 64) para A.41.2.

⁵³⁰ *ibid*, para A.43.2.

⁵³¹ *ibid*, para A.43.5.

⁵³² *ibid*, para A.43.6.

⁵³³ Nicole Bartl and others, 'Positionspapier Der Kinder- Und Jugendanwaltschaften Zum Aktuellen Diskurs Über Ein Verbot von Social Media Für Kinder Und Jugendliche' (Die Kinder- und Jugendanwaltschaften

reported that these are often not effectively utilised, sometimes out of disinterest, but also out of a sense of being overwhelmed by the fast-paced technological developments.⁵³⁴ Education may help parents to fill in their gaps in understanding to ensure that they have knowledge of the specific risks of certain types of social media and their usage. Education for children may be targeted at teaching them how to regulate their own access to material online, understand the extent of their private or personal information online, and how to report illegal or harmful content.⁵³⁵ Equipping children with knowledge and skills, including through encouraging digital literacy and critical thinking, can empower them to engage safely online. In recognition of this, the European Parliament has called for adequate resources to be allocated towards this goal, noting that ‘protecting minors online is a shared responsibility that requires the involvement of parents, guardians, public authorities, platforms and schools’ and that each of these institutions can be involved in the education process.⁵³⁶

5.5 Proportionality assessment

Based on the above discussion, it is argued that social media bans, whether imposed at a certain age by the State or within an age-range in which discretion is afforded to parents, are not proportionate to the harms that they seek to address. The extreme nature of a blanket ban on children accessing social media platforms severely limits their freedom of expression and right to peaceful assembly as well as a range of other rights, including the right to rest, leisure and play. Social media bans can hinder children’s digital education and do not respect the evolving capacity of the child, nor their right to participation. There are a range of other methods available to legislators seeking to achieve the same aim of protecting children which are much less restrictive and interfere less with these rights. In the open letter signed by 25 Greek and international organisations in May 2026, it was argued that the Greek Government’s proposed ban failed the proportionality test, and the authors instead called for ‘investment in digital literacy, the education of children and parents, and the redesign of platforms themselves to limit addictive and exploitative measures’.⁵³⁷ This thesis strongly supports this position. Parents and carers should be encouraged to understand their children’s usage of social media

Österreichs 2026) 4 <<https://www.kija-sbg.at/0/0/nc/home/kija-sbg/news-einzelansicht/a/detail/News/kinder-und-jugendanwaeltinnen-warnen-vor-pauschalem-social-media-verbot.html>>; Deutscher Ethikrat (n 482) 25.

⁵³⁴ Bartl and others (n 533) 4.

⁵³⁵ Parliamentary Joint Committee on Human Rights (n 45) para 1.166.

⁵³⁶ European Parliament (n 328) paras 81–82.

⁵³⁷ ‘25 Greek and International Organizations Raise Concerns to the Prime Minister and the Competent Ministers Regarding the Draft Law on the Prohibition of Access to Social Media for Children under 15 Years Old’ (*Homo Digitalis*, 25 May 2026) <<https://homodigitalis.gr/en/posts/136244>> accessed 30 May 2026.

and any particular associated risks, as well as the relevant steps that can be taken to address these. Digital education can assist parents in this task and ensure that children are empowered to navigate the online world safely. Whether implemented alone, or ideally as part of a layered scheme involving education and parental participation, risk-based approaches tackle the source of the problem by imposing an obligation on platform providers to actively improve the safety of their service for young users. In light of these alternatives, social media bans cannot be considered proportionate.

6 Conclusion

This thesis had the aim of addressing the question of whether youth social media bans can be said to be in the best interests of the child, considering the full range of rights owed to children. It sought to answer this question by comparing the Australian social media ban with the current approach to platform regulation in the EU as well as calls for new bans following the Australian example, both at the EU and Member State level.

An explanation of the range of children's rights relevant both to the use and regulation of social media demonstrated that the best interests concept is aimed at ensuring children have full enjoyment of their rights. This is closely linked with the right of children to express their views on decisions affecting them and for these opinions to be given due weight. Working *with* children, rather than making decisions for them is essential to understanding what young people's best interests include. While social media can raise risks in relation to children's rights to protection, it can also promote several other rights, including the right to freedom of expression and freedom of peaceful assembly as well as the right to rest, leisure and play. Although a significantly complex task to balance the risks and opportunities arising out of social media, children themselves are 'an enormous resource in rising to this challenge' and States are obliged to involve them and consult with them in determining this balance.⁵³⁸ Consideration of the best interests of the child must guide this balancing act and decision-makers should be guided by the age and maturity of children in carrying out assessments of best interest.⁵³⁹

It was argued that while social media bans may have the goal of protecting children, the Australian example has demonstrated the practical difficulties in achieving this. Where

⁵³⁸ Third and others (n 459) 15.

⁵³⁹ UN Committee on the Rights of the Child, 'General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para. 1)' (n 333) para 84.

enforcement is not effective, as has been the case so far in Australia, children may be pushed into unregulated spaces online. Furthermore, age assurance methods utilised by social media platforms have a range of privacy risks associated, depending on the technology used. It was further argued that blanket social media bans do not comply with the principle of the evolving capacity of the child. Bans that include an age-range in which parents may consent to their child's usage provide more flexibility, however, face their own challenges, including undermining the reality of children as rights-bearers in their own right, tipping the balance towards protection at the expense of participation rights.

A proportionality assessment highlighted that there are a number of other less restrictive methods aimed at achieving the aim of protecting children online which offer viable alternatives to social media bans. The risk-based approach which targets the specific hazards facing young users of social media has the advantage of addressing the causes of possible harms. Mandating that social media platform providers conduct risk assessments involving specific consideration of the rights of the child including by involving children in this process has the potential to result in real change. If enforced effectively, this obligation should lead to the creation of digital spaces that are inclusive to young people, rather than shutting them out from the online world. Other alternatives explored were increased parental involvement and education. It is argued that these can be seen as complementary tools and further highlight the range of other options available to lawmakers beyond social media bans. As the European Commission has previously recognised, while children should be encouraged to find a healthy balance between the on- and offline worlds, 'digital abstinence is not an option for today's children, as information, elements of formal education, social contact and entertainment are increasingly online.'⁵⁴⁰ Rather, solutions aimed at protecting children online should seek to promote the best interests of the child by facing this reality and also aiming to foster provision and participation rights.

⁵⁴⁰ Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Digital Decade for Children and Youth: The New European Strategy for a Better Internet for Kids (BIK+)' (2022) COM(2022) 212 final 5.

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