

“Duty of care” will refresh the Australian social media regulation debate

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Abstract: The Australian Government is tackling the harms of social media on a number of fronts. These include a proposed ban on 16-year-olds and younger from social media, and a new duty of care for social media platforms to minimise harmful content. We think these approaches balance risk and reward in a better manner than the mis/disinformation legislation, and have a much better chance of implementation. As a result, the duty of care will refresh the Australian social media regulation debate.

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Last week, the Australian Government [announced](#) it would implement a Digital Duty of Care regulatory model for social media platforms, aimed at enhancing online safety and preventing online harms. This initiative is based on the findings of a 2023 independent review of the Online Safety Act, which highlighted the importance of a Duty of Care. The approach follows that of the UK and EU, and conforms to the [“fast follower” regulatory strategy](#) we recommended earlier this year.

The concept of a duty of care, rooted in common law, mandates taking reasonable steps to protect others from harm and is already a part of work, health, and safety regimes across various jurisdictions. The model is intended to provide a systemic and preventative approach to online safety, with strong penalty arrangements for platforms that fail to meet their obligations.

To complement the Digital Duty of Care, the government plans to legislate enduring categories of harm, including those affecting young people, mental wellbeing, and the promotion of harmful practices. Regular risk assessments against these harms will be required, aligning with similar regulations in the European Union and the UK. Harmonising these policies with other countries is seen as crucial for driving effective change across global markets. This approach aims to create a consistent framework for online safety that can be applied internationally.

The government also intends to legislate a minimum age of 16 for social media access, a move supported by the National Cabinet. This legislation will impose a positive obligation on social media platforms to prevent children under this age from creating accounts.

The decision is backed by a growing body of evidence linking social media use to negative mental health outcomes in young people. Findings from the UK and the US indicate significant links between excessive social media use and poor mental health outcomes, including depression and anxiety.

To be clear, these studies do not show that every child suffers from exposure to social media. Rather, they show that a significant number seem to have been harmed, to greater or lesser extents (see for example, [this recent review of the research literature](#)). Causality is not yet clear. This body of evidence is often compared to the evidence on tobacco harms which began to emerge from the 1950s onwards.

The proposed legislation will introduce a new, broad definition of social media to encompass more services under the term “age-restricted social media.” This will include popular platforms like Facebook, Instagram, TikTok, and X, while excluding messaging and

gaming services. The goal is to ensure that a wider range of services adhere to the minimum age limit, thereby enhancing the overall safety and wellbeing of young users online.

Why does this matter?

The establishment of a duty of care is a much more flexible approach to social media regulation than the proposed mis/dis-information regime currently before the Australian Parliament. That regime involves significant risks to freedom of speech, and could potentially be used by an unscrupulous government to limit public discussion of contentious issues, with associated risks to the Government's reputation (see our report "[Mis/disinformation legislation puts Government credibility at risk](#)"). The key issue is that no fully objective definition of mis- or dis-information is possible.

The duty of care approach is both more flexible and more objective, provided that the harms that social media is required to mitigate are actual and not hypothetical. Social media platforms will have an incentive to identify and mitigate systemic risks early. As the Government points out, duty of care is a well-established principle in occupational health and safety law. Actual harm is something that can be demonstrated to the satisfaction of a court, for which there are many precedents. As a result, we think this form of regulation has a much better chance of being implemented than the proposed mis/disinformation regime.

Regarding the age 16 restriction, the Government acknowledges that no age restriction can be 100% foolproof. However, the Government also emphasises the normative value of this age limit, which can serve as a reference point for parents in discussions with their children.

We think that governments will eventually go further by stigmatising children's unmanaged access to social media. If that seems improbable or undesirable, remember that attitudes to drink driving were radically changed by strategic advertising campaigns. It is also possible to discourage parents from providing early access to social media and even to smartphones. Right now, peer pressure on parents encourages early access, but peer pressure can be redirected.

The libertarian would see this as too much intervention. But in the case of young people and social media, the indications of harm (to some children at least) are becoming hard to ignore. The dilemma for governments is whether to intervene early and risk overreacting, or to wait and risk harm. The present Government has chosen to act, and we think they are probably wise to do so.

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