

6 December 2021

Hon Michaelia Cash
Attorney Generals Department
Parliament House
Canberra ACT 2600
By email: OnlinePrivacyBill@ag.gov.au

Dear Senator Cash,

The NSW Council for Civil Liberties (NSWCCL) thanks the Attorney General for the opportunity to make a submission on the exposure draft concerning the Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill 2021 (Bill). Our comments on the Bill are brief.

1. Whilst NSWCCL supports any measure that represents a commitment to strengthening the *Privacy Act 1988* (Act), we wonder why this Bill is being rushed through when a review of the Act is under way. Many of the provisions of the Bill, such as clear notification and consent provisions and increased penalties for breaches of the Act are part of the review of the Act. The whole purpose of the review is to ensure the Act's fitness for purpose in relation to digital technology.
2. The urgency of the consultation on the Bill suggests that online privacy has some special status compared to other forms of digital technology, surveillance or an individual's privacy generally. It does not.
3. The Bill seeks to embed privacy protections relating to children and vulnerable people into the Online Privacy Code. Such privacy protections are already included for consideration in the Acts review and are more suitable for embedding in primary legislation. NSWCCL contends that suggested code requirements to protect vulnerable groups, such as age verification and parental consent for users under 16, are unworkable. Certainly age verification creates digital ID privacy concerns for all social media users.¹
4. The problem that should be addressed is the exploitative and harmful amount of data that is collected by social media platforms that is claimed, for example, by Facebook, as being corporate IT. The Act, not the Code, should deal with online data "from data creation and collection, through its use, storage and processing, to its destruction...[and] the right to have personal data erased."² Data collected should be limited only to that which is necessary for the specific purpose.

Yours sincerely,



Michelle Falstein
Secretary

¹ Salinger Privacy Blog Privacy law reform in Australia – the good, the bad and the ugly (DEC 3, 2021) <https://www.salingerprivacy.com.au/2021/12/03/privacy-act-reform-proposals/>

² UNICEF Guidelines for Industry on Child Online Protection (2015) <https://www.unicef.org/media/66616/file/Industry-Guidelines-for-Online-ChildProtection.pdf>