

Senate Standing Committees on Environment and Communications

PO Box 6100

Parliament House

Canberra ACT 2600

22 November 2024

Submitted via committee website

Dear Secretary,

RE: Inquiry into the Online Safety Amendment (Social Media Minimum Age) Bill 2024

EFA welcomes the opportunity to provide comments on the proposed *Online Safety Amendment (Social Media Minimum Age) Bill 2024* (“OSA Bill”).

However, we find that the lack of time provided by the Committee with which to respond is an outrage. **One business day** is an incredibly restrictive and unfair timeframe to review what is a nuanced and complex topic. A social media ban has serious implications for children and young people across the country, with negative impacts significantly amplified amongst vulnerable groups and in rural and remote communities. A one-day submission period to examine the details of the proposed law and its implications for Australian society is a grotesque abuse of our democratic process.

EFA’s submission is contained in the following pages.

About EFA

Established in January 1994, EFA is a national, membership-based, not-for-profit organisation representing Internet users concerned with digital freedoms and rights.

EFA is independent of government and commerce, and is funded by membership subscriptions and donations from individuals and organisations with an altruistic interest in promoting civil liberties in the digital context.

EFA members and supporters come from all parts of Australia and from diverse backgrounds. Our major objectives are to protect and promote the civil liberties of users of digital communications systems (such as the Internet) and of those affected by their use and to educate the community at large about the social, political, and civil liberties issues involved in the use of digital communications systems.

Yours sincerely,

John Pane

Chair

Electronic Frontiers Australia

Introduction

EFA is again deeply troubled by the rush to accumulate new power concentrated in few hands and subject to little oversight or review.

EFA is concerned that Australia is rushing to construct a system of authoritarian control over all internet users that should not be welcomed by a liberal democracy. It is leading Australia down a very dark path instead of taking a human rights approach to correctly identifying and solving the underlying issue.

The introduction of the flawed OSA Bill creates a social media ban for children under 16. It raises serious concerns and potential harms impinging on childrens' and adults' human rights, privacy, internet governance, and has potential serious negative impacts on vulnerable populations and rural/remote communities. The Bill is the result of a moral panic - it is being introduced on the basis of both parental anxiety and the informal logical fallacy of 'common sense' which stems from parental anxiety. The scientific and academic evidence in support of the OSA Bill is contradictory .

Summary of Issues

Human Rights Impacts

The OSA Bill infringes upon children's autonomy, agency, and political rights. It restricts their ability to express themselves, connect with others, and participate in online communities. This can be particularly harmful for young people from marginalised groups who may rely on social media as a space for support and identity formation. It impacts children in rural and remote communities disproportionately.

The OSA Bill raises further serious impacts on digital privacy and internet governance. It increases the locus of power in the Communications Minister and one regulatory body - the Office of the eSafety Commissioner - who, by way of issuing further regulations in the absence of parliamentary oversight, could lead to the development of more sophisticated surveillance technologies to enforce the ban, potentially compromising the privacy of all internet users. Additionally, it sets a precedent for uncalled for and unacceptable government intervention in online spaces, potentially leading to further restrictions on internet freedom.

The Evidence in support of the OSA Bill

The science relating to social media harms is far from settled despite the representations of the Communications Minister. While some studies have linked social media use to negative mental health outcomes, other research suggests that it can also have positive effects, such as increased social connection, political expression and access to information. It is important to consider the potential benefits of social media for young people, particularly for those in rural and remote communities who may have limited access to other forms of social interaction. This has not been appropriately considered in the formation of the OSA Bill.

Proponents of the Bill tried to present a consensus, but experts in the field remain divided with evidence of the case of a social media ban pointing more toward correlation of potential harms of social media as opposed to demonstrable, evidence based causation of harms.

The government's own Joint Select Committee on Social Media and Australian Society, which assessed the evidence both in favour and against the proposition for social media ban has, in its final report, stated **it did not support the social media ban for children under 16 . Instead the Committee recommended users be given the power to alter, reset or turn off algorithms, as well as be provided with greater privacy protection.**¹

Finally, we note the Communication Minister's Department's analysis of the under 16yo social media ban which cites two sources:

- a study which has findings that its co-author says do not support the case for a teen ban
- the US Surgeon-General's advice ... which if you read is actually a reference to the first study²

How can Australians trust the government to get this critical policy right when it cannot correctly interpret the science and research?

Defining Social Media:

The term “social media” is nebulous and difficult to pin down. Many online activities, including gaming and forums, involve social components, making it unclear where lines are drawn. Is a child's Minecraft server with friends really “social media”?

Popular games like Minecraft and Roblox meet broad definitions of social media due to their chat and interaction features. They may ultimately be subject to legislative carve-outs, but the fact that it takes special effort to exclude them highlights how broad these definitions are — and how arbitrary the bans can be.

The OSA Bill won't stop young people under 16 from watching videos on YouTube or seeing content on Facebook – it is primarily designed to stop them from making an account. This also means that the wider ecology of anonymous web-based forums, including potentially harmful spaces like 4chan, slip through the definition.

Further debate and consultation is required on this key definition within the OSA Bill. We note the government has been heavily swayed in the formulation of the OSA Bill by the News Corp “Let them be kids” campaign³. This virtue signalling campaign from New Corp is puzzling given how they demonstrate their own social licence and corporate social responsibilities.

Legislative Limitations

Legislation targeting specific platforms is often outdated by the time it's implemented. Effective policy needs to be general and future-proof rather than banning a select few platforms. Blanket bans risk affecting platforms that aren't intended targets and become obsolete or overbroad as new platforms emerge. How will the millions of existing social media users be treated if the Bill is passed in its current form? Will there be active grandfathering?

¹ <https://www.theguardian.com/technology/2024/nov/18/australian-parliamentary-inquiry-stops-short-of-backing-social-media-ban-for-under-16s>

² <https://www.crikey.com.au/2024/11/20/teen-social-media-ban-michelle-rowland-study-question-time/>

³ <https://www.crikey.com.au/2024/11/11/teen-social-media-ban-australia-timeline/>

The OSA Bill has significant privacy implications. It would be far more sensible for the government to deliver the Children's Privacy Code as articulated in the *Privacy and Other Amendments Bill 2024*. The Children's Privacy Code will be designed for and solve a broader range of risks and harms such as the targeted advertising of alcohol, smoking, vaping and gambling products and services. These harms are much more urgent and real compared to those currently attributed to social media. They demonstrably harm the child, the family unit and Australian society.

Inconsistent Safety Standards

If child safety is the focus, allowing platforms like Roblox to continue while banning less problematic environments creates a double standard. Roblox, for instance, presents well-known risks, including exposure to inappropriate content and predatory behaviour.

Supporters of this legislation should be concerned that more predatory environments might get a pass while safer forums are restricted.

Again, we reiterate it is remarkable that the government is not being held to account for the digital harms caused by targeted on-line advertising and marketing of gambling, cigarettes, vaping and alcoholic beverages by Big media and Big Data entities.

Digital ID as the New Normal

Banning children from social media would require everyone to show ID, effectively coercing all Australians who access social media into submitting to participate in a "pilot" for Digital ID. The government's Data and Digital Government Strategy makes it very clear that Digital ID is central to its plans through 2030 and beyond, linking data across agencies like MyGov, health, education, and ATO for administrative convenience with few privacy safeguards. This raises the question: Is this genuinely about protecting children, or is this simply a distraction to habituate the Australian public into using Digital ID?

Postponing the inevitable

Bans don't solve the challenges of the digital world—they simply delay them. Preventing access denies young people the chance to build skills and have guided conversations about safe, creative, and productive online participation. Bans also have the tendency of preventing, delaying or displacing important conversations with children and young people about their safe, productive, creative and enjoyable participation in online spaces.

The approach in the OSA Bill risks leaving young people unprepared and more vulnerable when they inevitably gain access to social media platforms later.

Unenforceable law

Children already bypass age restrictions to access platforms and devices, often without their parents' knowledge. This raises practical enforcement issues: who is held accountable if a teen lies about their age to access a platform? Punishing parents for something they're unaware of only adds unfair burdens. Moreover, setting up laws that are easily broken risks teaching an entire generation to see law-breaking as trivial, undermining respect for the rule of law.

Today's teenagers are digital natives. They are intuitive, intelligent, collaborative and motivated. They will get around any age gating scenario or social media ban by leveraging technology such as a VPN, image ageing applications and so on. The writing is already on the wall in other jurisdictions⁴.

In conclusion, a social media ban for children under 16 is a complex issue with potential unintended consequences. It is crucial to carefully consider the potential benefits and harms of social media use, as well as the rights and needs of young people, before implementing this Bill. Further consultation and collaboration is required before this Bill is allowed to pass. The Children's Privacy Code as contemplated by the Privacy Amendment and Other Legislation Bill 2024 is the more appropriate vehicle for dealing with the potential risks and potential harms of social media platforms.

⁴ <https://www.popsi.com/technology/vpn-boom/>