



Australian Government

Australian Government response to the
Senate Environment and Communications Legislation Committee
report:

*Online Safety Bill 2021 [Provisions] and Online Safety (Transitional
Provisions and Consequential Amendments) Bill 2021 [Provisions]*

November 2022

Introduction

The Albanese Government has a strong record of supporting online safety measures for Australians, in government and in opposition. That is why Labor supported passage of the *Online Safety Bill 2021* (the bill) and *Online Safety (Transitional Provisions and Consequential Amendments) Bill 2021* (collectively, the bills).

The Albanese Government notes that, according to Senate Resolution 44(1), the government should table a response to recommendations made by a committee of the Senate within three months of the committee's reporting of its recommendations.

On 25 February 2021 the bills were referred by the Senate to the Environment and Communications Legislation Committee (the committee) for inquiry and report.

On 12 March 2021 the Committee tabled its report on the bills and made two formal recommendations. The Committee recommended that a clarifying amendment be made to the bill's Explanatory Memorandum, and that the bills be passed.

Australian Greens senators also made two additional recommendations, for the withdrawal and redrafting of the bill, and for the introduction of a Charter of Rights which includes privacy and digital rights.

Labor senators, then in opposition, made one recommendation in comments, for consideration of amendments strengthening protections of free speech and digital rights.

The Government thanks the Committee for its examination of these bills and for the recommendations it presented for consideration.

Australian Government response

Committee Recommendation 1:

2.93 The Committee recommends that the Australian Government consider amending the Explanatory Memorandum to the Online Safety Bill 2021 to clarify that the requirement for an industry code to be registered within six months is for best endeavours and that the Commissioner has the discretion to work with industry over whatever timeframe is deemed necessary to achieve an effective outcome.

The Government **agrees** to this recommendation.

Labor supported this recommendation and notes the supplementary Explanatory Memorandum to the Online Safety Bill 2021 which clarifies that the requirement for an industry code to be registered within six months is for best endeavours and that the Commissioner has the discretion to work with industry over whatever timeframe is deemed necessary to achieve an effective outcome. Industry is now working closely with the eSafety Commissioner to efficiently develop these codes.

Committee Recommendation 2:

2.95 The Committee recommends that the bills be passed.

The Government **agrees** to this recommendation, and notes that the bills, as amended, were passed on 23 June 2021.

Additional Recommendation 1 (Australian Greens):

1.25 The Australian Greens recommend that the bill be withdrawn and redrafted to take account of concerns raised by submitters, including:

- a) use of the National Classification Code, which is currently under review;
- b) potential for elements of the bill to be used against lawful online content and content creators;
- c) inadequate rights of appeal and remedy for businesses and individuals whose content is wrongly blocked or removed, either by the Commissioner or online platforms;
- d) inadequate transparency and accountability regarding discretionary decisions made by a single, unelected officer;
- e) powers covering restricted access/encryption services; and
- f) potential significant and detrimental effects on sex workers.

The Government **notes** this recommendation.

Labor was successful in securing amendments to the bill creating an internal review scheme and strengthening the Commissioner's annual reporting requirements. These changes strengthened the right of appeal of the Commissioner's decisions, and the transparency and accountability of the Commissioner.

Additional Recommendation 2 (Australian Greens):

1.26 The Australian Greens recommend that Australia introduce a constitutionally or legislatively enshrined Charter of Rights which includes privacy and digital rights consistent with the European Union's General Data Protection Regulation.

The Government **notes** this recommendation.

The Government considers the issue of a Charter of Rights as out of scope of the report and of this response.

Additional Recommendation 3 (Labor):

1.14 Labor Senators recommend that the Government consider further amendments to clarify the bill in terms of its scope and to strengthen due process, appeals, oversight and transparency requirements given the important free speech and digital rights considerations it engages.

The Government **agrees** to this recommendation.

Labor was successful in securing amendments to the bill creating an internal review scheme and strengthening the Commissioner's annual reporting requirements. These changes strengthened the right of appeal of the Commissioner's decisions, and the transparency and accountability of the Commissioner.

The Albanese Government notes that negotiations with the then government were constructive, and resulted in an improved bill which could be supported.