

Online Safety

Department of Infrastructure, Regional Development, and Communications



Assembly Four welcomes any opportunity to engage in technology based legislation and would like to give thanks for the 3 day extension.

Assembly Four is a collective of sex workers and technologists based out of Melbourne, Australia who build solutions and engage in research that not only help sex workers survive, but thrive.

As technologists and sex workers, we are incredibly passionate about these matters as it not only impacts our livelihoods but our safety, online and offline.

Assembly Four wishes to endorse the work put forward by the following organisations who have chosen a harm reduction approach which highlights a number of key issues with the draft Basic Online Safety Expectations in regards to the fundamental human rights, privacy and security of Australians;

- Scarlet Alliance
- Freedom United
- Digital Rights Watch
- Global Partners
- Electronic Frontiers Australia

At this point, we believe it's important to reiterate that the proposed measures will not prevent online harm but in fact increases the harm of the most marginalised voices online and offline.

These standards that are being set out in Online Safety Act determinations have a very real potential to be applied in jurisdictions that are corrupt and put individuals at real risk of offline harm.



Regards.

Assembly Four

Eliza Sorensen

Lola Hunt

Jack Chen

Assembly Four supports in principle the intention to improve online safety for Australians; However, Assembly Four does not endorse the Online Safety Act and would like to continue to highlight that throughout the submission process we have maintained that the Online Safety Act is vague and the various draft determinations do not prevent online or offline harm.

As it currently stands, we don't believe that appropriate safeguards for individuals or adequate reporting and oversight mechanisms are in place to prevent the misuse of the exceptional powers that have been granted to the eSafety Commissioner and their office by its own staff but also by the government.¹

The lack of definition of the phrase 'harmful and unlawful' is concerning not just for sex workers, but for all individuals in Australia; *The Classification Act when created it was still a crime to be gay in Tasmania*, just because a government deems something unlawful, doesn't mean it is harmful; just that the law is wrong.

SECTION 6: EXPECTATIONS - PROVIDER WILL TAKE REASONABLE STEPS TO ENSURE SAFE USE

Whilst the core expectation preserves the stated intent of the draft determination being over perspective, we feel that that s6.3(a) "developing and implementing processes to detect, moderate, report and remove (as applicable) material or activity on the service that is or may be unlawful or harmful" incentives and encourages automated decision making to 'detect, moderate, report and remove' content or communication.

Through the work of various² respected researchers, we know that automated systems are flawed. In practice, the automated deplatforming of marginalised voices and communities are creating real and significant offline harm.

SECTION 8: ADDITIONAL EXPECTATION—PROVIDER WILL TAKE REASONABLE STEPS REGARDING ENCRYPTED SERVICES

You cannot weaken or undermine³ encrypted services for an individual; you weaken it for all. Encrypted services are important to not just the marginalised communities we serve, but for all of us, including executive branches of government and politicians.

We believe that this is a dangerous expectation and should be removed to ensure the protection of human rights and prevent the abuse.

¹<https://www.abc.net.au/news/2021-11-14/abc-ita-buttrose-accuses-government-of-political-interference/100619454>

² <https://hackinghustling.org/wp-content/uploads/2020/09/Posting-Into-the-Void.pdf>

³ <https://www.brookings.edu/techstream/why-encryption-and-online-safety-go-hand-in-hand/>

SECTION 10: ADDITIONAL EXPECTATION—PROVIDER WILL CONSULT AND COOPERATE WITH OTHER SERVICE PROVIDERS TO PROMOTE SAFE USE

10(2)(b) declares that reasonable steps taken to adhere to this expectation could include *‘sharing information with other service providers or activity on the service that may be unlawful or harmful, for the purpose of preventing such material or activity’*;

Firstly, I would like to continue to raise our concern with the phrase ‘unlawful or harmful’, especially when you consider that the Online Safety Act has no provisions for things that are considered legal offline; In most Australian states, a ‘*Romeo and Juliette*’ provision exists specifically to recognise that adolescents sexual development is natural and shouldn’t be criminalized.

Secondly, I find the most concerning part of this section to be the idea of inter-platform data sharing, which potentially includes Personally Identifiable Information. The determination fails to provide safeguards for individuals or organisations in the event of a data breach or abuse.⁴

Tangentially related, the Australian Information Commissioner and Privacy Commissioner has stated that ClearViewAI has breached Australians’ privacy by not only scraping sensitive information without consent; but also failing to take reasonable steps to ensure that the personal information that was disclosed was accurate.⁵

Commissioner Falk stated that ‘The covert collection of this kind of sensitive information is unreasonably intrusive and unfair’ and this clearly demonstrates the potential issues that organisations will face in the implementation of this determination but also the fact it’s an invasion of privacy and even if there was oversight, it’s an extremely problematic solution and it places people and communities at risk, offline and online.

SECTION 13: CORE EXPECTATION—PROVIDER WILL ENSURE MECHANISMS TO REPORT AND MAKE COMPLAINTS ABOUT CERTAIN MATERIAL

It’s important to expand on the current reporting requirements to ensure that platforms are held accountable for discriminatory practices, including instances where the content removal, account suspension and/or deletion decisions have been contested or appealed, including the outcome and whether or not that claim was due to third-party harassment.

⁴ https://www.usenix.org/system/files/sec22summer_jain.pdf

⁵ <https://www.oaic.gov.au/updates/news-and-media/clearview-ai-breached-australians-privacy>

Our final recommendations;

1. Remove all instances of the term 'harmful' and 'unlawful' from the draft Basic Online Safety Expectations.
2. Remove section 6(2).
3. Remove section 6(3)(a).
4. Remove section 8.
5. Remove section 9.
6. Remove section 10(2)(b). Should it remain, the terms 'unlawful or harmful' should be replaced by the types of content outlined in section 11, or identify specific types of targeted content.
7. Require services to report on incorrect content removal, account suspension or deletion, and appeals processes.