

**ONLINE SAFETY: ONLINE CONTENT PROMOTING CRIMINAL OFFENDING**

**QUESTION: Will the Government support Coalition efforts to crack down on youth crime by criminalising online content that glorifies offending, and strengthening the eSafety Commissioner's powers to remove this material?**

Reports that young offenders are using social media to spruik their criminal activities online is a concern to the Australian Government.

As I relayed to the House yesterday, the Online Safety Act already provides the eSafety Commissioner with broad powers to require the removal of 'class 1' material that would be refused classification in Australia, including material that promotes, incites or instructs people in crime or violence.

Under sections 109 and 110 of the Online Safety Act, the eSafety Commissioner may issue a notice requiring removal of class 1 material which has been provided on a social media service, relevant electronic service or designated internet service.

Under section 111, the relevant service must comply with a removal notice given under sections 109 or 110 or face a penalty of up to 500 penalty units (\$156,500).

The Commissioner can use these powers, as well as their established relationships with law enforcement and social media platforms, to have material removed expeditiously.

These broad powers provide the eSafety commissioner with flexibility to move quickly to remove illegal material.

Irrespective of intent, material that incites or promotes violence should be removed.

In contrast, the Bill introduced by those Opposite would apply to a narrower range of material than is currently considered actionable under the Online Content Scheme, as well as slowing down the ability of the eSafety Commissioner to take this down.

It adds complex red tape and administrative obstacles in requiring the regulator to establish the 'intent' of the individual posting the material, an unnecessary barrier to the removal of content.

Rather than helping to address the notoriety of youth offenders who are spruiking their crimes online, the proposed legislation would mean that this content stays online for longer.

If those Opposite are serious about making the online environment safer and strengthening the ability of the eSafety Commissioner to act on illegal and seriously harmful content, I would encourage them to engage constructively through the review of the Online Safety Act, which the Government has brought forward and is currently underway – as opposed to putting forward legislation that would put an additional burden on the regulator before they can act to remove seriously and harmful material online.

In relation to the elements of the bill that relate to the Criminal Code, criminal offences are largely a matter for the states and territories, and I note a number of states have already signalled their intent to act in this area.

The Criminal Code already criminalises the use of a carriage service to post menacing, harassing, or offensive content, an offence which carries a maximum penalty of 5 years imprisonment.

QB24-000119

Those Opposite should explain why they did nothing about this issue while in Government, and how their Bill will have any practical impact given the existing State, Territory and Commonwealth offences.

This Government takes seriously the need to ensure our online safety laws remain effective and the regulator has the ability to act quickly to address and remove harmful material online.

## BACKGROUND

### Coalition Private Member's Bill – Content on social media promoting criminal activities

- On 14 March 2024, Opposition Leader Peter Dutton published a joint media release announcing a Federal Government proposal to “*crack down on youth crime by making it illegal to post social media material that glamorises violence and criminal activity*”.
- The Private Member's Bill, to be introduced in the week beginning 18 March, will:
  - Make it an offence to post material depicting violence, drug offences or property offences for the purpose of increasing a person's notoriety (or that of the persons shown in the material), punishable by up to two years' imprisonment.
  - Include a sentencing measure in the Crimes Act to ensure that as part of the sentencing process, courts are able to prohibit persons who have been convicted of the new offence from using social media for up to two years.
  - Amend the Online Safety Act to empower the eSafety Commissioner to remove such videos from social media and other platforms.
- The Opposition have urged the Government to support the Bill.

**Contact:** Andrew Irwin (Online Safety Branch) §22(1)(a)(ii)

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**From:** Irwin, Andrew  
**Sent:** Friday, 23 February 2024 5:25 PM  
**To:** s22(1)(a)(ii)  
**Cc:** Penprase, James; s22(1)(a)(ii)  
**Subject:** Criminalising online content [SEC=OFFICIAL]

OFFICIAL

s22(1)(a)  
/ii)


Apologies for the delay but below is the extract that has been added to the QTB (working it's way up in PDMS now).

Below that, I've also included some previous briefing (with relevant elements highlighted) from an instance where the WA police had reported some content relating to criminal activity to TikTok. Note that this is TikTok specific and the response (and terms of service) may vary by platform, but it does indicate the eSafety Commissioners' powers and how it operates in such situations.

Hope that is of assistance, please let us know if there are further avenues you'd like us to look at.

Cheers,  
Andrew

s22(1)(a)(ii)



Infrastructure, Transport, Regional Development, Communications and the Arts

## PREVIOUS TIK TOK EXAMPLE (December 2022)

### Online Safety Act 2021

- \* The Act creates the Online Content Scheme which includes powers for the eSafety Commissioner to investigate and require the removal of class 1 material in response to complaints.
- \* If posts on TikTok depict a crime, the eSafety Commissioner has powers to act as this would meet the definition of class 1 material (i.e. depiction of crime, cruelty or violence).
- \* To remove class 1 material, eSafety may consider a number of formal or informal compliance options for material provided on a social media service (like TikTok), these include:
  - \* A service provider notification, informing the provider that eSafety is aware of illegal or restricted content on its service;
  - \* A removal notice, requiring the recipient take all reasonable steps to remove the content; or
  - \* An app removal notice, requiring the app that provides access to the material be made inaccessible to Australians (this is a last resort power that requires multiple instances of non-compliance with a removal notice).
- \* However, the fastest way to have harmful content removed from TikTok is for reports to be made directly to TikTok through the app, or website form.
- \* eSafety has advised that in its experience dealing with depictions of similar crimes in Western Australia, TikTok has been cooperative in responding quickly to law enforcement requests.

### Basic Online Safety Expectations

- \* The Online Safety (Basic Online Safety Expectations) Determination 2021 makes clear that the government expects that service providers have terms of use and take reasonable steps to ensure there are penalties for breaches of its terms of use.
- \* We understand that it is against TikTok's terms of service to allow users to post any material that would constitute, encourage or provide instructions for a criminal offence, dangerous activities or self-harm.
- \* Under the Act, the eSafety Commissioner may issue a periodic or non-periodic reporting notice that requires online services to provide specific information about what they doing to meet the expectations. A failure to report can attract penalties of up \$550,000 a day.
- \* It is a decision of the independent eSafety Commissioner to issue a reporting notice.

As flagged, I spoke to TikTok this morning to raise concerns about the latest reports of videos of unlawful behaviour on the platform. TikTok have provided the following information about their efforts:

### TikTok's engagement with WA and NT Police and Education Departments

- \* TikTok's Law Enforcement Outreach team has been engaged with WA Police since April 2021, both at a state level and also specifically with local officers within the Kimberley region. Over this time, we have briefed the WA Police Force in detail about TikTok, including best practices for WA Police to submit requests to restrict content that may be in violation of our Community Guidelines.
- \* Notedly, our Law Enforcement Outreach team was engaged directly with the Fitzroy Crossing Police in late 2021. As a result of that work we were able to take action on a reported account, and ensure the local police were aware of channels to support their crime prevention efforts in that local region.
- \* Reporting of content by WA Police in relation to criminal activity on platform has been limited in the past 6 months. TikTok's Law Enforcement Outreach team reached out to investigators in WA Police on 15 December, in response to the recent resurfacing of youth crime through the media. We are awaiting WA Police to identify a point-of-contact to revert back to us on these matters.
- \* We have not received any requests or engagement from Northern Territory Police relating to these matters. Contact details for TikTok's Law Enforcement Outreach team were shared with NT Police via the Office of the eSafety Commissioner in November.
- \* TikTok also corresponded with the WA Department of Education and NT Department of Education in 2021. The purpose of this engagement was to establish a communication channel that could be used by the Departments' to

report concerning content to TikTok. To date, we have only received one query via these channels about content (unrelated to youth criminal activity) on TikTok.

TikTok's Community Guidelines and our approach to enforcement

- \* Our Community Guidelines make it clear that we will remove content that promotes or enables criminal activities, to prevent such behaviour being normalised. In relation to Illegal Activities and Regulated Goods (IARG), our Community Guidelines also make clear that we will remove content that provides instructions on how to conduct criminal activities that result in harm to people, animals, or property.
- \* We use both machine and human moderation practices for this purpose, resulting in proactive takedowns in a majority of instances.
- \* For example, in the last quarter (April - June 2022) alone, as outlined in our Community Guidelines Enforcement Report, we proactively removed over 97% of content deemed violative of our IARG policies, with 93% removed before it had any views.
- \* We also have a process to report content that users, or members of the public, believe might be violative, according to our Community Guidelines. This is available both 'in-app' and, importantly, through online reporting forms, which concerned members of the public and others can use. It is easy to find online here.
- \* In recent days, TikTok has proactively removed content that our moderation teams determined to be in violation of TikTok's Community Guidelines in relation to our Illegal Activities and Regulated Goods policy. This included an account as well as a number of different videos relating to activity in the Northern Territory and Western Australia.

Andrew Irwin (he/him)

Assistant Secretary ☐ Online Safety Branch ☐ Online Safety, Media and Platforms Division

s22(1)(a)(ii) @infrastructure.gov.au

p s22(1)(a)(ii) ☐ M s22(1)(a)(ii)

GPO Box 594 Canberra, ACT 2601

Department of Infrastructure, Transport, Regional Development and Communications and the Arts CONNECTING AUSTRALIANS ☐ ENRICHING COMMUNITIES ☐ EMPOWERING REGIONS I am part time ☐ working 9.30-4.30 Monday and Tuesday, regular hours on Wednesday and Thursday, and working from home 9-2.30 Friday.

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OFFICIAL

**From:** s22(1)(a)(ii)  
**Sent:** Tuesday, 27 February 2024 9:35 AM  
**To:** s22(1)(a)(ii)  
**Cc:** s22(1)(a)(ii) Irwin, Andrew  
**Subject:** FW: Private member's bill - online content promoting criminal conduct [SEC=OFFICIAL]  
**Attachments:** QB24-000020.docx

OFFICIAL

Hi s22(1)(a)(ii)

For your visibility AGD has also been asked to develop a QTB on this proposed private member's bill to deal with material promoting violence.

They have shared the draft attached and it is very similar to ours.

Kind regards

s22(1)(a)(ii)

s22(1)(a)(ii)

Assistant Director Projects and Implementation Online Safety Branch

s22(1)(a)(ii)@Infrastructure.gov.au

p s22(1)(a)(ii)

GPO Box 594 Canberra, ACT 2601

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**From:** s22(1)(a)(ii) <s22(1)(a)(ii)@ag.gov.au>  
**Sent:** Tuesday, 27 February 2024 9:19 AM  
**To:** s22(1)(a)(ii) s22(1)(a)(ii)@infrastructure.gov.au; Irwin, Andrew <s22(1)(a)(ii)@INFRASTRUCTURE.gov.au>  
**Cc:** s22(1)(a)(ii) <s22(1)(a)(ii)@ag.gov.au>; Inverarity, Tara <s22(1)(a)(ii)@ag.gov.au>  
**Subject:** RE: Private member's bill - online content promoting criminal conduct [SEC=OFFICIAL]

OFFICIAL

Good morning s22(1)(a)(ii) and Andrew,

As per my discussion with s22(1)(a)(ii) please find attached a QTB we've been asked to develop for the AG on the Opposition Leader's comments re online posting of material promoting violence.



You'll note it is very similar to what you provided us, so grateful if you're able to confirm you don't have any concerns.

A response before 10am would be greatly appreciated (and of course apologies for the tight timeframe!)

Thanks, and happy to discuss,

s22(1)(a)(ii)

A/g Assistant Secretary | Cybercrime and Cross Border Data Branch Attorney-General's Department Phone s22(1)(a)(ii) | Mobile s22(1)(a)(ii) Web ag.gov.au | Twitter | Facebook | YouTube | LinkedIn We acknowledge the traditional custodians of this land and celebrate their ongoing culture and contribution to society.

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From: s22(1)(a)(ii) <s22(1)(a)(ii)@infrastructure.gov.au>  
Sent: Monday, 26 February 2024 9:38 AM  
To: s22(1)(a)(ii) <s22(1)(a)(ii)@ag.gov.au>  
Cc: s22(1)(a)(ii) <s22(1)(a)(ii)@ag.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@INFRASTRUCTURE.gov.au>; Irwin, Andrew s22(1)(a)(ii)@INFRASTRUCTURE.gov.au  
Subject: RE: Private member's bill - online content promoting criminal conduct [SEC=OFFICIAL]

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Hi s22(1)(a)(ii)

Further to the below, I just remembered that I undertook to send you through our cleared QTB text here it is.

Additionally, Andrew Irwin (cc'd) has just joined Online Safety Branch as our new Assistant Secretary just thought I'd take this opportunity to provide his details, so that you have them.

Andrew Irwin (he/him)  
Assistant Secretary | Online Safety Branch | Online Safety, Media and Platforms Division  
s22(1)(a)(ii)@infrastructure.gov.au  
p s22(1)(a)(ii) | M s22(1)(a)(ii)

Cheers

s2  
2  
s22(1)(a)(ii)



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s22(1)(a)(ii)

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From: s22(1)(a)(ii) [redacted]  
 Sent: Friday, 23 February 2024 5:21 PM  
 To: s22(1)(a)(ii) [redacted] <s22(1)(a)(ii)@ag.gov.au>  
 Cc: s22(1)(a)(ii) [redacted] @ag.gov.au' <s22(1)(a)(ii)@ag.gov.au>; s22(1)(a)(ii) [redacted] <s22(1)(a)(ii)@INFRASTRUCTURE.gov.au>  
 Subject: Private member's bill - online content promoting criminal conduct [SEC=OFFICIAL]

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Hi s22(1)(a)(ii) [redacted]

Thanks again for your assistance on the phone earlier!

I think you or s22(1)(a)(ii) [redacted] mentioned that there was a media release regarding the announcement of the private member's bill [redacted] if so would you mind pointing me in its direction? s22(1)(a)(ii) [redacted] and I have been hunting around for it on our end without any success.

Have a great weekend

s22(1)(a)(ii) [redacted]

s22(1)(a)(ii) [redacted]

Assistant Director [redacted] Projects and Implementation [redacted] Online Safety Branch  
 s22(1)(a)(ii) [redacted]@Infrastructure.gov.au  
 p s22(1)(a)(ii) [redacted]

GPO Box 594 Canberra, ACT 2601  
 Ngunnawal Country

Department of Infrastructure, Transport, Regional Development, Communications and the Arts CONNECTING AUSTRALIANS [redacted] ENRICHING COMMUNITIES [redacted] EMPOWERING REGIONS  
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DREYFUS QTB

Category: Daily Issues

PDR: QB24-000020

**Online content promoting criminal offending (To be advised by MO)**

- The Government takes seriously reports that young offenders are using social media to spruik their criminal activities.
- The Government is committed to ensuring Australians are safe online.
- The *Criminal Code Act 1995* already criminalises using a carriage service, including social media, in a way that is menacing, harassing or offensive.

**Criminal Code**

- The Criminal Code includes an offence of using a carriage service in a manner that a reasonable person would consider menacing, harassing or offensive.
- Where young offenders are posting material that meets this threshold, penalties of up to five years' imprisonment already apply.

**eSafety**

- The Online Safety Act already provides powers for the eSafety Commissioner to remove material that would be refused classification in Australia.
- This includes material that instructs or incites people in crime or violence.

Contact Officer s22(1)(a)(ii)	Phone s22(1)(a)(ii)	Date Created 27 February 2024	Date Updated/Reviewed 27 February 2024
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**OFFICIAL  
NOT FOR TABLING**

**OFFICIAL**

PDR: QB24-000020

- Further questions on the Online Safety Act and the eSafety Commissioner can be addressed to my colleague, the Minister for Communications, the Hon Michelle Rowland MP.

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PDR: QB24-000020

**Background**

On 21 February 2024, the Herald Sun (and other News Corp papers) reported on a Coalition commitment to crack down on youth offenders using social media to promote their criminal behaviour for 'clicks'.

The reporting linked the Bill to an incident in January where graphic footage of a hit and run was posed and circulated on social media.

Opposition Leader Peter Dutton announced the Coalition would develop a Private Members Bill to:

- criminalise posting content that glorifies criminal behaviour, and
- strengthen the eSafety Commissioner's powers in respect of this material.

The Opposition Leader has urged the Prime Minister to adopt the Bill.

**Attachments**

1.	Opposition Leader Peter Dutton pledges to get tough on youth crime, <i>Herald Sun</i> – 21 February 2024
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**OFFICIAL  
NOT FOR TABLING**

**From:** s22(1)(a)(ii)  
**Sent:** Thursday, 14 March 2024 11:35 AM  
**To:** DLO Rowland; s22(1)(a)(ii); s22(1)(a)(ii); s22(1)(a)(ii) Question Time Briefs  
**Cc:** Irwin, Andrew; OSMaPDivisionCoordination  
**Subject:** RE: QTB request - Online Safety [SEC=OFFICIAL]

OFFICIAL

Hi s22(1)(a)(ii)

I will pick up this one ☐ thanks! Should be fine to get you something before midday tomorrow.

s22(1)(a)(ii)

s22(1)(a)(ii)  
 Assistant Director ☐ Projects and Implementation ☐ Online Safety Branch  
 s22(1)(a)(ii) @Infrastructure.gov.au  
 p s22(1)(a)(ii)  
 GPO Box 594 Canberra, ACT 2601  
 Ngunnawal Country

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From: DLO Rowland <s22(1)(a)(ii)@MO.communications.gov.au>  
 Sent: Thursday, 14 March 2024 11:32 AM  
 To: s22(1)(a)(ii) <s22(1)(a)(ii)@infrastructure.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@infrastructure.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@infrastructure.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@INFRASTRUCTURE.gov.au>; Question Time Briefs <s22(1)(a)(ii)@infrastructure.gov.au>  
 Cc: Irwin, Andrew <s22(1)(a)(ii)@INFRASTRUCTURE.gov.au>; DLO Rowland <s22(1)(a)(ii)@MO.communications.gov.au>; OSMaPDivisionCoordination <Os22(1)(a)(ii)@communications.gov.au>  
 Subject: QTB request - Online Safety [SEC=OFFICIAL]

OFFICIAL

Good morning

Very sorry, I am not exactly sure who this would sit with so have sent to everyone.

The MO has requested a one page QTB in response to a media release from the Opposition regarding a private members bill to amend the Online Safety Act ☐ the bill also covers items for the AG.

The media release states the bill would amend the Act [redacted] to specifically empower the eSafety Commissioner to order the removal of such videos from social media and other digital platforms [redacted] The changes we are proposing would make it explicit that the Commissioner has a mandate to deal with complaints on this issue, in a similar way that the office responds to reports of cyberbullying and cyber abuse. [redacted]

I haven't been able to locate the MR online, however there is media on it [redacted] attached and here: Coalition plan to tackle online glorification of crime | The Canberra Times | Canberra, ACT.

I understand Andrew is off today, but grateful if we could have something up by midday tomorrow to allow time for s22(1)(a)(ii) [redacted] and s22(1)(a)(ii) [redacted] to review before Monday.

Thanks  
s22(1)(a)(ii) [redacted]

Thanks  
s22(1)(a)(ii) [redacted]  
s22(1)(a)(ii) [redacted]

Department Liaison Officer  
Office of the Hon Michelle Rowland MP | Minister for Communications s22(1)(a)(ii) [redacted] @infrastructure.gov.au  
s22(1)(a)(ii) [redacted] @infrastructure.gov.au  
p s22(1)(a)(ii) [redacted] m s22(1)(a)(ii) [redacted]

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s22(1)(a)(ii)

**From:** s22(1)(a)(ii) <s22(1)(a)(ii)@MO.Communications.gov.au>  
**Sent:** Tuesday, 26 March 2024 7:22 PM  
**To:** s22(1)(a)(ii) <s22(1)(a)(ii)@COMMUNICATIONS.gov.au>  
**Cc:** s22(1)(a)(ii) <s22(1)(a)(ii)@MO.communications.gov.au>; Gannon, Bridget <s22(1)(a)(ii)@infrastructure.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@INFRASTRUCTURE.gov.au>; Irwin, Andrew <s22(1)(a)(ii)@INFRASTRUCTURE.gov.au>  
**Subject:** RE: Seeking advice: Crimes and Online Safety Legislation Amendment (Combatting Online Notoriety) Bill 2024 [SEC=OFFICIAL]

OFFICIAL

Belated thanks for the quick fact check on this one

OFFICIAL

**From:** s22(1)(a)(ii) <s22(1)(a)(ii)@COMMUNICATIONS.gov.au>  
**Sent:** Tuesday, 26 March 2024 1:37 PM  
**To:** s22(1)(a)(ii) <s22(1)(a)(ii)@MO.Communications.gov.au>  
**Cc:** s22(1)(a)(ii) <s22(1)(a)(ii)@MO.communications.gov.au>; Gannon, Bridget <s22(1)(a)(ii)@infrastructure.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@INFRASTRUCTURE.gov.au>; Irwin, Andrew <s22(1)(a)(ii)@INFRASTRUCTURE.gov.au>  
**Subject:** RE: Seeking advice: Crimes and Online Safety Legislation Amendment (Combatting Online Notoriety) Bill 2024 [SEC=OFFICIAL]

OFFICIAL

Hi s22(1)(a)(ii)

Thanks, we have no factual changes to the text you're updated.

Kind regards,

s22(1)(a)(ii)

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s22(1)(a)(ii)

A/g Director • Projects & Implementation / Online Safety Branch • Online Safety, Media and Platforms Division

s22(1)(a)(ii) @communications.gov.au

p s22(1)(a)(ii)

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**From:** s22(1)(a)(ii) <s22(1)(a)(ii)@MO.Communications.gov.au>  
**Sent:** Tuesday, 26 March 2024 1:27 PM  
**To:** Irwin, Andrew <s22(1)(a)(ii)@INFRASTRUCTURE.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@infrastructure.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@COMMUNICATIONS.gov.au>  
**Cc:** s22(1)(a)(ii) <s22(1)(a)(ii)@MO.communications.gov.au>; Gannon, Bridget <s22(1)(a)(ii)@infrastructure.gov.au>  
**Subject:** RE: Seeking advice: Crimes and Online Safety Legislation Amendment (Combatting Online Notoriety) Bill 2024 [SEC=OFFICIAL]

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Thanks very much Andrew and team

Can we please get a super quick fact check of the attached (i.e. by 1:45pm, as we will need to print for the Minister to take into QT).

Thanks

s22(1)(a)(ii)

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**From:** Irwin, Andrew <s22(1)(a)(ii)@INFRASTRUCTURE.gov.au>  
**Sent:** Tuesday, 26 March 2024 12:29 PM  
**To:** s22(1)(a)(ii) <s22(1)(a)(ii)@MO.Communications.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@infrastructure.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@mo.communications.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)@COMMUNICATIONS.gov.au>  
**Cc:** s22(1)(a)(ii) <s22(1)(a)(ii)@MO.communications.gov.au>; Gannon, Bridget <s22(1)(a)(ii)@infrastructure.gov.au>  
**Subject:** RE: Seeking advice: Crimes and Online Safety Legislation Amendment (Combatting Online Notoriety) Bill 2024 [SEC=OFFICIAL]

OFFICIAL

Hi s22(1)(a)(ii)

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In short, eSafety does have a current power but it is not exactly the same as the one in the proposed Bill, in that the current power focusses on content (not intent) and issues a removal notice to the service provider (not end-user).

Specifically, the current power is that under sections 109 and 110, the eSafety Commissioner may issue a notice requiring removal of class 1 material (including material which promotes, incites, or instructs in crime or violence) which has been provided on a social media service, relevant electronic service or designated internet service, with the notice being issued to the provider of that service. Under section 42(1) of the OSA, the eSafety Commissioner may investigate the matter on her own initiative or in response to a complaint. That is, it is not limited to complaints.

As requested, thanks to the team below is our detailed response to your questions comparing the proposed Bill to existing OSA provisions. Note that in the time available we have not sought formal legal advice, and have not engaged with eSafety but can do these things if you want further. We'd also note that the review of the Act is live and any perceived gaps can be addressed in that process.

Happy to discuss,

Andrew

### Andrew Irwin (he/him)

Assistant Secretary • Online Safety Branch  
• Online Safety, Media and Platforms Division

s22(1)(a)(ii) [@infrastructure.gov.au](https://www.infrastructure.gov.au)

P s22(1)(a)(ii) • M s22(1)(a)(ii)

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*I am part time – working 9.30-4.30 Monday and Tuesday, regular hours on Wednesday and Thursday, and working from home 9-2.30 Friday.*

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*I pay my respects to Elders past and present and to all Aboriginal and Torres Strait Islanders.*

**Ngunnawal Country**



## - Which elements of the Bill are the responsibility of our Minister vs the Attorney-General?

The Attorney General would be responsible for elements of the Bill amending the *Criminal Code Act 1995* and the *Crimes Act 1914*:

- It would make it a federal criminal offence to post a video of crime for the purposes of boosting a person's online notoriety – for property offences, for drug offences and also for violent material (this provision will be added to existing telecommunications provisions in the Criminal Code).
- The Bill would enable courts to ban people from using social media for a period of up to two years if they're convicted of one of these offences.

The Minister is responsible for the Online Safety Act 2021. Elements of the Bill that fall within the OSA are:

- It would provide the eSafety Commissioner with a very clear and unambiguous power to remove these videos. Mr Coleman claims that the eSafety Commission does not have the clear power to take down these crime videos.

- Noting eSafety already has powers under the Online Content Scheme to act on material that incites, promotes or instructs in matters of crime or violence, would there be any meaningful difference in eSafety's ability to act on this material under the proposed complaints scheme for criminal activity?

- **Yes.** Under section 104C of the Bill proposed by Mr Coleman, the eSafety Commissioner may give a removal notice to an **end user** as well as to social media services, relevant electronic services, or designated internet services provided for by the Part 9 of the OSA (the Online Content Scheme). The eSafety Commissioner does have some ability to give end-user notices currently, but these are only for the image-based scheme, cyberbullying scheme and adult cyber abuse scheme.
- To note: the proposed complaints scheme would likely **slow down** eSafety's ability to act on this material. While the eSafety Commissioner currently has a complaints scheme for the Online Content Scheme (sections 38, 39 and 40 of the OSA), introducing a dedicated complaints scheme dedicated in the public perception to 'criminal activity' would require significant uplift in capability of the eSafety investigations team both because of volume of complaints and increased complexity in liaising with law enforcement for referral and preservation of evidence.

- What might be the unintended consequences or risks with the Bill (if in the AG's space, no need for detailed analysis)?

An unintended consequence of the Bill is that it would duplicate the powers already given to eSafety under the Online Content Scheme in the Act. This duplication may create confusion.

The Bill's proposed section 104C(1)(b) would require that the 'Commissioner is satisfied that the material is or was criminal activity material' subject to the definitions in 9A which rely on an 'ordinary or reasonable person' test. To prevent challenges, this might have the unintended consequence of slowing down action from the Commissioner in conducting that assessment, or even in some cases waiting for a determination from a law enforcement body.

We have not assessed the consequences arising under the Criminal Code, which is within the remit of the Attorney General.

- What are the factual inaccuracies in Mr Coleman's statement (e.g. saying that eSafety 'don't have that clear power' now to take down material depicting criminal activity), and can you please provide relevant sections of the OSA that already cover this?

- The only way the eSafety Commissioner may reasonably be considered to not have '**clear power**' currently is that the power is not particular to the poster's perceived intention. The proposed Bill makes particular mention of intention in subsection 9A(c) in regard to posting 'for the purpose of increasing the notoriety of one or more persons depicted in the material'. Under the current powers in the OSA, the treatment of posted material is purpose agnostic – instead, the eSafety Commissioner issues removal notices based on the content of the material (note that there would be some overlap between content that promotes, and notoriety, but focusses on the content focuses on its effects rather than the mind of the end user). Establishing intent of a post may take time, and may lead to legal challenges.
- Under **section 106** of the OSA, class 1 material is defined as material that would be, or would likely be, classified as Refused Classification by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*. Material which promotes, incites, or instructs in crime or violence may be classified as Refused Classification.

- Under **sections 109 and 110**, the eSafety Commissioner may issue a notice requiring removal of class 1 material which has been provided on a social media service, relevant electronic service or designated internet service.
- Under **section 111**, a person must comply with a removal notice given under sections 109 or 110 or face a penalty of up to 500 penalty units (**\$156,500**).

OFFICIAL

**From:** s22(1)(a)(ii) <s22(1)(a)(ii)> @MO.Communications.gov.au>  
**Sent:** Tuesday, 26 March 2024 9:02 AM  
**To:** Irwin, Andrew <s22(1)(a)(ii)> @INFRASTRUCTURE.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)> @infrastructure.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)> @mo.communications.gov.au>; s22(1)(a)(ii) <s22(1)(a)(ii)> @COMMUNICATIONS.gov.au>  
**Cc:** s22(1)(a)(ii) <s22(1)(a)(ii)> @MO.communications.gov.au>  
**Subject:** Seeking advice: Crimes and Online Safety Legislation Amendment (Combatting Online Notoriety) Bill 2024 [SEC=OFFICIAL]

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Hi all

David Coleman introduced the Coalitions' Combatting Online Notoriety Bill yesterday, and also asked the Minister a question on it during QT. Mr Coleman also did in an interview with Kieran Gilbert:

**GILBERT:** We'll keep watching. Brief on that one. You are introducing legislation today, the coalition, it's been called post and boast legislation. It's about really youth crime, isn't it? Young people posting and boasting about what they're doing. It's timely, the introduction of this legislation, given the horrific stories Matt Cunningham has been reporting today out of the Northern Territory and some of it going to this very issue. Have you picked up much support across the parliament on this legislation?

**COLEMAN:** Well, we haven't really heard from the government yet on this, and we need to because this is just common sense. We've got the power to do this. There are criminal provisions related to telecommunications already under federal law. We want to add this to those provisions and we want to send a very clear message. If you post one of these videos, you could go to jail. So, don't do it. And that's the coalition's position because this is just outrageous. You've got people who are sleeping in their beds, criminals going into their homes, filming them and then bragging about it online. It's totally unacceptable. And so I introduced the legislation today and the government should back it.

**GILBERT:** As you say, it's common sense. You would expect the government to jump on board because it's actually quite similar to what NSW is doing at the state level.

**COLEMAN:** Yeah, there's some of the state laws, they're a little different. The federal law that we propose goes a little bit further and they can work side by side, but it's all about giving the police the tools to act on this because at the moment in most of Australia, you can post one of these videos and basically there's no consequence. And there should be a consequence. And importantly, Kieran, our law catches not only the person who committed the underlying crime, but also the person who's filming it and posting it. You've got to get both of them.

**GILBERT:** It seems a no brainer, but you're also going to empower the e safety commissioner to take down this stuff. Yeah?

**COLEMAN:** So, at the moment, they don't have that clear power to do that now. So, this will give her very clear power. So, we call it criminal activity material. And if there's criminal activity material, the esafety commissioner sees it issue an order to social media companies. They've got to take it down in big fines if they don't.

I've attached a copy of the bill and the EM – grateful for your advice on four things:

- Which elements of the Bill are the responsibility of our Minister vs the Attorney-General?
- Noting eSafety already has powers under the Online Content Scheme to act on material that incites, promotes or instructs in matters of crime or violence, would there be any meaningful difference in eSafety's ability to act on this material under the proposed complaints scheme for criminal activity?

- What might be the unintended consequences or risks with the Bill (if in the AG's space, no need for detailed analysis)?
- What are the factual inaccuracies in Mr Coleman's statement (e.g. saying that eSafety 'don't have that clear power' now to take down material depicting criminal activity), and can you please provide relevant sections of the OSA that already cover this?

With apologies for the short timeframe, but we are after advice by **1pm today**. If there's anything that will take longer let me know and we can chat about what we would get as a first tranche of advice.

Thanks

s22(1)(a)(ii)

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