



**AFFILIATION OF AUSTRALIAN
WOMEN'S ACTION ALLIANCES
(AAWAA)**

Women's Action Alliance Canberra (WAAC)
Women's Action Alliance Tasmania (WAAT)
Queensland Women's Action Alliance (QWAA)
South Australian Women's Action Alliance (SAWAA)
Western Australian Women's Action Alliance (WAWAA)
Women's Action Alliance Victoria (WAAV)



Statutory Review of the *Online Safety Act 2021*

**Department of Infrastructure, Transport, Regional
Development, Communications and the Arts**

**Submission from the
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The Affiliation of Australian Women's Action Alliances (AAWAA) welcomes the opportunity to contribute to this review of the *Online Services Act 2021*.

AAWAA brings together women's liberation groups from the ACT, NSW, Tasmania, Queensland, South Australia, and Western Australia, all of whom contributed to and endorsed this submission. Our members include teachers, lawyers, nurses, doctors, scientists, researchers, academics, professionals, retirees, mothers, and lesbians.

We advocate for women and girls in all domains of our lives but especially where we face discrimination or are physically vulnerable by reason of our sex, including in sport, prisons, and healthcare. We campaign against homophobia and against gender-based stereotyping in education, the media, and online. We are also keenly committed to supporting and advocating for young people impacted by gender medicine.

Balancing rights and safety

AAWAA shares growing community concerns about the real-life harms facilitated by the internet, including harassment and abuse of women. We support the purpose of the *Online Safety Act* managing and mitigating these harms, including the grant of powers to the office of the eSafety Commission (eSafety) to investigate and seek to remove content that is demonstrably and seriously harmful. We advocate for stronger action to regulate pornography online, to investigate and regulate industry's use of manipulative product design, as well as age verification for adult platforms, applications and other Relevant Electronic Services. We also support a role for the Commission in promoting online safety for Australians through education. A safer online environment will help eliminate discrimination and violence against women and girls.

However, our members and those who similarly advocate for women's and girls' sex-based protections and rights – along with those who question medical interventions for gender dysphoria/incongruence – have also experienced breaches of our fundamental right to freedom of expression in the name of online safety. This has been particularly egregious in the case of Twitter,¹ which for many years maintained a secret blacklist of gender-critical feminists and critics of gender medicine. Other social media providers, including Reddit and YouTube, have also censored discussion of these important issues.²

Regrettably, and pertinent to this review, we believe that misinformed and misguided actions taken by eSafety in the name of online safety, while perhaps well-intentioned, have also directly impacted our human rights. Some of these matters are currently the subject of

¹ [Ending Discrimination by Twitter](#), Quilette, November 2022.

² [Twitter's free speech threatens radical trans activism](#), *The Spectator*, January 2023; [Twitter regularly suspends and bans feminists](#), Twitter thread on Twitter's banning of gender critical tweets since 2018; [Twitter closes Graham Linehan account after trans comment](#), *The Guardian*, June 2020; [Reddit is banning women's health subreddits under new rules](#), *Feminist Current*, July 2020; [YouTube has taken down the video "to keep our community safe"](#), Tweets by Helen Joyce; [Etsy equates 'Detransitioner awareness' designs with hatred](#), July 2023.

administrative and judicial review,³ and we trust that the outcomes will inform and rectify future considerations.

We believe it is also imperative that Parliament addresses the systemic weaknesses in the *Online Safety Act 2021* to establish a robust and balanced framework that protects both safety and fundamental freedoms, mitigating the risk of future violations.

We offer constructive suggestions to this end, aligning our suggestions broadly with the terms of reference of your review.

Incorporate ‘freedom of expression’ into the Act’s objects

We urge the review to recommend amending the overarching objects of the Act at section 3 to ensure that they explicitly reference Australians’ fundamental right to freedom of expression and that the Act provides an operational framework for balancing eSafety actions with respect to this right. As it currently stands, the Act contains only a single reference – buried at article 233 – to the “constitutional doctrine of the implied freedom of political communication,” itself a narrower protection of our rights than freedom of expression.⁴

We suggest the reviewers examine the UK *Online Safety Act 2023*⁵ or the Queensland *Human Rights Act 2019*⁶ as possible models to embody a principle of proportionality, so that any eSafety action to limit freedom of expression serves a well-defined and legitimate aim and is the least restrictive means of achieving that aim.

An explicit reference to freedom of expression will be especially critical if an amended Act empowers eSafety to address ‘hate speech’ and grants it a prerogative to define or interpret what might constitute ‘hate speech.’

Incorporate freedom of expression into the operative provisions of the Act

We also recommend amendments to relevant operative provisions of the Act to make explicit the importance of freedom of expression, especially in relation to schemes designed to protect and promote online safety for adults (as opposed to children for whom the balance must necessarily tilt towards safety over freedom). We are referring here in particular to the Adult Cyber Abuse scheme and the exercise of the eSafety Commissioner’s powers to oversee industry codes and standards. By way of comparison, the UK *Online Safety Act 2023* includes 38 references to freedom of expression.⁷

The importance of including an explicit reference to freedom of expression is further underscored by considerations of procedural fairness in the operation of the Adult Cyber Abuse scheme. The Act currently requires assessing the “intent” to cause “serious harm,” stating that “an ordinary reasonable person would conclude that it is likely that the material

³ They include the matters of Jasmine Sussex who commented on the ethics of biological men breastfeeding babies (see Clarrisa Bye, [‘Censorship’: Breastfeeding tweets removed after government request](#), Daily Telegraph, 25 May, 2023); ‘BillBoard Chris’ who commented on the suitability of an Australian trans-rights advocate to develop an international health directive on gender medicine (see [‘Spectacular backfire’: Australian government’s attempt to censor trans post draws heat](#), Dystopian Down Under, March 2024); and [‘Celine Against the Machine’](#) who had her social media posts regarding gender ideology in Australian schools removed.

⁴ [Online Safety Act 2021](#).

⁵ [Online Safety Act 2023](#), UK.

⁶ [Human Rights Act 2019](#), Queensland.

⁷ [Online Safety Act 2023](#), UK.

was *intended* to have an effect of causing serious harm to a particular Australian adult” (emphasis added).

While those who have been subject to eSafety’s sanctions can seek administrative and judicial review, these processes are costly and time-consuming, in some instances denying these people a fair opportunity to explain or contextualise their intent.

The operation of statutory schemes under the Act: online guidance

In the absence of explicit direction in the Act, eSafety provides relatively limited explanation and guidance on its legal responsibility to uphold the rights of all Australians to freedom of expression. The Commission speaks directly to the issue only in its annual reports and in its Regulatory Guidance to the Adult Cyber Abuse Scheme,⁸ but not in its guidance,⁹ including for forms,¹⁰ for adults lodging complaints under that scheme.

AAWAA is concerned that this guidance reflects an inadequate, even distorted, understanding of the right to freedom of expression as developed under Australian jurisprudence (and explained, for example, by the Australian Human Rights Commission.¹¹) This approach emphasises that restrictions on freedom of expression must be the exception and not the norm, with expression that threatens violence or imminent danger a fundamental baseline for judging risk.

However, in its Regulatory Guidance of the Adult Cyber Scheme (p. 6) eSafety appears to have inverted this accepted norm by placing the onus on those expressing potentially controversial viewpoints to self-censor lest they discourage others from participating online:

The Adult Cyber Abuse Scheme is not intended to stifle freedom of speech, including in the context of political comments, legitimate expression or robust debates online. *However, environments that allow serious abuse to spread can actually reduce freedom of speech, because people who are targeted by abuse feel silenced and may stop participating online.*¹² (emphasis added)

Regrettably, eSafety further reinforces this bias in its online guide for complainants¹³ by omitting the clear direction in the Act that “serious harm” explicitly excludes “mere ordinary emotional reactions such as those of only distress, grief, fear or anger.” This omission serves to encourage complainants to seek redress for perceived harms rather than fostering a tolerance for differing opinions.

AAWAA is concerned that the omission also serves to discourage social media users from standing up for their rights when eSafety ‘informally’ requests platforms to remove content

⁸ [Adult Cyber Abuse Scheme: Regulatory Guidance](#), eSafety Commissioner.

⁹ [Adult cyber abuse quick guide](#), eSafety Commissioner.

¹⁰ [Adult cyber abuse complaints form](#), eSafety Commissioner.

¹¹ [Freedom of information, opinion and expression](#), Australian Human Rights Commission. As Human Rights Commissioner Lorraine Finlay [explains](#), “If freedom of speech only means that you are able to say nice things about things that everybody agrees on, then it is meaningless. Freedom of speech is most important when it means standing up for the right of someone to say something you may vehemently disagree with. But in a democratic society it is absolutely critical that we recognise that we have diversity of thought, diversity of perspectives and that we are able to engage with different ideas. If we can’t do that then we lose an important part of who we are as a nation and a community.”

¹² [Adult Cyber Abuse Scheme: Regulatory Guidance](#), eSafety Commissioner.

¹³ [Adult cyber abuse quick guide](#), eSafety Commissioner.

(and the platform communicates these concerns to the user).¹⁴ A reliance on informal processes, especially when dealing with contested viewpoints, can exacerbate a chilling effect on free speech.

Gendered violence: eSafety’s misguidance

We also see eSafety’s confusion about safety and free speech reflected in its guidance on ‘gendered violence.’¹⁵ AAWAA does not contest the reality of ‘gendered’ violence online, such as in pornography, cyberstalking, and non-consensual sharing of intimate images, and supports eSafety’s powers to address and mitigate these harms.

That said, we are deeply troubled that eSafety has conflated sex-based/‘gendered’ violence with expressions of what are essentially statements of views and opinions, including:

- “making harmful claims that gender is binary – for example, deliberately misgendering someone online – such as using he/him/his or she/her pronouns for a non-binary person who uses they/them pronouns – and saying that non-binary people are ‘just confused’ or ‘brainwashed’”
- “spreading false information that attempts to undermine and reverse the rights of women and LGBTIQ+ people – by implying that these rights are coming at the expense of other groups.”

eSafety is effectively silencing one side of a critical social debate here – and one that AAWAA holds fundamental to women’s protections, welfare, and rights. We make no bones of the fact that the presence of biological men in women’s sport, for example, creates a conflict of rights.¹⁶ We are similarly adamant that sex is binary, and that people who believe they can change sex – and the medical establishment that fosters this delusion – may, indeed, be confused on this issue. Some individuals may be angered or even distressed by our assertions, but our saying so, even vehemently, can hardly be deemed “seriously harmful” let alone equated with violence. On the contrary, we believe that the risks created by the threat of transgressing eSafety’s arbitrary standards serves to discourage many people – especially women – from participating in discussions online, risking far greater harm to individuals and our democracy.

Operation of the Act: research and education

In fulfilling its research and educational functions, eSafety references the views and research of a range of overseas advocacy groups. AAWAA is concerned that these groups often define terms ‘harm’ and ‘hate’ in ways that extend beyond Australian legal standards (as defined in our discrimination and vilification laws). These definitions in turn impact freedom of expression, especially in the context of debates about gender ideology (in regard to women’s sex-based protections and rights, and gender medicine). For example, the Global Center for Digital Hate includes critical opinions on gender medicine and discussions of gender in sport within its definition of hate speech.¹⁷

¹⁴ eSafety spoke to the issue of informal actions at [Estimates](#), 30 May 2024.

¹⁵ [Gendered violence](#), eSafety Commissioner.

¹⁶ [Inclusion in sport must not come at the expense of safety, fairness, or the right to privacy and dignity in changerooms for women and girls](#), Affiliation of Australian Women’s Action Alliances, April 2024.

¹⁷ [Social media’s role in amplifying dangerous lies about LGBTQ+ people](#), Global Center for Countering Digital Hate, August 2022.

We are particularly concerned about eSafety’s endorsement of the US advocacy group GLAAD, which eSafety has referenced, for example in its 2023 legal notice to X/Twitter,¹⁸ in its online educational webinars,¹⁹ and its own published research.²⁰

GLAAD²¹ is a high-profile US NGO that supports ‘gender affirming health care’ for children – that is, the model of health care that involves puberty blockers, cross sex hormones, and other physical interventions to ‘affirm’ a young person’s self-declared ‘gender identity.’ GLAAD campaigns to censor media and others who question the science behind the model.²² This organisation maintains a catalogue of individuals and organisations whose opinions it opposes²³ – including feminists.²⁴

To be clear, AAWAA has no issue with a diversity of lobby groups in debates of gender ideology, nor with their tactics (so long as these are lawful). Rather, our objection is to eSafety’s endorsement of the organisation, including its appeal to GLAAD’s authority in support of its legal notices and in its educational material. eSafety’s reliance on GLAAD in this regard raises serious questions about eSafety’s commitment to the impartiality necessary to uphold the principles of administrative law and natural justice. eSafety’s endorsement of GLAAD’s opinions would also appear at odds with its responsibilities under the *Public Service Act 1999*, including to impartiality.²⁵

AAWAA also assesses there is significant room for improvement in the rigour and comprehensiveness of eSafety’s own research, with ‘Protecting LGBTIQ Voices online’ as a notable example. While community consultation is commendable, a sample size of 13 individuals, nominated by publicly funded LGBTIQ+ advocacy groups, including ACON and Thorn-Harbour Health, represents questionable methodology.²⁶

We look to eSafety to correct these limitations as a matter of urgency and to include a wider range of voices on this topic, including from grass-roots organisations such as LGB Alliance

¹⁸ [eSafety demands answers from Twitter about how it’s tackling online hate](#), June 2023. Given our past struggles with Twitter censorship and notwithstanding our in-principle support for eSafety to exercise its powers to demand transparency from industry, AAWAA found eSafety’s framing of this particular issue jarring and inappropriate, including the comment that “The general amnesty that Musk announced ... [for previously banned accounts] is more akin to breaking serial offenders out of Twitter jail and he did so in the name of free expression.” See [Australia issues Elon Musk’s Twitter with a ‘please explain’ notice over surge in online hate](#), ABC News, June 2023.

¹⁹ For example, Transcend/eSafety webinar presentation, May 2024. eSafety does not publish these materials nor does it share them with participants – a cause for concern in regard to transparency and accountability.

²⁰ [Tipping The Balance, LGBTIQ+ teens’ experiences negotiating connection, self-expression, and harm online](#), eSafety Commissioner, June 2024.

²¹ [GLAAD](#)

²² On GLAAD’s campaign regarding gender affirming care and saying that the science is settled, see for example its 2023 campaign, [New York Times sign on letter, from LGBTQ and allied leaders and organizations](#). On the reality that the science is not, in fact, settled see The World Health Organisation, [Frequently Asked Questions \(FAQ\) WHO development of a guideline on the health of trans and gender diverse people](#), which notes that “the evidence base for children and adolescents is limited and variable regarding the longer-term outcomes of gender affirming care”. See also the [Society for Evidence Based Medicine](#).

²³ [GLAAD Accountability Project](#).

²⁴ [Women’s Liberation Front](#), GLAAD.

²⁵ [Public Service Act 1999](#), Section 10 (5).

²⁶ [Protecting LGBTIQ+ voices online](#), eSafety Commissioner.

Australia,²⁷ CoAL,²⁸ and the Lesbian Action Group, as well as from detransitioner groups such as Detrans Woman Aus.²⁹ These groups represent individuals who may experience disproportionately high rates of online abuse due to their gender-critical views, their lesbianism or bi-sexuality, or their criticisms of gender medicine. Their perspectives are essential for developing comprehensive and effective online safety strategies.³⁰

We were also disappointed that the report ‘Tipping the Balance’ (June 2024) appears to discount contemporary parental concerns about screen time for teens, suggesting an exception for LGBTIQ teens.³¹ The report also fails to acknowledge contemporary debates – including among clinical experts – that social media use may in fact exacerbate gender dysphoria in young people.³²

Legislating new powers?

AAWAA acknowledges the importance of periodically reviewing the scope of the *Online Safety Act* to adapt to technological advancements, and we commend the Issues Paper for exploring potential new areas of concern. At the same time, providing Australians with the opportunity to offer feedback on actual draft legislation, rather than ideas, will be essential to safeguarding our democracy and human rights.

Having experienced the weaponisation of ‘hate speech’ against our community, AAWAA is particularly concerned about any misguided attempts to legislate against it, both online and offline. Steps in that direction must not proceed without robust safeguards for freedom of expression for all, including dissenting voices, clear definitions that mitigate overreach, a focus on demonstrable harms rather than mere offence, and provisions for procedural fairness.

²⁷ [LGB Alliance Australia](#)

²⁸ [Coalition of Activist Lesbians Australia](#)

²⁹ [Detrans Woman AUS](#)

³⁰ [Why detransitioners are crucial to the science of gender care](#), Reuters Investigates, December 2022.

³¹ The report states, “It’s possible there is a misalignment between parents’ and caregivers’ concerns about screen time and online harms, and their understanding of the benefits that their LGBTIQ+ teen may experience as a result of being online that our LGBTIQ+ survey participants articulated.”

³² Dr Laura Edwards-Leeper, a former head of the Child and Adolescent Committee for The World Professional Association for Transgender Health (WPATH) and Erica Anderson a past WPATH Board Member and former President of the United States Professional Association for Transgender Health (USPATH) have both warned that social media may drive dysphoria especially in combination with other factors like autism and trauma. As they note, “The messages that teens get from TikTok and other sources may not be very productive for understanding this constellation of issues” (see [Trans kids don’t get the mental health care they’re entitled to](#), *The Washington Post*, November 2021). The recent Cass Review has also noted a concentration of people reporting gender dysphoria/incongruence in Generation Z and younger Millennials relative to rates in other adults – a correlation that underscores the likelihood that social media use may be influencing the development of gender dysphoria/incongruence. See [Final Report, Cass Review](#), April 2024.

Recommendations

1. Amend the objects of the Act to incorporate freedom of expression.
2. Amend the operative provisions of the Act – especially those relating to the Adult Cyber Abuse Scheme and adult user safety measures – to incorporate freedom of expression.
3. Review eSafety's interpretation of the Act, including in its online guides.
4. Review eSafety's reliance on overseas advocacy groups.
5. Review eSafety's research to ensure it considers diverse perspectives within the Australian community.
6. Open to public scrutiny and in draft form any new powers to be granted eSafety, with any proposals to sanction "hate speech" in particular to incorporate robust safeguards for freedom of expression.