**Director – Strategy and Research**
**Online Safety, Media and Platforms Division**
**Department of Infrastructure, Transport, Regional Development, Communications and the Arts**
**GPO Box 594 Canberra, ACT 2601**
**OSAReview@COMMUNICATIONS.gov.au**

**To the Director for Strategy and Research,**

Thank you for this opportunity to make a **Submission to the Review of the Online Safety Act 2021.** I will be addressing several questions raised in the information accompanying the Review documents, and also elaborating on a number of concerns around the role and powers of both the Act itself and the actions of the current eSafety Commissioner, Ms Julie Inman Grant.

**Point 1:**
**Section 106 of the Online Safety Act 2021** – includes **Class 1 Material** that describes in part: **Material that promotes, incites or instructs in matters of crime or violence. Class 1 material includes, for example … pro-terror material.**

Also, **Abhorrent violent material is defined in section 474.31 of the Criminal Code** (in part) as: **"material that must also have been produced by a person or persons, each of whom is: aided, abetted, counselled, procured, or were in any way knowingly concerned in the abhorrent violent conduct.**

Yet, despite these clear definitions, it seems that no action is being taken by the eSafety Commissioner against the online sermons and speeches by Islamic Imams in Australia who are inciting violence, murder and genocide against Jews, the nation of Israel, and [redacted] (all non-Muslims). These Imams are also calling for [redacted] – a violent global uprising against Israel and Jewish people – and groups of Muslims online are recorded as chanting [redacted] which even our Prime Minister states is a violent statement calling for the complete annihilation of Israel and the Jewish race.

If the eSafety Commissioner is serious about her role, why is it that she is not calling for the removal of these speeches and the "abhorrent violent material" of pro-Palestinian pro-Hamas protestors still visible online in Australia. These protestors and activists are recorded as celebrating the actions of a listed terrorist group, Hamas (something which is illegal in Australia). In addition, Islamic Imams and their supporters are seen online chanting: [redacted] (as NSW Police claim), in live public forums – and this content is still present on internet sites.

There seems to be a curious reluctance by the eSafety Commissioner, Ms Julie Inman Grant, to assert her role in this online space for which she has given no explanation. However, conversely, when a self-professed Muslim-radicalised teenager allegedly stabbed Assyrian Bishop Mar Mari Emmanuel in Western Sydney on 15th April, 2024, Ms Inman Grant immediately sought an injunction to prevent the platform "X" from showing the image in Australia, and then took "X" to the Federal Court to seek to ban the image from being seen globally as well.

It is somewhat ironic that some of the radical content that the teenage man may have watched could have included the hateful rants by Islamic Imams, since he was heard on his body-cam to say that the Bishop had "insulted the Prophet" and that was the reason the teenager gave for allegedly stabbing the Bishop. So the "incitement to violence" that was **not** acted on by the eSafety Commissioner may well have fuelled the attack which she did finally seek to have removed. It seems Ms Inman Grant does not believe that "prevention is better than cure."

**In summary, either online Class 1 material or "abhorrent violent material" needs to result in consistent action by the eSafety Commissioner on every occasion, or it does not warrant such action at all. The present situation of apparently *ad hoc* action is indefensible under the Online Safety Act 2021 and our current legislative systems.**

**Point 2:**
**Review Part 2 – Q 3: Does the Act regulate things (such as tools or services) that do not need to be regulated, or fail to regulate things that should be regulated?**

When reading about the purpose of the **Online Safety Act 2021** on the Federal Government's website, much of the language used relates to "safety" as it applies not only to minors, but now also to adults. ***"The Act gives eSafety substantial new powers to protect all Australians – adults now as well as children – across most online platforms and forums where people can experience harm."***

The thrust of the new legislation is to "protect adults from harm". This can be a grey area of policy for residents of a democratic nation like Australia, where many of us believe that **freedoms of speech, belief and association should be protected more than "safety issues" when it comes to adults.**

Obviously, there will be some adults who are vulnerable to harm due to underlying physical, mental health or psychosocial factors, however, the vast majority of Australian adults would be concerned that **it is not the role of government or an un-elected bureaucrat to make wide-ranging decisions through legislation to allegedly "keep adults safe".** This role could too easily morph into censorship and manipulation of the kinds of data that adults can access online and with whom they choose to associate.

This was highlighted in the recent case held in the Federal Court regarding the attempts by the eSafety Commissioner, Ms Julie Inman Grant, to prevent the platform "X" from showing a video of the above-mentioned alleged terrorist attack on an Assyrian Bishop in Sydney. This case is even more **complicated by the Bishop's own assertions that he did not wish the attack on him to be removed from the internet or be used to silence the free speech rights of Australians.** Justice Geoffrey Kennett, who heard the case, noted that it raised serious questions concerning freedom of expression in Australia. **"There is widespread alarm at the prospect of a decision by an official of a national government restricting access to controversial material on the internet by people all over the world,"** he said. **"It has been said that if such capacity existed it might be used by a variety of regimes for a variety of purposes, not all of which would be benign."**

The **inconsistency of decision-making** is another factor here, where vision of the murder of American citizen George Floyd, the 9/11 terrorist attacks in the USA and violent anti-lockdown protests in Melbourne in recent years (where protestors were shot with rubber bullets by police) – to name but a few – are still visible online, yet these have not been targets of the eSafety Commissioner's de-platforming plans.

Furthermore, **censorship of the media is by nature undemocratic** when it means that political speech and actions can be unilaterally removed from platforms because a single powerful individual deems it to be "harmful" for even adults to view. Terms such as "harmful" can be very subjective and to use such a nebulous and undefined term as the basis for removal of online material from adults could constitute a violation of the human rights to which all Australians should be afforded under the **UN Declaration of Human Rights.** This violation relates especially to **Article 19** which states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold

opinions without interference and **to seek, receive and impart information and ideas through any media and regardless of frontiers**." The **Online Safety Act 2021** appears to directly conflict with this right and should be redrafted to ensure that only material which deprives individuals of their own human rights (such as individuals subjected to **abhorrent violent content or degrading pornography** in the production of the online material) should be subject to evaluation under the Act.

Finally, the failure of the recent Federal Court action should require redrafting of the section of the Act that states: ***"The Online Safety Act gives the existing Online Content Scheme new powers to regulate illegal and restricted content no matter where it is hosted."*** *(My underlining.)* There is no point in having an **unenforceable section in the Act which will lead to expensive and ineffective judicial proceedings** without any benefits to Australian citizens. **Hence, this sentence should be removed from the Online Safety Act 2021.**

**Point 3:**
**Review Part 2 – Q 3: Does the Act regulate things (such as tools or services) that do not need to be regulated, or fail to regulate things that should be regulated?**

**The Online Safety Act 2021 states:**
**"Respecting human rights –** In regulating the online environment, governments must consider how to uphold a range of fundamental human rights and supporting principles, including:
- the principle of the best interests of the child
- the principles of dignity, equality, and mutual respect
- the right to freedom of information, opinion, and expression
- the right to freedom of association
- the right to privacy
- the right to protection from exploitation, violence, and abuse
- the right to non-discrimination.

This section then goes on to make the following statement that I will refer to as a "**Statement of Concern"** (to me):
***"There are important nuances to be considered in assessing human rights impacts. For example, legislative limits on permissible online activity can have the effect of restricting freedom of expression for some, while supporting safe freedom of expression for others who might otherwise be silenced by abuse or hate."***

This "**Statement of Concern"** appears to be saying that it is acceptable under the Act to limit the "freedom of expression" of some citizens, yet support the "freedom of expression" of others, on the basis that the latter **"might otherwise be silenced by abuse or hate." I totally disagree with this statement.** It is inappropriate for a government agency to uphold the democratic rights of some in the community yet discriminate against the rights of others purely on the basis that certain groups "might" be silenced by abuse or hate.

**Legislation needs to be clearcut and consistent. It cannot be modified in practice around the idea that negative behaviour "might" occur, and therefore subgroups of society deserve special privileges and protections ahead of time.** Legislation should support the democratic rights of **all** citizens equally, and then specify complaints procedures that can be pursued if individuals actually break the law with regard to their speech or behaviour. Violations of the law also need to be serious, voluntary and targeted in order to be considered as "unlawful" – not simply that another person "feels offended" or "hurt" by the speech or actions of others.

The "**Statement of Concern"** is not an acceptable statement when it comes to legislation and will lead to the misuse of power, predetermining "victim" and "oppressor" status for certain subgroups of society based on religious or political bias, and hence could be attributed unequal rights under the law. This is absolutely unconscionable in a democracy. **In summary, I believe that this "Statement of Concern" seeks to "regulate things that do not need to be regulated" and should therefore be removed from the Act.**

**Point 4:**
**The Basic Online Safety Expectations of the Online Safety Act 2021** states that: ***"Basic Online Safety Expectations … are designed to … encourage the tech industry to be more transparent about their safety features, policies and practices."***

**Yet there does not appear to be an equal expectation about the "transparency of the safety features, policies and practices" of the eSafety Commissioner** and her decisions to take expensive legal action against private companies worldwide. Ms Inman Grant seems to work on the assumption that any topic that she deems to be "unsafe" for Australians (children or adults) requires her attention to remove it from public platforms. There do not seem to be any "balancing principles" which ensure that her decisions are objective, cost effective, consistent and not motivated by partisan politics or her own personal opinions.

Ms Inman Grant should be required to document her decision-making processes as to why she believes certain online content is "unsafe", and why other material is "safe", when her current decision-making is opaque and appears to be random to many Australians, including myself. Given the limitations she is seeking to make on media content available to all of us, there should be transparency to ensure that decisions are evidence-based, consistent and open to feedback from Australian citizens to ensure that she is representing the views of a majority of citizens and not simply her own opinions or those of a minority of people who may have unrepresentative views.

My concerns also arise from some statements Ms Inman Grant made at Davos in 2022 including: ***"So I think we are going to have to think about a recalibration of a whole range of human rights that are playing out online, you know, from freedom of speech to the freedom to be, you know, free from online violence."***

Ms Inman Grant appears to be saying that "freedom of speech" is not a given, from her point of view, and needs to be "recalibrated" (whatever that means). This is a chilling statement from someone tasked with ensuring that Australians should have their democratic rights respected and upheld by all who are paid to carry out the rights and wishes of the majority of citizens. It is not her role to redefine "freedom of speech" or decide who gets to keep that right, or lose it, in our country.

She was also recorded as saying: ***"If free speech means only the loudest voices are heard, then I would argue it is only the illusion of free speech, when the voices of marginalised communities are suppressed."***

Once again, freedom of speech is a fundamental right of all citizens in a democracy. It is not for the eSafety Commissioner to have philosophical discussions about which voices she deems to be "loudest" and which are "suppressed" and to give differential weightings to those who fit her sociological understanding of "marginalised communities" and those of the "loudest" communities.

**Transparency is something that is singularly lacking in the eSafety Commissioner's brief**, and this needs to be corrected. Her decisions need to be documented, her rationale included and reference made to which sections of the Act are relevant to her actions or inactions. This would help to ensure

that she is not given the unilateral power to shutdown certain content based only on her own decision-making processes and biases.

In summary, it is even more important to ensure that **the eSafety Commissioner must go through a process of transparency and accountability regarding her decisions and actions to ensure that the above-mentioned rights of all Australians are protected under the Act and in the actions of the eSafety Commissioner.**

**Point 5:**
**Review Part 5 – Q 23: Is the current level of transparency around … the Commissioner appropriate? If not, what improvements are needed?**

In addition to the points I have already made, I believe there are some significant concerns around the appointment and decisions of the current eSafety Commissioner that warrant further regulatory actions. Firstly, given that Ms Julie Inman Grant is **a very new arrival in Australia, she is not in an ideal position to understand Australian attitudes to many issues** like "Australian adults being told what to do or not do by an outsider", an understanding of the history and alliances between various pressure groups who may attempt to influence her role, and the powerplays or impotence of various political or religious organisations within our nation.

In addition, the fact that **Ms Inman Grant is a disgruntled former employee of Twitter**, now known as "X", should have meant that there was **a serious conflict of interest** for her to be appointed to such a prominent role in a portfolio in which she would be deciding which issues end up being pursued against particular multinational companies, including her former employer's company. In this case, **the court action against "X" has failed and may well incur significant tax-payer expenses as a result. This is not in anyone's best interests.**

The recent case of her failed Federal Court action also indicates that **Ms Inman Grant has a poor grasp of legal processes in Australia**. While the **Online Safety Act 2021** "gives the existing Online Content Scheme new powers to regulate illegal and restricted content **no matter where it is hosted**" (my highlighting), **this does not appear to have succeeded, even in an Australian court.** In his ruling in the Federal Court case, Justice Geoffrey Kennett pointed out that "the interests of millions of people unconnected with the litigation would be affected." Therefore, **"it [was not] a reasonable action for the commissioner to take, even if it were required of her by law".** He also stated: To extend the previous injunction would require "strong prospects of success, strong evidence of a real likelihood of harm if the order is not made, and good reason to think it would be effective," he said. "At least the first and the third of these circumstances seem to be largely absent. **Courts rightly hesitate to make orders that cannot be enforced, as it has the potential to bring the administration of justice into disrepute."** (My highlighting.)

Also, there was clearly **a political response** to the alleged stabbing of Bishop Mar Mari Emmanuel. Prime Minister Albanese stated soon afterwards: "I find it extraordinary that X chose not to comply and are trying to argue their case," adding that the issue was about "dangerous misinformation that can be 'weaponized'." (The PM has never explained how a recording of an actual event could be construed as "misinformation".) Shortly afterwards, MP Tanya Plibersek said Elon Musk, the owner of "X", was an "egotistical billionaire" and Labor MP Murray Watt claimed Musk was: "a narcissistic billionaire." The marked government response may have led (at least in part) to the eSafety Commissioner taking extraordinary action when many other online cases appear to have been ignored by her.

**For all of these reasons, Ms Inman Grant is not an appropriate person to be appointed to this position by the Albanese Government, and should be replaced in this role by someone better qualified to act with consistency and a better understanding of the Australian milieau and legal systems.**

**Point 6:**
**The Online Safety Act 2021 requires industry to develop new codes to regulate illegal and restricted content. This refers to the most seriously harmful material, such as … content that is inappropriate for children, such as high impact violence and nudity.**

**Section 106 of the Online Safety Act 2021 includes (in part): 'Class 2' "material that is, or would likely be, classified as R 18+ or X 18+ (such as pornography, and other high impact material)."**

In recent years, there have been numerous attempts made through private members bills in parliament to establish **age-verification programs on pornography sites**, but unfortunately these have been rejected by a majority of Members of Parliament. In addition, possible approaches to limiting child access to pornography in the Commissioner's Roadmap for Age Verification have only recently occurred, along with complementary measures to prevent and mitigate harms to children from online pornography. It seems that finally, after much external pressure from concerned members of the public, the Government is now running an "age assurance pilot". **It is a national shame that such a simple step to protect the well-being of children can have been blocked by the influence of powerful lobby groups for so long in Australia.**

It also begs the question as to why the eSafety Commissioner, who has had these powers since 2021, has failed to introduce age-verification programs, since she is supposed to be "keeping children safe from online harm." **Perhaps, as part of this review, the Commissioner could explain her inaction on this quintessential issue.**

**Point 7:**
**Review Q 25: To what extent do industry's current dispute resolution processes support Australians to have a safe online experience? Is an alternative dispute resolution mechanism such as an Ombuds scheme required? If so, how should the roles of the Ombuds and Commissioner interact?**

I believe it would be very important to create an Ombudsman scheme in the area of online safety rather than simply rely on a single bureaucrat, the eSafety Commissioner, to implement the Online Safety Act as she sees fit. Ombudsman schemes have been very important in a range of public protections in Australia, and enable an independent, cost effective and impartial means of following up concerns and disputes raised by the public.

The Ombudsman could investigate complaints about actions and decisions of Australian government agencies like the eSafety Commissioner's role, and assess whether her/his decisions are unjust, unlawful, discriminatory or unfair. This would ensure a greater level of transparency and accountability for the administration of the Online Safety Act 2021 by the eSafety Commissioner, and allow assessments following actions (such as the Federal Court case against "X") to improve the enforceability and appropriateness of subsequent decision-making by the Commissioner. The Ombudsman could also make recommendations for the refinement of the Act itself where it is shown to be inappropriate, poorly worded or unenforceable.

As regards "**how should the roles of the Ombuds and Commissioner interact?"** I would suggest that members of the public who have concerns regarding the actions, lack of action or statements by the

eSafety Commissioner, could approach the Ombudsman with their queries or complaints. This would ensure that concerns are taken seriously, can be managed confidentially, and that responses can be required of the Commissioner that will improve future processes. In other words, **the Commissioner will be answerable to the Ombudsman, and not the other way around.**

**Point 8:**
**Review Part 4 – Q 20: Should the Commissioner have powers to impose sanctions such as business disruption sanctions?**

**No, I do not believe that the Commissioner should have the powers to impose sanctions such as business disruption sanctions.** I do not believe that ANY extra powers should be given to the Commissioner at this point until the Review has been completed and there are strong calls for extra powers by a wide range of Australian citizens.

There is too much emphasis in this Act regarding penalties and enforcement which are unlikely to be effective in practice, and which many Australians believe is ultimately **government interference in the affairs of the nation and the rights of democratic citizens.** No political party or unelected bureaucrat should have the extensive powers that the Commissioner already has, and given that many people are concerned with the inappropriate actions already taken by Ms Inman Grant, **I don't believe that extended powers (such as imposing business disruption sanctions) should be added to the already concerning powers and overreach of the Commissioner and the Online Safety Act 2021.**

**Concluding Statements**: In conclusion, I believe that there are serious problems with the wording of the **Online Safety Act 2021** and the current powers of the eSafety Commissioner under this legislation. Now that Australians have seen the government overreach in the area of supposed "online safety of adults", it is appropriate to withdraw some of the legislation and the Commissioner's powers to only those areas that are considered to be essential to a majority of Australians. No additional powers should be made available to the Commissioner without clear evidence that this is in the best interests of all citizens. It is essential to protect our human rights (as agreed to under the United Nations Universal Declaration of Human Rights, especially Articles 18 and 19.

12, 18, 19, 2, 7, 10