

To: The Australian Department of Infrastructure, Transport, Regional Development,
Communications and the Arts

Re: Statutory Review of the Online Safety Act 2021

June 2024

Dear Department,

Please find following my submission to the above Review.

I make this submission as a private citizen with an interest in civics, ethics, and Freedom of Speech.

Thank you for the opportunity to make a submission to this Review.

Yours faithfully,

David A W Miller.

SUBMISSION

Statutory Review of the Online Safety Act 2021

Introduction

The policing of online safety, and indeed determining the appropriateness of any writings and publications in the public sphere, is a very difficult and sensitive topic, because it requires balancing the need to restrict harm to society and individuals, with the equally (or even greater) need to maintain civil liberties and Freedom of Speech. I think it is inevitably a compromise to some extent, but it is important to get the balance as right as possible.

Issues – “Hate Speech”

I wish to concentrate my comments on the issues raised in Part 6 of your document “Statutory Review of the Online Safety Act 2021 – Issues Paper”. That is, the “Online harms which may not be fully addressed under the Act” (page 45).

Of particular concern, is the section on “hate speech” (page 46). This section opens with the statement “There are different views about what constitutes hate speech...”. There certainly are, and this is one of the things that makes targeting “hate speech” in legislation, so dangerous.

True hate speech usually involves abusive language, slander, or vilification. However, increasingly, activists - particularly activists promoting alternative lifestyles – implicitly define “hate speech” as “expressing an opinion which disagrees with my opinion”, or which “disapproves of my lifestyle or the issue that I am promoting”, or “that offends me in some way”. In other words, such people implicitly make the equation that “free speech” = “hate speech” (if it disagrees with their way of thinking about some issue).

This is a false equation that none the less is being legislatively confirmed around the country – and indeed around the western world, and is an attack not only on Freedom of Speech, but also on logical reasoning. Anyone who holds a strong opinion on some issue is going to be offended by the opinion of someone else who holds an equally strong opinion the other way. This does not imply that either party has engaged in hate speech. Disagreement does not equal hatred, bigotry, vilification, etc.

Is saying that one does not approve of the homosexual lifestyle hate speech? Logically, no it is not, but according to homosexual activists, yes, it is. Is quoting the Bible on some topical issue hate speech? No, it is not – it is quoting classical literature - but according to some people, yes, it is – if it disagrees with their opinion. Is quoting valid medical research hate speech? No, it is not, but according to some people, yes, it is – if it casts doubt on some case they are making, such as the safety or lack of safety of certain vaccines.

One could go on and on, but the point should be clear that increasingly, hate speech is being accidentally or deliberately conflated with free speech. That is, if the information in question conflicts with someone else’s views or the majority opinion of the day, then it can be labelled as “hate speech” and censored or punished. This is exceedingly dangerous.

Illustrating how absurd and harmful this is, is one of the examples that has been brought to our attention. It is the case of a woman who is a breast-feeding advocate, and who posted online her opinion that a “transgender” man who attempts to breastfeed his baby will not be

able to effectively do so, and that it could be harming the baby, and that he should not be attempting what he is doing.

According to the information I have, this breastfeeding advocate was informed that she had “broken the law” by expressing her opinion, and had caused the “transgender” person offense by “inciting hatred, contempt and serious ridicule” through expressing her opinion, and she has been charged under the Queensland Anti-discrimination Act, and now must face the Queensland Civil and Administrative Tribunal to defend herself. All for expressing the common belief that biological men cannot breastfeed. What a laughable fiasco and a travesty of justice! Even if this breast-feeding advocate is ultimately proved to be incorrect, the way to do so is to present medical knowledge or research, not to resort to the legal system, and to judges who probably have no scientific or medical knowledge of the issue.

So, any view that the authorities or some person does not like can be arbitrarily labelled as “hate speech” and censored or punished. If this is already happening, then it is only going to make the situation worse to further tighten control of “hate speech” as is being proposed. As the text on page 46 of the Issues Paper itself says, there is already other legislation in place to control things such as slander and vilification – legislation which is already being abused. We do not want further legislation that can also be weaponised against individuals or organisations that someone doesn’t like.

Issues – “Cyber-flashing”, “Volumetric attacks”, “Technology-facilitated abuse”, etc

Likewise, the existing Act and other legislation to do with slander, vilification, obscenity, etc, should be enough to deal with these issues without further classifying these phenomena.

Consultation Questions

In this section I will give my opinion on some of the consultation questions listed in Part 7, pages 55 & 56, of the Statutory Review of the Online Safety Act 2021 Issues Paper.

1. Are the current objects of the Act to improve and promote online safety for Australians sufficient or should they be expanded?

Answer: They should not be expanded - they are already too severe.

3. Does the Act regulate things that do not need to be regulated...?

Answer: Yes, see my text above.

6. To what extent should online safety be managed through a service providers’ terms of use?

Answer: Many online service providers are arbitrarily misusing their own “terms of use” to censor opinions that they do not like. I have read many stories of people having their content removed or even their account closed by a social media company because the person has expressed an innocuous opinion but one that the social media company doesn’t like.

However, the government should not be doing this as well, and thus applying double censorship.

Because these companies are privately owned there is a limited amount that can be done to prevent them arbitrarily censoring content that is not harmful. But the government should encourage social media companies to be neutral “channels” and to only censor things such

as extreme violence, pornography, child abuse, slander, libel, vilification, “doxing”, etc. Ironically, these are the things that the social media companies are often NOT censoring.

7. Should regulatory obligations depend on a service providers’ risk or reach?

Answer: No, because this is arbitrary, and it is the material itself that is the issue, not how many people may see it.

12. What role should the Act play in helping to restrict children’s access to age-inappropriate content?

Answer: There needs to be foolproof age verification methods required to be in place, through this Act or other legislation.

14. Should the Act empower ‘bystanders’, or members of the public who may not be directly affected by illegal or seriously harmful material, to report this material to the Commissioner?

Answer: Yes, but not anonymously. Too many malicious, spurious complaints are made by individuals hiding behind anonymity. On the other hand, we should encourage the public to report crimes and problems in society even if the complainant is not involved.

26. Are additional safeguards needed to ensure the Act upholds fundamental human rights and supporting principles?

Answer: Yes – see the information I have given above concerning things such as hate speech.

27. Should the Commissioner have powers to act against content targeting groups as well as individuals?

Answer: Generally, no – because groups are often formed to promote certain aims or principles, and censoring criticism of the group is tantamount to censoring criticism of what the group stands for. For instance, if someone makes a comment on social media that “all Christians are bigots”, then that is an expression of an opinion, and although it is biased, it does not harm anyone.

Thank you.