

LGB ALLIANCE AUSTRALIA



**Online Safety Act 2021:
Submission to the 2024 Review**

About LGB Alliance Australia

Our Vision

Lesbians, gay men and bisexuals living free from discrimination or disadvantage based on their sexual orientation.

Our Mission

To advance lesbian, gay and bisexual rights

We advance the interests of lesbians, gay men and bisexuals, and stand up for our right to live as same-sex attracted people without discrimination or disadvantage.

We will ensure that the voices of lesbians, gay men and bisexuals are heard in all public and political discussions affecting our lives.

To highlight the dual discrimination faced by lesbians

We amplify the voices of lesbians and highlight the dual discrimination experienced by lesbians as women who are same-sex attracted in a male-dominated society.

To protect children who may grow up to be lesbian, gay, or bisexual

We work to protect children from harmful, unscientific ideologies that may lead them to believe either their personality or their body is in need of changing. Any child growing up to be lesbian, gay or bisexual has the right to be happy and confident about their sexuality and who they are.

To promote free speech on lesbian, gay and bisexual issues

We promote freedom of speech and informed dialogue on issues concerning the rights of lesbians, gay men and bisexuals. We assert that different opinions, even those we may disagree with, should be heard as part of the public debate.

You can find out more about us on our website – www.lgballiance.org.au

You can get in contact with us on email – contact@lgballiance.org.au

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Executive Summary

LGB Alliance Australia is Australia's largest organisation advocating solely for the rights of lesbian, gay and bisexual individuals. Our vision is that lesbians, gay men and bisexuals live free from discrimination based on their sexual orientation.

We welcome the opportunity to contribute to the review of Australia's Online Safety Act 2021. This speaks to three of our guiding objectives, namely: to advance lesbian, gay and bisexual rights; to protect children who may grow up to be lesbian, gay or bisexual; and to promote free speech on lesbian, gay and bisexual issues.

This submission focuses on four topics.

Firstly, the issues paper for this consultation raises the topic of age assurance. We support the push to keep social media, smartphones and pornography away from children as a public health measure, as long as age assurance systems are safe, private and ethical. We welcome the news that the eSafety Commissioner will pilot an approach to age-gate pornography.

Since smartphones, social media and pornography proliferated in the 2010s, the developed world has been hit by a crisis in child and youth mental health. This has included a spike in distress about gender, which has led to many children and adolescents being subjected to dangerous, unnecessary medical interventions. This distress presents disproportionately among children who might otherwise have grown up to be lesbian, gay or bisexual adults. One survey found 89% of girls and 81% of boys referred to the UK's Gender Identity Development Service were same-sex attracted.¹ The situation represents a threat to the health and future of our community.

In her groundbreaking report on the UK's gender services for children, Dr Hilary Cass OBE placed the rapid rise in childhood "gender dysphoria" from c.2010 in the context of broader threats to children's wellbeing relating to social media and pornography. Researchers have identified that young people distressed about gender show higher than average rates of heavy, dysregulated social media use and high-risk experiences online.

Secondly, the issues paper raises the topic of "online hate" against specific groups. We are deeply aware of the harms caused to our community by homophobic and sexist harassment and vilification. We believe these could be reduced through targeted action to address serious offences committed online (e.g. cyber stalking, death threats), unsafe design elements in digital platforms (e.g. their low privacy settings and "addictive" nature), and coordinated, malicious, inauthentic campaigns by foreign states and private bad actors.

However, we do not support the proposal for a new complaints scheme for individuals to report "hate" content and new requirements for digital platforms to remove such content.

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A focus on content removal is likely to be unwieldy, contested, and vulnerable to misuse. We predict such a system would be leveraged by activists for gender identity ideology to silence individuals and groups which raise concerns about the impacts of that ideology on lesbian, gay and bisexual people. Laws against “hate speech” have already been used that way overseas. Many of the people targeted also had their content or accounts removed by digital platforms, while being harassed and threatened by activists for gender identity ideology.

In those cases, censorship was not an alternative to harassment and “hate”; it was an extension of those things.

Until a couple of decades ago, it was quite common for people who were openly lesbian, gay or bisexual to face a triple threat: harassment by law enforcement, prohibition from taking part fully in public life, and aggression from hostile individuals and groups. Ironically, similar challenges occur today for those who speak openly about the biological realities of same sex attraction.

Thirdly, the issues paper invites comment on eSafety’s complaints systems. Doubtless these systems have helped many people. However, we hold concerns that the adult cyber-abuse system appears to have been used several times to attempt to censor content because it referenced the biological sex of high-profile transgender activists – a scientific fact which was already in the public domain. We do not believe a public regulator should censor content because it offends someone’s belief system or self-image.

This concerns us because biological sex is core to same sex attraction. Many LGB people are insulted by a trend of heterosexuals appropriating our language and invading our social spaces – e.g. men “identifying” as lesbians, women “identifying” as gay men. We should be free to object to this trend and to speak factually about sex difference.

Finally, we raise concerns about messaging from the Office of the eSafety Commissioner in relation to lesbian, gay and bisexual people. eSafety’s research project and online safety resource for the “LGBTIQ community” contain messaging about women and same sex attraction which could be considered inadequate and even hostile. We do not suggest this was deliberate on the part of eSafety, but we believe better materials could be produced in future through wider community engagement.

Recommendations

1. Pursue the recommendation of Jonathan Haidt and Jean Twenge that social media use and smartphone ownership be delayed until late adolescence, combined with investment in children’s real-world opportunities for play, independence and community cohesion. Any tech solutions to age assurance must be safe, private and ethical.

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2. Reduce vilification of groups of people (“online hate”) via the following approaches:
 - Take targeted action to address serious offences committed via digital technology, including threats to kill, inflict serious injuries or commit a sexual offence; stalking; and incitement to commit an offence.
 - Require privacy and safety settings for social media accounts to be set to “high” automatically when an account is opened.
 - Reform the “addictive” nature of digital technologies, many of which were designed to be distracting, provocative, and hard to stop using.
 - Pursue the recommendations of the Australian Senate Select Committee into Foreign Interference through Social Media to address threats to democratic life through coordinated, malicious inauthentic activity by foreign states and private bad actors.
3. Reject approaches to addressing online hate which focus on content removal. Such approaches are unwieldy and open to abuse.
4. Clarify that all Australians, including LGB people and women, are entitled to full enjoyment of our rights under the Universal Declaration of Human Rights, the Convention on the Elimination of all Forms of Discrimination against Women, and the International Covenant on Civil and Political Rights. These include freedoms of thought, conscience and religion; opinion and expression; and peaceful assembly and association.
5. Remove “offensiveness” as a criterion for adult cyber-abuse in the Online Safety Act.
6. Ensure the adult cyber-abuse system prioritises addressing serious offences, such as stalking, threats of violence, coercive control, and sexual harassment.
7. Make public the policy guidance given to eSafety staff about how to determine whether material constitutes adult cyber-abuse.
8. Clarify that the purpose of the complaints system is not to censor so-called “misgendering” or affronts to someone’s gender identity. The role of a secular public regulator should not involve silencing statements that offend someone’s belief system.
9. Require social media providers which remove or hide content following a request from eSafety to give the poster clear, prompt, accurate information about why the content was removed or hidden and the options for appeal.
10. Encourage eSafety staff to engage with LGB Australians with a diversity of experiences and viewpoints, including older LGB people, LGB people who are not clients of “LGBTIQ+” services, LGB people in rural areas, and lesbians.

11. Clarify with eSafety staff that lesbian, gay and bisexual individuals experience same-sex attraction on grounds of biological sex, for which we have been marginalised and vilified. It is normal for us to socialise in single-sex environments sometimes, to refuse partners of the opposite sex, and to speak openly about sex difference. We do not deserve to be denigrated for this.

Age assurance and child safety

This section responds to the issues paper Question 12: “What role should the Act play in helping to restrict children’s access to age inappropriate content (including through the application of age assurance)?”

We are deeply concerned about the impacts of social media and pornography (usually accessed via smartphones) on the mental health and wellbeing of children, including those who will grow up to be lesbian, gay or bisexual adults. Keeping these high-risk technologies away from children makes sense as a public health measure. Of course, it is important that any age assurance systems do not further endanger children’s privacy or safety.

Australia faces a crisis in child and youth mental health. The Household, Income and Labour Dynamics in Australia Survey 2023 found the proportion of young people aged 15-24 experiencing psychological distress more than doubled between 2011-21. By 2021, 4 out of 10 young Australians were psychologically distressed, with rates higher for young women.² Tragically, self-harm and suicide, especially among girls, have also risen markedly in Australia.³

American social psychologist Jonathan Haidt, psychologist Jean Twenge and research scientist Zach Rausch charted this trend across many developed countries, mapping it to the spread of social media and smartphones from 2010. They found the relationship was especially strong for adolescent girls on social media. They concluded that no alternative explanation fit the timeframe or applied plausibly to all affected countries.⁴

Similarly, a 2023 survey of 27,000 young adults from multiple countries found better mental wellbeing correlated markedly with older age of first smartphone ownership, even after researchers accounted for the impacts of childhood trauma and adversity in some young people. The correlation was especially strong for females.⁵

These concerns have particular relevance to same sex attracted young people.

The recent growth in youth mental health problems has been accompanied by an unprecedented rise in distress about gender. LGB Alliance Australia comments on this matter because there is very significant evidence that “gender non-conformity”, distress about gender, and even cross-sex identification are very common among children who grow up to be LGB adults.⁶ For example, one patient survey found that 89% of girls and 81% of boys referred to the UK’s Gender Identity Development Service were same sex attracted.⁷

As the UK’s Lesbian Project stated, “a generation of young lesbians, among others, has been radically failed by the medical profession”.⁸ The Gay Men’s Network calls the transitioning of children “an unprecedented homophobic medical scandal.”⁹

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This scandal took off in earnest in the 2010s, the same period social media, smartphones and online pornography arrived in the lives of almost all adolescents. Victoria's Royal Children's Hospital gender clinic had approx. 100 patients in 2014; by 2022 this had increased more than tenfold to 1,100.¹⁰ Numbers of children in Queensland's gender service also spiked – e.g. from 190 in 2017 to 992 in 2022.¹¹ By 2023, Mission Australia's national survey found 1 in 27 teens aged 15-19 identified as "gender diverse", with very high rates of psychological distress.¹²

Patterns were similar in other English-speaking developed countries. In the UK, referrals of children to the Gender Identity Development Service grew from 50 in 2009 to 2,500 in 2020, with 4,600 on the waiting list.¹³ The year of the sharpest rise, 2014, was also the year smartphone ownership by British young people shot up to 88% from 66% two years earlier.¹⁴

The characteristics of children presenting with distress about gender also changed. Previously, this problem mainly affected biological males, but now it presented predominantly in adolescent females – the same cohort whose mental health was suffering more broadly.¹⁵

In her review of the UK's gender services for children, Dr Hilary Cass OBE observed that the increase in gender dysphoria paralleled a wider deterioration in child and youth mental health, highlighting the stress that social media places on girls especially and the alarming impacts of pornography on young people.¹⁶ She stated:

"The data on young people's mental health, social media use and increased risks associated with online harm give an appreciation and understanding that going through the teenage years is increasingly difficult, with stressors that previous generations did not face. ... mental distress can present through physical manifestations such as eating disorders or body dysmorphic disorders. It is likely that for some young people this presents as gender related distress."¹⁷

Lisa Littman's research identified high rates of heavy, dysregulated social media use in children distressed about gender. Many young adults who once identified as transgender (and later ceased) cited social media and online communities as encouraging them to transition. Many parents of gender-distressed children described their children as immersed in online worlds at the expense of their real-life relationships, encountering high-risk content and communications – e.g. messaging advising children to lie to doctors to get cross-sex hormones or telling children they would die by suicide if they did not transition.¹⁸

One parent told Littman "I believe my child experienced what many kids experience on the cusp of puberty – uncomfortableness! – but there was an online world at the ready to tell her that those very normal feelings meant she's in the wrong body."¹⁹

Online hate

This section responds to the issues paper Question 27: “Should the Commissioner have powers to act against content targeting groups as well as individuals? What type of content would be regulated and how would this interact with the adult cyber-abuse and cyberbullying schemes?”

LGB Alliance Australia is very aware of how homophobic and sexist vilification impacts our community. For example, in a 2023 survey of 100+ of our supporters, we found that two-thirds had been subjected to slurs against LGB people and almost half believed their physical or mental health had been impacted by discrimination about their same sex attraction.²⁰

Recently, we asked a sample of our supporters (27) about their experiences of online harassment. Their responses showed a wide variety of experiences and viewpoints: some had never experienced hostility online, some had been seriously harassed, and many were circumspect about mentioning LGB issues online. Comments included:

- *“There are some sites on which I have no hesitation using the word ‘lesbian’ and others (for example local community fb site) on which I would not.”*
- *“As a same-sex attracted woman, the bulk of the abuse I have received is targeted at patriarchal stereotypes of women as sex objects, and in particular, lesbians as a niche fetish.”*
- *“I have never experienced any backlash when discussing my sexuality online.”*
- *“It is difficult telling which people might be dangerous and which ones are all hot air. Generally, free speech is robust and fine. I was doxxed and personally targeted several years ago, which was quite disturbing.”*
- *“My mental outlook and self-worth is not dependent on cyber opinions or disagreements, even if ‘hateful’ ... Gen X, baby.”*
- *“I do not talk about these [LGB] issues online.”*

Part of this picture is the online vilification of individuals who defend the sex-based rights of LGB people and women. We have observed homophobic slurs, wild accusations, sustained harassment and sexualised threats and aggression – see for example the testimonies to the 2021 Parliamentary Inquiry into Social Media and Online Safety by Senator Claire Chandler; Anna Kerr, principal solicitor at the Feminist Legal Clinic; and Sall Grover, CEO of Giggle.²¹

Many of our supporters described similar experiences, such as:

- *“I have been sent death threats, threats of rape, threats to contact my employer about my views from transgender activists.”*
- *“Called homophobic slurs and had nefarious motives ascribed to me for expressing gender critical views.”*
- *“I have received abusive and threatening posts, messages and direct messages on Facebook, X and reddit in response to gender critical/sex realist content.”*

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- *“Demeaning responses and depictions about lesbians, same sex attraction. Being called bigoted for being a sex realist.”*
- *“Name calling, character assignation, presumptions of my alignment with fundamentalist religions, workplace gossip and complaints of my fictitious bad behaviour.”*
- *“I was told on Twitter to ‘go away and play with a hand grenade, you Nazi’ for stating that a man can never become a woman. I have also been abused in my neighbourhood Facebook group for stating the same. The abuse was highly personal: comments about my hair, facial features, taste in music, career, and clothing choices”.*
- *“On X and Facebook for example, I and a number of my LGB contacts remain anonymous ... it's a bit like being in the closet all over again. The price of the anonymity entailed to sustain our online discourse safely is an estrangement from each other as real people”.*

Directions for improving user safety

We submit that online vilification and harassment could be reduced in frequency and impact if government, regulators and platforms focused on addressing the following:

- Serious offences committed via digital technology, including stalking; threats to kill, inflict serious injuries or commit a sexual offence; coercive control; sexual harassment; and incitement to commit an offence.
- Privacy and safety settings on social media accounts, which are often set to the lowest level automatically when an account is opened, creating in-built risks to users.
- “Addictive” design of digital technologies, many of which were created intentionally to be distracting, provocative and hard to stop using.
- Threats to democratic life through coordinated, malicious inauthentic activity by foreign states or private bad actors. This topic was explored by the 2023 Australian Senate Select Committee into Foreign Interference through Social Media.

Our supporters also told us they wanted to see the Australian Government lead by example and defend the rights of LGB people and women to gather publicly and speak openly about biological sex and its importance without being harassed and threatened.

The dangers of focusing on content removal

We do not believe online vilification and harassment would be resolved by trying to remove all “hateful” content. The sheer volume of content and disputes over what constitutes “hate” would make this approach impracticable – especially if protected characteristics include matters of belief, such as religion, political affiliation and gender identity. Here, the distinction between “hate” and “differences of opinion” can be highly disputed.

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As the issues paper notes, there is no clear, agreed definition of “hate”.²² Laws and systems cannot function fairly and smoothly if they are based on vague, subjective or hotly-contested definitions – especially if further risk factors are thrown in, such as anonymous reporting or placing the burden of proof on the accused.

It is worth considering the example of the disastrous recent introduction of Scotland’s Hate Crime and Public Order Act, which led to Police Scotland being bombarded with more than 7,000 complaints in the first week.²³ *

Moreover, we think it likely that any new system focused on removing so-called “hate” content would be leveraged to silence criticisms of gender identity ideology, including its impacts on LGB people. Laws and regulations against “hate” have been used this way before – see below.

When harassment and censorship combine

Dealing with “online hate” is often framed as a tension between personal freedom and protection from harm. But the situation is different for LGB people (and others) who voice criticisms of gender identity ideology. Many have faced a three-pronged attack: sexist and homophobic harassment by hostile individuals and groups, silencing by digital platforms, and threats of formal action by regulators or police.

When powerful institutions embrace intolerant belief systems, censorship is not an alternative to harassment; it is an extension of harassment.

The United Nations Special Rapporteur on Violence Against Women and Girls, Ms Reem Alsalem, has written of this phenomenon:

“I am deeply concerned at the escalation of intimidation and threats against women and girls for expressing their opinions and beliefs regarding their needs and rights based on their sex and/or sexual orientation.

...

I am concerned about the decreasing space available for women and women’s organizations to organize and/or express their opinion peacefully in several countries in the Global North. Women coming together to demand the respect for their needs based on their sex and/or sexual orientation have been threatened, attacked, and vilified.

...

I also note with concern the frequent tactic of smearing women, girls and their allies who hold lawful and protected beliefs on non-discrimination based on sex and same sex attraction as “Nazis,” “genocidaires” and “extremists” to intimidate women, instil fear into them and shame them into silence.

...

* Ironically, the most common subject of complaints was Scotland’s then-Chief Minister, following a controversial speech he gave about race relations.

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Measures that I find particularly concerning include reprisals such as censorship, legal harassment, loss of jobs, loss of income, removal from social media platforms, speaking engagements and the refusal to publish research conclusions and articles.

...

I note with concern the way in which provisions that criminalize hate speech based on a number of grounds, including gender expression or gender identity, in countries in the Global North have been interpreted. Some such provisions are being taken to mean that any interrogation of the scope of rights based on gender identity amount to hate speech against non-binary persons and perhaps even incitement of hatred and genocide."²⁴

This resonates with the experiences of our supporters. When we surveyed a sample of supporters (27), we found very high overlap between experiences of online abuse, online accusations, and online censorship. The majority of people who had been harassed online or who believed they would be harassed if they spoke openly about LGB issues also believed they could not speak freely about LGB issues without being sanctioned by digital platforms or accused of abusing others. For example:

- *"I have to be extremely careful who I engage in discussions with about LGB same-sex sexual orientation, because there are people who'll harass me, call me names like 'bigot', or report me for not agreeing that males who say they're women can be lesbians."*
- *"Making factual statements about biology is treated with aggression. People who raise issues around women's and lesbians' rights are grossly and falsely accused of hate speech."*

Further risks arise when such behaviours are enshrined in law. In several overseas jurisdictions, laws about "hate speech" and "non-crime hate incidents" have been used to persecute individuals who speak about biological sex and its importance.

For example, in Norway, lesbian artist Tonje Gjevjon and feminist organiser Christina Ellingsen were investigated by police after voicing their objections online to biological males who called themselves lesbians. Gjevjon stated on Facebook "It is as impossible for men to become lesbians as it is for men to become pregnant. Men are men regardless of sexual fetishes". Ellingsen tweeted "How does it help young lesbians when males claim to be lesbian, too?" and "Why [does] FRI [a transgender activist group] teach young people that males can be lesbians? Isn't that conversion therapy?" Both women were questioned by police for these comments and faced the possibility of three years imprisonment, before their cases were finally dropped.²⁵

Similar cases occurred in the UK. For example, in 2017, Linda Bellos OBE, a lesbian, labour activist and veteran campaigner for racial equality, spoke on a livestreamed panel of feminist intellectuals where she remarked that she would defend herself if male activists for gender identity ideology assaulted her, as they had done recently to another older woman. Bellos, in her late 60s at the time, quipped "If any one of those bastards comes

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anywhere near me, I will take my glasses off and clock 'em". After a complaint by a transgender activist who watched the footage online, Bellos was questioned under caution by police for using threatening, abusive or insulting words or behaviour, then subjected to a private prosecution, which only ended when the Crown Prosecution Service intervened.²⁶

UK police have also leveraged a bizarre system of "non-crime hate incidents". One woman was targeted after tweeting a mild criticism of the Progress Pride flag, while another woman was tracked down via CCTV after she took a photograph of a sticker by lesbian artist Angela Wild, which read "Keep Males Out Of Women-Only Spaces". Police interrogated the women at length before recording "non-crime hate incidents" against them.²⁷

Such incidents are both sinister and an extraordinary waste of public resources.

When online platforms suppress LGB voices

Digital platforms have also silenced voices critical of the impacts of gender identity ideology on LGB people. Individuals have been suspended or banned from social media platforms after using language which most people would find reasonable and factual, such as "Lesbians are female homosexuals", "Men aren't women" and "Women don't have penises."²⁸

For example, University of Melbourne Professor Holly Lawford-Smith has described how speaking openly about her lesbianism and her gender-critical views got her banned from Twitter, from the essay-writing platform Medium, and from the dating sites HER and Hinge.²⁹ According to Lawford-Smith, she was suspended from HER after stating in her dating profile that she was only interested in matching with other lesbians. Their customer service team told her she had been reported for "transphobic" behaviour and that it was against their community guidelines to list people she was not interested in matching with.³⁰

When we surveyed our supporters, many described similar experiences, such as:

- *"I have been sanctioned multiple times on YouTube for discussing LGB issues."*
- *"Over the last 3 years, I have been continually deboosted on X, and been notified twice by Twitter/X that someone in Germany found my account hateful for supporting LGB Alliance, and recently my X account had its reach temporarily limited."*
- *"The threat of being blocked and cancelled is ever present. YouTube, all dating apps falsely claiming to be for lesbians, Facebook, Twitter and numerous other ... websites have banned lesbians from peacefully and respectfully discussing gay rights."*

Dating apps seem especially controlling. Both lesbians and gay men have spoken publicly of being banned or suspended on grounds of "transphobia" because they stated they only wanted same sex partners – e.g. lesbians were banned for saying "only interested in biological women" and "no males".³¹ For example, the British barrister and feminist

organiser Lucy Masoud described being banned from the Hinge app for “transphobia” after she wrote in her dating profile “All I ask is that you be on time, don’t moan about me getting overly involved in Love Island and that you’re a biological female.”³²

Banning LGB people from online spaces for making ordinary statements about biological sex and our own boundaries is deeply disturbing. Even worse is the stifling of debate on matters of wider societal importance, notably the medicalisation of children distressed about gender. Recently, countries such as England, Finland, Sweden, Norway, Denmark and Chile have announced more cautious responses to childhood gender distress, following evidence of the serious risks and harms of the so-called affirmation approach – see for example the UK’s Cass Report and the “WPATH files”.³³ However, we speculate that these necessary changes might have occurred sooner if dissenting voices had not been suppressed online for years. High-profile examples include the Twitter bans (now revoked) of the writer Graham Linehan, feminist philosopher Professor Holly Lawford-Smith and journalist Meghan Murphy.

Adult cyber-abuse complaints system

This section responds to the issues paper Question 8: “Are the thresholds that are set for each complaints scheme appropriate?”

LGB Alliance Australia holds concerns about the complaints system for adult cyber-abuse material. On several occasions, the Office of the eSafety Commissioner appears to have used the complaints system to attempt to remove factual references to the biological sex of high-profile transgender activists.

This matter concerns LGB Alliance Australia because biological sex is core to same sex attraction. Lesbian, gay and bisexual individuals are attracted to our partners on grounds of their physical sex, not their self-declared “gender identity”. To speak freely about our own lives, we must be able to describe sex difference clearly and accurately. This includes being free to name the sex of other individuals, even if this occasionally causes offence.

Recent years have seen a rise in heterosexuals appropriating our language and experiences for their own gratification – e.g. men claiming to be lesbians, women claiming to be gay men. Such claims turn our real experience of same sex attraction – and the isolation, inequality and dangers that traditionally went with it – into a commodity to be enjoyed by heterosexuals.

Many LGB people find this trend bizarre and offensive and we should be free to say so. We should be free to say (for example) “That biological male is not a lesbian – he is a man”.

In light of this, we are concerned that there have been at least three cases where eSafety is alleged to have instructed or urged the removal of content under the adult cyber-abuse complaints system partly on grounds that the content “misgendered” individuals who were, or had been, high-profile transgender activists. In other words, the content

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accurately stated the biological sex of these individuals, a fact which was already in the public domain.

The cases had complexities, but it is the removal of content for “misgendering” which concerns us.

A Canadian news site and a feminist social media platform claimed to have been contacted by eSafety advising them to take down “offensive” content regarding a news story. Apparently eSafety deemed the content offensive enough to remove partly because it referred to a biological male as “he”, “him” and “a man”.³⁴ Similarly, a Canadian cultural commentator had one of his tweets hidden from Australian viewers after eSafety intervened. Again, this appears to have been partly because he named the biological sex of a transgender activist. He claims eSafety told him “the material misgenders the complainant and reiterates that this point is deliberate, which is likely intended to invalidate and mock the Complainant’s gender identity”.³⁵

We find this disturbing. If the claims are correct, eSafety appears to have taken the position that naming someone’s biological sex – in and of itself – constitutes cyber-abuse and is grounds for content removal.

This seems at odds with how the complaints system should function. The issues paper for this review states the system is “reserved for the most severely abusive material”, including “material which sets out realistic threats, places people in real danger, is excessively malicious or is unrelenting” – “The threshold for regulatory action is extremely high”.³⁶ The Online Safety Act states that the regulator must take into account “the standards of morality, decency and propriety generally accepted by reasonable adults”.³⁷

We contend that calling a biological male “he” and “a man” is a statement of scientific fact. In most cases, it is considered normal and unremarkable. Some people may find it insulting or upsetting, but we would be amazed if most Australians thought it severely abusive enough to warrant state censorship.

Individuals who believe they have a “gender identity” more important than their physical body (akin to a religious belief in the soul) should be entitled to express their views publicly. But their belief system should not be enforced by a public regulator.

However, part of the problem may be the Act’s definition of adult cyber-abuse material: as material which an ordinary reasonable person would conclude was likely intended to have an effect on a particular Australian adult of causing serious harm, and which an ordinary reasonable person in the position of the Australian adult would regard as “menacing, harassing or offensive” (our emphasis).³⁸ Serious harm is defined as “serious physical harm or serious harm to a person’s mental health, whether temporary or permanent.” It includes “serious psychological harm” and “serious distress” but not “mere ordinary emotional reactions such as those of only distress, grief, fear or anger.”³⁹

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This complex definition cannot be easy for regulators to apply consistently and impartially. There seems a strong emphasis on the complainant's self-reported perception, including of the relatively mild experience of being "offended".

Curiously, the Act's definition of child cyber-bullying reads as much tighter. It does not mention "offence" and seems to place greater emphasis on bullying behaviour needing to be serious to warrant an intervention by eSafety.

Finally, there seem to have been incidents when the Online Safety Act was misrepresented. At least three holders of X/Twitter accounts allege they received messages from the platform telling them content they posted criticising transgender activists was hidden from Australian viewers because it was "in violation of an Australian law".⁴⁰ From what we can tell, X/Twitter did not explain which law, how it was broken, or the posters' rights to appeal eSafety decisions.⁴¹ The fault may lie with X/Twitter, but such poor communication is disappointing.

eSafety messaging concerning LGB Australians

This section responds to the issues paper Question 16: "What more could be done to promote the safety of Australians online, including through research, educational resources and awareness raising?"

The Online Safety Act formalises the eSafety Commissioner's role in promoting online safety for Australians. Doubtless much of eSafety's work has been high quality and valued by many people. However, we hold concerns about the approach taken to promoting online safety for lesbian, gay and bisexual individuals.

eSafety released an online safety resource for the "LGBTIQ+ community", which:

- Did not address male sexual harassment of lesbians and bisexual women online;
- Did not acknowledge that it is normal for LGB people to go online looking for partners and friends of our own sex;
- Used the word "bisexual" three times, "gay" once (in a negative context) and "lesbian" three times (two of them negative), in contrast to 11 mentions of "trans" (all sympathetic);
- Featured an anecdote portraying women who want female-only spaces as "hateful" and deserving of being reported to the authorities;
- Urged readers to "avoid sending messages that question someone's sexual orientation, gender identity, bodily characteristics and cultural background";
- Listed crass remarks about transgender people's genitals alongside racist slurs as examples of "hate speech".⁴²

A reader who viewed this altogether could get the impression that biological sex is irrelevant to sexual attraction and that seeking same-sex partners exclusively is morally

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wrong, akin to racism. We trust this was not the intention, as such messages would be homophobic.

The resource also featured child-like cartoon pictures of men with beards and body hair wearing large breasts and “sexy” women’s clothing. It is hard to believe this fetishistic imagery was intended to make lesbians and bisexual women feel respected.

eSafety also released a report about “LGBTIQ+” online safety based on interviews with 13 service providers and users. The report largely ignored homophobic harassment of LGB people and male sexual harassment of women online. It focused instead on DEI concepts such as “unconscious bias”, “lateral abuse”, “micro-aggressions”, “cissexism” and “hierarchy of privilege”. It also included unchallenged references to women as “terfs”⁴³ – a misogynist slur which, in real life, is often accompanied by sexual harassment and threats of violence.[†]

Neither of the above projects appear to have engaged with community organisations focused solely on the needs of lesbians, gay men, and/or bisexuals, although eSafety did engage with organisations focused largely or solely on transgender issues.^{‡ 44}

This approach has not gone unnoticed. When we surveyed a sample of our supporters, quite a few perceived the eSafety office as promoting gender identity ideology and trying to silence dissenting views. While some of our supporters were keen to learn more about the positives that eSafety could deliver, others said they would not trust eSafety to act impartially to help LGB individuals who had been abused online if those individuals held views unacceptable to eSafety staff – e.g. that same-sex attraction is based on biological sex.

Such perceptions are worrying to us. We want public regulatory bodies to be seen as trustworthy, impartial and accessible to all Australians and we are sure the eSafety Commissioner wants the same thing. We feel confident that more diverse engagement could help to deliver better products in the future.

LGB Alliance Australia would be glad to discuss any of these issues further.

[†] For examples, see “Terf is a Slur” archive – language and content warning. <https://terfisa slur.com/>

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