

General submission in relation to public consultations surrounding the e-Safety Act, enhancing the role of the e-commissioner, strengthening Online Safety Standards and the National Classification Code and the Communications Legislation Amendment Bill 2023

To whom it may concern

Following my objection in July 2023 to the proposed Communications Legislation Amendment Bill 2023, which I consider presents a grave threat to the freedom of speech in Australia, I have recently become aware of a number of other “public consultations” that are underway that relate to online safety and the control of discourse on the internet, under the direction of the Minister for Communications.

I have also recently become aware of a new (to me) role within Government, namely that of the e-safety Commissioner, an unelected position that appears to have the power to determine what can and can't be seen by Australians online, under the guise of protecting the public from harmful content. Even if this position needs to exist, I would propose that no single person should be in sole charge of this role (it should be a panel of a minimum of 3 people from different parts of society) and that no-one should be allowed to sit on this panel for a period of more than 3 years.

Turning to the range and scope of these additional consultations (see above headline), the information provided is quite confusing as to what exactly the consultation is about and in some cases it is highly technical, such as requiring invasive standards for end-to-end encryption. I do not support a mandate for social media companies to be required to proactively and indiscriminately detect, monitor, and scan the content of its users as it amounts to generalised bulk surveillance that is incompatible with human rights. Nor do I believe that encrypted platforms should be required to comply with detection or scanning requirements. Encryption is crucial for privacy and security in the digital age, and scanning mandates would necessarily undermine this critical technology and the rights it protects.

In the name of delivering online safety, which of course all Australians would support in principle, particularly in relation preventing children from exploitation or exposure to violent or sexually explicit material online (not that there is much evidence of the success of restricting such material in Australia as far as I can tell), Government is once again proposing further controls on what the Australian public can and cannot see or say on social media. The overriding sense that comes across with all these consultations is that the Minister appears to be seeking alternative legislated methods by which to achieve the same outcomes as proposed in the Communications Legislation Amendment Bill 2023. This should be resisted and objected to.

Whether it's the proposed tightening of Online Safety Standards, which will require social media companies to actively police and censor what their users are discussing or posting on their apps (encrypted or not), or face even tougher fines for not doing so; or changes to National Classification codes, that draw more and more topics within the remit of e-safety regulators, there is a growing sense of authoritarianism about such measures that should be disturbing to all.

Australians need to be alive to the laws of unintended consequences. Of course there must be a line drawn about what is unacceptable online, but there are already a range of existing criminal, equality, human rights and defamation legislation in place that can deal with the vast majority of any issues that may arise.

I support the e-safety Commission role as a place where people (or those acting on their behalf) can seek review/redress to any perceived online harms that have been committed. However, as we all know, on many issues (political or social) there is no such thing as right and wrong, simply opinions and many of these opinions will inevitably differ.

For the Australian Government to be seeking amendments to rules and legislation that gives the Government, the Australian Communications & Media Authority or an unelected e-safety Commissioner the power to force digital media companies to take down (censor) information that it determines is “false, misleading or deceptive” and is “likely to cause or contribute to serious harm” is not the way to police public discourse. Who decides such matters?

Whilst I’m sure that the current proposed strengthening of online safety laws on the back of recent violent events in Sydney comes from a place of good intentions, the scope for the abuse of democracy by a less benevolent government using this legislation to shut up or silence opinions that the government of the day does not like or approve of, is truly Orwellian and must be rejected in the strongest possible terms by anyone who believes in free speech and wants to live in a democratic country.

The way to manage online discourse (if indeed such things should be managed at all) is to have more speech not less, thus exposing citizens to more debate and evidence so that they can sort fact from fiction and reach sensible conclusions. Censorship of criminal or slanderous material is of course important and must be supported, but not through mechanisms that can also be used to stifle debate in a free society.

Your sincerely

James Longfield