

# **ABC submission on exposure draft of Online Safety Bill 2020**

**February 2021**



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## Introduction

The Australian Broadcasting Corporation (ABC) welcomes the opportunity to offer comments on the exposure draft of the Online Safety Bill 2020 (Bill) which was released by the Department of Infrastructure, Transport, Regional Development and Communications for consultation.

The ABC supports appropriate measures to minimise the risks of online harm and enable Australians to use online services safely. However, the ABC offers comments and seeks clarification on specific elements of the Bill as they relate to media organisations, in the following broad categories.

- New protections from online harm
- Expanded scope of online safety schemes
- User moderation tools on third party platforms.

## New protections from online harm

The ABC increasingly faces difficulties in protecting its presenters, reporters and social media moderators from online bullying and harassment. Often, while such online conduct can be extremely distressing for the subject, it does not always reach the necessary threshold to pursue court action or police intervention and the remedies currently available at law (e.g., in defamation) do not provide an effective mechanism to quickly stop the offensive conduct. Jurisdictional issues can also arise where the perpetrator commits such conduct in one State or Territory against a victim in a different State or Territory. The current absence of a national framework for the protection of adults from online bullying and harassment adds complexity that can undermine intended schemes of protection.

Accordingly, the ABC is broadly supportive of the measures contained in the Bill, including those which are targeted at the protection of adults from cyber-abuse material, notably contained in Part 3, Division 4 and Part 7 of the current draft of the Bill, and hopes that these measures will help to facilitate safer online experiences.

## Expanded scope of online safety schemes

As a public media organisation, the ABC operates in accordance with a range of regulation and accountability mechanisms. The *Australian Broadcasting Corporation Act 1983* (ABC Act) provides the framework for the ABC and enshrines the importance of maintaining the independence and integrity of the Corporation and the need to ensure its presentation of news and information is accurate and impartial. The ABC provides programs and services in line with its Charter in section 6 of the ABC Act, as an independent and highly trusted news media organisation.

All of the ABC's online content and services are subject to the ABC's Editorial Policies. The Editorial Policies provide the principles and enforceable standards set by the ABC Board to ensure the independence and integrity of the ABC. In addition to the Editorial Policies,

audience interactions and user-generated content on our online services are also governed by our Terms of Use, Privacy Policy and Editorial Guidance Notes on moderating user-generated content and managing children and young people's participation online.

Any changes to the existing legislation and accompanying regulations which capture services provided by the Australian media sector must take account of the ABC's unique role as a public media organisation and established public policy which is designed to minimise the potential for government interference with its editorial decision-making processes.

The ABC believes any dilution of its independence, however subtle, may compromise its ability to fulfil its core functions, including delivering diverse, innovative and sometimes controversial content to audiences.

The exposure draft of the Bill proposes to expand the scope of the *Enhancing Online Safety Act 2015* to apply existing and new regulatory schemes to a broader range of service providers. As drafted, the Bill would appear to apply to the ABC in respect of both the 'designated internet service' (section 14) and 'hosting service' (section 17) definitions.

While the ABC supports the broad policy objectives of the Bill across many areas, it is also concerned that the additional regulation of its services as proposed by the draft Bill would:

- diminish the ABC's independence as a public media organisation and inhibit its statutory duty to maintain an independent news and information service; and
- add an unnecessary additional layer of administrative process to an existing, complaints handling process that has proved robust and effective.<sup>1</sup>

The UK Government has acknowledged the importance of upholding media freedom in its recent response to the consultation on its Online Harms White Paper.<sup>2</sup> In response to concerns raised about the detrimental impact of applying online safety regulation to journalistic content, the UK Government has announced that content published by news publishers on their own sites, as well as user comments on that content, will be exempted from the regulation, and that the legislation will include robust protections for journalistic content shared on in-scope services.

At a minimum, the ABC submits that similar exemptions should exist in the Bill in respect of journalistic content and news publishers that are subject to professional journalistic standards, such as the ABC.

The ABC would also welcome further clarification and consultation about the intended interaction between the revised online content scheme proposed in Part 9 of the Bill and the National Classification Scheme, which is also currently under review.

## **User comment moderation tools on third party platforms**

One of the most common mechanism for protecting users from online harm is moderation of online discussions. The Bill may also be an appropriate vehicle for introducing provisions

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<sup>1</sup> <https://about.abc.net.au/talk-to-the-abc/editorial-complaints/complaints-process/>

<sup>2</sup> [Online Harms White Paper: Full government response to the consultation - GOV.UK \(www.gov.uk\)](#)

which lead to better tools for media organisations to moderate user comments on third-party platforms.

All ABC content is provided on its own platforms and services, across its TV, radio and digital media services. Some of this content is also made available through third-party digital platforms and product ecosystems, including those operated by Google and Facebook. The ABC makes use of these platforms to reach and engage with audiences. Effective use of these platforms helps the ABC to maximise the public benefits it delivers to Australians.

On its own platforms, the ABC applies its moderation process for user-generated content, which is subject to guidelines that assess the content against a risk-assessment framework. High-risk content and all content aimed at children or young people is reviewed before posting, and video content is generally subject to pre-moderation. The ABC also takes this approach on third party platforms, such as Facebook, to the extent permitted by the third-party and in line with the expectations and conventions of the users of the platform.

It would be helpful if publishers like the ABC had more tools to better manage accounts on third-party platforms—for example, Facebook pages do not allow media organisations to effectively moderate or disable harmful user-generated comments. As a result, the ABC has had the experience of having to choose between deploying significant moderation resources or withdrawing stories on contentious topics from these pages.

Without improved tools in this area, media organisations may be forced to withdraw from the use of some of these products and/or increase moderation resourcing in order to mitigate legal risks incurred as a result of being on the platforms.

It was for this reason that the ABC welcomed provisions in the exposure draft of the *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020 (Bargaining Code Bill)* that would have enabled registered news media businesses to better manage “user comments” with respect to content they post within third-party digital platform products, such as Facebook.<sup>3</sup> The proposed provisions would have, on written request by a registered news business, required a designated digital platform to ensure that a registered news business can do the following in relation to covered news content that the news media business had posted itself on a third party digital platform service:

- remove or filter user comments;
- disable entirely the making of user comment; and
- block user comments by particular users and accounts in certain circumstances.

This minimum standard was subsequently removed from the Bargaining Code Bill introduced into the Parliament.

The ABC indicated at a recent hearing on the Bargaining Code Bill that it would support reintroduction of these provisions (they were outlined in section 52S of the exposure draft and further outlined in paragraphs 1.88 - 1.90 of the draft Explanatory Memorandum), or

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<sup>3</sup> ACCC, News media bargaining code, 31 July 2020, Section 52S, <https://www.accc.gov.au/focus-areas/digital-platforms/news-media-bargaining-code/draft-legislation>

alternatively it would encourage policymakers to consider alternative ways in which this issue can be addressed.

The Online Safety Bill may be an appropriate alternative vehicle for these provisions.

The ABC would welcome further clarification and consultation about the intended interaction of the new online content scheme proposed in Part 9 of the Bill, and the current issues that arise when media organisations use third party platforms to engage with audiences but have limited options to moderate comments.