

Online Safety Bill Submission

Dear honorable committee,

I'm grateful for the opportunity to respond to the consultation for the potential introduction of an Online Safety Act. As a disabled queer technologist who specialises in Infrastructure, Security, and Privacy, the internet holds a pretty important place in my heart. For it gave me community and support in turbulent times in my life where offline resources were inaccessible due to my age, didn't exist, or couldn't be accessed due to stigma.

The Online Safety Bill in it's current form will result in additional harm to marginalised communities.

I will expand on some of my recommendations, however I have listed them directly below this paragraph and again at the end of this document, along with additional information and sources.

Recommendations for the Online Safety Bill

- Sunset clause to ensure review.
- Remove Part 9 from the Bill because it's not the right place to address content between consenting adults and will result in a chilling effect on freedom of expression.
- "Reasonable Adult" as a means of assessment must be removed as it's completely subjective.
- Replace the singular role of an appointed E-Safety commissioner and establish an elected multi-stakeholder E-Safety Commission board which has representatives of the general Australian community and industry who are considered experts in their respective fields and practice harm reduction, such as Digital Rights Watch, Electronic Frontiers Australia, Scarlet Alliance, Headspace, Australian Unemployed Workers Union, First Nations Media Australia, People with Disability Australia, Human Rights Law Centre, etc.
- Criminal Investigations should be handed to an organisation who has existing frameworks and relationships to handle these situations, such as the Australian Federal Police.
- Any removal notice must be confirmed by a Federal court.
- When content has been censored under this law, it should be replaced by a transparency notice to the effect.
- Transparency reports with granular data on reporting, conviction, wrongdoing, appeals, etc, must be issued at least semiannually to the public.
- A public appeal process must be included to prevent outright abuse and censorship.
- Add provisions to ensure small business and community organisations have appropriate time to respond to communications and requests from the E-

Safety Office.

- Industry Standard consultation windows must be increased from 30 day to 90 days to ensure small businesses and communities without policy teams or in-house council are given adequate time to respond.
- Existing standard consultation processes, such that of Standards Australia, should be adopted to allow for greater transparency, industry participation and trust.
- Add specific protections to guard against scope creep, ensuring that the E-Safety office cannot seek to end Encryption or seek backdoors.

Sunset Clause

The Online Safety Bill should be required to have a sunset clause set for no longer than 12 months to ensure a review and community consultation is conducted to determine its effectiveness.

Transparency and issues with Data

The E-Safety commissioners role entails educating the Australian public and advising Ministers on internet safety and related research. Currently the research that has been presented by the E-Safety Commissioner has primarily been conducted through an international lens and through problematic organisations that have anti-LGBTQIA+ agendas and are known to inflate their data to suit a specific narrative which ensures their continued funding.

According to the Australian Institute of Criminology, there has been little systemic research into CSAM in Australia. It is fair to say that without further specific APAC research (which includes professionals in the harm reduction space) that we are doomed to make decisions that do not reflect the reality of our situation.

In order to gain trust and prevent abuse of such power, granular transparency reports should be released no later than semiannually to the Australian public and whilst this is not an exhaustive list, it should include at least the following information:

- How many reports were deemed actionable?
- How many reports went on to become a criminal or legal matter?
- How many reports were deemed to be harassment, fake, or abandoned?
- How many of these are repeat or follow up reports?
 - How many of these repeat content reports were due to content being re-uploaded to the same or another platform?
- How many reports were cases of minors consensually sending content to another minor?
- How many reports were appealed by either the platform to the person reported?
- Have there been any reports on wrong-doing or misuse of powers from anyone under the E-Safety commissioners scope, including ACMA employees

who have been under secondment?

- What organisations does the E-Safety Office work with and what are the requirements?
- What organisations have accessed data and how many times?
- On how many occasions have the Online Safety Office shared information with the above organisations?

The E-Safety Commissioner Role needs to be dissolved

If history can teach us anything, it is that no one person should have such authoritative power to deem what is and isn't appropriate for members of the public to access .

As such, I believe that the only appropriate way forward is to immediately dissolve the E-Safety Commissioner role and a multi-stakeholder board should be elected in its place. This should contain representatives from the general public but also industry bodies who are considered experts in their respective fields and practice harm reduction methodologies such as: Digital Rights Watch, Electronic Frontiers Australia, Scarlet Alliance, Headspace, Australian Unemployed Workers Union, First Nations Media Australia, People with Disability Australia, Human Rights Law Centre, etc.

To further underline the point that no single individual should have unilateral decision making power, the current E-Safety commissioner, while serving in an official capacity, has made repeated references to the US First Amendment, which is a right that Australians do not currently enjoy enshrined in law or constitution.

This makes it clear that no one individual should hold this position, but instead a board of people, and that the current E-Safety Commissioner is fundamentally the wrong person to lead this office in any capacity, due to the fact she has been misrepresenting the rights of Australians; lacks a working knowledge and understanding of the Australian environment, and is therefore unable to accurately represent a reasonable Australian adult.

Given the lack of working knowledge and understanding of Australian law and constitution, I firmly believe that any criminal or legal investigation should not be managed by the E-Safety Commissioner and it's merry band of civilian investigators. This power should be completely stripped from the scope of the E-Safety Office duties and assigned to an existing agency, such as the Australian Federal Police, who already have existing powers, frameworks, expertise and relationships to manage cases of CSAM, non-consensual intimate images, harassment, cyberbullying, etc.

Freedom of Expression

Over the last decade in particular, we have seen a consistent push to surveil every day Australians citizens, activists and journalists through policy failures such as the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2015 and Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018.

We are able to externally confirm this grip tightening by looking at the CIVICUS annual report on civil rights of countries worldwide, where in 2019 Australia's democratic status was downgraded from 'open' to 'narrow'.

Given this report and the consequences for industry, I believe it's entirely appropriate for a federal court to confirm the requirement for a takedown notice and when content has been censored under this law, it should be replaced with a transparency notice to that effect.

By appointing a single unelected individual who has unilateral power to decide what is and isn't appropriate for the Australian public to have access to we run the real risk of chilling effects on freedom of expression and speech both of which are important to a working democracy.

Small Business and Communities

The Online Safety Bill in its current form completely disregards the reality and hardship most small businesses and community-run organisations will encounter trying to know what this bill means for their organisation, let alone enforcement or appeal given the tight timelines requested by the E-Safety Office.

Given that the Privacy Act has certain provisions to exclude organisations based on turnover or industry, it should be considered that the Online Safety Bill has the same provisions or different timelines based on turnover or platform size.

In the exposure draft, it is stated that the E-Safety Commissioner will be in a position to create and set industry standards and the consultation for new standards only has to be open for 30 days.

Whist I think it's inappropriate for the E-Safety Commissioner and her office to be setting industry standards, I believe they are dreaming if they believe 30 days is enough time for small businesses to research, evaluate and put together a response on an industry standard. Especially when you consider that majority of small businesses do not have the privilege of having policy teams or in house legal council. Also, there is still an active pandemic interrupting workloads.

I can't think of another area of law or business where 30 days is considered remotely acceptable for a fair consultation period. At bare minimum, the consultation period must be increased from 30 to 90 days to even allow for a reasonable consultation process where businesses and organisations of all sizes and means are able to respond. However, I believe that the E-Safety office shouldn't reinvent the wheel and should adopt an existing process such as that of Standards Australia, which would allow for greater transparency, industry participation and trust.

Conclusion and recommendations

Increasing internet safety for some shouldn't come at the expense of others and in my professional and personal opinion this is what the Online Safety Bill does. This is an intentionally vague and overreaching piece of legislation which gives an unelected individual who fundamentally doesn't understand, or wilfully misrepresents, Australian law and constitution unilateral power to decide what is and isn't appropriate for members of the Australian public to access.

As I stated in my opening, the Online Safety Bill in its current form will result in additional harm to marginalised communities who already experience disproportionate censorship and violence at the hands of social media platforms and services.

Whilst I've included my recommendations, I also endorse the submissions from industry leaders such as Scarlet Alliance, Assembly Four, Prostasia and Digital Rights Watch Australia.

Recommendations for the Online Safety Bill

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- "Reasonable Adult" as a means of assessment must be removed as it's completely subjective.
- Replace the singular role of an appointed E-Safety commissioner and establish an elected multi-stakeholder E-Safety Commission board which has representatives of the general Australian community and industry who are considered experts in their respective fields and practice harm reduction, such as Digital Rights Watch, Electronic Frontiers Australia, Scarlet Alliance, Headspace, Australian Unemployed Workers Union, First Nations Media Australia, People with Disability Australia, Human Rights Law Centre, etc.
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- Add provisions to ensure small business and community organisations have appropriate time to respond to communications and requests from the E Safety Office.
- Industry Standard consultation windows must be increased from 30 day to 90 days to ensure small businesses and communities without policy teams or in-house council are given adequate time to respond.
- Existing standard consultation processes, such that of Standards Australia, should be adopted to allow for greater transparency, industry participation and trust.

- Add specific protections to guard against scope creep, ensuring that the E-Safety office cannot seek to end Encryption or seek backdoors.

Regards,
Eliza Sorensen

Sources and extra information

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