

Response to proposed Online Safety Act

I am responding to the consultation regarding the current draft of the proposed Online Safety Act.

I'm an experienced technologist that specialises in web platforms and products, and have 12 years of professional in a wide variety of industries including regulated industries like medical and financial services.

The internet is critical part of modern society, and **I believe the Online Safety Act in its current form will hurt its value, harm Australian industry, and marginalised communities.**

Summary

- **Review the Classification and Broadcast Services Act of 1995** and bring it up to date as it relies on definitions defined 26 years ago, which is an extremely long time in the internet age.
- **Replace the singular role of eSafety Commissioner and establish an elected eSafety Commission from representatives from the Australian community and Australian industry**, as the power that an unelected single commissioner with minimal checks on power is problematic. **The current eSafety Commissioner Julie Inman Grant is unsuited to hold the position** due to her strong ties to the United States, her history as a lobbyist, and called Australia a "formal penal colony" while acting as eSafety Commissioner in 2019.
- **Add mechanisms to ensure there is adequate oversight and checks on power that the eSafety Commission has to prevent abuse and corruption.**
- **I also endorse and recommend submissions by Digital Rights Watch, Scarlet Alliance, and Assembly Four**

Issues with power and overreach

It is a significant issue that a single unelected individual determines what is considered "offensive" with this bill. This is too much power for one individual,

considering the current scope of this bill. **The eSafety commissioner should be replaced by an elected group of people that represents the Australian community and relevant industries.**

The current commissioner is Julie Inman Grant, who has previously worked for large Silicon Valley companies such as Twitter, Adobe, and Microsoft, and spent most of her life in the United States. Considering her past as a lobbyist, it must be considered that her policies and actions are likely to favour large, established companies in the US.

While acting as eSafety commissioner, she said the following: "[...], Microsoft sent me out to the **formal penal colony in Australia**".

(<https://www.childdignity.com/podcasts/2019/12/16/safeguarding-podcast-safety-by-design-with-julie-inman-grant>)

It seems incredulous that we are meant to expect someone who is willing to say such a phrase in a recorded podcast to be able to decide what "reasonable" means. Imagine if Grant had been sent to Germany instead? Would a "reasonable adult" say "Microsoft sent me out to the formal home of the Nazi party in Germany"?

The Classification Act (1995) defines "reasonable person" as:

Reasonable Adult or Person: Possessing common sense and an open mind, and able to balance personal opinion with generally accepted community standards.

It's abundantly clear to me that Grant does not represent Australia, nor Australian interests, and cannot be in a position to define what "reasonable" means.

Considering Section 28. Powers of the Commissioner says:

The Commissioner has power to do all things necessary or convenient to be done for or in connection with the performance of the Commissioner's functions.

And Section 180, which states states:

The Commissioner has the privileges and immunities of the Crown in right of the Commonwealth.

This seems to be too much power to be giving someone who refers to Australia as "a formal penal colony". **Australians cannot trust someone who clearly has a disdain for our country.**

Australia should not import laws and ideologies from the United States, especially considering their current state.

Effects on Australian industry

The Australian technology industry has already suffered a hit with the Assistance and Access Bill (2018), where the Bill enables government entities to force private Australian citizens to backdoor software in secret, without their employers knowledge.

This led to the **loss in trust in both Australian software companies, as well the inability to trust Australian employees**, as due to the AA Bill's secrecy, the public cannot know what the citizen was tasked with to achieve.

The proposed Online Safety Bill does not list any provisions to consider new and smaller companies, so any service that handles user-generated content would find it difficult to get off the ground.

Considering the current eSafety Commissioner's history of working at Silicon Valley tech companies and her past as a lobbyist, **there is cause for concern that her actions will hurt the Australian tech industry** while benefiting her past employers.

I believe that having an elected eSafety Commission comprised of representatives from the Australian community and Australian technology industry would help to address these concerns.

Dependence on outdated legislation

There are critical definitions in the proposed bill that references ***Classifications (Publications, Films, and Computer Games) Act (1995)***.

Considering it is now 2021, it has been 26 years since the Classifications Act was written – which is a significant amount of time in the internet age – **many parts of this Act is outdated and is no longer fit for use.**

The Australian Law Reform Commission has stated that:

2.44 Stakeholders have identified aspects of the current classification and content regulation framework that have become dysfunctional, are failing to meet intended goals, and create confusion for industry and the wider community.

See <https://www.alrc.gov.au/publication/classification-content-regulation-and-convergent-media-alrc-report-118/2-the-current-classification-scheme-2/assessing-the-current-scheme-2/>

Passing an Act that involves the internet, but references definitions from a 26 year old Act does not make any sense and is likely to cause even more confusion for industry and the wider community, which **disproportionately affects smaller companies and marginalised communities.**

Recommendations

- **Review the Classification and Broadcast Services Act of 1995** and bring it up to date as it relies on definitions defined 26 years ago, which is an extremely long time in the internet age.
- **Replace the singular role of eSafety Commissioner and establish an elected eSafety Commission from representatives from the Australian community and Australian industry**, as the power that an unelected single commissioner with minimal checks on power is problematic. **The current eSafety Commissioner Julie Inman Grant is unsuited to hold the position** due to her strong ties to the United States, her history as a lobbyist, and called Australia a "formal penal colony" while acting as eSafety Commissioner in 2019.
- **Add mechanisms to ensure there is adequate oversight and checks on power that the eSafety Commission has to prevent abuse and corruption.**
- **I also endorse and recommend submissions by Digital Rights Watch, Scarlet Alliance, and Assembly Four**

Thank you for considering my submission.

Regards,
Jack Chen