



Submission regarding the *Online Safety Bill*
exposure draft

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1 Introduction

Pirate Party Australia is grateful for the opportunity to make a submission on the Exposure Draft. Some parts of the proposed Bill are worthwhile, some are not.

2 Overall notes and comments

Notice to the hosting provider is the generally utilised accepted approach to removing online content. Experience with other notice-and-takedown systems, such as YouTube's scheme under the DMCA, reveals problems with false-positive complaints.

This legislation may avoid some of the problems by routing all complaints through the Commissioner, but not other aspects. A significant issue with this Bill is that for most purposes the Commission fulfils all three roles of investigation, decision and enforcement. Oversight is distinctly lacking.

Section 15 (2) (ii), as currently worded, has transphobic insinuations. It could better and more simply be worded as "identifies as female".

This legislation doesn't seem to consider decentralised hosting services. Given the complexity (and in some cases impossibility) of assigning responsibility for content on these services, this is probably for the best.

3 Specific comments on parts

3.1 Part 4 "Basic online safety expectations"

The point of this part is that service providers should provide internal mechanisms for users to make complaints about content before escalating to the Commission. As such, this part could likely be dramatically simplified.

3.2 Part 6: Intimate images

Section 33 (2) and (5) (complaint despite prior consent to post intimate images) are specifically supported on a privacy basis.

3.3 Part 7: Adult Cyber-Abuse Scheme

If speech or material is sufficiently harmful as to be illegal, it's irrelevant whether it occurs online or offline. This Part is fundamentally a bureaucratic way of forcing a takedown, under a lower threshold than, say, defamation law.

However, there is one notable way in which online interactions can be harmful in a way that offline ones aren't: when many people make a negative (but not, individually, that harmful) comment in a short space of time, the effect can be overwhelming.

3.4 Part 9: Online Content Scheme

This part of the Bill is far less worthwhile than the others.

The Pirate Party holds that the Classification Board should operate on a consumer-advice rather than a censorious basis. Consequently we recommend major changes

to the sections relating to the online content scheme, in line with the following principles:

1. content should be classified by the industry on a co-regulatory, consumer advice basis, as it is in the US and in the EU; 2. the Refused Classification rating should be abolished; 3. unclassified content should be restricted to adults only; 4. content that is (otherwise) illegal should continue to be disallowed for sale, distribution or presentation.

Points (1) and (2) are not for this Bill to implement. However, implementation of point (4) may well be done using processes similar to the remedial and removal notices described in sections 109 through 123, whether by the Commissioner or another part of the government.

The aspects of the Bill permitting the Commissioner to pre-empt the decisions Classification Board are farcical. Issues with the classification regime should be dealt with by amendments to that regime.

The App removal notice scheme as described in Division 6 is overbroad. Any service that facilitates the posting of content in general could be considered to facilitate the posting of restricted content!

Inserting "specifically" before "facilitates" will help here.

As an example, Apple makes the choice to not distribute apps with the specific purpose of pornography, but nonetheless permits general-content apps that allow the user to view pornographic material, such as web browsers.

3.5 Part 15: Disclosure of information

Section 212 (g) and (h) should be amended to explicitly specify that the Commissioner must not disclose such information as would cause punishments under foreign law greater than what Australian law provides for.

4 About Pirate Party Australia

Pirate Party Australia is a political party based around the core tenets of freedom of information and culture, civil and digital liberties, privacy and anonymity, government transparency, and participatory democracy. It formed in 2008, and is part of an international movement that began in Sweden in 2006. Pirate Parties have been elected to all levels of government worldwide.