

Committee Secretary
Senate Standing Committees on Environment and Communications
Parliament House Canberra 2600

Monday, 1 March 2021

Dear Secretary,

please find below a brief submission on the Online Safety Bill 2021 and associated Amendments Bill.

Summary The bill before the committee is dangerously flawed and contains provisions for unaccountable online censorship far in excess of previous schemes rejected by the Parliament. In order that some of the bill's more straightforward reform proposals are able to progress, the bill should either be withdrawn and redrafted, split or substantially amended.

Process The Government should be congratulated for producing an exposure draft of such contentious legislation. This is an important practice for bringing major issues to the fore without entangling them in Parliamentary procedure. As expected, the draft bill provoked hundreds of submissions flagging grave concerns. For some reason the Government has ignored this feedback and instead proposes to proceed with an unacceptably compressed timetable, with a largely unamended bill, in the absence of an formal response to red flags many civil society organisations have raised. This response indicates that the Government had already made up its mind, calling into question the purpose of the exposure draft. It therefore falls to the Senate, through this Committee, to prevent the foreseeable risks posed by this bill as drafted.

Background

Senators will no doubt be aware that this is not the first time the Parliament has considered a scheme for open-ended and unaccountable internet filtering and content take-down regime. A vastly less ambitious scheme advanced by the Rudd/Gillard Government was abandoned in 2010 when the then Abbott Opposition indicated it would not support it, effectively denying it the numbers in Parliament. To their credit, having abandoned the scheme, the ALP did not seek to resurrect it, but it should not be lost on Coalition Senators that their predecessors successfully defeated a scheme less far-reaching than the one the Minister now seeks to advance, in the teeth of an election campaign, on grounds which were well argued and entirely justified.

The current process appears to be treading the same path followed in the United States under the FOSTA-SESTA package. Under cover of an attack on sex workers which will significantly increase their risk of coming to harm, the Government seems intent on setting in place intrusive and coercive powers with wide ranging effect, in the hands of an e-Safety Commissioner without recourse to adequate rights of appeal.

According to the exposure draft submission by Scarlett Alliance:

“The Bill has the potential to be harmful to sex workers by:

- Making our advertising, online content, and other digital assets subject to Australia’s arcane classification and broadcasting regulation, which previously related to publications, computer games and broadcast media like television and radio. This Bill applies to a range of different online platforms and electronic services, including social media, instant messaging, online games, websites, apps, internet service providers and others.
- Making us vulnerable to malicious complaints and reports about our digital content;-Causing a ‘chilling effect’ on platforms that could lead to accelerated de-platforming and loss of access to digital tools and services, including those used to advertise services or sell content;
- Requiring the creation of ‘restricted access systems’ to our online content.”

Given the extraordinarily short time in which to make submissions, the Committee should seek access to the full range of exposure draft submissions provided to the Department, and it should strongly push back on the unseemly haste with which the Government appears to be moving.

Recommendations

I strongly endorse the recommendations proposed by Digital Rights Watch in their submission to the exposure draft; namely that if the bill is not withdrawn, the Senate should amend it to:

- Include a sunset clause.
- Remove the adult cyber-abuse content scheme.
- Establish a multi-stakeholder review board for activity covered by the Bill.
- Require transparency reporting on complaints and take-downs.
- Articulate a meaningful and timely appeals process.
- Include an explicit assurance that ISPs and/or digital platforms will not be expected to weaken or undermine encryption in any way to comply with any parts of this Bill.

I draw the Committee’s attention to submissions of digital rights organisations including Digital Rights Watch, Electronic Frontiers Australia, and AssemblyFour. Substantial expertise is available to the Committee, including from those who have been engaged in this debate in various incarnations for well over a decade. As evidenced with other bungled attempts to impose clumsy curtailments on digital rights, it’s far easier to take a breath and avoid doing harm than it is to amend the damage in retrospect.

In trust,

Scott Ludlam

former Senator for Western Australia.