

Statutory Review of the Online Safety Act 2021

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The eSafety Commissioner was established in July 2015 with an initial remit focused on protecting children from cyberbullying.

Since then the eSafety Commissioner's remit has expanded significantly to "protect Australian's from harm", and to have significant enforcement powers under Australia's Online Safety Act 2021.

My concern is that due to the overly broad interpretation of "harm" and "protect", the eSafety Commissioner is using its enforcement powers in ways that are completely at odds with Australian values such as pluralism, tolerance, liberalism and freedom of speech. In short the eSafety Commissioner is now operating as a political censor and is a threat to Australian democracy. I am further concerned about the eSafety Commissioner's role in establishing the "Global online safety regulator", and the risks these organizations pose to democratic freedoms worldwide.

My recommendation therefore is that the eSafety Commissioner should be stripped of all enforcement powers, including its ability to order take down notices, fines and reporting notices; furthermore its other operations involved in building a global censorship network should also immediately cease and be defunded.

Evidence that the eSafety Commissioner is operating as a censor of political speech

Emmanuel Mar Mari attack

On 15 April 2024 Bishop Mar Mari Emmanuel was attacked while giving a sermon at Christ The Good Shepherd Church. Meta, Microsoft, Google, Tik Tok, Reddit and Telegram all responded to requests and takedown notices issued by the eSafety Commissioner. X also geo-blocked this content.

The blocking of this content (although imperfectly implemented) deprived Australian's of being able to view this horrific and violent attack and to be informed about a terrorist attack on its own soil. In short the eSafety Commissioner was attempting to censor *news*.

The reasoning of the eSafety Commissioner in this instance are particularly puzzling but seem to be based on two unconnected arguments:

- “a key issue of concern for me throughout this process, was the ease by which children were able to access this extremely violent stabbing video on X”
- The video of the attack may go “viral, potentially inciting further violence and inflicting more harm on the Australian community”

Both of these arguments cannot be implemented without trampling on fundamental rights in a liberal democracy. Firstly, as children may view *any online content*, this is effectively applying the same standard of censorship for children and adults. To apply such a standard to social media platforms would deprive adults from viewing all content not suitable for children. The second argument highlights how ambiguity in the term “harm” allows the eSafety Commissioner to abuse its powers to censor clearly newsworthy content. Violent terrorist attacks are a clear matter of public interest, is the eSafety Commissioner also proposing to censor content such as the murder of George Floyd or the September 11 Terrorist attacks? How can Australian democracy continue to function if Australian’s are impeded from viewing and discussing newsworthy incidents such as terrorism or other acts of violence?

The fact that the eSafety Commissioner dropped its legal case against X unfortunately does not restore free speech in Australia, because: Meta, Microsoft, Google, Tik Tok, Reddit and Telegram all complied with take down notices, and X also did so, it only declined to do so globally. Furthermore, the eSafety Commissioner has made it clear it will seek other paths to censor this content.

Chris Elston (Billboard Chris)

Teddy Cook is [REDACTED]
[REDACTED] is also director of community health at ACON an Australian tax payer funded body that promotes medicalized treatments for gender dysphoria for adults and children without “gatekeeping”. [REDACTED] cook was appointed to participate in the “WHO GUIDELINES ON THE HEALTH OF TRANS AND GENDER DIVERSE PEOPLE” on the 15 January 2024.

Canadian man Chris Elston criticized the appointment of [REDACTED] Cook to this body on X. Chris is known anti-child mutilation campaigner whose views on the treatment of childhood gender dysphoria are roughly in line with the Cass review, and the Swedish and Finish approaches but differ from the medicalized approach favoured in Australia, and much of the United States. Mr Eston’s criticism of [REDACTED] Cook referenced Cook’s social media conduct that included posting naked images, and references to “trans-orgies” and bestiality.

On the 22nd March 2024, the eSafety Commissioner issued a take down notice for this post on X, on the basis that “an ordinary reasonable person would conclude that the Material is intended to cause serious harm to the Complainant”.

The take down notice further argues that: harm was caused by “mis-gendering” Cook. Believers in gender identity theory believe that pronouns should reflect not a person’s sex, but a persons declared gender identity. Therefore according to eSafety, Mr Elston should use male pronouns when referring to ■■■ Cook.

As Mr Elston, has a long standing opposition to medicalized approaches to treating gender dysphoric youth and an equally long standing opposition to gender identity theory it seems clear that Mr Elston’s intent was to a) speak clearly using sex-based pronouns; and b) oppose ■■■ Cooks appointment to an international body based on both her ideological bent and her online conduct.

The reasonableness of Mr Elston’s arguments aside, the eSafety commissioner sought to globally censor the speech of a Canadian man criticizing the appointment of an Australian ■■■■■■■■■■ to an international body. This censorship is egregious both in that it is clearly aimed at political speech, and that it was intended to be implemented globally.

The idea that “misgendering” is unacceptable reaches its ludicrous extreme in the case of discussing male sex offenders who identify as women. Under questioning in senate estimates Julie Inman Grant refused to say if “misgendering” a male sex offender online would result in a take-down order by eSafety.

Celine Baumgarten (Celine against the machine)

The eSafety Commissioner has successfully censored a [video exposing an LGBTQ club in an elementary school in Melbourne](#). Ms Baumgarten shared public domain information about the school, a teacher and their “LGBTQ club” with some disapproving commentary that schools, especially primary schools should have these sorts of clubs. This infringed upon not only Ms Baumgarten’s freedom of speech, but also the right of Australian’s to know what is going on in Australian schools.

Free speech is for everyone, including for those with “unreasonable views”, however concerns about social transition and the ethics of gender medicine are shared by the Cass Review which states: “the University of York’s systematic review found that there is no clear evidence that social transition in childhood has positive or negative mental health outcomes, there are studies demonstrating that for a majority of young children presenting with gender incongruence, this resolves through puberty.”

Again free speech is for everyone, including those with “fringe views”, but Ms Baumgarten’s concerns are actually aligned with the largest ever independent review into the treatment of gender dysphoria. The eSafety Commissioner’s censorship of political speech in this instance therefore stifles debate, and makes Australian’s less informed. Importantly, to those who share the concerns of Cass and Baumgarten, even endangers children in direction contradictions with the goals of the eSafety Commissioner.

Online Hate Notice Issued to X

The eSafety Commissioner has issued a non-compliance notice to X

The eSafety Commissioner is concerned that there is less moderation on the platform due to a greatly reduced Trust and Safety team at X, and has argued that this has resulted in an increase in “hate speech”.

In terms of “hate speech”, I agree with the Foundation for Individual Rights and Expression that states “the government cannot regulate hate speech without inevitably silencing the dissent and dialogue that democracy requires”.

While platforms such as X can have their own moderation policies, these are relationships between the platform and the users of the platform. To have an external regulator such as eSafety to insist or interfere with a moderation policy is a disruption to democratic norms.

Indeed, in the US context (which of course has robust speech protections) this is at the heart of the Murthy v Missouri case before the US Supreme Court.

An apparent example of concern to Julie Inman Grant is X’s re-instatement of previously banned accounts: “To be permanently banned on twitter you have to have violated the policies pretty egregiously”.

One of the most famous cases of an Australian being suspended from twitter is Australian academic philosopher Holly Lawford Smith. Details of her case are here: <https://hollylawford-smith.org/an-open-letter-to-twitters-board-of-directors/>. It seems that Ms Lawford-Smith’s “egregious” violation of the policy is simply to “know what a woman is”.

Given eSafety’s continuous contempt for political speech of ordinary people both within and beyond Australia I further call for eSafety’s powers to issue non-compliance notices to also be rescinded.

Hiding posts of Australian politicians

The official X account of eSafety has marked [this post](#) which is a repost of an Australian politician, transparently this is a government attempting to silence political speech. The tweet also shut down the reply function.

‘Dog Whistles’ as ‘Online Harm’

Julie Inman Grant was criticized on X by X’s owner Elon Musk. Ms Grant then blamed doxxing of her family members and other harassment not on the people who did the doxxing and harassment, but on Mr Musk himself.

Of course all harassment and doxxing experienced by Ms Grant and her family is to be strongly condemned, but the way that Ms Grant implies criticism about the way she runs her office with ‘harm’ is particularly disturbing. The implication is that Musk is responsible for ‘online harm’ because he is responsible for any inappropriate behavior of anyone who reads his post and agrees with him.

This is a scary view for the holder of an office with significant censorial power. This perspective makes the definition of “online harm” dangerously subject to interpretation, and scarily open to abuse.