

Response to request for submission on a new Online Safety Act
February 14, 2021

Please keep this submission anonymous and private.

While I agree generally with the aims of the eSafety commissioner and protecting children from harm, much of the bill is extremely broad in nature and grants extensive amounts of power to the commissioner and their delegates. Some specific notes follow.

- **S34(2), s37(2), s42(2)** – The blanket ability of the commissioner to investigate in whatever conduct the Commissioner sees fit is extremely broad, especially (for instance) where cases may involve matters such as sexual orientation where discretion or safety become issues.
- **ss106-107** – Generally, permitting the Commissioner to classify material as either Class 1 or Class 2 in cases where the material has not actually been classified is essentially inviting a judgement call by the Commissioner, which is and should not be their function. This function is better served by the classification board.
- **Part 14:** The powers of the Commissioner to demand the production of evidence on risk of jail time and fines should in my view only be permissible in relation to matters where harm against specific individuals (hate/revenge porn, child abuse videos etc) is a part of the related matter. The power to compel is overkill for complaints and investigations where no harm or potential harm is involved in the production or consumption of the offensive material in question.
- **ss212(1)(g) and 212(1)(h)** – A blanket permission for disclosure of related information to authorities of foreign powers is especially troubling in relation to (for example) Chinese dissident crackdowns on the topics of Hong Kong and the Uighurs, American intelligence operations, and other troubling and authoritarian regimes who rely on the ‘regulation’ of social media or related services.
- **s221** – While it is proper that complainants and those following the direction of the Commissioner are protected from civil liability, in context of the following section, this shield becomes an issue.
- **s222** – The abdication of liability of the Commissioner or delegates for damages incurred for any act or omission performed ‘in good faith’ is extremely broad. The ‘good faith’ efforts of the Commissioner should not be an unbreakable shield from which they can pursue whatever ‘good faith’ agenda they happen to believe in. What prevents the commissioner from arbitrarily deciding – though in good faith – that certain acts are now offensive in nature (for example, the provision of safe-sex information generally, information on transgender individuals etc) and would fall under Class 1 or Class 2 Material? What remedy is provided for damages incurred in this scenario?

Thank you for reading.