

Queensland Community Safety Bill 2024

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FSU Australia Submission on the Queensland Community Safety Bill 2024

Introduction

The Free Speech Union of Australia (FSU) is a non-profit organisation that aims to protect and promote the free speech rights of our members and Australians more broadly. We envision a flourishing Australian civil society that engages in vigorous debate and values the expression of dissenting ideas.

Our submission focusses on one aspect of the Bill, namely the aspect concerning 'online criminal content'.

Issue 1: Glorifying unlawful conduct

The Bill proposes to add the power for the police to take down any material that they perceive to have the purpose of 'glorify[ing] ... unlawful conduct', or to 'increase the reputation' of those persons involved in a crime (as set out in proposed Section 745D).

Whilst we understand the concern of preventing the promotion of criminal content, we do not consider this is an appropriate measure. Allowing the public to see the criminal conduct in question allows for accountability, including of the Police, which is an important safeguard in a democratic society. We also imagine that it assists the Police in identifying those involved in the crime. Nor is it clear to us how the police would decide the intention of posters. We consider this is unworkable, as well as being a de-facto limitation on political expression. The recent decision of the Federal Court in *eSafety Commissioner v X Corp [2024] FCA 499* confirms this.

Issue 2: Lack of safeguards

Whilst we think the objective of the bill is inappropriate, the proposed implementation is another matter. Worryingly, the Bill contains no safeguards, and Police Officers appear to be able to issue notices to providers on the basis of mere belief. The Bill contains the following fundamental flaws:

1. **No notification provision to end users:** It lacks provision for any notification to the end user, so they can challenge the notice. There should be a clear right of appeal. For that to be effective, one must actually know about the notice.
2. **No due process:** A notice can be issued on the basis of 'discretion', rather than taking into account any competing considerations, such as Freedom of Expression. We observe there is no 'procedural fairness' requirement. Instead, any failure of procedural fairness is said to expressly not 'affect the validity of the notice' (see proposed Section 745F). This is not compatible with the constitutionally implied freedom of political expression.
3. **Disproportionate Penalty:** The present Bill has penalties which are both extravagant and grossly disproportionate, amounting to up to \$1.5 million per contravention of the notice (see proposed Section 745E(4)). Given the number of notices that might be issued out of one event, this could quickly spiral into a large amount of money.
4. **Lack of Judicial Oversight:** The Bill does not have any mechanism to ensure the notices are appropriately tailored, or are done judicially. We would expect that something like this should require an application to the Magistrates Court and for the Magistrate to be required to sit with someone who has appropriate technological expertise (as is done under the regime in New Zealand: see Section 17 of the Harmful Digital Communications Act 2015 (NZ)).
5. **Allowing the Police to Issue Notices:** A police officer should not have the power to personally issue such a notice. Allowing the police to quietly suppress footage which may include their own (mis)conduct is not a good look, nor appropriate in a democratic society.
6. **Failing to adopt the least restrictive approach:** The present Bill fails to take the least restrictive approach towards restricting access to content, but rather takes an all or nothing approach of removing (or keeping) the content. For example, content could be temporarily shadow-banned and have its distribution slowed in the immediate aftermath (say for 24 to 48 hours), rather than being removed entirely. This would also have the advantage of helping the police to track those driving its distribution and thus those who were likely there, whilst not preventing those from seeing the material who are interested in it. The present proposal goes well beyond the stated intention of preventing content from going 'viral'.
7. **Requiring total deletion rather than hiding material:** The wording 'remove the material from the service' is unfortunate, as it suggests the material should be deleted entirely, rather than merely not being available to the public. This has considerable evidential issues for any subsequent proceedings. It may also not be possible, given the range of backup facilities used by online providers.

Conclusion

If someone is involved in a violent Act, then we suggest there are already appropriate means for dealing with them, rather than attempting to suppress what might have happened. We would argue that the present proposal risks the reputation of the Police Service and thus will likely reduce engagement with it.

This is not an effective crime prevention strategy.

We would be pleased to attend Parliament and answer any questions you may have.

Yours sincerely

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