

Statement of Reasons

Date of decision	15 January 2025
Decision	Refusal to give a removal notice under section 88 of the <i>Online Safety Act 2021</i> (Cth)
Decision-maker	Manager Adult Cyber Abuse
Case reference	ACA-2025-0593398

Introduction

1. I am a delegate of the eSafety Commissioner (**eSafety**) for the purposes of section 88 of the *Online Safety Act 2021* (Cth) (the **Act**).
2. This statement sets out my reasons to refuse to give a removal notice under section 88 of the Act on the basis that the requirements in section 88(1) have not been met (**a Notice**).

Legislative framework

3. Part 7 of the Act establishes a scheme for the removal of cyber-abuse material targeted at an Australian adult from a social media service, relevant electronic service, designated internet service and hosting service.
4. Section 88 provides eSafety with the power, if certain requirements are met, to give a removal notice to a designated internet service.
5. One of these requirements, as outlined in subsection 88(1)(b) is that the eSafety Commissioner is satisfied that the material is or was cyber-abuse material targeted at an Australian adult.
6. Cyber-abuse material targeted at an Australian adult is defined in section 7(1) of the Act to mean material which meets all of the following conditions:
 - a. It is provided on a social media service, relevant electronic service or designated internet service;
 - b. An ordinary reasonable person would conclude that that it is likely that the material was intended to have an effect of causing serious harm to a particular Australian adult;
 - c. An ordinary reasonable person in the position of the Australian adult would regard the material as being, in all the circumstances, menacing, harassing or offensive; and
 - d. Such other conditions (if any) as are set out in the legislative rules.

Decision

7. I decided to refuse to give a Notice under section 88 of the Act based on the Material and the reasons below.

Background

8. On 9 January 2025, Reuben Kirkham (the **Complainant**) made a complaint to eSafety under section 36(1) (the **eSafety Complaint**).
9. The eSafety Complaint provided a URL link to the relevant material and detailed arguments and submissions. The material was posted by Linda Robinson on the Council on Foreign Relations blog on their website, www.cfr.org, and consists of comments made by the eSafety Commissioner Julie Inman Grant during a discussion about Online Safety of over one hour in duration facilitated by Linda Robinson where the Commissioner was asked and answered a range of questions, including about experiences implementing online safety measures in Australia. In response to one question, the Commissioner commented about the Free Speech Union and X (the **Material**).
10. On the 4 January 2025, the Complainant made a complaint to the provider, the Council on Foreign Relations, by email (the **Provider Complaint**).
11. On 15 January 2025, I made the decision to refuse to give a Notice on the basis that the prerequisite in subsection 88(1)(b) was not met.

Information and documents relied upon to make decision

12. I have taken the following information and documents into account in making my decision:
 - a. The Material;
 - b. The eSafety Complaint;
 - c. The Provider Complaint;
 - d. eSafety's Adult Cyber Abuse Scheme Regulatory Guidance (December 2023);
 - e. X Corp. and eSafety Commissioner [2025] ARTA 852; and
 - f. The relevant sections of the Act which are extracted in **Appendix A**.

Reasons for decision

13. Having considered the above documents and information, the precondition to giving a Notice in section 88(1)(b) is not met because I am not satisfied that the Material is cyber-abuse material targeted at an Australian adult within the meaning of section 7 of the Act. This is because:
 - a. An ordinary reasonable person would not conclude that it is likely that the Material was intended to have an effect of causing serious harm to a **'particular Australian adult'** based on the following. As noted by Deputy President O'Donovan of the Administrative Review Tribunal, '[t]he behaviour of concern is not upsetting or distressing comments made generally, but behaviour where individuals are targeted.'¹

¹ X Corp. and eSafety Commissioner [2025] ARTA 852 at [39].

- b. The Material contains comments directed at the actions of an entity, not an Australian adult. There is no reference in the Material to the Complainant as an individual or any other particular Australian adult.
 - c. The Material does not identify the Complainant as having any connection with the entity such it could not be concluded that the Material was directed at any particular Australian adult.
 - d. I am of the view that the Complainant's inference that as an employee of the entity the Material targets him personally is not persuasive.
14. As I am not satisfied that the Material targets a 'particular Australian adult', I have not been required to reach a conclusion on whether other parts of the definition of cyber-abuse targeted at an Australian adult are met.
15. I will, however, note that threshold imposed by section 7 of the Act is particularly high. The requirement that an ordinary reasonable person would conclude that it is likely that the Material was intended to have an effect of causing serious harm '...is what converts section 7 from a provision that would otherwise provide for a broadly available censorship tool based on emotional responses to posted material, to a provision that protects people from a much narrower form of conduct where causing serious harm to a particular person was, in the relevant sense, intended.'²
16. The threshold in section 7 of the Act will not be met easily as '[a] finding by the ordinary reasonable person that a person was setting out to cause serious harm to another is a serious, adverse finding with implications for freedom of expression...'³
17. While, as noted above, I have not been required to reach a conclusion on these matters, taking into account the points at [15] and [16], I am of the view that it is unlikely that either of the following requirements would be met if the Material did target a particular Australian adult:
- a. That an ordinary reasonable person would conclude that it is likely that the Material was intended to have an effect of causing serious harm; or
 - b. That an ordinary reasonable person in the position of the Australian adult would regard the Material as being, in all the circumstances, menacing harassing or offensive.

Conclusion

The reasons provided above are the reasons for my decision to refuse to give a Notice under section 88 of the Act in relation to the Material.



Manager, Adult Cyber Abuse Section (EL2)
Delegate of the eSafety Commissioner

Date: 29 August 2025

² Ibid at [21]

³ Ibid at [119].

Appendix A – Extracts of relevant sections of the *Online Safety Act 2021 (Cth)*

7 Cyber-abuse material targeted at an Australian adult

- (1) For the purposes of this Act, if material satisfies the following conditions:
- (a) the material is provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service;
 - (b) an ordinary reasonable person would conclude that it is likely that the material was intended to have an effect of causing serious harm to a particular Australian adult;
 - (c) an ordinary reasonable person in the position of the Australian adult would regard the material as being, in all the circumstances, menacing, harassing or offensive;
 - (d) such other conditions (if any) as are set out in the legislative rules;
- then:
- (e) the material is **cyber-abuse material targeted at the Australian adult**; and
 - (f) the Australian adult is the **target** of the material.

Note: For **serious harm**, see section 5.

- (2) An effect mentioned in paragraph (1)(b) may be:
- (a) a direct result of the material being accessed by, or delivered to, the Australian adult; or
 - (b) an indirect result of the material being accessed by, or delivered to, one or more other persons.

36 Complaints about cyberabuse material

Complaint made by an Australian adult

- (1) If an Australian adult has reason to believe that the adult was or is the target of cyber-abuse material that has been, or is being, provided on:
- (a) a particular social media service; or
 - (b) a particular relevant electronic service; or
 - (c) a particular designated internet service;
- the adult may make a complaint to the Commissioner about the matter.

Complaint made on behalf of an Australian adult

- (2) If:
- (a) a person (the **responsible person**) has reason to believe that cyber-abuse material targeted at an Australian adult has been, or is being, provided on:
 - (i) a particular social media service; or
 - (ii) a particular relevant electronic service; or
 - (iii) a particular designated internet service; and

- (b) the adult has authorised the responsible person to make a complaint about the matter;

the responsible person may, on behalf of the adult, make a complaint to the Commissioner about the matter.

Complaint about material that was provided on a service

- (3) If:

- (a) a complaint made by a person under this section concerns material that has been, or is being, provided on:

- (i) a social media service; or
- (ii) a relevant electronic service; or
- (iii) a designated internet service; and

- (b) the person wants the Commissioner to give the provider of the service a removal notice under section 88 requiring the provider to remove the material from the service;

the complaint under this section must be accompanied by evidence that the material was the subject of a complaint that was previously made to the provider of the service.

- (4) For the purposes of subsection (3), evidence must be in a form required by the Commissioner.

- (5) If:

- (a) a social media service; or
- (b) a relevant electronic service; or
- (c) a designated internet service;

issues a receipt or complaint number to a complainant as part of its ordinary business processes, the Commissioner may require evidence to be in the form of the receipt or complaint number.

- (6) If:

- (a) a social media service; or
- (b) a relevant electronic service; or
- (c) a designated internet service;

does not issue a receipt or complaint number to a complainant as part of its ordinary business processes, the Commissioner may require evidence to be:

- (d) in the form of a screen shot; or
- (e) in the form of a statutory declaration; or
- (f) in such other form as the Commissioner specifies.

- (7) Subsections (5) and (6) do not limit subsection (4).

- (8) A requirement under subsection (4), (5) or (6) is not a legislative instrument.

88 Removal notice given to the provider of a social media service, relevant electronic service or designated internet service

- (1) If:

- (a) material is, or has been, provided on:

- (i) a social media service; or
- (ii) a relevant electronic service; or

- (iii) a designated internet service; and
- (b) the Commissioner is satisfied that the material is or was cyber-abuse material targeted at an Australian adult; and
- (c) the material was the subject of a complaint that was made to the provider of the service; and
- (d) if such a complaint was made—the material was not removed from the service within:
 - (i) 48 hours after the complaint was made; or
 - (ii) such longer period as the Commissioner allows; and
- (e) a complaint has been made to the Commissioner under section 36 about the material;

the Commissioner may give the provider of the service a written notice, to be known as a **removal notice**, requiring the provider to:

- (f) take all reasonable steps to ensure the removal of the material from the service; and
 - (g) do so within:
 - (i) 24 hours after the notice was given to the provider; or
 - (ii) such longer period as the Commissioner allows.
- (2) So far as is reasonably practicable, the material must be identified in the removal notice in a way that is sufficient to enable the provider of the service to comply with the notice.

Notice of refusal to give a removal notice

- (3) If the Commissioner decides to refuse to give a removal notice under subsection (1), the Commissioner must give written notice of the refusal to the person who made the complaint to the Commissioner under section 36.