

10 February 2022

Hon Don Harwin MLC

Chair

Standing Committee on Social Issues

New South Wales Parliament

By Email: Committee.SocialIssues@parliament.nsw.gov.au

Dear Chair,

Thank you for your correspondence of 3 February 2022 in relation to the inquiry of the NSW Legislative Council's Standing Committee on Social Issues into the *Crimes Amendment (Display of Nazi Symbols) Bill 2021* (the Bill).

As you know, eSafety is Australia's national independent regulator for online safety.

eSafety supports the intention behind this Bill and recognises the harm that online hate symbols, especially symbols associated with the Nazis, can have, including on at-risk and marginalised groups.

To assist the Committee in its considerations, we welcome the opportunity to provide comments on how this Bill may interact with eSafety's enabling legislation the *Online Safety Act 2021* (Cth) (OSA) as set out below.

1. We note that the cl 7 of the Bill defines 'public act' to include '...broadcasting and communicating through social media and other electronic methods'. We understand that 'social media' and 'electronic methods' are not defined in the *Crimes Act 1914* (NSW). You may wish to consider the definitions in the OSA for social media service, relevant electronic service and designated internet service as these terms provide clarity on a range of online services which are captured by our legislation. It is ideal to align legislative definitions, where possible, to reduce inconsistency and promote coordination of regulatory efforts.
2. eSafety is empowered under part 9 of the OSA to investigate and seek removal of illegal and restricted content, known as the Online Content Scheme. The legal definition for the classes of material we can remove, known as class 1 and class 2 material, is linked to the *National Classification Code* (Classification Code). Relevantly, under the Classification Code we can generally only remove online hate symbols if they 'promote, incite or instruct in matters of crime or violence', though depending on the circumstances it may fall within other aspects of class 1 material. As such, we are not able to automatically seek removal of depictions of swastikas, or other symbol of or associated with the Nazi regime, without understanding the context and circumstances of the image. The passage of the Bill would not change this position.

Should the Bill pass, we would welcome a point of contact that we can liaise with in terms of the best way to receive referrals from NSW Police and vice versa and potentially to ensure preservation of evidence or deconfliction if required.

Finally, we note that the enabling legislation of the *National Classification Code* is administered by the Department of Infrastructure, Transport, Regional Development and Communications. Their input and co-ordination could be sought as more jurisdictions enact similar legislation, noting one of the objectives of the Classification Code is to have a consistent approach to classification across Australia.

We hope this information will assist you.

We wish you the very best with your inquiry.

Yours faithfully,

Julie Inman Grant
eSafety Commissioner