



17 October 2019

The Hon Paul Fletcher  
Minister for Communications, Cyber Safety and the Arts  
Parliament House  
Canberra ACT 2600  
Via email: [Paul.Fletcher.MP@aph.gov.au](mailto:Paul.Fletcher.MP@aph.gov.au)  
CC: [dlo@communications.gov.au](mailto:dlo@communications.gov.au)

  
Dear Minister,

**Telecommunications (Protecting Australians from Terrorist or Violent Criminal Material) Direction (No. 1) 2019 [F2019L01159]**

The Senate Standing Committee on Regulations and Ordinances assesses all disallowable legislative instruments against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and seeks your advice in relation to this matter.

***Incorporation***

The *Legislation Act 2003* (Legislation Act) provides that instruments may incorporate, by reference, the provisions of Acts, legislative instruments or other documents as they exist at particular times. It also provides that the explanatory statement to an instrument must:

if any documents are incorporated in the instrument by reference—  
contain a description of the incorporated documents and indicate how they may be obtained.<sup>1</sup>

With reference to these matters, the committee notes that the instrument incorporates the *List of websites hosting terrorist or violent criminal material (No. 1)* (the list). The explanatory statement explains that the eSafety Commissioner does not intend to publish the list, and that this approach is intended to minimise the risk of drawing further attention and traffic to domains whose operators provide access to material which promotes, incites or instructs in terrorist acts or violent crimes.<sup>2</sup>

The committee appreciates the importance of protecting Australians from exposure to harmful material, and preventing broad dissemination of the list. Nevertheless, from a scrutiny perspective, the committee reiterates that the Legislation Act expressly requires the explanatory statement to an instrument to indicate where any incorporated document

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1 Paragraph 15J(2)(c) of the Legislation Act.

2 Explanatory statement, p. 4.

may be obtained. It appears that this requirement has not been satisfied in relation to the present instrument.

**In light of the matters above, the committee requests your advice as to whether the explanatory statement to the instrument could be amended to indicate how the *List of websites hosting terrorist or violent criminal material (No. 1)* may be obtained. If it is not intended to amend the explanatory statement, the committee requests your advice as to how the requirements of paragraph 15J(2)(c) of the *Legislation Act 2003* are to be met.**

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **31 October 2019**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to [regords.sen@aph.gov.au](mailto:regords.sen@aph.gov.au).

Thank you for your assistance with this matter.

Yours sincerely,



Senator the Hon Concetta Fierravanti-Wells

Chair

Senate Standing Committee on Regulations and Ordinances



**PAUL FLETCHER MP**  
Federal Member for Bradfield  
Minister for Communications,  
Cyber Safety and the Arts

MS19-001026

Senator the Hon Concetta Fierravanti-Wells  
Chair  
Senate Standing Committee on Regulations and Ordinances  
Parliament House  
Canberra ACT 2600

Dear Chair

*Concetta*

Thank you for your letters of 17 and 23 October 2019 concerning the *Telecommunications (Protecting Australians from Terrorist or Violent Material) Direction (No.1) 2019* (the Instrument) and your suggestion that I invite the Committee to receive a private briefing on the issues raised regarding the Instrument.

There would be merit in such a briefing given the sensitivity of the issues involved, and it would be appropriate for this briefing to be provided by the eSafety Commissioner. I would ask that the Committee Secretariat liaise with my office or directly with the eSafety Commissioner's Executive Assistant Ms Karen Pasfield (02 9334 7838 or [Karen.Pasfield@eSafety.gov.au](mailto:Karen.Pasfield@eSafety.gov.au)) to arrange a mutually convenient time for Committee members and the Commissioner.

I would also ask that the Committee take no further action in relation to the Instrument until the briefing can be provided and the Committee can consider the issues raised.

I have provided a copy of this letter to the eSafety Commissioner.

Yours sincerely

Paul Fletcher

*3/11/2019*



AUSTRALIAN  
SENATE

**Senate Standing Committee on Regulations and Ordinances**

Parliament House, Canberra ACT 2600  
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14 November 2019

The Hon Paul Fletcher MP  
Minister for Communications, Cyber Safety and the Arts  
Parliament House  
Canberra ACT 2600  
Via email: [Paul.Fletcher.MP@aph.gov.au](mailto:Paul.Fletcher.MP@aph.gov.au)  
CC: [dlo@communications.gov.au](mailto:dlo@communications.gov.au)

*Paul*

Dear Minister,

**Telecommunications (Protecting Australians from Terrorist or Violent Criminal Material)  
Direction (No. 1) 2019 [F2019L01159]**

Thank you for your letter of 3 November 2019 to the Senate Standing Committee on Regulations and Ordinances, in relation to the above instrument.

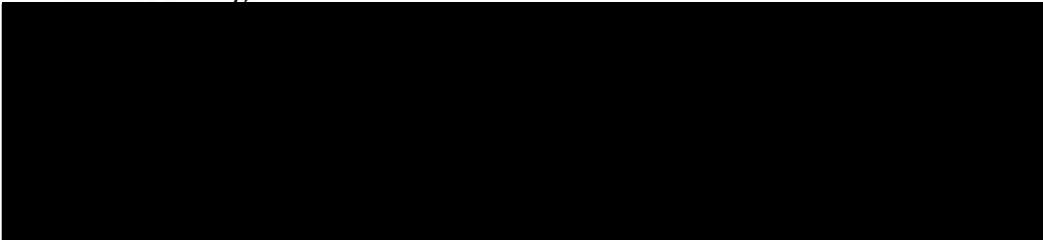
The committee has resolved to accept your offer of a private briefing with the eSafety Commissioner regarding the committee's scrutiny concerns. Accordingly, I have directed the committee secretariat to liaise directly with the Office of the eSafety Commissioner to arrange a mutually convenient time for such a briefing.

I note that, in the interests of transparency, all correspondence relating to this matter will be published on the committee's website, and recorded in the *Delegated Legislation Monitor*.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to [regords.sen@aph.gov.au](mailto:regords.sen@aph.gov.au).

Thank you for your assistance with this matter.

Yours sincerely,



**Senator the Hon Concetta Fierravanti-Wells**  
Chair  
Senate Standing Committee on Regulations and Ordinances



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Senate Standing Committee on Regulations and Ordinances

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27 November 2019

The Hon Paul Fletcher MP  
Minister for Communications, Cyber Safety and the Arts  
Parliament House  
CANBERRA ACT 2600

Dear Minister,

**Telecommunications (Protecting Australians from Terrorist or Violent Criminal Material) Direction (No. 1) 2019 [F2019L01159]**

Thank you for your letter of 3 November 2019 to the Senate Standing Committee on Regulations and Ordinances (the committee) inviting the committee to a private briefing with the eSafety Commissioner regarding the above instrument.

The committee met with the eSafety Commissioner today, and is considering the matters raised in that briefing.

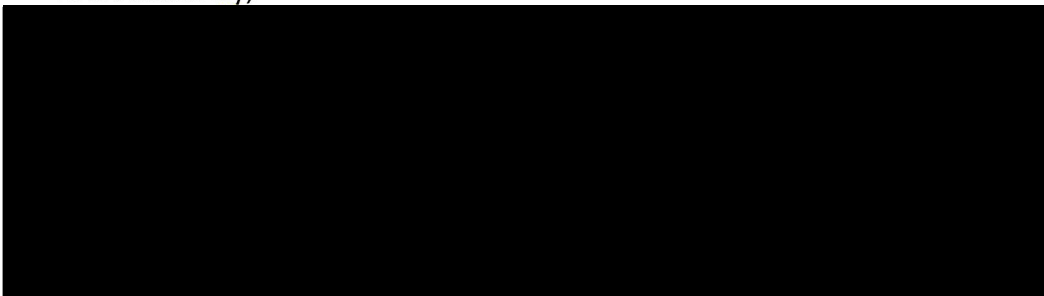
Noting that the instrument's disallowance period is due to expire today, the committee has resolved to place a 'protective' notice of motion to disallow the instrument, to provide the committee with additional time to consider the eSafety Commissioner's advice before the disallowance period expires.

Finally, please note that, in the interests of transparency, this correspondence will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to [regords.sen@aph.gov.au](mailto:regords.sen@aph.gov.au).

Thank you for your assistance with this matter.

Yours sincerely,



Senator the Hon Concetta Fierravanti-Wells  
Chair

Senate Standing Committee on Regulations and Ordinances



5 December 2019

Ms Julie Inman Grant  
eSafety Commissioner  
PO Box Q500  
Queen Victoria Building  
SYDNEY NSW 1230

Via email: [enquiries@esafety.gov.au](mailto:enquiries@esafety.gov.au)

Cc: [Paul.Fletcher.MP@aph.gov.au](mailto:Paul.Fletcher.MP@aph.gov.au); [Karen.Pasfield@eSafety.gov.au](mailto:Karen.Pasfield@eSafety.gov.au);  
[dlo@communications.gov.au](mailto:dlo@communications.gov.au)

Dear Ms Inman Grant,

**Telecommunications (Protecting Australians from Terrorist or Violent Criminal Material)  
Direction (No. 1) 2019 [F2019L01159]**

Thank you for providing a private briefing to the committee on 27 November 2019 regarding the above instrument.

In contrast to other Senate standing committees, this committee is solely concerned with the technical scrutiny of delegated legislation in accordance with the principles prescribed by Senate standing order 23. It does not consider substantive matters of policy. Accordingly, while the committee fully appreciates the policy rationale for the instrument, the committee is only concerned to ensure that it complies with the technical scrutiny principles prescribed by Senate standing order 23. These principles include compliance with the law.

In this regard, the committee remains concerned that the explanatory statement to the instrument does not comply with the *Legislation Act 2003* (Legislation Act). Paragraph 15J(2)(c) of the Legislation Act provides that, where an instrument incorporates a document by reference, as this instrument does, the explanatory statement must 'contain a description of the incorporated documents and indicate how they may be obtained'.

The committee is satisfied that the instrument contains a sufficient description of the document incorporated by the instrument. However, it remains concerned that, as drafted, the explanatory statement does not indicate how the *List of websites hosting terrorist or violent criminal material (No. 1)* may be obtained, as required by paragraph 15J(2)(c) of the Legislation Act.

**Accordingly, the committee requests your advice as to:**

- **whether the explanatory statement could be amended to indicate how the *List of websites hosting terrorist or violent criminal material (No. 1)* may be obtained, as required by the Legislation Act, and;**
- **if not, how the explanatory statement complies with paragraph 15J(2)(c) of the Legislation Act.**

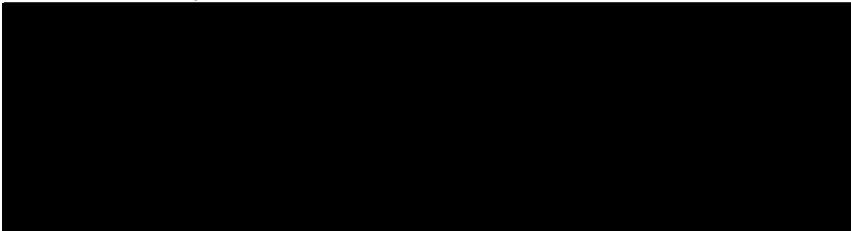
The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **Wednesday, 18 December 2019**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to [regords.sen@aph.gov.au](mailto:regords.sen@aph.gov.au).

Thank you for your assistance with this matter.

Yours sincerely,



**Senator the Hon Concetta Fierravanti-Wells**  
**Chair**  
**Senate Standing Committee for the Scrutiny of Delegated Legislation**

17 December 2019

Senator the Hon Concetta Fierravanti-Wells  
Chair  
Senate Standing Committee for the Scrutiny of Delegated Legislation  
Parliament House, Canberra ACT 2600

Via email: [regords.sen@aph.gov.au](mailto:regords.sen@aph.gov.au)

Cc: [zoe.hawkins@communications.gov.au](mailto:zoe.hawkins@communications.gov.au); [dlo@communications.gov.au](mailto:dlo@communications.gov.au)

Dear Senator Fierravanti-Wells

**Telecommunications (Protecting Australians from Terrorist or Violent Criminal Material) Direction (No. 1) 2019 [F2019L01159]**

Thank you for the opportunity to provide a private briefing to the Committee on 27 November 2019, and for your letter dated 5 December 2019.

I have considered the feedback from the Committee and advise that the explanatory statement will be amended to indicate that a copy of the *List of websites hosting terrorist or violent criminal material (No. 1)* will be made available free of charge on request to the eSafety Commissioner. A replacement explanatory statement will be lodged in January 2020 to give effect to this change.

If you have any questions, please contact:

- Toby Dagg, Acting Executive Manager, at [toby.dagg@esafety.gov.au](mailto:toby.dagg@esafety.gov.au) or on (02) 9334 7951;
- Sheona Colombage, Acting Manager, Cyber Report, at [shoena.colombage@esafety.gov.au](mailto:shoena.colombage@esafety.gov.au) or on (02) 9334 7767; or
- Nicole Chew, Manager, Legal Affairs and Public Policy, at [nicole.chew@esafety.gov.au](mailto:nicole.chew@esafety.gov.au) or on (02) 9334 7884.

Yours sincerely,

  
Julie Ynman Grant  
eSafety Commissioner





AUSTRALIAN  
SENATE

**Senate Standing Committee for the  
Scrutiny of Delegated Legislation**

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6 February 2020

Ms Julie Inman Grant  
eSafety Commissioner  
PO Box Q500  
Queen Victoria Building  
SYDNEY NSW 1230

Via email: [enquiries@esafety.gov.au](mailto:enquiries@esafety.gov.au)

Cc: [Paul.Fletcher.MP@aph.gov.au](mailto:Paul.Fletcher.MP@aph.gov.au); [karen.pasfield@esafety.gov.au](mailto:karen.pasfield@esafety.gov.au);  
[dlo@communications.gov.au](mailto:dlo@communications.gov.au); [Elizabeth.Clark@communications.gov.au](mailto:Elizabeth.Clark@communications.gov.au)

Dear Ms Inman Grant,

**Telecommunications (Protecting Australians from Terrorist or Violent Criminal Material) Direction (No. 1) 2019 [F2019L01159]**

Thank you for your response of 17 December 2019 to the Senate Standing Committee for the Scrutiny of Delegated Legislation, in relation to the above instrument.

The committee considered your response at its private meeting on 5 February 2020. On the basis of your advice, the committee has concluded its examination of the instrument.

The committee welcomes your undertaking to amend the explanatory statement to the instrument to indicate that a copy of the *List of websites hosting terrorist or violent criminal material (No. 1)* will be made available free of charge on request to the eSafety Commissioner.

In the interests of transparency, I note that your undertaking will be recorded in the *Delegated Legislation Monitor*, and this correspondence will be published on the committee's website

Thank you for your assistance with this matter.

Yours sincerely,

**Senator the Hon Concetta Fierravanti-Wells**  
**Chair**  
**Senate Standing Committee for the Scrutiny of Delegated Legislation**