



Introduction

More than ever, the internet is an essential utility helping us work, learn and communicate effectively. However, as our exposure to the online world increases, so do the risks.

In 2015, ground-breaking legislation in the form of Australia's Enhancing Online Safety Act became law. With it came the creation of the Children's eSafety Commissioner – the world's first online safety regulator – with a mandate to keep Australian children safe from online harms.

In the six years that followed, eSafety's remit was extended to protect all Australians. Over the same period we also saw online abuse spread from the major social media sites to new platforms and in new ways. To keep pace, in June 2021 the Australian Government enacted new legislation that gives the eSafety Commissioner improved powers to help protect all Australians from the most serious forms of online harm.

Why is Australia's legislation being updated?

Our laws need to keep pace with rapid changes in technology and the increased threats we all face online.

The reforms contained in the Online Safety Act 2021 give the eSafety Commissioner powers that are key to helping more Australians who are experiencing online harm.

The new Act will lift industry safety standards and plug critical gaps we have identified as Australia's online safety regulator.

What are the main changes in the new Act?

The key changes in the Online Safety Act 2021 are:

- **A new, world-first adult cyber abuse scheme for Australians.** eSafety can require the removal of adult cyber abuse material that targets an Australian if we are satisfied that the material is posted with the likely intention of causing serious harm. If the material is not removed, eSafety can impose civil penalties (including fines) on those who posted it and the provider of the service where it appears.
- **A person experiencing adult cyber abuse must first report the matter to the provider of the service** before coming to eSafety for assistance. This ensures that companies take responsibility for abuse enabled on their platforms and that eSafety serves as a safety net for Australians when harmful content is not removed.
- **An enhanced cyberbullying scheme for Australian children** will enable eSafety to require the removal of material from the full range of online services where under 18s are now spending time, not just social media sites. This includes online gaming platforms, content sharing sites and messaging services. The enhanced scheme will continue to allow eSafety to take other steps to minimise the risk of further bullying, including referring children and their families to mental health and other support services.

- **A strengthened image-based abuse scheme** to rapidly address the non-consensual sharing of intimate images. The scheme continues to provide a range of options when dealing with image-based abuse matters, including content take down, fines and other civil penalties.
- **Reduced take-down time** from 48 hours to 24 hours for service providers to comply with a notice to remove image-based abuse, cyberbullying, adult cyber abuse or seriously harmful online content. Failure to do so could attract penalties of up to \$111,000 for individuals and \$555,000 for companies.
- **Stronger information-gathering powers** to obtain identity information including basic subscriber information for anonymous accounts. This will enable eSafety to conduct investigations into harmful online behaviour and issue fines and notices.
- **A modernised Online Content Scheme** will allow the eSafety Commissioner to take action against seriously harmful online content, such as child sexual abuse material and pro-terror content, no matter where that content is hosted.

What are the expectations of industry?

Basic Online Safety Expectations

The new Act sets out core Basic Online Safety Expectations for the technology industry. The expectations will help ensure that technology industry products and services are safe for Australians to use and provide greater transparency around their safety features, policies and practices. The Minister for Communications, Urban Infrastructure, Cities and the Arts can determine the expectations for certain online services. The eSafety Commissioner will be able to require these services to report on compliance with any or all of these Basic Online Safety Expectations.

The Expectations are backed by civil penalties for non-compliance with the reporting obligations. The eSafety Commissioner will also have the ability to name providers that do not meet the Expectations as well as publish statements of compliance for those that do.

New industry codes or standards

A new set of industry codes will be developed to guide industry on compliance with their legal obligations under the new Act. To achieve this, the codes will cover the various segments of the online industry.

The desired approach would see these codes developed by industry and then reviewed and registered by the eSafety Commissioner. If suitable codes cannot be agreed, or do not meet the desired safety outcomes initially outlined, the Commissioner has the power to impose industry-wide standards in place of the codes.

The new codes should also promote the adoption of responsible industry processes and procedures for dealing with online safety and content issues.



The Act provides an extensive list of examples of matters that may be dealt with by industry codes and standards. These include ensuring that:

- all segments of the industry promote awareness of the safety issues and procedures for dealing with harmful online content on their services
- procedures are in place to ensure that online accounts are not provided to children without the consent of a parent or responsible adult
- parents and responsible adults are told about how to supervise and control children's access to material provided on the internet
- users are told about their rights to make complaints
- procedures for dealing with complaints are followed in line with company policies.

Codes and standards would be enforceable by civil penalties and injunctions to ensure compliance. The eSafety Commissioner can receive complaints and investigate potential breaches of industry codes and standards.

When will the new Act take effect?

The new Act will take effect on 23 January 2022. It is expected the industry codes will be developed within 12 months of Royal Assent.

Significant work needs to be done to implement the new Act, but during this time eSafety will continue to provide citizen-focused services and support.

Where can I find more information?

eSafety will continue to update our website with more information as we develop our regulatory guidance and release our regulatory priorities throughout 2021.

