

Communications strategy and plan:

Release of regulatory guidance - Adult Cyber Abuse [REDACTED]

Proposed release date: Thursday 16 December

<p>Purpose of the Communication plan</p>	<ul style="list-style-type: none"> The purpose of this communication strategy and plan is to provide communications support for the eSafety’s regulatory guidance for the Adult Cyber Abuse (ACA) scheme within the Online Safety Act (OSA), [REDACTED] This comms plan sits under the overarching OSA Comms plan, and the sub-comms plan for the ‘rolling thunder’ release of regulatory guidance in the lead up to commencement.
<p>Background</p>	<ul style="list-style-type: none"> The Act creates a modern, fit for purpose regulatory framework that builds on the strengths of the existing legislative scheme for online safety. The regulatory framework includes important updates to our existing image-based abuse, cyberbullying, and online content schemes and introduces a world-first Adult Cyber Abuse scheme. A number of regulatory guidance papers have been issued already, and the Adult Cyber Abuse plan is one of the later regulatory guidance materials (to be followed by the Online content scheme and AVC guidance materials.)
<p>Objective(s) and measurables</p>	<ul style="list-style-type: none"> To proactively announce and manage risks surrounding our key regulatory milestones as eSafety readies for commencement of our new powers under the Online Safety Act 2021 on 23 January 2022. [REDACTED] [REDACTED]
<p>Considerations & Target audiences</p>	<ul style="list-style-type: none"> To note: there is around 5 weeks between this communications release of regulatory guidance, and the next communication around the commencement of the Act on 23 January - [REDACTED] The framing of the commencement piece will include both the ACA and all other elements of the OSA. The PRIMARY FOCUS of this release is on the Australian public to raise awareness of the new ACA, through media The SECONDARY FOCUS of this release is for industry and stakeholders - to tell them that the reg guidance is available

<p>Key overarching proactive messages</p>	<p>Guidance release</p> <ul style="list-style-type: none"> • As part of a series of regulatory guidance released by eSafety in the lead up to new legislation coming into effect on 23 January 2022, intended to give industry clarity into how the eSafety Commissioner will administer its protective schemes and when and where it will be able to use its strengthened powers. • The guidance gives an overview of actions eSafety can take under the new legislation to address serious online abuse, explaining how the eSafety Commissioner will interpret and generally apply certain powers when responding to reports. • It's important to note that all decisions made by the eSafety Commissioner will be considered on a case-by-case basis, looking at the particular circumstances of each matter. <p>New Online Safety Act – Adult Cyber Abuse scheme</p> <ul style="list-style-type: none"> • From 23 January 2022, for the first time anywhere in the world, eSafety will begin operating a new Adult Cyber Abuse scheme. This will give Australian adults who are the victims of seriously harmful online abuse somewhere to turn when the platforms fail to act on reports. • Australians who are subjected to serious online abuse should firstly report it to the platform. If the platforms do not action the report, people can then report to eSafety. We will be able to act as a safety net if the report meets the high threshold of serious abuse, and issue a notice to the platform to get the harmful content removed. • If eSafety issues a notice to remove the harmful content, the platform then has 24 hours to comply (unless a longer period is approved), or risk being issued fines and/or civil penalties for not actioning this. • eSafety will have the ability to issue significant civil penalties for failure to comply with a notice to remove serious online abuse material. The penalties extend to platforms and perpetrators. <p>How is 'serious cyber abuse' defined?</p> <ul style="list-style-type: none"> • The threshold is high, with two parts. The abuse must be intended to cause serious physical or psychological harm – like threats causing fear, intimidation, inciting violence or self-harm- AND be menacing, harassing or offensive in all the circumstances. Harm will generally be 'serious' when it endangers - or could endanger - a person's life or could have some form of lasting effect on a person. • Somebody finding something offensive or disagreeable is not enough, the content must also be intended to cause serious harm to that individual. • Material has to target an individual, not a group, of people. • There is an expectation that adults have a higher level of resilience than children, and as such the threshold is much higher than eSafety's youth cyberbullying scheme. • We are aware the threshold is high and there may be some circumstances where we can't take regulatory action. Every situation is unique and eSafety is committed to helping all Australians. Even if a matter does not meet the threshold, we will still be able to offer support, information and advice. <p>What the scheme isn't</p> <ul style="list-style-type: none"> • This scheme is not about censoring free speech, commentary or banter. It is about helping to stop serious online abuse which has the intent to cause serious harm and is menacing, harassing or offensive.
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	<ul style="list-style-type: none"> • We will not be proactively policing the internet – eSafety only acts on reports made to us. We are not going to be the content moderators of the internet, nor will we be looking at determining the truth of claims posted online. • It is not about cleansing the internet of racism or misogyny. We can't solve the underlying issues that exist in society and which we so often see becoming amplified by social media. • The scheme does not cover defamation. Defamation is a civil action, determined by Courts, designed to balance the right of freedom of speech with protecting a person's reputation against harm. Our legislation is about harm minimisation by removing harmful content, defamation laws are about compensation for damage caused to reputations. The scheme does not cover harms to a business – such as reviews. • The OSA ACA addresses online abuse at a very high and serious threshold and will not capture defamatory material, which is the focus of the Attorney General provisions in the recent legislation proposed by government.
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Communications tactical plan

Date	Communications collateral – items required	Theme/content Message hierarchy/hook	Audience & reach
W/C 29 November	Development of FAQs: Content: <i>What will, what won't meet the threshold?</i>	For media use, to include where relevant on website	
Mon 13 December	Pre-record of radio grabs for release on Thursday 16 December	Grabs to be developed from approved media release	Media (radio stations) – distributed under embargo
Mon 13 December	Blog and/or opinion piece to be published/released on Thu 16 December	eSafety will have new powers from 23 Jan to tackle online abuse	General public, wide reach
Mon 13 December	<div style="background-color: black; height: 15px; width: 100%;"></div> <div style="background-color: black; height: 15px; width: 40%; margin-top: 5px;"></div> Provide with embargoed copy of regulatory guidance and media release. All info provided will be embargoed until 0100hrs Wednesday 16 December	ACA reg guidance Media release Interview	<div style="background-color: black; width: 100px; height: 15px; display: inline-block;"></div> publications, predominantly <div style="background-color: black; width: 100px; height: 15px; display: inline-block;"></div>

Date	Communications collateral – items required	Theme/content Message hierarchy/hook	Audience & reach
Thu 16 December	<p>National media release distributed to all major mainstream metro and regional media, newswires, broadcast and print (i.e. all outlets) – JIG to record incoming requests for broadcast / interview</p> <p>Embargoed radio grabs distributed through Radio Release to all radio stations</p>	<p>Media release through [REDACTED]</p> <p>Ensure JIG calendar clear as possible 16 Dec AM (at least)</p>	National reach, all media outlets
Thu 16 December	<p>From 0100hrs media release live on eSafety website, embargo lifted, print news report published.</p> <p>Reactive (broadcast) media requests for JIG interview.</p>	<p>Website content made live:</p> <ul style="list-style-type: none"> • Media release • Blog • Regulatory Guidance 	National reach, all media outlets
Thu 16 December	<p>Social media, rolling pre-commencement campaign: new ACA scheme for eSafety from 23 January 2022</p> <p>Content: <i>What will, what won't meet the threshold?</i></p>	Call to action to visit website	Social followers
Thu 16 December	EDM to targeted audiences	EDM	[REDACTED] has list of identified stakeholders

MEDIA RELEASE DRAFT CONTENT

Safety net to protect Australian adults from serious online abuse to launch from January next year

From late January, Australia's online safety regulator – the eSafety Commissioner - will begin operating a reporting scheme for adult cyber abuse, part of the new Online Safety Act. This will give Australian adults who are the victims of seriously harmful online abuse somewhere to turn, if the online service providers have failed to act on reports to them.

Today, eSafety has released detailed regulatory guidance for this scheme, to give an overview of actions the eSafety Commissioner can take to address serious online abuse reported to us.

“This is a world-first scheme. From the end of January we will be able to act as a safety net to give Australian adults who have been subjected to serious online abuse somewhere to turn if the online service providers have failed to act in removing the abusive content,” said eSafety Commissioner Julie Inman Grant.

“If a platform fails to take action, people can come to us to make a report. Our new investigative and information gathering powers will allow us to investigate and assess complaints, and decide what action we can take.

“This ground-breaking scheme gives us the ability to help those Australian adults who have been subject to the worst types of online abuse, which is becoming an all-too-common occurrence. If a report meets the threshold, we can issue a notice to the platform to get that harmful content removed.”

If eSafety issues a notice to remove the harmful content, the platform then has 24 hours to comply. The eSafety Commissioner will have the ability to seek significant civil penalties for failure to comply with a notice to remove abusive material.

“The bar for determining what ‘adult cyber abuse’ is has been set deliberately high, to ensure it does not stifle freedom of speech or banter. We are talking here about the most serious of abusive posts, intended to cause serious psychological or physical harm,” said Ms Inman Grant

Under the law, to reach the threshold the abuse must be both ‘intended to cause serious harm’, and ‘menacing, harassing or offensive in all the circumstances’.

“Serious harm could include material which sets out realistic threats, places people in real danger, is excessively malicious or is unrelenting.”

Somebody finding something offensive or disagreeable would not be enough, the content must also be intended to cause serious harm to that individual. The scheme is not intended to regulate hurt feelings, purely reputational damage, bad online reviews, strong opinions or banter.

“There may be some circumstances where we can't take regulatory action. Every situation is unique and every matter reported to us will be considered on a case-by-case basis. Even if a matter does not meet the threshold, we will still be able to offer support, information and advice,” said the Commissioner.

“eSafety can only act on adult cyber abuse reports made to us, we will not be proactively policing the internet, nor will we be content moderators looking at determining the truth of claims posted online. This new scheme is about helping those who are suffering from the worst types of online abuse.”

eSafety’s new scheme does not cover defamation. Defamation is a civil action, determined by Courts, designed to balance the right of freedom of speech with protecting a person’s reputation against harm. The Online Safety Act, and the new Adult Cyber Abuse Scheme, is about harm minimisation by removing serious and targeted online abuse, defamation laws are about compensation for damage caused to reputations.

Commencement of the Online Safety Act and the Adult Cyber Abuse Scheme is on Sunday 23 January, 2022. See the regulatory guidance here [link].

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BACKGROUND

HOW ESAFETY WILL ASSESS COMPLAINTS IN ACCORDANCE WITH THE ACT

The new Online Safety Act defines adult cyber abuse as material targeting an Australian adult which is **both** intending to cause serious harm; **and** menacing, harassing or offensive.

If the material only meets one of the two criteria above (e.g. something is offensive but is not intended to cause serious harm), that will likely not be classed as adult cyber abuse under the Act.

For eSafety to be able to act on a complaint, the material must target an *actual individual*. Material that targets a group or broad range of people, would not meet the definition of ‘adult cyber abuse material’ in the Act. For example, if someone makes a post saying “all people of [X] background should be kicked out the country” – under the Act, because it is directed at a *group* of people rather than an *individual*, it would not meet the definition. A post like this may, however, breach a platform’s terms of use.

What is ‘serious harm’?

The Act defines ‘serious harm’ to mean serious physical harm or serious harm to a person’s mental health. This includes serious psychological harm and serious distress that goes beyond ‘mere ordinary emotional reactions such as those of only distress, grief, fear or anger’.

eSafety will consider each matter on a case-by-case basis, but generally serious harm will look at how often and prominent abuse is occurring such as:

- urging or encouraging violence against a person;
- threats of violence;
- posts designed to generate volumetric and ‘pile on’ attacks from others;

Content *not* likely to be considered ‘serious harm’ under the Online Safety Act would be things such as:

- name calling and opinions (e.g. “you are an ugly cow”);
- character attacks (e.g. “you are a lying bigot”)
- claims of criminal conduct (e.g. “you’re a paedophile”)
- violent language (e.g. ‘I hope you get bashed’).. (In this instance this “hope” is wishing something to happen, rather than a tangible threat such as “I know where you live and am going to bash you”).

Some instances (i.e. character attacks) may fall under defamation legislation, which is not the intent of the Online Safety Act.

What is ‘menacing, harassing or offensive’ material?

Conduct that is threatening and/or repetitive may be considered menacing or harassing.

Something is likely to be deemed offensive if it’s meant to arouse significant anger, significant resentment, outrage, disgust, or hatred; and does more than simply hurt someone’s feelings.

Whether something is menacing, harassing or offensive is a question that must be considered in light of all the relevant circumstances under the Act. For instance, this means that if someone’s background, race or sexuality is part of why they are being targeted, this is a relevant consideration. eSafety must also consider anything that may be relevant about the person posting the material, such as their age.

That’s why every matter will be considered on a case-by-case basis.