

eSafety

Regulatory Posture and Regulatory Priorities

2021-22

November 2021



Our purpose and functions

eSafety's purpose is to help safeguard Australians at risk from online harms and to promote safer, more positive online experiences.

eSafety has a range of regulatory functions and powers, which we apply in a flexible and integrated way to promote compliance and achieve good outcomes for all Australians.

These powers are enhanced by the Online Safety Act 2021 (the Act), commencing 23 January 2022.

Our approach is set out in:

- the [eSafety Strategy](#), which explains our mission, vision, strategic goals and actions for achieving them
- our [Compliance and Enforcement Policy](#), which explains the powers available to eSafety to encourage and enforce compliance with the Act, and the factors we may take into account before using these powers
- our [Regulatory Guidance](#), which explains how eSafety implements each of the regulatory schemes included in the Act
- this document, which explains our regulatory posture (or philosophy), as well as our regulatory priorities for the 2021-22 financial year.

Our regulatory posture

Building on our experience administering the Enhancing Online Safety Act 2015, eSafety will continue efforts to prevent and help remediate online harm and improve safety standards. We will raise awareness among the public and the online industry about the changes enacted through the Online Safety Act 2021.

Where appropriate, we will continue to work informally with service providers to resolve individual complaints about online content and behaviour. We will also consider any systemic online safety problems these complaints may reveal.

Where a cooperative approach is not appropriate or sufficient to keep Australians safe online, eSafety will draw on our robust range of regulatory options. While we may take graduated measures to act against online harm, there will be times when immediate and firm enforcement action is warranted due to the circumstances and severity of the harm.

Based on evidence and insights, we will apply our powers in a fair, transparent and proportionate way to limit the impact of harm to the user and to deter future wrongdoing by the platform or perpetrator.

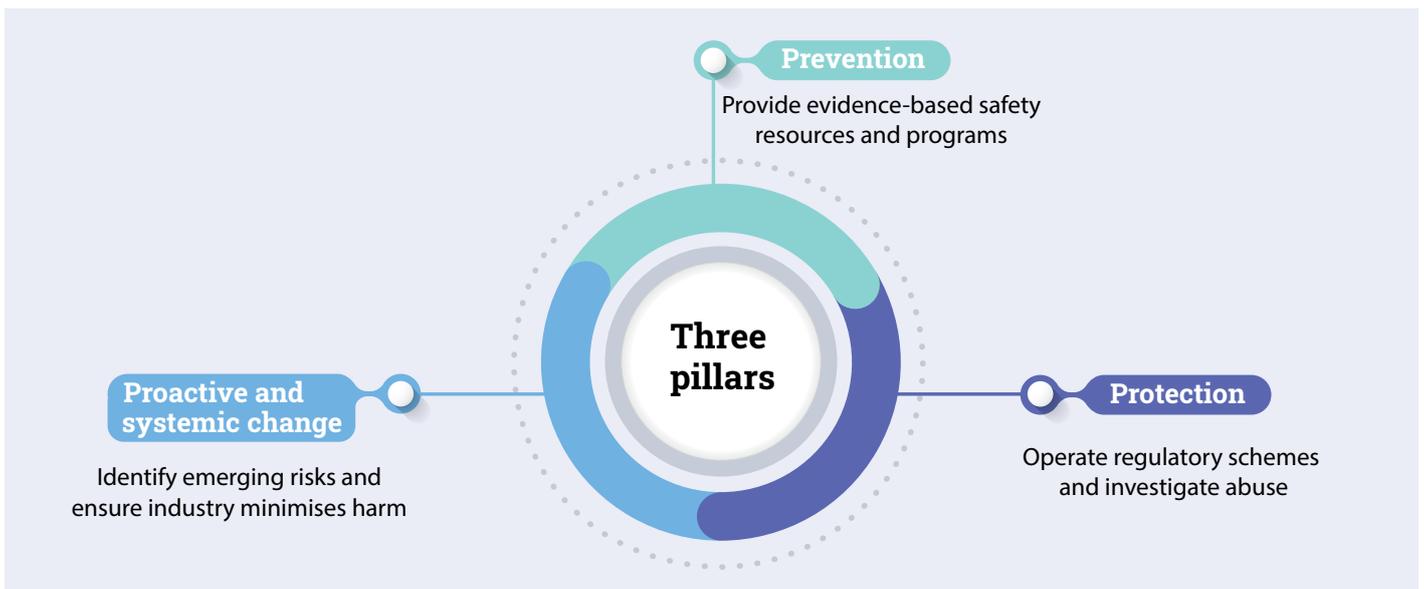
We will drive continuous improvements in safety by online service providers by reviewing the effectiveness of their efforts to keep their users safe, and by providing practical recommendations and tools to support better outcomes.

Our approach

eSafety recognises that combating online harm is a global challenge. This is why we work as part of a cross-agency, cross-sector and multi-jurisdictional online safety ecosystem.

Our aim is to prevent and remedy harm, enhance transparency and accountability, and examine the effectiveness and impact of what services are doing to keep users safer online. We take a risks- and harms-based approach to our work, which complements the role other agencies play in investigating and prosecuting crimes perpetrated online.

Our core mission, safeguarding Australians at risk of online harm, is the foundation that underpins our three pillars of purpose: prevention, protection and proactive change. Each of our functions serves a main purpose but is also connected to the others, supporting them and in turn receiving support.



Prevention

eSafety conducts research and provides evidence-based online safety resources and programs which empower individuals, families and communities to be safer online.

Proactive and systemic change

eSafety engages in consultation and environmental and horizon scanning to understand existing and emerging online threats.

We develop voluntary guidance material and tools with industry to enable providers of products and services to lift safety capabilities to better protect their customers' safety and rights.

The Basic Online Safety Expectations upgrade safety standards and enhance transparency and accountability.

Protection

The regulatory and co-regulatory elements of the Act build on this foundation.

Mandatory codes are to be developed by industry to prevent and address online harms relating to class 1 and class 2 material.

eSafety provides accessible and trustworthy complaints mechanisms to report cyberbullying of children, adult cyber abuse, image-based abuse and other forms of seriously harmful online content, such as child sexual exploitation or pro-terror material. eSafety works with service providers and others to achieve quick and positive outcomes for victims and survivors of online harm. We provide support for complainants that may involve referrals to law enforcement, mental health providers or legal services or may provide tips and strategies for how to mitigate further harm.

Decisions about whether and how to take regulatory action are made in accordance with eSafety's **Compliance and Enforcement Policy**. We apply this on a case-by-case basis, informed by our research and investigative insights. We consider the best outcomes for those who report abuse, along with opportunities to deter wrongdoing and drive continuous improvement among online services.

Regulatory context

The dynamic and evolving nature of the online environment requires eSafety to be agile and decisive in our regulatory approach. This need has been highlighted during the global COVID-19 pandemic, when an increase in time spent online has led to a surge in negative experiences. The growing exposure to risks and the increase in reports of harm has required us to develop new advice and resources and strengthen our investigative capacity.

The Australian government enacted the Online Safety Act 2021 (the Act) to better equip eSafety to prevent and address current and future online harms in a rapidly changing environment. The Act enhances eSafety's regulatory schemes for dealing with the cyberbullying of children, image-based abuse, and illegal or restricted online content, while also introducing a new scheme for dealing with adult cyber abuse.

The Act also allows the development of Basic Online Safety Expectations (expectations) for a broad range of online services, outlining the fundamental safety practices expected of service providers. By empowering eSafety to request or require information about how services are protecting the online safety of their users, the expectations will drive greater transparency and accountability.

Our work complements the role other agencies play in investigating and pursuing those responsible for online crimes within Australia and elsewhere. It also considers several other important developments in the online regulatory landscape in Australia, including:

- the Australian Competition and Consumer Commission Digital Platforms Inquiry and media bargaining code
- the Office of the Australian Information Commissioner Online privacy review
- the Australian Communications and Media Authority code of practice on disinformation and misinformation.

Beyond our borders, many other countries are also considering options to regulate online services. As the world's first online safety regulator, we provide international leadership and insights that we hope will help others generate positive change. eSafety continues to work with other regulators, in Australia and overseas, to promote collaboration and consistency in order to achieve effective outcomes worldwide.

Regulatory priorities

In 2021-22 our regulatory priorities are primarily focused on putting into operation the enhanced protections of the Online Safety Act 2021 (the Act). We are also continuing to strengthen the support we give Australians through our established schemes and programs, laying the foundations for our new regulatory regimes, and driving online industry improvements through Safety by Design.



Adult Cyber Abuse Scheme

The Act establishes a new scheme to facilitate the removal of serious online abuse targeting Australian adults, commencing 23 January 2022.

Adult cyber abuse is material that:

- is likely to have been intended to cause serious harm to a specific adult, and
- would be regarded by an ordinary reasonable person in the position of the targeted adult as being menacing, harassing or offensive in those circumstances.

In 2021-22, our focus is on raising awareness among the Australian public about:

- the risks and nature of adult cyber abuse
- how the Adult Cyber Abuse Scheme may help
- the relevant legislative thresholds for regulatory action
- how to collect evidence of the abuse
- the need to report the abuse directly to the relevant service before asking eSafety to investigate.

We are building on the strong foundation of our Cyberbullying Scheme for children, as well as our experience providing support to adult victims of online abuse on an informal basis. We are strengthening our advice and resources for those experiencing, or at risk of, adult cyber abuse. We are also providing clearer pathways to get help from eSafety and for referrals to external agencies for mental health support, law enforcement and legal assistance.

In addition, we are raising awareness about the Adult Cyber Abuse Scheme among the online industry and establishing processes for working to remove and deter adult cyber abuse on their services.

Where collaborative efforts are insufficient or inappropriate, we may use the formal options available to us to require removal of material and deter further harm. Formal options range from issuing a Service Provider Notification or Removal Notice through to taking enforcement action such as imposing civil penalties and fines, court-ordered injunctions and legally enforceable undertakings. Enforcement action is more likely in serious matters, for example, where we encounter deliberate non-compliance that creates an ongoing risk of harm.



Schemes that deal with cyberbullying of children, image-based abuse and illegal or restricted content

Since 2015, eSafety has operated regulatory schemes to investigate complaints from the public about cyberbullying targeting children and illegal or restricted online content (such as child sexual exploitation and abuse material). In 2018, we also began operating a scheme to investigate image-based abuse, which is the threatened or actual non-consensual sharing of intimate images or videos.

Through these schemes, we have worked with the online industry and other stakeholders to reduce harm for victims and survivors.

The Act strengthens these schemes and brings them into greater alignment with each other. For example, under the Act, each scheme now applies to the same broad range of online services – including those provided to Australian end-users from outside Australia – and the services have a standard 24-hour time period to comply with Removal Notices (which eSafety can decide to extend in appropriate circumstances).

Building on our experience administering these schemes to date, eSafety continues to provide compassionate citizen service to people who come to us for help. We also continue to raise public awareness of our pathways for reporting harmful online content and behaviour, and we are improving our website's guidance and resources to help people prevent and reduce harm. We take a proportionate, transparent and evidence-based approach to allocating our resources, identifying the most urgent risks and severe harms and determining the most effective responses.

One of our highest priorities remains the rapid removal of child sexual exploitation and abuse material, along with other forms of illegal content that cause the most severe harm through their production, distribution and consumption.

We identify and promote better solutions to prevent and reduce the types of harm that are most commonly reported to us. This includes exploring technological solutions that allow us to scale up assistance and reduce the spread of harmful online content and behaviour.

We are raising online industry awareness about the changes to the schemes. Where appropriate, we are also continuing to work to resolve user complaints and to address underlying issues that could lead to further harm. If appropriate, we use the formal options available to us to reduce and deter harm, especially when we encounter deliberate non-compliance that creates an ongoing risk of harm.





Industry Codes

The Act gives industry bodies or associations the opportunity to develop a new code or set of codes to regulate and prevent the spread of certain types of harmful online material, which would be registered by eSafety.

This 'class 1' and 'class 2' material ranges from the most seriously harmful online content, such as videos showing the sexual abuse of children or acts of terrorism, through to content which is inappropriate for children, such as online pornography.

The codes would apply to the participants of eight key sections of the online industry, including providers of social media, messaging, search engine and app distribution services, as well as internet and hosting service providers, manufacturers and suppliers of equipment used to access online services, and those that install and maintain the equipment.

eSafety must make reasonable efforts to make sure an adequate code for each section of the online industry is registered within six months of commencement of the Act. However, the Act allows for standards to be imposed if the online industry cannot reach agreement on codes.

To help the online industry develop the codes, eSafety released a [position paper](#) in September 2021 setting out 11 policy positions regarding the substance, design, development and administration of industry codes, as well as eSafety's preferred model based on risks and outcomes. eSafety has engaged with several industry bodies and associations and will continue to work with them to have codes registered within the legislative timeframe.



Safety by Design is an initiative that puts user safety and rights at the centre of design and development of online products and services. Rather than retrofitting safeguards after a harm has occurred, Safety by Design focuses on how technology developers and service providers can prevent online harms by anticipating, detecting and eliminating risks for users before their products and services reach the market and throughout their lifecycle. This proactive approach focuses on embedding safety into the culture, leadership and processes of industry participants. It emphasises accountability and aims to foster more positive, civil and rewarding online experiences for everyone.

eSafety's research and consultation for the Safety by Design initiative began in 2018. It now includes a set of principles, interactive assessment tools for enterprise and start-up technology companies, resources for investors and financial entities, and engagement with the tertiary sector.

This year, we are encouraging widespread adoption of Safety by Design by governments, organisations and industry participants globally. We are also generating increased engagement with the principles and tools among the start-up and investment communities. Further, we are making sure the needs of groups who may be marginalised or at higher risk are effectively considered, incorporated and actioned in Safety by Design practices.





Basic Online Safety Expectations

The Act allows for the creation of a set of Basic Online Safety Expectations for online service providers. Core expectations include that services will take reasonable steps to:

- make sure end-users can use the service in a safe manner, and
- provide clear and readily identifiable ways for end-users to report specific forms of harmful content or behaviour to the service.

Under the Act, eSafety can require online services to report on the extent to which they are complying with these expectations. This will help make sure technology industry products and services are safe for Australians to use. It will also provide greater transparency around their safety features, policies and practices, noting that services' transparency to date has been selective and uneven.

In deciding whether to issue a notice that requires an online service to submit a report, eSafety will consider several factors. These include the number of complaints received about material on the service, whether the service has contravened a civil penalty provision relating to the expectations and whether there are deficiencies in the service's terms of use.

In line with the minimum six-month reporting period established under the Act, eSafety will not require reporting until the expectations have been in effect for at least six months. However, we may request certain information from service providers during that time if a serious online safety issue emerges.

In 2021-22 our focus is on raising awareness of the Basic Online Safety Expectations among the service providers, as well as consulting with stakeholders to develop regulatory guidance and to build their capacity to comply. We are also encouraging services to engage with our Safety by Design resources, particularly the self-assessment tools, to help them audit and improve their current safety practices and position themselves to meet the expectations.

For several years, eSafety has been discussing with industry some of the common safety problems and challenges we have identified across their services through our reporting trends and investigative insights. This year, we will examine our evidence base through the lens of the Basic Online Safety Expectations, deciding the key data points and information we may request or require from different services to assess how well they are meeting the expectations.

We will also develop systems and processes to request or require reporting from services, with an emphasis on transparency and accountability for both industry and ourselves. Our approach will acknowledge and highlight good safety practices, identify areas for improvement, and provide recommendations to help services comply with the expectations.



