

Basic Online Safety Expectations: Information session summary for industry

This document summarises the information session run by the eSafety Commissioner (eSafety) for online service providers on the [Online Safety \(Basic Online Safety Expectations\) Determination 2022](#). This session was held on the 21 June 2022.

The Basic Online Safety Expectations, also known as ‘the Expectations’, was registered on 23 January 2022, as provided for by the [Online Safety Act 2021](#) (the Act).

The Expectations aim to ensure that social media, messaging, gaming, file sharing, and other apps and websites¹, take reasonable steps to keep Australians safe online. The purpose is to increase the transparency and accountability of online service providers and help to incentivise and improve safety standards.

eSafety has a range of powers to seek information from service providers about their compliance in relation to the Expectations, backed by civil penalties. eSafety is able to require reporting from 24 July 2022. eSafety is also empowered to publish statements of compliance and non-compliance.

Regulatory guidance will be published by eSafety at the end of July 2022.

Implementing the Basic Online Safety Expectations

It is expected that service providers are currently reviewing policies and procedures to ensure alignment with the Expectations and that they are planning additional measures where they are not currently compliant. The Determination and Explanatory Statement provide an existing guide for service providers when deciding on the reasonable steps to take. The steps are deliberately non-prescriptive, recognising that service providers may have alternative means of achieving the same outcomes, and that not every Expectation will apply, or apply in the same way.

eSafety does not intend to issue statements of compliance or non-compliance with the Expectations initially, other than in exceptional cases. eSafety will use the information gathered from notices to build an understanding of industry practices, alongside other sources of evidence and insight.

¹ Social Media Services (SMS); Relevant Electronic Services (RES), and Designated Internet Services (DIS)
<https://www.legislation.gov.au/Details/C2022C00052>

Phased approach to information notices

There are three different ways that eSafety will be able to seek information from service providers regarding their implementation of the Expectations.

1. Requests for information

eSafety may request information about:

- the number of complaints regarding breaches of a service provider's terms of use
- the timeframe for responding to removal notices
- measures taken to make sure people can use the service in a safe manner
- reporting on the performance of online safety measures that providers have announced publicly or reported to the Commissioner.²

While failure to comply with these requests under section 20 of the Expectations is not enforceable, a failure to respond within 30 days would give eSafety discretion to prepare a statement that the service provider is not complying with the Expectations.

2. Reporting notices

eSafety may give a reporting notice to a service provider requiring them to provide details about their implementation of any part or the entirety of the Expectations. These notices are enforceable, backed by civil penalties and other enforcement mechanisms. Reporting notices are specific to the provider, although multiple notices can be issued. Notices can either be for:

- non-periodic reporting
- periodic reporting over a specified timeframe

3. Determinations

eSafety can make determinations – a legislative instrument – requiring periodic or non-periodic reporting for a specified class of services. Like the reporting notices, these are enforceable and backed by civil penalties for failure to report.

eSafety intends to take a phased approach to the issues and harms investigated through the use of notices. **This will involve issuing an initial set of individual non-periodic reporting notices shortly after 24 July 2022, focusing on how service providers are meeting several of the Expectations that relate to specific serious harms and illegal content, such as child sexual exploitation and abuse.** This recognises the acute nature and growth of these harms, particularly through the COVID-19 pandemic. It also builds on engagement that eSafety has had with service providers over several years in relation to common safety problems and challenges, including those observed through user complaints and broader engagement.

eSafety does not intend to exercise the power to issue a reporting determination in 2022, as it is expected that the number of service providers required to report can be managed through individual notices.

² Online Safety (Basic Online Safety Expectations) Determination 2022 (Cth) s20.

Types of information that may be requested or required

Notices will include specific questions about implementation of the Expectations. Providers are required to respond in the 'manner and form' specified. This may include:

- **Qualitative information on safety tools, processes and policies.** These may be phrased as yes/no questions, multiple choice questions or seek descriptive information.
- **Quantitative information on the operation of safety tools, processes and policies.** This may consist of metrics to determine the impact of interventions or information about resources allocated.

Service providers are required to respond within the timeframe specified. In line with the Act, this will be no shorter than 28 days from the giving of a notice, or from the end of the reporting period specified in the notice. Providers are encouraged to engage with eSafety if they do not collect the information in question, or if they anticipate challenges responding with the time required.

In line with the Act's objectives to improve online safety, and service providers' accountability and transparency, eSafety considers that information received from service providers in response to a notice should be made public, where appropriate.

Service providers will be asked to:

- clearly identify in their response if any information is commercial-in-confidence or should otherwise not be published
- provide clear and compelling reasons in support of any claim that certain information is commercial-in-confidence.

eSafety will consider these claims carefully. eSafety will also consider whether there are steps that can be taken to protect such information while ensuring the transparency and accountability objectives of the Act are still met.

Basic Online Safety Expectations webform

Section 21 of the Expectations requires service providers to nominate a designated contact point for the purposes of the Act. Any changes must be sent to eSafety in writing within 14 days after the change.

In order to enable service providers to share this information, and also to enable the sharing of other straightforward information, eSafety intends to establish a webform for in-scope service providers. By submitting contact information, eSafety will regard a service provider as having fulfilled section 21 of the Expectations. Service providers will be invited to participate in due course.

Contact us

If service providers have any questions about eSafety's intended approach set out here, they can contact industrybose@esafety.gov.au.

Further information and regulatory guidance will be published at the end of July 2022.