



COMMONWEALTH OF AUSTRALIA

## eSafety Commissioner

### Statement of Expectations

This Statement of Expectations (SoE) outlines the Australian Government's expectations for the operation and performance of the eSafety Commissioner. The SoE is issued by the Minister for Communications to the eSafety Commissioner consistent with regulatory best practice and relevant legislative frameworks, while acknowledging the Commissioner's statutory independence.

For the purpose of this SoE, the term 'eSafety' includes the eSafety Commissioner and staff who are provided by the Australian Communications and Media Authority (ACMA) to support the eSafety Commissioner's functions.

The Government expects the eSafety Commissioner to respond to this SoE with a Statement of Intent (Sol) within three months setting out how the eSafety Commissioner intends to meet the SoE. The eSafety Commissioner is required to make both this SoE and the Sol available on its website.

#### **Role of the eSafety Commissioner**

The eSafety Commissioner is responsible for administering the *Online Safety Act 2021 (OSA)*. The eSafety Commissioner is to improve and promote online safety for Australians through:

- the administration and enforcement of statutory schemes;
- educational and awareness activities, including the development of resources and tools to support parents and vulnerable Australians; and
- performance of other functions under the OSA.

I consider that industry is primarily responsible for the safety of online services. The eSafety Commissioner performs regulatory functions to provide a 'safety net' and ensure that industry acts to prevent and deal with harmful content. I therefore expect the eSafety Commissioner to work collaboratively with industry to achieve positive outcomes for Australians online. In achieving positive outcomes for Australians, eSafety should seek to minimise regulatory burden.

#### **Administering the OSA**

I expect the eSafety Commissioner to administer and appropriately allocate its resources across the regulatory functions under the OSA, comprising:

- the complaints system for cyber-bullying material targeted at an Australian child;
- the complaints system for cyber-abuse material targeted at an Australian adult;
- the complaints and objections system for non-consensual sharing of intimate images;
- the Online Content Scheme, including administration and enforcement of industry codes or industry standards, and development of industry standards if industry codes are deficient;
- the Basic Online Safety Expectations determination; and
- blocking powers in relation to material promoting, inciting, instructing in, or depicting abhorrent violent conduct.

Through its administration of the OSA, I expect the eSafety Commissioner to act in accordance with the best practice principles set out in the Regulator Performance Guide in its decision-making, policies, processes and communication practices to maximise effectiveness, efficiency and transparency as well as fostering of an internal culture of continuous improvement. The Government's preference is for an outcomes-focused approach to achieving regulatory outcomes and a risk-based approach to compliance obligations, engagement and enforcement.

I expect that any work under Parts 4 and 9 of the OSA regarding child sexual exploitation material complement and support the work led by the Australian Centre to Counter Child Exploitation (ACCCE).

In exercising its regulatory powers and functions, I expect the eSafety Commissioner to actively support its policy objectives and priorities, including to have regard to and contribute to, where possible, the Government's policy priorities with respect to First Nations Australians and meeting the Closing the Gap targets.

## **Cooperation and engagement**

I expect eSafety, through administration and enforcement of its regulatory schemes and outreach activities, to work closely with state and territory police and the Australian Federal Police by:

- making best efforts to put in place effective memoranda of understanding, to assist police to refer victims of cyberbullying, image-based abuse and adult cyber abuse to the support offered by eSafety; and
- promoting awareness of its regulatory functions to state and territory police, encouraging referrals of complainants where appropriate.

I expect eSafety, through administration and enforcement of its regulatory schemes and promotion of its current and any future education programs, to work closely with the Australian education sector by:

- making best efforts to put in place effective memoranda of understanding, or other cooperative arrangements such as letters of agreement, with public education departments and other relevant school bodies;
- promoting awareness of its regulatory functions to Australian schools, encouraging referrals of complainants where appropriate;
- using research findings to inform new products or information aimed at supporting schools and students; and
- providing effective oversight of the Trusted eSafety Provider program.

When deciding whether to engage with international stakeholders, and in undertaking such engagement, eSafety is to have regard to how the engagement advances Australia's interests and improves online safety for Australians.

## **Engagement with the responsible Minister**

I expect the eSafety Commissioner to keep the Government informed of its operations, including to provide regular reports to the responsible Minister on the operation and performance of eSafety.

The eSafety Commissioner is expected to notify the Government of any emerging or other issues that are likely to have a material impact on the operation of eSafety, and provide timely and accurate advice on significant matters, including:

- matters which the Government may be required to discuss in Parliament or other important issues for which the Government is accountable to the Parliament;
- important statutory, operational or internal budgetary issues;
- issues likely to have a significant impact on regulated entities; and
- emerging issues, including significant technology or international developments or regulatory matters that impact Australians, in the online safety sector.

I ask that the eSafety Commissioner provide advanced notification of any public submissions, statements or speeches where significant matters are involved.

## **Engagement with the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department)**

I expect the eSafety Commissioner to work closely with the Department, to support the Department's role in advising on policy, budget and other matters.

In working with the Department, I expect the eSafety Commissioner to be proactive in its approach and responsive to reasonable requests, including to:

- contribute its expertise, data and information to inform evidence-based policy development, including on the operational implications and practical implementation of Government policy initiatives;
- consult with the Department on opportunities to improve regulatory frameworks and remove barriers to industry and effective regulatory responses;
- advise the Department in a timely way of operational changes and other significant actions or issues so that it can advise the Minister;
- keep the Department informed of its regulatory activities, for example with insights from its investigations and research;
- keep the Department informed of significant meetings between the eSafety Commissioner and Ministers, where appropriate.

## **Engagement with ACMA**

Under the OSA, the eSafety Commissioner is an official of the ACMA for the purposes of the finance law. I expect the eSafety Commissioner to work closely with the ACMA Chair as the accountable authority. I expect the Commissioner to follow ACMA Accountable Authority Instructions

(Instructions) issued by the Accountable Authority of the ACMA to the extent that the instructions are not directions in relation to the performance of a function, or the exercise of a power, by the eSafety Commissioner.

I expect the eSafety Commissioner to formalise corporate service arrangements with the ACMA through a memorandum of understanding or a service level agreement within six months of publishing its Statement of Intent.

## **Governance, Transparency, and Accountability**

The eSafety Commissioner is an independent statutory office holder. The eSafety Commissioner performs its statutory functions as part of the Australian Government and is accountable to the Parliament, and ultimately the public, through the responsible Minister. In exercising the powers under the OSA, the eSafety Commissioner is to meet the highest standards of transparency, governance and accountability.

I expect the eSafety Commissioner to continue to prepare a detailed corporate plan and annual reports in line with best practice principles and consistent with the *Public Governance and Performance and Accountability Act 2013*, related legislation and guidance material.

I expect the eSafety Commissioner to identify and act on opportunities for reducing waste and increasing efficiencies in its use of public funds.

Michelle Rowland

Minister for Communications

6 December 2022