



DATE

[Provider]

Att: [Name of designated contact person/counsel]

By email: [Designated contact person/s email]

CC:

Our reference: YYYYMMDD – SMAR – [PLATFORM] – 63G

Commented **S 22** retitle the document with this reference

Notice requiring you to provide information

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1. The eSafety Commissioner (**Commissioner**) is required to monitor and promote compliance with the *Online Safety Act 2021* (Cth) (**the Act**), including the social media minimum obligation in s 63D of the Act.
2. Section 63D states that a provider of an age-restricted social media platform must take reasonable steps to prevent age-restricted users (that is, an Australian child who has not reached 16 years) from having accounts with the age-restricted social media platform.
3. Failure to comply with s 63D could result in the commencement of civil penalty proceedings for a civil penalty order of up to AU\$49.5 million for a single contravention by a body corporate, or other action as determined by the eSafety Commissioner.
4. To monitor a provider's compliance with s 63D, the Commissioner can require the production of information relevant to a provider's compliance with s 63D (s 63G(3)).
5. Please see **enclosed** a notice given to [Provider] under s 63G(3) (**the Notice**) requiring you to provide information relevant to your compliance with s 63D **in respect of** [Platform].

Commented **S** If provider and platform have different names, use the full name of the provider here and shorten in brackets, refer to the shortened version throughout the rest of the covering letter. Do not shorten if this would result in provider name and platform being the same.

Power to give the Notice

6. Division 4 of Part 4A of the Act gives the Commissioner the power to, by written notice, require a provider to give information relevant to their compliance with s 63D where the Commissioner believes on reasonable grounds that:
 - a. the person is a provider of an age-restricted social media platform; and
 - b. the person has information relevant to the person's compliance with s 63D.



7. I am a **[delegate]** of the Commissioner for the purposes of exercising the Commissioner's information-gathering powers in s 63G(3).

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Basis for giving the Notice

8. I give the Notice to you on the basis that I believe on reasonable grounds that:
- [Provider]** is the provider of **[Platform]**; and
 - [Platform]** is an age-restricted social media platform; and
 - [Provider]** has information relevant to its compliance with s 63D **[in respect of [Platform]]**.

Required action

9. The Notice requires you to provide the information specified in Schedule A to the Notice in the manner and form prescribed at Schedule A to the Notice to the office of the eSafety Commissioner (**eSafety**) by **[time]** AEST on **[date]**.

Failure to comply with the Notice

10. **[Provider]** must comply with a requirement under s 63G to the extent that it is capable of doing so (s 63H).
11. Failure to comply with the Notice is a contravention of s 63H and could result in the commencement of civil penalty proceedings for a civil penalty order of up to AU\$825,000 for a single contravention by a body corporate, or other action as determined by the Commissioner.

Extension of time to comply

12. If **[Provider]** requires additional time to comply with the Notice, please contact the Social Media Age Restrictions team by email at socialmediaage@esafety.gov.au by **[time]** AEST on **[date]**. Please provide reasons for why you are seeking an extension of time.
13. The Notice due date continues to apply unless eSafety confirms an extension is granted.

Confidentiality of the Notice

14. The Notice and its contents should be kept confidential unless **[eSafety otherwise agrees]** in writing.



15. You may share the Notice for the purpose of obtaining legal advice should you wish to do so.

Confidentiality of compelled information and Commissioner’s disclosure powers

16. The Commissioner has disclosure powers under Part 15 of the Act. The Commissioner may disclose information obtained under the Notice in certain circumstances, including to the Minister for Communications (s 208), certain authorities (s 212), and to the general public (e.g. s 217).

17. Please complete the **enclosed** template if you wish to provide reasons why particular information should not be disclosed.

Review rights

18. The decision to give you the Notice is not a reviewable decision under s 220 of the Act. As such, it is not subject to internal review or external merits review by the Administrative Review Tribunal.

19. You may be able to seek judicial review of the Notice. Judicial review does not consider the merits of the decision to give you the Notice, it considers the legality of the decision.

20. If you have any questions about the Notice, please contact the Social Media Age Restrictions team at socialmediaage@esafety.gov.au.

SIGNATURE

[Name]

[Job Title], Social Media Age Restrictions Team

Delegate of the eSafety Commissioner

Attachment: Notice under s 63G(3)
Disclosure of information template

Commented S : If being issued by the eSafety Commissioner, amend to:
Julie Inman Grant
eSafety Commissioner



NOTICE REQUIRING YOU TO PROVIDE INFORMATION
(under s 63G(3) of the *Online Safety Act 2021* (Cth))

To: [Provider]

By email: [insert]

CC: [insert]

1. This notice (**the Notice**) is given to you under s 63G(3) of the *Online Safety Act 2021* (Cth) (**the Act**) and requires you to provide the information specified in Schedule A to the Notice in the manner and form specified in Schedule A to the Notice by [time] AEST on [date] to the extent that you are capable of doing so.
2. I am giving you the Notice because I am satisfied that:
 - a. Section 63G(3) authorises the eSafety Commissioner (**Commissioner**) to give a written notice to a person to whom s 63G applies requiring them to give information to the Commissioner relevant to the person's compliance with s 63D of the Act.
 - b. The Commissioner has delegated the power under s 63G(3) to me.
 - c. The conditions for giving the Notice are met because I believe on reasonable grounds that:
 - i. [Provider] is the provider of [Platform], and
 - ii. [Platform] is an age-restricted social media platform; and
 - iii. [Provider] has information relevant to its compliance with s 63D in respect of [Platform/s].

Commented S : Subject to updated delegations instrument. Delete if issued by eSafety Commissioner

Commented S : If provider and platform have different names, use the full name of the provider here and shorten in brackets, refer to the shortened version throughout the rest of this part of the notice. Do not shorten if this would result in provider name and platform being the same.

False or misleading information

3. Giving false or misleading information to eSafety is an offence under the *Criminal Code Act 1995* (Cth).

Failure to comply with the Notice

4. You must comply with a requirement under the Notice to the extent you are capable of doing so.



5. Failure to comply with the Notice could result in the commencement of civil penalty proceedings for a civil penalty order of up to AU\$825,000, or other action as determined by the Commissioner.

Confidentiality of the Notice

6. The Notice and its contents should be kept confidential unless [eSafety otherwise agrees] in writing.
7. You may share the Notice for the purpose of obtaining legal advice should you wish to do so.

Commissioner's disclosure powers

8. The Commissioner has disclosure powers under Part 15 of the Act. The Commissioner may decide to disclose information obtained under the Notice, including to the Minister for Communications (s 208), certain authorities (s 212), and to the general public (e.g. s 217).

SIGNATURE

[Name]

[Job Title], Social Media Age Restrictions Team

Delegate of the eSafety Commissioner

Commented S : If being issued by the eSafety Commissioner, amend to:

Julie Inman Grant
eSafety Commissioner



SCHEDULE A – INFORMATION REQUIRED TO BE PROVIDED

The information you must provide is as follows:

1. ...

a. ...

2. ...

3. ...

This information must be provided in the following manner and form:

- The information is to be provided in a PDF and sent to socialmediaage@esafety.gov.au.
- Where the information sought is a number and the number is zero, you must provide the number and not respond with 'not applicable' or 'N/A'. Additional context may also be provided.
- Where [Provider] considers it is not capable of providing the required information, [Provider] should include statements explaining the basis on which it has determined it is not capable of providing the information.

Commented [eS9]: e.g. in PDF and sent to XX@esafety.gov.au.

The following definitions apply in this schedule:

Age-restricted social media platform has the meaning given by s 63C of the *Online Safety Act 2021* (Cth).

Age-restricted user means an Australian child who has not reached 16 years.

Commented [eSL10]: Remove (and add to) as necessary.

Confidentiality and the eSafety Commissioner's disclosure powers

Confidentiality

1. You are required to provide the information sought in the s 63G notice. The fact that certain information is confidential is not generally an excuse from complying with a s 63G notice.
2. Information obtained under a s 63G notice is not automatically confidential. For example, if eSafety receives information that is already in the public domain, the fact that the information was received in response to a s 63G notice does not mean the information becomes confidential.

Disclosure of compelled information

3. The eSafety Commissioner (**Commissioner**) may disclose information obtained under a s 63G notice in certain circumstances, including to the Minister for Communications (s 208 of the *Online Safety Act 2021* (Cth) (**the Act**)), certain authorities¹ (s 212) and to the general public² (e.g. s 217).
4. In the course of considering disclosure of compelled information, eSafety will take into account the objectives of the Act and the relevant functions of the Commissioner in s 27 of the Act, including:
 - to promote online safety for Australians;
 - to support and encourage the implementation of measures to improve online safety for Australians;
 - to collect, analyse, interpret and disseminate information relating to online safety for Australians;
 - to publish (whether on the internet or otherwise) reports and papers relating to online safety for Australians;
 - to advise and give the Minister reports about online safety for Australians; and
 - to monitor and promote compliance with the Act.
5. eSafety recognises that some information may not be suitable for disclosure and invites you to make submissions about the disclosure of information provided in response to the s 63G notice by the due date of the s 63G notice.
6. Any submissions that you provide are voluntary and do not form part of your obligation to respond to the s 63G notice. Your submissions will not be disclosed, unless required by another legal process.
7. eSafety does not intend to disclose information obtained under a s 63G notice where it is satisfied that:
 - (a) the information falls into one of the categories in Table 1 below; and
 - (b) your reasons demonstrate that you would be, or would reasonably be likely to be, adversely affected if the information were disclosed. It is not sufficient to simply assert that disclosure would fall into one of the categories in Table 1.

¹ The Commissioner may disclose information to certain authorities (including the Office of the Australian Information Commissioner) if the Commissioner is satisfied that the information will enable or assist the authority to perform or exercise any of the authority's functions or powers.

² The Commissioner may disclose information that relates to the affairs of a person if the person has consent to the disclosure and the disclosure is in accordance with that consent (s 215 of the OSA); the Commissioner may disclose information if it is already publicly available (s 216 of the OSA); the Commissioner may disclose (a) summaries of de-identified information; and (b) statistics derived from de-identified information (s 217 of the OSA).

Table 1: Categories of information that eSafety will consider not publishing

Category of information	Includes	Relevant Factors
Commercial in confidence	Trade secrets. Information with commercial value, where that value would be diminished if the information were published.	Matters eSafety will consider include: <ul style="list-style-type: none"> - the extent to which information is already publicly known - measures taken to guard secrecy - the value of the information to its owner and competitors - the effort and money spent by the owner in developing the information - the ease or difficulty with which others might acquire or duplicate the information - the commercial harm that could occur from publication - other relevant information or submissions raised.
Other business information that would be unreasonable to publish	Information about an individual's business or professional affairs, or information about the business, commercial or financial affairs of an organisation or undertaking (business information) that would unreasonably affect that person adversely in respect of their lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.	Matters eSafety will consider include: <ul style="list-style-type: none"> - whether the information is business information - how the publication of the information could have an unreasonable adverse impact on the individual or business.
Law enforcement and public safety	Information that could affect law enforcement or public safety, including disclosing methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law. Information that could assist individuals and groups from deliberately contravening or circumventing safety and security measures.	Matters eSafety will consider include: <ul style="list-style-type: none"> - whether the methods or procedures are publicly known or prevalent across industry. - the level of detriment that is likely to occur from the disclosure of any lawful methods or procedures for investigating, preventing, detecting or dealing with breaches of the law. - how information could assist individuals in contravening company safety policies and interventions and the level of detriment that is likely to occur. Information that eSafety will not normally publish: <ul style="list-style-type: none"> - Specific indicators, for example behavioural indicators (new account contacting multiple children) that might companies use, or technical indicators (e.g. device and IP addresses); - Language/terms searched for; - Detailed explanations or information on how technologies work and their weaknesses/vulnerabilities; - "New technology" that is not currently in the public domain.
Personal information	Information about a natural person.	Matters eSafety will consider: <ul style="list-style-type: none"> - whether the information is about an identified individual or an individual who is reasonably identifiable from the summary or other sources - whether the information in the summary could be de-identified so that is no longer about an identifiable individual or individual who is reasonably identifiable.

Table 2: Submission by provider

Please provide your submissions in the below table. It will assist if you provide submissions in the following format:

- 1) Question # in Schedule A to the Notice;
- 2) Specific content in provider's response that submission relates to;
- 3) Which '**Category of information**' in Table 1 the submission relates to (you may identify more than one where relevant); and
- 4) Specific reasons that demonstrate that you would be, or would be reasonably likely to be, adversely affected if the information were disclosed (carefully consider '**relevant factors**' in Table 1).

Question number in Schedule A to the Notice	Content in provider's response that submission relates to	Submission Category	Specific Reason
6a.	<i>E.g. "Provider does xyz on the service"</i>	<i>E.g, Law enforcement and public safety</i>	<i>Specific reason explaining why disclosure would be likely to cause any real, significant or material harm – please carefully consider relevant factors in Table 1.</i>