



Australian Government

Department of Infrastructure, Transport,
Regional Development, Communications and the Arts

Submission

Parliamentary Joint Committee on Law Enforcement: Inquiry into law enforcement capabilities in relation to child exploitation

October 2022

Overview

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) welcomes the opportunity to make a further submission to the Parliamentary Joint Committee on Law Enforcement's inquiry into law enforcement capabilities in relation to child exploitation.

This submission responds to Term of Reference (g) 'any related matters' on the capability of Australia's law enforcement agencies to tackle the growing scourge of child exploitation. It supersedes the Department's earlier submission provided in August 2021, reflecting the passage of the *Online Safety Act 2021* (the Act), which came into effect on 23 January 2022. The Act provides new and strengthened powers to the eSafety Commissioner to remove and respond to child sexual abuse material (CSAM).

Online Safety Act 2021

The Department's Online Safety Branch is responsible for providing online safety policy advice to the Government. The Act establishes the eSafety Commissioner, Australia's online safety regulator, responsible for administering schemes under the Act. The eSafety Commissioner is responsible for promoting online safety in Australia and administering complaints schemes for adult cyber abuse, child cyber-bullying, image-based abuse, and illegal and harmful online content.

eSafety's regulatory powers and responsibilities

The eSafety Commissioner supports and complements law enforcement efforts to counter online sexual exploitation of children by regulating online content, and setting standards and expectations for digital platforms to provide safe and lawful online environments. The Act empowers the eSafety Commissioner to prevent and respond to online child sexual exploitation through:

- The Online Content Scheme
- The Online Safety (Basic Online Safety Expectations) Determination 2022
- Industry Codes.

eSafety's legislative schemes allow for the receipt and investigation of complaints about harmful online content, and empower the eSafety Commissioner to order its removal from the internet. This protects Australians from exposure to harmful online content. This role complements that of Australian policing agencies who conduct criminal investigations, detecting and punishing those involved in the exploitation of children.

Online Content Scheme

eSafety administers the Online Content Scheme under Part 9 of the Act (previously contained in Schedules 5 and 7 of the *Broadcasting Services Act 1992*).

Under the Online Content Scheme, the Commissioner may investigate complaints about online content and act on 'Class 1' material no matter where it is hosted. 'Class 1' material is material that is, or would likely be,

refused classification under the National Classification Scheme. Refused classification material cannot be sold, hired, advertised or legally imported in Australia, and includes child sexual abuse material (CSAM).

Informal request

Where practicable, eSafety's preference in the first instance is to draw on established relationships with services to request the removal of content. Frequently, this speeds up the removal by avoiding the need for a formal notification or notice to be prepared and issued.

Removal notice

The eSafety Commissioner may issue a removal notice to a service provider or hosting provider based in Australia requiring the removal of CSAM within 24 hours. In these instances, eSafety notifies relevant Australian police and retains relevant evidence to make sure that law enforcement investigations will not be compromised before issuing a takedown notice. Non-compliance with a removal notice may result in a civil penalty of up to 500 penalty units. The eSafety Commissioner may also issue a removal notice to service providers hosting material outside of Australia.

Service provider notification

The eSafety Commissioner may prepare and publish a public statement ('service provider notification') about a service provider hosting class 1 material in contravention of their terms of use, and provide a copy to the service provider. There is no penalty for failure to act in relation to a service provider notification. However, eSafety will consider an online service provider's response to previous notifications when considering options to deal with material.

Link deletion notice

The eSafety Commissioner may issue a link deletion notice to search engine providers that provide Australians with links to class 1 material, including CSAM. A link deletion notice can only be issued if the Commissioner is satisfied that there were 2 or more times in the previous 12 months when end-users in Australia could access class 1 material using the link, and they have already issued a removal notice which was not complied with. A link deletion notice requires the provider to cease providing a link to class 1 material within 24 hours, or face a civil penalty of up to 500 penalty units.

App removal notices

The eSafety Commissioner may issue an app removal notice to the provider of an app distribution service, in

relation to an app that facilitates posting of class 1 material including CSAM. An app removal notice can only be issued if the Commissioner is satisfied that there were 2 or more times in the previous 12 months when end-users in Australia could access class 1 material on the app, and they have already issued a removal notice which was not complied with. An app removal notice requires the provider to cease enabling end-users in Australia to download the app within 24 hours. Failure to comply with a requirement under an app removal notice attracts a civil penalty of up to 500 penalty units.

Industry codes or industry standards

The Act empowers the eSafety Commissioner to seek the creation of strengthened industry codes, or to impose industry standards. The Act includes examples of matters to be dealt with by the codes or standards, including procedures for dealing with child sexual abuse material. Industry is currently developing these industry codes.

Basic Online Safety Expectations

The Act also includes a set of Basic Online Safety Expectations through a ministerial legislative instrument, which was registered on 23 January 2022. This instrument allows the eSafety Commissioner to require transparency reports from services on how they are meeting the expectations, including how they are preventing their platform from being used to access abuse material. Failure to respond to a reporting notice from the eSafety Commissioner will also attract a civil penalty. The eSafety Commissioner has issued legal notices to a number of online service providers requiring them to provide information about their efforts to prevent child sexual abuse material on their services.

Collaborative efforts

International

INHOPE

eSafety is the Australian member of INHOPE, a global network of 50 hotlines that works to rapidly remove child sexual abuse material from the internet. Where the eSafety Commissioner is made aware of child sexual abuse material located in an INHOPE member country, eSafety refers the content to that country's hotline, alerting that country's law enforcement agency to the content for investigation.

The vast majority of content referred through INHOPE is removed in less than three working days. In the small number of cases where child sexual abuse material is hosted in a non-INHOPE member country, eSafety informs the AFP.

Voluntary Principles

The Department supports AGD's work on the Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse, announced by Five Eyes countries and six major digital industry companies in March 2020.

Domestic

National Strategy to Prevent and Respond to Child Sexual Abuse (National Strategy)

Under the first phase of the National Strategy:

- eSafety has received \$3.0m in the 2021-22 Budget to deliver programs to help parents and families prevent online harms to children, including sexual abuse.
- The Department supports AGD's efforts to collaborate with the digital industry against offenders' exploitation of online platforms to commit crimes related to the sexual abuse of children.

Stakeholder engagement

The Department recognises the important work of the AFP, ABF, AUSTRAC and the ACIC to investigate and disrupt online sexual exploitation of children. The Department and eSafety participate in forums chaired by the AFP-led Australian Centre to Counter Child Exploitation (ACCCE), including the Prevention Stakeholder Forum and the Research Working Group, which seek to coordinate efforts to address child exploitation across government and the non-profit sector.