



Australian Government

Department of Infrastructure, Transport,
Regional Development and Communications

Submission

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

August 2021

Overview

The Department of Infrastructure, Transport, Regional Development and Communications (the Department) welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Law Enforcement's inquiry into law enforcement capabilities in relation to child exploitation. This submission describes the role of the Communications portfolio combatting online child sexual abuse material, the powers that will be available to the eSafety Commissioner when the *Online Safety Act 2021* comes into force in early 2022 and summarises recent Australian Government announcements regarding online safety and child safety.

The Department and eSafety have complementary roles

The Department's Digital Platforms and Online Safety Branch is responsible for providing online safety policy advice to the Government. The Department works closely with the eSafety Commissioner – Australia's online safety regulator. The eSafety Commissioner, supported by her office (eSafety) is responsible for administering complaints schemes for cyber-bullying, image-based abuse, and illegal and harmful online content, and promoting online safety in Australia. This will be extended to adult cyber abuse when the new *Online Safety Act 2021* comes into force.

eSafety works to remove online child sexual abuse material

While eSafety is not a law enforcement agency, it does contribute to responding to child exploitation online. eSafety administers the Online Content Scheme under Schedule 5 and Schedule 7 of the *Broadcasting Services Act 1992*. Under this scheme, the Commissioner may investigate valid complaints about online content, and take action on material found to be prohibited or potentially prohibited. This includes child sexual abuse material.

eSafety prioritises investigations into online child sexual abuse material and works with law enforcement agencies and the International Association of Internet Hotlines (INHOPE) to remove this content from the internet wherever it is hosted. This differs from but complements the Australian Federal Police and law enforcement agencies that focus on crime prevention and awareness raising, intelligence, investigations, disruption and prosecution of criminal offences.

For material hosted in Australia, eSafety notifies relevant Australian police and issues a takedown notice directing the hosting provider to remove the content. eSafety collects and retains relevant evidence to make sure that law enforcement investigations will not be compromised before issuing a takedown notice. Hosting providers that do not comply with a takedown notice issued by the eSafety Commissioner face penalties under the Online Content Scheme.

If child sexual abuse material is hosted overseas, eSafety work with INHOPE and the Australian Federal Police. The eSafety Commissioner is the Australian member of INHOPE, a network of 46 hotlines that works

as a global mechanism to rapidly remove child sexual abuse material from the internet. If child sexual abuse material is located in an INHOPE member country other than Australia, eSafety refers the content to that country's hotline so the relevant law enforcement agency is alerted. 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 Australian Federal Police.

eSafety will have new and strengthened powers under the Online Safety Act

On 23 June 2021, the Australian Parliament passed the *Online Safety Act 2021*. The Act bolsters Australia's world-leading online safety framework by introducing new and strengthened schemes to assist Australians when things go wrong online. The new Act will commence on 23 January 2022.

The Act preserves the Online Content Scheme that was previously set out in the *Broadcasting Services Act 1992*. The eSafety Commissioner will retain powers to issue removal notices to content hosts based in Australia and there will be civil penalties for non-compliance. Widespread industry awareness of the Scheme in Australia means formal takedowns are expected to remain rare events. Child sexual abuse material would be considered Class 1 content and therefore the Act will extend the eSafety Commissioner's powers to issue removal notices to content providers, no matter where they are located. Hosting providers will be required to take all reasonable steps to ensure the removal of child sexual abuse material, where the material can be accessed by end-users in Australia, within 24 hours or such longer period as the eSafety Commissioner allows.

The Act provides the eSafety Commissioner with a new power to issue a link deletion notice to search engine providers that provide Australians with links to class 1 material, such as child sexual abuse material. The Act also allows the eSafety Commissioner to issue an app removal notice to the provider of an app distribution service, to require the provider to cease enabling end-users in Australia to download a particular app that facilitates the posting of class 1 material within 24 hours or such longer period as the Commissioner allows. Failure to comply with a requirement under a link or app removal notice attracts a civil penalty.

The Act empowers the eSafety Commissioner to seek the creation of strengthened industry codes, or to impose industry standards. The Act includes the examples of matters to be dealt with by the codes or

standards, including procedures for dealing with child sexual abuse material.

The Act also introduces a set of Basic Online Safety Expectations through a ministerial legislative instrument. This will allow 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 incur a civil penalty.

The Department supports Home Affairs-led initiatives

The Department supports Home Affairs-led initiatives to hold the digital industry more accountable for hosting child sexual abuse material online. This includes Home Affairs' 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. The Department also supports Home Affairs' efforts to drive a coordinated and collaborative approach with the digital industry against offenders' exploitation of online platforms to commit child sexual abuse related crimes. This is part of the first phase of the National Strategy to Prevent and Respond to Child Sexual Abuse announced in the 2021-22 Budget.

The Department recognises the important work of the Australian Federal Police and other agencies in holding perpetrators of online child sexual abuse accountable for their crimes.

The Government recently agreed to boost agency capabilities

The Department notes the Government's \$146 million investment made over four years in the 2021-22 Budget for the first phase of a new National Strategy to Prevent and Respond to Child Sexual Abuse (the National Strategy). This investment will bolster the capabilities of the Australian Federal Police, the Australian Transaction Reports and Analysis Centre, the Australian Institute of Criminology, the Australian Border Force, the Australian Criminal Intelligence Commission and the Department of Home Affairs (Home Affairs) to prevent and respond to child sexual abuse. Of this, eSafety was allocated \$3 million of this funding to deliver programs to help parents and families prevent online harms to children.

The Government has invested significantly to improve online safety in Australia

The Government committed \$29.2 million for online safety over 4 years in the 2021-22 Budget, including \$3 million for eSafety's contribution to the National Strategy. This brings the Government's total commitment to keeping Australians safe online over the next four years to over \$125 million. Most of this funding is for online safety education, awareness, support and investigations. This funding will allow eSafety to fulfil its existing functions, perform additional functions under the *Online Safety Act 2021* and meet the increase in demand for resources.