Chapter 2

Coordinating law enforcement across jurisdictions

2.1 Cybercrime is a global challenge, and any effective response requires close coordination between law enforcement agencies across multiple international jurisdictions. As the International Association of Prosecutors—Global Prosecutors E-Crime Network (GPEN) stated, the central problem for law enforcement relates to the problem of jurisdiction and the borderless nature of the internet:

> Nearly every cybercrime will involve more than one jurisdiction and therefore require some form of international cooperation. In cybercrime cases you can have parallel or competing jurisdictions. There is the need for clarity regarding jurisdiction some countries have domestic laws with extrajurisdictional effect; and will limit the assistance they will give to another country on a matter if they have a jurisdictional claim or interest. If you look also at the different legal, investigative and prosecution systems and the fact that some countries will not extradite their own nationals. It can become very complicated and you can understand why countries require rules on negotiating jurisdiction.[1]

2.2 This borderless nature of cybercrime means that no country can fully protect itself against cybercrime without the help of law enforcement in other countries. It is therefore necessary for all countries to have law enforcement agencies, prosecutors and judges who understand the nature of cybercrime and are able to cooperate on investigations and prosecutions of these crimes. As GPEN noted:

> ICT criminals typically hide in countries that are less developed, where the law enforcement personnel, prosecutors and judges are less efficient in the investigation and prosecution of ICT offences.[2]

International law enforcement arrangements

2.3 Australia is party to several inter-jurisdictional treaties, alliances and other mechanisms that aim to facilitate international cooperation in relation to the investigation of criminal activity enabled by new and emerging technologies.

Council of Europe Convention on Cybercrime (Budapest Convention)

2.4 Council of Europe Convention on Cybercrime (Budapest Convention) is the leading, binding international instrument directed at cybercrime. It sets out offences that criminalise ICT-offending, and encourages effective international cooperation which is needed not only between governments but also with industry. The Australian

---

1 International Association of Prosecutors—Global Prosecutors E-Crime Network (GPEN), *Submission 19*, p. 3.

2 GPEN, *Submission 19*, p. 3.

government announced in 2010 that it would take steps to accede to the Budapest Convention. It came into force in Australia on 1 March 2013.[3]

2.5 Australia's accession to the Budapest Convention helps to improve the ability of Australian law enforcement agencies to work effectively with their overseas counterparts. The Budapest Convention aims to:

- harmonise domestic legal frameworks on cybercrime;
- provide for domestic powers to investigate and prosecute cybercrime; and
- establish an effective regime of international legal cooperation.[4]

2.6 Ms Esther George, Lead Cybercrime Consultant, International Association of Prosecutors, noted how many non-European countries, including Australia, have now adopted the Budapest Convention, increasing its effectiveness in establishing principles for cybercrime offences:

> …the Council of Europe cybercrime convention, which, although it began in Europe, has actually spread and taken over quite a few countries. They have about 56 countries as signatories now, and that includes Australia, US, Turkey, Chile, Costa Rica, Dominican Republic, Israel, Japan, Mauritius, Senegal, Sierra Leone, Tonga and the Philippines. I understand that Tunisia has recently been invited to join….The reason that I think this convention is very good is not just because I'm a Council of Europe expert…but also because the Council of Europe convention is the only treaty you have that actually deals with [it]. It's been around since 2001 and it covers what I think are the main pillars that need to be covered. It sets out the offences, and you've got countries that have not signed up to the convention that actually have taken on board the principles in their legislation and they've actually criminalised the offences…. It brings back the idea that what you need for international cooperation is for every country to criminalise the same offences.[5]

Mutual Legal Assistance Treaties

2.7 Mutual Legal Assistance Treaties (MLATs) are agreements between governments that facilitate the exchange of information relevant to an investigation occurring in at least one of those countries. They impact on the way that a user's data is shared with foreign governments for criminal investigations and prosecutions. MLATs are designed to facilitate cooperation in addressing serious cases of criminal

---

3 Government response, House of Representatives Standing Committee on Communications, *Report on the Inquiry into Cyber Crime*, p. 13, https://www.aph.gov.au/PARLIAMENTARY_BUSINESS/COMMITTEES/HOUSE_OF_REPRESENTATIVES_COMMITTEES?url=coms/reports.htm (accessed 4 December 2018).

4 Department of Home Affairs (DHA), 'Cybercrime', https://archive.homeaffairs.gov.au/about/crime/cybercrime (accessed 5 December 2018).

5 Ms Esther George, Lead Cybercrime Consultant, International Association of Prosecutors, *Committee Hansard*, 29 March 2018, p. 41.

activity including cybercrime. This international standardised process allows a court or judge to review each request before data is accessed.[6]

2.8 MLATs present a number of challenges to law enforcement agencies; some of these challenges are discussed in subsequent chapters.

Five Eyes Alliance

2.9 The Five Eyes Alliance is an intelligence alliance involving the United Kingdom, United States, Canada, Australia and New Zealand. It was formally founded on 5 March 1946 as a multilateral post-war agreement for cooperation in signals intelligence known as the UKUSA Agreement, and subsequently expanded to include Canada (1948) and Australia and New Zealand (1956). After more than 70 years, its scope continues to expand in response to security concerns associated with the emergence of new technologies.[7]

Australian law enforcement policy framework

2.10 In Australia, there has been a concerted national effort to develop a coordinated response to cybercrime, including the implementation of a high level policy framework to guide government, including law enforcement, contributions to a safer and more secure online environment.[8]

National Plan to Combat Cybercrime

2.11 In 2013 the Australian government released the first *National Plan to Combat Cybercrime*.[9] The National Plan provides a coordinated national response across jurisdictions, based on six key principles (see Figure 2).

---

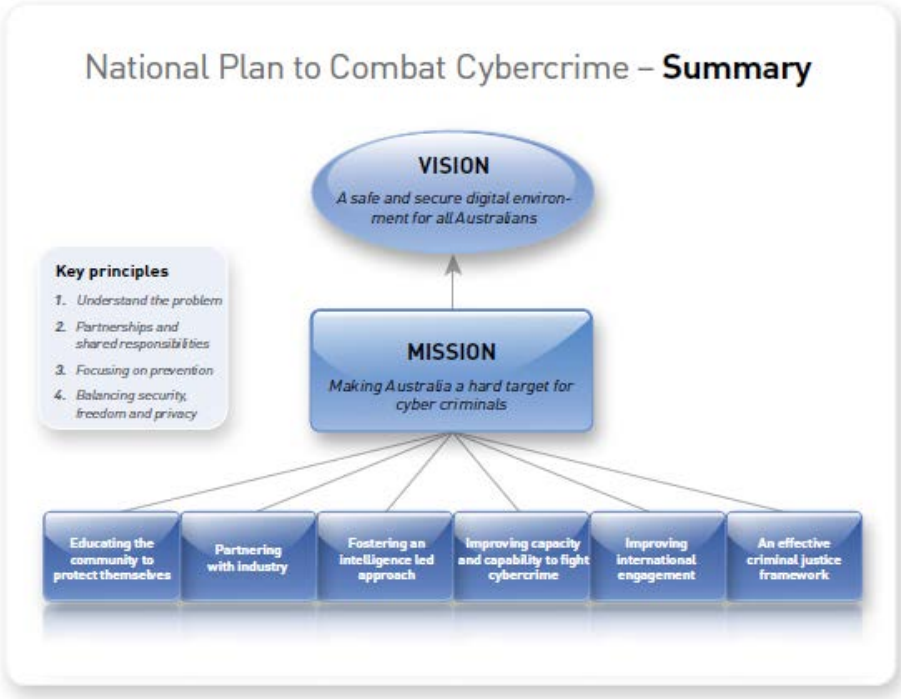
6 Access Now, *Mutual Legal Assistance Treaties*, https://www.mlat.info/ (accessed 18 February 2019).

7 JV Tossini, 'The Five Eyes—The Intelligence Alliance of the Anglosphere', *ukdj*, 14 November 2017, https://ukdefencejournal.org.uk/the-five-eyes-the-intelligence-alliance-of-the-anglosphere/ (accessed 20 December 2018). See Chapter 4 for discussion of the Five Eyes Alliance Statement of Principles in relation to encryption.

8 DHA, Attorney-General's Department (AGD) and Australian Border Force (ABF), *Submission 28*, p. 6.

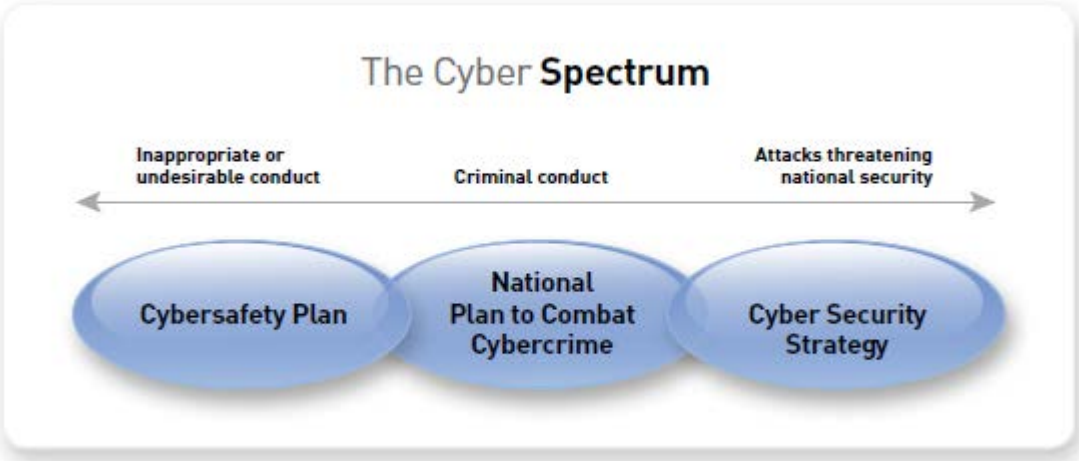
9 ISACA, *Submission 13*, [p. 2].

Figure 2: Overview of National Plan to Combat Cybercrime



2.12 The Plan notes that cybercrimes are part of a 'cyber spectrum' of activities ranging from broader social and personal risks associated with the use of the internet and computers on the one hand, to attacks that threaten national security on the other. The Plan focuses on the centre of this spectrum: criminal conduct (see Figure 3).

Figure 3: The Cyber Spectrum[10]



10 AGD, *National Plan to Combat Cybercrime*, 2013, p. 6.

Australia's Cyber Security Strategy

2.13 In 2016 the Prime Minister launched *Australia's Cyber Security Strategy* as a 'roadmap for creating a "cyber smart nation"'. The Strategy sets out the Australian government's philosophy and program for 'meeting the dual challenges of the digital age—advancing and protecting our interests' online between 2016 and 2020.[11]

2.14 It recognises that Australia needs to innovate and diversify its economy, and embrace 'disruptive technologies' that open up new possibilities for innovation and growth.[12]

2.15 The Strategy recognises that digital technologies bring risks, and that strong cyber security is a 'fundamental element of our growth and prosperity in a global economy' and vital to national security requiring partnerships between governments, the private sector and the community:[13]

> As people and systems become increasingly interconnected, the quantity and value of information held online has increased. So have efforts to steal and exploit that information. Cyberspace, and the dynamic opportunities it offers, is under persistent threat.[14]

2.16 The objectives of the Strategy include:

- the creation of jointly operated cyber threat sharing centres and an online threat sharing portal;
- partnering internationally to prevent cybercrime and other malicious/nefarious cyber activity; and
- helping to build capacity and awareness within Australia's public and private sectors by developing a highly-skilled workforce and raising citizens' awareness of the risks and benefits of the cyber realm.[15]

2.17 The Strategy includes a commitment to increasing the capabilities of the Australian Cyber Security Centre (ACSC); a new multi-use facility for the ACSC; additional funding for the Australian Federal Police (AFP) and Australian Criminal Intelligence Commission (ACIC); and engaging our regional partners to shut down

---

11 Commonwealth of Australia, Department of Prime Minister and Cabinet, *Australia's Cyber Security Strategy: Enabling innovation, growth & prosperity*, 2016, p. 2, https://cybersecuritystrategy.homeaffairs.gov.au/sites/all/themes/cybersecurity/img/PMC-Cyber-Strategy.pdf (accessed 5 December 2018).

12 ISACA, *Submission 13*, [p. 2].

13 Commonwealth of Australia, Department of Prime Minister and Cabinet, *Australia's Cyber Security Strategy: Enabling innovation, growth & prosperity*, 2016, p. 5.

14 Commonwealth of Australia, Department of Prime Minister and Cabinet, *Australia's Cyber Security Strategy: Enabling innovation, growth & prosperity*, 2016, p. 15.

15 ISACA, *Submission 13*, [pp. 2−3].

'safe havens' for cyber criminals.[16] It also recognises the importance of government working with the business sector to address cyber threats.[17] The Strategy also outlines a number of cyber security initiatives that have been implemented in relation to building strong cyber defences (see Figure 4).

2.18 Mr Andrew Colvin, Commissioner, AFP has remarked that the Strategy requires constant monitoring in order to keep pace with the changing cyber security environment:

> The government is constantly reviewing that strategy, and that's because, in cybercrime, of all the crimes we deal with, two years ago is a very long time and things have changed enormously, both in the threat actors that we are dealing with but also in the technologies—the targets that they're attacking.[18]

16 DHA, AGD and ABF, *Submission 28,* p. 7; see also Mr Hamish Hansford, First Assistant Secretary, National Security and Law Enforcement Policy, DHA, *Committee Hansard,* 11 May 2018, p. 48.

17 Commonwealth of Australia, Department of Prime Minister and Cabinet, *Australia's Cyber Security Strategy: Enabling innovation, growth & prosperity*, 2016 p. 6.

18 Mr Andrew Colvin, Commissioner, Australian Federal Police (AFP), *Committee Hansard,* 22 February 2019, pp. 5−6.

Figure 4: Australian cyber security initiatives as at 2016[19]

A new National Plan to Combat Cybercrime

2.19 On 19 May 2017, the Council of Australian Governments Law, Crime and Community Safety Council, comprising ministers with responsibilities for law and justice, police and emergency management, agreed to develop a new *National Plan to Combat Cybercrime* 'to ensure a strong national approach to tackling the increasing risks to business and individuals posed by cybercrime'.[20]

2.20 The National Cybercrime Working Group, comprising representatives from state and territory police and justice agencies, the ACIC and the Australia New

19 Commonwealth of Australia, Department of Prime Minister and Cabinet, *Australia's Cyber Security Strategy: Enabling innovation, growth & prosperity*, 2016, p. 29.

20 Law, Crime and Community Safety Council, *Communiqué*, 19 May 2017, https://www.ag.gov.au/About/CommitteesandCouncils/Law-Crime-and-Community-Safety-Council/Documents/19-May-LCCSC-Communique.pdf (accessed 20 December 2018).

Zealand Policing Advisory Agency, is currently overseeing the development of the new Plan.[21]

Australia's International Cyber Engagement Strategy[22]

2.21 In October 2017, the Australian government released *Australia's International Cyber Engagement Strategy* aimed at fostering relationships between Australia and Asia-Pacific nations, such as China, New Zealand, South Korea and India, and improving connectivity, collaboration, and access throughout the region, especially in areas such as cyber security and internet governance.[23]

2.22 The Strategy has led to the formation of the Asia Pacific Computer Emergency Response Team (APCERT), a combination of CERTs from several nations that monitor and protect cyberspace in the region. It is also anticipated that overall regional cyber security capability will be strengthened as a result of the establishment of the Pacific Cyber Security Operational Network (PaCSON) to provide operational points of contact.[24]

Australian law enforcement agencies

2.23 Within Australia, responsibility for dealing with the different forms of cybercrime is shared between national, state and territory law enforcement and security agencies.[25]

Department of Home Affairs

2.24 The government established the portfolio of Home Affairs in December 2017. It includes the ACIC, AFP, Australian Signals Directorate (ASD), Australian Transaction Reports and Analysis Centre (AUSTRAC), Australian Border Force (ABF), and Australian Security Intelligence Organisation (ASIO), representing an amalgamation of national security, emergency management and criminal justice

---

21 DHA, *Cybercrime*, https://archive.homeaffairs.gov.au/about/crime/cybercrime (accessed 5 December 2018).

22 Commonwealth of Australia, Department of Foreign Affairs and Trade, *Australia's International Cyber Security Strategy*, October 2017, https://dfat.gov.au/international-relations/themes/cyber-affairs/aices/pdf/DFAT%20AICES_AccPDF.pdf (accessed 28 March 2019).

23 Commonwealth of Australia, Department of Foreign Affairs and Trade, *Australia's International Cyber Engagement Strategy*, 2017, p. 32.

24 ISACA, *Submission 13*, [p. 4].

25 DHA, 'Cybercrime', https://archive.homeaffairs.gov.au/about/crime/cybercrime (accessed 5 December 2018).

functions from across government.[26] The portfolio also encompasses the Commonwealth Ombudsman which remains an independent statutory authority.[27]

2.25 The Department of Home Affairs (DHA), Attorney-General's Department (AGD) and Australian Border Force (ABF) stated that strong cyber security is 'fundamental to our economic growth and is vital for our national security'. They noted that the Home Affairs portfolio established in December 2017 is designed to be a central policy agency providing coordinated strategy and policy leadership.

> Strong oversight and accountability is important to give the public confidence that our agencies not only safeguard our nation's security, but do so respecting the rights and liberties of all Australians.[28]

Australian Commission for Law Enforcement Integrity

2.26 The Australian Commission for Law Enforcement Integrity (ACLEI) is a statutory authority established by the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act).

2.27 ACLEI is the only Commonwealth agency dedicated to the prevention, detection and investigation of corrupt conduct. It forms part of the Australian government's anti-corruption framework, focusing on agencies with law enforcement functions operating within a high-corruption risk environment.[29]

> Much of the information gathered by ACLEI occurs covertly—including through lawful access to digital records, and by using electronic surveillance capabilities. Often, ACLEI uses covertly-obtained material as a basis to collect additional information using its other investigatory tools—such as by issuing a summons for a person to attend a private hearing to give evidence, or corroborating information in another way (including by issuing notices to produce documents, or by conducting a search of premises under warrant).[30]

2.28 ACLEI works closely with other agencies subject to the Integrity Commissioner's jurisdiction to share information and insights to identify

---

26 DHA, AGD and ABF, *Submission 28*, p. 6.

27 DHA, AGD and ABF, *Submission 28*, p. 8.

28 DHA, AGD and ABF, *Submission 28*, p. 8.

29 Australian Commission for Law Enforcement Integrity (ACLEI), *Submission 1*, p. 1. The *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act) gives the Integrity Commissioner power to examine witnesses on oath in coercive hearings. Agencies subject to the Integrity Commissioner's jurisdiction include the ACIC; the former Crim Trac Agency and the former National Crime Authority; the Australian Federal Police; Australian Transaction Reports and Analysis Centre; Department of Immigration and Border Protection/DHA; prescribed aspects of the Department of Agriculture and Water Resources; and other agencies with law enforcement functions.

30 ACLEI, *Submission 1*, p. 1.

vulnerabilities in the agencies' practices and procedures and help strengthen anti-corruption policies and arrangements. It also publishes case studies, investigation reports and articles on its website to assist corruption prevention practitioners.[31]

Australian Criminal Intelligence Commission

2.29 The ACIC is Australia's national criminal intelligence agency. It commenced operations on 1 July 2016, bringing together the Australian Crime Commission (ACC) and CrimTrac to form Australia's national criminal intelligence agency equipped with intelligence, investigative and information delivery functions.

2.30 The ACIC 'works with partners on the serious and organised crime threats of most harm to Australians and the national interest'.[32] One of the agency's key priorities is to explore the future of crime and justice, including the emergence of new technologies and potential impacts.[33]

2.31 The ACIC is the system administrator responsible for the operation of the Australian Cybercrime Online Reporting Network (ACORN). In 2018−19, the Australian government allocated $59.1 million to the ACIC to develop the National Criminal Intelligence System (NCIS) as a whole of government capability to share criminal information and intelligence. The NCIS is discussed further in Chapter 6.

Australian Cyber Security Centre

2.32 The Australian Cyber Security Centre (ACSC), established by the Australian government in November 2014, brings together law enforcement and security agencies from across the nation and leads the Australian government's efforts to improve cyber security.

2.33 ACSC is located within the ASD. Its role is to continuously monitor cyber threats across the globe, and provide advice and information about how Australians can protect themselves and their businesses online.

2.34 ACSC also works with government, business and academic partners and experts in Australia and overseas to investigate and develop solutions to cyber security threats through a national network of Joint Cyber Security Centres.[34]

---

31 ACLEI, *Submission 1*, p. 7. The agencies subject to the Integrity Commissioner's jurisdiction include the Australian Criminal Intelligence Commission (ACIC); AFP; Australian Transaction Reports and Analysis Centre (AUSTRAC); DHA, including Australian Border Force); prescribed aspects of the Department of Agriculture and Resources; and any other Australian government agency prescribed by regulation under the *Law Enforcement Integrity Commissioner Act 2006*.

32 ACIC and Australian Institute of Criminology (AIC), *Submission 29*, p. 3.

33 ACIC and AIC, *Submission 29*, p. 3.

34 Australian Cyber Security Centre, https://cyber.gov.au/about-this-site/about-acsc/ (accessed 20 February 2019).

2.35 The Computer Emergency Response Team (CERT), based in the ACSC, was launched in 2010 to provide Australian businesses, Australia's critical infrastructure and other systems of national interest (rather than individuals or small businesses) with advice and support in mitigating cyber threats.[35]

Australian Federal Police

2.36 The AFP plays a pivotal role in enforcing federal criminal law and protecting the Australian national interests from crime by operating in the evolving digital and law enforcement landscape.

2.37 The AFP Corporate Plan 2017–18 lists a key focus of the AFP's capability development in continuously building on the ability to strengthen information on demand as well as detect, prevent and predict serious crime through deep data exploration. Other key focuses identified in the Corporate Plan include the ongoing partnerships with industry to invest in innovation to combat serious and organised crime.[36]

Australian Signals Directorate

2.38 The single biggest concentration of national cyber expertise lies within the ASD. The Cyber Security Research Centre (CSRC) noted that the central role and expertise of the ASD will be critical in future in ensuring an effective cooperative national effort on cybercrime.[37]

Australian Transaction Reports and Analysis Centre

2.39 The Australian Transaction Reports and Analysis Centre (AUSTRAC) is Australia's financial intelligence unit and anti-money laundering and counter-terrorism financing regulator. Its purpose is to protect the integrity of Australia's financial system and contribute to the administration of justice through its expertise in countering money laundering and the financing of terrorism:

> AUSTRAC works closely with law enforcement and national security intelligence agencies, primarily on counter-terrorism and counter-terrorism financing matters, as well as other national security priorities. AUSTRAC's intelligence has played an important role in identifying new suspects linked to terrorism in Australia and overseas, and has improved Australia's

35 Commonwealth of Australia, Department of the Prime Minister and Cabinet, *Australia's Cyber Security Strategy*, 2016, pp. 2−3.

36 ISACA, *Submission 13*, [p. 2].

37 Cyber Security Research Centre (CSRC), *Submission 8*, p. 11. The CSRC is a public, not-for-profit company through which the Cyber Security Cooperative Research Centre operates. See Cyber Security Cooperative Research Centre, https://www.cybersecuritycrc.org.au/ (accessed 31 January 2019).

understanding of high-risk funds flows to Syria, Iraq and surrounding countries.[38]

Other agencies

2.40 Other Australian government agencies with existing cybercrime and cyber security responsibilities also include:

- the Australian Digital Health Agency, which is responsible for the Australian government's digital health program, and Digital Health Cyber Security Centre;
- the Australian Taxation Office and Department of Social Services, which work to ensure a more secure cyber environment for Australians;
- the Australian Secret Intelligence Service (ASIS), which is responsible for counter-intelligence activities overseas; and
- the Australian Security Intelligence Organisation (ASIO), which is part of the Home Affairs portfolio and responsible for issues relating to cyber espionage in Australia.[39]

2.41 The Office of the eSafety Commissioner was established in July 2015.[40] The role of the office is to promote online safety for all Australians by coordinating online safety efforts of government, industry and the not-for-profit community. The office has 'a broad remit' including:

- a complaints service for young Australians who experience serious cyberbullying
- identifying and removing illegal online content
- tackling image-based abuse.

The Office also provides audience-specific content to help educate all Australians about online safety including young people, women, teachers, parents, seniors and community groups.[41]

38 AUSTRAC, *Submission 30*, p. 4.

39 See Appendix 4 for a list of Australian government agencies with existing cybercrime and cyber security responsibilities.

40 Commonwealth of Australia, Department of Communications and the Arts, *Launch of the Office of the Children's eSafety Commissioner*, 9 October 2015, https://www.communications.gov.au/departmental-news/launch-office-children%E2%80%99s-esafety-commissioner (accessed 8 March 2019).

41 Commonwealth of Australia, Office of the eSafety Commissioner, *Role of the office*, https://www.esafety.gov.au/about-the-office/role-of-the-office (accessed 8 March 2019).