Fact sheet—Online safety reform proposals—Harmful online content

What is proposed?

The online content scheme, which is currently contained in schedules 5 and 7 of the *Broadcasting Services Act 1992*, will be migrated into the new Online Safety Act. The schedules will be updated so they better reflect the online services that Australians use, allow the eSafety Commissioner to take quicker action on seriously harmful content in Australia and overseas, and update industry code requirements.

Why is it needed?

The current online content scheme is not suited to the contemporary online environment and the technologies and services used by Australians every day. It is limited in its ability to deal with harmful content hosted overseas, the services to which it applies are out-dated, and the reliance on the assessment and classification of online content by the Classification Board imposes unreasonable delays in dealing with harmful online content.

How will it work?

Seriously harmful content will be able to be reported directly the eSafety Commissioner. The Commissioner will investigate the content and will be able to issue a takedown notice for seriously harmful content, regardless of where it is hosted, and refer it to law enforcement and international networks if it is sufficiently serious. Where takedown notices are not effective, the ancillary service provider notice scheme will be able to be used request the delisting or de-ranking of material or services.

Other harmful content will be subject to principles-based industry codes that will require the use of the best available technology to prevent children's access to harmful content. The codes will have a complaints process built in, so members of the public can raise complaints with industry about code violations, and have those complaints escalated to the eSafety Commissioner if they are not resolved. Other matters will be covered by the codes, including making information available to consumers about opt-in tools and services for online safety.

Where there is no industry code, or the code is insufficient, the eSafety Commissioner will be able to make an industry standard about managing harmful content.

Who will be covered under the scheme?

People will be able to make a complaints to eSafety about seriously harmful material that can be accessed by end-users in Australia. There will also be mechanisms to complain to eSafety about breaches of industry codes or standards in relation to harmful material.

What type of material could be reported?

There are two kinds of material that will be covered under the online content scheme.

- Class 1 or seriously harmful content will include content that is illegal under the Commonwealth Criminal Code, such as child sexual abuse material, abhorrent violent material, and content that promotes, incites or instructs in serious crime.
- Class 2 content will be defined as content that would otherwise be classified as RC, X18+, R18+ and MA15+ under the National Classification Code. This includes high impact material like sexually explicit, high impact, realistically stimulated violent content, through to content that is unlikely to disturb most adults but is still not suitable for children, like coarse language, or less explicit violence. The most appropriate response to this kind of content will depend on its nature.

Which platforms would be covered under the scheme?

The revised online content scheme will apply to social media services (such as Facebook, Instagram and Twitter), instant messaging services (such as Facebook Messenger, WhatsApp and Viber), interactive online games, websites, and apps, and Internet Service Providers, among others.

What action would be taken from a report to eSafety?

The eSafety Commissioner would investigate a complaint and would have the power to issue a notice to the relevant service provider to take down the seriously harmful content within 24 hours. If the industry member does not comply, the Commissioner would have a range of enforcement powers at their disposal, including civil penalties for non-compliance.

For harmful material that is sufficiently serious, the eSafety Commissioner would refer matters to the Australian Federal Police and state and territory law enforcement, or international networks like INTERPOL and INHOPE, as appropriate.

Reports to eSafety about code breaches relating to Class 2 content, or other requirements under industry codes, would be investigated by eSafety. eSafety would have graduated sanctions available to address breaches of industry codes under the online content scheme, including warnings, notices, undertakings, remedial directions and civil penalties.

How does this scheme interact with other actions against harmful content?

There are established mechanisms for the eSafety Commissioner to refer sufficiently serious material to the Australian Federal Police, State and Territory Police, or overseas networks like INTERPOL as appropriate. The new Act will maintain this relationship with law enforcement in addressing seriously harmful content.

Where takedown notices are not complied with, the eSafety Commissioner will be able to use the ancillary service provider notice scheme to request that search engines delist or de-rank seriously harmful material, and that other distribution platforms such as app stores, stop offering apps or games hosting seriously harmful content.

During an online crisis event, the eSafety Commissioner will be able to use blocking powers to help stop the spread of seriously harmful content.