

Andre van Eyssen



November 12, 2021

Director, Online Safety Reform and Research Section
Department of Infrastructure, Transport, Regional Development and Communications
GPO Box 2154
Canberra 2601
(submitted by web form)

Dear Director,

RE: Draft Online Safety (Basic Online Safety Expectations) Determination 2021

I am writing this as a veteran of the ICT industry and a manager of an IT department in Victorian State Government. The opinions expressed in this submission are my own, borne of industry experience and are not endorsed by past or current employers.

While my concerns with the enabling legislation are numerous, I have attempted to constrain my commentary to immediate issues that I see has having an overall net negative impact on Australian society.

Please find my submission contained in the following pages.

Yours sincerely,

Andre van Eyssen

1 Introduction

I believe that the absence of exclusion of small service providers from the Online Safety Act 2021 presents substantial risk to individuals, a threat to Australian digital innovation and a challenge to skills development in the Information Technology industry nationwide.

2 Small & Family Services

The Online Safety Act 2021 and Draft Online Safety (Basic Online Safety Expectations) Determination 2021 provides no exclusion for small services designed to serve a limited circle of family, friends and acquaintances. It would provide the same obligations on micro service providers as would be faced by multi-billion dollar advertising companies.

There is a substantial deployment of independent online services in Australia designed to provide private services for the exchange of email, handling of digital content such as documents and photographs and small-scale instant messaging.

These services are often deployed with open source software such as NextCloud and Rocket.Chat and can be provided by consumer NAS¹ appliances that can be purchased from large retailers.

Without an exception for small services, the operator of a small NAS appliance would be subject to the same legal obligations as massive media companies such as Facebook or Google, made particularly vexing by nature of the penalties that would be sufficient to drive many Australians into bankruptcy.

Consider that a “share-house” with a common NAS appliance wherein accounts are held by residents and regular visitors of the house. It is unlikely that the operator of said NAS appliance would be even familiar with the Online Safety Act 2021 yet could be subject to six figure penalties for non-compliance.

A small website designed for an informal club would be open, once again, to the same obligations as large corporate websites.

In particular, small service providers are unlikely to have the budget or technical capability to implement the measures briefly mentioned in the published FAQ for the determination, such as training and protective measures. Operators of appliances would not even be able to enact modifications to their appliance software to meet additional user safety considerations as these products will not be tailored to the Australian market.

3 Impact on Industry

Provision of small services to a small group of users, usually friends and family is a strong strategy for learning the skills and problem-solving approaches required for a successful career in the Information Technology industry.

Such small services develop an understanding of web technologies, IP networking, firewalls and security as well as backup and other real-world considerations.

The threat of substantial fines, legal obligations and an Act that is difficult for the ordinary Australian to understand would act as a sharp deterrent. In a global technology market, Australia should be supporting acts that foster skills and talent rather than providing onerous obligations to deter such research and development.

¹Network Attached Storage

4 Record-keeping & Reporting

Requirements for small service providers to hold records of reports and complaints for a long period of time exposes them to the risk of holding detailed personally identifiable information (“PII”) in circumstances where they do not have a record-keeping system, they are not equipped to meet obligations under the Privacy Act and would carry an additional risk of data breach in the case of a security incident.

Increasing the risk profile of tiny operators and their users with little or no gain to the Australian public is unacceptable.

5 Australian Independence

In a time where the average Australian is compelled to place their private online data in the hands of large offshore companies, often with no assurance to privacy or even sustained provision of service we should foster and encourage Australians to look for options that break this cycle of external reliance.

“great oaks from little acorns grow”

Further, the micro-service of today driven by local innovation always has the potential to grow into a viable business in the future. Australian online business already has to fight significant stigma imposed by existing legislation and imposing a set of rules designed to regulate the behaviour of large offshore “big tech” companies will further crush local development in favour of the incumbent players who have the staffing, budget and industry strength to manage complex obligations.

6 Requested Action

I respectfully request that small sites (less than five hundred users) be declared exempt from the Online Safety Act of 2021 for the large part, and that micro services (less than one hundred users) be exempted completely.