Introduction

As Australia’s leader in online safety, the Office of the eSafety Commissioner (‘the Office’) welcomes the opportunity to provide a submission to the Digital Platforms Inquiry (‘the Inquiry’). The Office is delighted that the Australian Competition and Consumer Commission (ACCC) shares our vision of ensuring that Australia fosters responsible technology that takes a holistic view of consumer welfare and considers the broader societal impacts of online and technological products and services.

Our submission emphasises the importance of ensuring that regulatory responses are coordinated, consistent, effective and efficient. We have therefore provided an overview of our remit and online safety regulatory framework to enable the Inquiry to both account for, and build upon, the Office’s work and role.

In the three and a half years since the Office was established, our remit has expanded significantly and now encompasses a powerful combination of functions. These span from prevention through the production of research and best practice guidance, training and other education and awareness-raising resources, to early intervention and harm remediation through our cyberbullying, online content and image-based abuse regimes. In the course of carrying out these wide-ranging activities, it has become increasingly apparent that the only way to get ahead of online safety issues is to ensure that digital platforms are setting and constantly striving to achieve higher standards for user safety and wellbeing. We look forward to continuing our work with the digital platforms, the ACCC and other stakeholders to encourage and secure better and more consistent standards for user safety within the technology community.

Overview of the Office

The Office was established in July 2015 under the Enhancing Online Safety Act 2015 (Cth) (‘the Act’). The Commissioner’s initial remit was to enhance the online safety of children and young people, primarily through a complaints service for young Australians experiencing serious cyberbullying.

In July 2017, the Office’s remit was expanded to include promoting online safety for all Australians. This broad remit complements section 15 of the Act, which outlines a wide array of functions that together enable the Commissioner to lead, coordinate and advise on online safety issues to ensure all Australians have safe, positive and empowering experiences online.

The Office’s broad remit both requires and enables us to understand and address issues in a multifaceted way. We therefore adopt a wide, proactive and whole of community preventative approach, which allows us to deliver comprehensive, compassionate and citizen focused services.
Regulatory approach and activities

The four pillars underpinning our regulatory approach are Prevention, Protection, Partnerships and Promotion. This underscores the interconnected and multifaceted nature of our regulatory approach, which begins with prevention and awareness raising and ultimately extends to our investigative and enforcement regulatory powers, including collaboration with law enforcement agencies.

The Office’s interconnected and multifaceted regulatory approach is also why our three complaints and reporting schemes, outlined below, function as one Investigative Division.

• The Cyber Bullying Complaints Scheme, which investigates serious cyberbullying material targeting an Australian child,
• The Online Content Scheme, which investigates offensive and illegal online content, prioritising child sexual abuse material, and
• The Image-Based Abuse Portal, which investigates reports of image-based abuse.

Protecting citizens online requires more than a reliance on investigative and enforcement measures: it requires a proactive approach to addressing complex societal situations and behaviours. While operationally separate, functionally the complaints and reporting schemes act as a singular Investigative Division. This allows the teams to collaborate and refer complaints between the schemes, in order to ensure the best outcome for the complainant.

The Office undertakes an extensive research program to ensure our programs and resources are evidence based. This equips us with the insights and knowledge we need to understand the nature of online safety issues and design, implement and evaluate the best possible solutions across all age groups and demographics.


Our research informs our work programs and initiatives, including in the below key areas.

• Older Australians: To help older Australians realise and maximise the benefits of being online, eSafety launched the ‘Be Connected’ website in November 2017. Be Connected provides extensive online learning content and is designed to specifically address the needs of those who are either digitally disengaged or have only basic online skills and digital literacy.
• Women: The Office’s women’s programs and initiatives correspond with the breadth and nature of the abuse women receive online. These programs include eSafety Women, which is designed to assist women impacted by technology-facilitated abuse in domestic and family violence situations, and Women Influencing Tech Spaces, which is aimed at protecting and promoting women’s voices.
• Children: The Young and eSafe (YES) program is a youth focused web platform that is designed to engage and empower young people to take control of their online experiences. It is based on the five key themes of resilience, respect, empathy, responsibility and critical thinking, and provides young people advice and support for dealing with online pressures.
• Parents and carers: iParent is an online information hub that educates parents and carers on the risks their children face online. It also offers suggestions on how to initiate conversations with children on these risks and other online safety topics.

• Teachers: The Office has developed a range of school-based educational resources and programs to assist teachers in guiding their students on how to become responsible digital citizens. These are created by the Office’s in-house team of former educators and developed in conjunction with certification bodies and teachers.

• Community groups: The eSafety Outreach Program promotes online safety and the building of digital citizenship skills across the broader Australian community. This ranges from training and resource support for the classroom, to frontline services for a diverse range of community groups across Australia, including mental health and youth workers, foster carers, law enforcement and community libraries.

Stakeholder engagement

Given the complex, dynamic and evolving field of online safety, the Office recognises how important it is to draw upon the skills and expertise of our stakeholders.

We have therefore developed an extensive network of national and international stakeholders to support our mission of keeping Australians safer online. This is done to identify synergies and promote collaboration with key stakeholders and ensure our projects and programs complement, rather than duplicate, existing efforts in the online space.

Key stakeholders include government agencies, industry, law enforcement, academia, not-for-profit organisations, corporations and community-based groups. Work ranges from educational materials, events, awareness raising activities and the co-development of content.

Last year, the Office formed the eSafety and Mental Health Steering Group (‘the Group’), to bring together representatives from Australia’s key mental health and online safety organisations. The goal of the Group is to harness the collective resources of the member organisations to help combat cyberbullying and promote help-seeking strategies for individuals at risk of harm.

The Office has also established productive working relationships with the social media companies. While a range of powers and penalties are available to the Commissioner, the Office prefers to adopt a cooperative approach to resolving cyberbullying complaints, because the rapid removal of harmful content can de-escalate the negative impacts on a child. Due in part to the strength of our relationships, we have achieved a 100% compliance rate for removing offending content from social media platforms upon request without having to rely on our formal powers. We also have regular dealings with the large social media companies, such as Facebook/Instagram, Snapchat and Twitter, Google, YouTube and TikTok.
Discussion paper

The Office welcomes the Inquiry’s scrutiny of the impact of digital platforms on digital advertising, news and journalism and small business. We are broadly supportive of the preliminary report’s recommendations, acknowledging that these recommendations are predominantly focused on key areas set out in the Inquiry’s Terms of Reference (namely digital advertising, news and journalism and small business).

We welcome the Inquiry’s scrutiny of the impact of digital platforms on Australian citizens. However, we also highlight the importance of a coordinated approach which takes into account the existing regulatory framework, the ongoing work being conducted in the broader online safety space, and the role and remit of the Office.

Primarily, the Office would seek to avoid duplication of Government strategy already in place to protect citizens. As an online regulator focused on minimising risk and preventing online harm to Australian citizens, the Office has unparalleled experience in delivering public policy outcomes in the online space, pursuant to the substantial functions outlined in its own legislation. The Office continues to be instrumental in developing innovative solutions for citizens’ digital concerns and for ensuring the changing needs of the digital landscape are addressed.

The Office would have some concerns in supporting aspects of the preliminary report, specifically the recommendations for the additional roles of the new regulatory ombudsman and unspecified regulatory authority. The Office considers that many of the proposed consumer-focused functions of the proposed ombudsman and regulatory authority would fit within the citizen-focused functions and remit of the Office, as intended by government in establishing the Office.

That is, the Office supports citizens in relation to the information they receive and the services they use online, safeguarding them as consumers as well as more broadly. Our guidance and support of both children and adults in this regard is reflected in the numerous resources we provide, from online shopping to social interaction, as we cover consumer protections in the online space, removal of problematic content and enhanced digital literacy. Our research and feedback from outreach programs ensure that our regulatory approach remains agile, yet focused, in responding to consumer concerns.

It is significant that these aspects, along with the data collection, privacy and informed consent concerns raised in the preliminary report, point to the importance of Safety by Design, which is one of the Office’s key focuses and priorities.

Safety by Design

The technological design and architecture of online services governs how users are able to interact and engage online. These aspects act as both a facilitator and amplifier for how humans interact, engage and behave. While technology may not drive behaviours, it is the medium through which these behaviours can manifest. As such, developers, engineers and vendors of online services play an incredibly important role in shaping online environments and users’ safety therein.
As the Australian government agency responsible for promoting online safety, the Office recognises the need to drive-up standards of user safety within the technology community, and to encourage and secure greater consistency and standardisation of user safety considerations. To reduce risks and counter threats online, a proactive approach is critical. It recognises the importance of proactively and consciously considering user safety as a standard risk mitigation and development process.

In June 2018, the Office laid out its intention to develop a Safety by Design Framework and set of Safety by Design Principles. At its core, Safety by Design is about embedding the rights of users and user safety into the design, development and deployment of online and digital products and services.

A three-pronged consultation process was undertaken to guide the development of this work. This included consultation with industry, parents and carers and young people.

Safety by Design places safety as the third pillar in the developmental process, sitting alongside the well-established processes of privacy and security. The Office has been careful to articulate that the nexus between privacy, security and safety are numerous, and the relationship between them is not binary. Indeed, many of the fundamental data protection and security principles are as much an imperative for user safety as they are for data protection, privacy and security. Our intention is to promote the rights and autonomy of citizens.

In all cases, it is essential that appropriate technical and organisational measures are incorporated into the design and development of online services and products, and that safeguards are integrated into all processes to protect an individual’s rights. As such, our Safety by Design principles canvass issues similar to some of the proposed measures in the preliminary report. These include, but are not limited to, measures aimed at better informing and empowering consumers in relation to their attitudes regarding their data, privacy preferences, privacy and data policies, location tracking, online tracking, filtering and monitoring practices when dealing with digital platforms.

A review process has recently been completed that encompassed an assessment of whether, and to what extent, the Office’s powers and functions should be redeveloped. The review found that “the practice [of industry] to date has largely been one of retrofitting child protection safeguards into online services and products after harm emerges, or the damage is done” and that the Office requires a “more fit for purpose, proactive regulatory regime” in order to protect users upfront. Accordingly, we expect that Safety by Design will continue to remain an ongoing priority for the Office going forward.

As such, the Office is keen to embark on the next stage of its Safety by Design initiative, in which it will consult with industry and key stakeholders to develop resources and guidance to ensure the Framework and Principles are adopted. The guidance and resources will draw on best practices and will be tailored for size and maturity of company and industry.
Conclusion

As the world’s first and only government agency dedicated solely to online safety, we know that online issues are only becoming more complex and pervasive. We also understand the complex interplay of behaviours, situations and attributes that makes some citizens more susceptible to online risks and therefore online harms. We are thus uniquely placed as a regulator to influence this challenging and ever-evolving industry.

It is for this reason that we strongly urge that the Inquiry both accounts for and builds upon the Office’s remit and role as Australia’s leader in online safety. This will ultimately achieve the best outcomes for Australians who are seeking information, guidance and support as they engage online.

We would therefore like to work together to ensure the strategies and solutions of the ACCC and Office align in this important area. This will enable a consistent and coordinated approach to the regulation of social media services. This will in turn help achieve regulatory certainty, which will not only enhance the efficiency and effectiveness of the contributions of both the ACCC and the Office, but is also likely to encourage industry cooperation.