Productivity Inquiry
Productivity Commission
Via productivity.inquiry@pc.gov.au

Productivity Commission's Data and Digital Dividend Inquiry – Interim Report 2
eSafety Commissioner submission

The eSafety Commissioner (eSafety) welcomes the opportunity to respond to the Productivity Commission's 5 Year Productivity Inquiry: Australia's Data and Digital Dividend Interim Report 2.

eSafety is Australia's national independent regulator for online safety. We lead, coordinate, educate and advise on online safety issues and aim to empower all Australians to have safer, more positive online experiences.

We share the Productivity Commissioner's interest in how data and digital tools and applications can continue to drive Australia's prosperity, and how governments, industry and individuals can recognise and safely harness digital changes for Australia's benefit.

What policy issues and regulations are most important for agencies to coordinate on domestically and/or internationally, including both current and emerging areas?

Combatting online harms such as child sexual exploitation, non-consensual sharing of intimate images, terrorism and violent extremism, and cyberbullying and abuse is a global challenge which sits at the intersection of many different issues and equities. To demonstrate the complexity: these harms may simultaneously fall within our legislated investigations and removal schemes, amount to criminal offences under state or Commonwealth law, give rise to civil causes of action and intersect with myriad other social and legal issues, including misogyny, racism, religious discrimination, homophobia and other forms of hate. eSafety therefore works as part of a cross-agency, cross-sector and cross-border ecosystem which seeks to prevent and address these harms.

eSafety engages in consultation with experts and conducts environmental and horizon scanning to strengthen our understanding of evolving online threats. This also allows us to identify trends and challenges that require coordination and collaboration with local and international stakeholders.

eSafety periodically publishes position statements on emerging issues which may have an impact on Australians' online safety and the efficacy of existing legal and regulatory frameworks. It is particularly important to consider the ways that diverse or marginalised groups may be adversely affected, and ensure their voices feature in solutions. Issues we have examined or are currently examining include:

Anonymity and identity shielding

Anonymity and identity shielding allow a user to hide or disguise their identifying information online. While this can protect their safety and privacy, it can also make it difficult to hold them responsible if they cause harm to others. Within Australia, this issue has recently been considered in the context of online safety legislation and defamation law reform, with eSafety contributing to the Attorney-General's Department's consultation.

Age assurance

Age assurance is an umbrella term for measures which seek to determine a person's age or age-range for the purpose of engaging in a particular activity. eSafety is currently considering this issue in the context of reducing children's access to pornography. Both within Australia and

internationally, this issue has been examined in the context of broader online safety and privacy regulatory efforts, with eSafety contributing to discussions with colleagues at Office of the Australian Information Commissioner (OAIC), the Attorney-General's Department, the United Kingdom's Information Commissioner's Office (ICO), the UK's Office for Communications (Ofcom), and others.

Decentralisation

A decentralised internet, or 'Web 3.0', is an environment where decision making authority is distributed among users in a community, which can include responsibility for the moderation of harmful content and activity. Left unchecked, this could allow a range of harms such as child sexual exploitation, terrorist and violent extremism, bullying, harassment, intimidation, discrimination and other abuses to proliferate, without providing any way for users to get help or for consequences to be imposed on those responsible. We have contributed to discussions with thought leaders like the Australian Strategic Policy Institute to share our view that a principles-based approach – like that of Safety by Design (see below) – will help temper these risks.

Immersive technology

Immersive technologies, such as augmented reality, virtual reality, mixed reality and the 'metaverse', enable users to experience and interact in 3D with digital content in a way that looks, sounds and feels almost real. The hyper-realistic nature of this technology has the potential to exacerbate a range of online harms, including sexual abuse. We are working with representatives from across the digital ecosystem, including industry and users, to identify risks, embed protections and provide complaints pathways to ensure immersive technologies and their benefits can be fully enjoyed by all people.

Algorithms

Online services can use algorithms to reduce online harms (for example, by helping them to detect and filter out illegal and seriously harmful content at-scale), but algorithms and the systems and business models surrounding them can also create or contribute to a variety of harms. In our submission to the Inquiry into Social Media and Online Safety, we provided evidence of the extent to which algorithms used by platforms permit, amplify or reduce online harms to Australians. Algorithmic transparency and regulation of algorithms, artificial intelligence and automated decision making technologies are being considered across a number of government processes, and as a strategic priority for the Digital Platforms Regulators Forum (see below).

International engagement

Recognising that different countries may take different approaches to online safety regulation, strategic collaboration at the local, national and global level is critical to shape and guide changes to the digital environment. Securing coordination across jurisdictions to avoid a fragmentation of online safety legislation and governance arrangements is therefore a priority.

eSafety is involved in several international collaborative efforts that seek to achieve coordination, as well as combatting harmful online content, and promoting enhanced transparency of the tech sector. This includes providing expertise on international legislative developments, participating in working groups, and bilateral engagements with our counterparts in the UK, Europe, Korea, Ireland, Canada, New Zealand, Singapore, and the United States, as well as our capacity building efforts across the Indo-Pacific region. These international efforts support our domestic responsibilities as Australia's online safety regulator, educator and coordinator.

Which policymakers and regulators must be involved to effectively coordinate government activity in digital, data and cyber security areas, and how should they be coordinated?

Preventing and responding to online safety, privacy and security issues requires coordination and collaboration among many different stakeholders. This is not limited to government policymakers and regulators but also extends to educators, law enforcement, researchers and academics, non-government and advocacy organisations, industry and civil society. Below are some examples of how eSafety has promoted collaboration and coordination in our activities, in addition to our international collaboration outlined above.

Safety by Design

Protecting and safeguarding users online is a global concern. eSafety's <u>Safety by Design</u> initiative guides and supports companies to assess risks up front and build user safety into the design, development and deployment of online products and services. Working in collaboration with representatives from across the digital ecosystem, we have developed a series of online safety principles, risk assessment tools and guidance materials that support industry to make digital environments safer and more inclusive, especially for those most at-risk. These resources have been accessed in over 46 countries. We continue to work with stakeholders to enhance online safety awareness and to cement safety by design into policy and regulatory dialogues.

eSafety Advisory Committee

The eSafety Advisory Committee is eSafety's advisory forum attended by key representatives from industry, government, civil society organisations and academia. eSafety formed the committee in early 2020 to replace the Online Safety Consultative Working Group, which did not meet during 2019 while the Statutory Review of the Enhancing Online Safety Act 2015 was conducted. The eSafety Advisory Committee is tasked with providing technical and policy expertise, research data, coordination and other assistance to eSafety, to make sure Australia's online safety response and support system is consultative, evidence-based, cross-sectoral and effective.

Educators

As the national leader in online safety education, eSafety is also committed to engaging with key education stakeholders to build awareness of our resources to support a consistent national approach. eSafety regularly consults with, and coordinates responses from, education authorities and sector representatives on the development of educational resources, such as the <u>Toolkit for Schools</u> and the <u>Best Practice Framework for Online Safety Education</u>. eSafety also collaborates with Australian Government agencies such as the Department of Education and the National Office for Child Safety in coordinating responses to the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. Currently, eSafety is establishing a National Online Safety Education Coordination Council to engage with state and territory and non-government education authorities on online safety.

Law enforcement

eSafety coordinates with law enforcement to tackle a range of online harms that may amount to criminal offences, including online child exploitation. We have a working partnership with the Australian Centre to Counter Child Exploitation (ACCCE) that includes the operational sharing of intelligence and collaboration on educational material. Additionally memoranda of understanding (MOU) are currently being updated with all state and territory police and we are also in the process of negotiating an MOU with the Australian Cyber Security Centre.

Industry affairs and engagement

eSafety is committed to engaging with industry stakeholders in open communication that builds awareness of our functions, ensures industry are engaged in and fulfill their regulatory requirements, and fosters collaboration on key initiatives, such as Safety by Design. Our engagement is cognisant of the potential intersection of the work of other regulators who may also be engaging with industry stakeholders.

Digital Platforms Regulators Forum

As highlighted in the interim report, the Digital Platform Regulators Forum (DP-Reg) is an initiative of 4 independent Australian regulators to share information about, and collaborate on, cross-cutting issues and activities relating to the regulation of digital platforms. This includes consideration of how competition, consumer protection, privacy, online safety and data issues intersect.

This forum has evolved and grown since its original announcement in March 2022. Following the first bi-annual meeting of the regulator heads in June 2022, DP-Reg stood up 3 working groups to help achieve the forum's agreed priorities for 2022-23. These groups are currently engaged in a variety of joint activities, including:
- collaborating on data and research projects
- engaging with key stakeholders on algorithms and other digital technologies
- sharing lessons on successful regulatory interventions
- building regulatory skills and capabilities
- actively monitoring relevant international developments.

This work extends from each member's individual coordination with their inter-government policy colleagues, such as the Department of Infrastructure, Transport, Regional Development, Communications and the Arts, as well as active relationships with policy institutes, advocacy groups, and subject matter experts.

We look forward to even greater coordination between government agencies and deepening our engagement further with local and international policymakers on technology and data issues. This will likely improve decision-making, provide a more holistic response from government, and offer greater certainty for regulated entities.

eSafety appreciates the opportunity to contribute to this consultation and is happy to respond to any questions you may have in relation to this submission. We would welcome our inclusion in any further engagements on relevant matters.

Sincerely,

Julie Inman Grant

eSafety Commissioner