



Amending the Online Safety (Basic Online Safety Expectations) Determination 2022 (BOSE Determination)—Summary of the BOSE Determination and proposed amendments

November 2023

Key messages

- The BOSE Determination outlines the Government’s expectations of online service providers to protect Australians from abusive and harmful content online.
- In light of the rapidly evolving online environment, the Minister for Communications has proposed amendments to the BOSE Determination to address emerging harms, increase industry accountability and transparency, and strengthen the overall operation of the Determination.
- The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) welcomes your views on the proposed amendments by **5pm Friday 16 February 2024**.

The BOSE Determination – the Framework

The [BOSE Determination](#) is made by the Minister for Communications under Part 4 of the [Online Safety Act 2021](#) (the Act). The BOSE Determination articulates the Government’s minimum safety expectations of online service providers, establishing a benchmark for online service providers to take proactive steps to protect the community from abusive conduct and harmful content online. The BOSE Determination applies to social media services,¹ relevant electronic services,² and designated internet services.³ The BOSE Determination does not prescribe how these expectations will be met. Rather, they are drafted in a way that allow flexibility in the method of achieving these expectations. The BOSE Determination commenced in January 2022 following a period of public consultation on the draft Determination in late 2021.

¹ A ‘social media service’ is a service that has the sole or primary purpose of enabling online social interactions between end-users, where end-users can also link to other end-users and post material on the service (e.g. Facebook, X (formerly Twitter), Instagram, Reddit and TikTok).

² A ‘relevant electronic service’ is a service that allow end-users to communicate with other end users by means of email (e.g. Gmail), instant messaging (e.g. Whatsapp), SMS, MMS, chat services or online games.

³ A ‘designated internet service’ is a service, other than social media or relevant electronic services, that allow end-users to access material on the internet using an internet carriage service or a service that delivers material to persons by means of an internet carriage service (e.g. websites and other online services).

Under the Act, the eSafety Commissioner (the Commissioner) may require a service provider or class of providers to report on their compliance with one or more basic online safety expectations specified in the BOSE Determination. The provider must prepare the report in the manner and form specified in the Commissioner’s notice, and give the report to the Commissioner either within the time period specified in the reporting notice, or such longer period as the Commissioner allows (but not less than 28 days).

A provider who fails to comply with a reporting notice from the Commissioner may be subject to a civil penalty. The Commissioner can issue and publish service provider notifications under sections 48, 55 and 62 of the Act outlining that a service is not meeting the expectations in the BOSE Determination, which may create reputational risks for service providers. There are no civil penalties for failure to comply with the expectations outlined in the BOSE Determination, nor does the BOSE Determination impose a duty that is enforceable by court proceedings.

Key elements of the BOSE Determination

The BOSE Determination is comprised of ‘core expectations’, ‘additional expectations’ and ‘examples of reasonable steps’.

Core expectations

The Determination contains a range of ‘**core expectations**’ which are set out in the Act. These cannot be amended without amending the Act itself. These include expectations that service providers:

- take reasonable steps to ensure that end-users are able to use the service in a safe manner (subsection 6(1));
- take reasonable steps to minimise provision of cyber-bullying, adult cyber abuse, non-consensual intimate images, class 1 material, and material that promotes, incites, instructs in, or depicts abhorrent violent conduct (section 11);
- take reasonable steps to prevent access by children to class 2 material (subsection 12(1));
- ensure the service has clear and readily identifiable mechanisms that enable end-users to report, and make complaints about, certain material provided on the service (subsection 13(1)); and
- ensure the service has clear and readily identifiable mechanisms that enable end-users to report, and make complaints about, breaches of the service’s terms of use (subsection 15(1)).

Additional expectations

The Determination also contains ‘**additional expectations**’ which are determined by the Minister. New additional expectations can be added in the BOSE Determination without amending the Act. These include expectations that service providers:

- proactively minimise the extent to which material or activity on the service is unlawful or harmful (subsection 6(2));
- prevent anonymous accounts from being used to deal with material, or for activity, which is unlawful or harmful (subsection 9(1));
- consult and cooperate with providers of other services to promote the ability of end-users to use all of those services in a safe manner (subsection 10(1));
- have accessible terms of use, policies and procedures in relation to end-user safety, reports and complaints, and standards of conduct (sections 14 and 17); and
- keep records of reports and complaints about certain material (section 19).

Examples of reasonable steps

The Determination also contains ‘**examples of reasonable steps**’ that service providers can take to meet the core or additional expectations in the Determination. These are determined by the Minister and can be added to or amended without amending the Act. These examples are guides only. Not all reasonable steps have to be taken by all service providers.

Summary of the proposed amendments

Since the BOSE Determination commenced, the online world has continued to evolve. To address these developments, the Minister for Communications, the Hon Michelle Rowland MP, has asked the Department to consult on proposed amendments to strengthen the BOSE Determination.

The proposed amendments to the BOSE Determination are outlined in the draft Amendment Determination and explained in detail in the Consultation Paper. The draft Amendment Determination and Consultation Paper can be found on the Department's [website](#). Broadly, these changes relate to addressing emerging risks associated with generative artificial intelligence (AI) capabilities and recommender systems, protecting the best interests of the child, addressing the safety impacts of business and resourcing decisions, online hate speech, improving industry transparency, and the enforcement of service providers' terms of use.

The amendments propose a range of new additional expectations, including that:

- if a service provider uses generative AI capabilities, they must consider user safety and incorporate safety measures in the design, implementation and maintenance of the capabilities;
- if a service provider uses recommender systems, they must consider user safety and incorporate safety measures in the design, implementation and maintenance of the recommender system;
- service providers ensure the best interests of the child are a primary consideration in the design and operation of any service that is used by, or accessible to, children;
- service providers make available controls that give end-users the choice and autonomy to support safe online interactions;
- service providers prepare and publish regular transparency reports on the measures they are taking to keep Australians safe online;
- service providers review and respond to reports and complaints within a reasonable period of time, and provide feedback to users on the actions taken; and
- service providers take reasonable steps (including proactive steps) to detect breaches of their terms of use, policies and procedures in relation to the safety of end-users, and standards of conduct for end-users.

The amendments also propose a range of new examples of reasonable steps, including that service providers:

- assess whether business decisions will have a significant adverse impact on the ability of end-users to use the service in a safe manner, and in such circumstances, appropriately mitigating the impact;
- have processes for detecting and addressing hate speech which breaches a service's terms of use, policies and procedures in relation to the safety of end-users, and standards of conduct for end-users;
- invest in systems, tools and processes to improve the prevention and detection of material or activity on the service that is unlawful or harmful; and
- continually seek to develop, support or source, and implement improved technologies and processes for preventing access by children to class 2 material.

Public consultation – have your say

The Department welcomes feedback on the proposed changes, including whether the changes achieve their intended outcome, whether the changes are feasible, and any risks of implementation. Submissions are due by **5pm on Friday 16 February 2024**. Submissions may be lodged on the Department's [website](#), or via email at BOSEreform@communications.gov.au.

The submissions made will inform the Department's development of recommendations to the Minister in respect of proposed changes to the BOSE Determination. In amending the BOSE Determination, the Minister will have due regard to the comments provided during the consultation process.