

XRSI review of BOSE, SbD tools and Industry Codes

The legislative reforms for the Online Safety Act 2021 have passed and will be enacted on 23 January 2022. With these reforms come the development of:

- Industry codes – which will be developed by industry. A public position paper will be released on this in the coming weeks which we are more than happy to share.
- Basic Online Safety Expectations (BOSE). The BOSE is currently open for public consultation by the Department of Infrastructure, Transport, Regional Development and Communications until 15 October 2021. You can find out further information about that here:
<https://www.infrastructure.gov.au/have-your-say/draft-online-safety-basic-online-safety-expectations-determination-2021-consultation>



Online Safety (Basic Online Safety Expectations) Determination 2021

I, Paul Fletcher, Minister for Communications, Urban Infrastructure, Cities and the Arts, make the following determination.

Dated

Paul Fletcher **DRAFT ONLY—NOT FOR SIGNATURE**
Minister for Communications, Urban Infrastructure, Cities and the Arts

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Part 1—Preliminary

1 Name

This instrument is the *Online Safety (Basic Online Safety Expectations) Determination 2021*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument.	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 45 of the *Online Safety Act 2021*.

4 Definitions

In this instrument:

Act means the *Online Safety Act 2021*.

Part 2—Basic online safety expectations

Division 1—Purpose of this Part

5 Purpose of this Part

For the purposes of subsections 45(1), (2) and (3) of the Act, this Part specifies the basic online safety expectations for the following:

- (a) a social media service;
- (b) a relevant electronic service of any kind;

(c) a designated internet service of any kind.

Note: Subsections 6(1) and 7(1), section 11, subsection 12(1) and sections 13, 15 and 20 of this instrument are made in accordance with subsection 46(1) of the Act (core expectations)

Division 2—Expectations regarding safe use

6 Expectations—provider will take reasonable steps to ensure safe use

Core expectation

(1) The provider of the service will take reasonable steps to ensure that end-users are able to use the service in a safe manner.

Additional expectation

(2) The provider of the service will take reasonable steps to proactively minimise the extent to which material or activity on the service is or may be unlawful or harmful.

Reasonable steps that could be taken

(3) Without limiting subsection (1) or (2), reasonable steps for the purposes of this section could include the following:

- (a) Designating an organisational steward or point of contact that is accountable for the organisation taking reasonable steps to proactively prevent unlawful or harmful impact on the user.
- (b) developing and implementing processes to detect, moderate, report and remove (as applicable) material or activity on the service that is or may be unlawful or harmful;
 - (~~c~~) if a service or a component of a service (such as an online app or game) is targeted at, or being used by, children (the *children's service*)—ensuring that the default privacy and safety settings of the children's service are robust and set to the most restrictive level;
 - (~~d~~) ensuring that persons who are engaged in providing the service, such as the provider's employees or contractors, are trained in, and are expected to implement and promote, online safety;
 - (~~e~~) continually improving technology and practices relating to the safety of end-users;
 - (~~f~~) ensuring that assessments of safety risks and impacts are undertaken, and safety review processes are implemented, throughout the design, development, deployment and post-deployment stages for the service;
- (g) designating a regular (e.g., annual) review of safety practices, such as the minimisation of private data collection and assessment of physical and mental impact on the user.

Commented [XRS11]: Should we define safe meaning as it is subjective? To use services in a way that protects themselves and others from online harms and risks which may jeopardise their personal information, lead to unsafe communications or effect their mental health and wellbeing.

7 Expectations—provider will consult with Commissioner and refer to Commissioner’s guidance in determining reasonable steps to ensure safe use

Core expectation

(1) In determining what are reasonable steps for the purposes of subsection 6(1), the provider of the service will consult the Commissioner.

Additional expectation

(2) In addition, in determining what are reasonable steps for the purposes of subsection 6(1), the provider of the service will have regard to any relevant guidance material made available by the Commissioner.

8 Additional expectation—provider will take reasonable steps regarding encrypted services

If the service uses encryption, the provider of the service will take reasonable steps to develop and implement processes to detect and address material or activity on the service that is or may be unlawful or harmful.

Commented [XRSI2]: The qualified provides a clear door to ignoring this requirement. It's a challenge throughout the reg. Would recommend hat if keeping "reasonable" a requirement be set for a clear point of contact (or a steward) to own accountability for establishing what are those reasonable steps for the organizaton.

9 Additional expectation—provider will take reasonable steps regarding anonymous accounts

Additional expectation

(1) If the service permits the use of anonymous accounts, the provider of the service will take reasonable steps to prevent those accounts being used to deal with material, or for activity, that is or may be unlawful or harmful.

Reasonable steps that could be taken

(2) Without limiting subsection (1), reasonable steps for the purposes of that subsection could include the following:

- (a) having processes that prevent the same person from repeatedly using anonymous accounts to post material, or to engage in activity, that is unlawful or harmful;
- (b) having a bot-resistant processes that require verification of identity or ownership of accounts.

10 Additional expectation—provider will consult and cooperate with other service providers to promote safe use

Additional expectation

(1) The provider of the service will take reasonable steps to 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.

Reasonable steps that could be taken

(2) Without limiting subsection (1), reasonable steps for the purposes of that subsection could include the following:

- (a) working with other service providers to detect high volume, cross-platform attacks (also known as volumetric or ‘pile-on’ attacks);
- (b) sharing information with other service providers on material or activity on the service that is or may be unlawful or harmful, for the purpose of preventing such material or activity.

Division 3—Expectations regarding certain material and activity

11 Core expectation—provider will take reasonable steps to minimise provision of certain material

The provider of the service will take reasonable steps to minimise the extent to which the following material is provided on the service:

- (a) cyber-bullying material targeted at an Australian child;
- (b) cyber-abuse material targeted at an Australian adult;
- (c) a non-consensual intimate image of a person;
- (d) class 1 material;
- (e) material that promotes abhorrent violent conduct;
- (f) material that incites abhorrent violent conduct;
- (g) material that instructs in abhorrent violent conduct;
- (h) material that depicts abhorrent violent conduct;

[\(j\) suspected deepfake or forged content.](#)

12 Core expectation—provider will take reasonable steps to prevent access by children to class 2 material

Core expectation

(1) The provider of the service will take reasonable steps to ensure that technological or other measures are in effect to prevent access by children to class 2 material provided on the service.

Reasonable steps that could be taken

(2) Without limiting subsection (1) of this section, reasonable steps for the purposes of that subsection could include the following:

- (a) implementing age assurance mechanisms;
- (b) conducting child safety risk assessments.

13 Core expectation—provider will take reasonable steps to identify and label deepfake or forged content that may present safety risk to users

Core expectation

(1) The provider of the service will take reasonable steps to identify deepfake or forged voice recordings.

Reasonable steps that could be taken

(2) Without limiting subsection (1) of this section, reasonable steps for the purposes of that subsection could include the following:

- (a) implementing AI-based tools that identify frauds;
- (b) use of distributed ledger technology, such as blockchain, to digitally sign and affirm the validity of a video or recording.

Commented [XRS13]: The addition of one or more digital signature to a video or recording can increase the probability it will be considered a real record (a voting of sorts).

Division 4—Expectations regarding reports and complaints

13 Core expectation—provider will ensure mechanisms to report and make complaints about certain material

The provider of the service will ensure that the service has clear and readily identifiable mechanisms that enable end-users to report, and make complaints about, any of the following material provided on the service:

- (a) cyber-bullying material targeted at an Australian child;
 - (b) cyber-abuse material targeted at an Australian adult;
 - (c) a non-consensual intimate image of a person;
 - (d) class 1 material;
 - (e) class 2 material;
 - (f) material that promotes abhorrent violent conduct;
 - (g) material that incites abhorrent violent conduct;
 - (h) material that instructs in abhorrent violent conduct;
 - (i) material that depicts abhorrent violent conduct
- (j) suspected deepfake or forged content.

14 Additional expectation—provider will ensure service has terms of use, certain policies etc.

The provider of the service will ensure that the service has:

- (a) terms of use; and
- (b) policies and procedures in relation to the safety of end-users; and
- (c) policies and procedures for dealing with reports and complaints mentioned in section 13 or 15; ~~and~~
- (d) standards of conduct for end-users (including in relation to material that may be posted using the service by end-users, if applicable), and policies and procedures in relation to the moderation of conduct and enforcement of those standards.

Note 1: See section 17 in relation to making this information accessible to end-users

Note 2: For paragraph (b), the policies and procedures might deal with the protection, use and selling (if applicable) of end users' personal information

15 Core expectation—provider will ensure service has mechanisms to report and make complaint about breaches of terms of use

The provider of the service will ensure that 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.

16 Additional expectation—provider will make accessible information on how to complain to Commissioner

The provider of the service will ensure that information and guidance on how to make a complaint to the Commissioner, in accordance with the Act, about any of the material mentioned in section 13 provided on the service, is readily accessible to end-users.

Division 5—Expectations regarding making certain information accessible

17 Additional expectation—provider will make information on terms of use, policies and complaints etc. accessible

- (1) The provider of the service will ensure that the information specified in subsection (2) is:
 - (a) readily accessible to end-users; and
 - (b) in relation to the information mentioned in paragraph (2)(b)—accessible at all points in the end-user experience, including, but not limited to, point of purchase, registration, account creation, first use and at regular intervals (as applicable); and
 - (c) regularly reviewed (not less than annually) and updated; and

- (d) written in plain language.
- (2) For the purposes of subsection (1), the information is the following:
 - (a) the terms of use, policies and procedures and standards of conduct mentioned in section 14;
 - (b) information regarding online safety and parental control settings, including in relation to the availability of tools and resources published by the Commissioner.

18 Additional expectation—provider will provide regular reminders of and information about policies, terms and conditions etc.

The provider of the service will ensure that end-users receive regular reminders of, and updates in relation to changes in, the information specified in subsection 17(2), including through targeted in-service communications.

Division 6—Expectations regarding record keeping

19 Additional expectation—provider will keep records regarding certain matters

The provider of the service will keep records of reports and complaints about the material mentioned in section 13 provided on the service for 5 years after the making of the report or complaint to which the record relates.

Division 7—Expectations regarding dealings with the Commissioner

20 Core expectations—provider will provide requested information to the Commissioner

(1) If the Commissioner, by written notice given to the provider of the service, requests the provider to give the Commissioner a statement that sets out the number of complaints made to the provider during a specified period (not shorter than 6 months) about breaches of the service's terms of use, the provider will comply with the request within 30 days after the notice of request is given.

(2) If the Commissioner, by written notice given to the provider of the service, requests the provider to give the Commissioner a statement that sets out, for each removal notice given to the provider during a specified period (not shorter than 6 months), how long it took the provider to comply with the removal notice, the provider will comply with the request within 30 days after the notice of request is given.

(3) If the Commissioner, by written notice given to a provider of the service, requests the provider to give the Commissioner specified information relating to the measures taken by the provider to ensure that end-users are able to use the service in

Commented [XRS14]: I recommend that the provider of the service be required, on an annual basis, to publicly disclose the number of reports and complaints received about material mentioned in section 13.

a safe manner, the provider will comply with the request within 30 days after the notice of request is given.

21 Additional expectations—provider will have designated contact person

- (1) The provider of the service will ensure that there is an individual who is:
 - (a) an employee or agent of the provider; and
 - (b) designated as the service’s contact person for the purposes of the

Act;

[\(c\) may be the same individual accountable for ensuring the organisation takes a proactive approach to preventing unlawful or harmful impact on an end user as specified in section 6\(3\)a.](#)

- (2) The provider will ensure that the contact details of the contact person are notified to the Commissioner [and publicly listed on the service provider’s website.](#)

- (3) If there is a change to the identity or contact details of the individual designated as the service’s contact person for the purposes of the Act, the provider will give the Commissioner written notice of the change within 14 days after the change.