

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission in response to the  
Department of Infrastructure,  
Transport, Regional  
Development and  
Communications consultation

**Exposure draft – Online  
Safety Bill 2020**

14 February 2021

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## Section 1. INTRODUCTION

- 1.1 Optus appreciates the opportunity to provide input to the Department of Infrastructure, Transport, Regional Development and Communications (“the Department”) consultation on the Exposure Draft of the *Online Safety Bill 2020* (“the Bill”).
- 1.2 Optus’ interest in the Bill relates to its roles as both an Internet Service Provider (ISP) and Internet Content Host (albeit in a limited capacity); both of these roles are subject to the requirements in the Bill.
- 1.3 Optus works closely with the eSafety Commissioner and her staff on various initiatives, including as a member of the Commissioner’s eSafety Advisory Committee sub-group on Online Harms, and as a certified provider of online safety training courses to schools through the Digital Thumbprint program<sup>1</sup>.
- 1.4 The Office of the eSafety Commissioner has expanded its remit since it was first formed, with its focus now extending beyond children’s online safety to the online safety experience of the entire community. This expanded remit is evident in the Bill, especially with the introduction of the new scheme for complaints about cyber-abuse material targeted at an Australian adult. Optus believes the Commission’s broader remit is a positive change, and is warranted given the changing use and mis-use of online services over time.
- 1.5 Optus has long advocated for the Online Content Scheme in Schedules 5 and 7 of the *Broadcasting Services Act 1992* (“the BSA”) to be reviewed and we are pleased to see that a much improved, technology-agnostic and streamlined Scheme has been included in the Bill.
- 1.6 We stand ready to work with our industry association, Communications Alliance, and industry colleagues to develop the new industry code envisaged by the Bill. However, we recommend that 12 months be allowed for this process (as outlined below).
- 1.7 Our view is that the requirement to have an industry code registered within 6 months following commencement of the legislation is unrealistic, as this is a new process within the eSafety Office, based on new legislation, with new industry participants bound by this process, as well as the fact that at least one month out of the six is required to be taken up by a public consultation period, thereby reducing the timeframe even more.
- 1.8 Communications Alliance has also made a submission to this consultation. Optus is a member of Communications Alliance and supports their submission.

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<sup>1</sup> <http://www.digitalthumbprint.com.au/>



## Section 2. FEEDBACK ON THE ONLINE SAFETY BILL

- 2.1 Overall, Optus supports the new Bill. Our view is that having all of the relevant legislative requirements relating to the eSafety Commission in one place is a positive step.
- 2.2 This compilation of the requirements, and the long-awaited updates to some of them, should help to reduce some confusion and complexity for providers and the Commissioner and their staff, thereby leading to enhanced protections against online harms for the community. We do believe, however, that there are some items which require further clarification or amendment, and these are addressed below.

### **24 hour take-down period**

- 2.3 We understand the rationale and desirability for taking down illegal content as quickly as possible (especially for some particularly abhorrent types of content), but note that not all providers have staff available to undertake this task 7 days a week.
- 2.4 We request that the Department consider whether action of such requests by close of the next business day would be more achievable and could more practically balance the desire for rapid content removals to protect people from online harms without adding additional impost on the business operations of industry participants.

### **Requirement for a new industry code**

#### *Code development*

- 2.5 Similar to the current requirements in the BSA, the Bill requires industry to develop a code to address certain matters. A co-regulatory approach and process continues to be relevant.
- 2.6 As noted previously, Optus is ready to work with industry colleagues and Communications Alliance to develop the new code.
- 2.7 We do not believe that the six month timeframe the legislation allows for development, finalisation and registration of the industry code is feasible, however, especially given:
- (a) this will be the first time the eSafety Commissioner and staff will undergo a Code registration process of this type;
  - (b) this is a full-scale development from scratch of a new code based on new legislation, which will require sufficient time to ensure a robust and practical instrument which will help deliver the desired outcomes and better protect the Australian community;
  - (c) the code (or maybe even multiple codes) will apply to a broader set of industry participants than those covered previously, which means this will be a new process for those participants;
  - (d) industry has no visibility of, nor can it influence, the amount of time the Commissioner will require at their end between code finalisation and registration; and
  - (e) the Bill requires a minimum of 30 days for public comment on the draft code, which reduces the time available for code development and Code registration, especially if significant public comment has to be considered. We therefore

recommend that the Department amend the Bill to allow 12 months for code registration, consistent with the timeframe being afforded to the Commissioner in the event they develop an industry standard.

*Content of the industry code*

- 2.8 Experience with the previous industry codes under the Online Content Scheme in the BSA was that the prescriptiveness of the legislation dictated the prescriptiveness and scope of content of the codes.
- 2.9 As technologies and methods of accessing and producing content changed, the regulations were left behind and it has taken many years to reach the current stage of review, despite repeated industry requests for this to occur.
- 2.10 When considering the content of the codes for registration, it will be important for the Commissioner to allow for sufficient flexibility and focus on the desired outcomes, as opposed to the processes by which those outcomes are met, to ensure the same situation does not recur.
- 2.11 Whilst the Bill contains a long list of items that may be addressed in a code, it will also be important to ensure the code is fit for purpose, and that only relevant items out of that long list are required to be incorporated into the code.
- 2.12 In addition, it would be helpful to clarify the relationship between the industry code (and the list of matters that may be addressed in such a code) and the Basic Online Safety Expectations, to be determined by the Minister. There appears to be some overlap in the items that are to be addressed by both of these activities, and it will therefore be critical to determine how best to manage this overlap and avoid regulatory duplication.
- 2.13 The timing of the Minister's Determination will also be important for the development of the industry code, to ensure consistency between the two, and allow for the code to address any matters flowing from the Basic Online Safety Expectations. Further guidance from the Department or the Minister's Office on this matter would be appreciated.

Ends.