

## **EXPLANATORY STATEMENT**

### ***Enhancing Online Safety for Children Act 2015***

#### ***Enhancing Online Safety (Family and Domestic Violence) Legislative Rules 2015***

Issued by the authority of the Minister for Communications

#### **Legislative basis**

Section 108 of the *Enhancing Online Safety for Children Act 2015* (the Act) provides that the Minister may, by legislative instrument, make legislative rules prescribing matters required or permitted by the Act to be prescribed by legislative rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Paragraph 15(1)(r) of the Act confers any functions specified in legislative rules on the Children's e-Safety Commissioner (the Commissioner).

#### **Purpose of the instrument**

The purpose of the Legislative Rules is to confer additional functions upon the Commissioner in relation to the online safety of persons at risk of domestic or familial violence of any kind.

#### **Background**

The Act establishes the Children's e-Safety Commissioner as an independent statutory office supported by the Australian Communications and Media Authority. The Commissioner commenced operations on 1 July 2015.

The Commissioner provides a national leadership role in improving online safety for Australian children, including by administering:

- a two-tiered scheme for the rapid removal of cyberbullying material targeted at an Australian child from large social media services; and
- an end-user notice regime, under which the Commissioner has the power to issue a notice requiring a person who posted cyberbullying material targeted at an Australian child to remove the material, refrain from posting cyber-bullying material or apologise for posting the material.

Other functions of the Commissioner, as set out in section 15 of the Act, include:

- promoting online safety for children;
- supporting and encouraging the implementation of measures to improve online safety for children;
- supporting, conducting and accrediting educational, promotional and community awareness programs that are relevant to online safety for children;
- making, on behalf of the Commonwealth, grants of financial assistance in relation to online safety for children and conducting and evaluating research about online safety for children; and
- advising and giving the Minister reports about online safety for children.

The Commissioner also administers the Online Content Scheme under Schedules 5 and 7 to the *Broadcasting Services Act 1992*, which regulates illegal and offensive content in Australia with reference to the National Classification Scheme.

Paragraph 18(1)(r) of the Act was included to provide flexibility to confer additional functions upon the Commissioner where the Commissioner would be well placed to effectively perform the relevant functions.

#### *Family and Domestic Violence and Technology-Facilitated Abuse*

The growing proliferation of and dependence on technology in society including personal devices and social media services have led to a rise in these technologies being used to harass, stalk and coerce people at risk of domestic violence. While technology can have many benefits for victims and their supporters, it can also extend the reach and prevalence of violent behaviours, and creates new opportunities for perpetrators. Technology-facilitated abuse includes activities that utilise technology in order to:

- threaten, menace, harass or cause offence
- stalk (for example, installing a tracking device on a mobile phone)
- distribute or threaten to distribute ‘revenge porn’
- restrict the victim’s access to finances or methods of communication
- access or modify private information or correspondence (for example, text messages) of the victim, or
- alienate the victim from support networks such as friends or family.

The use of technology to abuse domestic violence victims is well established. However, despite the prevalence of technology-facilitated abuse, existing support services are often ill equipped to provide technical advice on how people at risk of domestic violence can protect themselves against these forms of abuse.

The Council of Australian Governments has committed to consider strategies to tackle the increased use of technology to facilitate abuse against women. (Communique 17 April 2015).

On 24 September 2015, the Australian Government announced a \$100 million package of measures to provide a safety net for those people, primarily women and children, at high risk of experiencing family or domestic violence.

This package includes funding for the Commissioner to develop online resources and tool kits targeted at people at risk as well as front line staff, such as staff in crisis centres and women’s shelters, who support and respond to at risk people and situations. These resources would aim to provide practical information about the risks of using technology and how to protect against technology-assisted abuse.

The Office of the Children’s e-Safety Commissioner has a wealth of expertise in technology use and abuse and in developing educational, promotional and community awareness programs on online safety for a wide range of audiences, including families, children, parents, teachers, service providers, and for diverse cultural audiences.

The Office has the technology and communication expertise to develop physical and online resources that will provide clear and accessible advice on the sources of risk, and empower those at risk of domestic or family violence to protect themselves, for example by modifying computer, phone and account settings and being vigilant with personal information security.

These Legislative Rules will expand the Commissioner's functions and responsibilities under the Act to enable the Commissioner to implement these new measures.

The specification of additional functions, to enable the Commissioner to support and empower Australian families and persons at risk of technology-facilitated domestic or family violence, is well aligned with the Commissioner's existing functions and objectives.

### **Consultation**

In accordance with the consultation requirements of section 17 of the *Legislative Instruments Act 2003*, the Office of the Children's e-Safety Commissioner was consulted in relation to these Legislative Rules.

### **Regulation impact**

The Office of Best Practice Regulation (OBPR) has advised that a Regulation Impact Statement is not required for this instrument. The OBPR reference number is ID 19913.

**Details of the accompanying instrument**

The instrument is a disallowable instrument for the purposes of the *Legislative Instruments Act 2003*.

Details of the accompanying instrument are set out in **Attachment 1**.

**Statement of compatibility with human rights**

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out in **Attachment 2**.

**Attachment 1****Details of the *Enhancing Online Safety (Family and Domestic Violence) Legislative Rules 2015*****Section 1 – Name of Legislative Rules**

Section 1 of the Legislative Rules provides that the name of the instrument is the *Enhancing Online Safety (Family and Domestic Violence) Legislative Rules 2015*.

**Section 2 - Commencement**

Section 2 provides that the Legislative Rules commence on the day after they are registered on the Federal Register of Legislative Instruments.

**Section 3 - Definitions**

Section 3 sets out the key definitions used in the Legislative Rules.

The term, ‘*Act*’ refers to the *Enhancing Online Safety for Children Act 2015*.

The term ‘*online safety*’ means the capacity of a person to use social media services and electronic services in a safe manner.

To aid the reader, a note at the end of section 3 indicates that specified terms have the same meaning as in the Act. These terms are electronic service and social media service.

**Section 4 – Conferral of additional functions**

Section 4 sets out the additional functions conferred on the Commissioner for the purposes of paragraph 15(1)(r) of the Act.

These functions are:

- (1) to promote online safety for persons at risk of family or domestic violence, including on the risks of using technology;
- (2) to support, encourage and conduct educational, promotional, training and community awareness programs that are relevant to online safety for persons at risk of family or domestic violence; and
- (3) to make, on behalf of the Commonwealth, grants of financial assistance in relation to online safety for persons at risk of family or domestic violence.

## Attachment 2

### **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.*

#### **Enhancing Online Safety (Family and Domestic Violence) Legislative Rules 2015**

The *Enhancing Online Safety (Family and Domestic Violence) Legislative Rules 2015* (Legislative Rules) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Rules**

The Legislative Rules have been made by the Minister for Communications (the Minister) under subsection 108(1) of the *Enhancing Online Safety for Children Act 2015* (the Act).

The Act establishes the Children's e-Safety Commissioner (the Commissioner) as an independent statutory office supported by the Australian Communications and Media Authority.

The functions of the Commissioner as set out in section 15 of the Act include promoting online safety for children, and supporting and encouraging the implementation of measures to improve online safety for children.

The growing proliferation of and dependence on technology in society including personal devices and social media services have led to a rise in these technologies being used to harass, stalk and coerce people at risk of domestic violence. While technology can have many benefits for victims and their supporters, it can also extend the reach and prevalence of violent behaviours, and creates new opportunities for perpetrators. Technology-facilitated abuse includes activities that utilise technology in order to:

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These Legislative Rules will expand the Commissioner's functions and responsibilities under the Act to enable the Commissioner to implement these new measures.

### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.