

EXPLANATORY STATEMENT

Enhancing Online Safety for Children Act 2015

Enhancing Online Safety (Legislative Rules) Instrument of Repeal 2017

Legislative Authority

The *Enhancing Online Safety (Legislative Rules) Instrument of Repeal 2017* (the Instrument) is made under subsection 108(1) of the *Enhancing Online Safety for Children Act 2015* (the Act) and subsection 33(3) of the *Acts Interpretation Act 1901*.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Purpose

The purpose of the Instrument is to repeal the *Enhancing Online Safety (Family and Domestic Violence) Legislative Rules 2015* (the Family and Domestic Violence Rules) and the *Enhancing Online Safety (Intimate Images and Other Measures) Legislative Rules 2017* (the Intimate Images Rules), which are both redundant as a result of the *Enhancing Online Safety for Children Amendment Act 2017* (Amendment Act).

The Amendment Act, which commenced on 23 June 2017, extends the Commissioner's online safety general functions to cover all Australians, not just Australian children, including persons at risk of family or domestic violence, older Australians, and persons at risk of having intimate images of them shared without their consent.

Background

The Family and Domestic Violence Rules was made under subsection 108(1) of the Act on 13 December 2015 and provided for the Children's e-Safety Commissioner's general functions to extend to persons at risk of family or domestic violence.

The Intimate Images Rules was made under subsection 108(1) of the Act on 23 May 2017 and provided for the Children's e-Safety Commissioner's general functions to extend to older Australians, and Australian persons at risk of having intimate images of them shared without their consent.

The Amendment Act expands the general functions of the Commissioner to recognise the range of existing and proposed new functions performed by the Commissioner that go beyond online safety for children, including in relation to persons at risk of family or domestic violence, older Australians, and persons at risk of having intimate images of them shared without their consent. As the Amendment Act has come into effect, there is no longer a need for separate legislative rules for family and domestic violence, older Australians and persons at risk of having intimate images of them shared without their consent.

Consultation

Consultation on the Instrument was not considered necessary as the Instrument is of a minor or machinery nature.

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 ID21276.

Other details

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 1**.

Details of the accompanying Instrument are set out in **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 (Legislative Rules) Instrument of Repeal 2017

The Instrument is 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 Instrument

The Instrument has been made by the Minister for Communications under subsection 108(1) of the *Enhancing Online Safety for Children Act 2015* (the Act) and subsection 33(3) of the *Acts Interpretation Act 1901*.

The Instrument repeals the *Enhancing Online Safety (Family and Domestic Violence) Legislative Rules 2015* and the *Enhancing Online Safety (Intimate Images and Other Measures) Legislative Rules 2017*. Those two Rules are now redundant as a result of the legislative amendments made to the Act by the *Enhancing Online Safety for Children Amendment Act 2017* (Amendment Act).

The Amendment Act, which commenced on 23 June 2017, extends the Commissioner's online safety general functions to cover all Australians, not just Australian children, including persons at risk of family or domestic violence, older Australians, and persons at risk of having intimate images of them shared without their consent.

Human rights implications

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

Conclusion

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

Details of the *Enhancing Online Safety (Legislative Rules) Instrument of Repeal 2017*

Section 1 – Name of instrument

Section 1 provides that the title of the Instrument is the *Enhancing Online Safety (Legislative Rules) Instrument of Repeal 2017*.

Section 2 – Commencement

Section 2 provides that the Instrument commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

Section 3 provides that the Instrument is made under the authority of subsection 108(1) of the *Enhancing Online Safety for Children Act 2015* and subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 4 – Schedule

Section 4 provides that each instrument that is specified in Schedule 1 to the instrument is repealed as set out in the Schedule.

Schedule 1 – Repeals

Item 1 repeals the *Enhancing Online Safety (Family and Domestic Violence) Legislative Rules 2015*.

Item 2 repeals the *Enhancing Online Safety (Intimate Images and Other Measures) Legislative Rules 2017*.