





# **Enhancing Online Safety for Children Amendment Act 2017**

**No. 51, 2017**

**An Act to amend the *Enhancing Online Safety for  
Children Act 2015*, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# Enhancing Online Safety for Children Amendment Act 2017

No. 51, 2017

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## **An Act to amend the *Enhancing Online Safety for Children Act 2015*, and for related purposes**

[Assented to 22 June 2017]

The Parliament of Australia enacts:

### **1 Short title**

This Act is the *Enhancing Online Safety for Children Amendment Act 2017*.

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## 2 Commencement

- (1) Each provision of this Act 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	The day after this Act receives the Royal Assent.	23 June 2017

Note: This table relates only to the provisions of this Act as originally enacted.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

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

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Amendments

### Part 1—Main amendments

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

##### **1 Title**

Omit “**children**”, substitute “**Australians**”.

##### **2 Section 1**

Omit “*Enhancing Online Safety for Children Act 2015*”, substitute “*Enhancing Online Safety Act 2015*”.

**Note:** This item amends the short title of the Act. If another amendment of the Act is described by reference to the Act’s previous short title, that other amendment has effect after the commencement of this item as an amendment of the Act under its amended short title (see section 10 of the *Acts Interpretation Act 1901*).

##### **3 Section 3**

Omit “a Children’s e-Safety Commissioner”, substitute “an eSafety Commissioner”.

##### **4 Section 3**

Omit:

- A key function of the Commissioner is to administer a complaints system for cyber-bullying material targeted at an Australian child.

substitute:

- The functions of the Commissioner include:
  - (a) promoting online safety for Australians; and
  - (b) administering a complaints system for cyber-bullying material targeted at an Australian child; and
  - (c) coordinating activities of Commonwealth Departments, authorities and agencies relating to online safety for children; and

- |   |
|---|
| (d) administering the online content scheme under the <i>Broadcasting Services Act 1992</i> . |
|---|

**5 Section 3**

After “The complaints system”, insert “for cyber-bullying material targeted at an Australian child”.

**6 Section 3**

Omit:

- |  |
|--|
| <ul style="list-style-type: none"><li>• The functions of the Commissioner also include:<ul style="list-style-type: none"><li>(a) promoting online safety for children; and</li><li>(b) coordinating activities of Commonwealth Departments, authorities and agencies relating to online safety for children; and</li><li>(c) administering the online content scheme that was previously administered by the ACMA.</li></ul></li></ul> |
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**7 Section 4**

Insert:

*Australians* means individuals who are ordinarily resident in Australia.

**8 Section 4 (definition of *Children’s Online Safety Special Account*)**

Repeal the definition.

**9 Section 4 (definition of *Commissioner*)**

Omit “Children’s e-Safety Commissioner”, substitute “eSafety Commissioner”.

**10 Section 4**

Insert:

*online safety for Australians* means the capacity of Australians to use social media services and electronic services in a safe manner.

## **11 Section 4**

Insert:

***Online Safety Special Account*** means the Online Safety Special Account referred to in section 72.

## **12 Subsection 12(1)**

Repeal the subsection, substitute:

- (1) The Commissioner must, as appropriate, have regard to the Convention on the Rights of the Child in the performance of functions:
  - (a) conferred by or under this Act; and
  - (b) in relation to Australian children.

## **13 Part 2 (heading)**

Repeal the heading, substitute:

## **Part 2—eSafety Commissioner**

## **14 Section 13**

Repeal the section, substitute:

## **13 Simplified outline of this Part**

- There is to be an eSafety Commissioner.
- The functions of the Commissioner include:
  - (a) promoting online safety for Australians; and
  - (b) administering a complaints system for cyber-bullying material targeted at an Australian child; and
  - (c) coordinating activities of Commonwealth Departments, authorities and agencies relating to online safety for children; and
  - (d) administering the online content scheme under the *Broadcasting Services Act 1992*.

Note: For administrative provisions relating to the Commissioner, see Part 7.

**15 Section 14 (heading)**

Repeal the heading, substitute:

**14 eSafety Commissioner**

**16 Section 14**

Omit “a Children’s e-Safety Commissioner”, substitute “an eSafety Commissioner”.

Note: This item alters the name of an office. Section 25B of the *Acts Interpretation Act 1901* provides that the office continues in existence under the new name so that its identity is not affected.

**17 Section 14 (note)**

Omit “Children’s e-Safety Commissioner”, substitute “eSafety Commissioner”.

**18 Paragraphs 15(1)(b), (c) and (e) to (l)**

Omit “online safety for children”, substitute “online safety for Australians”.

**19 Subparagraph 15(1)(p)(i)**

Omit “online safety for children”, substitute “online safety for Australians”.

**20 Part 8 (heading)**

Repeal the heading, substitute:

**Part 8—Online Safety Special Account**

**21 Section 71**

Omit “is established”, substitute “is continued in existence with the new name Online Safety Special Account”.

**22 Section 72 (heading)**

Repeal the heading, substitute:

**72 Online Safety Special Account**

**23 Subsection 72(1)**

Omit “is established by this section”, substitute “is continued in existence with the new name Online Safety Special Account”.

**24 Paragraph 73(1)(b)**

Omit “Children’s Online Safety Special Account”, substitute “Online Safety Special Account”.

**25 Section 74**

Omit “Children’s Online Safety Special Account”, substitute “Online Safety Special Account”.

**26 Paragraph 74(a)**

Omit “online safety for children”, substitute “online safety for Australians”.

**27 Paragraph 80(1)(g)**

Omit “children”, substitute “individuals”.

## Part 2—Consequential amendments

### *Australian Communications and Media Authority Act 2005*

#### **28 Subparagraphs 57(aa)(i) and (ii)**

Omit “Children’s e-Safety Commissioner’s” (wherever occurring), substitute “eSafety Commissioner’s”.

#### **29 Paragraph 59D(1)(a)**

Omit “Children’s e-Safety Commissioner”, substitute “eSafety Commissioner”.

### *Broadcasting Services Act 1992*

#### **30 Subsection 6(1) (definition of *Commissioner*)**

Omit “Children’s e-Safety Commissioner”, substitute “eSafety Commissioner”.

#### **31 Paragraph 169A(a)**

Omit “*Enhancing Online Safety for Children Act 2015*”, substitute “*Enhancing Online Safety Act 2015*”.

#### **32 Paragraph 112(1)(d) of Schedule 7**

Omit “*Enhancing Online Safety for Children Act 2015*”, substitute “*Enhancing Online Safety Act 2015*”.

### *Criminal Code Act 1995*

#### **33 Paragraph 273.9(5)(a) of the *Criminal Code***

Omit “Children’s e-Safety Commissioner”, substitute “eSafety Commissioner”.

#### **34 Paragraph 474.21(4)(a) of the *Criminal Code***

Omit “Children’s e-Safety Commissioner”, substitute “eSafety Commissioner”.

**35 Paragraph 474.24(4)(a) of the *Criminal Code***

Omit “Children’s e-Safety Commissioner”, substitute “eSafety Commissioner”.

***Freedom of Information Act 1982***

**36 Division 1 of Part II of Schedule 2**

Omit:

Children’s e-Safety Commissioner, in relation to:

- (a) exempt content-service documents concerning the performance of a function, or the exercise of a power, under Schedule 7 to the *Broadcasting Services Act 1992*; and
- (b) exempt internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to that Act.

**37 Division 1 of Part II of Schedule 2**

Insert:

eSafety Commissioner, in relation to:

- (a) exempt content-service documents concerning the performance of a function, or the exercise of a power, under Schedule 7 to the *Broadcasting Services Act 1992*; and
- (b) exempt internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to that Act.

***Telecommunications Act 1997***

**38 Section 284 (heading)**

Repeal the heading, substitute:

**284 Assisting the ACMA, the eSafety Commissioner, the ACCC or the Telecommunications Industry Ombudsman**

**39 Subparagraph 284(1A)(a)(i)**

Omit “Children’s e-Safety Commissioner”, substitute “eSafety Commissioner”.

**40 Subparagraph 284(1A)(a)(ii)**

Omit “Children’s e-Safety Commissioner’s”, substitute “eSafety Commissioner’s”.

**41 Paragraph 284(1A)(b)**

Omit “Children’s e-Safety Commissioner”, substitute “eSafety Commissioner”.

**42 Section 299 (heading)**

Repeal the heading, substitute:

**299 Assisting the ACMA, the eSafety Commissioner, the ACCC or the Telecommunications Industry Ombudsman**

**43 Subsection 299(1A)**

Omit “Children’s e-Safety Commissioner’s”, substitute “eSafety Commissioner’s”.

**44 Section 299 (note)**

After “the ACMA,”, insert “the eSafety Commissioner.”.

**45 Section 579**

Omit “Children’s e-Safety Commissioner”, substitute “eSafety Commissioner”.

**46 Subsection 581(2A)**

Omit “Children’s e-Safety Commissioner”, substitute “eSafety Commissioner”.

**47 Paragraphs 581(2B)(a), (b) and (c)**

Omit “Children’s e-Safety Commissioner” (wherever occurring), substitute “eSafety Commissioner”.

## **Part 3—Saving and transitional provisions**

### **48 Transitional provision—Children’s e-Safety Commissioner**

- (1) A thing done by, or in relation to, the Children’s e-Safety Commissioner under an Act before the commencement of this item has effect on and after that commencement as if it had been done by, or in relation to, the eSafety Commissioner.
- (2) This item does not limit the operation of subsection 25B(1) of the *Acts Interpretation Act 1901*.

### **49 Saving provision—protection from criminal proceedings**

Clause 112 of Schedule 7 to the *Broadcasting Services Act 1992*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a person who was the Children’s e-Safety Commissioner at any time before that commencement.

### **50 Saving provision—agencies exempt in respect of particular documents**

Despite the amendments of Division 1 of Part II of Schedule 2 to the *Freedom of Information Act 1982* made by this Schedule, the item in that Division relating to the Children’s e-Safety Commissioner, being that item as in force immediately before the commencement of this item, continues in force on and after that commencement in relation to documents of that Commissioner.

### **51 Transitional rules**

- (1) The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments made by this Act.
- (2) However, to avoid doubt, the rules may not do the following:
  - (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;

**Schedule 1** Amendments

**Part 3** Saving and transitional provisions

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- (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
    - (e) directly amend the text of this Act.
  - (3) This Act (other than subitem (2)) does not limit the rules that may be made for the purposes of subitem (1).
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*[Minister's second reading speech made in—  
House of Representatives on 9 February 2017  
Senate on 14 June 2017]*

(1/17)

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