



Australia's Online Safety Consultation

Extended powers for Australia's online safety regulator may encompass mobile games

Regulator: The eSafety Commissioner

RISK BAROMETER:



JURISDICTION RELEVANCE:

Australia

TIMELINE:

The consultation runs from December 23rd 2020 until February 14th 2021.

WHAT YOU SHOULD KNOW:

- A step ahead of the UK's projected online harms legislation (see our Policy Brief [here](#)), Australia's [Online Safety Bill](#) gives extended powers to the eSafety Commissioner¹ to mandate a much-enlarged range of online services to remove illegal, abusive, and harmful content within 24, as opposed to 48 hours.
- Although the Bill's primary focus is on social media, mobile games may be caught in three core areas:
 - » The first and probably lowest risk is an expanded cyber abuse take down scheme, now including games chat rooms.
 - » A 'modernised online content (i.e., removal) scheme' for 'Class II content'² which includes complaints handling and investigations that can result in 24-hour removal notices or ensuring that the content in question is subject to an appropriate 'restrictive access system' (RAS)³, meaning age verification (AV), within the same period.
 - » An obligation to create new and strengthened industry codes, including for an 'app distribution service,' encompassing transparent and easy to use complaints processes and measures to prevent children from accessing accounts without parental consent –

combined with educating and pro-actively helping parents to implement content filtering software and parental controls. Flow-on effects for app-based games are implicit.

- » Enforcement measures include infringement notices, enforceable undertakings, and injunctions. Sanctions for non-compliance include requiring search engines and app stores to block access to complained-of services and fines of up to \$555,000.

MOST TELLING:

'The Commissioner may give a remedial notice ... to take down Class II material or ensure the material is subjected to a Restricted Access System within 24 hours.' (Take-down powers related to class II material)

DELANY & CO HOT TAKE:

The fines may not be as breath-taking as the UK's projected Online Harms Bill (up to £18m or 10% of global annual turnover) but the devil is in the detail: for the first time, age verification for online games rated 18+ could be enforceable by law.

Endnotes: [1] Australia's independent regulator for online safety [2] Class I is material refused classification and so irrelevant [3] The "Restrictive Access System" or RAS: Although in practice, it has not been properly applied to online games, theoretically it requires AV for games rated 15+ or 18+. For the first time, this Online Safety Bill, would empower enforcement.