

# Cyberbullying Scheme Regulatory Guidance

eSC RG 1

Updated January 2025



# Contents

<b>Overview of this guidance</b>	<b>2</b>
<b>Overview of the Cyberbullying Scheme</b>	<b>2</b>
<b>Key terms</b>	<b>3</b>
Who is ‘an Australian child’?	3
What is ‘cyberbullying material’?	3
What is ‘seriously threatening, seriously intimidating, seriously harassing, or seriously humiliating’ material?	3
Is any material exempt from cyberbullying complaints?	3
<b>Making a complaint to eSafety</b>	<b>4</b>
Who can complain?	4
Complaint made by an Australian child	4
Complaint made on behalf of an Australian child	4
Making a complaint to online service providers first	4
<b>Investigation of cyberbullying material</b>	<b>5</b>
<b>Approaches to compliance and enforcement</b>	<b>5</b>
Informal requests	5
Formal actions	5
Compliance and enforcement options	6
Service provider notifications	7
What are service provider notifications?	7
When can eSafety give a service provider notification under the Cyberbullying Scheme?	7
What are the consequences of a service provider notification?	8
Removal notices	8
What is a removal notice?	8
When can eSafety give a removal notice under the Cyberbullying Scheme?	8
What are the consequences of a removal notice?	9
End-user notices	9
What is an end-user notice?	9
When can eSafety issue an end-user notice?	9
What are the consequences of failing to comply with an end-user notice?	9
<b>Taking enforcement action</b>	<b>10</b>
<b>Review rights</b>	<b>11</b>
<b>Basic Online Safety Expectations</b>	<b>11</b>
<b>Find more information and support</b>	<b>11</b>

# Overview of this guidance

**eSafety is committed to empowering all Australians to have safer, more positive experiences online.**

This information is for members of the general public (including children, parents, carers and educators), online industry and other professionals who require further information about the Cyberbullying Scheme. It provides an overview of the actions available to eSafety under the Online Safety Act 2021 (the Act) to address cyberbullying of Australian children. It also explains how eSafety will generally interpret and apply the law when responding to reports of cyberbullying.

All decisions made by eSafety will be made on a case-by-case basis, considering the particular circumstances of each complaint received.

## Overview of the Cyberbullying Scheme

The Cyberbullying Scheme is a safety net to be used when a complaint has been made to an online service provider but the online service provider has not removed the material. The Cyberbullying Scheme has the following regulatory features:

- 1. A system under which a person may make a complaint to eSafety** about cyberbullying material that targets an Australian child. The complainant must have first reported the material to the relevant online service provider before asking eSafety to give a notice to the provider requiring removal of the cyberbullying material.
- 2. Investigative and information gathering powers** which allow eSafety to assess complaints about cyberbullying material targeting an Australian child and decide what action we can take.
- 3. Removal powers** which allow eSafety to give notices to online service providers, and to people (end-users) who have posted, shared or sent cyberbullying material, requiring them to remove the material. Notices to end-users can also require that the person stop posting, sharing or sending cyberbullying material directed to the targeted child and apologise to them.
- 4. Enforcement actions** available to eSafety where there has been a failure to comply with our notices. These range from issuing a formal warning to seeking civil penalties.



# Key terms

## Who is ‘an Australian child’?

When the Act refers to ‘an Australian child’ it generally means any young person under 18 who ordinarily lives in Australia. This can include an Australian child who is travelling overseas temporarily.

eSafety cannot use its powers under the Cyberbullying Scheme to help a child who does not ordinarily live in Australia.

## What is ‘cyberbullying material’?

Under the Act, cyberbullying material<sup>2</sup> means online communication to or about an Australian child that is seriously threatening, seriously intimidating, seriously harassing or seriously humiliating. It can include posts, comments, emails, messages, memes, images and videos.

For eSafety to investigate, the material must target a specific child, not broad groups of unidentified children.

## What is ‘seriously threatening, seriously intimidating, seriously harassing, or seriously humiliating’ material?

These terms are not defined in the Act and are intended to have their ordinary meaning. Cyberbullying material will not generally include material that is simply offensive or insulting.

Examples include:

- 1. Seriously threatening:** when someone posts or comments that they are going to harm a child, or encourages others to do it, such as saying ‘We’re going to wait outside your house and bash you when you come out’ or ‘If you stop talking to me I will post your address and phone number all over the internet.’
- 2. Seriously intimidating:** when someone posts something that is designed to make the child fearful but is not on its face a direct threat, e.g. posting an image showing a person with their head in a guillotine with the caption “Snitches get stitches” and tagging the child.
- 3. Seriously harassing:** when someone keeps sending messages to a child or persistently reposting material. Each message or post on its own may not be enough to be called cyberbullying material, but the repetition increases the impact.
- 4. Seriously humiliating:** when someone posts a comment or shares an image that seriously embarrasses a child – this could be a video that shows a child with a mobility disability slipping in mud at school then crying about having to wear dirty clothes all day, with captions and comments making fun of the child’s disability and how the child ‘can’t even walk properly’.

<sup>1</sup>Section 5 of the Act. <sup>2</sup>Section 6 of the Act. <sup>3</sup>Section 6(4) of the Act.

## Is any material exempt from cyberbullying complaints?

The Act recognises that a person in a position of authority over a child (such as their parent, carer, teacher or employer) may need to send, post or share material that could upset the child. If this action is considered reasonable in the circumstances, it will not be treated by eSafety as cyberbullying. For example, if a teacher posts class exam results online or an employer emails a young person to notify them of their dismissal, neither of those materials would meet the definition of cyberbullying.

## Making a complaint to eSafety

### Who can complain?

A cyberbullying complaint may be made to eSafety by the targeted child, a parent or guardian of the child or someone who is authorised by the child to complain on their behalf. The complaint can be made to eSafety through the [online form](#) on our website.

### Complaint made by an Australian child

A cyberbullying complaint may be made by an Australian child if they have reason to believe they are, or have been, the target of cyberbullying material.<sup>4</sup>

The material must be, or have been, provided on:

- a social media service
- a relevant electronic service such as an email service, chat service, instant messaging service or an online game where end-users play against each other, or
- a designated internet service such as a website or app.

A person who has recently turned 18 can complain about cyberbullying material that targeted them before they turned 18 if both of the following additional conditions are met:

- the complaint is made within a reasonable time after the person became aware of the material; and
- the complaint is made within 6 months after the person reached 18 years of age.<sup>5</sup>

### Complaint made on behalf of an Australian child

A responsible person may make a complaint on behalf of an Australian child if the person has reason to believe that the child is, or has been, the target of cyberbullying material on one of the online services listed in the previous section. This person can be a parent or guardian of the child, or a responsible person the child has asked to make a complaint about the matter – for example, this could be a family member, carer, friend, teacher or police officer.<sup>6</sup>

### Making a complaint to online service providers first

If the person making the complaint wants eSafety to give a removal notice to an online service provider, they must show that they have made a complaint about the material to the relevant online service provider listed in the previous section. We will ask for this evidence through our online reporting form. eSafety cannot give a removal notice until at least 48 hours have passed since the complaint was made to the relevant online service provider.

<sup>4</sup>Section 30(1) of the Act. <sup>5</sup>Section 30(3) of the Act. <sup>6</sup>Section 30(2) of the Act. <sup>7</sup>Section 30(4) of the Act.

Many online services provide links or other methods for members of the public to report cyberbullying and they will have the material removed without help from eSafety. This is often the fastest way to get material removed. The [eSafety Guide](#) has more information about how to report cyberbullying to commonly used online services.

If the relevant online service provider supplies a receipt, reference or report number as part of its business processes, we will usually need to know that number. In cases where receipts are not provided, we will need a screenshot of the report or some other proof that it was made. Otherwise, a statutory declaration can be supplied – this is a legal document that contains a written statement saying something is true, which has been witnessed by an authorised person.

## Investigation of cyberbullying material

Under the Act, eSafety is empowered to investigate complaints about cyberbullying material.<sup>8</sup>

eSafety may ask for information from relevant people, organisations and online service providers, and make any other enquiries that will help with our investigation of a cyberbullying complaint. eSafety may also end an investigation at any point.<sup>10</sup>

eSafety's investigative powers are set out in Part 14 of the Act. These powers include the ability to compel a person to answer questions and/or produce documents or other information.<sup>11</sup> eSafety has additional information-gathering powers under Part 13 of the Act to obtain end-user identity and contact information from the provider of a social media service, relevant electronic service or designated internet service.<sup>12</sup>

## Approaches to compliance and enforcement

When seeking to have cyberbullying material removed, eSafety may take informal or formal action.

### Informal requests

eSafety often approaches online service providers informally to ask them to remove cyberbullying material in the first instance. We find that this generally results in faster removal of material compared to formal action, which is a better outcome for the targeted child.

### Formal actions

While eSafety will generally seek informal removal of material by online service providers, we will not hesitate to use our formal powers when we consider it appropriate.

For example, if an online service provider has a history of not responding to our informal removal requests or there are other factors that suggest the online service provider is unlikely to respond to an informal removal request, we may decide to give a removal notice without first approaching them informally for removal.

<sup>8</sup>Section 31(1) of the Act. <sup>9</sup>Section 31(2) of the Act. <sup>10</sup>Section 31(5) of the Act. <sup>11</sup>Sections 197 to 205 of the Act. <sup>12</sup>Sections 193 to 196 of the Act.

Some online service providers and end-users may prefer to receive a formal notice from eSafety, which means certain legal protections set out under section 221 of the Act will apply. If this is the case, eSafety's preference is that the online service provider make this clear in their response to an informal request so eSafety can assess the appropriateness of formal action as quickly as possible.

## Compliance and enforcement options

Under the Act, eSafety can consider a range of formal compliance and enforcement options when investigating cyberbullying material.

Outcome	Formal action - directed towards end-users	Formal action - directed towards online service providers
Put an online service provider on notice		<p>Give one of the following <b>service provider notifications</b>:</p> <ul style="list-style-type: none"> <li>• a written notice informing an online service provider that material that meets the definition of cyberbullying is on its service</li> <li>• a statement informing an online service provider that material that meets the definition of cyberbullying and that breaches the service's own terms of use is, or was, on its service on two or more occasions over the past 12 months. In addition, eSafety may publish this statement on our website.</li> </ul>
Require removal of content	<p>Give an <b>end-user notice</b> requiring the person who posted, shared or sent the cyberbullying material to do any or all of the following:</p> <ul style="list-style-type: none"> <li>• take all reasonable steps to ensure the removal of the material within a timeframe specified by eSafety</li> <li>• stop posting, sharing or sending cyberbullying material targeting the child</li> <li>• apologise to the child in a way and timeframe specified by eSafety (or if the child has become an adult, to the adult).</li> </ul> <p>This can be given where eSafety has received a valid complaint and eSafety is satisfied a complaint has been made about the material to the relevant online service provider.</p>	<p>Give a <b>removal notice to an online service provider</b> requiring the online service provider to remove the material on the service or take all reasonable steps to cease hosting the material within 24 hours (or a longer timeframe if allowed by eSafety).</p> <p>This can be given where a valid complaint has been received by eSafety and eSafety is satisfied a complaint has been made about the material to the relevant online service provider and removal has not occurred within 48 hours.</p>
Take enforcement action	<p>Options where an end-user fails to comply with a requirement under an end-user notice:</p> <ul style="list-style-type: none"> <li>• issuing a formal warning</li> <li>• seeking a court injunction.</li> </ul>	<p>Options where a service provider fails to comply with a requirement under a removal notice:</p> <ul style="list-style-type: none"> <li>• issuing a formal warning</li> <li>• accepting an enforceable undertaking</li> <li>• seeking a court injunction</li> <li>• issuing an infringement notice</li> <li>• seeking a civil penalty order.</li> </ul>

## Service provider notifications

### What are service provider notifications?

Generally, a service provider notification informs the online service provider that eSafety is aware that material which meets the definition of cyberbullying is on its service.

A service provider notification may be given to the provider of a social media service, relevant electronic service or designated internet service.<sup>13</sup>

eSafety can issue two different types of service provider notifications, as set out in the next section.

### When can eSafety give a service provider notification under the Cyberbullying Scheme?

Service provider notifications can be given in two circumstances:

- eSafety may give a written notice to an online service provider to make it aware of cyberbullying material on its service following a complaint. We can give this notice to an online service provider even if a complainant has not yet made a complaint about the matter to the online service provider. This is a quick way of putting the service provider “on notice” about cyberbullying material, and eSafety expects the notice would prompt the service provider to remove the material. eSafety may use this option where, for example, a less formal approach is likely to result in faster content removal. This type of service provider notification can only be given with the consent of the complainant and does not give rise to enforcement options if the online service provider does nothing in response.<sup>14</sup>
- If cyberbullying material is, or was, available on an online service provider on two or more occasions over the past 12 months, eSafety may:
  - prepare a statement to that effect, and
  - publish the statement on our website and
  - give a copy of the statement to the online service provider.

To give this statement, the material must also have breached the service’s own terms of use. The purpose of publishing this statement is to call out services that are not doing enough to combat cyberbullying.<sup>15</sup> eSafety will generally give an online service provider a chance to comment (and take action) before determining whether to publish the statement.



<sup>13</sup>Section 73 of the Act. <sup>14</sup>Section 73(1) of the Act. <sup>15</sup>Section 73(2) of the Act.



## **What are the consequences of a service provider notification?**

A service provider notification is a less formal approach than giving a removal notice and there is no enforcement action which arises from a failure to act after receiving such a notification.

However, eSafety expects that an online service provider would take action to remove the content without the need for eSafety to give a removal notice.

In addition, eSafety will consider an online service provider's response to any notifications when considering other regulatory options.

## **Removal notices**

### **What is a removal notice?**

A removal notice is a written notice requiring the recipient to remove or take all reasonable steps to cease hosting the cyberbullying material from a service within 24 hours or a longer timeframe specified by eSafety.

A removal notice may be given to the provider of a social media service, relevant electronic service, designated internet service,<sup>16</sup> or hosting service.<sup>17</sup>

Failure to comply with the notice enables eSafety to take a range of enforcement actions, from issuing a formal warning to seeking civil penalty orders.

### **When can eSafety issue a removal notice under the Cyberbullying Scheme?**

eSafety may give a removal notice where:

- a complaint has been made to eSafety about the material
- the material is, or has been, provided on a social media service, a relevant electronic service or a designated internet service
- the material was the subject of a complaint made to the provider of the service
- the material was not removed from the service within 48 hours after the complaint was made or such longer period as eSafety allows
- eSafety is satisfied that the material is, or was, cyberbullying material targeted at an Australian child, and
- the material can be identified in a way that enables the online service provider or end-user to comply with the notice such as for example through screenshots, URLs, usernames or time stamps.<sup>18</sup>

A removal notice can also be given to a hosting service provider where the material provided on a social media service, relevant electronic or designated internet service is hosted by a hosting service provider and the criteria listed in this section are met.<sup>19</sup>

The Act does not impose any time limits within which a removal notice must be given.

The giving of a removal notice is ultimately at eSafety's discretion. This means eSafety makes the final decision about whether we will take action.

<sup>16</sup>Section 65 of the Act. <sup>17</sup>Section 66 of the Act. <sup>18</sup>Sections 65 and 66 of the Act. <sup>19</sup>Section 66 of the Act.

## **What are the consequences of a removal notice?**

A person must comply with a requirement under a removal notice to the extent that the person is capable of doing so.<sup>20</sup>

Failure to comply with a removal notice may result in a civil penalty of up to 500 penalty units.<sup>21</sup> eSafety may also consider several other enforcement options.

## **End-user notices**

### **What is an end-user notice?**

An end-user notice is a written notice to an end-user requiring them to do any or all of the following:

- take all reasonable steps to ensure the removal of the cyberbullying material from a specified service, and do so within the period specified in the notice
- refrain from posting, sharing or sending cyberbullying material directed at the targeted child, and
- apologise to the child (or, if the child has become an adult, to the adult) for posting, sharing or sending the material and to do so within the period specified in the notice.<sup>22</sup>

### **When can eSafety issue an end-user notice?**

eSafety can issue an end-user notice when:

- the material is, or has been, provided on a social media service, a relevant electronic service or a designated internet service
- a complaint has been made to eSafety about the material
- eSafety is satisfied that the material is, or was, cyberbullying material targeted at an Australian child, and
- the material was posted, shared or sent on the service by a particular end-user of the service.<sup>23</sup>

The Act does not impose any time limits within which an end-user notice must be given.

The giving of an end-user notice is ultimately at eSafety's discretion. This means eSafety makes the final decision about whether we will take action.

eSafety will typically work with the school principal or head teacher of the end-user's school in order to serve such a notice. When a school recognises the role they can provide in encouraging accountability and are willing to be part of a solution to address these behaviours, this route provides eSafety with the most effective way to disrupt a student's cyberbullying behaviour permanently, even if the target of the end-user's behaviour is not at the same school.

eSafety will work with schools to ensure that the end-user is appropriately supported and educated on what constitutes cyberbullying and the need to refrain from posting further cyberbullying material.

<sup>20</sup>Section 67 of the Act. <sup>21</sup>The monetary value of 1 penalty unit is \$313 (until 30 June 2026) for individuals. In addition, the maximum penalty ordered against a corporation (which can include online service providers) can be 5 times more than the maximum penalty ordered against an individual. <sup>22</sup>Section 70 of the Act. <sup>23</sup>Section 70 of the Act. <sup>24</sup>Section 71 of the Act.

## What are the consequences of failing to comply with an end-user notice?

A person must comply with a requirement under an end-user notice to the extent that the person is capable of doing so.<sup>24</sup>

Where a person fails to comply with an end-user notice, eSafety can take injunctive action or issue a formal warning.

## Taking enforcement action

Sometimes eSafety needs to go a step further, taking enforcement action against an end-user who has failed to comply with an end-user notice, or an online service provider who has failed to comply with a removal notice.

eSafety is empowered under the Act to address cyberbullying material through a range of actions. Where appropriate, eSafety takes a graduated approach to enforcement action.

Enforcement options available include the following:

- **Formal warnings.** A formal warning can be issued to either:
  - advise an online service provider that they have failed to comply with the requirements of a removal notice, and they could face further consequences if they continue to fail to comply, or
  - advise an end-user that they have failed to comply with the requirements of an end-user notice and they could face further consequences if they continue to fail to comply.
- **Enforceable undertakings.** An enforceable undertaking requires an online service provider to enter into an agreement with eSafety to ensure compliance with the Cyberbullying Scheme requirements. Once accepted by eSafety, the undertaking can be enforced by a Court.
- **Injunctions.** An injunction is an order granted by a Court to compel an end-user or online service provider to take certain actions, or to refrain from taking certain actions, to comply with the Cyberbullying Scheme requirements.
- **Infringement notices.** Infringement notices are notices that set out the particulars of an alleged contravention and specifying an amount to be paid. If it is not paid, eSafety may commence civil penalty proceedings.
- **Civil penalty orders.** These are court orders that require a person who is found to have contravened a civil penalty provision of the Act to pay a penalty.



# Review rights

Certain actions taken by eSafety under the Cyberbullying Scheme can be reviewed internally by eSafety and externally by the Administrative Review Tribunal<sup>#</sup>. The purpose of these review rights is to ensure that we have made the correct and preferable decisions on a case-by-case basis.

Under the Cyberbullying Scheme, a review can be requested when a removal notice or end-user notice has been given, or when eSafety has decided not to give a removal notice for material that meets the definition of cyberbullying.

Action which can be reviewed	Who can seek review?
Giving a removal notice	<ul style="list-style-type: none"><li>• The online service provider that received the notice</li><li>• The end-user who posted, shared or sent the relevant material</li></ul>
Giving an end-user notice	<ul style="list-style-type: none"><li>• Generally, a person whose interests are affected by the notice</li></ul>
Refusing to give a removal notice	<ul style="list-style-type: none"><li>• The targeted child, or a responsible person with the targeted child's consent</li><li>• The adult who made the complaint within 6 months after they reached 18 years of age about material targeting them when they were a child.</li><li>• The person who made the complaint about the material to eSafety</li></ul>

## Basic Online Safety Expectations

The Basic Online Safety Expectations (the Expectations) are a set of expectations set by the Australian Government for social media services, relevant electronic services and designated internet services. eSafety can require providers of these kinds of services to report on how they are meeting the Expectations.

The Basic Online Safety Expectations are focused on ensuring that these services take reasonable steps to keep Australian end-users safe including in relation to cyberbullying. They also aim to provide greater transparency and accountability around services' safety features, policies and practices. More information about the Expectations and how eSafety uses its powers to require transparency in relation to them can be found in the Basic Online Safety Expectations regulatory guidance on [eSafety's website](#).

## Find more information and support

For more information regarding cyberbullying, or to report cyberbullying to eSafety, please visit our website at [eSafety.gov.au](https://www.esafety.gov.au).

If you are in Australia and you are in immediate danger, call police on Triple Zero (000). If you are 25 or under and need support, you can call Kids Helpline anytime on 1800 55 1800. If you are 25 or over, please call Lifeline on 13 11 14.

<sup>#</sup>In October 2024, the new Administrative Review Tribunal (ART) replaced the Administrative Appeals Tribunal (AAT).

