

# Image-Based Abuse Scheme Regulatory Guidance

eSC RG 2

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# 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, the online industry and other professionals who require further information about the Image-Based Abuse Scheme. It provides an overview of the actions available to eSafety under the Online Safety Act 2021 (the Act) to address image-based abuse. It also explains how eSafety will generally interpret and apply the law when responding to reports of image-based abuse.

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

## Overview of the Image-Based Abuse Scheme

The Image-Based Abuse Scheme provides eSafety with regulatory powers to remove and take action against the non-consensual sharing of, or threat to share, an intimate image online. The Image-Based Abuse Scheme consists of the following regulatory features under the Act:

- 1. General prohibition on image-based abuse** allows eSafety to take action against a person (end-user) who shares online (or threatens to share) an intimate image without the consent of the person shown. An 'intimate image' can include a video.
- 2. A system under which a person may make a complaint to eSafety** about image-based abuse online.
- 3. A system under which a person may object** to an intimate image remaining online even if the person depicted originally consented to the intimate image being shared.
- 4. Investigative and information gathering powers** which allow eSafety to assess complaints about image-based abuse and decide what action we can take.
- 5. Removal powers** which allow eSafety to give notices to online service providers and end-users requiring them to remove an intimate image.
- 6. Remedial direction** powers which allow eSafety to require an end-user, who has breached the general prohibition on image-based abuse, to take actions specified by eSafety to reduce the risk of further breaches (such as removing the images online and deleting images from their devices).
- 7. Enforcement action** available to eSafety where there has been a breach of the general prohibition or a failure to comply with eSafety notices or directions. These range from issuing a formal warning to seeking civil penalties in court.

# Key terms

## What is 'image-based abuse'?

Image-based abuse means sharing online, or threatening to share, an **intimate image** without the consent of the person shown.

Image-based abuse is generally intended to cause harm, distress, humiliation and embarrassment. This can be through making the images or videos visible to particular people or the general public using an online service, or by threatening to make them visible (often in an attempt to control, coerce, 'punish' or blackmail the person targeted by the image-based abuse).

For eSafety to investigate a complaint about image-based abuse, the abuse must have happened on a social media service, relevant electronic service or a designated internet service. In addition, either the end-user who shared (or threatened to share) the image, or the person shown in the image, must be ordinarily resident in Australia.<sup>1</sup>

## What is 'consent'?

To consent is to give permission for something to happen. This consent must be 'express, voluntary and informed',<sup>2</sup> which means that the person understands what they are being asked and has not been tricked or forced into agreeing to their intimate image being shared.

Legally, a person under the age of 18 cannot consent to their intimate image being shared, nor can a person who is in a mental or physical condition where they are not capable of giving consent or their capacity to consent is substantially impaired. It is against the law to share an intimate image of someone who is under the age of 18 or of someone who cannot give express, voluntary and informed consent even if that person has said that they agree.<sup>3</sup>

## What does 'ordinarily resident in Australia' mean?

A person who is 'ordinarily resident in Australia' means a person who usually lives in Australia, even if they are overseas at the time of the alleged image-based abuse.



<sup>1</sup>Section 75(1) of the Act. <sup>2</sup>Section 21 of the Act. <sup>3</sup>Section 21 of the Act.

## What is an 'intimate image'?

The Act<sup>4</sup> defines an 'intimate image' to be a still visual image or moving visual images that shows, or appears to show:

- a person's genital area or anal area (whether bare or covered by underwear);
- a person's breasts (if the person identifies as female, transgender or intersex);
- private activity (for example, a person in a state of undress, using the bathroom, showering, bathing or engaged in sexual activity)
- a person without attire of religious or cultural significance if they would normally wear such attire in public.

In addition, for an image or video to be considered 'intimate' it must also show the person in circumstances in which an ordinary reasonable person would 'reasonably expect to be afforded privacy'.

Intimate images can include photos and videos that have been digitally altered (for example, photoshopped images or deepfakes). They also include images or videos which have been shared in a way that will make people think they show a specific person (for example, a nude photo tagged with a person's name even though it is not of them). A blurred image or video may be an intimate image, taking into account all the circumstances and characteristics of the image. Intimate images would not usually include drawn images and graphic representations of a person, such as comics and cartoons.

## What does 'without attire of religious or culture significance' mean?

Images or videos are considered to be intimate images if they show a person without clothing or accessories of religious or cultural significance that they consistently wear in public, in circumstances where the person would reasonably expect to be afforded privacy.

This is intended to recognise that an image of a person without particular religious or cultural attire that they consistently wear can cause significant harm to them. For example, a Muslim woman who consistently wears a niqab while in public or a Sikh man who consistently wears a turban in public.

## What does 'reasonably expect to be afforded privacy' mean?

In simple terms, this means the intimate image must show a person at a time when they would have assumed they had privacy.

Whether there is a reasonable expectation of privacy depends on the circumstances of the image itself and its creation. Factors eSafety might consider include the extent of control the person shown has over who is permitted to see the intimate image and in what circumstances.

<sup>4</sup>Section 15 of the Act.

eSafety will also consider the surrounding circumstances of the creation of the intimate image, including the existence of a relationship of trust or whether there was an agreement or understanding governing the use of the image.

The notion of whether a person is shown in circumstances in which an 'ordinary reasonable person would reasonably expect to be afforded privacy' will generally be interpreted broadly. However, there are limits on when a person would expect to be afforded privacy under the Act. For example, eSafety is unlikely to take action where a person has deliberately made their image available online with no way of controlling its distribution.

Other examples of where it would be unlikely that there was an expectation of privacy under the Act include:

- an image of an underwear model taken in the course of that person's work where the image was created and used for a public advertising campaign or public art display
- an image of a topless bather at a public beach (as opposed to a private beach).

When a person consents to the sharing of an image or video, they may still have a reasonable expectation of (or entitlement to) privacy if their consent is limited to certain circumstances.

## **What is an 'exempt provision of an intimate image'?**

eSafety cannot give a removal notice or take other enforcement action in relation to sharing of an image or video if the sharing took place in an exempt situation, even if the image or video meets the definition of an intimate image.<sup>5</sup>

Sharing an intimate image is exempt in the following situations:

- Where it is necessary for, or of assistance in:
  - enforcing a law, or
  - monitoring compliance with, or investigating a contravention of, a law.
- Where it is necessary for the purposes of proceedings in a court or tribunal.
- Where it is for a genuine medical or scientific purpose.
- Where an ordinary reasonable person would consider the shared post acceptable.<sup>6</sup>
- Where the person who posted the image is a 'protected person' (such as a member of staff of eSafety or the Australian Communications and Media Authority, or a member of the Classification Board).<sup>7</sup>
- Where the post was related to eSafety's exercise of its powers or functions.

<sup>5</sup>Section 86 of the Act. <sup>6</sup>Section 86(1)(g) of the Act sets out the criteria for this exemption. <sup>7</sup>Section 223 of the Act.

# General prohibition

The posting or threatened posting of an intimate image to a social media service, a relevant electronic service or a designated internet service without the consent of the person shown is prohibited under the Act.<sup>8</sup> It is a civil penalty provision which is punishable by up to 500 penalty units.<sup>9</sup>

The general prohibition does not apply if the sharing of the intimate image is or would be exempt.<sup>10</sup>

For eSafety to consider action under this general prohibition, the person who is shown in the image must be ordinarily resident in Australia, or the end-user responsible for the sharing (or threatened sharing) of the intimate image must be ordinarily resident in Australia.

Actions that can be taken against an end-user who posts or threatens to post an intimate image in these circumstances include civil penalty proceedings, infringement notices, injunctions, enforceable undertakings and formal warnings. eSafety is empowered to consider any enforcement option regardless of whether or not a removal notice has been given to the end-user.

## Intimate images which show a person without attire of religious or culture significance

The general prohibition on image-based abuse does not apply to intimate images if the end-user who shared them did not know that the person shown normally wears attire of religious or cultural significance when in public. In these circumstances a remedial direction (such as a direction to delete a photo) cannot be made by eSafety, as this power can only be used when there is a breach of the general prohibition.

This exception is required in the Act because, unlike the other types of intimate images, what is considered intimate by the person shown depends on the religious or cultural practices of that person and their community, not on general interpretation. Anyone who wishes to rely on the exception must be able to provide evidence establishing that they did not know that the person shown normally wears religious or cultural attire in public.

This exception is designed to limit the liability of end-users who did not know about the intimate nature of the image or video they shared, but it does not prevent eSafety from helping the person shown without their religious or cultural attire. eSafety can still assess the image or video as intimate and give a removal notice in these circumstances.<sup>11</sup>

<sup>8</sup>Sections 75(1) and 75(2) of the Act. <sup>9</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 individual. <sup>10</sup>Section 75(4) of the Act. <sup>11</sup>Section 75(3) of the Act.



# Making a complaint to eSafety

## Who can complain?

A complaint about image-based abuse can be made to eSafety when both these conditions have been met:

- a person has reason to believe their intimate image has been shared (or a threat has been made to share it) on a social media service, a relevant electronic service or a designated internet service without their consent
- the person shown in the intimate image is ordinarily resident in Australia or the end-user accused of sharing (or threatening to share) the intimate image is ordinarily resident in Australia.<sup>12</sup>

A person making a complaint about image-based abuse does not need to have reported the image or video to the online service provider where it appeared before making a complaint to eSafety. A person can still make a complaint even if they cannot identify the end-user who shared the intimate image.<sup>13</sup>

The complaint can be made to eSafety through the online form on [our website](#).

Once a complaint is received, eSafety is empowered to consider compliance and enforcement actions.

## Making a complaint on behalf of someone else

A person can make a complaint on behalf of another person whose intimate image has been shared (or where there are threats to share that person's intimate image) if they are:

- authorised by the person shown in the intimate image,<sup>14</sup> or
- the parent or guardian of a child less than 16 years of age who is shown in the intimate image,<sup>15</sup> or
- the parent or guardian of the person shown in the intimate image and the person shown has a mental or physical condition (whether temporary or permanent) that makes them incapable of managing their affairs.<sup>16</sup>

When a complaint is made on behalf of someone else, eSafety will need a declaration confirming that person is authorised to make the complaint.<sup>17</sup> eSafety will work with the person making the complaint and the person shown in the image or video to confirm that the person making the complaint is authorised to do so.



<sup>12</sup>Section 32 of the Act. <sup>13</sup>Section 32(2) of the Act. <sup>14</sup>Section 32(3)(a) of the Act. <sup>15</sup>Section 32(3)(b) of the Act. <sup>16</sup>Section 32(3)(c) of the Act. <sup>17</sup>Section 32(4) of the Act.

# Giving eSafety an objection notice

## Who can give an objection notice?

Even when a person has previously given consent to share their intimate image they may later object to its continued availability. This objection notice can be given to eSafety through the online form on our website.

## Objection given by the person shown in the intimate image

An objection notice can be given to eSafety when a person has reason to believe that their intimate image has been posted on a social media service, a relevant electronic service or a designated internet service.

In addition, any one of the following conditions must be met:

- the person who is shown in the intimate image is ordinarily resident in Australia
- the end-user responsible for posting the intimate image is ordinarily resident in Australia
- the intimate image is hosted in Australia.

eSafety will then be empowered to consider whether to give a removal notice. The decision will also depend on whether the sharing of the intimate image is exempt.

## Objection given on behalf of someone else

An objection notice can be given to eSafety on behalf of another person, if the person who gives the objection to eSafety is:

- authorised by the person shown in the intimate image, or
- the parent or guardian of a child less than 16 years of age who is shown in the intimate image, or
- the parent or guardian of person shown in the intimate image, and the person shown has a mental or physical condition (whether temporary or permanent) that makes them incapable of managing their affairs.<sup>18</sup>

When an objection notice is given on behalf of someone else, eSafety will need a declaration confirming that person is authorised to give the objection notice. eSafety will work with the person giving the objection notice and the person shown in the image to confirm that the person giving the objection notice is authorised to do so.

An objection notice can be given even if the person shown in the intimate image consented to it being shared online.<sup>19</sup>

<sup>18</sup>Section 33(3) of the Act. <sup>19</sup>Section 33(5) of the Act.

# Investigation of image-based abuse

eSafety is empowered to investigate complaints of image-based abuse under the Act.<sup>20</sup>

Under the Act, eSafety may obtain information from such persons, and make such inquiries, as we think will help with our investigation of an image-based abuse complaint.<sup>21</sup> eSafety may also end an investigation at any point.<sup>22</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>23</sup>

eSafety has additional information-gathering powers under Part 13 of the Act to obtain end-user identity and contact information from a social media service, relevant electronic service or designated internet service.<sup>24</sup>

## Prioritising Complaints

Due to the volume of image-based abuse complaints eSafety receives, we prioritise complaints that require the quickest compliance and enforcement action. As part of this process, we take into account a number of factors, including:

- the urgency of the situation
- the extent and nature of the abuse
- whether the image is currently online and the accessibility of the image
- any vulnerability or risk factors experienced by the person being targeted
- whether the intimate image was created for a commercial purpose.

If the complaint is against an unknown end-user who is threatening to share an intimate image without consent unless their demands are met, that is a type of blackmail called sexual extortion. The blackmailer is usually part of a scam that tricks people into sharing naked selfies or getting sexual online. In these situations, if the image is not available online or has been shared by the unknown end-user via a private message, eSafety will generally not be able to take regulatory action.

## Images created for a commercial purpose

eSafety is unlikely to prioritise matters where an image was originally created for a commercial purpose. The Image-Based Abuse Scheme is not intended to capture commercial breaches where there has been a breach of copyright.

<sup>20</sup>Section 34(1) of the Act. <sup>21</sup>Section 34(3) of the Act. <sup>22</sup>Section 34(5) of the Act. <sup>23</sup>Sections 197 to 205 of the Act. <sup>24</sup>Sections 193 to 196 of the Act.

In most cases, eSafety will not take any enforcement action in relation to image-based abuse complaints relating to an intimate image created for a commercial purpose. However, eSafety recognises that harm can occur in relation to these images which may require appropriate action. We determine the priority of matters requiring compliance and enforcement action on a case-by-case basis. Relevant factors include:

- whether the person has attempted to remove all of the relevant intimate images, including from the sites where they were originally monetised
- whether the person is still posting intimate images for commercial reasons
- whether the intimate images were originally available only to a limited subscriber base
- where continued availability of the intimate images will cause the person significant harm or distress.

## **Approaches to compliance and enforcement**

Under the Act, eSafety can consider a range of formal compliance and enforcement options when investigating image-based abuse and, where appropriate, may consider making informal requests as well.

### **Informal requests**

In the first instance, eSafety typically approaches online service providers to ask them to remove an intimate image, or to alert them to an account which is being misused to threaten to post an intimate image. We find that this generally results in faster removal of material compared to formal action, which is a better outcome for the person shown in the image. This is also preferable for online service providers, particularly where they are committed to resolving the complaints we raise with them swiftly and amicably.

### **Formal actions**

While we prefer to seek rapid voluntary removal of material by online service providers, we do 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 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 issue a removal notice without first approaching them informally for removal.

## Compliance and enforcement options

Under the Act, eSafety can consider a range of formal compliance and enforcement options when investigating image-based abuse.

Outcome	Formal action - end-user	Formal action - online service provider
Put an online service provider on notice		<p>Issue 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 an intimate image has been shared without consent on its service</li> <li>• a written statement informing an online service provider that an intimate image of a person shared without their consent, which breaches the service's own terms of use, is or was on their service on two or more occasions over the past 12 months. In addition, eSafety may publish this statement on our website.</li> </ul> <p><b>See full details below of the circumstances when these notifications can be provided.</b></p>
Require removal of content	<p>Give a <b>removal notice</b> requiring the end-user to take all reasonable steps to remove the material within 24 hours (or a longer timeframe specified by eSafety) arising from one of the following:</p> <ul style="list-style-type: none"> <li>• a complaint</li> <li>• an objection notice.</li> </ul> <p>Give a <b>remedial direction</b> arising from the breach of the general prohibition not to share, or threaten to share, intimate images without the consent of the person shown.</p>	<p>Give a <b>removal notice</b> requiring the online service provider to take all reasonable steps to remove the material within 24 hours (or a longer timeframe specified by eSafety) arising from one of the following:</p> <ul style="list-style-type: none"> <li>• a complaint</li> <li>• an objection notice.</li> </ul>
Take enforcement action	<p>Options for breaching the general prohibition or failing to comply with a removal notice or remedial direction:</p> <ul style="list-style-type: none"> <li>• issue a formal warning</li> <li>• accept an enforceable undertaking</li> <li>• seek a court injunction</li> <li>• issue an infringement notice</li> <li>• seek a civil penalty order.</li> </ul> <p>Failure to comply with a notice given under Part 14 of the Act<sup>25</sup> may also attract certain penalties.</p>	<p>Options for failing to comply with a removal notice</p> <ul style="list-style-type: none"> <li>• issuing a formal warning</li> <li>• accept an enforceable undertaking</li> <li>• seek a court injunction</li> <li>• issue an infringement notice</li> <li>• seek a civil penalty order.</li> </ul> <p>Failure to comply with a notice given under Part 13 or Part 14 of the Act<sup>26</sup> may also attract certain penalties.</p>

<sup>25</sup>Part 14 Notice refers to a notice given under the investigative powers outlined in Part 14 of the Act. <sup>26</sup>Part 13 Notice refers to a notice given under the information-gathering powers outlined in Part 13 of the Act. Part 14 Notice refers to a notice given under the investigative powers outlined in Part 14 of the Act.

## 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 an intimate image is on its service and eSafety has received a complaint or objection notice about the intimate image.

A service provider notification may be given to the provider of a social media service, relevant electronic service or designated internet service.<sup>27</sup>

### When can eSafety give a service provide notification under the Image-Based Abuse Scheme?

A service provider notification can be given to an online service in two circumstances:

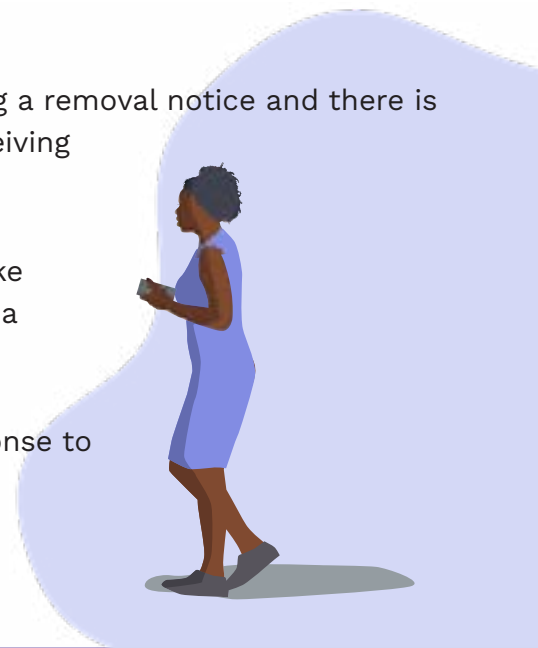
- A written notice may be used by eSafety to make an online service provider aware of an intimate image on its service following a complaint or an objection notice. This is a quick way of putting the service provider 'on notice' about an intimate image on their service, and eSafety expects the notice 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. The written notice will identify the image and state that eSafety is satisfied the person depicted did not consent to the provision of the image on the service. 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>28</sup>
- eSafety may provide a statement to an online service provider where an intimate image of a person is, or was, available on the service on two or more occasions over the past 12 months. To give this statement, the material must also have breached the service's own terms of use and the person shown in each intimate image must not have consented to the intimate image being provided on the service. eSafety may also publish this statement on its website. The purpose of publishing this statement is to call out a service if it is not doing enough to combat image-based abuse.<sup>29</sup> eSafety will generally give an online service provider an opportunity to comment (and take action) before determining whether to exercise its discretion to publish such a statement.

### 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 notification when considering other regulatory options.



<sup>27</sup>Section 85 of the Act. <sup>28</sup>Section 85(1) of the Act. <sup>29</sup>Section 85(2) of the Act

## Removal notices

### What is a removal notice?

A removal notice is a written notice requiring the recipient to take all reasonable steps to remove, or to take all reasonable steps to cease hosting, an intimate image on a service within 24 hours (or a longer timeframe specified by eSafety).

A removal notice may be given to the relevant end-user<sup>30</sup> or to the provider of a social media service, relevant electronic service, designated internet service<sup>31</sup> or hosting service.<sup>32</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 give a removal notice under the Image-Based Abuse Scheme?

eSafety may give a removal notice if all the following criteria are met:

- An intimate image (as defined by the Act) has been provided on a social media service, a relevant electronic service or a designated internet service.
- The intimate image is the subject of a valid complaint (and eSafety is satisfied that the person shown did not consent to it being shared online) or an objection notice (regardless of whether the person shown consented or not).
- The sharing of the intimate image did not place in an exempt situation.
- The material can be identified in a way that enables the online service provider or the end-user to comply with the notice (for example through screenshots, URLs, usernames or time stamps).<sup>33</sup>

A removal notice can also be given to a hosting service 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>34</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 compliance action will be taken.

### 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>35</sup>

Failure to comply with a removal notice may result in a civil penalty of up to 500 penalty units.<sup>36</sup> eSafety may also consider several other enforcement options.

<sup>30</sup>Section 78 of the Act. <sup>31</sup>Section 77 of the Act. <sup>32</sup>Section 79 of the Act. <sup>33</sup>Section 77, 78 and 79 of the Act. <sup>34</sup>Section 79 of the Act.

<sup>35</sup>Section 80 of the Act. <sup>36</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 individual.

## Remedial directions

### What is a remedial direction?

A remedial direction is a written communication that requires the recipient to take specific action aimed at preventing, or preventing further, sharing of intimate images without consent.

Generally, a remedial direction will be best suited to matters where a warning and/or removal notice is insufficient to address the risk of future abuse. For example, if an end-user has threatened to post an intimate image, eSafety may direct the end-user not to do so and to delete the image from their device.

### When can a remedial direction be given?

eSafety may give a remedial direction to an end-user who has contravened the general prohibition of image-based abuse under section 75 of the Act, regardless of whether a removal notice has already been given to them or to an online service provider.

A remedial direction cannot be given if the intimate image shows someone without cultural or religious attire and the end-user who posted it did not know that the person shown normally wears that attire in public.<sup>37</sup>

A remedial direction also can't be given if the person depicted had previously consented to the posting of the intimate image.<sup>38</sup>

A remedial direction may be used in conjunction with, or as an alternative to, other compliance and enforcement action.

The Act does not impose any time limit within which a remedial direction must be given following the image-based abuse. In addition, the Act does not specify the time limit within which an end-user must comply with a remedial direction – this is set by eSafety.

### What are the consequences of a failure to comply with a remedial direction?

A person must not contravene a remedial direction.<sup>39</sup>

Contravention of a remedial direction may result in a civil penalty of up to 500 penalty units.<sup>40</sup> eSafety may also consider other enforcement options.

<sup>37</sup>Section 75(3) of the Act. <sup>38</sup>s75(2) of the Act. <sup>39</sup>Section 83(3) of the Act. <sup>40</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 individual.



# Taking enforcement action

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

eSafety is empowered under the Act to address image-based abuse 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 an online service provider<sup>41</sup> or an end-user<sup>42</sup> to advise them that they have breached a civil penalty provision under the Image-Based Abuse Scheme.
- **Enforceable undertakings.** An enforceable undertaking requires an end-user or an online service provider to enter into an agreement with eSafety to ensure compliance with the Image-Based Abuse 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 Image-Based Abuse Scheme requirements.
- **Infringement notices.** Infringement notices are notices that set out the particulars of an alleged contravention and specify 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.



<sup>41</sup>The civil penalty provision under the Image-Based Abuse Scheme for an online service provider is failing to comply with a removal notice (section 80 of the Act). <sup>42</sup>The civil penalty provisions under the Image-Based Abuse Scheme for an end-user are breaching the general prohibition (section 75 of the Act), failing to comply with a removal notice (section 80 of the Act) and failing to comply with a remedial direction (section 83 of the Act).

# Review rights

Certain actions taken by eSafety under the Image-Based Abuse 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 a correct and preferable decision in each case.

A review can be requested when a removal notice or remedial direction has been given, or when eSafety has decided not to give a removal notice to an online service provider for material that was the subject of a valid complaint and was not exempt for any reason.

Action which can be reviewed	Who can seek review?
Giving a removal notice (online service provider)	<ul style="list-style-type: none"><li>• The online service provider who received the notice</li><li>• The end-user who posted the content to the service</li></ul>
Giving a removal notice (end-user)	<ul style="list-style-type: none"><li>• Generally, a person whose interests are affected by the decision</li></ul>
Giving a remedial direction	<ul style="list-style-type: none"><li>• Generally, a person whose interests are affected by the decision</li></ul>
Refusing to give a removal notice (online service provider)	<ul style="list-style-type: none"><li>• The person shown in the intimate image, or an authorised person with the depicted person's consent</li><li>• The person who made the complaint about the intimate image to eSafety</li></ul>

## Basic Online Safety Expectations

The Basic Online Safety Expectations (the Expectations) outline the Australian Government's expectations that social media, messaging and gaming service providers and other apps and websites will take reasonable steps to keep Australians safe online. The Expectations are designed to improve providers' safety standards and improve transparency and accountability.

Under the Act, eSafety can issue a statutory notice requiring a provider of these kinds of services to report on how they are meeting the Expectations and can publish a summary of the information provided.

The purpose of the Expectations is to encourage online service providers to take reasonable steps to keep Australian end-users safe online, including in relation to image-based abuse. 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 image-based abuse, or to make a report of image-based abuse to eSafety, please visit the 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).

