

eSafety Internal Review Procedure

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1. Introduction

Providing internal reviews of decisions is an important feature of good administrative practice by government agencies. Where eSafety has made a decision that affects an individual or an entity, our internal review scheme allows them to ask us to review that decision if they believe it's unreasonable, unfair or otherwise wrong.

As well as providing fairness to people affected by our decisions, the internal review scheme helps eSafety to continually improve the quality, efficiency and effectiveness of our decision-making.

2. Purpose

The purpose of this Internal Review Procedure is to explain how eSafety's internal review scheme works. It also provides guidance for applicants about the types of decisions eSafety can review internally, how to request a review and the process involved in conducting a review.

This Internal Review Procedure addresses the requirement of section 220A of the Online Safety Act 2021 (the Act) that eSafety must formulate an internal review scheme and publish it on eSafety's website. You can access the notifiable instrument setting up the internal review scheme on our website: [Internal review of decisions](#).

3. Scope

The Internal Review Procedure applies to certain decisions made by eSafety – see section 6 and Annexure 1 for a list of decisions.

A separate process applies to the review of decisions by eSafety in response to a request made under the Freedom of Information Act 1982. Information about that process is available on our website: [Freedom of information](#).

Asking us to review a decision is not the same as:

- giving feedback
- making a complaint about our service
- making a complaint about a program.

If you want to give us feedback or make a complaint about our service or a program, please use our [enquiries form](#).



4. Internal Review Principles

The following principles inform eSafety’s approach to internal reviews:

1. We will provide information about internal and external review options.
2. We will provide a transparent and thorough internal review.
3. We will apply the process we use to review decisions consistently and provide decisions in a reasonable time.
4. We will conduct reviews in a fair and objective way.
5. We will support review outcomes with clear reasons and provide these to you in writing.

The Internal Review Guidelines outlined in section 11 of this document support these principles.

5. What is an internal review?

An internal review is an impartial assessment of the merits of a decision. The purpose of an internal review is to consider whether, on the available facts, the original decision we made was the correct and preferable one.

Where possible and practical, the person who conducts the review will be someone who:

- was not substantially involved in making the original decision, and
- is not less senior than the original decision-maker.

Their role is to consider the facts, law and policy aspects of the decision and determine the correct and preferable decision.

An internal review of a decision may result in a decision to affirm, vary or revoke the original decision. We must give reasons in writing to support the outcome of our review.

eSafety will review a decision internally only once, unless we determine there are exceptional circumstances.

6. What decisions can be internally reviewed?

eSafety makes a range of decisions under the Act related to the performance of its functions. They include decisions relating to:

- administering complaints schemes about cyberbullying, adult cyber abuse, image-based abuse and illegal and restricted online content
- issuing notices to online service providers, including providers of social media services, relevant electronic services, designated internet services and hosting services
- registering industry codes.



We provide a full list of the decisions eSafety can internally review at **Annexure 1**. These decisions are contained in section 220 of the Act. These decisions can also be subject to external review by the Administrative Appeals Tribunal (AAT). The AAT is an independent body that reviews the merits of a wide range of administrative decisions by Australian Government agencies.

7. Who can request an internal review?

Generally, to request an internal review of a decision, the decision must directly affect an individual or an entity in some way.

There are certain decisions that we will only internally review if a specific person or entity requests that we do so. This is consistent with the limits set by the Act on who can apply for an external review of the same decisions. **Annexure 2** lists these decisions and who is eligible to request a review.

8. How to request an internal review

If you have concerns about a decision we've made, or you're having difficulty understanding it, please respond to the email address that communicated the decision to you before requesting an internal review. We may be able to help without the need for you to formally request a review.

You should make a request for an internal review of a decision as soon as possible and within 30 days after receiving the original decision, or within any longer period eSafety allows.

Requesting an internal review is free. However, you must make requests in writing. You must complete the online [review form](#), which you can download and email or post to eSafety.

Your review request should include:

- your name and contact details
- original case reference number, if you know it
- the decision you want eSafety to review
- your reasons for requesting the review
- any relevant documents or information (other than those previously provided) to support your view that the decision was incorrect, unreasonable or wrong
- the outcome you are seeking
- information about any help you need (such as the Translating and Interpreter Service or National Relay Service for people with hearing or speech impairment).

You may also ask someone to help you request a review. If you do this, please let us know on your form if you consent to us communicating with them on your behalf.

9. What is the status of a decision while it is being reviewed?

A reviewable decision remains in effect while we undertake an internal review. A request for internal review does not affect the operation of, or prevent eSafety from taking action to implement, the original decision.

If you make a request to the AAT for external review (see sections 10 and 13), the AAT may, in certain circumstances, decide to stay a decision.

10. Can a decision be externally reviewed by the AAT without first being internally reviewed by eSafety?

There is no legislative requirement for you to first request an internal review of a decision by eSafety before going to the AAT. However, the AAT may choose not to review a decision when eSafety has not had an opportunity to conduct an internal review.

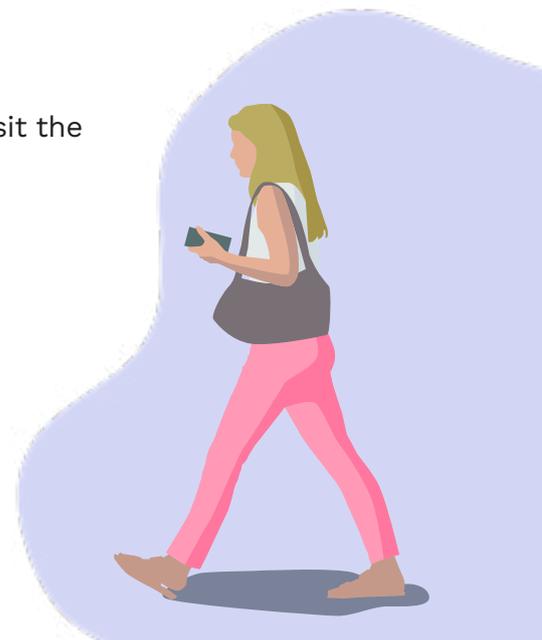
For decisions appealed directly to the AAT, eSafety will usually request an opportunity to review the decision at the first pre-hearing conference.

There may be limited circumstances where it is not appropriate for a decision to be subject to internal review as a first step in the review process. They may include (but are not necessarily limited to) where:

- a decision needs specific independent expertise to evaluate its merit
- a decision was made at the most senior level of the agency (i.e. by the eSafety Commissioner)
- an individual's interests would be significantly adversely affected by a requirement to go through an internal review process before an external review can occur.

If eSafety determines that an internal review is not an appropriate first step, we will discuss this with you.

If you want to request an external review of a decision by the AAT without first requesting an internal review by eSafety, you should visit the [AAT's website](#) or contact them directly for more information.



11. Internal Review Guidelines

When you request an internal review of a decision by eSafety, you can expect us to follow these guidelines:

1. We will promptly acknowledge your request.
2. We will listen and behave professionally and respectfully when dealing with your request.
3. We aim to complete all reviews at the earliest opportunity and within 30 days of receiving your written request.
4. We will advise you about the expected timeframes for our actions.
5. If we are not able to meet the expected timeframes, we will tell you as soon as possible and provide reasons.
6. We will conduct reviews in a fair and objective manner without bias. We will appropriately manage conflicts of interest, whether actual or perceived, and we will give you procedural fairness.
7. We will handle reviews confidentially.
8. We will handle personal information in accordance with the law.
9. We will communicate the outcome of the review in writing.
10. When we advise you of the review's outcome, we will provide clear reasons and explain any further review options that may be available to you.

12. The internal review process

eSafety will consistently apply the process below when we conduct an internal review.

12.1 Recording the request

eSafety records all requests for an internal review. Recorded information includes:

- your name and contact details
- the decision for which you are seeking a review
- your reasons for seeking an internal review and any additional information provided
- the outcome you are seeking.

Each request for a review will have a unique reference number.

12.2 Privacy and confidentiality

We will handle reviews confidentially. We will handle personal information in accordance with the law.

You can learn more about your rights in relation to personal information eSafety collects by reading our [Privacy policy](#). Our [Personal information collection notice](#) explains what information we collect and what we do with it.

12.3 Assessment and triage

We will assess the request to confirm that it is valid. A request may be invalid because:

- you did not provide the information we require in your request
- you are not eligible to request a review of the decision (see Annexure 2)
- we have previously reviewed the same decision and you did not provide a compelling reason why we should review it again.

We will tell you in writing if your request is invalid. If it is invalid because you did not provide the information we require, we will give you a further opportunity to do so.

Where we identify that a request for a review also contains a complaint, we will notify you of this and handle the complaint issue separately. A complaint is an expression of dissatisfaction with our services, staff or how we handled the original concern.

12.4 Acknowledgement

We will acknowledge requests in writing within 3 business days of receiving them. We will give you a contact point for enquiries and tell you how long we expect it will take to complete the review.

eSafety aims to complete reviews within 30 days of receiving a written request. However, it may take longer in certain circumstances. We will advise you about any delay, explain the reason, and give you an estimate for when we will complete the review.

12.5 Allocation to review officer

We will allocate all requests for internal review to a ‘review officer’. The review officer will be a senior eSafety staff member who, where possible and practical, was not substantially involved in making the decision under review and who is no less senior than the original decision-maker.

The review officer’s role is to reconsider the original decision on its merits. The review officer ‘stands in the shoes’ of the original decision-maker to consider the evidence with fresh eyes and make an independent decision in accordance with the facts, relevant legislation, policy and procedures, and the principle of procedural fairness (see section 12.7). They can exercise all the powers and discretions that were available to the original decision-maker.

Once we allocate your request to a review officer, they may contact you by phone or email to discuss your request, clarify issues and ask for further information if necessary.



12.6 Reviewing relevant material and considering the original decision

The review officer will have access to all the documentation and/or information used by the original decision-maker, as well as any additional documents and/or information you provide to support your review request. The review officer may also request and/or receive documentation and/or information from other sources.

The review officer may ask you to provide further relevant information. In this case, you will need to provide the information within the timeframe we request and we will suspend the review 'clock' until we get the information.

The review officer will consider all of the relevant evidence, including any new information, before making a decision. Against the background of the evidence, they will consider whether the original decision-maker:

- identified and addressed all the relevant issues
- sought and considered appropriate evidence
- complied with legislative requirements and relevant policies and procedures
- made the correct and preferable decision
- adequately explained the original decision and reasons for the decision to you.

12.7 Providing procedural fairness

We will provide applicants with procedural fairness. For example:

- sometimes, the review officer may identify information relevant to the decision under review that you do not know about, or have not previously had the opportunity to make submissions about. If that occurs, we will contact you and give you a reasonable opportunity to make submissions with respect to the information if it is adverse to you
- where the review officer proposes to make a new decision that adversely affects you more than the original decision, we will also notify you and give you an opportunity to provide a further submission before we make a final decision.

12.8 Deciding and notifying the outcome of the review

After considering all the evidence and meeting any obligations to provide procedural fairness, the review officer can affirm, vary or revoke the original decision.

A decision by eSafety made as result of internal review under section 220A of the Act has the same effect as if it had been made under the relevant legislative provision under which the original decision was made.

We will notify you about the review outcome in writing and give you the reasons for the decision. If the review officer considers it is appropriate, they may also contact you by phone to discuss the decision. We will also tell you about any external review options that may be available to you.

13. External review

Merits review

The AAT can review decisions outlined in section 220 of the Act. You must make applications to the AAT in writing within 28 days of being notified of a decision. If eSafety has internally reviewed the decision, this means within 28 days of being notified of the outcome of the internal review.

The AAT website has more information at www.aat.gov.au. Questions about the AAT's procedures and requirements should be directed to the AAT:

- Email to generalreviews@aat.gov.au
- 1300 366 700 (cost of a local call)
- GPO Box 9955 in each capital city

Judicial review

Judicial review has a narrower focus than external review and relates primarily to the legality of how the decision was made. The right to judicial review applies to all administrative decisions under legislation, except to the extent that it is lawfully restricted.¹

Commonwealth Ombudsman

If you are unhappy with how we handled your matter, you may also have the right to complain to the Commonwealth Ombudsman. However, the Ombudsman usually prefers that you discuss your complaint with eSafety first.

The Commonwealth Ombudsman cannot substitute a different decision or require eSafety to do so, but it may examine the process that eSafety used to arrive at its decision. There is an office of the Commonwealth Ombudsman in each capital city. For further information call 1300 362 072 or visit ombudsman.gov.au.

14. How we use reviews to improve our decision-making

When we finalise an internal review, we will advise the original decision-maker of the outcome. Where required, we will provide additional training, guidance or supervision to address any deficiencies in the original decision-making process.

eSafety systematically collects and analyses deidentified review data to identify trends in relation to:

- the number of internal reviews requested and conducted
- the types of decisions for which internal reviews are requested
- the outcomes of internal reviews, and
- timeliness of internal reviews completed.

We use the data to monitor our performance and inform staff training and development, as well as to help us improve policies, processes and practices.

¹See *Kirk v Industrial Court (NSW)* (2010) 239 CLR 531.

eSafety is required under the Act to publish internal review data in our annual report. eSafety will periodically review this Internal Review Procedure, and associated procedures and training for our staff, to make sure they continue to reflect best practice in decision-making.

Annexure 1: Reviewable decisions

eSafety area of responsibility	Decisions that are internally reviewable by eSafety and externally reviewable by the AAT under section 220 of the Online Safety Act 2021
Basic Online Safety Expectations	<p>Section 49: Periodic reporting notice given to the provider of a social media service, relevant electronic service or designated internet service.</p> <p>Section 56: Non-periodic reporting notice given to the provider of a social media service, relevant electronic service or designated internet service.</p>
Online Content Scheme	<p>Section 109: Removal notice given to the provider of a social media service, relevant electronic service or designated internet service relating to class 1 material.</p> <p>Section 110: Removal notice given to a hosting service provider relating to class 1 material.</p> <p>Section 114: Removal notice given to the provider of a social media service, relevant electronic service or designated internet service relating to certain class 2 material.</p> <p>Section 115: Removal notice given to a hosting service provider relating to certain class 2 material.</p> <p>Section 119: Remedial notice given to the provider of a social media service, relevant electronic service or designated internet service relating to certain class 2 material.</p> <p>Section 120: Remedial notice given to a hosting service provider relating to certain class 2 material.</p> <p>Section 124: Link deletion notice given to the provider of an internet search engine service.</p> <p>Section 128: App removal notice given to the provider of an app distribution service.</p>
Cyberbullying Scheme (children and young people under 18)	<p>Section 65: Removal notice given to the provider of a social media service, relevant electronic service or designated internet service under the Cyberbullying Scheme.</p> <p>Section 65: Refusal to give the provider of a social media service, relevant electronic service or designated internet service a removal notice under section 65.</p> <p>Section 66: Removal notice given to a hosting service provider under the Cyberbullying Scheme.</p> <p>Section 66: Refusal to give a hosting service provider a removal notice under section 66.</p> <p>Section 70: End-user notice given under the Cyberbullying Scheme.</p>

<p>Image-Based Abuse Scheme</p>	<p>Section 77: Removal notice given to the provider of a social media service, relevant electronic service or designated internet service under the Image-Based Abuse Scheme.</p> <p>Section 77: Refusal to give the provider of a social media service, relevant electronic service or designated internet service a removal notice under section 77.</p> <p>Section 78: Removal notice given to an end-user under the Image-Based Abuse Scheme.</p> <p>Section 79: Removal notice given to a hosting service provider under the Image-Based Abuse Scheme.</p> <p>Section 79: Refusal to give a hosting service provider a removal notice under section 79.</p> <p>Section 83: Remedial direction given under the Image-Based Abuse Scheme.</p>
<p>Adult Cyber Abuse Scheme</p>	<p>Section 88: Removal notice given to the provider of a social media service, relevant electronic service or designated internet service under the Adult Cyber Abuse Scheme.</p> <p>Section 88: Refusal to give the provider of a social media service, relevant electronic service or designated internet service a removal notice under section 88.</p> <p>Section 89: Removal notice given to an end-user under the Adult Cyber Abuse Scheme.</p> <p>Section 90: Removal notice given to a hosting service provider under the Adult Cyber Abuse Scheme.</p> <p>Section 90: Refusal to give a hosting service provider a removal notice under section 90.</p>
<p>Material that depicts Abhorrent Violent Conduct</p>	<p>Section 99: Blocking notice given to an internet service provider in relation to material that depicts, promotes, incites or instructs in abhorrent violent conduct.</p>
<p>Industry Codes and Standards</p>	<p>Section 140: Refusal to register an industry code.</p> <p>Section 143: Decision to:</p> <ul style="list-style-type: none"> • give a direction to a person to comply with an industry code; or • vary a direction to comply with an industry code that is applicable to a person; or • refuse to revoke a direction to comply with an industry code that is applicable to a person.
<p>Service Provider Determinations</p>	<p>Section 151(5): Decision of an administrative nature made under a service provider determination (a legislative instrument made under section 151(5)), where the decision relates to a person.</p> <p>Section 154: Decision to:</p> <ul style="list-style-type: none"> • give a person a remedial direction in respect of the contravention of a service provider rule set out in a service provider determination; or • vary a remedial direction (given under section 154) that is applicable to a person; or • refuse to revoke a remedial direction (given under section 154) that is applicable to a person.

Annexure 2: Eligible people who can request a review of certain decisions

Decision type	Who can request a review
<p>Decision under s65; s77; s88 of the Act</p> <p>Removal notice given to the provider of a social media service, relevant electronic service or designated internet service given in accordance with the:</p> <ul style="list-style-type: none"> • Cyberbullying Scheme, • Image-Based Abuse Scheme, and • Adult Cyber Abuse Scheme. 	<p>(a) The provider of the social media service, relevant electronic service or designated internet service; or</p> <p>(b) the end-user – if the material that is the subject of the notice was posted on the service by that user.</p>
<p>Decision under s65; s77; s88 of the Act</p> <p>Refusal of Commissioner to give a removal notice to a provider of a social media service, relevant electronic service or designated internet service in accordance with the:</p> <ul style="list-style-type: none"> • Cyberbullying Scheme, • Image-Based Abuse Scheme, and • Adult Cyber Abuse Scheme. 	<p>(a) A person who made a complaint under the Act about the material provided on the service;² or</p> <p>(b) in the case of a refusal to give a section 65 (Cyberbullying Scheme) or 88 (Adult Cyber Abuse Scheme) removal notice – by, or with the consent of, the person who was the target of the material provided on the service; or</p> <p>(c) in the case of a refusal to give a section 77 (Image-based Abuse Scheme) removal notice that relates to an intimate image of a person – by, or with the consent of, that person.</p>
<p>Decision under s66; s79; s90 of the Act</p> <p>Removal notice given to a hosting service provider given in accordance with the:</p> <ul style="list-style-type: none"> • Cyberbullying Scheme, • Image-Based Abuse Scheme, and • Adult Cyber Abuse Scheme. 	<p>(a) The hosting service provider; or</p> <p>(b) the end-user– if the material that is the subject of the notice was posted on the service by that user.</p>
<p>Decision under s66; s79; s90 of the Act</p> <p>Refusal to give a removal notice to a hosting service provider in accordance with the:</p> <ul style="list-style-type: none"> • Cyberbullying Scheme, • Image-Based Abuse Scheme, and • Adult Cyber Abuse Scheme. 	<p>(a) A person who made a complaint under the Act about the material;³ or</p> <p>(b) in the case of a refusal to give a section 66 (Cyberbullying Scheme) or 90 (Adult Cyber Abuse Scheme) removal notice – by, or with the consent of, the person who was the target of the material provided on the service; or</p> <p>(c) in the case of a refusal to give a section 79 (Image-based Abuse Scheme) removal notice that relates to an intimate image of a person – by, or with the consent of, that person.</p>
<p>Decision under s140 of the Act</p> <p>Refusal to register an industry code</p>	<p>The body or association that developed the code.</p>

²Complaint must be made under sections 30, 32 or 36 of the Act. ³Complaint must be made under sections 30, 32 or 36 of the Act.

Decision type	Who can request a review
Decision under s143 of the Act to: <ul style="list-style-type: none"> • give a direction to a person to comply with an industry code; • vary a direction to comply with an industry code that is applicable to a person; or • refuse to revoke a direction to comply with an industry code that is applicable to a person. 	The person who is the subject of the decision.
Decision of an administrative nature made under a service provider determination (a legislative instrument made under section 151(5)), where the decision relates to a person.	The person who is the subject of the decision.
Decision under section 154 to: give a person a remedial direction in respect of the contravention of a service provider rule set out in a service provider determination; <ul style="list-style-type: none"> • vary a remedial direction (given under section 154) that is applicable to a person; or • refuse to revoke a remedial direction (given under section 154) that is applicable to a person. 	The person who is the subject of the decision.

