

# 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 detail about the Image-Based Abuse Scheme. It provides an overview of the actions available to eSafety under the Online Safety Act 2021 (Cth) (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 Act includes an Image-Based Abuse Scheme which has the following regulatory features:

- 1. The 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** about breaches of the general prohibition on image-based abuse.
- 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 issue notices to online service providers and end-users requiring them to remove intimate images which are the subject of a valid complaint or objection.
- 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 deleting images from their devices).
- 7. Enforcement actions** available to eSafety where there has been a breach of the general prohibition or a failure to comply with our notices or directions. These options range from formal warnings to seeking civil penalties.



# 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.

The image or video itself may have been obtained with the consent of the person shown in it (for example, they may have agreed to the image or video being taken or may have sent it to the end-user), or it may have been accessed without their consent (for example, through hacking or through it being given to the end-user by another person).

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

For eSafety to investigate a complaint about image-based abuse, the abuse has to have happened on a social media service, relevant electronic service or a designated internet service, and either the end-user sharing (or threatening 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 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 give consent is substantially impaired. It is against the law to share an intimate image of someone who is under the age of 18 or 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?

This term is interpreted broadly and, as such, is not limited to Australian citizens and permanent residents. It can include those who usually live in Australia, even if they are overseas at the time of the alleged image-based abuse. It also includes people who are more than visitors (for example, residents holding student, business, temporary protection visas, or temporary or provisional spouse visas).

<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'?

In general terms, eSafety interprets an 'intimate image' to be one which shows nudity, sexual poses, private activity such as showering, or someone without the religious or cultural clothing they would normally wear in public.

The definition of intimate image includes still or moving visual images and as such when this document refers to an 'intimate image' it can mean still images or videos.<sup>4</sup>

Specifically, the Act<sup>5</sup> defines an 'intimate image' to be an image or video 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); or
- 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.

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 look at 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(2)(a) of the Act. <sup>5</sup>Section 15 of the Act.

eSafety will also consider the surrounding circumstances of the intimate image's creation, including the existence of a relationship of trust or contract 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; or
- 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 'expectations of privacy' apply to content created for a commercial purpose?**

When images or videos are created for a commercial purpose, the Image-Based Abuse Scheme will not be able to assist where there has simply been a breach of copyright. In practice, this means there needs to be evidence that, beyond a copyright claim, the person shown in the image or video retained a degree of effective control over it. This control may include being able to restrict who can copy or share the image or video.

The intended audience of the image or video when it is shared is also relevant to deciding the extent of privacy expected, but is not the only criteria. When intimate content is shared online, whether for a fee or free of charge, it is difficult to maintain control of its distribution. It may end up being copied and shared far more widely than initially intended. For example, this can happen when a subscriber shares intimate photos or videos posted by a creator (or screenshots of them) with people who have not paid the creator for them.

eSafety's decision to take action in relation to an intimate image also depends on whether the sharing of the intimate image is considered an 'exempt provision of the intimate image'.

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

eSafety cannot issue a removal notice or take other enforcement action in relation to sharing of an image or video if the circumstances of that sharing are exempt, even if the image or video meets the definition of an intimate image.<sup>6</sup>

Sharing an intimate image is exempt in any of the following circumstances:

- Where it is necessary for, or of assistance in:
  - enforcing a law, or
  - monitoring compliance with, or investigating a contravention of, a law.

<sup>6</sup>Section 86 of the Act.

- 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>7</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).
- Where the post was related to eSafety’s exercise of its powers or functions.

## 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 is prohibited under the Act without the consent of the person shown.<sup>9</sup> It is a civil penalty provision which is punishable by up to 500 penalty units.<sup>10</sup>

For eSafety to consider action under this general prohibition, the person who is shown must be ordinarily resident in Australia; or the person responsible for the sharing (or threatened sharing) of the intimate image must be ordinarily resident in Australia. In addition, the general prohibition does not apply if the sharing of the intimate image is or would amount to an exempt provision of the image.<sup>11</sup>

Action that can be taken against a person who posts or threatens to post an intimate image in these circumstances includes civil penalty proceedings, infringement notices, injunctions, enforceable undertakings or formal warnings. eSafety is empowered to consider any enforcement options regardless of whether or not a removal notice has been sent.

### 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 assisting the person shown without their religious or cultural attire. eSafety can still class the image or video as intimate and issue a removal notice in these circumstances.<sup>12</sup>

<sup>7</sup>Section 86(1)(g) of the Act sets out the criteria for this exemption. <sup>8</sup>Section 223 of the Act. <sup>9</sup>Sections 75(1) and 75(2) of the Act. <sup>10</sup>The monetary value of 1 penalty unit is \$222 (until 30 June 2023) 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>11</sup>Section 75(4) of the Act. <sup>12</sup>Section 75(3) of the Act.

# Making a complaint to eSafety

## Who can complain?

An image-based abuse complaint can be made to eSafety through the online form on our website.

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.

eSafety can commence an investigation into image-based abuse when:

- we receive a complaint from a person who has reason to believe that 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, and
- 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 or video is ordinarily resident in Australia.<sup>13</sup>

A person can still make a complaint even if they cannot identify the person who shared the intimate image.<sup>14</sup>

Once a complaint is received, eSafety is also 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 there are threats to share their intimate image) if they are:

- authorised by the person shown in the intimate image,<sup>15</sup> or
- the parent or guardian of a child less than 16 years of age who is shown in the intimate image,<sup>16</sup> or
- the parent or guardian of the person shown in the intimate image who has a mental or physical condition (whether temporary or permanent) that makes them incapable of managing their affairs.<sup>17</sup>

When a complaint is made on behalf of someone else, eSafety will need a declaration confirming that person is authorised to make a complaint. 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>18</sup>



<sup>13</sup>Section 32 of the Act. <sup>14</sup>Section 32(2) of the Act. <sup>15</sup>Section 32(3)(a) of the Act. <sup>16</sup>Section 32(3)(b) of the Act. <sup>17</sup>Section 32(3)(c) of the Act. <sup>18</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 has to 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 issue a removal notice. The decision will also depend on whether the sharing of the intimate image or video 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 us is:

- authorised by the person shown in the intimate image
- 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 who has a mental or physical condition (whether temporary or permanent) that makes them incapable of managing their affairs.<sup>19</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 or video 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 or video consented to it being shared online.<sup>20</sup>

<sup>19</sup>Section 33(3) of the Act. <sup>20</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>21</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>22</sup> eSafety may also end an investigation at any point.<sup>23</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>24</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>25</sup>

## 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 intimate images, or to alert them to accounts which are being misused to threaten to post intimate images. We find that this generally results in faster removal of material compared to formal actions, which is a better outcome for the person shown in the images. 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 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 removal requests or there are other factors that suggest the online service provider is unlikely to respond to a removal request, we may decide to issue a removal notice without first approaching them informally for removal.

<sup>21</sup>Section 34(1) of the Act. <sup>22</sup>Section 34(3) of the Act. <sup>23</sup>Section 34(5) of the Act. <sup>24</sup>Sections 197 to 205 of the Act. <sup>25</sup>Sections 193 to 196 of the Act.

## 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 or video has been shared without consent on its service</li> <li>• a statement informing an online service provider that an intimate image of a person that was shared without their consent 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>Issue 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>Issue a <b>remedial direction</b> arising from the breach of the general prohibition not to share, or threaten to share, intimate images or videos without the consent of the person shown.</p>	<p>Issue 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>• 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> <p>Failure to comply with a Part 14 notice 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>• 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> <p>Failure to comply with a Part 13 or part 14 Notice may also attract certain penalties.</p>

## 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 about the intimate image.

A service provider notification may be issued to the provider of a social media service, relevant electronic service or designated internet service.<sup>26</sup>

### When can eSafety issue them under the Image-Based Abuse Scheme?

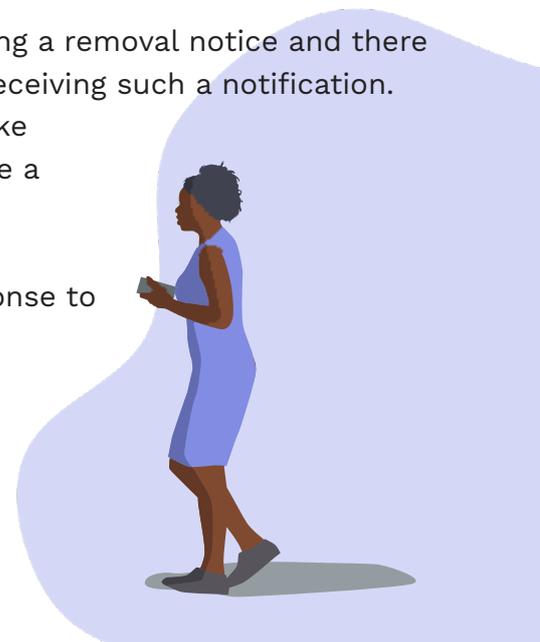
Service provider notifications can be issued to platforms in two circumstances:

- 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. In addition, if the intimate image was provided without consent, eSafety will also notify the online service provider of that fact. This is a quick way of putting the service provider “on notice” about intimate images 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. This type of service provider notification can only be issued with the consent of the complainant and does not give rise to enforcement options if the online service provider does nothing in response.<sup>27</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 2 or more occasions over the past 12 months and. To issue this statement, the material must also have breached the service’s own terms of use and the person shown in each intimate image did not consent 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 services that are not doing enough to combat image-based abuse.<sup>28</sup> eSafety will generally give an online service provider a chance to comment (and take action) before determining whether to exercise the discretion to publish the statements.

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

A service provider notification is a less formal approach than issuing 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 issue a removal notice.

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



<sup>26</sup>Section 85 of the Act. <sup>27</sup>Section 85(1) of the Act. <sup>28</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 an intimate image from a service within 24 hours or a longer timeframe specified by eSafety.

A removal notice may be issued to the relevant end-user<sup>29</sup> or to the provider of a social media service, relevant electronic service, designated internet service<sup>30</sup> or hosting service.<sup>31</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 Image-Based Abuse Scheme?

eSafety may issue a removal notice when:

- 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), and
- the post is not an exempt post.<sup>32</sup>

A removal notice can also be issued 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>33</sup>

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

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

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

A person must comply with a requirement under a removal notice to the extent that person is capable of doing so.<sup>34</sup>

Failure to comply with a removal notice may result in a civil penalty of up to 500 penalty units.<sup>35</sup> eSafety may also consider several other enforcement options.

<sup>29</sup>Section 78 of the Act. <sup>30</sup>Section 77 of the Act. <sup>31</sup>Section 79 of the Act. <sup>32</sup>Section 77, 78 and 79 of the Act. <sup>33</sup>Section 79 of the Act.

<sup>34</sup>Section 80 of the Act. <sup>35</sup>The monetary value of 1 penalty unit is \$222 (until 30 June 2023) 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, non-consensual sharing of intimate images.

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 a person has threatened to post an intimate image, eSafety may direct the person 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 or not a removal notice has already been issued to them or to an online service provider.

Remedial directions cannot be given if:

- the person shown initially consented to the intimate image being shared, (eSafety can consider issuing a removal notice if a valid objection notice is given)<sup>36</sup> or
- the intimate image shows someone without cultural or religious attire and the person who posted it did not know that the person shown normally wears that attire in public.<sup>37</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 a person 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>38</sup>

Contraventions of a remedial direction may result in a civil penalty of up to 500 penalty units.<sup>39</sup> eSafety may also consider several other enforcement options.

<sup>36</sup>Section 75(2) of the Act. <sup>37</sup>Section 75(3) of the Act. <sup>38</sup>Section 83(3) of the Act. <sup>39</sup>The monetary value of 1 penalty unit is \$222 (until 30 June 2023) 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>40</sup> or an end-user<sup>41</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 and civil penalty orders.** These require payment of a financial penalty and can be directed towards either an online service provider<sup>42</sup> or an end-user<sup>43</sup> who have breached a civil penalty provision.



<sup>40</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>41</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). <sup>42</sup>The civil penalty provision under the Image-Based Abuse Scheme for an online service is failing to comply with a removal notice (section 80 of the Act). <sup>43</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 and by the Administrative Appeals Tribunal. The purpose of these review rights is to ensure that we have made the correct and preferable decisions on a case-by-case basis.

A review can be requested when a removal notice or remedial direction has been issued, or when eSafety has decided not to issue 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?
Issuing 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>
Issuing a removal notice (end-user)	<ul style="list-style-type: none"><li>• Generally, a person whose interests are affected by the decision</li></ul>
Issuing a remedial direction	<ul style="list-style-type: none"><li>• Generally, a person whose interests are affected by the decision</li></ul>
Refusing to issue a removal notice (online service provider)	<ul style="list-style-type: none"><li>• The person shown in the intimate image, or with that person's consent</li><li>• The person who made the complaint about the intimate image to eSafety</li></ul>

## 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://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.

