



Overview of the current Australian online harm and online safety legal framework and the proposed new Online Safety Act

	Existing legislative framework	Proposed Act
What type of material does the framework apply to?	Intimate images and image-based abuse	
	Intimate images: Any images of a person in a state of undress or engaging in an activity in circumstances where a reasonable person would reasonably expect to be afforded privacy.	Intimate images: No change.
	Cyberbullying and cyber abuse	
	Cyberbullying material against children: Material that was intended to have an effect on a particular Australian child, and likely to have the effect of seriously threatening, intimidating, harassing or humiliating that child.	Cyberbullying material against children: No change.
		Cyber abuse material against adults: Material that was menacing, harassing or offensive, and was intended to have an effect of causing serious distress or serious harm to an Australian adult.
	Prohibited and potential prohibited online content	
	Prohibited content: Content that may be Refused Classification or classified as X18+ under the National Classification Code.	Class 1 Content ('seriously harmful content'): Includes child sexual abuse material, abhorrent violent material, incitement to violence and others as determined by legislative instrument.
	Potential prohibited content: Content classified as R18+ or MA15+ under the National Classification Code.	Class 2 Content: Content that would be classified as RC, X18+ and MA15+ under the National Classification Code.
	Abhorrent violent material	
	Abhorrent violent material: <i>Content that:</i> <ul style="list-style-type: none"> records or streams abhorrent violent conduct including murder, attempted murder, a terrorist act, torture, rape or kidnapping, whether such conduct occurred inside or outside Australia; is produced by the perpetrator or an accomplice; and a reasonable would consider offensive in the circumstances. 	Abhorrent violent material: No change, but will constitute seriously harmful content as set out above.



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Where does this sit within the legislative framework?	<p>Enhancing Online Safety Act 2015 (image-based abuse, cyberbullying)</p> <p>Broadcasting Services Act 1992 (online content)</p> <p>Criminal Code Act 1995 (removal of abhorrent violent material)</p>	<p>Online Safety Act</p> <p>(online safety, online harms and protection of Australians online)</p> <p>Criminal Code Act 1995 (removal of abhorrent violent material)</p>
Which providers does the framework apply to?	<p>Intimate images:</p> <ul style="list-style-type: none"> social media services; designated internet services (e.g. websites); relevant electronic services (e.g. messaging services such as SMS); and services that host the above. <p>Cyberbullying material against children:</p> <ul style="list-style-type: none"> Tier 1 social media services, that have applied to and satisfied the eSafety Commissioner that they can comply with basic online safety expectations; Tier 2 social media services, as designated by the Minister following a recommendation by the eSafety Commissioner (Facebook, Instagram and YouTube). <p>Prohibited online content:</p> <p>hosting services;</p> <p>live content services; and</p> <p>links services.</p>	<p>Harmonisation across image-based abuse, cyberbullying and cyber abuse, and harmful online content:</p> <p>social media services;</p> <p>designated internet services;</p> <p>relevant electronic services; and</p> <p>services that host the above.</p>
	<p>Removal of abhorrent violent material:</p> <ul style="list-style-type: none"> social media services; designated internet services; internet service providers; and services that host the above. 	<p>Removal of abhorrent violent material:</p> <p>No change.</p>



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<p>What are the eSafety Commissioner's powers under the framework?</p>	Notice and take-down processes	
	<p>48 hours</p> <p>Take down notice for image-based abuse and cyberbullying material accessible by Australians. For notices in relation to cyberbullying material, this is:</p> <ul style="list-style-type: none"> to Tier 1 services, a request; and to Tier 2 services, a requirement. <p>Prohibited and potentially prohibited content: Various powers to require content be taken down or restricted, or to notify and refer requests (where hosted overseas).</p> <p>Abhorrent violent material: Ability to notify providers that they are hosting abhorrent violent material, triggering the provider's obligation to remove it expeditiously (see below).</p>	<p>24 hours</p> <p>Take down notice for image-based abuse, cyberbullying and cyber abuse and seriously harmful content (including abhorrent violent material) accessible by Australians.</p>
		<p>Requests to ancillary service providers: 'Reserve powers' to request (not require) that search engines delist or de-rank search results for websites, and that distribution platforms cease offering apps or games, that persistently facilitate the posting of prohibited material.</p>
	Other powers	
	<p>Online crisis events: No targeted powers, but the eSafety Commissioner has used its ability to give 'written directions' to telecommunication carriage service providers or content service providers in respect of harmful content (effectively directing ISPs to block content).</p>	<p>Online crisis events: A new power to direct ISPs to block certain domains containing terrorist or extreme violent material, for time limited periods, in the event of an 'online crisis event'. This is intended to be limited in both duration and the nature of events to which it relates.</p>
		<p>Accreditation scheme oversight: Oversight of an accreditation programme evaluating the mainstream tools and services available in the market to protect Australians' online safety.</p>
		<p>Basic Online Safety Expectations (BOSE): The Minister will specify a set of 'basic online safety expectations', and the Commissioner can then require entities to report on their actions to uphold these.</p> <p>Role and governance of the eSafety Commissioner: The Proposal is considering potential changes to the governance model for the eSafety Commissioner more broadly.</p>



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How does this impact the Criminal Code offences in relation to abhorrent violent material?	Removal of abhorrent violent material: Expediently remove abhorrent violent material once the service provider becomes aware of a substantial risk that the material was available on their platform.	No change. It is not clear how this will coexist with the separate, harmonised regime for 24 hour take-down notices outlined above.
	Reporting abhorrent violent material: Service provider to notify the Australian Federal Police of material which it reasonably believes is abhorrent violent material within a reasonable period of time of becoming of aware of that content.	No change.