

# Schedule 8 – Equipment Online Safety Code (Class 1A and Class 1B Material)



## 1 Structure

This Code is comprised of the terms of this Schedule together with the Online Safety Code (Class 1A and Class 1B Material) Head Terms (**Head Terms**).

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## 2 Scope

This Code only applies to the following types of persons:

- (a) Manufacturers, to the extent that equipment is for use by Australian end-users;
- (b) Suppliers, to the extent that equipment is for use by Australian end-users; and
- (c) Maintenance and installation providers who provide maintenance or installation services to Australian end-users<sup>1</sup>.

together known as **equipment providers**.

- (d) OS providers, to the extent that equipment is for use by Australian end-users.

This Code only applies to equipment to the extent that it is hardware.

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## 3 Definitions

Unless otherwise indicated, terms used in this Code have the meanings given in the OSA or in the Head Terms or as set out below.

**children's interactive device** means equipment that is an interactive (Tier 1) device targeted at children.

*Note:* an interactive (Tier 1) device that is primarily intended for use by, primarily designed for, and/or primarily marketed to, children is a device that is targeted at children and will be a children's interactive device. On the other hand, a general audience interactive (Tier 1) device that could be used by children, but is not primarily intended for use by, primarily designed for, and/or primarily marketed to children, is not a children's interactive device. *All* interactive (Tier 1) devices are the subject of minimum compliance measures under this Code, with children's interactive devices also being subject to additional heightened requirements recognising the need for increased protections.

**device** in this Code has the same meaning as, and is used interchangeably with, equipment.

**equipment** means equipment that is for use by Australian end-users of:

- (a) a social media service;
- (b) a relevant electronic service;
- (c) a designated internet service; or
- (d) an internet carriage service,

in connection with that service.

**equipment provider** means a:

- (a) manufacturer;
  - (b) supplier;
  - (c) maintenance provider; or
  - (d) installation provider.
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**gaming device** means a device designed primarily to enable Australian end users to play online games with other end users.

Note: A gaming device may be an interactive (Tier 1), secondary (Tier 2) or non-interactive (Tier 3) device.

**installation provider** means a person who installs equipment for Australian end-users.

**interactive (Tier 1) device** means equipment that satisfies all of the following:

- (a) is user-interactive;
- (b) is personal and portable (may be carried with the end-user);
- (c) is capable of operation without the use of any other interactive (Tier 1) device; and
- (d) general internet browsing through a screen or display capable of displaying video or images is an intended ~~primary~~ or significant function of the device.

Note: Guidance on the application of this definition is set out in clause 5 below. The definition of an interactive (Tier 1) device includes any gaming devices with general internet browsing functionality, provided that the functionality is not attained through unauthorised third-party software, modifications, tools, 'hacks', or other methods that may breach any applicable terms of use.

**maintenance provider** means a person who maintains equipment for Australian end-users.

**manufacturer** means a person who:

- (a) manufactures equipment for the purposes of supply (whether by way of sale, lease, hire or hire purchase) to Australian end-users, including by:
  - (i) holding itself out to the public as the manufacturer of the equipment;
  - (ii) causing or permitting its name, a name by which it carries on business or a brand, or its mark to be applied to equipment supplied by the person as the manufacturer of the equipment;
  - (iii) causing or permitting another person, in connection with:
    - (A) the supply or possible supply of equipment by that other person; or
    - (B) the promotion by that other person by any means of the supply or use of equipment;to hold it out to the public as the manufacturer of the equipment; or
- (b) where there is no manufacturer falling within (a) above, imports equipment into Australia for the purposes of supply (whether by way of sale, lease, hire or hire purchase) to Australian end-users (provided that if a distributor imports on behalf of another entity, that other entity will be considered the manufacturer).

Note: This definition excludes offshore entities who are only involved in the physical manufacture of equipment (e. g. factories overseas). Further, in relation to (b) above, equipment can be imported into Australia outside of formal distribution channels such as by an unrelated third party (e. g. parallel import). In this situation, the person who imports the equipment (without authorisation from the manufacturer) is considered the manufacturer.

**non-interactive (Tier 3) device** means equipment that is not an interactive (Tier 1) device or a secondary (Tier 2) device.

**operating system** means a designated internet service that consists of an operating system for an interactive (Tier 1) device that is provided to Australian end-users.

Note: An operating system will only fall within the scope of this Code if it is a designated internet service, that is, where the operating system either allows end-users to access material using an internet carriage service, or delivers material to persons having equipment appropriate for receiving that material, where delivery is by means of an internet carriage service.

**OS provider** means a person who:

- (a) is the provider of an operating system; and
- (b) controls the final overall operating system for the device.

**Note:** The OS provider may also be the manufacturer of the interactive (Tier 1) device, or a third-party OS provider who provides the operating system to the manufacturer for use in the manufacturer's (Tier 1) interactive devices. This definition recognises that there may be more than one "provider" of an operating system due to the supply chain used for different devices. For example, a person may provide an operating system to a manufacturer and a manufacturer may provide that operating system to end-users. The OS provider for the purposes of this Code is the provider that controls the final overall operating system and therefore controls the engineering decisions related to the final version of the features and settings made available to end-users by way of the operating system on the device. As an example, a provider of an open-source operating system is not an OS provider of that operating system for the purposes of this Code as they do not control the final overall operating system of a device which incorporates that open-source operating system.

**secondary (Tier 2) device** means equipment that is not an interactive (Tier 1) device and satisfies all of the following:

- (a) is user-interactive;
- (b) may be personal or communal (intended for use by more than one end-user);
- (c) is capable of operation with or without the use of an interactive (Tier 1) device; and
- (d) general internet browsing is not an intended ~~primary or~~ significant function of the device.

**Note:** Guidance on the application of this definition is set out in clause 5 below.

**supplier** means a person who supplies, by way of sale, lease, hire or hire purchase, equipment to Australian end-users (e.g. retailers of equipment), but does not include a person who supplies equipment in the course of:

- (a) performing services (such as maintenance services) on an existing device that has previously been supplied to the end-user by any supplier; or
- (b) replacing equipment that has previously been supplied to the end-user by the supplier, where such replacement does not involve a new sale, lease, hire or hire purchase of equipment in return for payment by the end-user.

**Note:** The exclusions in (a) and (b) above mean that, for example, a person will not be acting as a supplier when it replaces a device or component of a device in the course of servicing that device (e.g., when providing maintenance services), or where it replaces a device pursuant to warranty or statutory obligations. This includes where the replacement involves a refurbished device. In such circumstances, the "supplier" obligations under this Code will have already been complied with by the original supplier. While it will not be acting as a "supplier" for the purposes of this Code when replacing a device or component in the course of maintenance services, a maintenance provider will have separate obligations as a maintenance provider under this Code.

**user-interactive** means a two-way flow of material between a device and an end-user.

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## 4 Role of equipment providers and OS providers

Equipment providers play an important role in manufacturing (or importing), distributing, installing and maintaining equipment for Australian end-users, enabling them to access online services. OS providers provide the operating systems for devices that enable access to online services.

Equipment providers and OS providers are not providers of content services. The measures in this Code are designed to be proportionate to the role equipment and OS providers are able to play in creating and maintaining a safe online environment.

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## 5 Guidance on categories of equipment

The definitions of interactive (Tier 1) devices, secondary (Tier 2) devices and non-interactive (Tier 3) devices under this Code are mutually exclusive.

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The table below provides further guidance on the definitions of interactive (Tier 1) devices and secondary (Tier 2) devices to assist with the application and understanding of those definitions. This guidance is not intended to modify or restrict the definitions.

Concept	Explanation	Example
User-interactive	There is a two-way flow of material between that device and the end-user.	A smartphone or tablet is user-interactive as it allows an end-user to input text or speech and can generate material in various forms including text, sound, and visual images.  A router or modem is not user-interactive as it does not generate material that an end-user can interact with.
Personal	The equipment is portable and may be carried with the end-user.	Personal equipment such as smartphones or tablets are portable and designed to be carried with the end-user, such that they are more likely to be used by an end-user privately rather than only in communal spaces.  A communal smart home device such as a smart TV is not portable.
Communal	The equipment is not personal and generally intended for use by more than one-end user.	Smart TVs or smart home devices are used by multiple household members.
Standalone	Is capable of being used without the use of another interactive (Tier 1) device.	A smart watch requires a connected smart phone to operate and would not be considered standalone.  A personal computer can be operated without the use of any other interactive (Tier 1) device and would be considered standalone.
General internet browsing	General internet browsing is an intended <del>primary or</del> significant function of the device.	An e-book reader's <del>primary-intended significant</del> function is to enable end-users to read e-books, rather than browse the internet. Additionally, e-book readers may have limited or no web-browsing apps or functionality.  A personal computer's <del>primary-intended or</del> significant function is to enable end-users to use web browsers and applications.  <u>Gaming devices that do not have general internet browsing functionality except through unauthorised third-party software, modifications, tools, 'hacks' or other methods that may breach any applicable terms of use do not have general internet browsing as an intended significant function of the device.</u>

## 6 Compliance measures

The table below contains mandatory minimum and optional compliance measures for equipment providers and OS providers for equipment that is for use by Australian end-users.

The table also sets out guidance on the implementation of some measures. The guidance and notes are not intended to be binding, but are rather provided to provide further guidance on the way that a relevant industry participant may choose to implement a measure.

Equipment providers and OS providers only need to consider compliance measures for outcomes that are stated to be applicable to them. Where an outcome is not applicable to equipment providers (or to

a particular category of equipment providers) or OS providers (as relevant), this will be explained and no minimum or optional compliance measures will appear.

Each minimum or optional compliance measure relates to a specified category of equipment i.e., interactive (Tier 1) devices, secondary (Tier 2) devices and non-interactive (Tier 3) devices. If the measure is expressed to apply to all 'equipment' or 'devices', or does not specify which category it applies to, it applies to all categories of equipment.

Each minimum or optional compliance measure relates to a specified type of equipment provider, i. e. manufacturers, suppliers, maintenance providers or installation providers of equipment. If the measure is expressed to apply to 'equipment providers', then it applies to all equipment providers (but not OS providers).

## 7 Compliance measures for class 1A and 1B material

<b>Objective 1: Industry participants take reasonable and proactive steps to create and maintain a safe online environment for Australian end-users.</b>	
<b>Outcome 1: Industry participants take reasonable and proactive steps to prevent access or exposure to, distribution of online storage of class 1A material.</b>	
	By complying with the minimum compliance measures under Outcome 7, equipment providers will also meet the requirements of this Outcome.
<b>Outcome 2: Industry participants take reasonable and proactive steps to prevent or limit access or exposure to, and distribution of class 1B material.</b>	
	By complying with the minimum compliance measures under Outcome 7, equipment providers will also meet the requirements of this Outcome.
<b>Outcome 4: Industry participants take reasonable and proactive steps to limit hosting of class 1A and 1B material in Australia.</b>	
	This Outcome is not applicable to equipment providers and OS providers.
<b>Outcome 5: Industry participants consult, cooperate and collaborate with other industry participants in respect of the removal, disruption and/or restriction of class 1A and class 1B materials.</b>	
<b>Minimum compliance measure</b>	<p><b>1) Industry forums</b></p> <p>If a person is a manufacturer of interactive (Tier 1) devices, <a href="#">gaming devices</a> or an OS provider, that person must take part in an annual forum organised and facilitated by one of the industry associations responsible for the development of this Code (as listed in the Head Terms) to discuss and share relevant issues, advances and best practice in online safety with other industry participants.</p> <p><u>Note:</u> The industry association responsible for the organisation and facilitation of the forum will ensure that the annual forum will allow online participation.</p>
<b>Optional compliance measure</b>	<p><b>2) Industry forums</b></p> <p>A person who is:</p> <ol style="list-style-type: none"> <li>a manufacturer of secondary (Tier 2) devices or non-interactive (Tier 3) devices;</li> <li>a supplier;</li> <li>a maintenance provider; or</li> <li>an installation provider,</li> </ol> <p>may choose to attend the industry forum referred to in measure 1.</p>
<b>Outcome 6: Industry participants communicate and cooperate with eSafety in respect of matters relating to class 1A and class 1 B material, including complaints.</b>	
<b>Minimum compliance measures</b>	<p><b>3) Communication with eSafety concerning complaints</b></p> <p>If a person is a manufacturer or supplier of interactive (Tier 1) devices, that person must implement policies and processes that ensure it responds in a timely and appropriate manner to communications from eSafety about complaints of breach of this Code.</p> <p><b>4) Transparency</b></p> <p>If a person is a manufacturer <del>of interactive (Tier 1) devices</del> or an OS provider, that person must share information with eSafety about material new features or functions released by the manufacturer or OS provider that the manufacturer or OS provider reasonably considers are likely to have a material positive or negative effect on the access or exposure to, distribution of, and online storage of class 1A or class 1B materials in Australia.</p>

	<p><u>Note:</u> In implementing this measure neither manufacturers <del>of an interactive (Tier 1) device</del> nor OS providers are required to disclose information to eSafety that is confidential and information will be shared after any public announcement of the relevant changes.</p>
<p><b>Objective 2: Industry participants will empower people to manage access and exposure to class 1A and 1B material.</b></p>	
<p><b>Outcome 7: Industry participants provide tools and/or information to limit access and exposure to class 1A and class 1B material.</b></p>	
<p><b>Minimum compliance measures</b></p>	<p><b>5) Provision of information about safe use of equipment online</b></p> <p>a) A manufacturer of interactive (Tier 1) devices or <u>gaming devices</u> <del>designed primarily to enable end-users to play online games with other end-users</del> must ensure that easily accessible information with respect to the safe use of <u>that interactive (Tier 1) devices or devices designed primarily to enable end-users to play online games with other end-users</u> by Australian end-users is available in the form of online safety resources.</p> <p>This information must include:</p> <ol style="list-style-type: none"> <li>i) the role of eSafety, including a link to eSafety’s complaints forms; and</li> <li>ii) how Australian end-users can limit access to class 1A and class 1B materials when using that equipment.</li> </ol> <p>b) A manufacturer of children’s interactive devices or <u>gaming devices</u> <del>designed primarily to enable end-users to play online games with other end-users</del> must ensure that easily accessible information is made available to Australian end-users about how to support online safety in a child’s use of <u>that children’s interactive or those devices designed primarily to enable end-users to play online games with other end-users</u>.</p> <p><i>Examples of how this can be done include:</i></p> <ol style="list-style-type: none"> <li>i) <i>use of a QR code on, or inside, packaging that leads to a website with information about the equipment’s specific online safety features or through referral to eSafety’s advice and resources; and/or</i></li> <li>ii) <i>inclusion of such information in the online safety resources.</i></li> </ol> <p>c) A supplier of interactive (Tier 1) devices, including children’s interactive devices, <u>and gaming devices</u>, must provide easily accessible information with respect to the safe use of <del>interactive (Tier 1) those</del> devices, including <u>children’s interactive devices how to support online safety in a child’s use of those devices, online by Australian end-users</u> at or around the time of a sale, including at a minimum information about;</p> <ol style="list-style-type: none"> <li>i) the role of eSafety, including a link to eSafety’s complaints forms; and</li> <li>ii) how Australian end-users can limit access to class 1A and class 1B materials when using that equipment.</li> </ol> <p><i>Examples of how this could be done include:</i></p> <ol style="list-style-type: none"> <li>i) <i>providing information on customer receipts;</i></li> <li>ii) <i>having in-store <del>interactive (Tier 1)</del> devices that demonstrate safety settings and features.</i></li> </ol> <p>d) If a person is a maintenance provider or installation provider of interactive (Tier 1) devices, that person must provide information with respect to the safe use of interactive (Tier 1) devices online by Australian end-users upon request.</p> <p><i>Examples of how this could be done include:</i></p> <ol style="list-style-type: none"> <li>i) <i>An installation provider or maintenance provider may refer end-users who have questions to information available online (e.g., on the manufacturer’s website, or eSafety’s website);</i></li> <li>ii) <i>An installation provider or maintenance provider can assist Australian end-users in setting up any online safety features and/or access control on an interactive (Tier 1) device and respond to queries from end-users regarding those online safety features.</i></li> </ol>

e) A manufacturer of gaming devices with functionality that enables Australian end-users to freely browse the internet must provide easily accessible information that this functionality exists.

Examples of how this could be done include providing a notification on the gaming device's packaging or on the manufacturer's website that the gaming device has functionality that enables the Australian end-user to freely browse the internet.

Note: Gaming devices that do not have internet browsing functionality except through unauthorised third-party software, modifications, tools, 'hacks' or other methods that may breach any applicable terms of use do not have functionality that enable Australian end-users to freely browse the internet.

**Guidance:**

*In implementing these measures, industry participants should also consider the needs and capabilities of children, for example with respect to complexity of language, ease of access etc.*

**6) Tools**

a) An OS provider must ~~take reasonable steps to~~ develop and implement relevant tools where appropriate within operating systems that allow Australian end-users to help reduce the risk of harm to children when using interactive (Tier 1) devices.

*Examples of how this could be done include:*

- i) *enabling Australian end-users to set up an adult or a child account or profile within the interactive (Tier 1) device;*
- ii) *providing parent/guardian controls so that Australian end-users with an adult account can limit the interactions and functionality of associated child accounts so that a child may only access limited features, websites and/or content; and*
- iii) *provision of a range of safety settings, as well as clear and accessible guidance about the use and effect of such settings.*

b) An OS provider for a children's interactive device must set default safety settings for Australian end-users for children's interactive devices to the most restrictive privacy and location settings provided for on that device.

c) An OS provider must make tools available to Australian end-users to assist in restricting the unauthorised access to and operation of an adult's interactive (Tier 1) device by a child.

*Examples of how this could be done include making security measures available to Australian end-users to assist with preventing unauthorised access to and operation of interactive (Tier 1) devices in circumstances where the device does not have parent/guardian controls enabled.*

d) A manufacturer of gaming devices must develop and implement appropriate tools that allow Australian end-users to help reduce the risk of harm to children when using that devices.

Examples of how this could be done include

i) enabling Australian end-users to set up an adult or a child account or profile within the gaming device; and

ii) providing parental and carer controls so that Australian end-users with an adult account can disable or limit internet browsing functionality and disable or limit the playing of some or all games for Australian end-users for a child account.

**Guidance:**

*In implementing these measures, industry participants should also consider the needs and capabilities of children, for example with respect to complexity of language, ease of access etc.*

	<p><b>7) Staff</b></p> <p>A supplier of interactive (Tier 1) devices must provide tools or training to staff to enable staff to appropriately respond to questions from Australian end-users regarding online safety, including available complaints mechanisms.</p> <p><i>Examples of how this can be done include making online safety resources available to staff, directing staff to other online safety resources (e.g., manufacturer online safety information or eSafety’s website) or through staff training.</i></p>
<p>Optional compliance measures</p>	<p><b>8) Provision of information about the safe use of equipment online</b></p> <p>a) A manufacturer of interactive (Tier 1) devices may provide additional information with respect to the safe use of interactive (Tier 1) devices online by Australian end-users.</p> <p><i>Examples of how this can be done include a safety warning or QR code on, or inside, packaging.</i></p> <p><i>Examples of the types of information that could be provided include:</i></p> <ul style="list-style-type: none"> <li><i>i) the risks presented by interactive (Tier 1) devices in respect of harmful online material;</i></li> <li><i>ii) the availability and use of online content filtering or other software;</i></li> <li><i>iii) how to support a child’s safe use of social media services, relevant electronic services and designated internet services where accessible through the equipment.</i></li> </ul> <p>b) An equipment provider may make available information with respect to the safe use of secondary (Tier 2) devices or non-interactive (Tier 3) devices online by Australian end-users.</p> <p><b>Guidance:</b></p> <p><i>In implementing these measures, industry participants should also consider the needs and capabilities of children, for example with respect to complexity of language, ease of access etc.</i></p> <p><b>9) Safety features and settings</b></p> <p>A manufacturer of secondary (Tier 2) devices may take reasonable steps to consider features and/or settings that are designed to mitigate the risks to children when accessing material via the secondary (Tier 2) device.</p> <p>A manufacturer of secondary (Tier 2) devices may take reasonable steps to develop and implement tools that permit the use of online content filtering technologies and other safety features to help reduce the risk of harm to children.</p>
<p><b>Outcome 8: Industry participants provide clear and effective reporting and complaints mechanisms for class 1A and class 1B material.</b></p>	
<p>Minimum compliance measures</p>	<p><b>10) Right to complain</b></p> <p>If a person is a manufacturer or supplier of interactive (Tier 1) devices, that person must make available information to Australian end users on their right to complain to a content provider and/or eSafety (including where a complaint to a content provider remains unresolved) about class 1A and 1B material, or unsolicited electronic messages that promote such material.</p> <p><b>11) Link to eSafety’s form</b></p> <p>If a person is a manufacturer or supplier of interactive (Tier 1) devices, that person must make available, via their online safety resources, a link to eSafety’s online content complaints reporting form.</p> <p>This Outcome is not applicable to maintenance providers and installation providers.</p>
<p><b>Outcome 9: Industry participants effectively respond to reports and complaints about class 1A and class 1B material.</b></p>	
<p>Minimum compliance measure</p>	<p><b>12) Handling code complaints</b></p>

	<p>If a person is a manufacturer of interactive (Tier 1) devices, or an OS provider, that person must have a complaints mechanism to deal with complaints of potential Code breaches from Australian end-users.</p> <p>This Outcome is not applicable to maintenance providers and installation providers.</p>
<p><b>Objective 3: Industry participants will strengthen transparency of, and accountability for, class 1A and 1B material.</b></p>	
<p><b>Outcome 10: Industry participants provide clear and accessible information about class 1A and class 1B material.</b></p>	
	<p>By complying with the minimum compliance measures under Outcome 7, equipment providers will also meet the requirements of this Outcome.</p>
<p><b>Outcome 11: Industry participants publish annual reports about class 1A and 1B material and their compliance with this Code.</b></p>	
<p><b>Minimum compliance measure</b></p>	<p><b>13) Annual reporting for manufacturers of interactive (Tier 1) devices and OS providers</b></p> <p>If a person is a manufacturer of <u>an</u> interactive (Tier 1) devices and or an OS provider, that person must submit a Code report which as a minimum contains the following information:</p> <p><u>a) the number of complaints from Australian end-users received by the manufacturer of an interactive (Tier 1) device or the OS provider about compliance with this Code through the complaint mechanisms implemented under minimum compliance measure 12 above;</u></p> <p><u>a)b) the steps that the provider has taken to comply with the applicable minimum compliance measures; and</u></p> <p><u>b)c) an explanation as to why these measures are appropriate.</u></p> <p>The first Code report must be submitted by a manufacturer of interactive (Tier 1) devices or OS provider, respectively, to eSafety 12 months after this Code comes into effect. If a person is a manufacturer of interactive (Tier 1) devices or an OS provider, respectively, the person must submit subsequent Code reports to eSafety annually.</p> <p><u>Note:</u> ‘appropriate’ has the meaning given in the Head Terms. The above is the only annual reporting requirement under Outcome 11 for equipment providers and OS providers. This outcome is not otherwise applicable to equipment providers or OS providers because of their role in the digital ecosystem as explained in clause 4.</p>
<p><b>Minimum compliance measure</b></p>	<p><b>14) Reporting for manufacturers of secondary (Tier 2) devices</b></p> <p>Where eSafety issues a written request to a manufacturer of secondary (Tier 2) devices to submit a Code report, the manufacturer named in such request must submit to eSafety a Code report which includes the following information:</p> <p>a) an explanation as to why the manufacturer considers the devices to be a secondary (Tier 2) devices;</p> <p>b) the steps that the manufacturer has taken to comply with their applicable minimum compliance measures; and</p> <p>c) an explanation as to why these measures are appropriate.</p> <p>A manufacturer of secondary (Tier 2) devices who has received such a request from eSafety is required to submit a Code report within <u>26</u> months of receiving the request, but for the first request no earlier than 12 months after this Code comes into effect. A manufacturer of secondary (Tier 2) devices will not be required to submit a Code report to eSafety more than once in any 12 month period.</p> <p><u>Note:</u> ‘appropriate’ has the meaning given in the Head Terms.</p>