

Schedule 3 – Hosting Services Online Safety Code (Class 1A and Class 1B Material)

In force – latest version

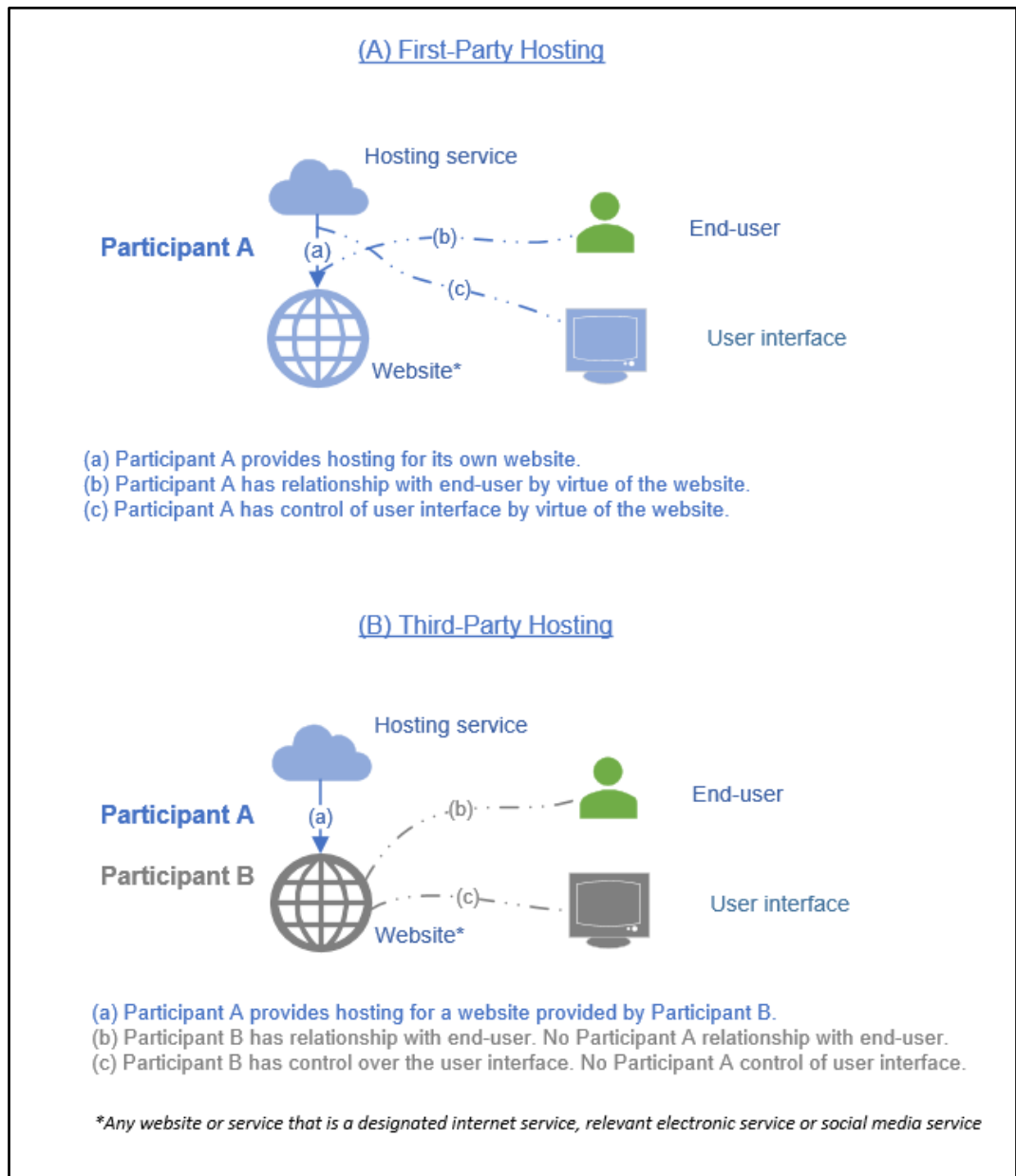
1 Structure

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**).

2 Scope

- (a) This Code applies to providers of hosting services, so far as those services host material in Australia.
- (b) Hosting services can be distinguished into two categories:
 - (i) **first-party hosting service:** a service provided by a person that hosts stored material that has been provided on that person's own social media service, relevant electronic service, or designated internet service.
 - (ii) **third-party hosting service:** a service provided by a person that hosts stored material that has been provided on another person's social media service, relevant electronic service, or designated internet service.
- (c) This Code applies only to providers of third-party hosting services. As a first-party hosting service also necessarily involves a social media service, relevant electronic service, or designated internet service provided by the same industry participant, the relevant obligations and compliance measures for a provider of such first-party hosting service are contained in the Social Media Services Online Safety Code (Class 1A and Class 1B Material) or other applicable regulation (e.g. industry standards), as may be the case.
- (d) Distinguishing between these two categories of hosting service is important given the significant differences between the two, not only in terms of end-user engagement, but also in the different purposes they have in relation to hosting material online and their technical, legal, and practical ability to exercise control over an individual piece of material.
 - (i) First-party hosting services include consumer-facing services that allow for the upload, storage and/or management of individual pieces of stored material by end-users. Common examples of first-party hosting services include:
 - (A) a social media service, where the hosting service provider and social media service provider are the same person;
 - (B) a relevant electronic service, where the hosting service provider and relevant electronic service provider are the same person; and
 - (C) an online file storage service, photo storage service or other media hosting service (which are generally categorised as designated internet services and are not covered under this Code but may be subject to other applicable regulation (e.g. an industry standard), where the hosting service provider and the provider of the user service are the same person.
 - (ii) Third-party hosting services have the primary purpose of supporting the delivery of another service online, performing a 'back-end' or technical function. Providers of third-party hosting services do not have an effective ability to engage with end-users, and instead have their relationship with other service providers, who may themselves have relationships with end-users.

- (e) The following diagram further explains (through examples) the distinction and different functional limitations of first-party hosting services and third-party hosting services:



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.

first-party hosting service means a service provided by a person that hosts stored material that has been provided on that person's own social media service, relevant electronic service, or designated internet service.

third-party hosting service means a service provided by a person that hosts stored material that has been provided on another person's social media service, relevant electronic service, or designated internet service.

customer, in relation to a third-party hosting service, means an individual or enterprise customer to whom the third-party hosting service is supplied (whether or not a fee is paid for the supply).

4 Role of third-party hosting services

- (a) The role of providers of third-party hosting service in achieving the objectives of the Codes is different from other service providers who may have a direct relationship with end-users. The nature of a third-party hosting service inherently limits the control that can be exercised over individual pieces of material on the service. Providers of third-party hosting service do not have direct relationships with the end-users of their customers' services, and they also do not control the interface or material with which end-users engage. As such, this Code acknowledges the role of providers of third-party hosting services as well as their customers, in working towards the outcomes of this Code.
- (b) A third-party hosting service hosts material of another person's social media service, relevant electronic service, or designated internet service, where that other person's service acts as the direct interface between end-users and material online. As such, while this Code is drafted in a way that reflects some of the above-mentioned limitations of third-party hosting services, it also acknowledges that this Code will function in tandem with the Social Media Services Online Safety Code (Class 1A and Class 1B Material) or other applicable regulation (e.g. industry standards), as may be the case.
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5 Risk profile

While there are different kinds of third-party hosting services, for the purpose of this Code and the compliance measures in this Code, third-party hosting services are deemed to have a generally equivalent risk profile. As such, minimum compliance measures under this Code apply to all providers of third-party hosting services.

6 Approach to measures and guidance for providers of third-party hosting services

The table in clause 7 below contains minimum and optional compliance measures for providers of third-party hosting services.

The table in clause 7 also sets out guidance on the implementation of some measures. This is not intended to be binding on providers but to guide them on the way in which they may choose to implement a measure.

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

<p>Objective 1: Industry participants will take reasonable proactive steps to create and maintain a safe online environment for end-users in Australia.</p>	
<p>Outcome 4: Industry participants take reasonable and proactive steps to limit hosting class 1A and 1B material in Australia.</p>	
<p>Minimum compliance measure</p>	<p>1) Clear policies regarding class 1A and class 1B materials</p> <p>A provider of a third-party hosting service must have in place policies and/or contractual terms that make clear to customers of the service that customers must, when using the service, comply with applicable Australian content laws and regulations, including industry codes or standards made pursuant to the OSA, that create legal obligations for customers relating to class 1A and class 1B material.</p> <p>Guidance:</p> <p><i>For the purpose of this measure, providers of a third-party hosting service may satisfy this measure in different ways and by making use of different language. Providers may consider that existing language in policies and/or contractual terms satisfies this requirement.</i></p>
<p>Minimum compliance measure</p>	<p>2) Systems and processes for enforcement of policies</p> <p>A provider of a third-party hosting service must enforce the following policies and/or contractual terms to ensure appropriate and proportionate enforcement action with respect to customers of the service that breach its policies prohibiting class 1A and class 1B material:</p> <ol style="list-style-type: none"> a) standard operating procedures which include channels for prioritising and escalating reports of class 1A and class 1B material on a customer's service that makes use of the third-party hosting service; b) standard operating procedures to enforce their policies when they become aware of class 1A and class 1B material on a customer's service that makes use of the third-party hosting service, such as by notifying, warning, suspending, or terminating the account(s) of the customer in question; and c) policies and procedures that take into account the application of Australian laws that oblige the participant to report certain categories of material to law enforcement bodies, as well as the application of criminal offences relating to possession and distribution of material, so as to ensure that all appropriate escalations and referrals occur as necessary and appropriate in accordance with such laws. <p>Guidance:</p> <p><i>Providers have flexibility to design terms and policies to allow appropriate and proportionate responses to potential breaches on a case-by-case basis. Providers have the ability to exercise discretion to enforce terms and policies in accordance with the specific circumstances of each potential breach.</i></p>
<p>Minimum compliance measures</p>	<p>3) Contact mechanism in relation to class 1A and class 1B materials on customer services</p> <p>A provider of a third-party hosting service must ensure that end-users can contact the provider in relation to class 1A and class 1B material provided on a customer's service where such material is hosted by the third-party hosting service.</p> <p><i>Examples of how a provider of a third-party hosting service can comply with this measure include:</i></p> <ol style="list-style-type: none"> i) <i>by making available online an email address;</i> ii) <i>by providing a web form (Contact Us or similar).</i>

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.	
Minimum compliance measure	<p>4) Industry collaboration mechanisms for removing, disrupting and/or restricting class 1A and class 1B material</p> <p>A provider of a third-party hosting service must ensure that it takes appropriate steps or adopt measures that are designed to support outcome 5 in relation to class 1A or class 1B material, including for example:</p> <ul style="list-style-type: none"> a) establishing clear channels of communication between the third-party hosting service provider and other third-party hosting service providers, as well as participants in different sectors of the online industry; b) joining industry organisations intended to address serious online harms, and/or share information on best practice approaches, that are relevant to third-party hosting services; c) working with eSafety to share information, intelligence, and/or best practices relevant to addressing certain categories of class 1A or class 1B material, that are relevant to third-party hosting services; d) collaborating with non-government or other organizations that facilitate the sharing of information, intelligence, and/or best practices relevant to addressing certain categories of class 1A or class 1B material; and/or e) joining and/or supporting global or local multi-stakeholder initiatives that bring together a range of subject matter experts to share information and best practices, collaborate on shared projects, and/or working to reduce online harms. Examples include the WePROTECT Global Alliance.
Outcome 6: Industry participants communicate and cooperate with eSafety in respect of matters relating to class 1A and class 1B material, including complaints.	
Minimum compliance measure	<p>5) Communication and cooperation with eSafety concerning Code compliance</p> <p>A provider of a third-party hosting service must implement policies and procedures that ensure it responds in a timely and appropriate manner to communications from eSafety about compliance with this Code.</p>
Objective 2: Industry participants will empower people to manage access and exposure to class 1A and class 1B material	
Outcome 7: Industry participants provide tools and/or information to limit access and exposure to class 1A and class 1B material.	
Minimum compliance measure	<p>6) Tools and settings</p> <p>A provider of a third-party hosting service must offer customers of the service:</p> <ul style="list-style-type: none"> a) tools, settings or information (e.g., privacy and online safety settings), appropriate to the nature and function of the third-party hosting service, that are capable of enabling customers to address material, including class 1A and class 1B material, on the customer's service; and b) clear and accessible guidance about how to use and the effect of any such tools, settings or information.
Objective 3: Industry participants will strengthen transparency of, and accountability for, class 1A and class 1B material.	
Outcome 10: Industry participants provide clear and accessible information about class 1A and class 1B material.	
Minimum compliance measure	<p><u>Note</u>: that this outcome 10 is partially addressed through measures laid out under outcome 4.</p> <p>7) Online safety information</p>

	<p>A provider of a third-party hosting service must provide information or links to information that are accessible to Australian end-users about:</p> <ul style="list-style-type: none"> a) online safety issues with respect to class 1A and class 1B material; and b) the role and functions of eSafety, including how to make a complaint to eSafety under the OSA. <p><i>Examples of how a provider of a third-party hosting service can provide information or links to information include:</i></p> <ul style="list-style-type: none"> i) <i>establishing a dedicated hub, portal or other location that houses online safety information for users or refers users to where they can find online safety information (e.g., the eSafety website); and</i> ii) <i>running online safety awareness-raising campaigns in Australia, including in partnerships with one or more other organisations including government and non-government organisations or others.</i>
<p>Outcome 11: Industry participants publish annual reports about class 1A and 1B material and their compliance with this Code</p>	
<p>Minimum compliance measure</p>	<p>8) Reporting</p> <p>Where eSafety issues a written request to a provider of a third-party hosting service to submit a Code report, the provider named in such request must submit to eSafety a Code report which includes the following information:</p> <ul style="list-style-type: none"> a) the steps that the provider has taken to comply with their applicable minimum compliance measures; b) an explanation as to why these measures are appropriate; and c) the number of reports in relation to class 1A or class 1B material received by the third-party hosting service under minimum compliance measure 3. <p>A provider of a third-party hosting service who has received such a request from eSafety is required to submit a Code report within 2 months of receiving the request, but for the first request no earlier than 12 months after this Code comes into effect. A provider of a third-party hosting service 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>