

# Consolidated Industry Codes of Practice for the Online Industry (Class 1A and Class 1B Material) Head Terms

In force – latest version

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## Preamble

### Background

Part 9 of the *Online Safety Act 2021* (Cth) anticipates that bodies and associations representing sections of the online industry should develop industry codes that are to apply to industry participants in the respective sections of the industry in relation to their online activities. Words used in this document have the meanings given in section 2.1 of the Head Terms below.

Part 9 also anticipates that industry standards may be determined by eSafety for participants in sections of the online industry in some circumstances.

The sections of the online industry to which codes or standards may apply pursuant to Part 9 (referred to in this Preamble as sections of the online industry) are as follows:

- providers of social media services, so far as those services are provided to end-users in Australia;
- providers of relevant electronic services, so far as those services are provided to end-users in Australia;
- providers of designated internet services, so far as those services are provided to end-users in Australia;
- providers of internet search engine services, so far as those services are provided to end-users in Australia;
- providers of app distribution services, so far as those services are provided to end-users in Australia;
- providers of hosting services, so far as those services host material in Australia;
- the group consisting of providers of internet carriage services, so far as those services are provided to customers in Australia;
- the group consisting of persons who manufacture, supply, maintain or install equipment that is for use by end-users in Australia of a social media service, relevant electronic service, designated internet service or internet carriage service (in each case in connection with the service).

### Structure

These *Consolidated Industry Codes of Practice for the Online Industry (Class 1A and Class 1B Material)* contain six separate industry codes that apply to different sections of the online industry. Each code has been developed by one or more industry bodies or associations that represent the relevant section of the online industry. Each code is comprised of a common set of Head Terms and a Schedule setting out terms applicable to the relevant section of the online industry covered by that code. These details are set out in the table below:

Title	Code structure	Section of the online industry to which the code applies	Industry representative
Social Media Services Online Safety Code (Class 1A and Class 1B Material)	Head Terms + Schedule 1	Providers of social media services, so far as those services are provided to end-users in Australia	<ul style="list-style-type: none"><li>• Communications Alliance (<b>CA</b>)</li><li>• Digital Industry Group Inc. (<b>DIGI</b>)</li></ul>

Title	Code structure	Section of the online industry to which the code applies	Industry representative
App Distribution Services Online Safety Code (Class 1A and Class 1B Material)	Head Terms + Schedule 2	Providers of app distribution services, so far as those services are provided to end-users in Australia	<ul style="list-style-type: none"> <li>• CA</li> <li>• DIGI</li> <li>• IGEA</li> </ul>
Hosting Services Online Safety Code (Class 1A and Class 1B Material)	Head Terms + Schedule 3	Providers of hosting services, so far as those services host material in Australia	<ul style="list-style-type: none"> <li>• BSA</li> <li>• CA</li> </ul>
Internet Carriage Services Online Safety Code (Class 1A and Class 1B Material)	Head Terms + Schedule 4	Providers of internet carriage services, so far as those services are provided to customers in Australia	<ul style="list-style-type: none"> <li>• CA</li> </ul>
Equipment Online Safety Code (Class 1A and Class 1B Material)	Head Terms + Schedule 5	Persons who manufacture, supply, maintain or install equipment that is for use by end-users in Australia of a social media service, relevant electronic service, designated internet service or internet carriage service (in each case in connection with the service)  OS providers (as defined in Schedule 5)	<ul style="list-style-type: none"> <li>• AMTA</li> <li>• CA</li> <li>• CESA</li> <li>• IGEA</li> </ul>
Internet Search Engine Services Online Safety Code (Class 1A and Class 1B Material)	Head Terms + Schedule 6	Providers of internet search engine services, so far as those services are provided to end-users in Australia	<ul style="list-style-type: none"> <li>• CA</li> <li>• DIGI</li> </ul>

### **Identifying the applicable code or standard**

For each online activity that they undertake, each participant in the online industry must identify and comply with the industry code or industry standard that applies to that online activity.

Where a single electronic service could fall within the scope of more than one industry code or industry standard, the relevant industry participant will only be required to comply with one code or industry standard, as the case may be, for that electronic service. The code or industry standard that will apply in this situation is the code or industry standard that is most closely aligned with the predominant purpose of the single electronic service.

No industry participant will have to comply with more than one industry code or industry standard in relation to the same electronic service.

The Schedule for each industry code may provide further detail as to the intended scope of that code. If an industry participant is still unsure as to which industry code or industry standard is applicable to a particular electronic service, the industry participant may seek guidance from eSafety.

### **Differentiating between services based on functionality**

All industry codes collectively recognise that every online industry participant has a role to play in addressing the harms presented by class 1A and 1B material.

Electronic products and services provided across different sections of the online industry may include different functionalities, which in turn may be relevant to:

- the connection between a product or service and a relevant online safety risk;
- the relationship between a product or service and an end-user, including whether or not a service controls the end-user interface; and
- the visibility, control or administration of specific material accessible to an end-user.

The structure of the various industry codes, including the separate Head Terms and Schedules, is intended to ensure that differences such as these are appropriately accounted for.

Note: For example, social media services generally include a more direct interface between online material and end-users than exists for internet search engine services or app distribution services. Similarly, hosting services, internet carriage services and applicable equipment support access to material only in conjunction with another online service, and have different relationships with end-users and control over end-user interfaces.

### **First party hosting of materials by social media services, app distribution services and internet search engine services**

For the purpose of the codes, if a provider of a social media service, app distribution service or internet search engine service hosts stored material for the purpose of providing such a service, the hosting of the stored material is not treated as a separate online activity that requires additional compliance measures, beyond those set out in the applicable Schedule.

### **App distribution by social media services, hosting services and internet search engine services**

For the purpose of the codes, if a provider of a social media service, a hosting service or internet search engine service provides an app distribution service for first-party apps for the purpose of providing such social media service, hosting service or internet search engine service, the provision of the app distribution service is not treated as a separate online activity that requires additional compliance measures, beyond those set out in the applicable Schedule.

## Head Terms

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### 1 Introduction

#### 1.1 Purpose

- (a) The purpose of this Code is to establish appropriate safeguards for the community in relation to certain types of seriously harmful material, referred to in this Code as 'class 1A' and 'class 1B' material. Each participant in the online industry has a role to play in addressing the online safety risks presented by this material.
- (b) This Code sets out:
  - (i) online safety objectives and outcomes used in this Code; and
  - (ii) a process for industry participants to follow in order to identify and adopt reasonable compliance measures by reference to applicable online safety objectives and outcomes.
- (c) In doing so, this Code recognises that:
  - (i) different services, products, and technologies may have different risk profiles;
  - (ii) compliance measures should be proportionate to the level of risk associated with a particular online activity or service and to the size and capacity of the industry participant responsible for that online activity or service; and
  - (iii) compliance measures should be flexible in order to enable effective implementation in practice, recognise the differences between unique services, and to adapt to changes in technology and in the risk environment.

#### 1.2 Development

The industry representatives responsible for leading the development of this Code (as listed in the Preamble):

- (a) consulted widely with relevant industry participants in order to ensure that they adequately represented their section of the online industry and their views were adequately considered in the development of the codes;
- (b) consulted widely with the public, stakeholders and other interested parties to ensure that their views were adequately considered in the development of the codes; and
- (c) consulted with eSafety on the development of this Code.

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## 2 Definitions and interpretation

### 2.1 Definitions

Terms used in this Code have the meanings given in the OSA or otherwise as set out below:

**app distribution service** means a service that enables end-users to download apps, where the download of the apps is by means of a carriage service.

**appropriate** where used to qualify measures required under this Code means that when implemented by relevant industry participants the measures must be demonstrably reasonable, in accordance with section 5.1(b).

**Australian end-user** means an end-user in Australia.

**class 1 material** has the meaning given to it under section 106 of the OSA.

Note: This can be summarised as:

- (i) material that is a film, the contents of a film, a computer game, a publication or the contents of a publication, and is:
  - (A) classified as RC by the Classification Board under the Classification Act; or
  - (B) has not been classified by the Classification Board, but if it were to be classified under the Classification Act, it would be likely to be classified as RC, or
- (ii) material that is not a film, the contents of a film, a computer game, a publication or the contents of a publication, but if it were to be classified by the Classification Board in a corresponding way to the way in which a film would be classified under the Classification Act, the material would be likely to be classified as RC.

**class 1A material** is a subcategory of class 1 material used for the purpose of this Code that is comprised of child sexual exploitation material, pro-terror material, and extreme crime and violence material, in each case as further described in Annexure A.

**class 1B material** is a subcategory of class 1 material used for the purpose of this Code that is comprised of crime and violence material and drug-related material, in each case as further described in Annexure A.

Note: Class 1A material and class 1B material are not intended to capture material depicting sexual activity between or in the presence of only consenting adults, or material depicting the nudity of only consenting adults, which may be referred to as “online pornography”. Consent in this context has the same meaning as given to the term under the OSA, and includes consent to both the creation and sharing of the relevant material. Notwithstanding this, material labelled, published, or promoted as online pornography may still be class 1A material or class 1B material if it is comprised of any of the kinds of material outlined to be class 1A material or class 1B material in this Code, as further described in Annexure A.

Note: For the purposes of class 1B material, the term ‘drug’ is intended to refer only to a prohibited drug (being those specified in Schedule 4 of the *Customs (Prohibited Imports) Regulations 1956* (Cth)), but only to the extent that the use or other handling of the drug is itself unlawful. For example, diazepam is a drug specified in Schedule 4, however its authorised provision and use with a valid prescription is not against the law. Heroin is also a drug specified in Schedule 4, however it is generally not able to be authorised for use in any circumstance. As with all material regulated by this Code, drug-related material must be assessed with reference to the Classification Process and other information contained in Annexure A.

**class 1C material** is a subcategory of class 1 material used for the purpose of this Code that is comprised of particular online pornography, as further described in Annexure A.

**Classification Act** means the *Classification (Publications, Films and Computer Games) Act 1995* (Cth).

**Classification Guidelines** means the Guidelines for the Classification of Computer Games, the Guidelines for the Classification of Films and the Guidelines for the Classification of Publications.

**Classification Guidelines for Computer Games** means the *Guidelines for the Classification of Computer Games 2012* as made under the Classification Act.

**Classification Guidelines for Films** means the *Guidelines for the Classification of Films 2012* as made under the Classification Act.

**Classification Guidelines for Publications** means the *Guidelines for the Classification of Publications 2005* as made under the Classification Act.

**Classification Process** means, in relation to a given item of material, the process that would be undertaken by the Classification Board under the Classification Act if required to classify that item of material.

Note: Guidance on this process is set out in Annexure A of this Code, for reference purposes.

**classified** means classified under the Classification Act.

**Code** means this Industry Code of Practice comprised of these Head Terms and the relevant Schedule identified in the Preamble.

**Code report** means a report described in section 7.3 of this Code.

**CSAM or child sexual abuse material means** class 1A material to the extent that it is comprised of visual depictions of child sexual abuse.

**CSEM or child sexual exploitation material** means class 1A material to the extent that it is comprised of child sexual exploitation material, as further described in Annexure A and includes **CSAM** and **Known CSAM**.

**electronic service** has the meaning given in section 5 of the OSA.

**end-user** means a natural person who is an end-user of a product or online service covered by this Code.

**eSafety** means the eSafety Commissioner.

**first-party app** means an app that is provided by the same person who also provides an app distribution service in relation to that app.

**industry participant** means, in relation to a section of the online industry, a member of a group that constitutes that section of the online industry.

**known CSAM** means material consisting of images (either still images or video images) that has been verified as child sexual abuse material and has been recorded on a database managed by a recognised child protection organisation that: (i) is designed to facilitate the identification of CSAM online; and (ii) which an industry participant is permitted to use for the purpose of utilising technological means to proactively detect such material on its service.

Note: 'Recognised child protection organisation' refers to private organisations (including not-for-profit organisations) legitimately operating to combat child exploitation and abuse, and recognised as expert or authoritative in that context. Notable examples include the National Centre for Missing and Exploited Children and the Internet Watch Foundation.

**known pro-terror material means class 1A material** that has been verified as pro-terror material and may include material that can be detected via hashes, text signals, searches of key words terms or URLs and /or behavioral signals and/or patterns which signal or are associated with online materials produced by terrorist entities on the United Nations Security Council's Consolidated Sanctions List.

Note: Material may for example, be verified as a result of an opinion of the Classification Board published by eSafety on its website or by using tools provided by independent organisations that are recognised as having expertise in counter-terrorism such as Tech against Terrorism and the Global Internet Forum to Counter Terrorism.

**material** has the meaning given in section 5 of the OSA.

Note: The term 'material' is defined broadly under the OSA as material whether in the form of text, data, speech, music, other sounds, visual images, moving images, or any other form, or any combination of forms. For the avoidance of doubt, 'material' includes a film, the contents of a film, a computer game, a publication or the contents of a publication.

**National Classification Code** means the *National Classification Code (May 2005)* made under the Classification Act.

**online activity** has the meaning given in section 134 of the OSA.

Note: This term includes providing a social media service, so far as the service is provided to end-users in Australia; providing a relevant electronic service, so far as the service is provided to end-users in Australia; providing a designated internet service, so far as the service is provided to end-users in Australia; providing an internet search engine service, so far as the service is provided to end-users in Australia; providing an app distribution service, so far as the service is



provided to end-users in Australia; providing a hosting service, so far as the service hosts material in Australia; providing an internet carriage service, so far as the service is provided to customers in Australia; and manufacturing, supplying, maintaining or installing equipment that is for use by end-users in Australia of a social media service, relevant electronic service, designated internet service or internet carriage service (in each case in connection with the service).

**OSA** means the *Online Safety Act 2021* (Cth).

**Privacy Law** means the *Privacy Act 1988* (Cth), any industry code made under that Act, and any other Australian law or regulation regulating the management of personal information.

**pro-terror material** means class 1A material to the extent that it is comprised of pro-terror material, as further described in Annexure A.

**publication** has the meaning given in section 5 of the Classification Act, being any written or pictorial matter, but does not include a film, a computer game, or an advertisement for a publication, film or computer game.

Note: This is a statutory term used in the context of the Australia's 'National Classification Scheme' and has a distinct meaning to how the same term is used under other legislative and regulatory schemes. Despite the definition of "any written or pictorial matter" appearing rather wide-ranging, it has a very specific treatment in a National Classification Scheme context and is generally limited to magazines, newspapers, serials, periodicals and books.

For the purpose of this Code, 'publication' has the same restricted interpretation. It does not extend to include any and all text-based or image-based material, or other forms of material that might appear to fall within the scope of a plain reading of the definition of publication. For example, material in the form of user-generated text and photographs (such as that which may be posted on a social media service) is not a publication and instead would fall into the wide category described in paragraph (ii) of the note under the definition of class 1 material (see above).

**RC** means the 'Refused Classification' classification under the National Classification Code.

## 2.2 Interpretation

- (a) In this Code, unless the contrary intention appears:
- (i) where a term is defined in bold, it has that meaning;
  - (ii) headings are for convenience only and do not affect interpretation;
  - (iii) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (iv) words in the singular include the plural and vice versa;
  - (v) where a word or phrase is defined, its other grammatical forms have a corresponding meaning; and
  - (vi) mentioning anything after the word 'include', 'includes' or 'including' does not limit what else might be included.
- (b) In this Code, where examples are provided of the manner in which a requirement of a particular provision of this Code may be satisfied, these examples should not be read as requiring or limiting the manner in which the relevant provision may be satisfied.

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## 3 Coverage

- (a) This Code applies to class 1A material and class 1B material.
  - (b) Unless otherwise stated, this Code applies to both classified and unclassified material.
  - (c) This Code does not apply to class 1C material or to computer games that have been classified (including computer games that have been classified as RC).
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Note: This Code will still apply to material imported into a game environment via the game's interactive tools which is separate to the game itself and which is likely to be classified as class 1A or class 1B material. This Code will also apply to class 1A or class 1B material which has been recorded from a classified computer game and posted elsewhere on the internet.

- (d) The distinctions between the subcategories of class 1 material under this Code have been drawn from descriptions of RC material under the National Classification Code and the Classification Guidelines, along with an understanding of the relative severity and potential for harm associated with different types of material. In broad terms:
- (i) class 1A material refers to child sexual exploitation material, pro-terror material and extreme crime and violence material;
  - (ii) class 1B material refers to crime and violence material and drug-related material; and
  - (iii) class 1C material refers to particular online pornography.

Note 1: For further detail on these subcategories, please refer to the guidance in Annexure A.

Note 2: The subcategorisation of class 1 material reflected in this Code is not currently reflected in the OSA, Classification Act, National Classification Code or Classification Guidelines. The subcategories were originally proposed by eSafety in guidance provided to industry participants in order to help distinguish between different types of class 1 material. The purpose of using these subcategories is to recognise that some material is more harmful than other material, and that industry participants may handle this material in different ways.

- (e) Industry participants may use different terminology to describe class 1A material, class 1B material and class 1C material for different audiences.
- (f) Nothing under this Code requires the industry participant to arrange for any material to be classified or otherwise to replicate the classification functions of the Classification Board. However, where an industry participant applies a compliance measure under this Code that requires the industry participant to identify or distinguish between different subcategories of unclassified class 1 material, the industry participant must develop a process for categorising that material in a way that is informed by the Classification Process. In each case, the process developed by the industry participant will serve as a proxy for the Classification Process and may vary depending on the circumstances in which it is to be applied, including to take into account the nature and volume of material to be categorised. Where the compliance measure is to be applied in relation to a single known item of material, the process may involve a detailed review of that material and may follow the Classification Process more closely than where the compliance measure is to be applied at scale in relation to multiple unknown items of material.

Note 1: For example, when applying a compliance measure at scale, an industry participant may develop particular flags or triggers in order to identify material that is likely to be class 1A or class 1B material under this Code, where those flags or triggers are framed by reference to factors that would be taken into account pursuant to the Classification Process. Different industry participants may develop different flags or triggers, depending on the nature of the online activities they are undertaking, the nature of the material they are dealing with, and other relevant factors.

Note 2: Guidance on the Classification Process is set out in Annexure A for reference purposes.

- (g) The nature of the Classification Process, and the variety of factors that will be relevant to take into account, along with the challenges of assessing material at scale, means that there is an inherent risk of different entities reaching different conclusions in relation to the categorisation of material under this Code. The fact that an industry participant:
- (i) has categorised a given item of material in a different way to another industry participant, or in a different way to eSafety; or
  - (ii) has not identified every item of class 1A or class 1B material on a service provided by the industry participant,

will not of itself be an indicator that the industry participant has failed to comply with this Code.

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## 4 Online safety objectives and outcomes

Subject to any exclusions in the Schedule, the following online safety objectives and outcomes are used in this Code:

- (a) **Objective 1:** Industry participants will take reasonable and proactive steps to create and maintain a safe online environment for Australian end-users.
  - (i) **Outcome 1:** Industry participants take reasonable and proactive steps to prevent access or exposure to, distribution of, and online storage of class 1A material.
  - (ii) **Outcome 2:** Industry participants take reasonable and proactive steps to prevent or limit access or exposure to, and distribution of class 1B material.
  - (iii) **Outcome 4<sup>1</sup>:** Industry participants take reasonable and proactive steps to limit hosting of class 1A and 1B material in Australia.
  - (iv) **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 material.
  - (v) **Outcome 6:** Industry participants communicate and cooperate with eSafety in respect of matters relating to class 1A and 1B material, including complaints.
- (b) **Objective 2:** Industry participants will empower Australian end-users to manage access and exposure to class 1A and class 1B material.
  - (i) **Outcome 7:** Industry participants provide tools and/or information to limit access and exposure to class 1A and 1B material.
  - (ii) **Outcome 8:** Industry participants provide clear and effective reporting and complaints mechanisms for class 1A and 1B material.
  - (iii) **Outcome 9:** Industry participants effectively respond to reports and complaints about class 1A and 1B material.
- (c) **Objective 3:** Industry participants will strengthen transparency of, and accountability for class 1A and class 1B material.
  - (i) **Outcome 10:** Industry participants provide clear and accessible information about class 1A and class 1B material.
  - (ii) **Outcome 11:** Industry participants publish annual reports about class 1A and 1B material and their compliance with this Code.

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## 5 Compliance

### 5.1 Compliance measures

- (a) Each industry participant will follow the process set out in section 5.2 of this Code in order to identify and adopt reasonable compliance measures that recognise the

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<sup>1</sup> **Outcome 3** has been deliberately omitted as it pertains to class 2 material only which is not subject to the Codes.

importance of the applicable online safety objectives and outcomes specified in section 4 of this Code.

- (b) It is the responsibility of each industry participant to be able to demonstrate that the compliance measures it has adopted are reasonable, taking into account:
  - (i) the importance of the applicable online safety objectives and outcomes specified in section 4 of this Code;
  - (ii) where relevant, the risk profile of the industry participant as set out in an applicable schedule;
  - (iii) the importance of protecting and promoting human rights online, including the right to freedom of expression, the right not to be subjected to arbitrary or unlawful interference with privacy, the right to protection from exploitation, violence and abuse, and the rights and best interests of children, including associated statutory obligations;
  - (iv) the product or service in question, including its function, purpose, size/scale and maturity as well as the capacity and capabilities of the industry participant providing the product or service; and
  - (v) other considerations set out in this Code.
- (c) In some cases, after taking all relevant considerations into account, it may be reasonable for an industry participant to adopt no compliance measures.
- (d) Such compliance measures as are adopted by an industry participant should be designed to be both effective and scalable and, as appropriate, should be supported by appropriate policies, procedures, systems and technologies.

## 5.2 Process to identify compliance measures

In order to identify compliance measures that should be adopted in relation to an online activity that is subject to this Code, each industry participant will identify the code applicable to that activity (see Preamble) and take the following steps:

(a) **Step 1: Risk profile**

If the Schedule differentiates between online activities based on their risk profile and requires a risk assessment, the industry participant will either

- (i) assess the level of risk associated with the online activity and will assign a risk profile to that activity in accordance with the criteria set out in the Schedule; or
- (ii) prior to the date this Code comes into effect, and in lieu of carrying out a risk assessment, automatically assign the highest risk profile contemplated by the Schedule to that activity.

The Schedule may define different risk tiers for the purposes of assigning a risk profile. In this case, the tiers are intended to represent an overall level of risk relative to other online activities within the same section of the online industry (with 'Tier 3' representing lower level of relative risk, 'Tier 2' representing a moderate level of relative risk, and 'Tier 1' representing a higher level of relative risk). The tiers are not intended to represent a level of risk relative to other online activities within other sections of the online industry (that is, a Tier 1 activity under one Schedule will not necessarily carry the same level of absolute risk as a Tier 1 activity under another Schedule or applicable industry standard).

Where a risk assessment is required under a Schedule, the industry participant must conduct an initial risk assessment as soon as practical following the date this Code comes into effect in accordance with section 7.1. An industry participant must carry out subsequent risk assessments in accordance with the requirements set out on the applicable Schedule.

The industry participant will, at eSafety's request, notify eSafety of the risk profile it has assigned to the online activity or how its online activity, including its service or device type, is categorised under this Code, together with the participant's reasons for assigning that category.

Note: To inform eSafety as to how the Code applies to a participant's online activities, eSafety may seek an explanation from an industry participant as to how it has assessed risk or how it has assessed its online activities to fall into specific categories of services/devices. For example, a participant that is not required to undertake a risk assessment because a Schedule exempts particular categories of services from a risk assessment, will, upon request, notify eSafety that its service falls within the exempted category and the reasons for making this assessment. A participant may also be requested to provide details around its assessment where no risk tiering or exemptions apply.

Irrespective of the risk profile assigned by the industry participant, ultimately the risk profile for a given online activity will depend on the objective criteria specified in the Schedule. However, if the industry participant has automatically assigned the highest risk profile to an activity in accordance with section 5.2(a)(ii), it must notify eSafety of that risk profile on or before the date this Code comes into effect.

If the Schedule does not differentiate between online activities based on their risk profile, then the industry participant may proceed directly to Step 2.

(b) **Step 2: Adoption of minimum compliance measures**

Where the Schedule sets out minimum compliance measures for:

- (i) an online activity with the risk profile assigned to the activity by the industry participant in Step 1; or
- (ii) all industry participants in relation to that online activity,

the industry participant must adopt those minimum compliance measures irrespective of any other compliance measures adopted by the industry participant.

(c) **Step 3: Consideration of optional compliance measures**

Where the Schedule sets out optional compliance measures for:

- (i) an online activity with the risk profile assigned to the activity by the industry participant in Step 1; or
- (ii) all industry participants in relation to that online activity,

the industry participant will consider whether or not to adopt those optional compliance measures pursuant to the process in section 5.1(b).

For the avoidance of doubt, optional compliance measures are not mandatory and any failure by an industry participant to adopt one or more optional compliance measures does not of itself mean that the industry participant is in breach of this Code.

(d) **Step 4: Consideration of other compliance measures**

In addition to any applicable minimum compliance measures and optional compliance measures set out in the Schedule, the industry participant may consider whether there

are any other compliance measures that the industry participant could adopt pursuant to the process in section 5.1(b).

### **5.3 Presence of class 1A and IB material will not necessarily establish non-compliance**

The presence of class 1A or 1B material on an electronic service does not of itself establish a failure by the industry participant responsible for that service to have the processes in place required by this Code or that the industry participant has otherwise failed to comply with its obligations under this Code. In particular, this Code acknowledges that compliance measures designed to proactively detect class 1A or 1B on an electronic service may not be successful in detecting all such material.

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## **6 Industry participants not required to undertake certain steps or breach Australian laws or regulations**

### **6.1 Industry participants not required to undertake certain steps**

This Code does not require any industry participant to undertake steps that do the following:

- (a) implement or build a systematic weakness, or a systematic vulnerability, into a form of encrypted service or other information security measure;

Note: Examples of 'other information security measures' include private firewall configurations, VPN tunnels and private networking links, which work directly or complement encryption to protect legitimate cybersecurity and data integrity interests.

- (b) build a new decryption capability in relation to encrypted services;
- (c) render methods of encryption less effective;
- (d) undertake monitoring of private communications between end-users;

Note: In considering whether it would be reasonable for an industry participant to adopt a particular compliance measure under this Code, it will be relevant for the industry participant to take into account the desirability of not intruding upon, and otherwise maintaining the privacy and integrity of, private communications between end-users. However, where indicated in the Schedule, it may be appropriate for an industry participant to adopt measures that involve analysis of behavioural signals and other data or trends in order to prevent, detect and address harmful activity.

- (e) share, either directly or through an intermediary such as a relevant industry association, with another industry participant any information:
  - (i) that comprises any trade secret or other commercially-sensitive information about its business, organisation or other undertaking;
  - (ii) that may raise concerns about the potential anti-competitive effects of sharing that information; or
  - (iii) that the industry participant is prohibited from disclosing pursuant to a duty of confidence or under another law or regulation by which the industry participant is bound;
- (f) verify or publish the real identity of any end-user (though an industry participant may be required to adopt compliance measures that are intended to prevent end-users from exploiting anonymity or other identity shielding techniques to share harmful material);
- (g) verify the real age of any end-user (though an industry participant may be required to adopt compliance measures that provide assurance that the end-user is not a child under the age that is permitted to use the service);

- (h) use or disclose personal information of an Australian end-user (or do anything else) in a way that would put the industry participant in breach of any applicable Privacy Law;
- (i) use or disclose personal information of a foreign end-user (or do anything else) in a way that would put the industry participant in breach of any law or regulation relating to the management of personal information of that foreign end-user; or
- (j) take any action within Australia that is prohibited under another Australian law or regulation by which the industry participant is bound.

## **6.2 Effect of 6.1**

- (a) An industry participant cannot use section 6.1 to excuse it from otherwise complying with an applicable Code requirement.
- (b) Where an industry participant is concerned that compliance with a Code requirement is reasonably likely to result in the industry participant taking steps that would do anything described in section 6.1(a) to 6.1(j), the industry participant must either:
  - (i) communicate to eSafety the industry participant's specific concerns about complying with the Code requirement; or
  - (ii) take an alternative approach to meeting the Code requirement that does not require the industry participant to take steps described in section 6.1(a) to 6.1(j).

## **6.3 Lawful conduct**

Nothing in this Code prohibits any industry participant from engaging in conduct for which, while ordinarily unlawful, a lawful exception, exclusion or protection from liability exists under Australian law and applies to that participant's conduct. For example, see section 474.24 of the *Criminal Code Act 1995* (Cth).

## **6.4 No breach of Code where action required under another Australian law**

An industry participant will not be in breach of this Code merely where it takes an action in Australia that is required by another Australian law or regulation by which the industry participant is bound.

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# **7 Code administration**

## **7.1 Commencement**

- (a) This Code comes into effect six months from the date of registration by eSafety.
- (b) If after the effective date in section 7.1(a) eSafety notifies an industry participant that it is non-compliant with a measure required under this Code and the participant has reasonable grounds for not being fully compliant, the participant will not be in breach provided that it can demonstrate to eSafety's reasonable satisfaction that it is working towards achieving compliance on or before the first anniversary of the date of registration.

Note: Examples of reasonable grounds for not being fully compliant by the date specified in section 7.1(a) may include circumstances where significant engineering or system changes are required in order to implement a measure.

## **7.2 Enforceability**

- (a) If an industry participant fails to comply with this Code, then eSafety may make use of their enforcement powers pursuant to Part 9, Division 7, of the OSA.
- (b) Industry participants are expected to keep records of the compliance measures they have adopted to comply with this Code for a period of two years.

### 7.3 Code reporting

- (a) Where required by this Code, an industry participant will submit a report to eSafety on its compliance with this Code (a **Code report**) containing the information set in the applicable Schedule.
- (b) If an industry participant identifies any material in a Code report as the industry participant's confidential information, eSafety must maintain such material in confidence.
- (c) Where an industry participant must submit a Code report to eSafety for multiple online activities, the industry participant may submit a consolidated Code report that covers all those activities.
- (d) An industry participant may satisfy an obligation to submit a Code report by referring eSafety to material provided through other existing voluntary transparency reporting that the industry participant makes available, provided that such reporting adequately addresses the reporting requirements set out in this section 7.3.
- (e) To avoid duplication in reporting to eSafety, an industry participant will not be required to provide a Code report about a matter under this Code where that matter has already been reported to eSafety pursuant to another requirement under the OSA, provided that the industry participant has drawn eSafety's attention to the previous report and explained why a further report under this Code is not required as a consequence.

Note: The requirements for submitting Code reports are set out in the applicable Schedule. An industry participant should contact eSafety if it has concerns about meeting any of the requirements, including the relevant timeframe for a report or where it encounters difficulties of (dis)aggregation of data.

### 7.4 Complaints about Code compliance

- (a) This section applies where the Schedule specifies that the industry participant must enable an Australian end-user to make a complaint to an industry participant about:
  - (i) the industry participant's handling of reports about class 1A or class 1B material that is accessible on a service provided by the industry participant; or
  - (ii) any other aspect of the industry participant's compliance with this Code.
- (b) Except where the Schedule specifies that an industry participant may refer a complaint in section 7.4(a) to eSafety or another participant that is better placed to deal with the complaint, an industry participant must:
  - (i) investigate every complaint that is made to that industry participant, other than where the complaint appears frivolous or vexatious or otherwise not made in good faith; and
  - (ii) complete the investigation, and notify the complainant of the outcome, within a reasonable time (taking into account the subject matter of the complaint and any ongoing online safety risk).

### 7.5 Ongoing role of industry representatives

The industry representatives responsible for leading the development of this Code (as listed in the Preamble) will:

- (a) play a role in the proactive promotion of this Code to both industry participants and Australian end-users;
- (b) to provide guidance to relevant industry participants;



- (c) engage with industry bodies and associations that represent other sections of the online industry on matters relating to online safety;
- (d) engage with eSafety’s relevant advisory committee or other relevant stakeholder forum on the general operation of this Code;
- (e) raise concerns with eSafety about this Code on behalf of industry participants; and
- (f) participate in ongoing review and revision of this Code as contemplated in section 7.6 of this Code.

Over time, additional industry representatives may emerge and/or choose to participate in the administration of this Code.

## **7.6 Code review**

- (a) This Code will be reviewed after it has been in operation for two years, and thereafter at three yearly intervals.
- (b) Each review will be coordinated by the industry representatives responsible for leading the development of this Code (as listed in the Preamble) and will be based on the input of industry participants, eSafety, and other interested stakeholders.
- (c) The industry representatives responsible for each review will seek input on the terms of reference from industry participants, eSafety and other interested stakeholders.
- (d) Each review will at a minimum consider:
  - (i) the continued relevance of the risk assessment methodology and compliance measures (including Code reports) set out in this Code;
  - (ii) any developments that have created gaps in this Code that should be filled or rendered compliance measures set out in this Code unnecessary;
  - (iii) any potential changes in risk vectors for industry sections or industry sub-sections;
  - (iv) any developments, including technological, that may impact the effective detection of material covered under this Code;
  - (v) areas that have caused confusion for industry participants;
  - (vi) how industry participants have complied with this Code, including results of any compliance monitoring, insights from complaints handling (including areas of systemic non-compliances) and insights in relation to the handling of appeals by Australian end-users against decisions taken to comply with Code and industry participant’s policies or terms and conditions;
  - (vii) how successful or unsuccessful this Code has been in preventing and mitigating harm;
  - (viii) the public’s and other stakeholders’ awareness, understanding and response to this Code; and
  - (ix) other matters raised by eSafety or other government bodies in relation to this Code.
- (e) The industry representatives responsible for each review will consult with eSafety on a confidential basis prior to releasing a draft code for public comment.

- (f) The industry representatives responsible for each review will ensure that a draft of the revised code will be published and members of the public, relevant sections of the industry and other relevant stakeholders are invited to make a submission about the draft within a public consultation period that runs for at least 30 days.
- (g) The industry representatives responsible for each review will consider submissions that were received from the public, participants in the relevant sections of the industry and other relevant stakeholders within the public consultation period.
- (h) Once the review has been completed and where, as a result of a review, the code(s) have been revised, the industry representatives responsible for each revision will submit the revised code(s) for registration to eSafety.
- (i) Notwithstanding any of the above, any proposed changes to this Code will be implemented in accordance with the applicable process in Part 9, Division 7, Subdivision C of the OSA.

## Annexure A Guidance on Classification Process

This Annexure provides an overview of the Classification Process as it applies at the date of this Code. To the extent that the Classification Process changes, including as a result of any legislative reforms or changes to applicable supporting codes or guidelines, industry participants must refer to the updated Classification Process. The industry representatives responsible for leading the development of this Code must work to promptly update this Annexure as required to reflect any changes to the Classification Process.

This Annexure includes direct extracts from relevant legislation and instruments, in addition to summaries and guidance prepared to assist industry. When content has been extracted verbatim from legislation or an instrument, this is indicated in *italics*.

### A1. Overview

The Classification Board makes classification decisions pursuant to the Classification Act and by using the National Classification Code and the applicable Classification Guidelines.

The process undertaken by the Classification Board to classify material under the Classification Act varies depending on the form of material being considered. As such, the approach taken by industry participants under this Code should also vary depending on the form of material being considered.

The following table provides a summary of the different forms of material to which this Code may apply, and outlines the relevant laws and regulations that industry participants should consider in determining whether or not this Code applies to that material:

Material	Scope of application of this Code	Relevant regulation
<b>Material that is not a film, publication or computer game</b> (Further detail provided at A6)	Material where the following conditions are satisfied: a) the material is not a film, the contents of a film, a computer game, a publication or the contents of a publication; and b) if the material were to be classified in a corresponding way to the way in which a film would be classified under the Classification Act, the material would be likely to be classified as RC, and the material is not class 1C material.	<ul style="list-style-type: none"> <li>OSA, section 106(1)(g);</li> <li>Classification Act, including section 11;</li> <li>National Classification Code, including clause 3, item 1;</li> <li>Classification Guidelines for Films.</li> </ul>
<b>Films</b> (Further detail provided at A6)	Material that is a film, or the contents of a film, and the film: a) has been classified as RC; or b) has not been classified by the Classification Board, but if it were to be classified by the Classification Board, it would likely to be classified as RC, and the material is not class 1C material.	<ul style="list-style-type: none"> <li>OSA, section 106(1)(a)-(b);</li> <li>Classification Act, including section 11;</li> <li>National Classification Code, including clause 3, item 1;</li> <li>Classification Guidelines for Films.</li> </ul>
<b>Publications</b> (Further detail provided at A7)	Material that is a publication, or the contents of a publication, and the publication: a) has been classified as RC; or b) has not been classified by the Classification Board, but if it were to be classified by the Classification Board, it would likely to be classified as RC, and the material is not class 1C material.	<ul style="list-style-type: none"> <li>OSA, section 106(1)(c)-(d);</li> <li>Classification Act, including section 11;</li> <li>National Classification Code, including clause 2, item 1;</li> <li>Classification Guidelines for Publications.</li> </ul>

Material	Scope of application of this Code	Relevant regulation
<b>Computer games</b> (Further detail provided at A8)	Material that is a computer game, and the computer game: a) has not been classified but, if it were to be classified, the computer game would be likely to be classified as RC, b) and the material is not class 1C material.	<ul style="list-style-type: none"><li>OSA, section 106(1)(e)-(f);</li><li>Classification Act, including section 11;</li><li>National Classification Code, including clause 4, item 1;</li><li>Classification Guidelines for Computer Games.</li></ul>

## A2. The Classification Act

- (a) Section 11 of the Classification Act outlines that matters to be taken into account in making a decision on classification include:
- (i) *the standards of morality, decency and propriety generally accepted by reasonable adults;*
  - (ii) *the literary, artistic or educational merit (if any) of the material;*
  - (iii) *the general character of the material, including whether it is of a medical, legal or scientific character; and*
  - (iv) *the persons or class of persons to or amongst whom it is published or is intended or likely to be published.*
- (b) The matters listed in section 11 of the Classification Act are not exhaustive, and are supplemented by the National Classification Code and the Classification Guidelines.

## A3. The National Classification Code

- (a) Under the National Classification Code, classification decisions are required to give effect, as far as possible, to the following principles:
- (i) *adults should be able to read, hear, see and play what they want;*
  - (ii) *minors should be protected from material likely to harm or disturb them;*
  - (iii) *everyone should be protected from exposure to unsolicited material that they find offensive; and*
  - (iv) *the need to take account of community concerns about:*
    - (A) *depictions that condone or incite violence, particularly sexual violence; and*
    - (B) *the portrayal of persons in a demeaning manner.*
- (b) While the National Classification Code does not expressly include reference to Australians (such as Australian adults or Australian minors), as an instrument of Commonwealth, the National Classification Code has a clear Australian nexus.
- (c) Under the National Classification Code, films, publications and computer games are required to be classified as RC if they:
- (i) *depict, express, (and, for publications only, describe), or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of*

*morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified;*

- (ii) *describe or depict in a way that is likely to cause offence to a reasonable adult, a person who is, or appears to be, a child under 18 (whether the person is engaged in sexual activity or not); or*
- (iii) *promote, incite or instruct in matters of crime or violence.*

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## **A4. The Classification Guidelines**

- (a) The Classification Guidelines are legislative instruments made pursuant to the Classification Act that act as a tool for classifying different types of material. They help to explain the different classification categories (RC, X18+, R18+, etc) and scope the scope and limits of material suitable for each category.
- (b) The Classification Guidelines assist the interpretation of, and must be read alongside, the National Classification Code. To the extent that a contradiction between the Classifications Guidelines and National Classification Code arise, the National Classification Code takes precedence.
- (c) Each of the Classification Guidelines comprise introductory information and guidance explaining how they are to be used, as well as descriptions of the material that falls under the different classification categories.

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## **A5. The Classification Guidelines for Films**

- (a) For the purposes of this Code, and in accordance with section 106(g) of the OSA, the Classification of Guidelines for Films will apply to material that is a film and to other material, excluding only publications and computer games.
- (b) For ease of reference, an extract of the relevant guidance contained in the Classification Guidelines for Films is set out below. Assessments relevant to materials that are publications or computer games must be made by reference to their own separate Classification Guidelines.
- (c) Three essential principles underpin the Classification Guidelines for Films:
  - (i) *Importance of context*

*Context is crucial in determining whether a classifiable element is justified by the story-line or themes. In particular, the way in which important social issues are dealt with may require a mature or adult perspective. This means that material that falls into a particular classification category in one context may fall outside it in another.*
  - (ii) *Assessing impact*
    - (A) *The Classification Guidelines for Films use a hierarchy of impact ranging from the 'G' classification that is seen to be of very mild impact, to 'RC' or 'Refused Classification', which is considered to have a very high impact.*
    - (B) *Assessing the impact of material requires considering not only the treatment of individual classifiable elements but also their cumulative effect. It also requires considering the purpose and tone of a sequence.*
    - (C) *Impact may be higher where a scene:*

1. *contains greater detail, including the use of close-ups and slow motion;*
2. *uses accentuation techniques, such as lighting, perspective and resolution;*
3. *uses special effects, such as lighting and sound, resolution, colour, size of image, characterisation and tone;*
4. *is prolonged;*
5. *is repeated frequently;*
6. *is realistic, rather than stylised; or*
7. *encourages interactivity.*

(D) *'Interactivity' includes the use of incentives and rewards, technical features and competitive intensity. As a general rule:*

1. *except in material restricted to adults, nudity and sexual activity must not be related to incentives or rewards; and*
2. *material that contains drug use and sexual violence related to incentives or rewards is Refused Classification (RC).*

Note: **intensity** means strength of the treatment of the subject matter, or strength of engagement or involvement

(E) *Impact may be lessened where reference to a classifiable element is verbal rather than visual. For example, a verbal reference to sexual violence is generally of less impact than a visual depiction. Also, some visual impacts have less impact than others: for example, an incidental depiction may have less impact than a direct one.*

(iii) *The six classifiable elements*

(A) *The six classifiable elements are:*

1. *themes;*
2. *violence;*
3. *sex;*
4. *language;*
5. *drug use; and*
6. *nudity.*

(B) *The classification takes account of the context and impact of each of these elements, including their frequency and intensity, and their cumulative effect. It also takes account of the purpose and tone of a sequence, and how material is treated*

## A6. Subcategories of class 1 material – Films and other material (excluding publications and computer games)

This section sets out how films or other material (excluding publications and computer games) that meet the definition of class 1 material will be divided into subcategories for the purposes of this Code.

Note: Content in the column titled ‘Covers the following kinds of material:’ is taken directly from either the (a) Classification Act, section 9A; (b) National Classification Code, clause 3, item 1; or (c) Classification Guidelines for Films, part 2: RC – Refused Classification and List of Terms. Content from those sources have been reorganised for the purpose of aligning with the subcategories of class 1 material that are relevant to this Code, however the substance of the source material has not been altered.

Note: References to ‘without justification’ throughout this section remind industry participants of the other matters and principles that must be considered for the purposes of this Code, as outlined in sections 2, 3 and 5 of this Annexure.

Subcategory:	Covers the following kinds of material:
Class 1A material	<p><b>Child sexual exploitation material (CSEM)</b></p> <p>Class 1 material that:</p> <ul style="list-style-type: none"> <li>• <i>includes or contains the promotion or provision of instruction in paedophile activity;</i></li> <li>• <i>includes or contains descriptions or depictions of child sexual abuse or any other exploitative or offensive descriptions or depictions involving a person who is, or appears to be, a child under 18 years; or</i></li> <li>• <i>describes or depicts in a way that is likely to cause offence to a reasonable adult, a person who is, or appears to be, a child under 18 (whether or not the person is engaged in sexual activity).</i></li> </ul> <p><u>Note:</u> <b>Exploitative</b> means <i>appearing to purposefully debase or abuse for the enjoyment of others, and lacking moral, artistic or other values.</i> <b>Offensive</b> means that <i>which causes outrage or extreme disgust.</i> <b>Sexual activity</b> means <i>matters pertaining to sexual acts, but not limited to sexual intercourse.</i></p>
	<p><b>Pro-terror material</b></p> <p>Class 1 material that <i>advocates the doing of a terrorist act</i> because it:</p> <ul style="list-style-type: none"> <li>• <i>directly or indirectly counsels, promotes, encourages or urges the doing of a terrorist act;</i></li> <li>• <i>directly or indirectly provides instruction on the doing of a terrorist act; or</i></li> <li>• <i>directly praises the doing of a terrorist act in circumstances where there is a substantial risk that such praise might have the effect of a leading a person to engage in a terrorist act,</i></li> </ul> <p>but not if the <i>depiction or description could reasonably be considered to be done merely as part of public discussion or debate or as entertainment or satire.</i></p> <p><u>Note:</u> <b>Terrorist act</b> has the meaning given by section 100.1 of the Criminal Code (no matter where the action occurs, the threat of action is made or the action, if carried out, would occur).</p>
	<p><b>Extreme crime and violence material</b></p> <p>Class 1 material that without justification:</p> <ul style="list-style-type: none"> <li>• <i>promotes, incites or instructs in matters of crime or violence, or includes or contains detailed instruction or promotion in matters of crime or violence;</i></li> <li>• <i>includes or contains or depictions of practices such as bestiality;</i></li> <li>• <i>depicts, expresses or otherwise deals with matters of crime, cruelty or violence in such a way that the material offends against the standards of morality, decency and propriety</i></li> </ul>

Subcategory:	Covers the following kinds of material:
	<p><i>generally accepted by reasonable adults to the extent that such material should not be classified; or</i></p> <ul style="list-style-type: none"> <li><i>includes or contains gratuitous, exploitative or offensive depictions of (i) violence with a very high degree of impact or which are excessively frequent, prolonged or detailed; (ii) cruelty or real violence which are very detailed or which have a high impact; or (iii) sexual violence,</i></li> </ul> <p>where the impact of the material is extreme, having regard to factors that heighten impact such as where material contains <i>greater detail, encourages interactivity</i> or is <i>realistic, prolonged or repeated.</i></p> <p><b>Note:</b> <b>Sexual violence</b> means <i>sexual assault or aggression, in which the victim does not consent.</i> <b>Intensity</b> means <i>strength of the treatment or subject matter; strength of engagement or involvement.</i></p>
Class 1B material	<p><b>Crime and violence material</b></p> <p>Class 1 material that without justification:</p> <ul style="list-style-type: none"> <li><i>promotes, incites or instructs in matters of crime or violence, or includes or contains detailed instruction or promotion in matters of crime or violence;</i></li> <li><i>includes or contains depictions of practices such as bestiality;</i></li> <li><i>depicts, expresses or otherwise deals with matters of crime, cruelty or violence in such a way that the material offends against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that such material should not be classified; or</i></li> <li><i>includes or contains gratuitous, exploitative or offensive depictions of (i) violence with a very high degree of impact or which are excessively frequent, prolonged or detailed; (ii) cruelty or real violence which are very detailed or which have a high impact; or (iii) sexual violence,</i></li> </ul> <p>but is not class 1A material as the impact of the material is considered less than extreme.</p> <p><b>Drug-related material</b></p> <p>Class 1 material that without justification:</p> <ul style="list-style-type: none"> <li><i>depicts, expresses or otherwise deals with matters of drug misuse or addiction in such a way that the material offends against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that such material should not be classified;</i></li> <li><i>includes or contains detailed instruction in the use of proscribed drugs; or</i></li> <li><i>includes or contains material promoting or encouraging proscribed drug use.</i></li> </ul> <p><b>Note:</b> <b>Drug</b> is intended to refer only to a prohibited drug (being those specified in Schedule 4 of the <i>Customs (Prohibited Imports) Regulations 1956 (Cth)</i>), but only to the extent that the use or other handling of the drug is itself unlawful.</p>
Class 1C material	<p><b>Particular online pornography</b></p> <p>Class 1 material that without justification:</p> <ul style="list-style-type: none"> <li><i>depicts, expresses or otherwise deals with matters of sex in such a way that the material offends against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that such material should not be classified; or</i></li> <li><i>includes or contains gratuitous, exploitative or offensive depictions of (i) sexual activity accompanied by fetishes or practices which are offensive or abhorrent; or (ii) incest fantastic or other fantasies which are offensive or abhorrent.</i></li> </ul> <p><b>Note:</b> <b>Fetish</b> means an <i>object, an action or a non-sexual part of the body which gives sexual gratification.</i></p>



## A7. Subcategories of class 1 material – Publications

This section sets out how publications that meet the definition of class 1 material will be divided into subcategories for the purposes of this Code.

Note: Content in the column titled 'Covers the following kinds of material:' is taken directly from either the (a) Classification Act, section 9A; (b) National Classification Code, clause 2, item 1; or (c) Classification Guidelines for Publications, RC Refused Classification and Glossary of Terms. Content from those sources have been reorganised for the purpose of aligning with the subcategories of class 1 material that are relevant to this Code, however the substance of the source material has not been altered.

Note: References to 'without justification' throughout this section remind industry participants of the other matters and principles that must be considered for the purposes of this Code, as outlined in sections 2, 3 and 5 of this Annexure.

Subcategory:	Covers the following kinds of material:
Class 1A material	<p><b>Child sexual exploitation material (CSEM)</b></p> <p>Class 1 material that is a publication, or the contents of a publication, that:</p> <ul style="list-style-type: none"> <li>• <i>promote or provide instruction in paedophile activity;</i></li> <li>• <i>contains descriptions or depictions of child sexual abuse or any other exploitative or offensive descriptions or depictions involving a person who is, or appears to be, a child under 18 years;</i></li> <li>• <i>contains gratuitous, exploitative or offensive descriptions or depictions of sexualised nudity or sexual activity involving minors; or</i></li> <li>• <i>describes or depicts in a way that is likely to cause offence to a reasonable adult, a person who is, or appears to be, a child under 18 (whether the person is engaged in sexual activity or not).</i></li> </ul> <p><u>Note:</u> <b>Exploitative</b> means <i>appearing to purposefully debase or abuse for the enjoyment of readers/viewers, and lacking moral, artistic or other values.</i> <b>Sexualised nudity</b> includes <i>poses, props, text and backgrounds that are sexually suggestive.</i> <b>Sexual activity</b> means <i>matters pertaining to sexual acts but not limited only to portrayals of sexual intercourse.</i></p>
	<p><b>Pro-terror material</b></p> <p>Class 1 material that is a publication, or the contents of a publication, that <i>advocates the doing of a terrorist act</i> because it:</p> <ul style="list-style-type: none"> <li>• <i>directly or indirectly counsels, promotes, encourages or urges the doing of a terrorist act;</i></li> <li>• <i>directly or indirectly provides instruction on the doing of a terrorist act; or</i></li> <li>• <i>directly praises the doing of a terrorist act in circumstances where there is a substantial risk that such praise might have the effect of a leading a person to engage in a terrorist act,</i></li> </ul> <p>but not if the <i>depiction or description could reasonably be considered to be done merely as part of public discussion or debate or as entertainment or satire.</i></p> <p><u>Note:</u> <b>Terrorist act</b> has the meaning given by section 100.1 of the Criminal Code (no matter where the action occurs, the threat of action is made or the action, if carried out, would occur).</p>
	<p><b>Extreme crime and violence material</b></p> <p>Class 1 material that is a publication, or the contents of a publication, that without justification:</p> <ul style="list-style-type: none"> <li>• <i>promotes, incites or instructs in matters of crime or violence, or contains detailed instruction in matters of crime or violence;</i></li> <li>• <i>contains realistic depictions of bestiality;</i></li> <li>• <i>describes, depicts, expresses or otherwise deals with matters of crime, cruelty or violence in such a way that the material offends against the standards of morality,</i></li> </ul>

Subcategory:	Covers the following kinds of material:
	<p><i>decency and propriety generally accepted by reasonable adults to the extent that such material should not be classified;</i></p> <ul style="list-style-type: none"> <li><i>contains gratuitous, exploitative or offensive descriptions or depictions of (i) violence with a very high degree of impact which are excessively frequent, emphasised or detailed; (ii) cruelty or real violence which are very detailed or which have a high impact; or (iii) sexual violence,</i></li> </ul> <p>where the impact of the publication or its contents is extreme, having regard to factors that heighten impact such as emphasis, tone, frequency, context and detail.</p> <p><b>Note:</b> <b>Sexual violence</b> means <i>the act of sexual assault or aggression, in which the victim does not consent.</i> <b>Detail</b> means <i>the amount of verbal or visual information in the representation of a subject.</i> <b>Emphasis</b> or <i>emphasising</i> means <i>given prominence or strong focus.</i> <b>Gratuitous</b> means <i>unwarranted or uncalled for, and included without the justification of a defensible story-line or artistic merit.</i> <b>Impact</b> means <i>strength of the effect on the reader/viewer.</i> <b>Offensive</b> means <i>that which causes outrage or extreme disgust, offending against generally accepted standards and therefore likely to offend most people.</i> <b>Real</b> means <i>actual.</i> <b>Violence</b> means <i>acts of violence, obvious threats of violence or the result of violence.</i> <b>Tone</b> means <i>the quality or feeling of material, such as its sadness, humour, menace, lightness or seriousness.</i></p>
Class 1B material	<p><b>Crime and violence material</b></p> <p>Class 1 material that is a publication, or the contents of a publication, that without justification:</p> <ul style="list-style-type: none"> <li><i>promotes, incites or instructs in matters of crime or violence, contains detailed instruction in matters of crime or violence;</i></li> <li><i>contains realistic depictions of bestiality;</i></li> <li><i>describes, depicts, expresses or otherwise deals with matters of crime, cruelty or violence in such a way that the material offends against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that such material should not be classified;</i></li> <li><i>contains gratuitous, exploitative or offensive descriptions or depictions of (i) violence with a very high degree of impact which are excessively frequent, emphasised or detailed; (ii) cruelty or real violence which are very detailed or which have a high impact; or (iii) sexual violence,</i></li> </ul> <p>but is not class 1A material as the impact of the publication or its contents is considered to be less than extreme.</p> <p><b>Drug-related material</b></p> <p>Class 1 material that is a publication, or the contents of a publication, that without justification:</p> <ul style="list-style-type: none"> <li><i>describes, depicts, expresses or otherwise deals with matters of drug misuse or addiction in such a way that the material offends against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that such material should not be classified; or</i></li> <li><i>contains detailed instruction in the use of proscribed drugs.</i></li> </ul> <p><b>Note:</b> <b>Drug</b> is intended to refer only to a prohibited drug (being those specified in Schedule 4 of the <i>Customs (Prohibited Imports) Regulations 1956 (Cth)</i>), but only to the extent that the use or other handling of the drug is itself unlawful.</p>
Class 1C material	<p><b>Particular online pornography</b></p> <p>Class 1 material that is a publication, or the contents of a publication, that without justification:</p> <ul style="list-style-type: none"> <li><i>describes, depicts, expresses or otherwise deals with matters of sex in such a way that the material offends against the standards of morality, decency and propriety generally</i></li> </ul>

Subcategory:	Covers the following kinds of material:
	<p><i>accepted by reasonable adults to the extent that such material should not be classified; or</i></p> <ul style="list-style-type: none"> <li><i>contains exploitative descriptions or depictions of (i) violence in a sexual context; (ii) sexual activity accompanied by fetishes or practices which are revolting or abhorrent; or (ii) incest fantasies or other fantasies which are offensive or revolting or abhorrent.</i></li> </ul> <p><b>Note:</b> <b>Fetish</b> means an object, an action or a non-sexual part of the body which gives sexual gratification. <b>Violence in a sexual context</b>, as distinct from sexual violence, refers to a relationship between the elements of violence and sex/sexualised nudity. The relationship may be established by the placement, juxtaposition, style or content of images and text, and/or by a story-line.</p>

## A8. Subcategories of class 1 material – Computer games

This section sets out how computer games that meet the definition of class 1 material will be divided into subcategories for the purposes of this Code.

**Note:** Content in the column titled 'Covers the following kinds of material:' is taken directly from either the (a) Classification Act, section 9A; (b) National Classification Code, clause 4, item 1; or (c) Classification Guidelines for Computer Games, RC - Refused Classification and List of Terms. Content from those sources have been reorganised for the purpose of aligning with the subcategories of class 1 material that are relevant to this Code, however the substance of the source material has not been altered.

**Note:** References to 'without justification' throughout this section remind industry participants of the other matters and principles that must be considered for the purposes of this Code, as outlined in sections 2, 3 and 5 of this Annexure.

Subcategory:	Covers the following kinds of material:
Class 1A material	<p><b>Child sexual exploitation material (CSEM)</b></p> <p>Class 1 material that is a computer game that:</p> <ul style="list-style-type: none"> <li><i>includes or contains the promotion or provision of instruction in paedophile activity; or</i></li> <li><i>includes or contains descriptions or depictions of child sexual abuse or any other exploitative or offensive descriptions or depictions involving a person who is, or appears to be, a child under 18 years; or</i></li> <li><i>describes or depicts in a way that is likely to cause offence to a reasonable adult, a person who is, or appears to be, a child under 18 (whether the person is engaged in sexual activity or not).</i></li> </ul> <p><b>Note:</b> <b>Exploitative</b> means appearing to purposefully debase or abuse for the enjoyment of others, and lacking moral, artistic or other values. <b>Offensive</b> means that which causes outrage or extreme disgust. <b>Sexual activity</b> means matters pertaining to sexual acts but not limited only to portrayals of sexual intercourse.</p> <p><b>Pro-terror material</b></p> <p>Class 1 material that is a computer game that <i>advocates the doing of a terrorist act</i> because it:</p> <ul style="list-style-type: none"> <li><i>directly or indirectly counsels, promotes, encourages or urges the doing of a terrorist act;</i></li> <li><i>directly or indirectly provides instruction on the doing of a terrorist act; or</i></li> <li><i>directly praises the doing of a terrorist act in circumstances where there is a substantial risk that such praise might have the effect of a leading a person to engage in a terrorist act,</i></li> </ul> <p>but not if the <i>depiction or description could reasonably be considered to be done merely as part of public discussion or debate or as entertainment or satire.</i></p> <p><b>Note:</b> <b>Terrorist act</b> has the meaning given by section 100.1 of the Criminal Code (no matter where the action occurs, the threat of action is made or the action, if carried out, would occur).</p>

Subcategory:	Covers the following kinds of material:
	<p><b>Extreme crime and violence material</b></p> <p>Class 1 material that is a computer game that without justification:</p> <ul style="list-style-type: none"> <li>• <i>promotes, incites or instructs in matters of crime or violence, or contains detailed instruction or promotion in matters of crime or violence;</i></li> <li>• <i>includes or contains depictions of practices such as bestiality;</i></li> <li>• <i>depicts, expresses or otherwise deals with matters of crime, cruelty or violence in such a way that the material offends against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that such material should not be classified;</i></li> <li>• <i>includes or contains depictions of (i) violence with a very high degree of impact which are excessively frequent, prolonged, detailed or repetitive; (ii) cruelty or realistic violence which are very detailed and which have a very high impact; or (iii) actual sexual violence; or</i></li> <li>• <i>includes or contains implied sexual violence related to incentives and rewards,</i></li> </ul> <p>where the impact of the computer game is extreme, having regard to factors that heighten impact such as where material contains greater detail, is highly interactive, is realistic rather than stylised or links incentives or rewards to high impact elements.</p> <p><u>Note:</u> <b>Sexual violence</b> means <i>sexual assault or aggression, in which the victim does not consent.</i></p>
<p><b>Class 1B material</b></p>	<p><b>Crime and violence material</b></p> <p>Class 1 material that is a computer game that without justification:</p> <ul style="list-style-type: none"> <li>• <i>promotes, incites or instructs in matters of crime or violence, or contains detailed instruction or promotion in matters of crime or violence;</i></li> <li>• <i>includes or contains depictions of practices such as bestiality;</i></li> <li>• <i>depicts, expresses or otherwise deals with matters of crime, cruelty or violence in such a way that the material offends against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that such material should not be classified;</i></li> <li>• <i>includes or contains depictions of (i) violence with a very high degree of impact which are excessively frequent, prolonged, detailed or repetitive; (ii) cruelty or realistic violence which are very detailed and which have a very high impact; or (iii) actual sexual violence; or</i></li> <li>• <i>includes or contains implied sexual violence related to incentives and rewards,</i></li> </ul> <p>but is not class 1A material as the impact of the computer game is considered to be less than extreme.</p> <hr/> <p><b>Drug-related material</b></p> <p>Class 1 material that is a computer game that without justification:</p> <ul style="list-style-type: none"> <li>• <i>contains illicit or proscribed drug use related to incentives or rewards;</i></li> <li>• <i>contains interactive drug use which is detailed and realistic;</i></li> <li>• <i>depicts, expresses or otherwise deals with matters of drug misuse or addiction in such a way that the material offends against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that such material should not be classified;</i></li> <li>• <i>includes or contains detailed instruction in the use of proscribed drugs, or material promoting or encouraging proscribed drug use.</i></li> </ul> <p><u>Note:</u> <b>Drug</b> is intended to refer only to a prohibited drug (being those specified in Schedule 4 of the <i>Customs (Prohibited Imports) Regulations 1956</i> (Cth)), but only to the extent that the use or other handling of the drug is itself unlawful.</p>

Subcategory:	Covers the following kinds of material:
Class 1C material	<p><b>Particular online pornography</b></p> <p>Class 1 material that is a computer game that without justification:</p> <ul style="list-style-type: none"><li>• <i>depicts, expresses or otherwise deals with matters of sex in such a way that the material offends against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that such material should not be classified;</i></li><li>• <i>includes or contains depictions of actual sexual activity, or simulated sexual activity that are explicit and realistic;</i></li><li>• <i>includes or contains gratuitous, exploitative or offensive depictions of (i) activity accompanied by fetishes or practices which are offensive or abhorrent; or (ii) incest fantastic or other fantasies which are offensive or abhorrent.</i></li></ul> <p><u>Note:</u> <b>Fetish</b> means an object, an action or a non-sexual part of the body which gives sexual gratification.</p>