

Schedule 5 – Hosting Services Online Safety Code (Class 1C and Class 2 Material) 28 February 2025

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1 Structure

This Code is comprised of the terms of this Schedule together with the Online Safety Code (Class 1C and Class 2) Head Terms (**Head Terms**).

2 Scope

This Code applies to providers of hosting services, so far as those services host material in Australia.

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, they also do not control the interface or material with which end-users engage and cannot implement age assurance measures in respect of hosted content. 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 1C and Class 2 Material), the Designated Internet Services Online Safety Code (Class 1C and Class 2 material), the Relevant Electronic Services Code (Class 1C and Class 2 Material) or other applicable regulation (e.g. industry standards), as may be the case.

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 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 1C and class 2 material

| No. | Compliance Measure |
|-----|--|
| 1. | <p>Polices and contractual terms relating to applicable Australian content laws</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 1C and class 2 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 polices and/or contractual terms satisfies this requirement.</i></p> |
| 2. | <p>Enforcement action relating to customer breaches of polices and contractual terms</p> <p>A provider of a third-party hosting service must:</p> <ul style="list-style-type: none"> a) take appropriate and proportionate enforcement action with respect to customers of the service that breach its policies and/or contractual terms relating to complying 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 1C and class 2 material; b) Have systems and processes, including standard operating procedures to: <ul style="list-style-type: none"> i. enforce their policies when they become aware of non-compliance with the policies and/or contractual terms outlined in measure 1; and ii. escalate reports of non-compliance with measure 1 above. <p>Guidance:</p> <p><i>Providers have flexibility to design and enforce terms and policies to allow appropriate and proportionate responses to potential breaches on a case-by-case basis. Examples of appropriate and proportionate enforcement action may include notifying, warning, or suspending the account(s) of the customer in question.</i></p> |
| 3. | <p>Contact mechanisms</p> <p>A provider of a third-party hosting service must:</p> <ul style="list-style-type: none"> a) ensure that end-users can contact the provider in relation to breaches of applicable Australian content laws and regulations by customers of the third-party hosting service; b) provide information or links to information about: <ul style="list-style-type: none"> i. applicable Australian content laws and regulations; and ii. the role and function of eSafety and how to make a complaint to eSafety under the OSA. <p>Guidance:</p> <p><i>Examples of how a provider of a third-party hosting service can comply with this measure include:</i></p> <ul style="list-style-type: none"> (a) <i>by making available online an email address;</i> (b) <i>by providing a web form (Contact Us or similar).</i> |
| 4. | <p>Timely response to communications from eSafety</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> |

5.

Reporting to eSafety on Code compliance

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:

- (a) the steps that the provider has taken to comply with their applicable compliance measures; and
- (b) an explanation as to why these steps are appropriate.

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.