

Terms of Reference for the Review of the Online Safety Codes for Class 1A and Class 1B Material (Unlawful Material Codes)

1. Purpose and Scope

The purpose of this document is to set out the **Terms of Reference** for the first review of the Online Safety Codes for Class 1A and Class 1B Material (Unlawful Material Codes), previously known as the 'Phase 1 Codes'. The review must be conducted in accordance with Clause 7.6 of the Head Terms to the Unlawful Material Codes.

- **Scope:** The review will cover all Unlawful Material Codes, including the first set that commenced on 16 December 2023 and the Search Engine Services Code (Class1A and Class1B Material) that commenced on 12 March 2024.
- **Commencement:** The review is intended to commence in March 2026.

2. Minimum Matters for Consideration (as per Head Terms Clause 7.6(d))

The review must, at a minimum, consider the matters in s7.6 of the Head Terms:

- the continued relevance of the risk assessment methodology and compliance measures (including Code reports) set out in the Codes;
- any developments that have created gaps in this Codes that should be filled or rendered compliance measures set out in the Codes unnecessary;
- any potential changes in risk vectors for industry sections or industry subsections;
- any developments, including technological, that may impact the effective detection of material covered under this Code;
- areas that have caused confusion for industry participants;
- 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;
- how successful or unsuccessful this Code has been in preventing and mitigating harm;
- the public's and other stakeholders' awareness, understanding and response to this Code; and

- other matters raised by eSafety or other government bodies in relation to this Code.

3. Key Areas of Focus and Consideration

The review should include as key areas of focus:

- **Changes in the Threat and Technological Landscape:**
 - How the online safety threat landscape in Australia and globally has evolved since the development of the Codes (2022-23).
 - Consideration of available data, such as increase in complaints under the Online Content Scheme relating to Class1A and Class1B materials.
 - How technology has developed, including the rise of generative AI tools/chatbots and increases in the capability and accuracy of technical tools to detect, disrupt and deter Class 1A material.
- **The Changing Regulatory Settings in Australia:**
 - Changes to policy and regulatory settings since the Codes commenced, including the commencement of the Unlawful Material Standards, Age-Restricted Material Codes, and Social Media Minimum Age Requirements.
 - 'regulatory and legislative developments' such as the Government's plans to introduce a duty of care.
- **Addressing Confusion and Challenges:**
 - Any areas that have caused confusion or challenges for industry participants such as inconsistencies in terminology or similar measures.
 - The need to ensure any proposed amendments to minimum compliance measures consider risks and benefits of the current safeguards.

4. Exclusions (Out of Scope)

- eSafety has advised that the effect of section 5 in the Relevant Electronic Services (RES) Standard and its interaction with the Social Media Services Code should remain out of scope for this review i.e eSafety intends that Social media services meeting the definition of a relevant electronic service will continue to be regulated under the RES Standard.

5. Process Requirements

- The review will be coordinated by the industry representatives responsible for leading the review of the Codes, based on input from industry participants, eSafety, and other interested stakeholders.
- Industry representatives responsible for the review will consult with eSafety on a confidential basis prior to releasing draft Codes for public comment.

