



INTERNET ASSOCIATION OF AUSTRALIA LTD  
ABN 71 817 988 968  
ACN 168 405 098  
PO Box 8700  
Perth Business Centre WA 6849  
Phone: 1300 653 132

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Steering Committee of Industry Associations  
onlinesafety.org.au

By submission: <https://onlinesafety.org.au/submissions/>

**RE: Revised Consolidated Industry Codes of Practice for the Online Industry, Phase 1**

## INTRODUCTION

Thank you for the opportunity to express the Internet Association of Australia's (**IAA**) perspective on the revised Industry Codes of Practice for the Online Industry (**Codes**). We recognise the significance of having Codes that will adequately protect Internet users in Australia. In addition, we appreciate the efforts of the industry associations in consolidating the feedback of industry and the eSafety Commissioner, and revising the Codes to ensure the balance between appropriately addressing the issue of online safety in Australia, and practical measures that will not unnecessarily and/or disproportionately be a burden to industry.

IAA is a member-based association representing Australia's Internet community. Our membership is largely comprised of small to medium sized Internet Service Providers (**ISPs**) and Carriage Service Providers (**CSPs**) who may also provide hosting, SMS, MMS and email services. As such, our response will predominately pertain to Schedule 7 – Internet Carriage Services Online Safety Code (**Schedule 7 Code**).

In general, IAA supports the revised Schedule 7 Code. In particular, we strongly support the recognition of the limited role that ISPs and CSPs play with regards to content that is distributed on the Internet. In particular, as we represent smaller providers in the industry, we emphasise that measures should be proportionate and not overly burdensome or onerous for these ISPs and CSPs. To this end, we raise the following concerns about the proposed minimum compliance measures (**MCMs**) as well as to the Commissioner's letter regarding the previous draft Schedule 7 Code.

## OUR RESPONSE

### MCM 2: NOTIFYING HOSTING SERVICE PROVIDERS IF ISP IS AWARE OF ALLEGED CLASS 1A MATERIAL BEING HOSTED

We reiterate our concerns raised in our response to the previous Schedule 7 Code with respect to the MCM that requires ISPs to notify the hosting service provider(s) (HSP) upon the ISP becoming aware of alleged class 1A material being hosted by that HSP.

We appreciate the clarification provided by the industry associations in response to the consultation feedback at item 169. We understand that this MCM and the requirement to take “reasonable steps” is not intended to be onerous or pose burdensome obligations for ISPs to adhere to in attempt to identify the relevant HSP.

We recommend that the MCM 2 be amended to clarify this intention such as by way of a guidance comment that expressly sets out the example of what “reasonable steps” may entail. It is important that these MCMs are clear so as not to be utilised to penalise ISPs for failure to meet unclear requirements.

### **MCM 3: JOINING THE ONLINE CRISIS PROTOCOL TO GOVERN THE BLOCKING OF CERTAIN MATERIAL**

We are also concerned about MCM 3 which requires an ISP to sign and join the *Protocol governing ISP blocking under Part 8 of the Online Safety Act 2021 (No.3) (Protocol)* (or the equivalent subsequent protocols) upon the eSafety’s request.

We understand that is MCM 3 is not intended and may not be likely to capture smaller ISPs and it will most likely be utilised with respect to Australia’s larger ISPs. However, as the Schedule 7 Code does not expressly set out this limitation or intention, there is still the chance that the eSafety Commissioner will invoke the right to ask any ISP, including smaller ISPs, to sign and join the Protocol which would introduce more obligations to the ISP.

We therefore recommend that the MCM 3 is amended to include a consultation process that allows ISPs, once requested by eSafety, to provide a response as to whether or not they should be required to sign and join the Protocol, which the eSafety must consider before requiring the ISP to do so.

### **RESPONSE TO ESAFETY COMMISSIONER’S LETTER**

We also offer a response to some of the points raised in the Commissioner’s letter in response to the Codes. In particular, with respect to ISPs, we disagree with the Commissioner’s recommendation that ISPs should be required to invest in, or monitor the development of filtering technology designed to increase user safety.

With respect to investment, we believe this is outside the costs that ISPs should bear. Moreover, for smaller ISPs, this would pose a considerable burden due to the costs involved. In relation to the monitoring of the development of filtering technology, we support the industry associations’ decision to exclude this from the Schedule 7 Code. We believe that such collaboration or input from ISPs already exists within the broader Internet industry, and that including this as a MCM is not necessary nor would it be effective.

We also support the revised drafting of Schedule 2 – Relevant Electronic Services Online Safety Code which excludes CSPs from MCMs 8, 9, 10, noting the questionable efficiency and effectiveness of requiring CSPs from being subject to such requirements.

With regards to Schedule 3 – Designated Internet Services Online Safety Code, we disagree with the Commissioner’s feedback that technologies should be deployed to proactively detect CSAM and TVEC by end-user managed hosting services. This poses grave consequences for the privacy of all end-users of the service, which is a significant concern.

We also understand that term ‘Australian end-user’ has been amended as per the Commissioner’s feedback to the previous draft Codes and Head Terms. However, we question the practicality of expanding the term to include other end-users who are not ordinarily resident in Australia, particularly with respect to the handling of appeals or complaints.

## **CONCLUSION**

Once again, IAA appreciates the opportunity to contribute to the revised Industry Codes of Practice for the Online Industry. We reiterate our recognition of the importance of having appropriate frameworks in place to ensure the safety of Australian end-users, and appreciate the work that has gone in to produce the Codes to this effect. However, we also emphasise the need for any rules or obligations to be measured, practical and effective to appropriately balance the protection of individuals from harmful and offensive material, preserving individuals’ freedoms, and placing appropriate responsibilities on the Internet industry. We look forward to cooperation and collaboration with industry, regulators, and other stakeholders to ensure a measured, and effective Code that will best serve all Australians.

## **ABOUT THE INTERNET ASSOCIATION OF AUSTRALIA**

The Internet Association of Australia (IAA) is a member-based association representing the Internet community. Founded in 1995, as the Western Australian Internet Association (WAIA), the Association changed its name in early 2016 to better reflect our national membership and growth.

Our members comprise industry professionals, corporations, and affiliate organisations. IAA provides a range of services and resources for members and supports the development of the Internet industry both within Australia and internationally. Providing technical services as well as social and professional development events, IAA aims to provide services and resources that our members need.

IX-Australia is a service provided by the Internet Association of Australia to Corporate and Affiliate members. It is the longest running carrier neutral Internet Exchange in Australia. Spanning six states and territories, IAA operates over 30 points of presence and operates the New Zealand Internet Exchange on behalf of NZIX Inc in New Zealand.

IAA is also a licenced telecommunications carrier, and operates on a not-for-profit basis.

Yours faithfully,

Narelle Clark  
Chief Executive Officer  
Internet Association of Australia