



Communications Legislation Amendment (Content Services) Act 2007

No. 124, 2007

**An Act to amend the law relating to
communications, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Communications Legislation Amendment (Content Services) Act 2007

No. 124, 2007

An Act to amend the law relating to communications, and for other purposes

[Assented to 20 July 2007]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Communications Legislation
Amendment (Content Services) Act 2007*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	20 July 2007
2. Schedule 1, Parts 1 and 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	20 January 2008
3. Schedule 1, Part 3	The day on which this Act receives the Royal Assent.	20 July 2007
4. Schedule 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 12 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	20 July 2008
5. Schedule 3	The day on which this Act receives the Royal Assent.	20 July 2007

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—General content amendments

Part 1—Amendments

Australian Communications and Media Authority Act 2005

1 Section 3 (paragraph (c) of the definition of *investigation*)

Omit “or Part 5 of Schedule 6”, substitute “Part 5 of Schedule 6, or Part 3 of Schedule 7”.

2 Subsection 4(5)

Omit “or clause 38 of Schedule 6”, substitute “clause 38 of Schedule 6, or clause 43 of Schedule 7”.

3 At the end of section 4

Add:

- (7) An investigation under clause 44 of Schedule 7 to the *Broadcasting Services Act 1992* ends at the end of the day the ACMA completes the investigation.

4 Paragraph 10(1)(a)

After “content”, insert “, designated content/hosting services”.

5 Paragraph 53(2)(k)

After “Schedule 5”, insert “or 7”.

6 Paragraph 53(2)(o)

After “Schedule 5”, insert “or 7”.

7 After paragraph 53(2)(p)

Insert:

- (pa) determine, vary or revoke a designated content/hosting service provider determination under Schedule 7 to that Act;

Broadcasting Services Act 1992

8 Title

Omit “**and online services**”, substitute “, **online services and content services**”.

9 After paragraph 3(1)(h)

Insert:

- (ha) to ensure designated content/hosting service providers respect community standards in relation to content; and

10 Subsection 3(2)

Insert:

designated content/hosting service provider has the same meaning as in Schedule 7.

11 Subsection 4(3)

Omit “Internet content hosted in Australia, and”.

12 Paragraph 4(3)(a)

Omit “Internet content hosts and”.

13 After subsection 4(3)

Insert:

- (3AA) The Parliament also intends that designated content/hosting services be regulated in a manner that:
- (a) enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on the providers of those services; and
 - (b) will readily accommodate technological change; and
 - (c) encourages:
 - (i) the development of communications technologies and their application; and
 - (ii) the provision of services made practicable by those technologies to the Australian community.

14 Subsection 4(4)

Insert:

designated content/hosting service has the same meaning as in Schedule 7.

15 Subsection 4(4) (definition of *Internet content host*)

Repeal the definition.

16 Paragraph 5(1)(a)

Omit “and the Internet industry”, substitute “, the Internet industry and the commercial content service industry”.

17 At the end of section 5

Add:

(4) In this section:

commercial content service has the same meaning as in Schedule 7.

18 Subsection 6(1) (at the end of the definition of *registered code of practice*)

Add:

; or (d) clause 85 of Schedule 7.

19 After paragraph 130L(f)

Insert:

(fa) a code registered, or a standard determined, under Part 4 of Schedule 7 to this Act; or

20 After section 216C

Insert:

216D Schedule 7 (content services)

Schedule 7 has effect.

21 Clause 1 of Schedule 5

Repeal the clause.

22 Clause 2 of Schedule 5

Omit:

- A person may complain to the ACMA about ***prohibited content*** or ***potential prohibited content*** on the Internet, and the ACMA must investigate the complaint.
- Internet content hosted in Australia is ***prohibited content*** if:
 - (a) the content has been classified RC or X 18+ by the Classification Board; or
 - (b) the content has been classified R 18+ by the Classification Board and access to the content is not subject to a restricted access system.
- Internet content hosted outside Australia is ***prohibited content*** if the Internet content has been classified RC or X 18+ by the Classification Board.
- Internet content is ***potential prohibited content*** if the content has not been classified by the Classification Board, but if it were to be classified, there is a substantial likelihood that the content would be prohibited content.
- If the ACMA is satisfied that Internet content hosted in Australia is potential prohibited content, and is likely to be classified RC or X 18+, the ACMA must:
 - (a) request the Classification Board to classify the content; and
 - (b) give the relevant Internet content host an ***interim take-down notice*** directing the host not to host the content pending the classification of the content.
- If the ACMA is satisfied that Internet content hosted in Australia is potential prohibited content, and is likely to be classified R 18+, the ACMA must request the Classification Board to classify the content.
- If the ACMA is satisfied that Internet content hosted in Australia is prohibited content, the ACMA must give the

relevant Internet content host a *final take-down notice* directing the host not to host the prohibited content.

23 Clause 2 of Schedule 5

Omit:

- Bodies and associations that represent sections of the Internet industry may develop industry codes.

substitute:

- Bodies and associations that represent the Internet service provider section of the Internet industry may develop industry codes.

24 Clause 2 of Schedule 5

Omit:

- The ACMA may make online provider determinations regulating Internet service providers and Internet content hosts.

substitute:

- The ACMA may make online provider determinations regulating Internet service providers.

25 Clause 3 of Schedule 5 (definition of *access-control system*)

Repeal the definition.

26 Clause 3 of Schedule 5 (definition of *Classification Review Board*)

Repeal the definition.

27 Clause 3 of Schedule 5 (definition of *classified*)

Omit “this Schedule”, substitute “Schedule 7”.

28 Clause 3 of Schedule 5 (definition of *final take-down notice*)

Repeal the definition.

29 Clause 3 of Schedule 5 (definition of *interim take-down notice*)

Repeal the definition.

30 Clause 3 of Schedule 5 (definition of *potential prohibited content*)

Omit “the meaning given by clause 11”, substitute “the same meaning as in Schedule 7”.

31 Clause 3 of Schedule 5 (definition of *prohibited content*)

Omit “the meaning given by clause 10”, substitute “the same meaning as in Schedule 7”.

32 Clause 3 of Schedule 5 (definition of *restricted access system*)

Repeal the definition.

33 Clause 3 of Schedule 5 (definition of *special take-down notice*)

Repeal the definition.

34 Clauses 4 and 6 of Schedule 5

Repeal the clauses.

35 Part 3 of Schedule 5

Repeal the Part.

36 Clause 22 of Schedule 5

Repeal the clause.

37 Clause 23 of Schedule 5

Omit “, or an Internet content host”.

38 Paragraphs 23(a) and (b) of Schedule 5

Omit “or host”.

39 Clause 27 of Schedule 5

Repeal the clause, substitute:

27 ACMA may investigate matters on its own initiative

If the ACMA thinks that it is desirable to do so, the ACMA may investigate whether an Internet service provider:

- (a) has contravened a code registered under Part 5 of this Schedule that is applicable to the provider; or
- (b) has contravened an online provider rule that is applicable to the provider.

40 Division 3 of Part 4 of Schedule 5

Repeal the Division.

41 Subclause 40(1) of Schedule 5

After “Division 2”, insert “of Part 3 of Schedule 7”.

42 Paragraph 41(1)(a) of Schedule 5

After “Division 2”, insert “of Part 3 of Schedule 7”.

43 Paragraph 42(1)(a) of Schedule 5

Omit “subclause 12(1)”, substitute “subclause 24(1) or (2) of Schedule 7”.

44 Paragraph 44(1)(a) of Schedule 5

Omit “subclause 12(1)”, substitute “subclause 24(1) or (2) of Schedule 7”.

45 Clause 52 of Schedule 5

Omit:

- | |
|--|
| <ul style="list-style-type: none">• Bodies and associations that represent sections of the Internet industry may develop industry codes. |
|--|

substitute:

- Bodies and associations that represent the Internet service provider section of the Internet industry may develop industry codes.

46 Clause 55 of Schedule 5

Omit all the words after “is an”, substitute “activity that consists of supplying an Internet carriage service.”.

47 Clause 56 of Schedule 5

Repeal the clause, substitute:

56 Section of the Internet industry

- (1) For the purposes of this Part, a *section of the Internet industry* is to be ascertained in accordance with this clause.
- (2) For the purposes of this Part, the group consisting of Internet service providers constitutes a *section of the Internet industry*.

48 Subclause 59(1) of Schedule 5

Repeal the subclause.

49 Subclause 59(4) of Schedule 5

Repeal the subclause.

50 Subclause 60(1) of Schedule 5

Omit “both sections”, substitute “the Internet service provider section”.

Note: The heading to subclause 60(1) of Schedule 5 is replaced by the heading “*General matters*”.

51 Paragraph 60(1)(g) of Schedule 5

Omit “22 or”.

52 Paragraph 60(1)(h) of Schedule 5

Omit “22 or”.

53 Paragraph 60(1)(j) of Schedule 5

Before “action”, insert “subject to subclause (8A),”.

54 Paragraph 60(1)(k) of Schedule 5

Before “giving”, insert “subject to subclause (8A),”.

55 Paragraph 60(1)(l) of Schedule 5

Before “procedures”, insert “subject to subclause (8A),”.

56 After paragraph 60(1)(l) of Schedule 5

Insert:

- (la) if a determination is in force under subclause (8A) in relation to a device:
 - (i) procedures to be followed in order to inform the users of such a device of the unavailability of Internet content filtering; and
 - (ii) procedures directed towards the achievement of the objective of ensuring that customers have the option of blocking access to the Internet using such a device;

57 Paragraph 60(1)(m) of Schedule 5

Omit “relevant”, substitute “Internet service provider”.

Note: The heading to subclause 60(2) of Schedule 5 is replaced by the heading “*Other matters*”.

58 Paragraph 60(2)(d) of Schedule 5

Before “procedures” (first occurring), insert “subject to subclause (8A),”.

59 After subclause 60(8) of Schedule 5

Insert:

Internet content filtering—devices

- (8A) If the Minister is satisfied that Internet content filtering is not viable in relation to access to Internet content using a particular device (for example, a mobile telephone handset), the Minister may, by legislative instrument, determine that paragraphs (1)(j), (k) and (l) and (2)(d) do not apply in relation to access to Internet content using that device.

60 Paragraph 62(1)(h) of Schedule 5

Repeal the paragraph.

61 Paragraphs 79(a), (b), (c) and (d) of Schedule 5

Repeal the paragraphs.

62 Subclause 80(2) of Schedule 5

Repeal the subclause.

63 Subclause 80(3) of Schedule 5

Omit “or (2)”.

64 Subclauses 81(1) and (2) of Schedule 5

Omit “, or a specified Internet content host,”.

65 Subclause 83(1) of Schedule 5

Omit “, or an Internet content host,”.

66 Subclause 83(2) of Schedule 5

Omit “or host” (wherever occurring).

67 Subclause 83(3) of Schedule 5

Omit “, or an Internet content host,”.

68 Paragraphs 83(3)(a) and (b) of Schedule 5

Omit “or host”.

69 Paragraph 83(3)(b) of Schedule 5

Omit “or host’s”.

70 Clause 85 of Schedule 5

Repeal the clause, substitute:

85 Federal Court may order a person to cease supplying Internet carriage services

- (1) If the ACMA is satisfied that a person who is an Internet service provider is supplying an Internet carriage service otherwise than in accordance with an online provider rule, the ACMA may apply to the Federal Court for an order that the person cease supplying that Internet carriage service.

Schedule 1 General content amendments

Part 1 Amendments

- (2) If the Federal Court is satisfied, on such an application, that the person is supplying an Internet carriage service otherwise than in accordance with the online provider rule, the Federal Court may order the person to cease supplying that Internet carriage service.

71 Subclause 88(3) of Schedule 5

Repeal the subclause.

Note 1: The heading to clause 88 is altered by omitting “**and Internet content hosts**”.

Note 2: The heading to subclause 88(1) is deleted.

72 Clause 89 of Schedule 5

Repeal the clause.

73 Paragraphs 92(1)(a), (b), (c) and (d) of Schedule 5

Repeal the paragraphs.

74 Subparagraphs 92(1)(g)(i), (ii) and (iii) of Schedule 5

Omit “or an Internet content host”.

75 Paragraph 92(1)(h) of Schedule 5

Omit “or an Internet content host”.

76 Subclause 92(2) of Schedule 5

Omit “Internet content host or”.

77 At the end of the Act

Add:

Schedule 7—Content services

Note: See section 216D.

Part 1—Introduction

1 Simplified outline

The following is a simplified outline of this Schedule:

- A person may make a complaint to the ACMA about prohibited content, or potential prohibited content, in relation to certain services.
- The ACMA may take the following action to deal with prohibited content or potential prohibited content:
 - (a) in the case of a hosting service—issue a take-down notice;
 - (b) in the case of a live content service—issue a service-cessation notice;
 - (c) in the case of a links service—issue a link-deletion notice.
- Content (other than an eligible electronic publication) is **prohibited content** if:
 - (a) the content has been classified RC or X 18+ by the Classification Board; or
 - (b) the content has been classified R 18+ by the Classification Board and access to the content is not subject to a restricted access system; or
 - (c) the content has been classified MA 15+ by the Classification Board, access to the content is not subject to a restricted access system, the content does not consist of text and/or one or more still visual images, and the content is provided by a commercial service (other than a news service or a current affairs service); or
 - (d) the content has been classified MA 15+ by the Classification Board, access to the content is not subject to a restricted access system, and the content is provided by a mobile premium service.
- Content that consists of an eligible electronic publication is **prohibited content** if the content has been classified RC,

category 2 restricted or category 1 restricted by the Classification Board.

- Generally, content is ***potential prohibited content*** if the content has not been classified by the Classification Board, but if it were to be classified, there is a substantial likelihood that the content would be prohibited content.
- Bodies and associations that represent sections of the content industry may develop industry codes.
- The ACMA has a reserve power to make an industry standard if there are no industry codes or if an industry code is deficient.
- The ACMA may make determinations regulating certain content service providers and hosting service providers.

Note: The classification of an eligible electronic publication is the same as the classification of the corresponding print publication—see clause 24.

2 Definitions

In this Schedule:

access includes:

- (a) access that is subject to a pre-condition (for example, the use of a password); and
- (b) access by way of push technology; and
- (c) access by way of a standing request.

access-control system, in relation to content, means a system under which:

- (a) persons seeking access to the content have been issued with a Personal Identification Number that provides a means of limiting access by other persons to the content; or
- (b) persons seeking access to the content have been provided with some other means of limiting access by other persons to the content.

adult means an individual who is 18 or older.

adult chat service means a chat service where, having regard to any or all of the following:

- (a) the name of the chat service;
- (b) the way in which the chat service is advertised or promoted;
- (c) the reputation of the chat service;

it would be concluded that the majority of the content accessed by end-users of the chat service is reasonably likely to be prohibited content or potential prohibited content.

ancillary subscription television content service has the meaning given by clause 9A.

Australia, when used in a geographical sense, includes all the external Territories.

Australian connection has the meaning given by clause 3.

Australian police force means:

- (a) the Australian Federal Police; or
- (b) the police force of a State or Territory.

carriage service has the same meaning as in the *Telecommunications Act 1997*.

carriage service intermediary has the same meaning as in the *Telecommunications Act 1997*.

carriage service provider has the same meaning as in the *Telecommunications Act 1997*.

child means an individual who has not reached 18 years.

civil proceeding includes a civil action.

classification application means an application under clause 22.

Classification Board means the Classification Board established by the *Classification (Publications, Films and Computer Games) Act 1995*.

Classification Review Board means the Classification Review Board established by the *Classification (Publications, Films and Computer Games) Act 1995*.

classified means classified under this Schedule.

commercial content service means a content service that:

- (a) is operated for profit or as part of a profit-making enterprise; and
- (b) is provided to the public but only on payment of a fee (whether periodical or otherwise).

commercial content service provider means a person who provides a commercial content service.

Note: See clause 5.

computer game has the same meaning as in the *Classification (Publications, Films and Computer Games) Act 1995*.

content means content:

- (a) whether in the form of text; or
- (b) whether in the form of data; or
- (c) whether in the form of speech, music or other sounds; or
- (d) whether in the form of visual images (animated or otherwise); or
- (e) whether in any other form; or
- (f) whether in any combination of forms.

content service means:

- (a) a service that delivers content to persons having equipment appropriate for receiving that content, where the delivery of the service is by means of a carriage service; or
- (b) a service that allows end-users to access content using a carriage service;

but does not include:

- (c) a licensed broadcasting service; or
- (d) a national broadcasting service; or
- (e) a re-transmitted broadcasting service; or
- (f) a licensed datacasting service; or
- (g) a re-transmitted datacasting service; or
- (h) an exempt Parliamentary content service; or
- (i) an exempt court/tribunal content service; or
- (j) an exempt official-inquiry content service; or
- (k) an exempt point-to-point content service; or
- (l) an exempt Internet directory service; or

- (m) an exempt Internet search engine service; or
- (n) a service that enables end-users to communicate, by means of voice calls, with other end-users; or
- (o) a service that enables end-users to communicate, by means of video calls, with other end-users; or
- (p) a service that enables end-users to communicate, by means of email, with other end-users; or
- (q) an instant messaging service that:
 - (i) enables end-users to communicate with other end-users; and
 - (ii) is not an adult chat service; or
- (r) an SMS service that:
 - (i) enables end-users to communicate with other end-users; and
 - (ii) is not an adult chat service; or
- (s) an MMS service that:
 - (i) enables end-users to communicate with other end-users; and
 - (ii) is not an adult chat service; or
- (t) a service that delivers content by fax; or
- (u) an exempt data storage service; or
- (v) an exempt back-up service; or
- (w) at a time before the commencement of Schedule 2 to the *Communications Legislation Amendment (Content Services) Act 2007*—a telephone sex service (within the meaning of Part 9A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*); or
- (x) a service specified in the regulations.

Note 1: **SMS** is short for short message service.

Note 2: **MMS** is short for multimedia message service.

Note 3: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

content service provider means a person who provides a content service.

Note: See clause 5.

corresponding print publication, in relation to an eligible electronic publication, has the meaning given by clause 11.

court/tribunal proceedings means words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a court or a tribunal, and includes:

- (a) evidence given before the court or tribunal; and
- (b) a document presented or submitted to the court or tribunal; and
- (c) a document issued or published by, or with the authority of, the court or tribunal.

data storage device means any article or material (for example, a disk) from which information is capable of being reproduced, with or without the aid of any other article or device.

designated content/hosting service means:

- (a) a hosting service; or
- (b) a live content service; or
- (c) a links service; or
- (d) a commercial content service.

designated content/hosting service provider means a person who provides a designated content/hosting service.

designated content/hosting service provider rule means:

- (a) a provision declared by this Schedule to be a designated content/hosting service provider rule; or
- (b) each of the rules (if any) set out in a designated content/hosting service provider determination in force under clause 104.

eligible electronic publication has the meaning given by clause 11.

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

exempt back-up service means a back-up service, where each end-user's access is restricted to the end-user's backed-up content.

exempt court/tribunal content service means a service to the extent to which it delivers, or provides access to, content that consists of court/tribunal proceedings.

exempt data storage service means a data storage service, where each end-user's access is restricted to the end-user's stored content.

exempt Internet directory service means an Internet directory service that:

- (a) does not specialise in providing links to, or information about, Internet sites that specialise in prohibited content or potential prohibited content; and
- (b) is not a service specified in the regulations; and
- (c) complies with such other requirements (if any) as are specified in the regulations.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

exempt Internet search engine service means an Internet search engine service that:

- (a) does not specialise in providing links to, or information about, Internet sites that specialise in prohibited content or potential prohibited content; and
- (b) is not a service specified in the regulations; and
- (c) complies with such other requirements (if any) as are specified in the regulations.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

exempt official-inquiry content service means a service to the extent to which it delivers, or provides access to, content that consists of official-inquiry proceedings.

exempt Parliamentary content service means a service to the extent to which it delivers, or provides access to, content that consists of Parliamentary proceedings.

exempt point-to-point content service means a service that:

- (a) delivers content by:
 - (i) email; or
 - (ii) instant messaging; or
 - (iii) SMS; or

- (iv) MMS;
where the content is produced or packaged by the provider of the service; and
- (b) does not specialise in content that is prohibited content or potential prohibited content; and
- (c) is not an adult chat service; and
- (d) is not provided on payment of a fee (whether periodical or otherwise); and
- (e) is not a service specified in the regulations; and
- (f) complies with such other requirements (if any) as are specified in the regulations.

Note 1: *SMS* is short for short message service.

Note 2: *MMS* is short for multimedia message service.

Note 3: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

film has the same meaning as in the *Classification (Publications, Films and Computer Games) Act 1995*, but does not include a form of recording from which an eligible electronic publication can be produced.

Note: ***Film*** is defined broadly in that Act, and includes any form of recording from which a visual image can be produced.

final link-deletion notice means a notice under paragraph 62(1)(d), (e) or (f) or (4)(b), (c) or (d) of this Schedule.

final service-cessation notice means a notice under paragraph 56(1)(c) or (d) or (4)(b) or (c) of this Schedule.

final take-down notice means a notice under paragraph 47(1)(c), (d) or (e) or (4)(b), (c) or (d) of this Schedule.

hosting service has the meaning given by clause 4.

hosting service provider means a person who provides a hosting service.

immediate circle has the same meaning as in the *Telecommunications Act 1997*.

interim link-deletion notice means a notice under paragraph 62(2)(c) or (3)(d) of this Schedule.

interim service-cessation notice means a notice under paragraph 56(2)(d) or (3)(d) of this Schedule.

interim take-down notice means a notice under paragraph 47(2)(c) or (3)(d) of this Schedule.

Internet carriage service has the same meaning as in Schedule 5.

Internet content has the same meaning as in Schedule 5.

licensed broadcasting service means a broadcasting service provided in accordance with:

- (a) a licence allocated by the ACMA under this Act; or
- (b) a class licence determined by the ACMA under this Act.

licensed datacasting service means a datacasting service provided by the holder of a datacasting licence that authorises the provision of that service.

links service means a content service that:

- (a) provides one or more links to content; and
- (b) is provided to the public (whether on payment of a fee or otherwise)

links service provider means a person who provides a links service.

Note: See clause 5.

live content does not include stored content.

live content service means a content service that:

- (a) provides live content; and
- (b) is provided to the public (whether on payment of a fee or otherwise)

live content service provider means a person who provides a live content service.

Note: See clause 5.

MA 15+ content has the meaning given by clause 15.

mobile carriage service provider means:

- (a) a carriage service provider who supplies a public mobile telecommunications service; or

- (b) a carriage service intermediary who arranges for the supply by a carriage service provider of a public mobile telecommunications service.

mobile premium service means a commercial content service where:

- (a) a charge for the supply of the commercial content service is expected to be included in a bill sent by or on behalf of a mobile carriage service provider to the relevant customer; or
- (b) a charge for the supply of the commercial content service is payable:
 - (i) in advance; or
 - (ii) in any other manner;by the relevant customer to a mobile carriage service provider or a person acting on behalf of a mobile carriage service provider.

official-inquiry proceedings means words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of:

- (a) a Royal Commission; or
- (b) an official inquiry;

and includes:

- (c) evidence given before the Royal Commission or official inquiry; and
- (d) a document presented or submitted to the Royal Commission or official inquiry; and
- (e) a document issued or published by, or with the authority of, the Royal Commission or official inquiry.

Parliamentary proceedings means words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of:

- (a) a Parliament; or
- (b) a legislature; or
- (c) a committee of a Parliament or legislature;

and includes:

- (d) evidence given before the Parliament, legislature or committee; and

- (e) a document presented or submitted to the Parliament, legislature or committee; and
- (f) a document issued or published by, or with the authority of, the Parliament, legislature or committee.

potential prohibited content has the meaning given by clause 21.

prohibited content has the meaning given by clause 20.

provided by a content service has the meaning given by clause 6.

provided to the public, in relation to a content service, has the meaning given by clause 7.

public mobile telecommunications service has the same meaning as in the *Telecommunications Act 1997*.

R 18+ content has the meaning given by clause 15.

restricted access system has the meaning given by clause 14.

re-transmitted broadcasting service has the meaning given by clause 12.

re-transmitted datacasting service has the meaning given by clause 13.

service includes an Internet site or a distinct part of an Internet site.

special link-deletion notice means a notice under clause 67.

special service-cessation notice means a notice under clause 59A.

special take-down notice means a notice under clause 52.

stored content means content kept on a data storage device. For this purpose, disregard any storage of content on a highly transitory basis as an integral function of the technology used in its transmission.

Note: Momentary buffering (including momentary storage in a router in order to resolve a path for further transmission) is an example of storage on a highly transitory basis.

trained content assessor has the meaning given by clause 18.

voice call includes:

- (a) if a voice call is not practical for a particular end-user with a disability—a call that is equivalent to a voice call; and
- (b) a call that involves a recorded or synthetic voice.

3 Australian connection

Content service

- (1) For the purposes of this Schedule, a content service has an **Australian connection** if, and only if:
 - (a) any of the content provided by the content service is hosted in Australia; or
 - (b) in the case of a live content service—the live content service is provided from Australia.

Note: A link is an example of content. If a link provided by a content service is hosted in Australia, the content service will have an Australian connection (see paragraph (a)).

Hosting service

- (2) For the purposes of this Schedule, a hosting service has an **Australian connection** if, and only if, any of the content hosted by the hosting service is hosted in Australia.

4 Hosting service

For the purposes of this Schedule, if:

- (a) a person (the **first person**) hosts stored content; and
- (b) the hosted content does not consist of:
 - (i) voicemail messages; or
 - (ii) video mail messages; or
 - (iii) email messages; or
 - (iv) SMS messages; or
 - (v) MMS messages; or
 - (vi) messages specified in the regulations; and
- (c) the first person or another person provides a content service that:
 - (i) provides the hosted content; and

(ii) is provided to the public (whether on payment of a fee or otherwise);

the hosting of the stored content by the first person is taken to be the provision by the first person of a *hosting service* to the public.

Note 1: *SMS* is short for short message service.

Note 2: *MMS* is short for multimedia message service.

Note 3: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

5 Content service provider

- (1) For the purposes of this Schedule, a person does not provide a content service merely because the person supplies a carriage service that enables content to be delivered or accessed.
- (2) For the purposes of this Schedule, a person does not provide a content service merely because the person provides a billing service, or a fee collection service, in relation to a content service.

6 When content is provided by a content service

For the purposes of this Schedule, content is *provided* by a content service if the content is delivered by, or accessible to end-users using, the content service.

7 When content service is provided to the public etc.

- (1) For the purposes of this Schedule, a content service is *provided to the public* if, and only if, the service is provided to at least one person outside the immediate circle of the person who provides the service.
- (2) For the purposes of this Schedule, a content service that is provided to the public is taken to be different from a content service that is not provided to the public, even if the content provided by the services is identical.

8 Links to content

For the purposes of this Schedule, if:

- (a) a content service (the *first content service*) provides a link to another content service; and

- (b) the other content service specialises in prohibited content or potential prohibited content; and
 - (c) the other content service provides particular content;
- then:
- (d) end-users of the first content service are taken to be able to access the content mentioned in paragraph (c) using that link; and
 - (e) that link is taken to be a link to the content mentioned in paragraph (c).

9 Services supplied by way of a voice call or video call

If a service is supplied by way of:

- (a) a voice call made using a carriage service; or
 - (b) a video call made using a carriage service;
- the service is taken, for the purposes of this Schedule, to be a content service that allows end-users to access the relevant content using the carriage service.

9A Ancillary subscription television content service

- (1) For the purposes of this Schedule, an *ancillary subscription television content service* is a service that:
 - (a) delivers content by way of television programs to persons having equipment appropriate for receiving that content, where:
 - (i) those television programs are stored on the equipment (whether temporarily or otherwise); and
 - (ii) the equipment is also capable of receiving one or more subscription television broadcasting services provided in accordance with a licence allocated by the ACMA under this Act; and
 - (iii) those television programs are delivered to a subscriber to such a subscription television broadcasting service under a contract with the relevant subscription television broadcasting licensee; and
 - (b) complies with such other requirements (if any) as are specified in the regulations.

- (2) For the purposes of subsection (1), it is immaterial whether the equipment is capable of receiving:
- (a) content by way of television programs; or
 - (b) subscription television broadcasting services;
- when used:
- (c) in isolation; or
 - (d) in conjunction with any other equipment.

10 Classification of live content etc.

Recordings of live content

- (1) If there is a recording of live content, the recording is taken, for the purposes of classifying the live content under this Schedule, to be the content.

Short duration segments

- (2) If, on a particular day, live content has a duration of more than:
- (a) 60 minutes; or
 - (b) if another number of minutes is specified in the regulations—
that other number of minutes;
- each short duration segment of the content provided on that day is taken, for the purposes of:
- (c) classifying the content under this Schedule; and
 - (d) Part 3 of this Schedule; and
 - (e) paragraph 81(1)(e) of this Schedule;
- to be different live content from each other short duration segment provided on that day.
- (3) For the purposes of this clause, a ***short duration segment*** of live content is a segment that has a duration of:
- (a) 60 minutes; or
 - (b) if another number of minutes is specified in the regulations—
that other number of minutes.
- (4) For the purposes of this clause, it is immaterial when a short duration segment begins.
- (5) For the purposes of this clause, it is immaterial whether short duration segments overlap.

- (6) Regulations made for the purposes of paragraph (2)(b) or (3)(b) may make different provision with respect to different kinds of live content.
- (7) Subclause (6) does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

11 Eligible electronic publication

For the purposes of this Schedule, if:

- (a) content consists of:
 - (i) an electronic edition of a book, magazine or newspaper; or
 - (ii) an audio recording of the text, or abridged text, of a book, magazine or newspaper; and
- (b) a print edition of the book, magazine or newspaper is or was available to the public (whether by way of purchase or otherwise) in Australia;

then:

- (c) the content is an *eligible electronic publication*; and
- (d) the print edition of the book, magazine or newspaper is the *corresponding print publication* in relation to the eligible electronic publication.

12 Re-transmitted broadcasting services

- (1) For the purposes of this Schedule, a service is a *re-transmitted broadcasting service* if the service does no more than:
 - (a) re-transmit programs that have been previously transmitted by a licensed broadcasting service; or
 - (b) re-transmit programs that have been previously transmitted by a national broadcasting service.
- (2) In determining whether a service is a re-transmitted broadcasting service:
 - (a) ignore any changes to the format in which the programs are transmitted; and
 - (b) ignore any advertising or sponsorship matter; and
 - (c) ignore such other matters (if any) as are specified in the regulations.

13 Re-transmitted datacasting services

- (1) For the purposes of this Schedule, a service is a *re-transmitted datacasting service* if the service does no more than re-transmit datacasting content that has been previously transmitted by a licensed datacasting service.
- (2) In determining whether a service is a re-transmitted datacasting service:
 - (a) ignore any changes to the format in which the datacasting content is transmitted; and
 - (b) ignore any advertising or sponsorship matter; and
 - (c) ignore such other matters (if any) as are specified in the regulations.

14 Restricted access system

- (1) The ACMA may, by legislative instrument, declare that a specified access-control system is a *restricted access system* in relation to content for the purposes of this Schedule. A declaration under this subclause has effect accordingly.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (2) An instrument under subclause (1) may make different provision with respect to:
 - (a) R 18+ content; and
 - (b) MA 15+ content.
- (3) Subclause (2) does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (4) In making an instrument under subclause (1), the ACMA must have regard to:
 - (a) the objective of protecting children from exposure to content that is unsuitable for children; and
 - (b) the objective of protecting children who have not reached 15 years from exposure to content that is unsuitable for children who have not reached 15 years; and
 - (c) such other matters (if any) as the ACMA considers relevant.

- (5) The ACMA must ensure that an instrument under subclause (1) is in force at all times after the commencement of this Schedule.

15 R 18+ content and MA 15+ content

R 18+ content

- (1) For the purposes of this Schedule, **R 18+ content** is:
- (a) content (other than content that consists of an eligible electronic publication) that has been classified R 18+ by the Classification Board; or
 - (b) content (other than content that consists of an eligible electronic publication) where the following conditions are satisfied:
 - (i) the content has not been classified R 18+ by the Classification Board;
 - (ii) if the content were to be classified by the Classification Board, there is a substantial likelihood that the content would be classified R 18+ by the Classification Board.

MA 15+ content

- (2) For the purposes of this Schedule, **MA 15+ content** is:
- (a) content (other than content that consists of an eligible electronic publication) that has been classified MA 15+ by the Classification Board; or
 - (b) content (other than content that consists of an eligible electronic publication) where the following conditions are satisfied:
 - (i) the content has not been classified MA 15+ by the Classification Board;
 - (ii) if the content were to be classified by the Classification Board, there is a substantial likelihood that the content would be classified MA 15+ by the Classification Board.

Classification Board authorised to classify content

- (3) For the purposes of this clause, it is to be assumed that this Schedule authorised the Classification Board to classify the content.

16 Content that consists of a film

For the purposes of this Schedule, in determining whether content consists of the entire unmodified contents of a film, disregard any differences between:

- (a) the technique used to embody sounds and/or visual images in the film; and
- (b) the technique used to embody the sounds and/or visual images in a form in which they can be delivered by means of, or accessed using, the carriage service concerned.

17 Extended meaning of *use*

Unless the contrary intention appears, a reference in this Schedule to the *use* of a thing is a reference to the use of the thing either:

- (a) in isolation; or
- (b) in conjunction with one or more other things.

18 Trained content assessor

- (1) For the purposes of this Schedule, an individual is a *trained content assessor* if:
 - (a) the individual has, at any time during the preceding 12 months, completed training in:
 - (i) the making of assessments of the kinds referred to in paragraphs 81(1)(d) and (f) of this Schedule; and
 - (ii) giving advice of the kind referred to in subparagraph 81(1)(e)(ii) of this Schedule; and
 - (b) the training was approved by the Director of the Classification Board under subclause (2) of this clause.
- (2) For the purposes of paragraph (1)(b), the Director of the Classification Board may, by writing, approve specified training.
- (3) An approval under subclause (2) is not a legislative instrument.

19 Extra-territorial application

- (1) Unless the contrary intention appears, this Schedule extends to acts, omissions, matters and things outside Australia.

Note: Clause 3 is an example of a contrary intention.

- (2) Section 14.1 of the *Criminal Code* does not apply to an offence against this Schedule.

Part 2—Classification of content

Division 1—Prohibited content and potential prohibited content

20 Prohibited content

Content other than eligible electronic publications

- (1) For the purposes of this Schedule, content (other than content that consists of an eligible electronic publication) is ***prohibited content*** if:
- (a) the content has been classified RC or X 18+ by the Classification Board; or
 - (b) both:
 - (i) the content has been classified R 18+ by the Classification Board; and
 - (ii) access to the content is not subject to a restricted access system; or
 - (c) all of the following conditions are satisfied:
 - (i) the content has been classified MA 15+ by the Classification Board;
 - (ii) access to the content is not subject to a restricted access system;
 - (iii) the content does not consist of text and/or one or more still visual images;
 - (iv) access to the content is provided by means of a content service (other than a news service or a current affairs service) that is operated for profit or as part of a profit-making enterprise;
 - (v) the content service is provided on payment of a fee (whether periodical or otherwise);
 - (vi) the content service is not an ancillary subscription television content service; or
 - (d) all of the following conditions are satisfied:

- (i) the content has been classified MA 15+ by the Classification Board;
- (ii) access to the content is not subject to a restricted access system;
- (iii) access to the content is provided by means of a mobile premium service.

Eligible electronic publications

- (2) For the purposes of this Schedule, content that consists of an eligible electronic publication is **prohibited content** if the content has been classified RC, category 2 restricted or category 1 restricted by the Classification Board.

Note: The classification of an eligible electronic publication is the same as the classification of the corresponding print publication—see clause 24.

21 Potential prohibited content

- (1) For the purposes of this Schedule, content is **potential prohibited content** if:
- (a) the content has not been classified by the Classification Board; and
 - (b) if the content were to be classified by the Classification Board, there is a substantial likelihood that the content would be prohibited content.
- (2) However, content is not **potential prohibited content** if:
- (a) the content consists of an eligible electronic publication; and
 - (b) the content has not been classified by the Classification Board; and
 - (c) if the content were to be classified by the Classification Board, there is no substantial likelihood that the content would be classified RC or category 2 restricted.

Note: The classification of an eligible electronic publication is the same as the classification of the corresponding print publication—see clause 24.

- (3) In determining whether particular content is potential prohibited content, it is to be assumed that this Schedule authorised the Classification Board to classify the content.

Division 2—Classification of content

22 Applications for classification of content

- (1) Any of the following persons may apply to the Classification Board for classification of content under this Schedule:
 - (a) in the case of content that has been, or is being, hosted by a hosting service—the hosting service provider concerned; or
 - (b) in the case of content that a hosting service provider is considering whether to host—the hosting service provider; or
 - (c) in the case of content that has been, or is being, delivered to, or accessed by, an end-user of a content service—the content service provider concerned; or
 - (d) in the case of content that a content service provider is considering whether to deliver to, or make available for access by, an end-user of the content service concerned—the content service provider; or
 - (e) in the case of content that has been, or can be, accessed using a link provided by a links service—the links service provider concerned; or
 - (f) in the case of content where a links service provider is considering delivering, or making available for access, a link that will enable end-users to access the content—the links service provider; or
 - (g) in any case—the ACMA.
- (2) An application must be:
 - (a) in writing; and
 - (b) made in a form approved in writing by the Director of the Classification Board; and
 - (c) signed by or on behalf of the applicant; and
 - (d) accompanied by:
 - (i) the fee ascertained under clause 27; and
 - (ii) a copy of the content.

Note: For special rules about classification of live content, see clause 10.

23 Classification of content

If an application for classification of content is made under clause 22, the Classification Board must:

- (a) classify the content in accordance with whichever of clauses 24 and 25 is applicable; and
- (b) notify the applicant in writing of the classification of the content.

24 Classification of content that consists of a film, a computer game or an eligible electronic publication

Deemed classification

- (1) If:
 - (a) content consists of:
 - (i) the entire unmodified contents of a film; or
 - (ii) a computer game; and
 - (b) the film or computer game has been classified under the *Classification (Publications, Films and Computer Games) Act 1995*;

the content is taken to have been classified by the Classification Board under this Schedule in the same way as the film or the computer game, as the case may be, was classified under that Act.

- (2) If:
 - (a) content consists of an eligible electronic publication; and
 - (b) the corresponding print publication has been classified under the *Classification (Publications, Films and Computer Games) Act 1995*;

the content is taken to have been classified by the Classification Board under this Schedule in the same way as the corresponding print publication was classified under that Act.

Actual classification

- (3) If:
 - (a) content consists of:
 - (i) the entire unmodified contents of a film; or
 - (ii) a computer game; and
 - (b) the film or computer game has not been classified under the *Classification (Publications, Films and Computer Games) Act 1995*;

the Classification Board is to classify the content under this Schedule in a corresponding way to the way in which the film or computer game, as the case may be, would be classified under the *Classification (Publications, Films and Computer Games) Act 1995*.

(4) If:

- (a) content consists of an eligible electronic publication; and
- (b) the corresponding print publication has not been classified under the *Classification (Publications, Films and Computer Games) Act 1995*;

the Classification Board is to classify the content under this Schedule in a corresponding way to the way in which the corresponding print publication would be classified under the *Classification (Publications, Films and Computer Games) Act 1995*.

25 Classification of content that does not consist of a film, a computer game or an eligible electronic publication

If content does not consist of:

- (a) the entire unmodified contents of a film; or
- (b) a computer game; or
- (c) an eligible electronic publication;

the Classification Board is to classify the content under this Schedule in a corresponding way to the way in which a film would be classified under the *Classification (Publications, Films and Computer Games) Act 1995*.

26 Deemed classification of content classified under Schedule 5

If content has been classified by the Classification Board under Schedule 5 (otherwise than because of repealed subclause 12(1) of that Schedule), the content is taken, for the purposes of this Schedule, to have been classified by the Classification Board under this Schedule in the same way as the content was classified under Schedule 5.

27 Fees

- (1) A person who makes an application under clause 22 is liable to pay a fee.
- (2) The amount of a fee payable under subclause (1) is ascertained under whichever of subclauses (3), (4), (5) and (6) is applicable.

Films

- (3) If content consists of the entire unmodified contents of a film, regulations prescribing fees for the purposes of paragraph 14(1)(d) of the *Classification (Publications, Films and Computer Games) Act 1995* apply, subject to such modifications (if any) as are specified in regulations made for the purposes of this subclause, in relation to the classification under this Schedule of the content in a corresponding way to the way in which they apply to the classification under that Act of the film.

Computer games

- (4) If content consists of a computer game, regulations prescribing fees for the purposes of paragraph 17(1)(d) of the *Classification (Publications, Films and Computer Games) Act 1995* apply, subject to such modifications (if any) as are specified in regulations made for the purposes of this subclause, in relation to the classification under this Schedule of the content in a corresponding way to the way in which they apply to the classification under that Act of the computer game.

Eligible electronic publications

- (5) If content consists of an eligible electronic publication, regulations prescribing fees for the purposes of paragraph 13(1)(d) of the *Classification (Publications, Films and Computer Games) Act 1995* apply, subject to such modifications (if any) as are specified in regulations made for the purposes of this subclause, in relation to the classification under this Schedule of the content in a corresponding way to the way in which they apply to the classification under that Act of the corresponding print publication.

Content other than films, computer games or eligible electronic publications

- (6) If content does not consist of:
- (a) the entire unmodified contents of a film; or
 - (b) a computer game; or
 - (c) an eligible electronic publication;
- regulations prescribing fees for the purposes of paragraph 14(1)(d) of the *Classification (Publications, Films and Computer Games) Act 1995* apply, subject to such modifications (if any) as are specified in regulations made for the purposes of this subclause, in relation to the classification under this Schedule of the content in a corresponding way to the way in which they apply to the classification under that Act of a film.

Fees must not be such as to amount to taxation

- (7) A fee under subclause (1) must not be such as to amount to taxation.

Definitions

- (8) In this clause:
- modifications* includes additions, omissions and substitutions.

Division 3—Reclassification

28 Reclassification of content

- (1) If content has been classified by the Classification Board (otherwise than because of subclause 24(1) or (2)):
- (a) the Classification Board must not reclassify the content within the 2-year period beginning on the day on which the classification occurred; and
 - (b) after that 2-year period, the Classification Board may reclassify the content.
- (2) The Classification Board may act under paragraph (1)(b):
- (a) if required to do so by:
 - (i) the Minister; or
 - (ii) the ACMA; or

- (iii) if another person applied, under clause 22, for classification of the content—the other person; or
 - (b) on the Classification Board’s own initiative.
- (3) If the Classification Board is required to act under paragraph (1)(b), the Classification Board must do so.
- (4) If content is reclassified by the Classification Board, the Classification Board must give written notification to the following persons accordingly:
 - (a) the Minister;
 - (b) the ACMA;
 - (c) if another person applied, under clause 22, for classification of the content—the other person.

29 Notice of intention to reclassify content

- (1) If:
 - (a) content has been classified by the Classification Board (otherwise than because of subclause 24(1) or (2)); and
 - (b) the Classification Board intends to reclassify the content;then:
 - (c) the Director of the Classification Board must give notice of that intention, inviting submissions about the matter; and
 - (d) the Director of the Classification Board must cause the contents of the notice to be published, in such manner as the Director decides, at least 30 days before the Classification Board proposes to consider the matter; and
 - (e) the Director of the Classification Board must give a copy of the notice to:
 - (i) the Minister; and
 - (ii) the ACMA; and
 - (iii) if another person applied, under clause 22, for classification of the content—the other person; at least 30 days before the Classification Board proposes to consider the matter.
- (2) A notice under paragraph (1)(c) must specify the day on which the Board proposes to consider the matter.

- (3) The matters that the Classification Board is to take into account in reclassifying the content include issues raised in submissions made to the Classification Board about the matter.

Division 4—Review of classification decisions

Subdivision A—Review of classification of content

30 Persons who may apply for review

- (1) If content has been classified by the Classification Board (otherwise than because of subclause 24(1) or (2)), any of the following persons may apply to the Classification Review Board for a review of the classification:
- (a) the Minister;
 - (b) the ACMA;
 - (c) if a person other than the ACMA applied, under clause 22, for classification of the content—the other person;
 - (d) a person aggrieved by the classification.
- (2) Without limiting paragraph (1)(d), if the classification referred to in that paragraph is a restricted classification, the following persons or bodies are taken to be persons aggrieved by the classification:
- (a) a person who has engaged in a series of activities relating to, or research into, the contentious aspects of the theme or subject matter of the content concerned;
 - (b) an organisation or association, whether incorporated or not, whose objects or purposes include, and whose activities relate to, the contentious aspects of that theme or subject matter.
- (3) However, a person or body is not aggrieved by a restricted classification because of subclause (2) if the classification was made before:
- (a) the person engaged in a series of activities relating to, or research into, the contentious aspects of the theme or subject matter of the content concerned; or
 - (b) the organisation or association was formed, or its objects or purposes included and its activities related to, the contentious aspects of that theme or subject matter.

(4) In this clause:

restricted classification means:

- (a) for content that does not consist of a computer game or an eligible electronic publication—the classification MA 15+, R 18+, X 18+ or RC; or
- (b) for content that consists of a computer game—the classification MA 15+ or RC; or
- (c) for content that consists of an eligible electronic publication—the classification category 1 restricted, category 2 restricted or RC.

31 Applications for review

- (1) An application for review of a classification must be:
 - (a) in writing; and
 - (b) made in a form approved in writing by the Convenor of the Classification Review Board; and
 - (c) signed by or on behalf of the applicant; and
 - (d) except for an application made by the Minister—accompanied by the fee ascertained under subclause (4).
- (2) An application by the Minister or the ACMA for review of a classification may be made at any time.
- (3) Any other application for review of a classification must be made:
 - (a) within 30 days after the applicant is notified of the classification; or
 - (b) within such longer period as the Classification Review Board allows.
- (4) If:
 - (a) the applicant for a review of the classification of content is not covered by paragraph 30(1)(c); and
 - (b) a person other than the ACMA applied, under clause 22, for classification of the content;the Convenor of the Classification Review Board must notify the person mentioned in paragraph (b), in writing, of:
 - (c) the application for review; and
 - (d) the day on which it will be considered.

- (5) Regulations prescribing fees for the purposes of paragraph 43(1)(d) of the *Classification (Publications, Films and Computer Games) Act 1995* apply, subject to such modifications (if any) as are specified in regulations made for the purposes of this subclause, to a review of a classification under this Schedule in a corresponding way to the way in which they apply to a review of a classification under that Act.
- (6) A fee under subclause (1) must not be such as to amount to taxation.
- (7) In this clause:

modifications includes additions, omissions and substitutions.

32 Classification Review Board may refuse to deal with review applications that are frivolous etc.

If the applicant for a review of the classification of content is covered by paragraph 30(1)(d), the Classification Review Board may refuse to deal with the application, or to deal further with the application, if the Classification Review Board is satisfied that the application is:

- (a) frivolous; or
- (b) vexatious; or
- (c) not made in good faith.

33 Review

- (1) For the purposes of reviewing a classification of content, the Classification Review Board:
 - (a) may exercise all the powers and discretions that are conferred on the Classification Board by this Schedule; and
 - (b) must make a decision in writing classifying the content.
- (2) If the Classification Review Board classifies the content, this Schedule (other than this Subdivision) and Schedule 5 have effect as if the content had been reclassified by the Classification Board.

Subdivision B—Review of content that consists of a film or a computer game

34 Review of classification of content that consists of a film or a computer game

If:

- (a) content consists of:
 - (i) the entire unmodified contents of a film; or
 - (ii) a computer game; and
- (b) the film or computer game has been classified under the *Classification (Publications, Films and Computer Games) Act 1995*; and
- (c) the decision to classify the film or computer game is reviewed by the Classification Review Board under that Act; and
- (d) as a result of the review, the Classification Review Board classifies the film or computer game under that Act;

this Schedule and Schedule 5 have effect as if the film or computer game had been reclassified by the Classification Board under this Schedule in the same way as the film or computer game was classified under that Act by the Classification Review Board.

Subdivision C—Review of content that consists of an eligible electronic publication

35 Review of classification of content that consists of an eligible electronic publication

If:

- (a) content consists of an eligible electronic publication; and
- (b) the corresponding print publication has been classified under the *Classification (Publications, Films and Computer Games) Act 1995*; and
- (c) the decision to classify the corresponding print publication is reviewed by the Classification Review Board under that Act; and
- (d) as a result of the review, the Classification Review Board classifies the corresponding print publication under that Act;

this Schedule and Schedule 5 have effect as if the corresponding print publication had been reclassified by the Classification Board under this Schedule in the same way as the corresponding print publication was classified under that Act by the Classification Review Board.

Division 5—Miscellaneous

36 Decisions of the Classification Board etc.

- (1) Section 57 of the *Classification (Publications, Films and Computer Games) Act 1995* applies to the consideration by the Classification Board of a matter arising under this Schedule in a corresponding way to the way in which it applies to the consideration of an application under that Act.
- (2) To avoid doubt, sections 10, 19, 20, 22, 23A, 24, 25, 26, 27, 28 and 44A, and Division 6 of Part 2, of the *Classification (Publications, Films and Computer Games) Act 1995* do not apply to a classification under this Schedule.

Part 3—Complaints to, and investigations by, the ACMA

Division 1—Making of complaints to the ACMA

37 Complaints about prohibited content or potential prohibited content

Complaints about access to prohibited content or potential prohibited content

- (1) If a person has reason to believe that end-users in Australia can access prohibited content or potential prohibited content provided by a content service, the person may make a complaint to the ACMA about the matter.

Complaints about hosting services

- (2) If a person has reason to believe that a hosting service is:
 - (a) hosting prohibited content; or

(b) hosting potential prohibited content;
the person may make a complaint to the ACMA about the matter.

Complaints about links services

- (3) If a person has reason to believe that end-users in Australia can access prohibited content or potential prohibited content using a link provided by a links service, the person may make a complaint to the ACMA about the matter.

Content of complaint

- (4) A complaint under subclause (1), (2) or (3) about particular content must:
- (a) identify the content; and
 - (b) if the content is stored content—set out how to access the content (for example: set out a URL, a password, or the name of a newsgroup); and
 - (c) if:
 - (i) the content is stored content; and
 - (ii) the complainant knows the country or countries in which the content is hosted;
set out the name of that country or those countries; and
 - (d) if the content is live content—set out details of how the content was accessed (for example: set out a URL or a password); and
 - (e) if:
 - (i) the content is live content; and
 - (ii) the complainant believes that a particular incident depicted by the live content is sufficient to characterise the content as prohibited content or potential prohibited content;
set out the date and approximate time when that incident occurred; and
 - (f) set out the complainant's reasons for believing that the content is prohibited content or potential prohibited content; and
 - (g) set out such other information (if any) as the ACMA requires.
- (5) The rule in paragraph (4)(b) does not apply to a complaint to the extent (if any) to which finding out how to access the content
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would cause the complainant to contravene a law of the Commonwealth, a State or a Territory.

- (6) The rule in paragraph (4)(d) does not apply to a complaint to the extent (if any) to which finding out how the content was accessed would cause the complainant to contravene a law of the Commonwealth, a State or a Territory.

Timing of complaint about live content

- (7) If:
- (a) a person makes a complaint under subclause (1) about live content; and
 - (b) the person believes that a particular incident depicted in the live content is sufficient to characterise the content as prohibited content or potential prohibited content;
- the complaint must be made within 60 days after the occurrence of the incident.

Transitional

- (8) A person is not entitled to make a complaint under subclause (1), (2) or (3) about something that occurred before the commencement of this clause.

38 Complaints relating to breach of a designated content/hosting service provider rule etc.

- (1) If a person (the *first person*) has reason to believe that another person has:
- (a) breached a designated content/hosting service provider rule that applies to the other person; or
 - (b) committed an offence against this Schedule; or
 - (c) breached a civil penalty provision of this Schedule;
- the first person may make a complaint to the ACMA about the matter.
- (2) If a person has reason to believe that a participant in the content industry (within the meaning of Part 4 of this Schedule) has breached a code registered under that Part that is applicable to the participant, the person may make a complaint to the ACMA about the matter.

39 Form of complaint

- (1) A complaint under this Division is to be in writing.
- (2) However, the ACMA may permit complaints to be given, in accordance with specified software requirements, by way of a specified kind of electronic transmission.

40 Recordings of live content

- (1) If:
 - (a) a complaint under subclause 37(1) about live content is accompanied by a recording of:
 - (i) the live content; or
 - (ii) a segment of the live content; and
 - (b) the complainant made the recording;
neither making the recording, nor giving the recording to the ACMA, is taken to have infringed copyright.
- (2) Subclause (1) does not apply if:
 - (a) the ACMA is satisfied that the complaint is:
 - (i) frivolous; or
 - (ii) vexatious; or
 - (iii) not made in good faith; or
 - (b) the ACMA has reason to believe that the complaint was made for the purpose, or for purposes that include the purpose, of frustrating or undermining the effective administration of this Schedule; or
 - (c) the making of the recording would cause the complainant to contravene:
 - (i) a law of the Commonwealth (other than the *Copyright Act 1968*); or
 - (ii) a law of a State; or
 - (iii) a law of a Territory.

41 Residency etc. of complainant

A person is not entitled to make a complaint under this Division unless the person is:

- (a) an individual who resides in Australia; or

- (b) a body corporate that carries on activities in Australia; or
- (c) the Commonwealth, a State or a Territory.

42 Escalation of complaints made under industry codes etc.

- (1) This clause applies if:
 - (a) a person has made a complaint under:
 - (i) an industry code registered under Part 4; or
 - (ii) an industry standard determined under Part 4; or
 - (iii) a designated content/hosting service provider determination; and
 - (b) the complaint is about a particular matter; and
 - (c) the person could have made a complaint about the matter under subclause 37(1), (2) or (3) or 38(1) or (2); and
 - (d) the complaint is referred to the ACMA under the code, standard or determination.
- (2) This Part has effect as if the complaint mentioned in paragraph (1)(a) had been made under subclause 37(1), (2) or (3) or 38(1) or (2), as the case requires.

Division 2—Investigations by the ACMA

43 Investigation of complaints by the ACMA

- (1) The ACMA must investigate a complaint under Division 1.
 - (2) Subclause (1) has effect subject to subclauses (3), (4) and (6).
 - (3) The ACMA need not investigate a complaint if:
 - (a) the ACMA is satisfied that the complaint is:
 - (i) frivolous; or
 - (ii) vexatious; or
 - (iii) not made in good faith; or
 - (b) the ACMA has reason to believe that the complaint was made for the purpose, or for purposes that include the purpose, of frustrating or undermining the effective administration of this Schedule.
 - (4) The ACMA need not investigate, or continue to investigate, a complaint about a matter if:
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- (a) a complaint about the matter has been, or could have been, made under:
 - (i) an industry code registered under Part 4; or
 - (ii) an industry standard determined under Part 4; or
 - (iii) a designated content/hosting service provider determination; and
 - (b) clause 42 does not apply to the first-mentioned complaint.
- (5) The ACMA must notify the complainant of the results of an investigation under this clause.
- (6) The ACMA may terminate an investigation under this clause if it is of the opinion that it does not have sufficient information to conclude the investigation.

44 ACMA may investigate matters on its own initiative

The ACMA may investigate any of the following matters if the ACMA thinks that it is desirable to do so:

- (a) whether end-users in Australia can access prohibited content or potential prohibited content provided by a content service;
- (b) whether a hosting service is hosting prohibited content or potential prohibited content;
- (c) whether end-users in Australia can access prohibited content or potential prohibited content using a link provided by a links service;
- (d) whether a person has breached a designated content/hosting service provider rule that applies to the person;
- (e) whether a person has committed an offence against this Schedule;
- (f) whether a person has breached a civil penalty provision of this Schedule;
- (g) whether a participant in the content industry (within the meaning of Part 4 of this Schedule) has breached a code registered under that Part that is applicable to the participant.

45 Conduct of investigations

- (1) An investigation under this Division is to be conducted as the ACMA thinks fit.

- (2) The ACMA may, for the purposes of an investigation, obtain information from such persons, and make such inquiries, as it thinks fit.
- (3) This clause has effect subject to Part 13 of this Act (which confers certain investigative powers on the ACMA).

46 Protection from civil proceedings

Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of any of the following acts done in good faith:

- (a) the making of a complaint under Division 1;
- (b) the making of a statement to, or the giving of a document or information to, the ACMA in connection with an investigation under this Division.

Division 3—Action to be taken in relation to hosting services

47 Action to be taken in relation to hosting services

Prohibited content

- (1) If, in the course of an investigation under Division 2, the ACMA is satisfied that:
 - (a) content hosted by a hosting service provider is prohibited content; and
 - (b) the relevant hosting service has an Australian connection;the ACMA must:
 - (c) if:
 - (i) the content does not consist of an eligible electronic publication; and
 - (ii) the content has been classified RC or X 18+ by the Classification Board;give the hosting service provider a written notice (a ***final take-down notice***) directing the hosting service provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the content; or
 - (d) if:

- (i) the content does not consist of an eligible electronic publication; and
 - (ii) the content has been classified R 18+ or MA 15+ by the Classification Board;
- give the hosting service provider a written notice (a ***final take-down notice***) directing the hosting service provider to take such steps as are necessary to ensure that a type B remedial situation exists in relation to the content; or
- (e) if:
- (i) the content consists of an eligible electronic publication; and
 - (ii) the content has been classified RC, category 2 restricted or category 1 restricted by the Classification Board;
- give the hosting service provider a written notice (a ***final take-down notice***) directing the hosting service provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the content.

Note 1: For ***type A remedial situation***, see subclause (6).

Note 2: For ***type B remedial situation***, see subclause (7).

Potential prohibited content

- (2) If:
- (a) in the course of an investigation under Division 2, the ACMA is satisfied that:
 - (i) content hosted by a hosting service provider is potential prohibited content; and
 - (ii) the relevant hosting service has an Australian connection; and
 - (b) the ACMA is satisfied that, if the content were to be classified by the Classification Board, there is a substantial likelihood that:
 - (i) if the content does not consist of an eligible electronic publication—the content would be classified RC or X 18+; or
 - (ii) if the content consists of an eligible electronic publication—the content would be classified RC or category 2 restricted;

the ACMA must:

- (c) give the hosting service provider a written notice (an *interim take-down notice*) directing the provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the content until the ACMA notifies the hosting service provider under subclause (4) of the Classification Board's classification of the content; and
- (d) apply to the Classification Board under clause 22 for classification of the content.

Note: For *type A remedial situation*, see subclause (6).

(3) If:

- (a) in the course of an investigation under Division 2, the ACMA is satisfied that:
 - (i) content hosted by a hosting service provider is potential prohibited content; and
 - (ii) the relevant hosting service has an Australian connection; and
- (b) the content does not consist of an eligible electronic publication; and
- (c) the ACMA is satisfied that, if the content were to be classified by the Classification Board, there is a substantial likelihood that the content would be classified R 18+ or MA 15+;

the ACMA must:

- (d) give the hosting service provider a written notice (an *interim take-down notice*) directing the provider to take such steps as are necessary to ensure that a type B remedial situation exists in relation to the content until the ACMA notifies the hosting service provider under subclause (4) of the Classification Board's classification of the content; and
- (e) apply to the Classification Board under clause 22 for classification of the content.

Note: For *type B remedial situation*, see subclause (7).

- (4) If, in response to an application made as required by subclause (2) or (3), the ACMA is informed under paragraph 23(b) of the classification of particular content, the ACMA must:
 - (a) give the relevant hosting service provider a written notice setting out the classification; and
 - (b) in a case where:

- (i) the content does not consist of an eligible electronic publication; and
 - (ii) the effect of the classification is that the content is prohibited content because it has been classified RC or X 18+ by the Classification Board;
give the hosting service provider a written notice (a *final take-down notice*) directing the provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the content; and
- (c) in a case where:
- (i) the content does not consist of an eligible electronic publication; and
 - (ii) the effect of the classification is that the content is prohibited content because it has been classified R 18+ or MA 15+ by the Classification Board;
give the hosting service provider a written notice (a *final take-down notice*) directing the provider to take such steps as are necessary to ensure that a type B remedial situation exists in relation to the content; and
- (d) in a case where:
- (i) the content consists of an eligible electronic publication; and
 - (ii) the effect of the classification is that the content is prohibited content because it has been classified RC, category 2 restricted or category 1 restricted by the Classification Board;
give the hosting service provider a written notice (a *final take-down notice*) directing the provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the content.

Note 1: For *type A remedial situation*, see subclause (6).

Note 2: For *type B remedial situation*, see subclause (7).

- (5) If the ACMA makes a decision under subclause (2) or (3) to apply to the Classification Board for classification of content, the ACMA must give the relevant hosting service provider a written notice setting out the decision.

Type A remedial situation

- (6) For the purposes of the application of this clause to a hosting service provider, a ***type A remedial situation*** exists in relation to content at a particular time if:
- (a) the provider does not host the content; or
 - (b) the content is not provided by a content service provided to the public (whether on payment of a fee or otherwise).

Type B remedial situation

- (7) For the purposes of the application of this clause to a hosting service provider, a ***type B remedial situation*** exists in relation to content at a particular time if:
- (a) the provider does not host the content; or
 - (b) the content is not provided by a content service provided to the public (whether on payment of a fee or otherwise); or
 - (c) access to the content is subject to a restricted access system.

48 Revocation of interim take-down notices—voluntary withdrawal of content

- (1) If:
- (a) an interim take-down notice relating to particular content is applicable to a particular hosting service provider; and
 - (b) before the Classification Board classifies the content, the provider:
 - (i) ceases to host the content; and
 - (ii) gives the ACMA a written undertaking not to host the content;
- the ACMA may:
- (c) accept the undertaking; and
 - (d) revoke the interim take-down notice; and
 - (e) by written notice given to the Classification Board, determine that the Classification Board is not required to comply with clause 23 in relation to the classification of the content.
- (2) If an interim take-down notice is revoked under this clause, the ACMA must give the hosting service provider concerned a written notice stating that the interim take-down notice has been revoked.

49 Revocation of final take-down notices—reclassification of content

- (1) If:
- (a) content has been classified by the Classification Board (otherwise than because of subclause 24(1) or (2)); and
 - (b) a final take-down notice relating to the content is applicable to a particular hosting service provider; and
 - (c) the Classification Board reclassifies the content; and
 - (d) as a result of the reclassification, the content ceases to be prohibited content;
- the ACMA must revoke the final take-down notice.
- (2) If a final take-down notice is revoked under this clause, the ACMA must give the hosting service provider concerned a written notice stating that the final take-down notice has been revoked.

50 Revocation of final take-down notices—reclassification of content that consists of a film or a computer game

- (1) If:
- (a) content consists of:
 - (i) the entire unmodified contents of a film; or
 - (ii) a computer game; and
 - (b) the Classification Board reclassifies the film or computer game under the *Classification (Publications, Films and Computer Games) Act 1995*; and
 - (c) a final take-down notice relating to the content is applicable to a particular hosting service provider; and
 - (d) as a result of the reclassification, the content ceases to be prohibited content;
- the ACMA must revoke the final take-down notice.
- (2) If a final take-down notice is revoked under this clause, the ACMA must give the hosting service provider concerned a written notice stating that the final take-down notice has been revoked.

51 Revocation of final take-down notices—reclassification of a corresponding print publication

- (1) If:
- (a) content consists of an eligible electronic publication; and
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- (b) the Classification Board reclassifies the corresponding print publication under the *Classification (Publications, Films and Computer Games) Act 1995*; and
 - (c) a final take-down notice relating to the content is applicable to a particular hosting service provider; and
 - (d) as a result of the reclassification, the content ceases to be prohibited content;
- the ACMA must revoke the final take-down notice.
- (2) If a final take-down notice is revoked under this clause, the ACMA must give the hosting service provider concerned a written notice stating that the final take-down notice has been revoked.

52 Anti-avoidance—special take-down notices

- (1) If:
- (a) an interim take-down notice or a final take-down notice relating to particular content is applicable to a particular hosting service provider; and
 - (b) the ACMA is satisfied that the hosting service provider is hosting, or is proposing to host, content (the *similar content*) that is the same as, or substantially similar to, the content identified in the interim take-down notice or the final take-down notice, as the case may be; and
 - (c) the ACMA is satisfied that the similar content is prohibited content or potential prohibited content;
- the ACMA may:
- (d) if the interim take-down notice or final take-down notice, as the case may be, was given under paragraph 47(1)(c), (1)(e), (2)(c), (4)(b) or (4)(d) of this Schedule—give the hosting service provider a written notice (a *special take-down notice*) directing the provider to take all reasonable steps to ensure that a type A remedial situation exists in relation to the similar content at any time when the interim take-down notice or final take-down notice, as the case may be, is in force; or
 - (e) in any other case—give the hosting service provider a written notice (a *special take-down notice*) directing the provider to take all reasonable steps to ensure that a type B remedial situation exists in relation to the similar content at any time

when the interim take-down notice or final take-down notice, as the case may be, is in force.

Note 1: For *type A remedial situation*, see subclause (2).

Note 2: For *type B remedial situation*, see subclause (3).

Type A remedial situation

- (2) For the purposes of the application of this clause to a hosting service provider, a *type A remedial situation* exists in relation to the similar content at a particular time if:
- (a) the provider does not host the similar content; or
 - (b) the similar content is not provided by a content service provided to the public (whether on payment of a fee or otherwise).

Type B remedial situation

- (3) For the purposes of the application of this clause to a hosting service provider, a *type B remedial situation* exists in relation to content at a particular time if:
- (a) the provider does not host the similar content; or
 - (b) the similar content is not provided by a content service provided to the public (whether on payment of a fee or otherwise); or
 - (c) access to the similar content is subject to a restricted access system.

53 Compliance with rules relating to prohibited content etc.

Interim take-down notice

- (1) A hosting service provider must comply with an interim take-down notice that applies to the provider as soon as practicable, and in any event by 6 pm on the next business day, after the notice was given to the provider.

Final take-down notice

- (2) A hosting service provider must comply with a final take-down notice that applies to the provider as soon as practicable, and in any event by 6 pm on the next business day, after the notice was given to the provider.

Special take-down notice

- (3) A hosting service provider must comply with a special take-down notice that applies to the provider as soon as practicable, and in any event by 6 pm on the next business day, after the notice was given to the provider.
- (4) In proceedings relating to a contravention of subclause (3), it is a defence if the hosting service provider proves:
- (a) that the provider did not know; and
 - (b) that the provider could not, with reasonable diligence, have ascertained;
- that the relevant content was prohibited content or potential prohibited content.

Note: In criminal proceedings, a defendant bears a legal burden in relation to the matters in subclause (4)—see section 13.4 of the *Criminal Code*.

Undertaking

- (5) A hosting service provider must comply with an undertaking given by the provider and accepted under clause 48.

Designated content/hosting service provider rule

- (6) Subclauses (1), (2), (3) and (5) are designated content/hosting service provider rules.

54 Identification of content

Content may be identified in a notice under this Division:

- (a) by setting out the content; or
- (b) by describing the content; or
- (c) in any other way.

55 Application of notices under this Division

If a notice under this Division relates to particular Internet content, the notice applies to the content only to the extent to which the content is accessed, or available for access, from an Internet site, or a distinct part of an Internet site, specified in the notice.

Note: For specification by class, see subsection 46(3) of the *Acts Interpretation Act 1901*.

Division 4—Action to be taken in relation to live content services

56 Action to be taken in relation to live content services

Prohibited content

- (1) If, in the course of an investigation under Division 2, the ACMA is satisfied that:
- (a) live content provided by a live content service is prohibited content; and
 - (b) the live content service has an Australian connection;
- the ACMA must:
- (c) if the content has been classified RC or X 18+ by the Classification Board—give the live content service provider a written notice (a *final service-cessation notice*) directing the live content service provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the live content service; or
 - (d) if the content has been classified R 18+ or MA 15+ by the Classification Board—give the live content service provider a written notice (a *final service-cessation notice*) directing the live content service provider to take such steps as are necessary to ensure that a type B remedial situation exists in relation to the live content service.

Note 1: For *type A remedial situation*, see subclause (6).

Note 2: For *type B remedial situation*, see subclause (7).

Potential prohibited content

- (2) If:
- (a) in the course of an investigation under Division 2, the ACMA is satisfied that:
 - (i) live content provided by a live content service is potential prohibited content; and
 - (ii) the live content service has an Australian connection; and
 - (b) the ACMA is satisfied that, if the content were to be classified by the Classification Board, there is a substantial

likelihood that the content would be classified RC or X 18+;
and

- (c) the ACMA has:
 - (i) a recording of the content; or
 - (ii) a copy of such a recording;

the ACMA must:

- (d) give the live content service provider a written notice (an *interim service-cessation notice*) directing the provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the live content service until the ACMA notifies the live content provider under subclause (4) of the Classification Board's classification of the content; and
- (e) apply to the Classification Board under clause 22 for classification of the content.

Note: For *type A remedial situation*, see subclause (6).

(3) If:

- (a) in the course of an investigation under Division 2, the ACMA is satisfied that:
 - (i) live content provided by a live content service is potential prohibited content; and
 - (ii) the live content service has an Australian connection; and
- (b) the ACMA is satisfied that, if the content were to be classified by the Classification Board, there is a substantial likelihood that the content would be classified R 18+ or MA 15+; and
- (c) the ACMA has:
 - (i) a recording of the content; or
 - (ii) a copy of such a recording;

the ACMA must:

- (d) give the live content service provider a written notice (an *interim service-cessation notice*) directing the provider to take such steps as are necessary to ensure that a type B remedial situation exists in relation to the live content service until the ACMA notifies the live content provider under subclause (4) of the Classification Board's classification of the content; and

(e) apply to the Classification Board under clause 22 for classification of the content.

Note: For *type B remedial situation*, see subclause (7).

- (4) If, in response to an application made as required by subclause (2) or (3), the ACMA is informed under paragraph 23(b) of the classification of particular content, the ACMA must:
- (a) give the relevant live content service provider a written notice setting out the classification; and
 - (b) in a case where the effect of the classification is that the content is prohibited content because it has been classified RC or X 18+ by the Classification Board—give the live content service provider a written notice (a *final service-cessation notice*) directing the provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the live content service; and
 - (c) in a case where the effect of the classification is that the content is prohibited content because it has been classified R 18+ or MA 15+ by the Classification Board—give the live content service provider a written notice (a *final service-cessation notice*) directing the provider to take such steps as are necessary to ensure that a type B remedial situation exists in relation to the live content service.

Note 1: For *type A remedial situation*, see subclause (6).

Note 2: For *type B remedial situation*, see subclause (7).

- (5) If the ACMA makes a decision under subclause (2) or (3) to apply to the Classification Board under clause 22 for classification of content, the ACMA must give the relevant live content service provider a written notice setting out the decision.

Type A remedial situation

- (6) For the purposes of the application of this clause to a live content service provider, a *type A remedial situation* exists in relation to a live content service if the provider does not provide the live content service.

Type B remedial situation

- (7) For the purposes of the application of this clause to a live content service provider, a ***type B remedial situation*** exists in relation to a live content service if:
- (a) the provider does not provide the live content service; or
 - (b) access to any R 18+ or MA 15+ content provided by the live content service is subject to a restricted access system.

57 Undertaking—alternative to service-cessation notice

- (1) If:
- (a) in the course of an investigation under Division 2, the ACMA is satisfied that:
 - (i) live content provided by a live content service is prohibited content or potential prohibited content; and
 - (ii) the live content service has an Australian connection; and
 - (b) apart from this subclause, the ACMA would be required to take action under subclause 56(1), (2) or (3) in relation to the content; and
 - (c) the live content service provider concerned gives the ACMA a written undertaking relating to the live content service;
- then:
- (d) the ACMA may accept the undertaking; and
 - (e) if the ACMA accepts the undertaking—the ACMA is not required to take action under subclause 56(1), (2) or (3) in relation to the content.
- (2) Subclause (1) has effect despite anything in clause 56.

58 Revocation of service-cessation notices—undertaking

- (1) If:
- (a) a final service-cessation notice or interim service-cessation notice is applicable to a particular live content service provider; and
 - (b) the provider gives the ACMA a written undertaking relating to the live content service concerned;
- the ACMA may:
-

- (c) accept the undertaking; and
 - (d) revoke the final service-cessation notice or interim service-cessation notice; and
 - (e) in the case of an interim service-cessation notice—by written notice given to the Classification Board, determine that the Classification Board is not required to comply with clause 23 in relation to the classification of the content concerned.
- (2) If a final service-cessation notice or interim service-cessation notice is revoked under this clause, the ACMA must give the live content service provider concerned a written notice stating that the notice has been revoked.

59 Revocation of final service-cessation notices—reclassification of content

- (1) If:
- (a) content has been classified by the Classification Board (otherwise than because of subclause 24(1) or (2)); and
 - (b) a final service-cessation notice is applicable to a particular live content service provider; and
 - (c) the final service-cessation notice was given because the content was prohibited content; and
 - (d) the Classification Board reclassifies the content; and
 - (e) as a result of the reclassification, the content ceases to be prohibited content;
- the ACMA must revoke the final service-cessation notice.
- (2) If a final service-cessation notice is revoked under this clause, the ACMA must give the live content service provider concerned a written notice stating that the final service-cessation notice has been revoked.

59A Anti-avoidance—special service-cessation notices

- (1) If:
- (a) an interim service-cessation notice or a final service-cessation notice relating to a particular live content service is applicable to a particular live content service provider; and
 - (b) the ACMA is satisfied that the live content service provider:
-

- (i) is providing; or
- (ii) is proposing to provide;
another live content service that is substantially similar to the first-mentioned live content service; and
- (c) the ACMA is satisfied that the other live content service:
 - (i) has provided; or
 - (ii) is providing; or
 - (iii) is likely to provide;
prohibited content or potential prohibited content;the ACMA may:
 - (d) if the interim service-cessation notice or final service-cessation notice, as the case may be, was given under paragraph 56(1)(c), (2)(d) or (4)(b) of this Schedule—give the live content service provider a written notice (a *special service-cessation notice*) directing the provider to take all reasonable steps to ensure that a type A remedial situation exists in relation to the other live content service at any time when the interim service-cessation notice or final service-cessation notice, as the case may be, is in force; or
 - (e) in any other case—give the live content service provider a written notice (a *special service-cessation notice*) directing the provider to take all reasonable steps to ensure that a type B remedial situation exists in relation to the other live content service at any time when the interim service-cessation notice or final service-cessation notice, as the case may be, is in force.

Note 1: For *type A remedial situation*, see subclause (2).

Note 2: For *type B remedial situation*, see subclause (3).

Type A remedial situation

- (2) For the purposes of the application of this clause to a live content service provider, a *type A remedial situation* exists in relation to a live content service if the provider does not provide the live content service.

Type B remedial situation

- (3) For the purposes of the application of this clause to a live content service provider, a ***type B remedial situation*** exists in relation to a live content service if:
- (a) the provider does not provide the live content service; or
 - (b) access to any R 18+ or MA 15+ content provided by the live content service is subject to a restricted access system.

60 Compliance with rules relating to prohibited content etc.

Interim service-cessation notice

- (1) A live content service provider must comply with an interim service-cessation notice that applies to the provider as soon as practicable, and in any event by 6 pm on the next business day, after the notice was given to the provider.

Final service-cessation notice

- (2) A live content service provider must comply with a final service-cessation notice that applies to the provider as soon as practicable, and in any event by 6 pm on the next business day, after the notice was given to the provider.

Special service-cessation notice

- (2A) A live content service provider must comply with a special service-cessation notice that applies to the provider as soon as practicable, and in any event by 6 pm on the next business day, after the notice was given to the provider.

Undertaking

- (3) A live content service provider must comply with an undertaking given by the provider and accepted under clause 57 or 58.

Designated content/hosting service provider rule

- (4) Subclauses (1), (2), (2A) and (3) are designated content/hosting service provider rules.

61 Identification of content

Content may be identified in a notice under this Division:

- (a) by setting out the content; or
- (b) by describing the content; or
- (c) in any other way.

Division 5—Action to be taken in relation to links services

62 Action to be taken in relation to links services

Prohibited content

(1) If, in the course of an investigation under Division 2, the ACMA is satisfied that:

- (a) end-users in Australia can access content using a link provided by a links service; and
- (b) the content is prohibited content; and
- (c) the links service has an Australian connection;

the ACMA must:

- (d) if:
 - (i) the content does not consist of an eligible electronic publication; and
 - (ii) the content has been classified RC or X 18+ by the Classification Board;

give the links service provider a written notice (a *final link-deletion notice*) directing the links service provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the content; or

- (e) if:
 - (i) the content does not consist of an eligible electronic publication; and
 - (ii) the content has been classified R 18+ or MA 15+ by the Classification Board;

give the links service provider a written notice (a *final link-deletion notice*) directing the links service provider to take such steps as are necessary to ensure that a type B remedial situation exists in relation to the content; or

- (f) if:

- (i) the content consists of an eligible electronic publication;
and
 - (ii) the content has been classified RC, category 2 restricted
or category 1 restricted by the Classification Board;
- give the links service provider a written notice (a ***final link-deletion notice***) directing the links service provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the content.

Note 1: For ***type A remedial situation***, see subclause (6).

Note 2: For ***type B remedial situation***, see subclause (7).

Potential prohibited content

- (2) If:
- (a) in the course of an investigation under Division 2, the ACMA is satisfied that:
 - (i) end-users in Australia can access content using a link provided by a links service; and
 - (ii) the content is potential prohibited content; and
 - (iii) the links service has an Australian connection; and
 - (b) the ACMA is satisfied that, if the content were to be classified by the Classification Board, there is a substantial likelihood that:
 - (i) if the content does not consist of an eligible electronic publication—the content would be classified RC or X 18+; or
 - (ii) if the content consists of an eligible electronic publication—the content would be classified RC or category 2 restricted;
- the ACMA must:
- (c) give the links service provider a written notice (an ***interim link-deletion notice***) directing the provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the content until the ACMA notifies the links service provider under subclause (4) of the Classification Board’s classification of the content; and
 - (d) apply to the Classification Board under clause 22 for classification of the content.

Note: For ***type A remedial situation***, see subclause (6).

(3) If:

- (a) in the course of an investigation under Division 2, the ACMA is satisfied that:
 - (i) end-users in Australia can access content using a link provided by a links service; and
 - (ii) the content is potential prohibited content; and
 - (iii) the links service has an Australian connection; and
- (b) the content does not consist of an eligible electronic publication; and
- (c) the ACMA is satisfied that, if the content were to be classified by the Classification Board, there is a substantial likelihood that the content would be classified R 18+ or MA 15+;

the ACMA must:

- (d) give the links service provider a written notice (an *interim link-deletion notice*) directing the provider to take such steps as are necessary to ensure that a type B remedial situation exists in relation to the content until the ACMA notifies the links service provider under subclause (4) of the Classification Board's classification of the content; and
- (e) apply to the Classification Board under clause 22 for classification of the content.

Note: For *type B remedial situation*, see subclause (7).

(4) If, in response to an application made as required by subclause (2) or (3), the ACMA is informed under paragraph 23(b) of the classification of particular content, the ACMA must:

- (a) give the relevant links service provider a written notice setting out the classification; and
- (b) in a case where:
 - (i) the content does not consist of an eligible electronic publication; and
 - (ii) the effect of the classification is that the content is prohibited content because it has been classified RC or X 18+ by the Classification Board;

give the links service provider a written notice (a *final link-deletion notice*) directing the provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the content; and

- (c) in a case where:
-

- (i) the content does not consist of an eligible electronic publication; and
 - (ii) the effect of the classification is that the content is prohibited content because it has been classified R 18+ or MA 15+ by the Classification Board;
- give the links service provider a written notice (a ***final link-deletion notice***) directing the provider to take such steps as are necessary to ensure that a type B remedial situation exists in relation to the content; and
- (d) in a case where:
 - (i) the content consists of an eligible electronic publication; and
 - (ii) the effect of the classification is that the content is prohibited content because it has been classified RC, category 2 restricted or category 1 restricted by the Classification Board;
- give the links service provider a written notice (a ***final link-deletion notice***) directing the provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the content.

Note 1: For ***type A remedial situation***, see subclause (6).

Note 2: For ***type B remedial situation***, see subclause (7).

- (5) If the ACMA makes a decision under subclause (2) or (3) to apply to the Classification Board under clause 22 for classification of content, the ACMA must give the relevant links service provider a written notice setting out the decision.

Type A remedial situation

- (6) For the purposes of the application of this clause to a links service provider, a ***type A remedial situation*** exists in relation to particular content if:
 - (a) the provider ceases to provide a link to the content using the links service concerned; or
 - (b) the content is not provided by a content service provided to the public (whether on payment of a fee or otherwise).

Type B remedial situation

- (7) For the purposes of the application of this clause to a links service provider, a ***type B remedial situation*** exists in relation to particular content if:
- (a) the provider ceases to provide a link to the content using the links service concerned; or
 - (b) the content is not provided by a content service provided to the public (whether on payment of a fee or otherwise); or
 - (c) access to the content is subject to a restricted access system.

63 Revocation of interim link-deletion notices—voluntary deletion of link

- (1) If:
- (a) an interim link-deletion notice relating to a link to particular content is applicable to a particular links service provider; and
 - (b) before the Classification Board classifies the content, the provider:
 - (i) ceases to provide a link to the content; and
 - (ii) gives the ACMA a written undertaking not to provide a link to the content;
- the ACMA may:
- (c) accept the undertaking; and
 - (d) revoke the interim link-deletion notice; and
 - (e) by written notice given to the Classification Board, determine that the Classification Board is not required to comply with clause 23 in relation to the classification of the content.
- (2) If an interim link-deletion notice is revoked under this clause, the ACMA must give the links service provider concerned a written notice stating that the interim link-deletion notice has been revoked.

64 Revocation of final link-deletion notices—reclassification of content

- (1) If:
- (a) content has been classified by the Classification Board (otherwise than because of subclause 24(1) or (2)); and
-

- (b) a final link-deletion notice relating to a link to the content is applicable to a particular links service provider; and
 - (c) the Classification Board reclassifies the content; and
 - (d) as a result of the reclassification, the content ceases to be prohibited content;
- the ACMA must revoke the final link-deletion notice.
- (2) If a final link-deletion notice is revoked under this clause, the ACMA must give the links service provider concerned a written notice stating that the final link-deletion notice has been revoked.

65 Revocation of final link-deletion notices—reclassification of content that consists of a film or a computer game

- (1) If:
- (a) content consists of:
 - (i) the entire unmodified contents of a film; or
 - (ii) a computer game; and
 - (b) the Classification Board reclassifies the film or computer game under the *Classification (Publications, Films and Computer Games) Act 1995*; and
 - (c) a final link-deletion notice relating to a link to the content is applicable to a particular links service provider; and
 - (d) as a result of the reclassification, the content ceases to be prohibited content;
- the ACMA must revoke the final link-deletion notice.
- (2) If a final link-deletion notice is revoked under this clause, the ACMA must give the links service provider concerned a written notice stating that the final link-deletion notice has been revoked.

66 Revocation of final link-deletion notices—reclassification of a corresponding print publication

- (1) If:
- (a) content consists of an eligible electronic publication; and
 - (b) the Classification Board reclassifies the corresponding print publication under the *Classification (Publications, Films and Computer Games) Act 1995*; and

- (c) a final link-deletion notice relating to a link to the content is applicable to a particular links service provider; and
 - (d) as a result of the reclassification, the content ceases to be prohibited content;
- the ACMA must revoke the final link-deletion notice.
- (2) If a final link-deletion notice is revoked under this clause, the ACMA must give the links service provider concerned a written notice stating that the final link-deletion notice has been revoked.

67 Anti-avoidance—special link-deletion notices

- (1) If:
 - (a) an interim link-deletion notice or a final link-deletion notice relating to particular content is applicable to a particular links service provider; and
 - (b) the ACMA is satisfied that the links service provider is providing, or is proposing to provide, a link to content (the *similar content*) that is the same as, or substantially similar to, the content identified in the interim link-deletion notice or the final link-deletion notice, as the case may be; and
 - (c) the ACMA is satisfied that the similar content is prohibited content or potential prohibited content;the ACMA may:
 - (d) if the interim link-deletion notice or the final link-deletion notice, as the case may be, was given under paragraph 62(1)(d), (1)(f), (2)(c), (4)(b) or (4)(d)—give the links service provider a written notice (a *special link-deletion notice*) directing the provider to take all reasonable steps to ensure that a type A remedial situation exists in relation to the similar content at any time when the interim link-deletion notice or the final link-deletion notice, as the case may be, is in force; or
 - (e) in any other case—give the links service provider a written notice (a *special link-deletion notice*) directing the provider to take all reasonable steps to ensure that a type B remedial situation exists in relation to the similar content at any time when the interim link-deletion notice or the final link-deletion notice, as the case may be, is in force.

Note 1: For *type A remedial situation*, see subclause (2).

Note 2: For *type B remedial situation*, see subclause (3).

Type A remedial situation

- (2) For the purposes of the application of this clause to a links service provider, a *type A remedial situation* exists in relation to the similar content if:
- (a) the provider ceases to provide a link to the similar content using the links service concerned; or
 - (b) the similar content is not provided by a content service provided to the public (whether on payment of a fee or otherwise).

Type B remedial situation

- (3) For the purposes of the application of this clause to a links service provider, a *type B remedial situation* exists in relation to the similar content if:
- (a) the provider ceases to provide a link to the similar content using the links service concerned; or
 - (b) the similar content is not provided by a content service provided to the public (whether on payment of a fee or otherwise); or
 - (c) access to the similar content is subject to a restricted access system.

68 Compliance with rules relating to prohibited content etc.

Interim link-deletion notice

- (1) A links service provider must comply with an interim link-deletion notice that applies to the provider as soon as practicable, and in any event by 6 pm on the next business day, after the notice was given to the provider.

Final link-deletion notice

- (2) A links service provider must comply with a final link-deletion notice that applies to the provider as soon as practicable, and in any event by 6 pm on the next business day, after the notice was given to the provider.

Special link-deletion notice

- (3) A links service provider must comply with a special link-deletion notice that applies to the provider as soon as practicable, and in any event by 6 pm on the next business day, after the notice was given to the provider.
- (4) In proceedings relating to a contravention of subclause (3), it is a defence if the links service provider proves:
- (a) that the provider did not know; and
 - (b) that the provider could not, with reasonable diligence, have ascertained;
- that the relevant content was prohibited content or potential prohibited content.

Note: In criminal proceedings, a defendant bears a legal burden in relation to the matters in subclause (4)—see section 13.4 of the *Criminal Code*.

Undertaking

- (5) A links service provider must comply with an undertaking given by the provider and accepted under clause 63.

Designated content/hosting service provider rule

- (6) Subclauses (1), (2), (3) and (5) are designated content/hosting service provider rules.

Division 6—Law enforcement agencies

69 Referral of matters to law enforcement agencies

- (1) If, in the course of an investigation under Division 2, the ACMA is satisfied that:
- (a) content is prohibited content or potential prohibited content; and
 - (b) the content is of a sufficiently serious nature to warrant referral to a law enforcement agency;
- the ACMA must notify the content to:
- (c) a member of an Australian police force; or
 - (d) if there is an arrangement between the ACMA and the chief (however described) of an Australian police force under

which the ACMA is authorised to notify the content to another person or body—that other person or body.

Referral to law enforcement agency

- (2) The manner in which content may be notified under paragraph (1)(c) to a member of an Australian police force includes (but is not limited to) a manner ascertained in accordance with an arrangement between the ACMA and the chief (however described) of the police force concerned.
- (3) If a member of an Australian police force is notified of particular content under this clause, the member may notify the content to a member of another law enforcement agency.
- (4) This clause does not limit the ACMA's powers to refer other matters to a member of an Australian police force.

Previous referral to law enforcement agency under Schedule 5

- (5) The ACMA is not required to notify particular content under subclause (1) if the ACMA has already notified the content under paragraph 40(1)(a) of Schedule 5.

70 Deferral of action in order to avoid prejudicing a criminal investigation—hosting services

- (1) If:
 - (a) in the course of an investigation under Division 2, the ACMA is satisfied that:
 - (i) content hosted by a hosting service provider is prohibited content or potential prohibited content; and
 - (ii) the relevant hosting service has an Australian connection; and
 - (b) apart from this subclause, the ACMA would be required to take action under subclause 47(1), (2) or (3) in relation to the content; and
 - (c) a member of an Australian police force satisfies the ACMA that the taking of that action should be deferred until the end of a particular period in order to avoid prejudicing a criminal investigation;

the ACMA may defer taking that action until the end of that period.

- (2) Subclause (1) has effect despite anything in clause 47.

71 Deferral of action in order to avoid prejudicing a criminal investigation—live content services

- (1) If:

- (a) in the course of an investigation under Division 2, the ACMA is satisfied that:
- (i) live content provided by a live content service is potential prohibited content; and
 - (ii) the live content service has an Australian connection; and
- (b) apart from this subclause, the ACMA would be required to take action under subclause 56(1), (2) or (3) in relation to the content; and
- (c) a member of an Australian police force satisfies the ACMA that the taking of that action should be deferred until the end of a particular period in order to avoid prejudicing a criminal investigation;

the ACMA may defer taking that action until the end of that period.

- (2) Subclause (1) has effect despite anything in clause 56.

72 Deferral of action in order to avoid prejudicing a criminal investigation—links services

- (1) If:

- (a) in the course of an investigation under Division 2, the ACMA is satisfied that:
- (i) end-users in Australia can access content using a link provided by a links service; and
 - (ii) the content is potential prohibited content; and
 - (iii) the links service has an Australian connection; and
- (b) apart from this subclause, the ACMA would be required to take action under subclause 62(1), (2) or (3) in relation to the link; and

(c) a member of an Australian police force satisfies the ACMA that the taking of that action should be deferred until the end of a particular period in order to avoid prejudicing a criminal investigation;

the ACMA may defer taking that action until the end of that period.

(2) Subclause (1) has effect despite anything in clause 62.

Part 4—Industry codes and industry standards

Division 1—Simplified outline

73 Simplified outline

The following is a simplified outline of this Part:

- Bodies and associations that represent sections of the content industry may develop industry codes.
- Industry codes may be registered by the ACMA.
- Compliance with an industry code is voluntary unless the ACMA directs a particular participant in the content industry to comply with the code.
- The ACMA has a reserve power to make an industry standard if there are no industry codes or if an industry code is deficient.
- Compliance with industry standards is mandatory.

Division 2—Interpretation

74 Industry codes

For the purposes of this Part, an *industry code* is a code developed under this Part (whether or not in response to a request under this Part).

75 Industry standards

For the purposes of this Part, an *industry standard* is a standard determined under this Part.

76 Content activity

For the purposes of this Part, a *content activity* is an activity that consists of:

- (a) providing a hosting service that has an Australian connection;
or
- (b) providing a live content service that has an Australian connection; or
- (c) providing a links service that has an Australian connection;
or
- (d) providing a commercial content service that has an Australian connection.

77 Sections of the content industry

- (1) For the purposes of this Part, *sections of the content industry* are to be ascertained in accordance with this clause.
- (2) For the purposes of this Part, each of the following groups is a *section of the content industry*:
 - (a) hosting service providers, where the relevant hosting services have an Australian connection;
 - (b) live content service providers, where the relevant live content services have an Australian connection;
 - (c) links service providers, where the relevant links services have an Australian connection;
 - (d) commercial content service providers, where the relevant commercial content services have an Australian connection.

78 Participants in a section of the content industry

For the purposes of this Part, if a person is a member of a group that constitutes a section of the content industry, the person is a *participant* in that section of the content industry.

79 Designated body

The Minister may, by legislative instrument, declare that a specified body or association is the *designated body* for the purposes of this Part. The declaration has effect accordingly.

Division 3—General principles relating to industry codes and industry standards

80 Statement of regulatory policy

- (1) The Parliament intends that bodies or associations that the ACMA is satisfied represent sections of the content industry should develop codes (*industry codes*) that are to apply to participants in the respective sections of the industry in relation to their content activities.
- (2) The Parliament intends that the ACMA should make reasonable efforts to ensure that, for each section of the content industry, either:
 - (a) an industry code is registered under this Part within 6 months after the commencement of this Schedule; or
 - (b) an industry standard is registered under this Part within 9 months after the commencement of this Schedule.

81 Matters that must be dealt with by industry codes and industry standards—commercial content providers

- (1) The Parliament intends that, for the commercial content service provider section of the content industry, there should be:
 - (a) an industry code or an industry standard that deals with; or
 - (b) an industry code and an industry standard that together deal with;each of the following matters:
 - (c) the engagement of trained content assessors by commercial content service providers;
 - (d) ensuring that content (other than live content or content that consists of an eligible electronic publication) that:
 - (i) has not been classified by the Classification Board; and

- (ii) would, if it were classified by the Classification Board, be substantially likely to be classified RC, X 18+, R 18+ or MA 15+ by the Classification Board;
- is not provided by commercial content services (other than news services or current affairs services) unless a trained content assessor has assessed the content for the purposes of categorising the content as:
- (iii) content that would, if it were classified by the Classification Board, be substantially likely to be classified RC by the Classification Board; or
 - (iv) content that would, if it were classified by the Classification Board, be substantially likely to be classified X 18+ by the Classification Board; or
 - (v) content that would, if it were classified by the Classification Board, be substantially likely to be classified R 18+ by the Classification Board; or
 - (vi) content that would, if it were classified by the Classification Board, be substantially likely to be classified MA 15+ by the Classification Board;
- (e) ensuring that live content is not provided by commercial content services (other than news services or current affairs services) unless:
- (i) there is no reasonable likelihood that the live content will be of a kind that would, if it were classified by the Classification Board, be substantially likely to be classified RC, X 18+, R 18+ or MA 15+ by the Classification Board; or
 - (ii) a trained content assessor has given advice to the relevant commercial content service provider about whether the live content is likely to be of a kind that would, if it were classified by the Classification Board, be substantially likely to be classified RC, X 18+, R 18+ or MA 15+ by the Classification Board;
- (f) ensuring that content that consists of an eligible electronic publication that:
- (i) has not been classified by the Classification Board; and
 - (ii) would, if it were classified by the Classification Board, be substantially likely to be classified RC or category 2 restricted by the Classification Board;

is not provided by commercial content services (other than news services or current affairs services) unless a trained content assessor has assessed the content for the purposes of categorising the content as:

- (iii) content that would, if it were classified by the Classification Board, be substantially likely to be classified RC by the Classification Board; or
- (iv) content that would, if it were classified by the Classification Board, be substantially likely to be classified category 2 restricted by the Classification Board.

Note: The classification of an eligible electronic publication is the same as the classification of the corresponding print publication—see clause 24.

- (2) For the purposes of paragraphs (1)(d), (e) and (f), it is to be assumed that this Schedule authorised the Classification Board to classify the content concerned.

Codes and standards not limited

- (3) This clause does not limit the matters that may be dealt with by industry codes and industry standards.

82 Examples of matters that may be dealt with by industry codes and industry standards

- (1) This clause sets out examples of matters that may be dealt with by industry codes and industry standards.
- (2) The applicability of a particular example will depend on which section of the content industry is involved.
- (3) The examples are as follows:
 - (a) procedures to be followed in order to deal with complaints about matters, where the complainant could have made a complaint about the same matter under subclause 37(1), (2) or (3) or 38(1) or (2);
 - (b) telling persons about their rights to make complaints;
 - (c) procedures to be followed in order to assist persons to make complaints;

- (d) the referral to the ACMA of complaints about matters, where:
 - (i) the complainant could have made a complaint about the same matter under subclause 37(1), (2) or (3) or 38(1) or (2); and
 - (ii) the complainant is dissatisfied with the way in which the complaint was dealt with under the code or standard;
- (e) advice about the reasons for content having a particular classification;
- (f) procedures directed towards the achievement of the objective of ensuring that, in the event that a commercial content service provider becomes aware that:
 - (i) prohibited content; or
 - (ii) potential prohibited content;is or was delivered to, or made available for access by, an end-user of a commercial content service provided by another commercial content service provider, the other commercial content service provider is told about the prohibited content or the potential prohibited content, as the case may be;
- (g) promoting awareness of the safety issues associated with commercial content services or live content services;
- (h) procedures to be followed in order to deal with safety issues associated with commercial content services that are chat services;
- (i) procedures to be followed in order to assist parents and responsible adults to deal with safety issues associated with children's use of commercial content services that are chat services;
- (j) giving parents and responsible adults information about how to supervise and control children's access to content provided by commercial content services or live content services;
- (k) procedures to be followed in order to assist parents and responsible adults to supervise and control children's access to content provided by commercial content services or live content services;
- (l) procedures to be followed in order to inform producers of content provided by commercial content services or live content services about the legal responsibilities of

commercial content service providers in relation to that content;

- (m) the making and retention of records of content provided by a commercial content service or a live content service;
- (n) the making and retention of recordings of live content provided by a live content service;
- (o) procedures directed towards the achievement of the objective of ensuring that, in the event that new content services or live content services are developed that could put at risk the safety of children who are end-users of the services, the ACMA is informed about those services.

83 Escalation of complaints

- (1) This clause applies if an industry code or industry standard deals with the matter referred to in paragraph 82(3)(a).
- (2) The industry code or industry standard, as the case may be, must also deal with the matter referred to in paragraph 82(3)(d).

84 Collection of personal information

- (1) This clause applies to a provision of an industry code or industry standard if the provision deals with the making and retention of:
 - (a) records of content provided by a content service; or
 - (b) recordings of live content provided by a live content service.
- (2) The provision must not authorise the collection of personal information (within the meaning of the *Privacy Act 1988*) about an end-user of a content service.

Division 4—Industry codes

85 Registration of industry codes

- (1) This clause applies if:
 - (a) the ACMA is satisfied that a body or association represents a particular section of the content industry; and
 - (b) that body or association develops an industry code that applies to participants in that section of the industry and deals

with one or more matters relating to the content activities of those participants; and

- (c) the body or association gives a copy of the code to the ACMA; and
- (d) the ACMA is satisfied that:
 - (i) to the extent to which the code deals with one or more matters of substantial relevance to the community—the code provides appropriate community safeguards for that matter or those matters; and
 - (ii) to the extent to which the code deals with one or more matters that are not of substantial relevance to the community—the code deals with that matter or those matters in an appropriate manner; and
- (e) the ACMA is satisfied that, before giving the copy of the code to the ACMA:
 - (i) the body or association published a draft of the code and invited members of the public to make submissions to the body or association about the draft within a specified period; and
 - (ii) the body or association gave consideration to any submissions that were received from members of the public within that period; and
- (f) the ACMA is satisfied that, before giving the copy of the code to the ACMA:
 - (i) the body or association published a draft of the code and invited participants in that section of the industry to make submissions to the body or association about the draft within a specified period; and
 - (ii) the body or association gave consideration to any submissions that were received from participants in that section of the industry within that period; and
- (g) the ACMA is satisfied that the designated body has been consulted about the development of the code.

Note: *Designated body* is defined by clause 79.

- (2) The ACMA must register the code by including it in the Register of industry codes kept under clause 101.
- (3) A period specified under subparagraph (1)(e)(i) or (1)(f)(i) must run for at least 30 days.

- (4) If:
- (a) an industry code (the *new code*) is registered under this Part;
and
 - (b) the new code is expressed to replace another industry code;
the other code ceases to be registered under this Part when the new code is registered.

86 ACMA may request codes

- (1) If the ACMA is satisfied that a body or association represents a particular section of the content industry, the ACMA may, by written notice given to the body or association, request the body or association to:
 - (a) develop an industry code that applies to participants in that section of the industry and deals with one or more specified matters relating to the content activities of those participants;
and
 - (b) give the ACMA a copy of the code within the period specified in the notice.
- (2) The period specified in a notice under subclause (1) must run for at least 120 days.
- (3) The ACMA must not make a request under subclause (1) in relation to a particular section of the content industry unless the ACMA is satisfied that:
 - (a) the development of the code is necessary or convenient in order to:
 - (i) provide appropriate community safeguards; or
 - (ii) otherwise deal with the performance or conduct of participants in that section of the industry; and
 - (b) in the absence of the request, it is unlikely that an industry code would be developed within a reasonable period.
- (4) The ACMA may vary a notice under subclause (1) by extending the period specified in the notice.
- (5) Subclause (4) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901*.

- (6) A notice under subclause (1) may specify indicative targets for achieving progress in the development of the code (for example, a target of 60 days to develop a preliminary draft of the code).

87 Publication of notice where no body or association represents a section of the content industry

- (1) If the ACMA is satisfied that a particular section of the content industry is not represented by a body or association, the ACMA may publish a notice on the ACMA's Internet site:
- (a) stating that, if such a body or association were to come into existence within a specified period, the ACMA would be likely to give a notice to that body or association under subclause 86(1); and
 - (b) setting out the matter or matters relating to the content activities of those providers that would be likely to be specified in the subclause 86(1) notice.
- (2) The period specified in a notice under subclause (1) must run for at least 60 days.

88 Replacement of industry codes

- (1) Changes to an industry code are to be achieved by replacing the code instead of varying the code.
- (2) If the replacement code differs only in minor respects from the original code, clause 85 has effect, in relation to the registration of the code, as if paragraphs 85(1)(e) and (f) of this Schedule had not been enacted.

Note: Paragraphs 85(1)(e) and (f) deal with submissions about draft codes.

89 Compliance with industry codes

- (1) If:
- (a) a person is a participant in a particular section of the content industry; and
 - (b) the ACMA is satisfied that the person has contravened, or is contravening, an industry code that:
 - (i) is registered under this Part; and
 - (ii) applies to participants in that section of the industry;

the ACMA may, by written notice given to the person, direct the person to comply with the industry code.

- (2) A person must comply with a direction under subclause (1).
- (3) Subclause (2) is a designated content/hosting service provider rule.

Note: For enforcement, see Part 6 of this Schedule.

90 Formal warnings—breach of industry codes

- (1) This clause applies to a person who is a participant in a particular section of the content industry.
- (2) The ACMA may issue a formal warning if the person contravenes an industry code registered under this Part.

Division 5—Industry standards

91 ACMA may determine an industry standard if a request for an industry code is not complied with

- (1) This clause applies if:
 - (a) the ACMA has made a request under subclause 86(1) in relation to the development of a code that is to:
 - (i) apply to participants in a particular section of the content industry; and
 - (ii) deal with one or more matters relating to the content activities of those participants; and
 - (b) any of the following conditions is satisfied:
 - (i) the request is not complied with;
 - (ii) if indicative targets for achieving progress in the development of the code were specified in the notice of request—any of those indicative targets were not met;
 - (iii) the request is complied with, but the ACMA subsequently refuses to register the code; and
 - (c) the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard in order to:
 - (i) provide appropriate community safeguards in relation to that matter or those matters; or

- (ii) otherwise regulate adequately participants in that section of the industry in relation to that matter or those matters.
- (2) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subclause is to be known as an *industry standard*.
- (3) Before determining an industry standard under this clause, the ACMA must consult the body or association to whom the request mentioned in paragraph (1)(a) was made.
- (4) The Minister may, by legislative instrument, give the ACMA a written direction as to the exercise of its powers under this clause.

92 ACMA may determine industry standard where no industry body or association formed

- (1) This clause applies if:
 - (a) the ACMA is satisfied that a particular section of the content industry is not represented by a body or association; and
 - (b) the ACMA has published a notice under subclause 87(1); and
 - (c) that notice:
 - (i) states that, if such a body or association were to come into existence within a particular period, the ACMA would be likely to give a notice to that body or association under subclause 86(1); and
 - (ii) sets out one or more matters relating to the content activities of participants in that section of the industry; and
 - (d) no such body or association comes into existence within that period; and
 - (e) the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard in order to:
 - (i) provide appropriate community safeguards in relation to that matter or those matters; or
 - (ii) otherwise regulate adequately participants in that section of the industry in relation to that matter or those matters.

- (2) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subclause is to be known as an *industry standard*.
- (3) The Minister may, by legislative instrument, give the ACMA a written direction as to the exercise of its powers under this clause.

93 ACMA may determine industry standards—total failure of industry codes

- (1) This clause applies if:
 - (a) an industry code that:
 - (i) applies to participants in a particular section of the content industry; and
 - (ii) deals with one or more matters relating to the content activities of those participants;has been registered under this Part for at least 180 days; and
 - (b) the ACMA is satisfied that the code is totally deficient (as defined by subclause (6)); and
 - (c) the ACMA has given the body or association that developed the code a written notice requesting that deficiencies in the code be addressed within a specified period; and
 - (d) that period ends and the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard that applies to participants in that section of the industry and deals with that matter or those matters.
- (2) The period specified in a notice under paragraph (1)(c) must run for at least 30 days.
- (3) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subclause is to be known as an *industry standard*.
- (4) If the ACMA is satisfied that a body or association represents that section of the industry, the ACMA must consult the body or association before determining an industry standard under subclause (3).

- (5) The industry code ceases to be registered under this Part on the day on which the industry standard comes into force.
- (6) For the purposes of this clause, an industry code that applies to participants in a particular section of the content industry and deals with one or more matters relating to the content activities of those participants is *totally deficient* if, and only if:
 - (a) the code is not operating to provide appropriate community safeguards in relation to that matter or those matters; or
 - (b) the code is not otherwise operating to regulate adequately participants in that section of the industry in relation to that matter or those matters.
- (7) The Minister may, by legislative instrument, give the ACMA a written direction as to the exercise of its powers under this clause.

94 ACMA may determine industry standards—partial failure of industry codes

- (1) This clause applies if:
 - (a) an industry code that:
 - (i) applies to participants in a particular section of the content industry; and
 - (ii) deals with 2 or more matters relating to the content activities of those participants;has been registered under this Part for at least 180 days; and
 - (b) clause 93 does not apply to the code; and
 - (c) the ACMA is satisfied that the code is deficient (as defined by subclause (6)) to the extent to which the code deals with one or more of those matters (the *deficient matter* or *deficient matters*); and
 - (d) the ACMA has given the body or association that developed the code a written notice requesting that deficiencies in the code be addressed within a specified period; and
 - (e) that period ends and the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard that applies to participants in that section of the industry and deals with the deficient matter or deficient matters.

- (2) The period specified in a notice under paragraph (1)(d) must run for at least 30 days.
- (3) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with the deficient matter or deficient matters. A standard under this subclause is to be known as an *industry standard*.
- (4) If the ACMA is satisfied that a body or association represents that section of the industry, the ACMA must consult the body or association before determining an industry standard under subclause (3).
- (5) On and after the day on which the industry standard comes into force, the industry code has no effect to the extent to which it deals with the deficient matter or deficient matters. However, this subclause does not affect:
 - (a) the continuing registration of the remainder of the industry code; or
 - (b) any investigation, proceeding or remedy in respect of a contravention of the industry code or clause 89 that occurred before that day.
- (6) For the purposes of this clause, an industry code that applies to participants in a particular section of the content industry and deals with 2 or more matters relating to the content activities of those participants is *deficient* to the extent to which it deals with a particular one of those matters if, and only if:
 - (a) the code is not operating to provide appropriate community safeguards in relation to that matter; or
 - (b) the code is not otherwise operating to regulate adequately participants in that section of the industry in relation to that matter.
- (7) The Minister may, by legislative instrument, give the ACMA a written direction as to the exercise of its powers under this clause.

95 Compliance with industry standards

- (1) If:
 - (a) an industry standard that applies to participants in a particular section of the content industry is registered under this Part;and
-

(b) a person is a participant in that section of the content industry;

the person must comply with the industry standard.

Note: For enforcement, see Part 6 of this Schedule.

(2) Subclause (1) is a designated content/hosting service provider rule.

96 Formal warnings—breach of industry standards

(1) This clause applies to a person who is a participant in a particular section of the content industry.

(2) The ACMA may issue a formal warning if the person contravenes an industry standard registered under this Part.

97 Variation of industry standards

The ACMA may, by legislative instrument, vary an industry standard that applies to participants in a particular section of the content industry if it is satisfied that it is necessary or convenient to do so to:

(a) provide appropriate community safeguards in relation to one or more matters relating to the content activities of those participants; and

(b) otherwise regulate adequately those participants in relation to one or more matters relating to the content activities of those participants.

98 Revocation of industry standards

(1) The ACMA may, by legislative instrument, revoke an industry standard.

(2) If:

(a) an industry code is registered under this Part; and

(b) the code is expressed to replace an industry standard;

the industry standard is revoked when the code is registered.

99 Public consultation on industry standards

- (1) Before determining or varying an industry standard, the ACMA must:
 - (a) make a copy of the draft available on its Internet site; and
 - (b) publish a notice on its Internet site:
 - (i) stating that the ACMA has prepared a draft of the industry standard or variation; and
 - (ii) inviting interested persons to give written comments about the draft to the ACMA within the period specified in the notice.
- (2) The period specified in the notice must run for at least 30 days after the publication of the notice.
- (3) Subclause (1) does not apply to a variation if the variation is of a minor nature.
- (4) If interested persons have given comments in accordance with a notice under subclause (1), the ACMA must have due regard to those comments in determining or varying the industry standard, as the case may be.

100 Consultation with designated body

- (1) Before determining or varying an industry standard, the ACMA must consult the designated body.
- (2) Before revoking an industry standard under subclause 98(1), the ACMA must consult the designated body.

Note: *Designated body* is defined by clause 79.

Division 6—Register of industry codes and industry standards

101 ACMA to maintain Register of industry codes and industry standards

- (1) The ACMA is to maintain a Register in which the ACMA includes:
 - (a) all industry codes required to be registered under this Part;and

- (b) all industry standards; and
 - (c) all requests made under clause 86; and
 - (d) all notices under clause 87; and
 - (e) all directions under clause 89.
- (2) The Register may be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Internet.

Division 7—Miscellaneous

102 Industry codes may provide for matters by reference to other instruments

Section 589 of the *Telecommunications Act 1997* applies to an industry code in a corresponding way to the way in which it applies to an instrument under that Act.

103 Industry standards may provide for matters by reference to other instruments

Section 589 of the *Telecommunications Act 1997* applies to an industry standard in a corresponding way to the way in which it applies to an instrument under that Act.

Part 5—Designated content/hosting service provider determinations

104 Designated content/hosting service provider determinations

- (1) The ACMA may, by legislative instrument, determine rules that apply to designated content/hosting service providers in relation to the provision of designated content/hosting services.
- (2) A determination under subclause (1) is called a *designated content/hosting service provider determination*.
- (3) A designated content/hosting service provider determination has effect only to the extent that:

- (a) it is authorised by paragraph 51(v) of the Constitution (either alone or when read together with paragraph 51(xxxix) of the Constitution); or
- (b) both:
 - (i) it is authorised by section 122 of the Constitution; and
 - (ii) it would have been authorised by paragraph 51(v) of the Constitution (either alone or when read together with paragraph 51(xxxix) of the Constitution) if section 51 of the Constitution extended to the Territories.
- (4) The ACMA must not make a designated content/hosting service provider determination unless the determination relates to a matter specified in the regulations.
- (5) A designated content/hosting service provider determination may make provision for or in relation to a particular matter by empowering the ACMA to make decisions of an administrative character.

105 Exemptions from designated content/hosting service provider determinations

- (1) The Minister may, by legislative instrument, determine that a specified designated content/hosting service provider is exempt from designated content/hosting service provider determinations.
- (2) The Minister may, by legislative instrument, determine that a specified designated content/hosting service provider is exempt from a specified designated content/hosting service provider determination.
- (3) A determination under this clause may be unconditional or subject to such conditions (if any) as are specified in the determination.
- (4) A determination under this clause has effect accordingly.

Part 6—Enforcement

106 Compliance with designated content/hosting service provider rules—offence

- (1) A person commits an offence if:
-

- (a) the person is a designated content/hosting service provider;
and
- (b) the person engages in conduct; and
- (c) the person's conduct contravenes a designated content/hosting service provider rule that applies to the person.

Penalty: 100 penalty units.

- (2) A person who contravenes subclause (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

107 Compliance with designated content/hosting service provider rules—civil penalty provision

- (1) A person must not contravene a designated content/hosting service provider rule if:
 - (a) the person is a designated content/hosting service provider;
and
 - (b) the rule applies to the person.
- (2) Subclause (1) is a civil penalty provision.
- (3) A person who contravenes subclause (1) commits a separate contravention of that subclause in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

108 Remedial directions—breach of designated content/hosting service provider rules

- (1) This clause applies if the ACMA is satisfied that a designated content/hosting service provider has contravened, or is contravening, a designated content/hosting service provider rule that applies to the provider.
 - (2) The ACMA may give the designated content/hosting service provider a written direction requiring the provider to take specified action directed towards ensuring that the provider does not contravene the rule, or is unlikely to contravene the rule, in the future.
-

- (3) The following are examples of the kinds of direction that may be given to a designated content/hosting service provider under subclause (2):
- (a) a direction that the provider implement effective administrative systems for monitoring compliance with a designated content/hosting service provider rule;
 - (b) a direction that the provider implement a system designed to give the provider's employees, agents and contractors a reasonable knowledge and understanding of the requirements of a designated content/hosting service provider rule, in so far as those requirements affect the employees, agents or contractors concerned.

Offence

- (4) A person commits an offence if:
- (a) the person is subject to a direction under subclause (2); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct contravenes the direction.

Penalty: 100 penalty units.

- (5) A person who contravenes subclause (4) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

Civil penalty

- (6) A person must comply with a direction under subclause (2).
- (7) Subclause (6) is a civil penalty provision.
- (8) A person who contravenes subclause (6) commits a separate contravention of that subclause in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

109 Formal warnings—breach of designated content/hosting service provider rules

The ACMA may issue a formal warning to a person if the ACMA is satisfied that the person has contravened, or is contravening, a

designated content/hosting service provider rule that applies to the person.

110 Federal Court may order a person to cease providing designated content/hosting services

- (1) If the ACMA is satisfied that a person is providing a designated content/hosting service otherwise than in accordance with a designated content/hosting service provider rule that applies to the person, the ACMA may apply to the Federal Court for an order that the person cease providing that designated content/hosting service.
- (2) If the Federal Court is satisfied, on such an application, that the person is providing a designated content/hosting service otherwise than in accordance with a designated content/hosting service provider rule that applies to the person, the Federal Court may order the person to cease providing that designated content/hosting service.

Part 7—Protection from civil and criminal proceedings

111 Protection from civil proceedings—service providers

Hosting service provider

- (1) Civil proceedings do not lie against a hosting service provider in respect of anything done by the provider in compliance with clause 53.

Live content service provider

- (2) Civil proceedings do not lie against a live content service provider in respect of anything done by the provider in compliance with clause 60.

Links service provider

- (3) Civil proceedings do not lie against a links service provider in respect of anything done by the provider in compliance with clause 68.

112 Protection from criminal proceedings—ACMA, Classification Board and Classification Review Board

- (1) For the purposes of this clause, each of the following is a *protected person*:
- (a) the ACMA;
 - (b) a member or associate member of the ACMA;
 - (c) a member of the staff of the ACMA;
 - (d) a consultant engaged to assist in the performance of the ACMA's broadcasting, content and datacasting functions (as defined in the *Australian Communications and Media Authority Act 2005*);
 - (e) an officer whose services are made available to the ACMA under paragraph 55(1)(a) of the *Australian Communications and Media Authority Act 2005*;
 - (f) a member or temporary member of the Classification Board;
 - (g) a member of staff assisting the Classification Board or Classification Review Board as mentioned in section 88A of the *Classification (Publications, Films and Computer Games) Act 1995*;
 - (h) a consultant engaged to assist in the performance of the functions of the Classification Board or the functions of the Classification Review Board;
 - (i) an officer whose services are made available to the Classification Board under subsection 54(3) of the *Classification (Publications, Films and Computer Games) Act 1995*;
 - (j) a member of the Classification Review Board.
- (2) Criminal proceedings do not lie against a protected person for or in relation to:
- (a) the collection of content or material; or
 - (b) the possession of content or material; or
 - (c) the distribution of content or material; or

- (d) the delivery of content or material; or
- (e) the copying of content or material; or
- (f) the doing of any other thing in relation to content or material; in connection with the exercise of a power, or the performance of a function, conferred on the ACMA, the Classification Board or the Classification Review Board by this Schedule or Schedule 5 to this Act.

Definition

- (3) In this clause:

possession includes have in custody or control.

Part 8—Review of decisions

113 Review by the Administrative Appeals Tribunal

Decisions under Division 3 of Part 3

- (1) An application may be made to the Administrative Appeals Tribunal for a review of any of the following decisions made by the ACMA:
- (a) a decision to give a hosting service provider an interim take-down notice;
 - (b) a decision to give a hosting service provider a final take-down notice;
 - (c) a decision to give a hosting service provider a special take-down notice;
 - (d) a decision under subclause 47(2) or (3) to apply to the Classification Board for classification of content hosted by a hosting service provider.
- (2) An application under subclause (1) may only be made by the hosting service provider concerned.

Decisions under Division 4 of Part 3

- (3) An application may be made to the Administrative Appeals Tribunal for a review of any of the following decisions made by the ACMA:
-

- (a) a decision to give a live content service provider an interim service-cessation notice;
 - (b) a decision to give a live content service provider a final service-cessation notice;
 - (ba) a decision to give a live content service provider a special service-cessation notice;
 - (c) a decision under subclause 56(2) or (3) to apply to the Classification Board for classification of content provided by a live content service.
- (4) An application under subclause (3) may only be made by the live content service provider concerned.

Decisions under Division 5 of Part 3

- (5) An application may be made to the Administrative Appeals Tribunal for a review of any of the following decisions made by the ACMA:
- (a) a decision to give a links service provider an interim link-deletion notice;
 - (b) a decision to give a links service provider a final link-deletion notice;
 - (c) a decision to give a links service provider a special link-deletion notice;
 - (d) a decision under subclause 62(2) or (3) to apply to the Classification Board for classification of content that can be accessed using a link provided by a links service.
- (6) An application under subclause (5) may only be made by the links service provider concerned.

Decisions under clause 85

- (7) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the ACMA under clause 85 to refuse to register a code.
- (8) An application under subclause (7) may only be made by the body or association that developed the code.

Decisions under clause 89

- (9) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the ACMA under clause 89 to:
- (a) give a direction to a designated content/hosting service provider; or
 - (b) vary a direction that is applicable to a designated content/hosting service provider; or
 - (c) refuse to revoke a direction that is applicable to a designated content/hosting service provider.
- (10) An application under subclause (9) may only be made by the designated content/hosting service provider concerned.

Decisions under subclause 104(5) or clause 108

- (11) An application may be made to the Administrative Appeals Tribunal for a review of any of the following decisions made by the ACMA:
- (a) a decision of a kind referred to in subclause 104(5) (which deals with decisions under designated content/hosting service provider determinations), where the decision relates to a designated content/hosting service provider;
 - (b) a decision under clause 108 to:
 - (i) give a direction to a designated content/hosting service provider; or
 - (ii) vary a direction that is applicable to a designated content/hosting service provider; or
 - (iii) refuse to revoke a direction that is applicable to a designated content/hosting service provider.
- (12) An application under subclause (11) may only be made by the designated content/hosting service provider concerned.

Part 9—Miscellaneous

114 Additional ACMA functions

The ACMA has the following functions:

- (a) to monitor compliance with codes and standards registered under Part 4 of this Schedule;
- (b) to advise and assist parents and responsible adults in relation to the supervision and control of children's access to content services;
- (c) to conduct and/or co-ordinate community education programs about content services, in consultation with relevant industry and consumer groups and government agencies;
- (d) to conduct and/or commission research into issues relating to content services;
- (e) to liaise with regulatory and other relevant bodies overseas about co-operative arrangements for the regulation of the commercial content services industry, including (but not limited to) collaborative arrangements to develop:
 - (i) multilateral codes of practice; and
 - (ii) content labelling technologies;
- (f) to inform itself and advise the Minister on technological developments and service trends in the commercial content services industry.

115 Recordings of content etc.

Recordings of live content

- (1) The ACMA may:
 - (a) make a recording of live content, or of a segment of live content, for the purposes of:
 - (i) an investigation under Division 2 of Part 3; or
 - (ii) an application to the Classification Board under clause 22; and
 - (b) make one or more copies of such a recording for the purposes of:
 - (i) an investigation under Division 2 of Part 3; or
 - (ii) an application to the Classification Board under clause 22.

Copies of stored content

- (2) The ACMA may make one or more copies of stored content for the purposes of:
- (a) an investigation under Division 2 of Part 3; or
 - (b) an application to the Classification Board under clause 22.

Copyright

- (3) The ACMA does not infringe copyright if it does anything authorised by subclause (1) or (2).

116 Samples of content to be submitted for classification

The ACMA must, from time to time:

- (a) select samples of content that have been the subject of complaints under clause 37; and
- (b) apply to the Classification Board under clause 22 for classification of that content.

117 Service of summons, process or notice on corporations incorporated outside Australia

- (1) This clause applies to:
- (a) a summons or process in any proceedings under, or connected with, this Schedule; or
 - (b) a notice under this Schedule;
- where:
- (c) the summons, process or notice, as the case may be, is required to be served on, or given to, a body corporate incorporated outside Australia; and
 - (d) the body corporate does not have a registered office or a principal office in Australia; and
 - (e) the body corporate has an agent in Australia.
- (2) The summons, process or notice, as the case may be, is taken to have been served on, or given to, the body corporate if it is served on, or given to, the agent.
- (3) Subclause (2) has effect in addition to section 28A of the *Acts Interpretation Act 1901*.

Note: Section 28A of the *Acts Interpretation Act 1901* deals with the service of documents.

117A Meaning of *broadcasting service*

Disregard the following provisions of this Schedule in determining the meaning of the expression *broadcasting service*:

- (a) clause 9A;
- (b) subparagraph 20(1)(c)(vi).

118 Review

- (1) Within 3 years after the commencement of this Schedule, the Minister must cause to be conducted a review of the following matters:
 - (a) the operation of this Schedule;
 - (b) whether this Schedule should be amended or repealed.
- (2) The Minister must cause to be prepared a report of a review under subclause (1).
- (3) The Minister must cause copies of a report to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the report.

119 This Schedule does not limit Schedule 5

This Schedule does not limit the operation of Schedule 5.

120 This Schedule does not limit the *Telecommunications Act 1997*

This Schedule does not limit the operation of the *Telecommunications Act 1997*.

121 Implied freedom of political communication

- (1) This Schedule does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.
- (2) Subclause (1) does not limit the application of section 15A of the *Acts Interpretation Act 1901* to this Act.

122 Concurrent operation of State and Territory laws

It is the intention of the Parliament that this Schedule is not to apply to the exclusion of a law of a State or Territory to the extent to which that law is capable of operating concurrently with this Schedule.

123 Schedule not to affect performance of State or Territory functions

A power conferred by this Schedule must not be exercised in such a way as to prevent the exercise of the powers, or the performance of the functions, of government of a State, the Northern Territory, the Australian Capital Territory or Norfolk Island.

Criminal Code Act 1995

78 Subparagraph 474.21(4)(a)(i) of the *Criminal Code*

Omit “Schedule 5”, substitute “Schedule 7”.

79 Paragraph 474.21(4)(a) of the *Criminal Code*

Omit “under that Schedule”, insert “under Schedule 5 or Schedule 7 to that Act”.

80 Subparagraph 474.24(4)(a)(i) of the *Criminal Code*

Omit “Schedule 5”, substitute “Schedule 7”.

81 Paragraph 474.24(4)(a) of the *Criminal Code*

Omit “under that Schedule”, insert “under Schedule 5 or Schedule 7 to that Act”.

Export Market Development Grants Act 1997

82 Section 40 (cell at table item 18, column headed “Expense”)

Repeal the cell, substitute:

Expenses associated with commercial content services that specialise in prohibited content or potential prohibited content

83 Section 57A

Omit “Internet content that is”, substitute “a commercial content service that specialises in”.

Note: The heading to section 57A is altered by omitting “**prohibited or potential prohibited Internet content**” and substituting “**commercial content services that specialise in prohibited content or potential prohibited content**”.

84 Section 57A (note)

Omit “*Internet content*”, substitute “*commercial content service*”.

85 Section 107

Insert:

commercial content service has the same meaning as in Schedule 7 to the *Broadcasting Services Act 1992*.

86 Section 107 (definition of *Internet content*)

Repeal the definition.

87 Section 107 (definition of *potential prohibited content*)

Omit “Schedule 5”, substitute “Schedule 7”.

88 Section 107 (definition of *prohibited content*)

Omit “Schedule 5”, substitute “Schedule 7”.

Freedom of Information Act 1982

89 Subsection 4(1)

Insert:

exempt content-service document means:

- (a) a document containing content, or a record of content (within the meaning of Schedule 7 to the *Broadcasting Services Act 1992*), that:
 - (i) has been delivered by, or accessed using, a content service (within the meaning of that Schedule); and
 - (ii) was offensive content-service content when it was delivered by, or accessed using, that content service; or
- (b) a document that sets out how to access, or that is likely to facilitate access to, offensive content-service content (for

example, by setting out the name of an Internet site, an IP address, a URL or a password).

90 Subsection 4(1)

Insert:

offensive content-service content means content (within the meaning of Schedule 7 to the *Broadcasting Services Act 1992*) that is:

- (a) delivered by, or accessed using, a content service (within the meaning of that Schedule); and
- (b) either:
 - (i) prohibited content (within the meaning of that Schedule); or
 - (ii) potential prohibited content (within the meaning of that Schedule).

91 Subsection 4(1) (paragraphs (a) and (b) of the definition of *offensive Internet content*)

Omit “that Schedule”, substitute “Schedule 5 to that Act as in force before the commencement of Schedule 7 to that Act”.

92 Division 1 of Part II of Schedule 2 (item relating to the Attorney-General’s Department)

Repeal the item, substitute:

Attorney-General’s Department, in relation to:

- (a) documents in respect of commercial activities it undertakes; and
- (b) documents in respect of commercial activities undertaken by the Australian Government Solicitor; and
- (c) exempt content-service documents concerning the performance of a function, or the exercise of a power, under Schedule 7 to the *Broadcasting Services Act 1992*; and
- (d) exempt Internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to that Act.

93 Division 1 of Part II of Schedule 2 (item relating to the Australian Communications and Media Authority)

Repeal the item, substitute:

Australian Communications and Media Authority, in relation to:

- (a) exempt content-service documents concerning the performance of a function, or the exercise of a power, under Schedule 7 to the *Broadcasting Services Act 1992*; and
- (b) exempt Internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to that Act.

94 Division 1 of Part II of Schedule 2 (items relating to the Classification Board and the Classification Review Board)

Repeal the items, substitute:

Classification Board, in relation to:

- (a) exempt content-service documents concerning the performance of a function, or the exercise of a power, under Schedule 7 to the *Broadcasting Services Act 1992*; and
- (b) exempt Internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to that Act.

Classification Review Board, in relation to:

- (a) exempt content-service documents concerning the performance of a function, or the exercise of a power, under Schedule 7 to the *Broadcasting Services Act 1992*; and
- (b) exempt Internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to that Act.

Interactive Gambling Act 2001

95 Subsections 36(2) and (3)

After “Schedule 5”, insert “or 7”.

Telecommunications Act 1997

96 At the end of Division 1 of Part 13

Add:

275A Location information

- (1) For the purposes of this Part, information about the location of:
 - (a) a mobile telephone handset; or
 - (b) any other mobile communications device;is taken to be information that relates to the affairs of the customer responsible for the handset or device.
- (2) For the purposes of this Part, a document about the location of:
 - (a) a mobile telephone handset; or
 - (b) any other mobile communications device;is taken to be a document that relates to the affairs of the customer responsible for the handset or device.
- (3) This section is enacted for the avoidance of doubt.

97 At the end of subsection 291(1)

Add:

- ; and (e) if the information or document relates to the location of:
- (i) a mobile telephone handset; or
 - (ii) any other mobile communications device;
- the third person has consented to the disclosure, or use, as the case requires, in the circumstances concerned.

98 At the end of subsection 291(2)

Add:

- ; and (e) if the information or document relates to the location of:
- (i) a mobile telephone handset; or
 - (ii) any other mobile communications device;
- the third person has consented to the disclosure, or use, as the case requires, in the circumstances concerned.

99 At the end of subsection 291(3)

Add:

- ; and (e) if the information or document relates to the location of:
- (i) a mobile telephone handset; or
 - (ii) any other mobile communications device;
- the third person has consented to the disclosure, or use, as the case requires, in the circumstances concerned.

Part 2—General application and transitional provisions

100 Transitional—content provisions of Schedule 5 to the *Broadcasting Services Act 1992*

- (1) Despite the following repeals effected, and amendments made, by this Schedule:
- (a) the repeal of the following provisions of Schedule 5 to the *Broadcasting Services Act 1992*:
 - (i) the definition of *access-control system* in clause 3;
 - (ii) the definition of *Classification Review Board* in clause 3;
 - (iii) the definition of *final take-down notice* in clause 3;
 - (iv) the definition of *interim take-down notice* in clause 3;
 - (v) the definition of *restricted access system* in clause 3;
 - (vi) the definition of *special take-down notice* in clause 3;
 - (vii) clause 4;
 - (viii) Part 3;
 - (ix) Division 3 of Part 4;
 - (x) paragraphs 79(1)(a), (b), (c) and (d);
 - (xi) subclause 88(3);
 - (xii) paragraphs 92(1)(a), (b), (c) and (d);
 - (b) the amendments of the following definitions in Schedule 5 to the *Broadcasting Services Act 1992*:
 - (i) the definition of *classified* in clause 3;
 - (ii) the definition of *potential prohibited content* in clause 3;
 - (iii) the definition of *prohibited content* in clause 3;
- both:
- (c) the provisions covered by paragraph (a) of this item; and
 - (d) the definitions covered by paragraph (b) of this item, to the extent to which they relate to a provision covered by paragraph (a) of this item;

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continue to apply after the commencement of this item, subject to the modification set out in subitem (2), as if those repeals had not been effected and those amendments had not been made.

- (2) The ACMA must not take any action under clause 30 or 36 of Schedule 5 to the *Broadcasting Services Act 1992* after the commencement of this item.

101 Industry codes and standards under Part 5 of Schedule 5 to the *Broadcasting Services Act 1992*—Internet service providers

- (1) This item applies to:
- (a) an industry code registered under Part 5 of Schedule 5 to the *Broadcasting Services Act 1992*; or
 - (b) an industry standard under that Part;
- if:
- (c) the code or standard was in force immediately before the commencement of this item; and
 - (d) the code or standard relates, in whole or in part, to the Internet service provider section of the Internet industry.
- (2) The amendments of clause 60 of Schedule 5 to the *Broadcasting Services Act 1992* made by this Schedule do not affect the continuity of the code or standard to the extent to which it relates to the Internet service provider section of the Internet industry.
- (3) However, the Parliament intends that the ACMA should, within 90 days after the commencement of this item, take action under Schedule 5 to the *Broadcasting Services Act 1992* directed towards ensuring compliance with clause 60 of that Schedule as amended by this Schedule.

102 Industry codes and standards under Part 5 of Schedule 5 to the *Broadcasting Services Act 1992*—Internet content hosts

- (1) This item applies to:
- (a) an industry code registered under Part 5 of Schedule 5 to the *Broadcasting Services Act 1992*; or
 - (b) an industry standard under that Part;
-

if:

- (c) the code or standard was in force immediately before the commencement of this item; and
 - (d) the code or standard relates, in whole or in part, to the Internet content host section of the Internet industry.
- (2) The code or standard, to the extent to which it relates to the Internet content host section of the Internet industry, is revoked when this item commences.
 - (3) The code or standard, to the extent to which it relates to the Internet content host section of the Internet industry, ceases to be registered under that Part when this item commences.

103 Transfer of complaints made under repealed subclauses 22(1) and (2) of Schedule 5 to the *Broadcasting Services Act 1992*

- (1) This item applies to a complaint under repealed subclause 22(1) or (2) of Schedule 5 to the *Broadcasting Services Act 1992* if:
 - (a) the complaint was made before the commencement of this item; and
 - (b) the investigation of the complaint under clause 26 of that Schedule is pending immediately before the commencement of this item.
- (2) Schedule 7 to the *Broadcasting Services Act 1992* has effect as if:
 - (a) clause 37 of that Schedule included a provision that entitled the complainant to make the complaint under that clause; and
 - (b) the complaint had been made under that provision immediately after the commencement of this item; and
 - (c) subclause 37(8) of that Schedule did not apply to the complaint.

104 Transfer of certain investigations under repealed clause 27 of Schedule 5 to the *Broadcasting Services Act 1992*

- (1) This item applies to an investigation by the ACMA relating to a matter mentioned in repealed clause 27 of Schedule 5 to the *Broadcasting Services Act 1992* if:

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- (a) the investigation started before the commencement of this item; and
 - (b) the investigation is pending immediately before the commencement of this item; and
 - (c) the investigation relates to a matter covered by paragraph (1)(a) or (b) of that clause.
- (2) Schedule 7 to the *Broadcasting Services Act 1992* has effect as if clause 44 of that Schedule included a provision that authorised the ACMA to investigate the matter under that clause.

105 Application of amendments—*Export Market Development Grants Act 1997*

The amendments of the *Export Market Development Grants Act 1997* made by this Schedule apply to expenses incurred after the commencement of this item.

Part 3—Special transitional provisions

106 Transitional—pre-commencement training of content assessors

- (1) The Director of the Classification Board may exercise a power conferred by clause 18 of Schedule 7 to the *Broadcasting Services Act 1992* before that Schedule comes into operation as if it had come into operation.
- (2) The 12-month period referred to in paragraph 18(1)(a) of Schedule 7 to the *Broadcasting Services Act 1992* may begin before that Schedule comes into operation.
- (3) This item does not limit section 4 of the *Acts Interpretation Act 1901*.

107 Transitional—pre-commencement development of industry codes under Part 4 of Schedule 7 to the *Broadcasting Services Act 1992*

- (1) An industry code may be developed under Part 4 of Schedule 7 to the *Broadcasting Services Act 1992* (whether or not in response to a request under that Part) before that Schedule comes into operation as if it had come into operation.
- (2) The ACMA or any other person, body or association may:
 - (a) exercise a power conferred by; or
 - (b) do anything under;Division 4 of Part 4 of Schedule 7 to the *Broadcasting Services Act 1992* (other than clause 89 or 90 of that Schedule) before that Schedule comes into operation as if it had come into operation.
- (3) The ACMA may maintain a Register under clause 101 of Schedule 7 to the *Broadcasting Services Act 1992* before that Schedule comes into operation as if it had come into operation.
- (4) An industry code registered under clause 101 of Schedule 7 to the *Broadcasting Services Act 1992* before that Schedule comes into operation takes effect when that Schedule comes into operation.

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- (5) The Minister may exercise a power conferred by clause 79 of Schedule 7 to the *Broadcasting Services Act 1992* before that Schedule comes into operation as if it had come into operation.
- (6) This item does not limit section 4 of the *Acts Interpretation Act 1901*.

Schedule 2—Other content amendments

Part 1—Amendments

Broadcasting Services Act 1992

1 Clause 2 of Schedule 7 (paragraph (w) of the definition of *content service*)

Repeal the paragraph.

Telecommunications Act 1997

2 Section 7 (paragraph (p) of the definition of *civil penalty provision*)

Repeal the paragraph.

Telecommunications (Consumer Protection and Service Standards) Act 1999

3 Section 158A

Repeal the section, substitute:

158A Simplified outline

The following is a simplified outline of this Part:

- | |
|---|
| <ul style="list-style-type: none">• This Part regulates the prefixes of numbers used by telephone sex services.• The supply of other goods and services must not be tied to the supply of a telephone sex service. |
|---|

4 Subsection 158B(2)

Omit all the words after “in relation to the telephone sex service”, substitute “unless the voice call is made to a number with an approved prefix”.

5 Subsection 158B(6)

Repeal the subsection.

6 Section 158D

Repeal the section.

7 Paragraphs 158E(1)(a), (b), (c) and (d)

Omit “, 158C(1) or 158D(3)”, substitute “or 158C(1)”.

8 Section 158G

Repeal the section.

9 Subsection 158N(1)

Omit “(1)”.

10 Subsection 158N(2)

Repeal the subsection.

Part 2—Transitional provision

11 Transitional—section 158G of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*

- (1) This item applies to proceedings if:
 - (a) the proceedings are instituted under the *Telecommunications Act 1997* before or after the commencement of this item; and
 - (b) the proceedings relate to a contravention of Part 9A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; and
 - (c) the contravention occurred before the commencement of this item.
- (2) Despite the repeal of section 158G of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* by this Schedule, that section continues to apply, in relation to the proceedings, as if that repeal had not happened.

Schedule 3—Miscellaneous amendments

Telecommunications (Consumer Protection and Service Standards) Act 1999

1 Subsection 158P(10) (definition of *Australia*)

Omit “the eligible Territories”, substitute “an external Territory prescribed for the purposes of section 10 of the *Telecommunications Act 1997*”.

2 Subsection 158T(7) (definition of *Australia*)

Omit “the eligible Territories”, substitute “an external Territory prescribed for the purposes of section 10 of the *Telecommunications Act 1997*”.

[*Minister’s second reading speech made in—
House of Representatives on 10 May 2007
Senate on 12 June 2007*]

(71/07)

122 *Communications Legislation Amendment (Content Services) Act 2007* No. 124,
2007