



# **Enhancing Online Safety for Children Act 2015**

**No. 24, 2015**

**An Act to enhance online safety for children, and  
for other purposes**

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



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# **Enhancing Online Safety for Children Act 2015**

**No. 24, 2015**

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**An Act to enhance online safety for children, and  
for other purposes**

*[Assented to 24 March 2015]*

The Parliament of Australia enacts:

## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Enhancing Online Safety for Children Act 2015*.

### 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
Provisions	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	24 March 2015
2. Sections 3 to 108	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 July 2015 (F2015L00768)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.



### 3 Simplified outline of this Act

- There is to be a Children's e-Safety Commissioner.
- A key function of the Commissioner is to administer a complaints system for cyber-bullying material targeted at an Australian child.
- The complaints system includes the following components:
  - (a) a 2-tiered scheme for the rapid removal from social media services of cyber-bullying material targeted at an Australian child;
  - (b) a tier 1 social media service may be requested to remove from the service cyber-bullying material targeted at an Australian child;
  - (c) a tier 2 social media service may be given a notice (a *social media service notice*) requiring the removal from the service of cyber-bullying material targeted at an Australian child;
  - (d) a person who posts cyber-bullying material targeted at an Australian child may be given a notice (an *end-user notice*) requiring the person to remove the material, refrain from posting cyber-bullying material or apologise for posting the material.
- The functions of the Commissioner also include:
  - (a) promoting online safety for children; and
  - (b) coordinating activities of Commonwealth Departments, authorities and agencies relating to online safety for children; and
  - (c) administering the online content scheme that was previously administered by the ACMA.

### 4 Definitions

In this Act:

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**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.

**account** includes:

- (a) a free account; and
- (b) a pre-paid account; and
- (c) anything that may reasonably be regarded as the equivalent of an account.

**ACMA** means the Australian Communications and Media Authority.

**adult** means an individual who is 18 or older.

**Appropriation Act** means an Act appropriating money for expenditure out of the Consolidated Revenue Fund.

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

**Australian child** means a child who is ordinarily resident in Australia.

**Australian police force** means:

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

**basic online safety requirements** has the meaning given by section 21.

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

**child** means an individual who has not reached 18 years.

**Children's Online Safety Special Account** means the Children's Online Safety Special Account established by section 72.

**civil proceeding** includes a civil action.

**Commissioner** means the Children's e-Safety Commissioner.

Note: See section 14.

**Convention on the Rights of the Child** means the Convention on the Rights of the Child done at New York on 20 November 1989.

Note: The Convention is in Australian Treaty Series 1991 No. 4 ([1991] ATS 4) and could in 2014 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**cyber-bullying material targeted at an Australian child** has the meaning given by section 5.

**de-identified**: information is **de-identified** if the information is no longer about:

- (a) an identifiable individual; or
- (b) an individual who is reasonably identifiable.

**electronic service** means:

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

but does not include:

- (c) a broadcasting service (within the meaning of the *Broadcasting Services Act 1992*); or
- (d) a datacasting service (within the meaning of that Act).

**end-user notice** means a notice under subsection 42(1).

**legislative rules** means rules made under section 108.

**material** means material:

- (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 (moving or otherwise);  
or
- (e) whether in any other form; or

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(f) whether in any combination of forms.

**online safety for children** means the capacity of Australian children to use social media services and electronic services in a safe manner, and includes the protection of Australian children using those services from cyber-bullying material targeted at an Australian child.

**parent**: without limiting who is a parent of anyone for the purposes of this Act, a person is the parent of another person if the other person is a child of the person within the meaning of the *Family Law Act 1975*.

**posted** by an end-user of a social media service or relevant electronic service has the meaning given by section 7.

**provided** on a social media service or relevant electronic service has the meaning given by section 6.

**provider** of a social media service or relevant electronic service has a meaning affected by section 105.

**relevant electronic service** means any of the following electronic services:

- (a) a service that enables end-users to communicate, by means of email, with other end-users;
- (b) an instant messaging service that enables end-users to communicate with other end-users;
- (c) an SMS service that enables end-users to communicate with other end-users;
- (d) an MMS service that enables end-users to communicate with other end-users;
- (e) a chat service that enables end-users to communicate with other end-users;
- (f) a service that enables end-users to play online games with other end-users;
- (g) an electronic service specified in the legislative rules.

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

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

**removed** from a social media service or relevant electronic service has the meaning given by section 8.

**service** includes a website.

**social media service** has the meaning given by section 9.

**social media service notice** means a notice under subsection 35(1).

**target** of cyber-bullying material has the meaning given by section 5.

**terms of use** includes anything that may be reasonably regarded as the equivalent of terms of use.

**tier 1 social media service** means a social media service covered by a declaration under subsection 23(4).

**tier 2 social media service** means a social media service covered by a declaration under subsection 30(1).

**use** has a meaning affected by section 106.

## **5 Cyber-bullying material targeted at an Australian child**

- (1) For the purposes of this Act, if material satisfies the following conditions:
- (a) the material is provided on a social media service or relevant electronic service;
  - (b) an ordinary reasonable person would conclude that:
    - (i) it is likely that the material was intended to have an effect on a particular Australian child; and
    - (ii) the material would be likely to have the effect on the Australian child of seriously threatening, seriously intimidating, seriously harassing or seriously humiliating the Australian child;
  - (c) such other conditions (if any) as are set out in the legislative rules;
- then:
- (d) the material is cyber-bullying material targeted at the Australian child; and

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- (e) the Australian child is the target of the material.
- (2) An effect mentioned in subsection (1) may be:
  - (a) a direct result of the material being accessed by, or delivered to, the Australian child; or
  - (b) an indirect result of the material being accessed by, or delivered to, one or more other persons.
- (3) Subsection (1) has effect subject to subsection (4).
- (4) For the purposes of this Act, if:
  - (a) a person is:
    - (i) in a position of authority over an Australian child; and
    - (ii) an end-user of a social media service or relevant electronic service; and
  - (b) in the lawful exercise of that authority, the person posts material on the service; and
  - (c) the posting of the material is reasonable action taken in a reasonable manner;the material is taken not to be cyber-bullying material targeted at the Australian child.

**6 When material is provided on a social media service or relevant electronic service**

For the purposes of this Act, material is *provided* on a social media service or relevant electronic service if the material is accessible to, or delivered to, one or more of the end-users using the service.

**7 When material is posted by an end-user of a social media service or relevant electronic service**

For the purposes of this Act, material is *posted* on a social media service or relevant electronic service by an end-user if the end-user causes the material to be accessible to, or delivered to, one or more other end-users using the service.

## 8 When material is removed from a social media service or relevant electronic service

For the purposes of this Act, material is *removed* from a social media service or relevant electronic service if the material is neither accessible to, nor delivered to, any of the end-users in Australia using the service.

## 9 Social media service

- (1) For the purposes of this Act, *social media service* means:
- (a) an electronic service that satisfies the following conditions:
    - (i) the sole or primary purpose of the service is to enable online social interaction between 2 or more end-users;
    - (ii) the service allows end-users to link to, or interact with, some or all of the other end-users;
    - (iii) the service allows end-users to post material on the service;
    - (iv) such other conditions (if any) as are set out in the legislative rules; or

(b) an electronic service specified in the legislative rules; but does not include an exempt service (as defined by subsection (4) or (5)).

Note: Online social interaction does not include (for example) online business interaction.

- (2) For the purposes of subparagraph (1)(a)(i), online social interaction includes online interaction that enables end-users to share material for social purposes.

Note: Social purposes does not include (for example) business purposes.

- (3) In determining whether the condition set out in subparagraph (1)(a)(i) is satisfied, disregard any of the following purposes:

- (a) the provision of advertising material on the service;
- (b) the generation of revenue from the provision of advertising material on the service.

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### *Exempt services*

- (4) For the purposes of this section, a service is an *exempt service* if:
  - (a) none of the material on the service is accessible to, or delivered to, one or more end-users in Australia; or
  - (b) the service is specified in the legislative rules.
- (5) If the Commissioner is satisfied that:
  - (a) an electronic service has controls on:
    - (i) who can access material, or who can be delivered material, provided on the service; or
    - (ii) the material that can be posted on the service; and
  - (b) those controls will be effective in achieving the result that none of the material provided on the service could be cyber-bullying material targeted at an Australian child;the Commissioner may, by writing, declare that the service is an *exempt service* for the purposes of this section.
- (6) A declaration made under subsection (5) is not a legislative instrument.

## **10 Crown to be bound**

This Act binds the Crown in each of its capacities.

## **11 Application of this Act**

- (1) This Act extends to every external Territory.
- (2) This Act extends to acts, omissions, matters and things outside Australia.

## **12 Convention on the Rights of the Child**

- (1) In the performance of functions conferred by or under this Act, the Commissioner must, as appropriate, have regard to the Convention on the Rights of the Child.
- (2) Subsection (1) does not limit the matters to which the Commissioner may have regard.



## Part 2—Children's e-Safety Commissioner

### 13 Simplified outline of this Part

- There is to be a Children's e-Safety Commissioner.
- A key function of the Commissioner is to administer a complaints system for cyber-bullying material targeted at an Australian child.
- The functions of the Commissioner also include:
  - (a) promoting online safety for children; and
  - (b) coordinating activities of Commonwealth Departments, authorities and agencies relating to online safety for children; and
  - (c) administering the online content scheme that was previously administered by the ACMA.

Note: For administrative provisions relating to the Commissioner, see Part 7.

### 14 Children's e-Safety Commissioner

There is to be a Children's e-Safety Commissioner.

Note: In this Act, **Commissioner** means the Children's e-Safety Commissioner (see section 4).

### 15 Functions of the Commissioner

- (1) The functions of the Commissioner are:
  - (a) such functions as are conferred on the Commissioner by:
    - (i) this Act; or
    - (ii) Schedules 5 and 7 to the *Broadcasting Services Act 1992*; or
    - (iii) any other law of the Commonwealth; and
  - (b) to promote online safety for children; and

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- (c) to support and encourage the implementation of measures to improve online safety for children; and
- (d) to coordinate activities of Commonwealth Departments, authorities and agencies relating to online safety for children; and
- (e) to collect, analyse, interpret and disseminate information relating to online safety for children; and
- (f) to support, encourage, conduct, accredit and evaluate educational, promotional and community awareness programs that are relevant to online safety for children; and
- (g) to make, on behalf of the Commonwealth, grants of financial assistance in relation to online safety for children; and
- (h) to support, encourage, conduct and evaluate research about online safety for children; and
- (i) to publish (whether on the internet or otherwise) reports and papers relating to online safety for children; and
- (j) to give the Minister reports about online safety for children; and
- (k) to advise the Minister about online safety for children; and
- (l) to consult and cooperate with other persons, organisations and governments on online safety for children; and
- (m) to advise and assist persons in relation to their obligations under this Act; and
- (n) to monitor compliance with this Act; and
- (o) to promote compliance with this Act; and
- (p) to formulate, in writing, guidelines or statements that:
  - (i) recommend best practices for persons and bodies involved in online safety for children; and
  - (ii) are directed towards facilitating the timely and appropriate resolution of incidents involving cyber-bullying material targeted at an Australian child; and
- (q) to promote guidelines and statements formulated under paragraph (p); and
- (r) such other functions (if any) as are specified in the legislative rules; and

- (s) to do anything incidental to or conducive to the performance of any of the above functions.

*Grants*

- (2) Financial assistance may be granted under paragraph (1)(g) to:
  - (a) a State; or
  - (b) a Territory; or
  - (c) a person other than a State or Territory.
- (3) The terms and conditions on which financial assistance is granted under paragraph (1)(g) are to be set out in a written agreement between the Commonwealth and the grant recipient.
- (4) An agreement under subsection (3) is to be entered into by the Commissioner on behalf of the Commonwealth.

*Guidelines and statements are not legislative instruments*

- (5) Guidelines and statements formulated under paragraph (1)(p) are not legislative instruments.

## **16 Powers of the Commissioner**

The Commissioner has power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.

Note: For supplementary powers, see section 60.

## Part 3—Complaints about cyber-bullying material

### 17 Simplified outline of this Part

- There is a complaints system for cyber-bullying material targeted at an Australian child.

### 18 Complaints about cyber-bullying material

#### *Complaint made by an Australian child*

- (1) If an Australian child has reason to believe that he or she was or is the target of cyber-bullying material that has been, or is being, provided on a particular social media service or relevant electronic service, the child may make a complaint to the Commissioner about the matter.

#### *Complaint made on behalf of an Australian child*

- (2) If:
  - (a) a person (the **responsible person**) has reason to believe that cyber-bullying material targeted at an Australian child has been, or is being, provided on a particular social media service or relevant electronic service; and
  - (b) either:
    - (i) the responsible person is a parent or guardian of the child; or
    - (ii) the child has authorised the responsible person to make a complaint about the matter;the responsible person may, on behalf of the child, make a complaint to the Commissioner about the matter.

#### *Complaint made by an adult who was an Australian child*

- (3) If:
  - (a) a person is an adult; and

- (b) the person has reason to believe that, when he or she was an Australian child, he or she was the target of cyber-bullying material that was provided on a particular social media service or relevant electronic service;

the person may make a complaint to the Commissioner about the matter, so long as:

- (c) the complaint is made within a reasonable time after the person became aware of the matter; and
- (d) the complaint is made within 6 months after the person reached 18 years.

*Complaint about material that was provided on a social media service*

(4) If:

- (a) a complaint made by a person under this section concerns material that has been, or is being, provided on a tier 1 social media service; and
- (b) the person wants the Commissioner to give the provider of the service a notice under section 29 requesting the provider to remove the material from the service;

the complaint under this section must be accompanied by evidence that the material was the subject of a complaint that was previously made under the service's complaints scheme.

(5) If:

- (a) a complaint made by a person under this section concerns material that has been, or is being, provided on a tier 2 social media service; and
- (b) the person wants the Commissioner to give the provider of the service a social media service notice requiring the provider to remove the material from the service;

the complaint under this section must be accompanied by evidence that the material was the subject of a complaint that was previously made under the service's complaints scheme.

Note: A social media service notice is given under section 35.

(6) For the purposes of subsections (4) and (5), evidence must be in a form required by the Commissioner.

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- (7) If a social media service issues a receipt or complaint number to a complainant as part of its ordinary business processes, the Commissioner may require evidence to be in the form of the receipt or complaint number.
- (8) If a social media service does not issue a receipt or complaint number to a complainant as part of its ordinary business processes, the Commissioner may require evidence to be:
  - (a) in the form of a screen shot; or
  - (b) in the form of a statutory declaration; or
  - (c) in such other form as the Commissioner specifies.
- (9) Subsections (7) and (8) do not limit subsection (6).
- (10) A requirement under subsection (6), (7) or (8) is not a legislative instrument.

**19 Investigation of complaints**

- (1) The Commissioner may investigate a complaint made under section 18.
- (2) An investigation under this section is to be conducted as the Commissioner thinks fit.
- (3) The Commissioner may, for the purposes of an investigation, obtain information from such persons, and make such inquiries, as he or she thinks fit.
- (4) Subsections (1), (2) and (3) have effect subject to Part 13 of the *Broadcasting Services Act 1992* (which confers certain investigative powers on the Commissioner).

*Termination of investigation*

- (5) The Commissioner may terminate an investigation under this section.

## **Part 4—Social media services**

### **Division 1—Introduction**

#### **20 Simplified outline of this Part**

- The Parliament expects that each social media service will comply with the basic online safety requirements.
- There is a 2-tiered scheme for the rapid removal from social media services of cyber-bullying material targeted at an Australian child.
- A tier 1 social media service may be requested to remove from the service cyber-bullying material targeted at an Australian child.
- A tier 2 social media service may be given a notice (a *social media service notice*) requiring the removal from the service of cyber-bullying material targeted at an Australian child.

#### **21 Basic online safety requirements**

- (1) For the purposes of this Act, the *basic online safety requirements* for a social media service are as follows:
  - (a) the service's terms of use must contain:
    - (i) a provision that prohibits end-users from posting cyber-bullying material on the service; or
    - (ii) a provision that may reasonably be regarded as the equivalent of a provision covered by subparagraph (i);
  - (b) the service must have a complaints scheme under which end-users of the service can request the removal from the service of cyber-bullying material that breaches the service's terms of use;
  - (c) there must be an individual who is:
    - (i) an employee or agent of the provider of the service; and

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- (ii) designated as the service's contact person for the purposes of this Act;
- (d) the contact details of the contact person must be notified to the Commissioner.

Note: See also section 104 (terms of use).

- (2) For the purposes of this section, *cyber-bullying material* has its ordinary meaning.

**22 Statement of Parliamentary expectations**

- (1) The Parliament expects that each social media service will comply with the basic online safety requirements.
- (2) The Commissioner should, as far as is practicable, communicate that expectation to providers of social media services.
- (3) Subsections (1) and (2) do not impose a duty that is enforceable by proceedings in a court.



## **Division 2—Tier 1 social media services**

### **Subdivision A—Declaration of tier 1 social media service**

#### **23 Declaration of tier 1 social media service**

##### *Application*

- (1) The provider of a social media service may apply to the Commissioner for the declaration of the service as a tier 1 social media service.
- (2) An application must:
  - (a) be in writing; and
  - (b) be in a form approved, in writing, by the Commissioner; and
  - (c) be accompanied by such information as is specified in the legislative rules.
- (3) An application may contain a statement that any request given to the provider of the service under section 29 should be given under subsection 29(2).

##### *Declaration*

- (4) If:
  - (a) an application has been made under subsection (1) for the declaration of a social media service as a tier 1 social media service; and
  - (b) the Commissioner is satisfied that the service complies with the basic online safety requirements; and
  - (c) the service is not a tier 2 social media service;the Commissioner must, by writing, declare that the social media service is a ***tier 1 social media service*** for the purposes of this Act.

Note: See also subsection 33(3).

##### *Refusal*

- (5) If:
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- (a) an application has been made under subsection (1) for the declaration of a social media service as a tier 1 social media service; and
  - (b) the Commissioner is not required by subsection (4) to make the declaration;
- the Commissioner must:
- (c) refuse to declare the social media service as a tier 1 social media service; and
  - (d) give written notice of the refusal to the applicant.

*Declaration is not a legislative instrument*

- (6) A declaration made under subsection (4) is not a legislative instrument.

**24 Variation of declaration of tier 1 social media service—change of name**

- (1) If:
  - (a) a declaration is in force under subsection 23(4) in relation to a social media service; and
  - (b) the service changes its name;the Commissioner may, by writing, vary the declaration to reflect the new name of the service.
- (2) If the Commissioner varies the declaration, the Commissioner must give written notice of the variation to the provider of the service.

*Variation is not a legislative instrument*

- (3) A variation under subsection (1) is not a legislative instrument.

**25 Revocation of declaration of social media service as a tier 1 social media service**

- (1) The Commissioner may, by writing, revoke a subsection 23(4) declaration that relates to a social media service if:
  - (a) both:

- (i) at least 12 months have passed since the declaration was made; and
  - (ii) during the preceding 12 months, the provider of the service has repeatedly failed to comply with requests given to the provider under section 29; or
  - (b) the Commissioner is satisfied that the service does not comply with the basic online safety requirements.
- (2) If the Commissioner revokes the declaration, the Commissioner must give written notice of the revocation to the provider of the service.
- (3) If the Commissioner revokes the declaration, the provider of the service is not entitled to make an application under subsection 23(1) in relation to the service during the 28-day period that began when the instrument of revocation was made.

*Revocation is not a legislative instrument*

- (4) A revocation under subsection (1) is not a legislative instrument.

## **26 Notification of changes to terms of use of tier 1 social media service**

- (1) If:
- (a) there is a change to the terms of use of a tier 1 social media service; and
  - (b) the change could affect cyber-bullying material;
- the provider of the service must:
- (c) give the Commissioner written notice of the change; and
  - (d) do so within 14 days after the change.

Note: The notice may be given by electronic means—see the *Electronic Transactions Act 1999* and section 96 of this Act.

- (2) For the purposes of this section, **cyber-bullying material** has its ordinary meaning.

## **27 Notification of change of contact person etc.**

If:

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- (a) a social media service is a tier 1 social media service; and
  - (b) there is a change to:
    - (i) the identity; or
    - (ii) the contact details;  
of the individual designated as the service’s contact person for the purposes of this Act;
- the provider of the service must:
- (c) give the Commissioner written notice of the change; and
  - (d) do so within 14 days after the change.

Note: The notice may be given by electronic means—see the *Electronic Transactions Act 1999* and section 96 of this Act.

**28 Register of Tier 1 Social Media Services**

- (1) The Commissioner is to maintain a register, to be known as the Register of Tier 1 Social Media Services, in which the Commissioner includes the names of each tier 1 social media service.
- (2) The Register of Tier 1 Social Media Services is to be maintained by electronic means.
- (3) The Register of Tier 1 Social Media Services is to be made available for inspection on the Commissioner’s website.
- (4) The Register of Tier 1 Social Media Services is not a legislative instrument.

**Subdivision B—Request for removal of cyber-bullying material**

**29 Request for removal of cyber-bullying material**

*Default rule*

- (1) If:
  - (a) material is provided on a tier 1 social media service; and
  - (b) the material was the subject of a complaint that was made under the service’s complaints scheme; and
  - (c) the material was not removed from the service within:

- (i) 48 hours after the complaint was made; or
- (ii) such longer period as the Commissioner allows; and
- (d) a complaint has been made to the Commissioner under section 18 about the material; and
- (e) the Commissioner is satisfied that the material is or was cyber-bullying material targeted at an Australian child; and
- (f) the application for the declaration of the service as a tier 1 social media service did not contain a statement covered by subsection 23(3);

the Commissioner may give the provider of the service a written notice requesting the provider to:

- (g) remove the material from the service; and
- (h) do so within 48 hours after the notice was given to the provider.

Note: For declaration of a tier 1 social media service, see section 23.

*Special rule*

- (2) If:
  - (a) material is provided on a tier 1 social media service; and
  - (b) the service's terms of use contains:
    - (i) a provision that prohibits end-users from posting cyber-bullying material on the service; or
    - (ii) a provision that may reasonably be regarded as the equivalent of a provision covered by subparagraph (i); and
  - (c) the Commissioner is satisfied that the material breaches that provision of the service's terms of use; and
  - (d) the material was the subject of a complaint that was made under the service's complaints scheme; and
  - (e) the material was not removed from the service within:
    - (i) 48 hours after the complaint was made; or
    - (ii) such longer period as the Commissioner allows; and
  - (f) a complaint has been made to the Commissioner under section 18 about the material; and
  - (g) the Commissioner is satisfied that the material is or was cyber-bullying material targeted at an Australian child; and

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- (h) the application for the declaration of the service as a tier 1 social media service contained a statement covered by subsection 23(3);

the Commissioner may give the provider of the service a written notice requesting the provider to:

- (i) remove the material from the service; and
- (j) do so within 48 hours after the notice was given to the provider.

Note 1: For declaration of a tier 1 social media service, see section 23.

Note 2: See also section 104 (terms of use).

*Statement covered by subsection 23(3)*

- (3) If:
  - (a) the application for the declaration of a service as a tier 1 social media service contained a statement covered by subsection 23(3); and
  - (b) the service's terms of use does not contain:
    - (i) a provision that prohibits end-users from posting cyber-bullying material on the service; or
    - (ii) a provision that may reasonably be regarded as the equivalent of a provision covered by subparagraph (i);disregard the statement.

Note: See also section 104 (terms of use).

*Cyber-bullying material*

- (4) For the purposes of paragraphs (2)(b) and (3)(b), ***cyber-bullying material*** has its ordinary meaning.

## **Division 3—Tier 2 social media services**

### **Subdivision A—Declaration of tier 2 social media service**

#### **30 Declaration of tier 2 social media service**

- (1) The Minister may, by legislative instrument, declare that a specified social media service is a *tier 2 social media service* for the purposes of this Act.
- (2) The Minister must not declare that a social media service is a tier 2 social media service unless the Commissioner has, under section 31, recommended the making of the declaration.

#### **31 Recommendation about declaration of a tier 2 social media service**

- (1) The Commissioner may recommend that the Minister make a declaration under subsection 30(1) in relation to a specified social media service.

##### *Criteria for recommendation*

- (2) The Commissioner must not make a recommendation under subsection (1) in relation to a social media service if the service is a tier 1 social media service.
- (3) The Commissioner must not make a recommendation under subsection (1) in relation to a social media service unless:
  - (a) the Commissioner is satisfied that the social media service is a large social media service; or
  - (b) the provider of the social media service has requested the Commissioner to make the recommendation.
- (4) If a social media service has never been a tier 1 social media service, the Commissioner must not make a recommendation under subsection (1) in relation to the service unless:
  - (a) at least 28 days before making the recommendation, the Commissioner gave the provider of the service a written

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- invitation to apply under subsection 23(1) for the declaration of the service as a tier 1 social media service; and
- (b) the provider failed to make such an application.
- (5) In deciding whether to make a recommendation under subsection (1) in relation to a social media service, the Commissioner must have regard to:
- (a) whether the service complies with the basic online safety requirements; and
  - (b) whether the provider of the service has failed to make an application under subsection 23(1) for a declaration of the service as a tier 1 social media service; and
  - (c) whether a subsection 23(4) declaration relating to the service has been revoked under section 25; and
  - (d) such other matters (if any) as the Commissioner considers relevant.
- (6) Before making a recommendation under subsection (1) in relation to a social media service, the Commissioner must consult the provider of the service.
- (7) Subsections (4), (5) and (6) do not apply to a social media service if the provider of the service has requested the Commissioner to make the recommendation concerned.

*Large social media service*

- (8) In determining whether a social media service is a large social media service, the Commissioner must have regard to:
- (a) if the service has accounts for end-users:
    - (i) the number of accounts that are held by end-users who are ordinarily resident in Australia; and
    - (ii) the number of accounts that are held by end-users who are Australian children; and
  - (b) such other matters (if any) as the Commissioner considers relevant.
- (9) For the purposes of paragraph (8)(a), the Commissioner may make such assumptions and estimates as the Commissioner considers reasonable.



- (10) The Commissioner may publish on the Commissioner's website a statement that explains the Commissioner's approach to the administration of subsections (8) and (9).
- (11) A statement under subsection (10) is not a legislative instrument.

### **32 Variation of declaration of tier 2 social media service—change of name**

If:

- (a) a declaration is in force under subsection 30(1) in relation to a social media service; and
  - (b) the service changes its name;
- the Minister may, by legislative instrument, vary the declaration to reflect the new name of the service.

### **33 Revocation of declaration of social media service as a tier 2 social media service**

(1) If:

- (a) a declaration is in force under subsection 30(1) in relation to a social media service; and
- (b) the service complies with the basic online safety requirements; and
- (c) at least 3 months have passed since the declaration was made; and
- (d) if one or more social media service notices were given to the provider of the service at any time during the preceding 3 months—the provider complied with all, or nearly all, of those notices; and
- (e) the Commissioner has recommended the revocation of the declaration;

the Minister may, by legislative instrument, revoke the declaration.

- (2) The revocation takes effect at the end of the 28-day period that began at the end of the day on which the instrument was made.

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- (3) If, during that 28-day period, the provider of the service applies under subsection 23(1) for the declaration of the service as a tier 1 social media service:
  - (a) paragraph 23(4)(c) does not apply to the making of a subsection 23(4) declaration in relation to the service; and
  - (b) if a subsection 23(4) declaration is made in relation to the service—the subsection 23(4) declaration takes effect immediately after the end of that 28-day period.

**34 Register of Tier 2 Social Media Services**

- (1) The Commissioner is to maintain a register, to be known as the Register of Tier 2 Social Media Services, in which the Commissioner includes the names of each tier 2 social media service.
- (2) The Register of Tier 2 Social Media Services is to be maintained by electronic means.
- (3) The Register of Tier 2 Social Media Services is to be made available for inspection on the Commissioner’s website.
- (4) The Register of Tier 2 Social Media Services is not a legislative instrument.

**Subdivision B—Social media service notices**

**35 Social media service notice**

- (1) If:
  - (a) material is provided on a tier 2 social media service; and
  - (b) the material was the subject of a complaint that was made under the service’s complaints scheme; and
  - (c) the material was not removed from the service within:
    - (i) 48 hours after the complaint was made; or
    - (ii) such longer period as the Commissioner allows; and
  - (d) a complaint has been made to the Commissioner under section 18 about the material; and

- (e) the Commissioner is satisfied that the material is or was cyber-bullying material targeted at an Australian child; the Commissioner may give the provider of the service a written notice (a *social media service notice*) requiring the provider to:
- (f) remove the material from the service; and
  - (g) do so within 48 hours after the social media service notice was given to the provider.

Note 1: For declaration of a tier 2 social media service, see section 30.

Note 2: For enforcement, see:

- (a) sections 36 and 46 (civil penalty); and
- (b) section 47 (enforceable undertakings); and
- (c) section 48 (injunctions).

*Notice of refusal to give a social media service notice*

- (2) If the Commissioner decides to refuse to give a social media service notice to the provider of a social media service, the Commissioner must give written notice of the refusal to the person who made a section 18 complaint about the material concerned.

### **36 Compliance with social media service notice**

A person must comply with a requirement under a social media service notice to the extent that the person is capable of doing so.

Civil penalty: 100 penalty units.

### **37 Formal warning**

The Commissioner may issue a formal warning if a person contravenes section 36.

## **Division 4—Non-compliant social media services**

### **38 Non-compliance with the basic online safety requirements**

- (1) If the Commissioner is satisfied that a social media service does not comply with the basic online safety requirements, the Commissioner may:
  - (a) prepare a statement to that effect; and
  - (b) publish the statement on the Commissioner’s website.
- (2) If:
  - (a) the Commissioner has prepared a statement under subsection (1) in relation to a social media service; and
  - (b) the statement has been published on the Commissioner’s website; and
  - (c) the Commissioner is satisfied that the service complies with the basic online safety requirements;the Commissioner must remove the statement from the Commissioner’s website.

### **39 Non-compliance with a request for removal of cyber-bullying material**

If the Commissioner is satisfied that the provider of a social media service has not complied with a request under section 29, the Commissioner may:

- (a) prepare a statement to that effect; and
- (b) publish the statement on the Commissioner’s website.

### **40 Non-compliance with a social media service notice**

If the Commissioner is satisfied that the provider of a social media service has not complied with a social media service notice, the Commissioner may:

- (a) prepare a statement to that effect; and
- (b) publish the statement on the Commissioner’s website.

## Part 5—End-user notices

### 41 Simplified outline of this Part

- A person who posts cyber-bullying material targeted at an Australian child may be given a notice (an *end-user notice*) requiring the person to do any or all of the following:
  - (a) take all reasonable steps to ensure the removal of the material;
  - (b) refrain from posting any cyber-bullying material for which the child is the target;
  - (c) apologise for posting the material.

### 42 End-user notice

(1) If:

- (a) material is, or has been, provided on a social media service or relevant electronic service; and
- (b) a complaint has been made to the Commissioner under section 18 about the material; and
- (c) the Commissioner is satisfied that the material is or was cyber-bullying material targeted at an Australian child; and
- (d) the material was posted on the service by a particular end-user of the service;

the Commissioner may give the end-user a written notice (an *end-user notice*) requiring the end-user to do any or all of the following:

- (e) if the material is provided on the service—to:
  - (i) take all reasonable steps to ensure the removal of the material from the service; and
  - (ii) do so within the period specified in the notice;
- (f) in any case—to refrain from posting any cyber-bullying material for which the child is the target;
- (g) in any case—to:

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- (i) apologise to the child (or, if the child has become an adult, to the adult) for posting the material; and
- (ii) do so in the manner, and within the period, specified in the notice.

### *Transitional*

- (2) If material was posted on a social media service or relevant electronic service before the commencement of this section, paragraph (1)(a) does not apply to the material unless the material was provided on the service after the commencement of this section.

## **43 Compliance with end-user notice**

A person must comply with a requirement under an end-user notice to the extent that the person is capable of doing so.

Note: For enforcement, see section 48 (injunctions).

## **44 Formal warning**

The Commissioner may issue a formal warning if a person contravenes section 43.

## Part 6—Enforcement

### 45 Simplified outline of this Part

- A civil penalty provision in this Act is enforceable under Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*.
- The Commissioner may accept an enforceable undertaking under Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014* that relates to a social media service notice.
- The Commissioner may seek an injunction under Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014* that relates to:
  - (a) a social media service notice; or
  - (b) an end-user notice.

### 46 Civil penalty provision

#### *Enforceable civil penalty provision*

- (1) A civil penalty provision in this Act is enforceable under Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*.

Note: Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014* allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

#### *Authorised applicant*

- (2) For the purposes of Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, the Commissioner is an authorised applicant in relation to a civil penalty provision in this Act.

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*Relevant court*

- (3) For the purposes of Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, the Federal Circuit Court of Australia is a relevant court in relation to a civil penalty provision in this Act.

*Extension to external Territories etc.*

- (4) Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, as it applies in relation to a civil penalty provision in this Act, extends to:
- (a) every external Territory; and
  - (b) acts, omissions, matters and things outside Australia.

**47 Enforceable undertakings**

*Enforceable provisions*

- (1) Section 36 of this Act is enforceable under Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*.

*Authorised person*

- (2) The Commissioner is an authorised person in relation to section 36 of this Act for the purposes of Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*.

*Relevant court*

- (3) The Federal Circuit Court of Australia is a relevant court in relation to section 36 of this Act for the purposes of Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*.

*Extension to external Territories etc.*

- (4) Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*, as it applies in relation to section 36 of this Act, extends to:
- (a) every external Territory; and
  - (b) acts, omissions, matters and things outside Australia.



**48 Injunctions***Enforceable provisions*

- (1) The following provisions are enforceable under Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*:
- (a) section 36;
  - (b) section 43.

*Authorised person*

- (2) The Commissioner is an authorised person in relation to the provisions mentioned in subsection (1) for the purposes of Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*.

*Relevant court*

- (3) The Federal Circuit Court of Australia is a relevant court in relation to the provisions mentioned in subsection (1) for the purposes of Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*.

*Extension to external Territories etc.*

- (4) Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*, as it applies in relation to the provisions mentioned in subsection (1), extends to:
- (a) every external Territory; and
  - (b) acts, omissions, matters and things outside Australia.

**Part 7** Administrative provisions relating to the Commissioner

**Division 1** Introduction

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**Part 7—Administrative provisions relating to the  
Commissioner**

**Division 1—Introduction**

**49 Simplified outline of this Part**

- The Commissioner is to be appointed by the Minister.
- The Commissioner may delegate his or her functions and powers.
- The Commissioner must prepare an annual report.
- The ACMA must assist the Commissioner.
- The Minister may give directions to the Commissioner.

## **Division 2—Appointment of the Commissioner**

### **50 Appointment of the Commissioner**

- (1) The Commissioner is to be appointed by the Minister by written instrument.
- (2) A person is not eligible for appointment as the Commissioner unless the Minister is satisfied that the person has:
  - (a) substantial experience or knowledge; and
  - (b) significant standing;in at least one of the following fields:
  - (c) the operation of social media services;
  - (d) the operation of the internet industry;
  - (e) public engagement on issues relating to online safety;
  - (f) public policy in relation to the communications sector;
  - (g) child welfare or child wellbeing.
- (3) The Commissioner holds office on a full-time basis.

### **51 Period of appointment for the Commissioner**

The Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The Commissioner may be reappointed: see the *Acts Interpretation Act 1901*.

### **52 Acting appointments**

- (1) The Minister may appoint a person to act as the Commissioner:
  - (a) during a vacancy in the office of the Commissioner (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the Commissioner:
    - (i) is absent from duty or from Australia; or

**Part 7** Administrative provisions relating to the Commissioner

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- (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (2) A person is not eligible for appointment to act as the Commissioner unless the person is eligible for appointment as the Commissioner.

## **Division 3—Terms and conditions for the Commissioner**

### **53 Remuneration and allowances**

- (1) The Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Commissioner is to be paid the remuneration that is prescribed by the legislative rules.
- (2) The Commissioner is to be paid the allowances that are prescribed by the legislative rules.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **54 Leave of absence**

- (1) The Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Commissioner leave of absence (other than recreation leave) on the terms and conditions, as to remuneration or otherwise, that the Minister determines.

### **55 Outside employment**

The Commissioner must not engage in paid employment outside the duties of his or her office without the Minister's approval.

### **56 Disclosure of interests to the Minister**

The Commissioner must give written notice to the Minister of all interests, pecuniary or otherwise, that the Commissioner has or acquires, and that conflict or could conflict with the proper performance of the Commissioner's functions.

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**57 Resignation**

- (1) The Commissioner may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

**58 Termination of appointment**

- (1) The Minister may terminate the appointment of the Commissioner:
  - (a) for misbehaviour; or
  - (b) if the Commissioner is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of the Commissioner if:
  - (a) the Commissioner:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (b) the Commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (c) the Commissioner engages, except with the Minister's approval, in paid employment outside the duties of his or her office (see section 55); or
  - (d) the Commissioner fails, without reasonable excuse, to comply with section 56.

**59 Other terms and conditions**

The Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

## **Division 4—Other matters**

### **60 Supplementary powers**

- (1) The powers of the Commissioner include, but are not limited to, the power to enter into contracts.
- (2) Any contract entered into by the Commissioner is to be entered into on behalf of the Commonwealth.
- (3) Any real or personal property held by the Commissioner is held for and on behalf of the Commonwealth.
- (4) Any money received by the Commissioner is received for and on behalf of the Commonwealth.
- (5) The Commissioner cannot hold real or personal property, or money, on trust for a person other than the Commonwealth.  
Note: The Commonwealth may hold real or personal property or money on trust.
- (6) To avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (3).

### **61 Commissioner's liabilities are Commonwealth liabilities**

- (1) Any financial liabilities of the Commissioner are taken to be liabilities of the Commonwealth.
- (2) For the purposes of this section, *financial liability* means a liability to pay a person an amount, where the amount, or the method for working out the amount, has been determined.

### **62 Commissioner has privileges and immunities of the Crown**

The Commissioner has the privileges and immunities of the Crown in right of the Commonwealth.

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**63 Delegation by the Commissioner to a member of the staff of the ACMA etc.**

- (1) The Commissioner may, by writing, delegate any or all of the Commissioner's functions or powers to:
- (a) a member of the staff of the ACMA; or
  - (b) a person whose services are made available to the ACMA under paragraph 55(1)(a) of the *Australian Communications and Media Authority Act 2005*;
- if the member or person is:
- (c) an SES employee; or
  - (d) an acting SES employee; or
  - (e) an APS employee who holds or performs the duties of:
    - (i) an Executive Level 1 or 2 position; or
    - (ii) an equivalent position; or
  - (f) an APS employee who holds or performs the duties of:
    - (i) an APS 6 position; or
    - (ii) an equivalent position.

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

- (2) A delegate must comply with any written directions of the Commissioner.
- (3) Subsection (1) does not apply to a power to make, vary or revoke a legislative instrument.

**64 Delegation by the Commissioner to a body corporate**

- (1) The Commissioner may, by writing, delegate any or all of the Commissioner's functions or powers under:
- (a) Part 3; or
  - (b) Part 4 (other than section 35 or 37);
- to a body corporate that is:
- (c) specified in the legislative rules; and
  - (d) a company that is registered under Part 2A.2 of the *Corporations Act 2001*; and



- (e) a company limited by guarantee.
- (2) A delegate must comply with any written directions of the Commissioner.

*Information*

- (3) If, under subsection (1), the Commissioner delegates one or more functions or powers to a body corporate:
  - (a) the body corporate may give the Commissioner information and documents that are relevant to the performance of the Commissioner's functions, or the exercise of the Commissioner's powers, under this Act; and
  - (b) the Commissioner may give the body corporate information and documents that are relevant to the performance of the functions, or the exercise of the powers, delegated to the body corporate.

*Operation of other laws of the Commonwealth*

- (4) The legislative rules may provide that if, under subsection (1), the Commissioner delegates one or more functions or powers to a body corporate, the body corporate is taken, for the purposes of a specified law of the Commonwealth (other than this Act) to be a body corporate established for a public purpose by this Act.

*Funding agreement*

- (5) If, under subsection (1), the Commissioner delegates one or more functions or powers to a body corporate, the Minister may, on behalf of the Commonwealth, enter into an agreement with the body corporate for the payment to the body corporate of amounts in respect of the performance of the functions, and the exercise of the powers, delegated to the body corporate.

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**65 Sub-delegation by body corporate**

- (1) If, under subsection 64(1), the Commissioner delegates a function or power to a body corporate, the body corporate may, by writing, sub-delegate the function or power to a person who:
  - (a) is a director or employee of the body corporate; and
  - (b) satisfies the conditions set out in the legislative rules.
- (2) A sub-delegate must comply with any written directions of:
  - (a) the body corporate; or
  - (b) the Commissioner.
- (3) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply in relation to a sub-delegation in a corresponding way to the way in which they apply to a delegation.

**66 Annual report**

- (1) The Commissioner must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the operations of the Commissioner during that year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

- (2) If, under subsection 64(1), the Commissioner delegates one or more functions or powers to a body corporate, a report under subsection (1) of this section for a financial year must include a report on the operations of the body corporate under this Act during the year.

**67 Assistance to the Commissioner**

- (1) The ACMA must:
    - (a) assist the Commissioner to perform his or her functions and exercise his or her powers; and
    - (b) do so to such extent as the Commissioner reasonably requires.
  - (2) The assistance may include the following:
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- (a) the provision of advice;
  - (b) the making available of resources and facilities.
- (3) The ACMA must:
- (a) make available members of the staff of the ACMA to assist the Commissioner to perform his or her functions and exercise his or her powers; and
  - (b) do so to such extent as the Commissioner reasonably requires.
- (4) The Minister may, by legislative instrument, give directions to the ACMA in relation to the performance of its functions, or the exercise of its powers, under this section.
- Note 1: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.
- Note 2: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to the direction (see sections 44 and 54 of that Act).
- (5) The ACMA must comply with a direction under subsection (4).
- (6) For the purposes of this section, if a person is an officer or employee whose services are made available to the ACMA under paragraph 55(1)(a) of the *Australian Communications and Media Authority Act 2005*, the person is taken to be a member of the staff of the ACMA.

## **68 Commissioner not subject to direction by the ACMA**

To avoid doubt, the Commissioner is not subject to direction by:

- (a) the ACMA; or
- (b) a member or associate member of the ACMA; or
- (c) a member of the staff of the ACMA;

in relation to the performance of a function, or the exercise of a power, by the Commissioner.

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**69 Consultants**

- (1) The Commissioner may, on behalf of the Commonwealth, engage persons having suitable qualifications and experience as consultants to the Commissioner.
- (2) The consultants are to be engaged on the terms and conditions that the Commissioner determines in writing.

**70 Minister may give directions to the Commissioner**

- (1) The Minister may, by legislative instrument, give directions to the Commissioner about the performance of the Commissioner's functions or the exercise of the Commissioner's powers.

Note 1: For variation and revocation, see the *Acts Interpretation Act 1901*.

Note 2: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to the direction (see sections 44 and 54 of that Act).

- (2) A direction under subsection (1) must be of a general nature only.
- (3) Subsection (2) of this section does not apply to the Commissioner's powers under subsection 64(1).

Note: Subsection 64(1) deals with delegation to a body corporate.
- (4) The Commissioner must comply with a direction under subsection (1).

## **Part 8—Children's Online Safety Special Account**

### **71 Simplified outline of this Part**

- The Children's Online Safety Special Account is established.

### **72 Children's Online Safety Special Account**

- (1) The Children's Online Safety Special Account is established by this section.
- (2) The Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.
- (3) The Account is to be administered by the ACMA.
- (4) An amount must not be debited from the Account without the written approval of the Commissioner.

### **73 Credits to the Account**

#### *Determination*

- (1) The Minister may, by writing, determine that a specified amount is to be:
  - (a) debited against the appropriation for the ACMA departmental item in a specified Appropriation Act; and
  - (b) credited to the Children's Online Safety Special Account.
- (2) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the determination.

#### *ACMA departmental item*

- (3) For the purposes of the application of this section to an Appropriation Act, ***ACMA departmental item*** means a

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departmental item (within the meaning of that Act) that relates to the ACMA.

**74 Purposes of the Account**

The purposes of the Children's Online Safety Special Account are as follows:

- (a) to enhance online safety for children;
- (b) to make grants under paragraph 15(1)(g);
- (c) to pay:
  - (i) remuneration, and other employment-related costs and expenses, in respect of APS employees whose duties relate to the performance of the Commissioner's functions or the exercise of the Commissioner's powers; and
  - (ii) any other costs, expenses and other obligations incurred by the Commonwealth in connection with the performance of the Commissioner's functions or the exercise of the Commissioner's powers;
- (d) to pay any costs, expenses and other obligations incurred by the Commonwealth under an agreement entered into under subsection 64(5).

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

## **Part 9—Disclosure of information**

### **75 Simplified outline of this Part**

- The Commissioner may disclose information in certain circumstances.

Note: See also section 92 (referral of matters to law enforcement agencies).

### **76 Scope**

This Part applies to information that was obtained by the Commissioner as a result of the performance of a function, or the exercise of a power, conferred on the Commissioner by or under:

- (a) this Act; or
- (b) the *Broadcasting Services Act 1992*.

### **77 Disclosure to Minister**

The Commissioner may disclose information to the Minister.

### **78 Disclosure to APS employees for advising the Minister**

For the purpose of advising the Minister, the Commissioner may disclose information to:

- (a) the Secretary of the Department; or
- (b) an APS employee in the Department who is authorised, in writing, by the Secretary of the Department for the purposes of this section.

### **79 Disclosure to Royal Commissions**

- (1) The Commissioner may disclose information to a Royal Commission (within the meaning of the *Royal Commissions Act 1902*).

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- (2) The Commissioner may, by writing, impose conditions to be complied with in relation to information disclosed under subsection (1).
- (3) An instrument made under subsection (2) that imposes conditions relating to one particular disclosure identified in the instrument is not a legislative instrument.
- (4) Otherwise, an instrument made under subsection (2) is a legislative instrument.

**80 Disclosure to certain authorities**

- (1) The Commissioner may disclose information to any of the following authorities if the Commissioner is satisfied that the information will enable or assist the authority to perform or exercise any of the authority's functions or powers:
  - (a) the ACMA;
  - (b) the National Children's Commissioner;
  - (c) the Secretary of the Department administered by the Minister administering the *Classification (Publications, Films and Computer Games) Act 1995* or an APS employee in that Department whose duties relate to that Act;
  - (d) the Australian Federal Police;
  - (e) the Director of Public Prosecutions;
  - (f) an authority of a State or Territory responsible for enforcing one or more laws of the State or Territory;
  - (g) an authority of a foreign country responsible for regulating matters relating to the capacity of children to use social media services and electronic services in a safe manner.
- (2) The Commissioner may, by writing, impose conditions to be complied with in relation to information disclosed under subsection (1).
- (3) An instrument made under subsection (2) that imposes conditions relating to one particular disclosure identified in the instrument is not a legislative instrument.



- (4) Otherwise, an instrument made under subsection (2) is a legislative instrument.

### **81 Disclosure to teachers or school principals**

- (1) The Commissioner may disclose information to a teacher or school principal if the Commissioner is satisfied that the information will assist in the resolution of a complaint made under section 18.
- (2) The Commissioner may, by writing, impose conditions to be complied with in relation to information disclosed under subsection (1).
- (3) An instrument made under subsection (2) that imposes conditions relating to one particular disclosure identified in the instrument is not a legislative instrument.
- (4) Otherwise, an instrument made under subsection (2) is a legislative instrument.

### **82 Disclosure to parents or guardians**

- (1) The Commissioner may disclose information to a parent or guardian of an Australian child if the Commissioner is satisfied that the information will assist in the resolution of a complaint made under section 18.
- (2) The Commissioner may, by writing, impose conditions to be complied with in relation to information disclosed under subsection (1).
- (3) An instrument made under subsection (2) that imposes conditions relating to one particular disclosure identified in the instrument is not a legislative instrument.
- (4) Otherwise, an instrument made under subsection (2) is a legislative instrument.

### **83 Disclosure with consent**

The Commissioner may disclose information that relates to the affairs of a person if:

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- (a) the person has consented to the disclosure; and
- (b) the disclosure is in accordance with that consent.

**84 Disclosure of publicly available information**

The Commissioner may disclose information if it is already publicly available.

**85 Disclosure of summaries and statistics**

The Commissioner may disclose:

- (a) summaries of de-identified information; and
- (b) statistics derived from de-identified information.

**86 Relationship with Part 13 of the *Telecommunications Act 1997***

This Part does not authorise a disclosure of information that is prohibited by Part 13 of the *Telecommunications Act 1997*.

## **Part 10—Miscellaneous**

### **87 Simplified outline of this Part**

- This Part deals with miscellaneous matters, such as review of decisions and legislative rules.

### **88 Review of decisions**

#### *Declaration of tier 1 social media service*

- (1) An application may be made to the Administrative Appeals Tribunal for a review of any of the following decisions made by the Commissioner:
  - (a) a decision under subsection 23(5) to refuse to make a declaration in relation to a social media service;
  - (b) a decision under section 25 to revoke a declaration that relates to a social media service.
- (2) An application under subsection (1) may only be made by the provider of the social media service concerned.

#### *Social media service notice*

- (3) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Commissioner under section 35 to give a social media service notice to the provider of a social media service.
- (4) An application under subsection (3) may only be made by:
  - (a) the provider of the social media service; or
  - (b) the end-user who posted the material the subject of the notice.
- (5) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Commissioner to refuse

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to give the provider of a social media service a social media service notice that relates to material provided on the service.

- (6) An application under subsection (5) may only be made:
- (a) by a person who made a section 18 complaint about the material provided on the service; or
  - (b) by, or with the consent of, the person who was the target of the material provided on the service.

### *End-user notice*

- (7) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Commissioner under section 42 to give an end-user notice.

## **89 Protection from civil proceedings**

- (1) 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 section 18;
  - (b) the making of a statement to, or the giving of a document or information to, the Commissioner in connection with an investigation under section 19.
- (2) Civil proceedings do not lie against a person in respect of anything done by the person in compliance with:
- (a) a request under section 29; or
  - (b) a social media service notice; or
  - (c) an end-user notice.

## **90 Liability for damages**

None of the following:

- (a) the Commissioner;
- (b) a delegate of the Commissioner;
- (c) a director or employee of a body corporate that is a delegate of the Commissioner;

is liable to an action or other proceeding for damages for, or in relation to, an act or matter in good faith done or omitted to be done:

- (d) in the performance or purported performance of any function; or
- (e) in the exercise or purported exercise of any power; conferred on the Commissioner by or under this Act or the *Broadcasting Services Act 1992*.

### **91 Protection from criminal proceedings—Commissioner etc.**

- (1) For the purposes of this section, each of the following is a ***protected person***:
  - (a) the Commissioner;
  - (b) a member of the staff of the ACMA;
  - (c) an officer or employee whose services are made available to the ACMA under paragraph 55(1)(a) of the *Australian Communications and Media Authority Act 2005*;
  - (d) a consultant engaged under section 69;
  - (e) a body corporate that is a delegate of the Commissioner;
  - (f) a director or employee of a body corporate that is a delegate of the Commissioner.
- (2) Criminal proceedings do not lie against a protected person for or in relation to:
  - (a) the collection of material; or
  - (b) the possession of material; or
  - (c) the distribution of material; or
  - (d) the delivery of material; or
  - (e) the copying of material; or
  - (f) the doing of any other thing in relation to material;in connection with the exercise of a power, or the performance of a function, conferred on the Commissioner by or under this Act.
- (3) For the purposes of this section, ***possession*** includes have in custody or control.

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**92 Referral of matters to law enforcement agencies**

- (1) If:
- (a) in the performance of a function, or the exercise of a power, conferred on the Commissioner, the Commissioner becomes aware of particular material provided on a social media service or relevant electronic service; and
  - (b) the Commissioner is satisfied that the material is of a sufficiently serious nature to warrant referral to a law enforcement agency; and
  - (c) the material is not covered by clause 40 of Schedule 5, or clause 69 of Schedule 7, to the *Broadcasting Services Act 1992*;
- the Commissioner may notify the material to:
- (d) a member of an Australian police force; or
  - (e) if there is an arrangement between:
    - (i) the Commissioner; and
    - (ii) the chief (however described) of an Australian police force under which the Commissioner is authorised to notify the material to another person or body;that other person or body.

*Referral to law enforcement agency*

- (2) The manner in which material may be notified under paragraph (1)(d) to a member of an Australian police force includes (but is not limited to) a manner ascertained in accordance with an arrangement between:
- (a) the Commissioner; and
  - (b) the chief (however described) of the police force concerned.
- (3) If a member of an Australian police force is notified of particular material under this section, the member may notify the material to a member of another law enforcement agency.
- (4) This section does not, by implication, limit the powers of the Commissioner to refer other matters to a member of an Australian police force.

**93 Deferral of action in order to avoid prejudicing a criminal investigation**

If:

- (a) in the performance of a function, or the exercise of a power, conferred on the Commissioner, the Commissioner becomes aware of particular material provided on a social media service or relevant electronic service; and
- (b) apart from this section, the Commissioner would be required to take action under this Act in relation to the material; and
- (c) a member of an Australian police force satisfies the Commissioner 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 Commissioner may defer taking that action until the end of that period.

**94 Copies of material**

- (1) The Commissioner may make one or more copies of material for the purposes of an investigation under section 19.
- (2) The Commissioner does not infringe copyright if the Commissioner does anything authorised by subsection (1).

**95 Compensation for acquisition of property**

- (1) If the operation of this Act or the legislative rules would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

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**96 Service of notices by electronic means**

Paragraphs 9(1)(d) and (2)(d) of the *Electronic Transactions Act 1999* do not apply to a notice under:

- (a) this Act; or
- (b) the *Regulatory Powers (Standard Provisions) Act 2014*, so far as that Act relates to this Act.

Note: Paragraphs 9(1)(d) and (2)(d) of the *Electronic Transactions Act 1999* deal with the consent of the recipient of information to the information being given by way of electronic communication.

**97 Service of notices on contact person etc.**

*Scope*

- (1) This section applies to:
  - (a) a summons or process in any proceedings under, or connected with, this Act; or
  - (b) a summons or process in any proceedings under, or connected with, the *Regulatory Powers (Standard Provisions) Act 2014*, so far as that Act relates to this Act; or
  - (c) a notice under this Act; or
  - (d) a notice under the *Regulatory Powers (Standard Provisions) Act 2014*, so far as that Act relates to this Act.

*Service of summons, process or notice on contact person*

- (2) If:
  - (a) the summons, process or notice, as the case may be, is required to be served on, or given to, the provider of a social media service; and
  - (b) there is an individual who is:
    - (i) an employee or agent of the provider; and
    - (ii) designated as the service's contact person for the purposes of this Act; and
  - (c) the contact details of the contact person have been notified to the Commissioner;



the summons, process or notice, as the case may be, is taken to have been served on, or given to, the provider if it is served on, or given to, the contact person.

*Service of summons, process or notice on agent*

- (3) If:
- (a) 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
  - (b) the body corporate does not have a registered office or a principal office in Australia; and
  - (c) the body corporate has an agent in Australia;
- 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.

*Other matters*

- (4) Subsections (2) and (3) have 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.

**98 This Act does not limit Schedule 5 or 7 to the *Broadcasting Services Act 1992***

This Act does not limit the operation of Schedule 5 or 7 to the *Broadcasting Services Act 1992*.

**99 This Act does not limit the *Telecommunications Act 1997***

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

**100 Implied freedom of political communication**

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

**101 Concurrent operation of State and Territory laws**

It is the intention of the Parliament that this Act 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 Act.

**102 This Act not to affect performance of State or Territory functions**

A power conferred by this Act 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.

**103 Revocation or variation of instruments**

A provision of this Act that expressly authorises the revocation or variation of an instrument does not, by implication, limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* in relation to other instruments under this Act.

**104 Terms of use of a social media service**

- (1) For the purposes of this Act, if:
- (a) a social media service's terms of use contains a provision that prohibits end-users from posting on the service one or more kinds of material; and
  - (b) that provision does not expressly prohibit end-users from posting on the service cyber-bullying material; and
  - (c) if an end-user were to post on the service cyber-bullying material, the material would breach that provision;
- that provision may reasonably be regarded as the equivalent of a provision that prohibits end-users from posting on the service cyber-bullying material.

- (2) For the purposes of this section, *cyber-bullying material* has its ordinary meaning.

### **105 Provider of social media service or relevant electronic service**

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

### **106 Extended meaning of use**

Unless the contrary intention appears, a reference in this Act 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.

### **107 Review of this Act etc.**

- (1) Within 3 years after the commencement of this section, the Minister must cause to be conducted a review of the following matters:
- (a) the operation of this Act and the legislative rules;  
(b) whether this Act or the legislative rules should be amended;  
(c) whether a delegation should be made under subsection 64(1).
- (2) The Minister must cause to be prepared a report of a review under subsection (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.

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**108 Legislative rules**

- (1) The Minister may, by legislative instrument (and subject to subsection (2)), make rules (*legislative rules*) prescribing matters:
  - (a) required or permitted by this Act to be prescribed by the legislative rules; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the legislative rules may not do the following:
  - (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) amend this Act.

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*[Minister's second reading speech made in—  
House of Representatives on 3 December 2014  
Senate on 2 March 2015]*

(260/14)

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