

Enhancing Online Safety for Children (Consequential Amendments) Act 2015

No. 25, 2015

An Act to deal with consequential matters arising from the enactment of the *Enhancing Online Safety for Children Act 2015*, and for other purposes

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Enhancing Online Safety for Children (Consequential Amendments) Act 2015

No. 25, 2015

An Act to deal with consequential matters arising from the enactment of the *Enhancing Online Safety for Children Act 2015*, and for other purposes

[*Assented to 24 March 2015*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Enhancing Online Safety for Children (Consequential Amendments) 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 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 24 March 2015 |
| 2. Schedule 1, Part 1 | At the same time as section 3 of the *Enhancing Online Safety for Children Act 2015* commences. | 1 July 2015 |
| 3. Schedule 1, Part 2 | Immediately after the commencement of Part 1 of Schedule 1. | 1 July 2015 |
| 4. Schedule 2, Part 1 | At the same time as section 3 of the *Enhancing Online Safety for Children Act 2015* commences. | 1 July 2015 |
| 5. Schedule 2, Part 2 | Immediately after the commencement of Part 3 of Schedule 1 to the *Telecommunications Legislation Amendment (Deregulation) Act 2015*.  However, the provisions do not commence at all if Part 3 of Schedule 1 to the *Telecommunications Legislation Amendment (Deregulation) Act 2015* commences before the commencement of the provisions covered by table item 4. | 1 July 2015 |
| 6. Schedule 3 | At the same time as section 3 of the *Enhancing Online Safety for Children Act 2015* commences. | 1 July 2015 |

Note: This table relates only to the provisions of this Act as originally enacted.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 Schedules

Legislation 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.

4 Translation of certain references

If a Bill introduced into Parliament as the Telecommunications Legislation Amendment (Deregulation) Bill 2014 is enacted (with or without amendments) as the *Telecommunications Legislation Amendment (Deregulation) Act 2015*, each reference in this Act (other than this section) to the *Telecommunications Legislation Amendment (Deregulation) Act 2014* is to be read as a reference to the *Telecommunications Legislation Amendment (Deregulation) Act 2015*.

Schedule 1—Amendment of the Broadcasting Services Act 1992

Part 1—General amendments

Broadcasting Services Act 1992

1 Subsection 6(1)

Insert:

***Commissioner*** means the Children’s e‑Safety Commissioner.

2 Part 13 (heading)

Repeal the heading, substitute:

Part 13—Information gathering by the ACMA and the Commissioner

3 At the end of Division 1 of Part 13

Add:

169A Investigation by the Commissioner

A reference in this Part to an ***investigation*** by the Commissioner is a reference to an investigation by the Commissioner under:

(a) section 19 of the *Enhancing Online Safety for Children Act 2015*; or

(b) clause 27 of Schedule 5 to this Act; or

(c) clause 44 of Schedule 7 to this Act.

4 Section 173

Before “For”, insert “(1)”.

5 Section 173

After “an investigation”, insert “by the ACMA”.

6 At the end of section 173

Add:

(2) For the purposes of an investigation by the Commissioner, the Commissioner may give a written notice to a person summoning the person:

(a) to attend before:

(i) the Commissioner; or

(ii) a delegate of the Commissioner named in the notice;

to produce documents or to answer questions; or

(b) to provide documents or other information to the Commissioner;

relevant to the subject matter of the investigation.

7 Before subsection 174(1)

Insert:

Investigation by the ACMA

8 At the end of section 174

Add:

Investigation by the Commissioner

(4) If a person is summoned to attend before the Commissioner or a delegate of the Commissioner, the Commissioner or delegate may examine the person on oath or affirmation and, for that purpose:

(a) may require the person to take an oath or make an affirmation; and

(b) may administer an oath or affirmation to the person.

(5) The oath or affirmation is to be an oath or affirmation that the statements the person will make will be true to the best of the person’s knowledge or belief.

(6) The Commissioner or delegate may require the person to answer a question that is put to the person at an examination and that is relevant to a matter that the Commissioner is investigating or is to investigate.

9 Before subsection 176(1)

Insert:

Investigation by the ACMA

10 At the end of section 176

Add:

Investigation by the Commissioner

(3) If a person is examined by the Commissioner or a delegate of the Commissioner, a record must be made of the examination and the person is entitled to be given a written copy of the record.

(4) If the record of the examination of a person is made in electronic form, the person is, if the person so requests, to be given a copy of the record in that form.

11 Section 177

Before “The ACMA”, insert “(1)”.

12 Paragraph 177(a)

After “investigation”, insert “by the ACMA”.

13 At the end of section 177

Add:

(2) The Commissioner may, by written notice given to a person, require the person:

(a) to make available for inspection by:

(i) the Commissioner; or

(ii) a delegate of the Commissioner;

any documents in the possession of the person that may contain information relevant to the subject matter of an investigation by the Commissioner; and

(b) to permit the Commissioner or the delegate, as the case may be, to make copies of any such documents.

14 Subsection 200(3)

After “investigation”, insert “by the ACMA”.

15 At the end of section 200

Add:

(4) A person who gives evidence or produces documents at an investigation by the Commissioner has the same protection as a witness in a proceeding in the High Court.

16 Clause 27 of Schedule 5

Omit “its”, substitute “his or her”.

17 Subclause 28(2) of Schedule 5

Omit “it”, substitute “he or she”.

18 Subclause 68(5) of Schedule 5

Omit “its”, substitute “his or her”.

19 Subclause 69(4) of Schedule 5

Omit “its”, substitute “his or her”.

20 Subclause 70(8) of Schedule 5

Omit “its”, substitute “his or her”.

21 Subclause 71(8) of Schedule 5

Omit “its”, substitute “his or her”.

22 Clause 74 of Schedule 5

Omit “if it”, substitute “if the Commissioner”.

23 Paragraph 94(f) of Schedule 5

Omit “itself”, substitute “himself or herself”.

24 Clause 44 of Schedule 7

Omit “its”, substitute “his or her”.

25 Subclause 45(2) of Schedule 7

Omit “it”, substitute “he or she”.

26 Subclause 91(4) of Schedule 7

Omit “its”, substitute “his or her”.

27 Subclause 92(3) of Schedule 7

Omit “its”, substitute “his or her”.

28 Subclause 93(7) of Schedule 7

Omit “its”, substitute “his or her”.

29 Subclause 94(7) of Schedule 7

Omit “its”, substitute “his or her”.

30 Clause 97 of Schedule 7

Omit “if it”, substitute “if the Commissioner”.

31 Paragraph 112(1)(b) of Schedule 7

Repeal the paragraph.

32 Paragraph 112(1)(d) of Schedule 7

Repeal the paragraph, substitute:

(d) a consultant engaged under section 69 of the *Enhancing Online Safety for Children Act 2015*;

33 Paragraph 112(1)(e) of Schedule 7

After “officer”, insert “or employee”.

34 Paragraph 114(f) of Schedule 7

Omit “itself”, substitute “himself or herself”.

35 Subclause 115(3) of Schedule 7

Omit “if it”, substitute “if the Commissioner”.

Part 2—Amendments to change certain references to the ACMA into references to the Commissioner

36 Amendments—changing certain references to the ACMA into references to the Commissioner

The specified provisions of the Act specified in this Part are amended as follows:

(a) by omitting “ACMA” (wherever occurring) and substituting “Commissioner”;

(b) by omitting “**ACMA**” (wherever occurring) and substituting “**Commissioner**”;

(c) by omitting “ACMA’s” (wherever occurring) and substituting “Commissioner’s”.

Broadcasting Services Act 1992

37 Schedule 5

38 Schedule 7 (other than paragraphs (a) and (b) of the definition of *licensed broadcasting service* in clause 2, subparagraph 9A(1)(a)(ii) and paragraphs 112(1)(c) and (e))

Schedule 2—Amendments of other Acts

Part 1—General amendments

Australian Communications and Media Authority Act 2005

1 Section 3 (subparagraph (b)(iia) of the definition of *authorised disclosure information*)

Repeal the subparagraph.

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

Omit “Part 4 of Schedule 5, Part 5 of Schedule 6, or Part 3 of Schedule 7,”, substitute “Part 5 of Schedule 6”.

3 Paragraph 4(3)(b)

Repeal the paragraph, substitute:

(b) clause 38 of Schedule 6.

4 Paragraph 10(1)(a)

Omit “, internet content, designated content/hosting services”.

5 Subparagraph 10(1)(o)(ii)

After “*Broadcasting Services Act 1992*”, insert “(other than Schedule 5 or 7)”.

6 Paragraphs 53(2)(n), (o), (p) and (pa)

Repeal the paragraphs.

7 After paragraph 57(a)

Insert:

(aa) a report on the following matters:

(i) remuneration, and other employment‑related costs and expenses, in respect of APS employees whose duties relate to the performance of the Children’s e‑Safety Commissioner’s functions or the exercise of the Children’s e‑Safety Commissioner’s powers;

(ii) any other costs, expenses and other obligations incurred by the Commonwealth in connection with the performance of the Children’s e‑Safety Commissioner’s functions or the exercise of the Children’s e‑Safety Commissioner’s powers; and

8 After paragraph 59D(1)(l)

Insert:

(la) the Children’s e‑Safety Commissioner;

Criminal Code Act 1995

9 Paragraph 273.9(5)(a) of the *Criminal Code*

Omit “Australian Communications and Media Authority”, substitute “Children’s e‑Safety Commissioner”.

10 Paragraph 273.9(5)(a) of the *Criminal Code*

Omit “Authority’s”, substitute “Commissioner’s”.

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

Omit “Australian Communications and Media Authority”, substitute “Children’s e‑Safety Commissioner”.

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

Omit “Authority’s”, substitute “Commissioner’s”.

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

Omit “Australian Communications and Media Authority”, substitute “Children’s e‑Safety Commissioner”.

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

Omit “Authority’s”, substitute “Commissioner’s”.

Freedom of Information Act 1982

15 Division 1 of Part II of Schedule 2 (before the item relating to the Classification Board)

Insert:

Children’s e‑Safety Commissioner, 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.

Telecommunications Act 1997

16 Section 284 (heading)

Repeal the heading, substitute:

284 Assisting the ACMA, the Children’s e‑Safety Commissioner, the ACCC or the Telecommunications Industry Ombudsman

17 After subsection 284(1)

Insert:

(1A) Sections 276 and 277 do not prohibit a disclosure by a person of information or a document if:

(a) the disclosure is made to:

(i) the Children’s e‑Safety Commissioner; or

(ii) a member of the staff of the ACMA whose duties relate to the performance of the Children’s e‑Safety Commissioner’s functions; and

(b) the information or document may assist the Children’s e‑Safety Commissioner to carry out his or her functions or powers.

18 Section 299 (heading)

Repeal the heading, substitute:

299 Assisting the ACMA, the Children’s e‑Safety Commissioner, the ACCC or the Telecommunications Industry Ombudsman

19 After subsection 299(1)

Insert:

(1A) If information or a document is disclosed to a person as permitted by subsection 284(1A) or this subsection, the person must not disclose or use the information or document except for the purpose of, or in connection with, the carrying out of the Children’s e‑Safety Commissioner’s functions and powers.

20 Section 299 (note)

Repeal the note, substitute:

Note: Section 284 deals with the disclosure or use of information or documents to assist the ACMA, the Children’s e‑Safety Commissioner, the ACCC or the Telecommunications Industry Ombudsman.

21 Part 34 (heading)

Repeal the heading, substitute:

Part 34—Special provisions relating to conventions and directions

22 At the end of section 579

Add:

• The Children’s e‑Safety Commissioner may give directions to a carrier or a service provider in connection with the Commissioner’s performance of his or her functions or the exercise of his or her powers.

23 After subsection 581(2)

Insert:

(2A) The Children’s e‑Safety Commissioner may give written directions to:

(a) a carrier; or

(b) a service provider;

in connection with performing any of the Commissioner’s functions or exercising any of the Commissioner’s powers.

(2B) This section is not limited by any other provision of a law that:

(a) confers a function or power on the Children’s e‑Safety Commissioner; or

(b) prescribes the mode in which the Children’s e‑Safety Commissioner is to perform a function or exercise a power; or

(c) prescribes conditions or restrictions which must be observed in relation to the performance by the Children’s e‑Safety Commissioner of a function or the exercise by the Children’s e‑Safety Commissioner of a power.

24 After subsection 581(4)

Insert:

(4A) A person must comply with a direction given to the person under subsection (2A).

Part 2—Amendments contingent on the commencement of the Telecommunications Legislation Amendment (Deregulation) Act 2015

Telecommunications Act 1997

25 Section 284 (heading)

Repeal the heading, substitute:

284 Assisting the ACMA, the Children’s e‑Safety Commissioner, the ACCC or the Telecommunications Industry Ombudsman

26 Section 299 (heading)

Repeal the heading, substitute:

299 Assisting the ACMA, the Children’s e‑Safety Commissioner, the ACCC or the Telecommunications Industry Ombudsman

27 Section 299 (note)

Repeal the note, substitute:

Note: Section 284 deals with the disclosure or use of information or documents to assist the ACMA, the Children’s e‑Safety Commissioner, the ACCC or the Telecommunications Industry Ombudsman.

Schedule 3—Transitional provisions

1 Definitions

In this Schedule:

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

***Commissioner*** means the Children’s e‑Safety Commissioner.

***transition time*** means the commencement of this Schedule.

2 Transitional—acts of the ACMA to be attributed to the Commissioner

(1) This item applies to anything done by, or in relation to, the ACMA before the transition time under, or for the purposes of, Schedule 5 or 7 to the *Broadcasting Services Act 1992*.

(2) After the transition time, the thing has effect as if it had been done by, or in relation to, the Commissioner.

3 Substitution of Commissioner as a party to certain pending proceedings

(1) This item applies if:

(a) any proceedings to which the ACMA was a party were pending in any court or tribunal immediately before the transition time; and

(b) the proceedings are under, or in connection with, Schedule 5 or 7 to the *Broadcasting Services Act 1992*.

(2) The Commissioner is substituted for the ACMA, from the transition time, as a party to the proceedings.

4 Transitional—transfer of records to the Commissioner

(1) This item applies to any records or documents that:

(a) were in possession of the ACMA immediately before the transition time; and

(b) wholly or partly concern Schedule 5 or 7 to the *Broadcasting Services Act 1992*.

(2) If the records or documents wholly concern Schedule 5 or 7 to the *Broadcasting Services Act 1992*, the records or documents are to be transferred to the Commissioner after the transition time.

Note: The records and documents are Commonwealth records for the purposes of the *Archives Act 1983*.

(3) If the records or documents partly concern Schedule 5 or 7 to the *Broadcasting Services Act 1992*, the records or documents are to be made available to the Commissioner at the request of the Commissioner.

Note: The records and documents are Commonwealth records for the purposes of the *Archives Act 1983*.

5 Transitional—authorised disclosure information

Despite the amendment of the definition of ***authorised disclosure information*** in section 3 of the *Australian Communications and Media Authority Act 2005* made by this Act, that definition continues to apply, in relation to information obtained before the transition time, as if that amendment had not been made.

6 Transitional—protection from civil proceedings

Despite the amendments of:

(a) clause 29 of Schedule 5 to the *Broadcasting Services Act 1992*; and

(b) clause 46 of Schedule 7 to the *Broadcasting Services Act 1992*;

made by this Act, those clauses continue to apply, in relation to anything done before the transition time, as if those amendments had not been made.

7 Transitional—protection from criminal proceedings

Despite the amendments of clause 112 of Schedule 7 to the *Broadcasting Services Act 1992* made by this Act, that clause continues to apply, in relation to anything done before the transition time by:

(a) the ACMA; or

(b) a member or associate member of the ACMA; or

(c) a member of the staff of the ACMA; or

(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*); or

(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*;

as if those amendments had not been made.

8 Transitional rules

The Minister may, by legislative instrument, make rules in relation to transitional matters arising out of either or both of the following:

(a) the amendments made bythisAct;

(b) the enactment of the *Enhancing Online Safety for Children Act 2015*.

[*Minister’s second reading speech made in—*

*House of Representatives on 3 December 2014*

*Senate on 2 March 2015*]

(261/14)