



Online Safety Act 2021

No. 76, 2021

**An Act relating to online safety for Australians, and
for other purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	2
3 Objects of this Act	2
4 Simplified outline of this Act	2
5 Definitions	5
6 Cyber-bullying material targeted at an Australian child	14
7 Cyber-abuse material targeted at an Australian adult	15
8 Determining whether material is offensive	16
9 Material that depicts abhorrent violent conduct	17
10 When material is provided on a social media service, relevant electronic service or designated internet service	17
11 When material is posted by an end-user of a social media service, relevant electronic service or designated internet service	17
12 When material is removed from a social media service, relevant electronic service or designated internet service	17
13 Social media service	18
13A Relevant electronic service	19
14 Designated internet service	19
15 Intimate image	20
16 Non-consensual intimate image of a person	21
17 Hosting service	22
18 On-demand program service	22
19 Internet service providers	23
20 Supply of internet carriage service to the public	24
21 Consent	24
22 Crown to be bound	25
23 Application of this Act	25
24 Convention on the Rights of the Child	25
Part 2—eSafety Commissioner	26
25 Simplified outline of this Part	26
26 eSafety Commissioner	26
27 Functions of the Commissioner	26
28 Powers of the Commissioner	28

Part 3—Complaints, objections and investigations	29
Division 1—Introduction	29
29 Simplified outline of this Part.....	29
Division 2—Complaints about cyber-bullying material targeted at an Australian child	30
30 Complaints about cyber-bullying material.....	30
31 Investigation of complaints	32
Division 3—Complaints about, and objections to, intimate images	33
32 Complaints	33
33 Objection notice	34
34 Investigation of complaints	36
35 Commissioner’s response to objection notices	36
Division 4—Complaints about cyber-abuse material targeted at an Australian adult	37
36 Complaints about cyber-abuse material.....	37
37 Investigation of complaints	38
Division 5—Complaints relating to the online content scheme	40
38 Complaints about class 1 material or class 2 material	40
39 Complaints relating to breach of a service provider rule etc.....	40
40 Complaints relating to breach of an industry code etc	41
41 Residency etc. of complainant	41
42 Commissioner may investigate matters	41
43 Commissioner may refuse to investigate certain matters	43
Part 4—Basic online safety expectations	44
Division 1—Introduction	44
44 Simplified outline of this Part.....	44
Division 2—Basic online safety expectations	45
45 Basic online safety expectations	45
46 Core expectations	45
47 Consultation.....	47
48 Service provider notifications.....	48
Division 3—Reporting	50
Subdivision A—Periodic reporting about compliance with basic online safety expectations	50
49 Periodic reporting notice	50
50 Compliance with notice	51

51	Formal warning	52
52	Periodic reporting determination	52
53	Compliance with determination	53
54	Formal warning	53
55	Service provider notifications	53
Subdivision B—Non-periodic reporting about compliance with basic online safety expectations		54
56	Non-periodic reporting notice	54
57	Compliance with notice	56
58	Formal warning	56
59	Non-periodic reporting determination	56
60	Compliance with determination	57
61	Formal warning	57
62	Service provider notifications	57
Subdivision C—Self-incrimination		58
63	Self-incrimination	58
Part 5—Cyber-bullying material targeted at an Australian child		60
64	Simplified outline of this Part	60
65	Removal notice given to the provider of a social media service, relevant electronic service or designated internet service	60
66	Removal notice given to a hosting service provider	61
67	Compliance with removal notice	62
68	Formal warning	63
70	End-user notice	63
71	Compliance with end-user notice	64
72	Formal warning	64
73	Service provider notifications	64
Part 6—Non-consensual sharing of intimate images		66
Division 1—Introduction		66
74	Simplified outline of this Part	66
Division 2—Intimate images must not be posted without consent etc.		67
75	Posting an intimate image	67
76	Formal warning	68

Division 3—Removal notices	69
77 Removal notice given to the provider of a social media service, relevant electronic service or designated internet service.....	69
78 Removal notice given to an end-user.....	70
79 Removal notice given to a hosting service provider	71
80 Compliance with removal notice	72
81 Formal warning	72
Division 4—Miscellaneous	73
83 Remedial direction.....	73
84 Formal warning	73
85 Service provider notifications.....	73
86 Exempt provision of an intimate image	74
Part 7—Cyber-abuse material targeted at an Australian adult	77
87 Simplified outline of this Part.....	77
88 Removal notice given to the provider of a social media service, relevant electronic service or designated internet service.....	77
89 Removal notice given to an end-user.....	78
90 Removal notice given to a hosting service provider	79
91 Compliance with removal notice	80
92 Formal warning	80
93 Service provider notifications.....	80
Part 8—Material that depicts abhorrent violent conduct	82
Division 1—Introduction	82
94 Simplified outline of this Part.....	82
Division 2—Blocking requests	83
95 Blocking request.....	83
96 Duration of blocking request	84
97 Revocation of blocking request	84
98 Notification in relation to domain names and URLs	85
Division 3—Blocking notices	86
99 Blocking notice.....	86
100 Duration of blocking notice.....	87
101 Revocation of blocking notice	87
102 Notification in relation to domain names and URLs	88
103 Compliance with blocking notice	88

Division 4—Exempt material	89
104 Exempt material	89
Part 9—Online content scheme	91
Division 1—Introduction	91
105 Simplified outline of this Part.....	91
106 Class 1 material	91
107 Class 2 material	93
108 Restricted access system.....	96
Division 2—Removal notices relating to class 1 material	98
109 Removal notice given to the provider of a social media service, relevant electronic service or designated internet service.....	98
110 Removal notice given to a hosting service provider	98
111 Compliance with removal notice	99
112 Formal warning	99
113 Revocation of removal notice.....	99
113A Service provider notifications.....	100
Division 3—Removal notices relating to class 2 material	101
114 Removal notice given to the provider of a social media service, relevant electronic service or designated internet service.....	101
115 Removal notice given to a hosting service provider	101
116 Compliance with removal notice	102
117 Formal warning	102
118 Revocation of removal notice.....	103
118A Service provider notifications.....	103
Division 4—Remedial notices relating to class 2 material	104
119 Remedial notice given to the provider of a social media service, relevant electronic service or designated internet service.....	104
120 Remedial notice given to a hosting service provider	105
121 Compliance with remedial notice	105
122 Formal warning	106
123 Revocation of remedial notice	106
123A Service provider notifications.....	106
Division 5—Link deletion notices	108
124 Link deletion notice.....	108
125 Compliance with link deletion notice	109
126 Formal warning	109

127	Revocation of link deletion notice	109
Division 6—App removal notices		110
128	App removal notice	110
129	Compliance with app removal notice	111
130	Formal warning	111
131	Revocation of app removal notice	111
Division 7—Industry codes and industry standards		112
Subdivision A—Interpretation		112
132	Industry codes.....	112
133	Industry standards.....	112
134	Online activity	112
135	Sections of the online industry	113
136	Participants in a section of the online industry	114
Subdivision B—General principles relating to industry codes and industry standards		114
137	Statement of regulatory policy.....	114
138	Examples of matters that may be dealt with by industry codes and industry standards	115
139	Escalation of complaints.....	118
Subdivision C—Industry codes		119
140	Registration of industry codes	119
141	Commissioner may request codes.....	120
141A	Publication of notice where no body or association represents a section of the online industry	121
142	Replacement of industry codes.....	121
143	Compliance with industry codes.....	122
144	Formal warnings—breach of industry codes	122
Subdivision D—Industry standards		122
145	Commissioner may determine an industry standard	122
146	Compliance with industry standards.....	124
147	Formal warnings—breach of industry standards	125
148	Public consultation on industry standards.....	125
Subdivision E—Register of industry codes and industry standards		126
149	Commissioner to maintain Register of industry codes and industry standards.....	126
Subdivision F—Miscellaneous		126
150	Industry standards prevail over inconsistent industry codes	126
Division 8—Service provider determinations		127
151	Service provider determinations	127

152	Exemptions from service provider determinations	128
153	Compliance with service provider rules	128
154	Remedial directions—breach of service provider rules	129
155	Formal warnings—breach of service provider rules	129
Division 9—Federal Court orders		130
156	Federal Court may order a person to cease providing a social media service	130
157	Federal Court may order a person to cease providing a relevant electronic service	130
158	Federal Court may order a person to cease providing a designated internet service.....	131
159	Federal Court may order a person to cease supplying an internet carriage service.....	132
Division 10—Commissioner may obtain advice from the Classification Board		133
160	Commissioner may obtain advice from the Classification Board	133
Part 10—Enforcement		135
161	Simplified outline of this Part.....	135
162	Civil penalty provision	135
163	Infringement notices	136
164	Enforceable undertakings	137
165	Injunctions	139
Part 11—Administrative provisions relating to the Commissioner		141
Division 1—Introduction		141
166	Simplified outline of this Part.....	141
Division 2—Appointment of the Commissioner		142
167	Appointment of the Commissioner.....	142
168	Period of appointment for the Commissioner	142
169	Acting appointments.....	142
170	Application of finance law	143
Division 3—Terms and conditions for the Commissioner		144
171	Remuneration and allowances	144
172	Leave of absence	144
173	Outside employment.....	144
174	Disclosure of interests to the Minister	144
175	Resignation.....	145

176	Termination of appointment	145
177	Other terms and conditions	146
Division 4—Other matters		147
178	Supplementary powers	147
179	Commissioner’s liabilities are Commonwealth liabilities	147
180	Commissioner has privileges and immunities of the Crown.....	147
181	Delegation by the Commissioner to a member of the staff of the ACMA etc.	148
182	Delegation by the Commissioner to a contractor engaged by the Commissioner.....	148
183	Annual report.....	150
183A	Advisory committees.....	153
184	Assistance to the Commissioner	154
185	Contractors engaged by the Commissioner	155
186	Commissioner not subject to direction by the ACMA etc.	155
187	Consultants	156
188	Minister may give directions to the Commissioner	156
Part 12—Online Safety Special Account		157
189	Simplified outline of this Part.....	157
190	Online Safety Special Account.....	157
191	Credits to the Account.....	157
192	Purposes of the Account	158
Part 13—Information-gathering powers		159
193	Simplified outline of this Part.....	159
194	Commissioner may obtain end-user identity information or contact details.....	159
195	Compliance with notice	160
196	Self-incrimination.....	160
Part 14—Investigative powers		162
197	Simplified outline of this Part.....	162
198	Application of this Part.....	162
199	Notice requiring appearance for examination.....	162
200	Examination on oath or affirmation.....	162
201	Examination to take place in private.....	163
202	Record to be made of examination	163
203	Production of documents for inspection	163
204	Protection of persons giving evidence	164
205	Non-compliance with requirement to give evidence	164

Part 15—Disclosure of information	166
206 Simplified outline of this Part.....	166
207 Scope	166
208 Disclosure to Minister	166
209 Disclosure to Secretary, or APS employees, for advising the Minister	166
210 Disclosure to a member of the staff of the ACMA etc.....	166
211 Disclosure to Royal Commissions.....	167
212 Disclosure to certain authorities	167
213 Disclosure to teachers or school principals.....	168
214 Disclosure to parents or guardians.....	169
215 Disclosure with consent.....	169
216 Disclosure of publicly available information.....	169
217 Disclosure of summaries and statistics	169
218 Relationship with Parts 13 and 15 of the <i>Telecommunications Act 1997</i>	170
Part 16—Miscellaneous	171
219 Simplified outline of this Part.....	171
220 Review of decisions by the Administrative Appeals Tribunal.....	171
220A Internal review of decisions.....	175
221 Protection from civil proceedings.....	175
222 Liability for damages.....	176
223 Protection from criminal proceedings—Commissioner, Classification Board etc.....	177
224 Referral of matters to law enforcement agencies.....	178
225 Deferral of action in order to avoid prejudicing a criminal investigation	179
226 Copies of material.....	179
227 Compensation for acquisition of property	179
228 Service of notices by electronic means.....	180
229 Service of notices on contact person etc.	180
230 Instruments under this Act may provide for matters by reference to other instruments	182
231 This Act does not limit Schedule 8 to the <i>Broadcasting Services Act 1992</i>	183
232 This Act does not limit the <i>Telecommunications Act 1997</i>	183
233 Implied freedom of political communication.....	183
234 Concurrent operation of State and Territory laws.....	183
235 Liability of Australian hosting service providers and internet service providers under State and Territory laws etc.	183

236	This Act not to affect performance of State or Territory functions.....	185
237	Revocation or variation of instruments.....	185
238	Provider of social media service, relevant electronic service, designated internet service or app distribution service	185
239	Extended meaning of use.....	186
239A	Review of operation of this Act.....	186
240	Legislative rules	186



Online Safety Act 2021

No. 76, 2021

An Act relating to online safety for Australians, and for other purposes

[Assented to 23 July 2021]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act is the *Online Safety Act 2021*.

Section 2

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. The whole of this Act	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.	23 January 2022

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 Objects of this Act

The objects of this Act are:

- (a) to improve online safety for Australians; and
- (b) to promote online safety for Australians.

4 Simplified outline of this Act

- | |
|---|
| <ul style="list-style-type: none">• There is to be an eSafety Commissioner.• The functions of the Commissioner include:<ul style="list-style-type: none">(a) promoting online safety for Australians; and(b) administering a complaints system for cyber-bullying material targeted at an Australian child; and |
|---|
-

- (c) administering a complaints system for cyber-abuse material targeted at an Australian adult; and
 - (d) administering a complaints and objections system for non-consensual sharing of intimate images; and
 - (e) administering the online content scheme; and
 - (f) coordinating activities of Commonwealth Departments, authorities and agencies relating to online safety for Australians.
- The complaints system for cyber-bullying material targeted at an Australian child includes the following components:
 - (a) the provider of a social media service, a relevant electronic service or a designated internet service may be given a notice (a **removal notice**) requiring the removal from the service of cyber-bullying material targeted at an Australian child;
 - (b) a hosting service provider who hosts cyber-bullying material targeted at an Australian child may be given a notice (a **removal notice**) requiring the provider to cease hosting the material;
 - (c) 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 complaints system for cyber-abuse material targeted at an Australian adult includes the following components:
 - (a) the provider of a social media service, a relevant electronic service or a designated internet service may be given a notice (a **removal notice**) requiring the removal from the service of cyber-abuse material targeted at an Australian adult;
 - (b) a person who posts cyber-abuse material targeted at an Australian adult may be given a notice (a **removal notice**) requiring the person to remove the material;
 - (c) a hosting service provider who hosts cyber-abuse material targeted at an Australian adult may be given a

Section 4

notice (a **removal notice**) requiring the provider to cease hosting the material.

- The complaints and objections system for non-consensual sharing of intimate images includes the following components:
 - (a) a person who posts, or threatens to post, an intimate image may be liable to a civil penalty;
 - (b) the provider of a social media service, relevant electronic service or designated internet service may be given a notice (a **removal notice**) requiring the provider to remove an intimate image from the service;
 - (c) an end-user of a social media service, relevant electronic service or designated internet service who posts an intimate image on the service may be given a notice (a **removal notice**) requiring the end-user to remove the image from the service;
 - (d) a hosting service provider who hosts an intimate image may be given a notice (a **removal notice**) requiring the provider to cease hosting the image.
- The online content scheme includes the following components:
 - (a) the provider of a social media service, relevant electronic service or designated internet service may be given a notice (a **removal notice**) requiring the provider to remove certain material;
 - (b) a hosting service provider may be given a notice (a **removal notice**) requiring the provider to cease hosting certain material;
 - (c) the provider of an internet search engine service may be given a notice (a **link deletion notice**) requiring the provider to cease providing a link to certain material;
 - (d) the provider of an app distribution service may be given a notice (an **app removal notice**) requiring the provider to cease enabling end-users to download an app that facilitates the posting of certain material on a social

- media service, relevant electronic service or designated internet service;
- (e) bodies and associations that represent sections of the online industry may develop industry codes;
 - (f) the Commissioner may make an industry standard;
 - (g) the Commissioner may make service provider determinations regulating service providers in the online industry.
- The Minister may determine basic online safety expectations for social media services, relevant electronic services and designated internet services.
 - An internet service provider may be requested or required to block access to:
 - (a) material that promotes abhorrent violent conduct; or
 - (b) material that incites abhorrent violent conduct; or
 - (c) material that instructs in abhorrent violent conduct; or
 - (d) material that depicts abhorrent violent conduct.

5 Definitions

In this Act:

abhorrent violent conduct has the same meaning as in Subdivision H of Division 474 of the *Criminal Code*.

access includes:

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

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

- (a) persons seeking access to the material have a password, or a Personal Identification Number, that provides a means of limiting access by other persons to the material; or

Section 5

- (b) persons seeking access to the material have been provided with some other means of limiting access by other persons to the material.

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.

app includes a computer program.

app distribution service means a service that enables end-users to download apps, where the download of the apps is by means of a carriage service.

app removal notice means a notice given under section 128.

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 adult means an adult who is ordinarily resident in Australia.

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

Australian hosting service provider means a person who provides a hosting service that involves hosting material in Australia.

Australian police force means:

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

Australians means individuals who are ordinarily resident in Australia.

basic online safety expectations has the meaning given by section 45.

blocking notice means a notice under section 99.

blocking request means a request under section 95.

broadcasting service has the same meaning as in the *Broadcasting Services Act 1992*.

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

child means an individual who has not reached 18 years.

civil proceeding includes a civil action.

class 1 material has the meaning given by section 106.

class 2 material has the meaning given by section 107.

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

Commissioner means the eSafety Commissioner.

Note: See section 26.

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

consent, when used in relation to an intimate image or private sexual material, has the meaning given by section 21.

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 2021 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Section 5

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

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

cyber-abuse material targeted at an Australian adult has the meaning given by section 7.

cyber-bullying material targeted at an Australian child has the meaning given by section 6.

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

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.

designated internet service has the meaning given by section 14.

electronic message has the same meaning as in the *Spam Act 2003*.

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

end-user notice means a notice under subsection 70(1).

engage in conduct means:

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

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

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

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

exempt provision of an intimate image has the meaning given by section 86.

Federal Court means the Federal Court of Australia.

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

hosting service has the meaning given by section 17.

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

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

internet carriage service means a listed carriage service that enables end-users to access the internet.

internet service provider has the meaning given by section 19.

intimate image has the meaning given by section 15.

legislative rules means rules made under section 240.

link deletion notice means a notice given under section 124.

Section 5

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

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
- (f) whether in any combination of forms.

material that depicts abhorrent violent conduct has the meaning given by section 9.

National Classification Code means the Code (within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995*).

non-consensual intimate image of a person has the meaning given by section 16.

objection notice means a notice under section 33.

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

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

and includes:

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

on-demand program service has the meaning given by section 18.

online safety for Australians means the capacity of Australians to use social media services and electronic services in a safe manner.

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.

Online Safety Special Account means the Online Safety Special Account referred to in section 190.

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*.

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

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

and includes:

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

point-to-multipoint service means a carriage service which allows a person to transmit material to more than one end-user simultaneously.

posted by an end-user of a social media service, relevant electronic service or designated internet service has the meaning given by section 11.

Section 5

Note: Other parts of speech and grammatical forms of “posted” (for example, “post”) have a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*).

private sexual material means:

- (a) material that:
 - (i) depicts a person who is, or appears to be, 18 years of age or older and who is engaged in, or appears to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other persons); and
 - (ii) does so in circumstances that reasonable persons would regard as giving rise to an expectation of privacy; or
- (b) material the dominant characteristic of which is the depiction of:
 - (i) a sexual organ or the anal region of a person who is, or appears to be, 18 years of age or older; or
 - (ii) if a person is a female person, or a transgender or intersex person, who is, or appears to be, 18 years of age or older—either or both of the person’s breasts;where the depiction is in circumstances that reasonable persons would regard as giving rise to an expectation of privacy.

provided on a social media service, relevant electronic service or designated internet service has the meaning given by section 10.

provider of a social media service, relevant electronic service, designated internet service or app distribution service has a meaning affected by section 238.

publication has the same meaning as in the *Classification (Publications, Films and Computer Games) Act 1995*. Despite section 18A of the *Acts Interpretation Act 1901*, this definition does not affect the meaning of the expressions ***publish*** or ***published*** when used in this Act.

relevant electronic service has the meaning given by section 13A.

remedial notice means a notice given under section 119 or 120.

removal notice means a notice under:

- (a) section 65; or
- (b) section 66; or
- (c) section 77; or
- (d) section 78; or
- (e) section 79; or
- (f) section 88; or
- (g) section 89; or
- (h) section 90; or
- (i) section 109; or
- (j) section 110; or
- (k) section 114; or
- (l) section 115.

removed from a social media service, relevant electronic service or designated internet service has the meaning given by section 12.

restricted access system has the meaning given by section 108.

Secretary means the Secretary of the Department.

serious harm means serious physical harm or serious harm to a person's mental health, whether temporary or permanent.

serious harm to a person's mental health includes:

- (a) serious psychological harm; and
- (b) serious distress;

but does not include mere ordinary emotional reactions such as those of only distress, grief, fear or anger.

service includes a website.

service provider determination means a determination under section 151.

service provider rule means each of the rules (if any) set out in a service provider determination.

social media service has the meaning given by section 13.

Section 6

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

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

target of cyber-abuse material has the meaning given by section 7.

target of cyber-bullying material has the meaning given by section 6.

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

threat includes a threat made by any conduct, whether express or implied and whether conditional or unconditional.

use has a meaning affected by section 239.

6 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:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet 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
 - (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, relevant electronic service or designated internet 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.

7 Cyber-abuse material targeted at an Australian adult

- (1) For the purposes of this Act, if material satisfies the following conditions:
- (a) the material is provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service;
 - (b) an ordinary reasonable person would conclude that it is likely that the material was intended to have an effect of causing serious harm to a particular Australian adult;
 - (c) an ordinary reasonable person in the position of the Australian adult would regard the material as being, in all the circumstances, menacing, harassing or offensive;

Section 8

(d) such other conditions (if any) as are set out in the legislative rules;

then:

(e) the material is *cyber-abuse material targeted at the Australian adult*; and

(f) the Australian adult is the *target* of the material.

Note: For *serious harm*, see section 5.

(2) An effect mentioned in paragraph (1)(b) may be:

(a) a direct result of the material being accessed by, or delivered to, the Australian adult; or

(b) an indirect result of the material being accessed by, or delivered to, one or more other persons.

8 Determining whether material is offensive

(1) The matters to be taken into account in deciding for the purposes of this Act whether an ordinary reasonable person in the position of a particular Australian adult would regard particular material as being, in all the circumstances, offensive, include:

(a) the standards of morality, decency and propriety generally accepted by reasonable adults; and

(b) the literary, artistic or educational merit (if any) of the material; and

(c) the general character of the material (including whether it is of a medical, legal or scientific character).

(2) If:

(a) material is provided on:

(i) a social media service; or

(ii) a relevant electronic service; or

(iii) a designated internet service; and

(b) the material is private sexual material;

then, in deciding for the purposes of this Act whether an ordinary reasonable person in the position of a particular Australian adult would regard the material as being, in all the circumstances, offensive, regard must be had to whether the subject, or each of the

subjects, of the private sexual material gave consent to the material being provided on the service.

- (3) Subsection (2) does not limit subsection (1).

9 Material that depicts abhorrent violent conduct

- (1) For the purposes of this Act, *material that depicts abhorrent violent conduct* means material that is:
- (a) audio material; or
 - (b) visual material; or
 - (c) audio-visual material;
- that records or streams abhorrent violent conduct.
- (2) For the purposes of subsection (1), it is immaterial whether the material has been altered.

10 When material is provided on a social media service, relevant electronic service or designated internet service

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

11 When material is posted by an end-user of a social media service, relevant electronic service or designated internet service

For the purposes of this Act, material is *posted* on a social media service, relevant electronic service or designated internet 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.

12 When material is removed from a social media service, relevant electronic service or designated internet service

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

Section 13

13 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)).

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.

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.

13A Relevant electronic service

- (1) For the purposes of this Act, ***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;
- but does not include an exempt service (as defined by subsection (2)).

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

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

Exempt services

- (2) For the purposes of this section, a service is an ***exempt service*** if none of the material on the service is accessible to, or delivered to, one or more end-users in Australia.

14 Designated internet service

- (1) For the purposes of this Act, ***designated internet service*** means:
- (a) a service that allows end-users to access material using an internet 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 an internet carriage service;
- but does not include:
- (c) a social media service; or

Section 15

- (d) a relevant electronic service; or
 - (e) an on-demand program service; or
 - (f) a service specified under subsection (2); or
 - (g) an exempt service (as defined by subsection (3)).
- (2) The Minister may, by legislative instrument, specify one or more services for the purposes of paragraph (1)(f).

Exempt services

- (3) For the purposes of this section, a service is an **exempt service** if none of the material on the service is accessible to, or delivered to, one or more end-users in Australia.

15 Intimate image

- (1) This section sets out the circumstances in which material is an **intimate image** of a person for the purposes of this Act.

Depiction of private parts

- (2) Material is an **intimate image** of a person if:
- (a) the material consists of a still visual image or moving visual images; and
 - (b) the material depicts, or appears to depict:
 - (i) the person's genital area or anal area (whether bare or covered by underwear); or
 - (ii) if the person is a female person or a transgender or intersex person—either or both of the person's breasts;in circumstances in which an ordinary reasonable person would reasonably expect to be afforded privacy.

Depiction of private activity

- (3) Material is an **intimate image** of a person if:
- (a) the material consists of a still visual image or moving visual images; and
 - (b) the material depicts, or appears to depict, the person:
 - (i) in a state of undress; or

- (ii) using the toilet; or
 - (iii) showering; or
 - (iv) having a bath; or
 - (v) engaged in a sexual act of a kind not ordinarily done in public; or
 - (vi) engaged in any other like activity;
- in circumstances in which an ordinary reasonable person would reasonably expect to be afforded privacy.

Depiction of person without attire of religious or cultural significance

- (4) Material is an **intimate image** of a person if:
- (a) the material consists of a still visual image or moving visual images; and
 - (b) because of the person's religious or cultural background, the person consistently wears particular attire of religious or cultural significance whenever the person is in public; and
 - (c) the material depicts, or appears to depict, the person:
 - (i) without that attire; and
 - (ii) in circumstances in which an ordinary reasonable person would reasonably expect to be afforded privacy.

Interpretative provisions

- (5) For the purposes of this section, it is immaterial whether material has been altered.
- (6) For the purposes of this section, if material depicts, or appears to depict, a part of the body of a person, the material is taken to depict the person, or to appear to depict the person, as the case requires.

16 Non-consensual intimate image of a person

For the purposes of this Act, if:

- (a) an intimate image of a person is provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or

Section 17

- (iii) a designated internet service; and
 - (b) the person did not consent to the provision of the intimate image on the service; and
 - (c) the provision of the intimate image on the service is not an exempt provision of the intimate image;
- the intimate image is a non-consensual intimate image of the person.

17 Hosting service

For the purposes of this Act, if:

- (a) a person (the *first person*) hosts stored material that has been provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the first person or another person provides:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service;on which the hosted material is provided;
- the hosting of the stored material by the first person is taken to be the provision by the first person of a *hosting service*.

18 On-demand program service

- (1) For the purposes of this Act, *on-demand program service* means a service:
 - (a) that is provided to end-users using an internet carriage service; and
 - (b) to the extent to which the service provides material that is identical to a program that has been, or is being, transmitted on:
 - (i) a commercial television broadcasting service provided under a commercial television broadcasting licence; or
 - (ii) a subscription television broadcasting service provided under a subscription television broadcasting licence; or

- (iii) a subscription television narrowcasting service; or
 - (iv) a television broadcasting service provided by the Australian Broadcasting Corporation; or
 - (v) a television broadcasting service provided by the Special Broadcasting Service Corporation.
- (2) For the purposes of subsection (1), in determining whether material is identical to a program, disregard any differences that are attributable to the technical characteristics of the provision or transmission (for example, video resolution or sound quality).
- (3) For the purposes of subsection (1), in determining whether material is identical to a program, disregard the presence or absence of:
- (a) a watermark-type logo; or
 - (b) a watermark-type insignia.
- (4) An expression used in paragraph (1)(b) has the same meaning in that paragraph as it has in the *Broadcasting Services Act 1992*.

19 Internet service providers

Basic definition

- (1) For the purposes of this Act, if a person supplies, or proposes to supply, an internet carriage service to the public, the person is an ***internet service provider***.

Declared internet service providers

- (2) The Minister may, by legislative instrument, declare that a specified person who supplies, or proposes to supply, a specified internet carriage service is an ***internet service provider*** for the purposes of this Act.

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

Section 20

20 Supply of internet carriage service to the public

- (1) This section sets out the circumstances in which an internet carriage service is taken, for the purposes of section 19, to be supplied to the public.
- (2) If:
- (a) an internet carriage service is used for the carriage of material between 2 end-users; and
 - (b) each end-user is outside the immediate circle of the supplier of the service;
- the service is supplied to the public.

Note: If a company makes internet material available for access on the internet, and an individual obtains access to the material using an internet carriage service, the company and the individual are end-users in relation to the carriage of the material by the internet carriage service.

- (3) If:
- (a) an internet carriage service is used to supply point-to-multipoint services to end-users; and
 - (b) at least one end-user is outside the immediate circle of the supplier of the service;
- the service is supplied to the public.

21 Consent

For the purposes of the application of this Act to an intimate image or private sexual material, **consent** means consent that is:

- (a) express; and
 - (b) voluntary; and
 - (c) informed;
- but does not include:
- (d) consent given by a child; or
 - (e) consent given by an adult who is in a mental or physical condition (whether temporary or permanent) that:
 - (i) makes the adult incapable of giving consent; or
 - (ii) substantially impairs the capacity of the adult to give consent.

22 Crown to be bound

This Act binds the Crown in each of its capacities.

23 Application of this Act

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

24 Convention on the Rights of the Child

- (1) The Commissioner must, as appropriate, have regard to the Convention on the Rights of the Child in the performance of functions:
 - (a) conferred by or under this Act; and
 - (b) in relation to Australian children.
- (2) Subsection (1) does not limit the matters to which the Commissioner may have regard.

Part 2—eSafety Commissioner

25 Simplified outline of this Part

- There is to be an eSafety Commissioner.
- The functions of the Commissioner include:
 - (a) promoting online safety for Australians; and
 - (b) administering a complaints system for cyber-bullying material targeted at an Australian child; and
 - (c) administering a complaints system for cyber-abuse material targeted at an Australian adult; and
 - (d) administering a complaints and objections system for non-consensual sharing of intimate images; and
 - (e) administering the online content scheme; and
 - (f) coordinating activities of Commonwealth Departments, authorities and agencies relating to online safety for Australians.

Note: For administrative provisions relating to the Commissioner, see Part 11.

26 eSafety Commissioner

There is to be an eSafety Commissioner.

Note: In this Act, *Commissioner* means the eSafety Commissioner (see section 5).

27 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) any other law of the Commonwealth; and
 - (b) to promote online safety for Australians; and

- (c) to support and encourage the implementation of measures to improve online safety for Australians; and
- (d) to coordinate activities of Commonwealth Departments, authorities and agencies relating to online safety for Australians; and
- (e) to collect, analyse, interpret and disseminate information relating to online safety for Australians; and
- (f) to support, encourage, conduct, accredit and evaluate educational, promotional and community awareness programs that are relevant to online safety for Australians; and
- (g) to make, on behalf of the Commonwealth, grants of financial assistance in relation to online safety for Australians; and
- (h) to support, encourage, conduct and evaluate research about online safety for Australians; and
- (i) to publish (whether on the internet or otherwise) reports and papers relating to online safety for Australians; and
- (j) to give the Minister reports about online safety for Australians; and
- (k) to advise the Minister about online safety for Australians; and
- (l) to consult and cooperate with other persons, organisations and governments on online safety for Australians; 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 Australians; and
 - (ii) are directed towards facilitating the timely and appropriate resolution of incidents involving material provided on a social media service, relevant electronic service or designated internet service; and
- (q) to promote guidelines and statements formulated under paragraph (p); and

Section 28

- (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.

28 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 the Commissioner's functions.

Note: For supplementary powers, see section 178.

Part 3—Complaints, objections and investigations

Division 1—Introduction

29 Simplified outline of this Part

- There is a complaints system for cyber-bullying material targeted at an Australian child.
- There is a complaints and objections system for non-consensual sharing of intimate images.
- There is a complaints system for cyber-abuse material targeted at an Australian adult.
- There is a complaints system relating to the online content scheme.

Division 2—Complaints about cyber-bullying material targeted at an Australian child

30 Complaints about cyber-bullying material

Complaint made by an Australian child

- (1) If an Australian child has reason to believe that the child was or is the target of cyber-bullying material that has been, or is being, provided on:
- (a) a particular social media service; or
 - (b) a particular relevant electronic service; or
 - (c) a particular designated internet 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:
 - (i) a particular social media service; or
 - (ii) a particular relevant electronic service; or
 - (iii) a particular designated internet 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 the person was an Australian child, the person was the target of cyber-bullying material that was provided on:
- (i) a particular social media service; or
 - (ii) a particular relevant electronic service; or
 - (iii) a particular designated internet 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 previously made to the service provider

- (4) If:
- (a) a complaint made by a person under this section concerns material that has been, or is being, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the person wants the Commissioner to give the provider of the service a section 65 removal 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 to the provider of the service.
- (5) For the purposes of subsection (4), evidence must be in a form required by the Commissioner.
- (6) If:
- (a) a social media service; or
 - (b) a relevant electronic service; or
 - (c) a designated internet 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.

Section 31

- (7) If:
- (a) a social media service; or
 - (b) a relevant electronic service; or
 - (c) a designated internet 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:
- (d) in the form of a screen shot; or
 - (e) in the form of a statutory declaration; or
 - (f) in such other form as the Commissioner specifies.
- (8) Subsections (6) and (7) do not limit subsection (5).
- (9) A requirement under subsection (5), (6) or (7) is not a legislative instrument.

31 Investigation of complaints

- (1) The Commissioner may investigate a complaint made under section 30.
- (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 the Commissioner thinks fit.
- (4) Subsections (1), (2) and (3) have effect subject to Part 14 (which confers certain investigative powers on the Commissioner).

Termination of investigation

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

Division 3—Complaints about, and objections to, intimate images

32 Complaints

Complaint made by a person depicted in an intimate image

- (1) If a person has reason to believe that section 75 has been contravened in relation to an intimate image of the person, the person may make a complaint to the Commissioner about the matter.
- (2) If the complainant is not able to identify the person who allegedly contravened section 75, the complainant must make a statement to the Commissioner to that effect.

Complaint made on behalf of a person depicted in an intimate image

- (3) If a person (the **authorised person**) has reason to believe that section 75 has been contravened in relation to an intimate image of another person (the **depicted person**), the authorised person may, on behalf of the depicted person, make a complaint to the Commissioner about the matter, so long as:
 - (a) the depicted person has authorised the authorised person to make a complaint about the matter; or
 - (b) both:
 - (i) the depicted person is a child who has not reached 16 years; and
 - (ii) the authorised person is a parent or guardian of the depicted person; or
 - (c) both:
 - (i) the depicted person is in a mental or physical condition (whether temporary or permanent) that makes the depicted person incapable of managing the depicted person's affairs; and
 - (ii) the authorised person is a parent or guardian of the depicted person.

Section 33

- (4) The authorised person must make a declaration to the Commissioner to the effect that the authorised person is entitled to make the complaint on behalf of the depicted person.
- (5) If the authorised person is not able to identify the person who allegedly contravened section 75, the authorised person must make a statement to the Commissioner to that effect.

33 Objection notice

Objection notice given by a person depicted in an intimate image

- (1) If a person (the **depicted person**) has reason to believe that:
 - (a) an intimate image of the depicted person is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the provision of the intimate image on the service is not an exempt provision of the intimate image; and
 - (c) any of the following conditions is satisfied:
 - (i) the depicted person is ordinarily resident in Australia;
 - (ii) if the intimate image was posted on the service by an end-user of the service—the end-user is ordinarily resident in Australia;
 - (iii) the intimate image is hosted in Australia by a hosting service;

the depicted person may give the Commissioner a notice (an **objection notice**) objecting to the provision of the intimate image on the service.

- (2) The depicted person may give the objection notice even if the depicted person previously consented to the provision of the intimate image on the service.

Objection notice given on behalf of a person depicted in an intimate image

- (3) If a person (the **authorised person**) has reason to believe that:
-

- (a) an intimate image of another person (the *depicted person*) is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
- (b) the provision of the intimate image on the service is not an exempt provision of the intimate image; and
- (c) any of the following conditions is satisfied:
 - (i) the depicted person is ordinarily resident in Australia;
 - (ii) if the intimate image was posted on the service by an end-user of the service—the end-user is ordinarily resident in Australia;
 - (iii) the intimate image is hosted in Australia by a hosting service;

the authorised person may, on behalf of the depicted person, give the Commissioner a notice (an *objection notice*) objecting to the provision of the intimate image on the service, so long as:

- (d) the depicted person has authorised the authorised person to give the objection notice; or
 - (e) both:
 - (i) the depicted person is a child who has not reached 16 years; and
 - (ii) the authorised person is a parent or guardian of the depicted person; or
 - (f) both:
 - (i) the depicted person is in a mental or physical condition (whether temporary or permanent) that makes the depicted person incapable of managing the depicted person's affairs; and
 - (ii) the authorised person is a parent or guardian of the depicted person.
- (4) The authorised person must make a declaration to the Commissioner to the effect that the authorised person is entitled to give the objection notice on behalf of the depicted person.

Section 34

- (5) The authorised person may give the objection notice even if the depicted person previously consented to the provision of the intimate image on the service.

34 Investigation of complaints

- (1) The Commissioner may investigate a complaint made to the Commissioner under section 32.
- (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 the Commissioner thinks fit.
- (4) Subsections (1), (2) and (3) have effect subject to Part 14 (which confers certain investigative powers on the Commissioner).

Termination of investigation

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

35 Commissioner's response to objection notices

If an objection notice is given to the Commissioner under section 33 in relation to an intimate image, the Commissioner may consider whether to give a removal notice in relation to the intimate image.

Division 4—Complaints about cyber-abuse material targeted at an Australian adult

36 Complaints about cyber-abuse material

Complaint made by an Australian adult

- (1) If an Australian adult has reason to believe that the adult was or is the target of cyber-abuse material that has been, or is being, provided on:
- (a) a particular social media service; or
 - (b) a particular relevant electronic service; or
 - (c) a particular designated internet service;
- the adult may make a complaint to the Commissioner about the matter.

Complaint made on behalf of an Australian adult

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

Complaint about material that was provided on a service

- (3) If:
- (a) a complaint made by a person under this section concerns material that has been, or is being, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or

Section 37

- (iii) a designated internet service; and
 - (b) the person wants the Commissioner to give the provider of the service a removal notice under section 88 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 to the provider of the service.
- (4) For the purposes of subsection (3), evidence must be in a form required by the Commissioner.
 - (5) If:
 - (a) a social media service; or
 - (b) a relevant electronic service; or
 - (c) a designated internet 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.
 - (6) If:
 - (a) a social media service; or
 - (b) a relevant electronic service; or
 - (c) a designated internet 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:
 - (d) in the form of a screen shot; or
 - (e) in the form of a statutory declaration; or
 - (f) in such other form as the Commissioner specifies.
 - (7) Subsections (5) and (6) do not limit subsection (4).
 - (8) A requirement under subsection (4), (5) or (6) is not a legislative instrument.

37 Investigation of complaints

- (1) The Commissioner may investigate a complaint made under section 36.
-

- (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 the Commissioner thinks fit.
- (4) Subsections (1), (2) and (3) have effect subject to Part 14 (which confers certain investigative powers on the Commissioner).

Termination of investigation

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

Division 5—Complaints relating to the online content scheme

38 Complaints about class 1 material or class 2 material

- (1) If a person has reason to believe that end-users in Australia can access:
- (a) class 1 material that is provided on:
 - (i) a particular social media service; or
 - (ii) a particular relevant electronic service; or
 - (iii) a particular designated internet service; or
 - (b) class 2 material that is covered by paragraph 107(1)(a), (b), (c), (d) or (e) and provided on:
 - (i) a particular social media service; or
 - (ii) a particular relevant electronic service; or
 - (iii) a particular designated internet service;
- the person may make a complaint to the Commissioner about the matter.
- (2) If a person has reason to believe that:
- (a) end-users in Australia can access class 2 material that is covered by paragraph 107(1)(f), (g), (h), (i), (j), (k) or (l) and provided on:
 - (i) a particular social media service; or
 - (ii) a particular relevant electronic service; or
 - (iii) a particular designated internet service; and
 - (b) access to the material is not subject to a restricted access system;
- the person may make a complaint to the Commissioner about the matter.

39 Complaints relating to breach of a service provider rule etc.

If a person (the *first person*) has reason to believe that another person has:

- (a) breached a service provider rule that applies to the other person; or
 - (b) breached a civil penalty provision of Part 9 (which deals with the online content scheme);
- the first person may make a complaint to the Commissioner about the matter.

40 Complaints relating to breach of an industry code etc.

If a person has reason to believe that a participant in the online industry (within the meaning of Division 7 of Part 9) has breached:

- (a) a code registered under that Division that is applicable to the participant; or
- (b) an industry standard registered under that Division that is applicable to the participant;

the person may make a complaint to the Commissioner about the matter.

41 Residency etc. of complainant

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

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

42 Commissioner may investigate matters

- (1) The Commissioner may, on the Commissioner's own initiative or in response to a complaint made under section 38, 39 or 40, investigate any of the following matters if the Commissioner thinks that it is desirable to do so:
 - (a) whether end-users in Australia can access class 1 material that is provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service;

Section 42

- (b) whether end-users in Australia can access class 2 material that is covered by paragraph 107(1)(a), (b), (c), (d) or (e) and provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service;
 - (c) whether end-users in Australia can access class 2 material that is covered by paragraph 107(1)(f), (g), (h), (i), (j), (k) or (l) and provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service;and, if so, whether access to the material is subject to a restricted access system;
 - (d) whether a person has breached a service provider rule that applies to the person;
 - (e) whether a person has breached a civil penalty provision of Part 9 (which deals with the online content scheme);
 - (f) whether a participant in the online industry (within the meaning of Division 7 of Part 9) has breached a code registered under that Division that is applicable to the participant;
 - (g) whether a participant in the online industry (within the meaning of Division 7 of Part 9) has breached an industry standard registered under that Division that is applicable to the participant.
- (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 the Commissioner thinks fit.
 - (4) This section has effect subject to Part 14 (which confers certain investigative powers on the Commissioner).

43 Commissioner may refuse to investigate certain matters

- (1) If:
- (a) a person has made a complaint under section 38, 39 or 40;
and
 - (b) the complaint is about a particular matter; and
 - (c) the person could have made a complaint about the matter
under:
 - (i) an industry code registered under Division 7 of Part 9);
or
 - (ii) an industry standard determined under Division 7 of
Part 9);
- the Commissioner may refuse to investigate the matter.
- (2) Subsection (1) does not, by implication, limit the circumstances in
which the Commissioner may refuse to investigate a matter.

Part 4 Basic online safety expectations

Division 1 Introduction

Section 44

Part 4—Basic online safety expectations

Division 1—Introduction

44 Simplified outline of this Part

- The Minister may determine basic online safety expectations for social media services, relevant electronic services and designated internet services.
- The provider of a social media service, relevant electronic service or designated internet service may be required to give the Commissioner reports about compliance with the applicable basic online safety expectations.

Division 2—Basic online safety expectations

45 Basic online safety expectations

Social media service

- (1) The Minister may, by legislative instrument, determine that the basic online safety expectations for a social media service are the expectations specified in the determination.

Relevant electronic service

- (2) The Minister may, by legislative instrument, determine that the basic online safety expectations for each relevant electronic service included in a class of relevant electronic services specified in the determination are the expectations specified in the determination.

Designated internet service

- (3) The Minister may, by legislative instrument, determine that the basic online safety expectations for each designated internet service included in a class of designated internet services specified in the determination are the expectations specified in the determination.

Determination does not impose a legally enforceable duty

- (4) A determination under this section does not impose a duty that is enforceable by proceedings in a court.

46 Core expectations

- (1) A determination under section 45 must specify each of the following expectations:
 - (a) the expectation that the provider of the service will take reasonable steps to ensure that end-users are able to use the service in a safe manner;
 - (b) the expectation that, in determining what are such reasonable steps, the provider will consult the Commissioner;

Section 46

- (c) the expectation that the provider of the service will take reasonable steps to minimise the extent to which the following material is provided on the service:
 - (i) cyber-bullying material targeted at an Australian child;
 - (ii) cyber-abuse material targeted at an Australian adult;
 - (iii) a non-consensual intimate image of a person;
 - (iv) class 1 material;
 - (v) material that promotes abhorrent violent conduct;
 - (vi) material that incites abhorrent violent conduct;
 - (vii) material that instructs in abhorrent violent conduct;
 - (viii) material that depicts abhorrent violent conduct;
- (d) the expectation that the provider of the service will take reasonable steps to ensure that technological or other measures are in effect to prevent access by children to class 2 material provided on the service;
- (e) the expectation that the provider of the service will ensure that the service has clear and readily identifiable mechanisms that enable end-users to report, and make complaints about, any of the following material provided on the service:
 - (i) cyber-bullying material targeted at an Australian child;
 - (ii) cyber-abuse material targeted at an Australian adult;
 - (iii) a non-consensual intimate image of a person;
 - (iv) class 1 material;
 - (v) class 2 material;
 - (vi) material that promotes abhorrent violent conduct;
 - (vii) material that incites abhorrent violent conduct;
 - (viii) material that instructs in abhorrent violent conduct;
 - (ix) material that depicts abhorrent violent conduct;
- (f) the expectation that the provider of the service will ensure that the service has clear and readily identifiable mechanisms that enable end-users to report, and make complaints about, breaches of the service's terms of use;
- (g) the expectation that, if the Commissioner, by written notice given to the provider of the service, requests the provider to give the Commissioner a statement that sets out the number of complaints made to the provider during a specified period

(not shorter than 6 months) about breaches of the service's terms of use, the provider will comply with the request within 30 days after the notice of request is given;

- (h) the expectation that, if the Commissioner, by written notice given to the provider of the service, requests the provider to give the Commissioner a statement that sets out, for each removal notice given to the provider during a specified period (not shorter than 6 months), how long it took the provider to comply with the removal notice, the provider will comply with the request within 30 days after the notice of request is given;
- (i) the expectation that, if the Commissioner, by written notice given to the provider of the service, requests the provider to give the Commissioner specified information relating to the measures taken by the provider to ensure that end-users are able to use the service in a safe manner, the provider will comply with the request within 30 days after the notice of request is given.

Note 1: For *non-consensual intimate image of a person*, see section 16.

Note 2: Section 104 provides for exemptions for the following material:

- (a) material that promotes abhorrent violent conduct;
- (b) material that incites abhorrent violent conduct;
- (c) material that instructs in abhorrent violent conduct;
- (d) material that depicts abhorrent violent conduct.

- (2) Subsection (1) does not limit the expectations that may be specified in a determination under section 45.

47 Consultation

- (1) Before making or varying a determination under section 45, the Minister must:
 - (a) make a copy of the draft available on the Department's website; and
 - (b) publish a notice on the Department's website:
 - (i) stating that the Minister has prepared a draft of the determination or variation; and

Section 48

- (ii) inviting interested persons to give written comments about the draft to the Minister within the period specified in the notice.
- (2) The period specified in the notice must run for at least 30 days after the publication of the notice.
- (3) Subsection (1) does not apply to a variation if the variation is of a minor nature.
- (4) If interested persons have given comments in accordance with a notice under subsection (1), the Minister must have due regard to those comments in making or varying the determination.

48 Service provider notifications

Scope

- (1) This section applies to the following services:
 - (a) a social media service, if there are basic online safety expectations for the service;
 - (b) a relevant electronic service, if there are basic online safety expectations for the service;
 - (c) a designated internet service, if there are basic online safety expectations for the service.

Statement

- (2) If the Commissioner is satisfied that the provider of a service has contravened one or more basic online safety expectations for the service, the Commissioner may:
 - (a) prepare a statement to that effect; and
 - (b) give a copy of the statement to the provider of the service; and
 - (c) if the Commissioner considers that it is appropriate to publish the statement—publish the statement on the Commissioner’s website.

- (3) If the Commissioner is satisfied that the provider of a service has complied with the basic online safety expectations for the service at all times during a particular period, the Commissioner may:
- (a) prepare a statement to that effect; and
 - (b) give a copy of the statement to the provider of the service; and
 - (c) if the Commissioner considers that it is appropriate to publish the statement—publish the statement on the Commissioner’s website.

Division 3—Reporting

Subdivision A—Periodic reporting about compliance with basic online safety expectations

49 Periodic reporting notice

Scope

- (1) This section applies to the following services:
 - (a) a social media service, if there are basic online safety expectations for the service;
 - (b) a relevant electronic service, if there are basic online safety expectations for the service;
 - (c) a designated internet service, if there are basic online safety expectations for the service.

Notice

- (2) The Commissioner may, by written notice given to the provider of the service, require the provider to:
 - (a) do whichever of the following is specified in the notice:
 - (i) prepare periodic reports about the extent to which the provider complied with the applicable basic online safety expectations during such regular intervals as are specified in the notice;
 - (ii) prepare periodic reports about the extent to which the provider complied with one or more specified applicable basic online safety expectations during such regular intervals as are specified in the notice; and
 - (b) prepare those periodic reports in the manner and form specified in the notice; and
 - (c) give each of those periodic reports to the Commissioner:
 - (i) within the period ascertained in accordance with the notice in relation to the periodic report concerned; or

- (ii) if the Commissioner allows a longer period in relation to the periodic report concerned—within that longer period.
- (3) An interval specified under subparagraph (2)(a)(i) or (ii):
 - (a) must not be shorter than 6 months; and
 - (b) must not be longer than 24 months.
- (4) A period ascertained in accordance with the notice as mentioned in subparagraph (2)(c)(i) must not be shorter than 28 days after the end of the interval to which the periodic report relates.
- (5) In deciding whether to give a notice under subsection (2) to the provider of a service, the Commissioner must have regard to the following:
 - (a) the number of occasions during the previous 12 months on which complaints about material provided on the service were made to the Commissioner under this Act;
 - (b) whether the provider has previously contravened a civil penalty provision of this Division;
 - (c) whether there are deficiencies in the provider’s practices, so far as those practices relate to the capacity of end-users to use the service in a safe manner;
 - (d) whether there are deficiencies in the service’s terms of use, so far as they relate to the capacity of end-users to use the service in a safe manner;
 - (e) whether the provider has agreed to give the Secretary regular reports relating to the capacity of end-users to use the service in a safe manner;
 - (f) such other matters (if any) as the Commissioner considers relevant.

50 Compliance with notice

A person must comply with a notice under subsection 49(2) to the extent that the person is capable of doing so.

Civil penalty: 500 penalty units.

Section 51

51 Formal warning

The Commissioner may issue a formal warning if a person contravenes section 50.

52 Periodic reporting determination

Scope

- (1) This section applies to the following services:
 - (a) a social media service, if there are basic online safety expectations for the service;
 - (b) a relevant electronic service, if there are basic online safety expectations for the service;
 - (c) a designated internet service, if there are basic online safety expectations for the service.

Determination

- (2) The Commissioner may, by legislative instrument, determine that each provider of a service included in a specified class of services is required to:
 - (a) do whichever of the following is specified in the determination:
 - (i) prepare periodic reports about the extent to which the provider complied with the applicable basic online safety expectations during such regular intervals as are specified in the determination;
 - (ii) prepare periodic reports about the extent to which the provider complied with one or more specified applicable basic online safety expectations during such regular intervals as are specified in the determination; and
 - (b) prepare those periodic reports in the manner and form specified in the determination; and
 - (c) give each of those periodic reports to the Commissioner:
 - (i) within the period ascertained in accordance with the determination in relation to the periodic report concerned; or

- (ii) if the Commissioner allows a longer period in relation to the periodic report concerned—within that longer period.
- (3) An interval specified under subparagraph (2)(a)(i) or (ii):
 - (a) must not be shorter than 6 months; and
 - (b) must not be longer than 24 months.
- (4) A period ascertained in accordance with the determination as mentioned in subparagraph (2)(c)(i) must not be shorter than 28 days after the end of the interval to which the periodic report relates.

53 Compliance with determination

A person must comply with a determination under subsection 52(2) to the extent that the person is capable of doing so.

Civil penalty: 500 penalty units.

54 Formal warning

The Commissioner may issue a formal warning if a person contravenes section 53.

55 Service provider notifications

- (1) If:
 - (a) the Commissioner gave a notice under subsection 49(2) to the provider of:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the provider did not comply with the notice;the Commissioner may:
 - (c) prepare a statement to that effect; and
 - (d) publish the statement on the Commissioner's website; and
 - (e) give a copy of the statement to the provider of the service.

Section 56

- (2) If:
- (a) a determination under subsection 52(2) applies to the provider of:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the provider did not comply with the determination;
- the Commissioner may:
- (c) prepare a statement to that effect; and
 - (d) publish the statement on the Commissioner's website; and
 - (e) give a copy of the statement to the provider of the service.

Subdivision B—Non-periodic reporting about compliance with basic online safety expectations

56 Non-periodic reporting notice

Scope

- (1) This section applies to the following services:
- (a) a social media service, if there are basic online safety expectations for the service;
 - (b) a relevant electronic service, if there are basic online safety expectations for the service;
 - (c) a designated internet service, if there are basic online safety expectations for the service.

Notice

- (2) The Commissioner may, by written notice given to the provider of the service, require the provider to:
- (a) do whichever of the following is specified in the notice:
 - (i) prepare a report about the extent to which the provider complied with the applicable basic online safety expectations during the period specified in the notice;
 - (ii) prepare a report about the extent to which the provider complied with one or more specified applicable basic

- online safety expectations during the period specified in the notice; and
- (b) prepare the report in the manner and form specified in the notice; and
 - (c) give the report to the Commissioner:
 - (i) within the period specified in the notice; or
 - (ii) if the Commissioner allows a longer period—within that longer period.
- (3) The period specified under subparagraph (2)(a)(i) or (ii):
- (a) must not be shorter than 6 months; and
 - (b) must not be longer than 24 months.
- (4) The period specified in subparagraph (2)(c)(i) must not be shorter than 28 days after the notice is given.
- (5) In deciding whether to give a notice under subsection (2) to the provider of a service, the Commissioner must have regard to the following:
- (a) the number of occasions during the previous 12 months on which complaints about material provided on the service were made to the Commissioner under this Act;
 - (b) whether the provider has previously contravened a civil penalty provision of this Division;
 - (c) whether there are deficiencies in the provider's practices, so far as those practices relate to the capacity of end-users to use the service in a safe manner;
 - (d) whether there are deficiencies in service's terms of use, so far as they relate to the capacity of end-users to use the service in a safe manner;
 - (e) whether the provider has agreed to give the Secretary regular reports relating to the capacity of end-users to use the service in a safe manner;
 - (f) such other matters (if any) as the Commissioner considers relevant.

57 Compliance with notice

A person must comply with a notice under subsection 56(2) to the extent that the person is capable of doing so.

Civil penalty: 500 penalty units.

58 Formal warning

The Commissioner may issue a formal warning if a person contravenes section 57.

59 Non-periodic reporting determination

Scope

- (1) This section applies to the following services:
 - (a) a social media service, if there are basic online safety expectations for the service;
 - (b) a relevant electronic service, if there are basic online safety expectations for the service;
 - (c) a designated internet service, if there are basic online safety expectations for the service.

Determination

- (2) The Commissioner may, by legislative instrument, determine that each provider of a service included in a specified class of services is required to:
 - (a) do whichever of the following is specified in the determination:
 - (i) prepare a report about the extent to which the provider complied with the applicable basic online safety expectations during the period specified in the determination;
 - (ii) prepare a report about the extent to which the provider complied with one or more specified applicable basic online safety expectations during the period specified in the determination; and

- (b) prepare the report in the manner and form specified in the determination; and
- (c) give the report to the Commissioner:
 - (i) within the period specified in the determination; or
 - (ii) if the Commissioner allows a longer period—within that longer period.
- (3) The period specified under subparagraph (2)(a)(i) or (ii):
 - (a) must not be shorter than 6 months; and
 - (b) must not be longer than 24 months.
- (4) The period specified in subparagraph (2)(c)(i) must not be shorter than 28 days after the determination is made.

60 Compliance with determination

A person must comply with a determination under subsection 59(2) to the extent that the person is capable of doing so.

Civil penalty: 500 penalty units.

61 Formal warning

The Commissioner may issue a formal warning if a person contravenes section 60.

62 Service provider notifications

- (1) If:
 - (a) the Commissioner gave a notice under subsection 56(2) to the provider of:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the provider did not comply with the notice;the Commissioner may:
 - (c) prepare a statement to that effect; and
 - (d) publish the statement on the Commissioner's website; and

Section 63

- (e) give a copy of the statement to the provider of the service.
- (2) If:
 - (a) a determination under subsection 59(2) applies to the provider of:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the provider did not comply with the determination;the Commissioner may:
 - (c) prepare a statement to that effect; and
 - (d) publish the statement on the Commissioner's website; and
 - (e) give a copy of the statement to the provider of the service.

Subdivision C—Self-incrimination

63 Self-incrimination

- (1) A person is not excused from giving a report under this Division on the ground that the report might tend to incriminate the person.
- (2) However, in the case of an individual:
 - (a) the report; or
 - (b) giving the report; or
 - (c) any information, document or thing obtained as a direct or indirect consequence of giving the report;is not admissible in evidence against the individual:
 - (d) in civil proceedings for the recovery of a penalty (other than proceedings for the recovery of a penalty under this Division); or
 - (e) in criminal proceedings (other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Division).
- (3) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a penalty for an offence) in relation to giving a report under this

Section 63

Division, the individual is not excused from giving the report under this Division on that ground.

Note: A body corporate is not entitled to claim the privilege against self-exposure to a penalty.

Part 5—Cyber-bullying material targeted at an Australian child

64 Simplified outline of this Part

- A social media service, relevant electronic service or designated internet service may be given a notice (a **removal notice**) requiring the removal from the service of cyber-bullying material targeted at an Australian child.
- A hosting service provider who hosts cyber-bullying material targeted at an Australian child may be given a notice (a **removal notice**) requiring the provider to cease hosting the material.
- 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.

65 Removal notice given to the provider of a social media service, relevant electronic service or designated internet service

- (1) If:
- (a) material is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the material was the subject of a complaint that was made to the provider of the service; 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 30 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 **removal notice**) requiring the provider to:
- (f) remove the material from the service; and
 - (g) do so within:
 - (i) 24 hours after the removal notice was given to the provider; or
 - (ii) such longer period as the Commissioner allows.

Note: For enforcement, see:

- (a) sections 67 and 162 (civil penalty); and
 - (b) section 163 (infringement notices); and
 - (c) section 164 (enforceable undertakings); and
 - (d) section 165 (injunctions).
- (2) So far as is reasonably practicable, the material must be identified in the removal notice in a way that is sufficient to enable the provider of the service to comply with the notice.

Notice of refusal to give a removal notice

- (3) If the Commissioner decides to refuse to give a removal notice under subsection (1), the Commissioner must give written notice of the refusal to the person who made a section 30 complaint about the material concerned.

66 Removal notice given to a hosting service provider

- (1) If:
- (a) material is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
-

Section 67

- (b) the material was the subject of a complaint that was made to the provider of the service; 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 30 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 material is hosted by a hosting service provider;
the Commissioner may give the hosting service provider a written notice, to be known as a **removal notice**, requiring the provider to:
 - (g) take all reasonable steps to cease hosting the material; and
 - (h) do so within:
 - (i) 24 hours after the notice was given to the provider; or
 - (ii) such longer period as the Commissioner allows.
- (2) So far as is reasonably practicable, the material must be identified in the removal notice in a way that is sufficient to enable the hosting service provider to comply with the notice.

Notice of refusal to give a removal notice

- (3) If the Commissioner decides to refuse to give a removal notice under subsection (1), the Commissioner must give written notice of the refusal to the person who made a section 30 complaint about the material concerned.

67 Compliance with removal notice

A person must comply with a requirement under a removal notice given under section 65 or 66 to the extent that the person is capable of doing so.

Civil penalty: 500 penalty units.

68 Formal warning

The Commissioner may issue a formal warning if a person contravenes section 67.

70 End-user notice

- (1) If:
- (a) material is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) a complaint has been made to the Commissioner under section 30 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:
 - (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.
- (2) So far as is reasonably practicable, the material must be identified in the end-user notice in a way that is sufficient to enable the end-user to comply with the notice.

Section 71

71 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 165 (injunctions).

72 Formal warning

The Commissioner may issue a formal warning if a person contravenes section 71.

73 Service provider notifications

- (1) If:
- (a) material is provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the Commissioner is satisfied that the material is or was cyber-bullying material targeted at an Australian child; and
 - (c) a complaint has been made to the Commissioner under section 30 about the material;
- the Commissioner may, with the consent of the complainant, give the provider of the service a written notice that:
- (d) identifies the material; and
 - (e) states the Commissioner is satisfied that the material is cyber-bullying material targeted at an Australian child.
- (2) If the Commissioner is satisfied that there were 2 or more occasions during the previous 12 months on which:
- (a) cyber-bullying material targeted at an Australian child is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the provision of the material contravened the service's terms of use;
- the Commissioner may:
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- (c) prepare a statement to that effect; and
- (d) publish the statement on the Commissioner's website; and
- (e) give a copy of the statement to the provider of the service.

Part 6—Non-consensual sharing of intimate images

Division 1—Introduction

74 Simplified outline of this Part

- A person who posts, or threatens to post, an intimate image without the consent of the person depicted in the image may be liable to a civil penalty.
- The provider of a social media service, relevant electronic service or designated internet service may be given a notice (a **removal notice**) requiring the provider to remove an intimate image from the service.
- An end-user of a social media service, relevant electronic service or designated internet service who posts an intimate image on the service may be given a notice (a **removal notice**) requiring the end-user to remove the image from the service.
- A hosting service provider who hosts an intimate image may be given a notice (a **removal notice**) requiring the provider to cease hosting the image.

Division 2—Intimate images must not be posted without consent etc.

75 Posting an intimate image

- (1) A person (the *first person*) who is an end-user of:
- (a) a social media service; or
 - (b) a relevant electronic service; or
 - (c) a designated internet service;
- must not post, or make a threat to post, an intimate image of another person (the *second person*) on the service if:
- (d) the first person is ordinarily resident in Australia; or
 - (e) the second person is ordinarily resident in Australia.

Civil penalty: 500 penalty units.

Consent

- (2) Subsection (1) does not apply if the second person consented to the posting of the intimate image by the first person.

Note: In proceedings for a civil penalty order against a person for a contravention of subsection (1), the person bears an evidential burden in relation to the matter in this subsection (see section 96 of the *Regulatory Powers (Standard Provisions) Act 2014*).

Depiction of second person without attire of religious or cultural significance

- (3) Subsection (1) does not apply if:
- (a) the intimate image is covered by subsection 15(4) because it depicts, or appears to depict, the second person without particular attire of religious or cultural significance; and
 - (b) the first person did not know that, because of the second person's religious or cultural background, the second person consistently wears that attire whenever the second person is in public.

Note: In proceedings for a civil penalty order against a person for a contravention of subsection (1), the person bears an evidential burden

Part 6 Non-consensual sharing of intimate images

Division 2 Intimate images must not be posted without consent etc.

Section 76

in relation to the matter in this subsection (see section 96 of the *Regulatory Powers (Standard Provisions) Act 2014*).

Exempt provision of the intimate image

- (4) Subsection (1) does not apply if:
- (a) in the case of a post of the intimate image—the resulting provision of the intimate image on the service is an exempt provision of the intimate image; or
 - (b) in the case of a threat to post the intimate image—assuming that the threat had been carried out, the resulting provision of the intimate image on the service would be an exempt provision of the intimate image.

Note: In proceedings for a civil penalty order against a person for a contravention of subsection (1), the person bears an evidential burden in relation to the matter in this subsection (see section 96 of the *Regulatory Powers (Standard Provisions) Act 2014*).

76 Formal warning

The Commissioner may issue a formal warning if a person contravenes section 75.

Division 3—Removal notices

77 Removal notice given to the provider of a social media service, relevant electronic service or designated internet service

- (1) If:
- (a) an intimate image of a person is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the intimate image is the subject of:
 - (i) a complaint made to the Commissioner under section 32; or
 - (ii) an objection notice given to the Commissioner under section 33; and
 - (c) if subparagraph (b)(i) applies—the Commissioner is satisfied that the person did not consent to the provision of the intimate image on the service; and
 - (d) the provision of the intimate image on the service is not an exempt provision of the intimate image;
- the Commissioner may give the provider of the service a written notice, to be known as a **removal notice**, requiring the provider to:
- (e) take all reasonable steps to ensure the removal of the intimate image from the service; and
 - (f) do so within:
 - (i) 24 hours after the notice was given to the provider; or
 - (ii) such longer period as the Commissioner allows.
- (2) So far as is reasonably practicable, the intimate image must be identified in the removal notice in a way that is sufficient to enable the provider of the service to comply with the notice.

Notice of refusal to give a removal notice

- (3) If the Commissioner decides to refuse to give a removal notice under subsection (1), the Commissioner must give written notice of the refusal to:
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Section 78

- (a) if subparagraph (1)(b)(i) applies—the person who made the complaint mentioned in that subparagraph; or
- (b) if subparagraph (1)(b)(ii) applies—the person who gave the objection notice mentioned in that subparagraph.

78 Removal notice given to an end-user

- (1) If:
 - (a) an intimate image of a person is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the intimate image was posted on the service by a particular end-user of the service; and
 - (c) the intimate image is the subject of:
 - (i) a complaint made to the Commissioner under section 32; or
 - (ii) an objection notice given to the Commissioner under section 33; and
 - (d) if subparagraph (c)(i) applies—the Commissioner is satisfied that the person did not consent to the provision of the intimate image on the service; and
 - (e) the provision of the intimate image on the service is not an exempt provision of the intimate image;the Commissioner may give the end-user a written notice, to be known as a **removal notice**, requiring the end-user to:
 - (f) take all reasonable steps to ensure the removal of the intimate image from the service; and
 - (g) do so within:
 - (i) 24 hours after the notice was given to the end-user; or
 - (ii) such longer period as the Commissioner allows.
- (2) So far as is reasonably practicable, the intimate image must be identified in the removal notice in a way that is sufficient to enable the end-user to comply with the notice.

Notice of refusal to give a removal notice

- (3) If the Commissioner decides to refuse to give a removal notice under subsection (1), the Commissioner must give written notice of the refusal to:
- (a) if subparagraph (1)(c)(i) applies—the person who made the complaint mentioned in that subparagraph; or
 - (b) if subparagraph (1)(c)(ii) applies—the person who gave the objection notice mentioned in that subparagraph.

79 Removal notice given to a hosting service provider

- (1) If:
- (a) an intimate image of a person is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the intimate image is the subject of:
 - (i) a complaint made to the Commissioner under section 32; or
 - (ii) an objection notice given to the Commissioner under section 33; and
 - (c) if subparagraph (b)(i) applies—the Commissioner is satisfied that the person did not consent to the provision of the intimate image on the service; and
 - (d) the intimate image is hosted by a hosting service provider; and
 - (e) the provision of the intimate image on the service is not an exempt provision of the intimate image;
- the Commissioner may give the hosting service provider a written notice, to be known as a **removal notice**, requiring the provider to:
- (f) take all reasonable steps to cease hosting the intimate image; and
 - (g) do so within:
 - (i) 24 hours after the notice was given to the provider; or
 - (ii) such longer period as the Commissioner allows.

Section 80

- (2) So far as is reasonably practicable, the intimate image must be identified in the removal notice in a way that is sufficient to enable the hosting service provider to comply with the notice.

Notice of refusal to give a removal notice

- (3) If the Commissioner decides to refuse to give a removal notice under subsection (1), the Commissioner must give written notice of the refusal to:
- (a) if subparagraph (1)(b)(i) applies—the person who made the complaint mentioned in that subparagraph; or
 - (b) if subparagraph (1)(b)(ii) applies—the person who gave the objection notice mentioned in that subparagraph.

80 Compliance with removal notice

A person must comply with a requirement under a removal notice given under section 77, 78 or 79 to the extent that the person is capable of doing so.

Civil penalty: 500 penalty units.

81 Formal warning

The Commissioner may issue a formal warning if a person contravenes section 80.

Division 4—Miscellaneous

83 Remedial direction

Scope

- (1) This section applies if a person has contravened, or is contravening, section 75.

Remedial direction

- (2) The Commissioner may give the person a written direction requiring the person to take specified action directed towards ensuring that the person does not contravene section 75 in the future.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (3) A person must not contravene a direction under subsection (2).

Civil penalty: 500 penalty units.

Remedial direction is not a legislative instrument

- (4) A direction under subsection (2) is not a legislative instrument.

84 Formal warning

The Commissioner may issue a formal warning if a person contravenes a direction under subsection 83(2).

85 Service provider notifications

- (1) If:
 - (a) an intimate image of a person is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the intimate image is the subject of:

Section 86

- (i) a complaint made to the Commissioner under section 32; or
 - (ii) an objection notice given to the Commissioner under section 33; and
 - (c) if subparagraph (b)(i) applies—the Commissioner is satisfied that the person did not consent to the provision of the intimate image on the service; and
 - (d) the provision of the intimate image on the service is not an exempt provision of the intimate image;
- the Commissioner may, with the consent of the complainant, give the provider of the service a written notice that:
- (e) identifies the image; and
 - (f) states the Commissioner is satisfied that the person did not consent to the provision of the image on the service.
- (2) If the Commissioner is satisfied that there were 2 or more occasions during the previous 12 months on which:
- (a) an intimate image of a person is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the provision of the intimate image contravened the service's terms of use; and
 - (c) the person did not consent to the provision of the intimate image on the service; and
 - (d) the provision of the intimate image on the service is not an exempt provision of the intimate image;
- the Commissioner may:
- (e) prepare a statement to that effect; and
 - (f) publish the statement on the Commissioner's website; and
 - (g) give a copy of the statement to the provider of the service.

86 Exempt provision of an intimate image

- (1) For the purposes of this Act, if an intimate image of a person (the *depicted person*) is provided on:
 - (a) a social media service; or

(b) a relevant electronic service; or

(c) a designated internet service;

the provision of the intimate image on the service is an *exempt provision* of the intimate image if:

(d) the provision of the intimate image on the service is necessary for, or of assistance in:

(i) enforcing a law of the Commonwealth, a State or a Territory; or

(ii) monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or a Territory; or

(e) the provision of the intimate image on the service is for the purposes of proceedings in a court or tribunal; or

(f) the provision of the intimate image on the service is for a genuine medical or scientific purpose; or

(g) an ordinary reasonable person would consider the provision of the intimate image on the service acceptable, having regard to the following matters:

(i) the nature and content of the intimate image;

(ii) the circumstances in which the intimate image was provided on the service;

(iii) the age, intellectual capacity, vulnerability or other relevant circumstances of the depicted person;

(iv) the degree to which the provision of the intimate image on the service affects the privacy of the depicted person;

(v) if the intimate image was posted on the service by an end-user of the service—the relationship between the end-user and the depicted person;

(vi) whether the depicted person has died, and if so, how much time has elapsed since the depicted person's death;

(vii) any other relevant matters; or

(h) the following conditions are satisfied:

(i) the intimate image was posted on the service by an end-user of the service;

(ii) the end-user is a protected person (within the meaning of section 223);

Part 6 Non-consensual sharing of intimate images

Division 4 Miscellaneous

Section 86

- (iii) the post was in connection with the exercise of a power, or the performance of a function, conferred on the Commissioner by or under this Act; or
 - (i) a condition determined under subsection (2) is satisfied.
- (2) The Minister may, by legislative instrument, determine one or more conditions for the purposes of paragraph (1)(i).

Part 7—Cyber-abuse material targeted at an Australian adult

87 Simplified outline of this Part

- The provider of a social media service, a relevant electronic service or a designated internet service may be given a notice (a **removal notice**) requiring the removal from the service of cyber-abuse material targeted at an Australian adult.
- A person who posts cyber-abuse material targeted at an Australian adult may be given a notice (a **removal notice**) requiring the person to remove the material.
- A hosting service provider who hosts cyber-abuse material targeted at an Australian adult may be given a notice (a **removal notice**) requiring the provider to cease hosting the material.

88 Removal notice given to the provider of a social media service, relevant electronic service or designated internet service

- (1) If:
- (a) material is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the Commissioner is satisfied that the material is or was cyber-abuse material targeted at an Australian adult; and
 - (c) the material was the subject of a complaint that was made to the provider of the service; and
 - (d) if such a complaint was made—the material was not removed from the service within:
 - (i) 48 hours after the complaint was made; or

Section 89

- (ii) such longer period as the Commissioner allows; and
 - (e) a complaint has been made to the Commissioner under section 36 about the material;
- the Commissioner may give the provider of the service a written notice, to be known as a **removal notice**, requiring the provider to:
- (f) take all reasonable steps to ensure the removal of the material from the service; and
 - (g) do so within:
 - (i) 24 hours after the notice was given to the provider; or
 - (ii) such longer period as the Commissioner allows.
- (2) So far as is reasonably practicable, the material must be identified in the removal notice in a way that is sufficient to enable the provider of the service to comply with the notice.

Notice of refusal to give a removal notice

- (3) If the Commissioner decides to refuse to give a removal notice under subsection (1), the Commissioner must give written notice of the refusal to the person who made the complaint to the Commissioner under section 36.

89 Removal notice given to an end-user

- (1) If:
- (a) material is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the Commissioner is satisfied that the material is or was cyber-abuse material targeted at an Australian adult; and
 - (c) the material was the subject of a complaint that was made to the provider of the service; and
 - (d) if such a complaint was made—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

- (e) a complaint has been made to the Commissioner under section 36 about the material; and
 - (f) 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, to be known as a **removal notice**, requiring the end-user to:
- (g) take all reasonable steps to ensure the removal of the material from the service; and
 - (h) do so within:
 - (i) 24 hours after the notice was given to the end-user; or
 - (ii) such longer period as the Commissioner allows.
- (2) So far as is reasonably practicable, the material must be identified in the removal notice in a way that is sufficient to enable the end-user to comply with the notice.

Notice of refusal to give a removal notice

- (3) If the Commissioner decides to refuse to give a removal notice under subsection (1), the Commissioner must give written notice of the refusal to the person who made the complaint to the Commissioner under section 36.

90 Removal notice given to a hosting service provider

- (1) If:
- (a) material is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the Commissioner is satisfied that the material is or was cyber-abuse material targeted at an Australian adult; and
 - (c) the material was the subject of a complaint that was made to the provider of the service; and
 - (d) if such a complaint was made—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

Section 91

- (e) a complaint has been made to the Commissioner under section 36 about the material; and
 - (f) the material is hosted by a hosting service provider; the Commissioner may give the hosting service provider a written notice, to be known as a **removal notice**, requiring the provider to:
 - (g) take all reasonable steps to cease hosting the material; and
 - (h) do so within:
 - (i) 24 hours after the notice was given to the provider; or
 - (ii) such longer period as the Commissioner allows.
- (2) So far as is reasonably practicable, the material must be identified in the removal notice in a way that is sufficient to enable the hosting service provider to comply with the notice.

Notice of refusal to give a removal notice

- (3) If the Commissioner decides to refuse to give a removal notice under subsection (1), the Commissioner must give written notice of the refusal to the person who made the complaint to the Commissioner under section 36.

91 Compliance with removal notice

A person must comply with a requirement under a removal notice given under section 88, 89 or 90 to the extent that the person is capable of doing so.

Civil penalty: 500 penalty units.

92 Formal warning

The Commissioner may issue a formal warning if a person contravenes section 91.

93 Service provider notifications

- (1) If:
- (a) material is, or has been, provided on:
 - (i) a social media service; or

- (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the Commissioner is satisfied that the material is or was cyber-abuse material targeted at an Australian adult; and
 - (c) a complaint has been made to the Commissioner under section 36 about the material;
- the Commissioner may, with the consent of the complainant, give the provider of the service a written notice that:
- (d) identifies the material; and
 - (e) states the Commissioner is satisfied that the material is cyber-abuse material targeted at an Australian adult.
- (2) If the Commissioner is satisfied that there were 2 or more occasions during the previous 12 months on which:
- (a) cyber-abuse material targeted at an Australian adult is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the provision of the material contravened the service's terms of use;
- the Commissioner may:
- (c) prepare a statement to that effect; and
 - (d) publish the statement on the Commissioner's website; and
 - (e) give a copy of the statement to the provider of the service.

Part 8 Material that depicts abhorrent violent conduct

Division 1 Introduction

Section 94

Part 8—Material that depicts abhorrent violent conduct

Division 1—Introduction

94 Simplified outline of this Part

- An internet service provider may be requested or required to block access to:
 - (a) material that promotes abhorrent violent conduct; or
 - (b) material that incites abhorrent violent conduct; or
 - (c) material that instructs in abhorrent violent conduct; or
 - (d) material that depicts abhorrent violent conduct.

Division 2—Blocking requests

95 Blocking request

- (1) If:
- (a) material can be accessed using an internet carriage service supplied by an internet service provider; and
 - (b) the Commissioner is satisfied that the material:
 - (i) promotes abhorrent violent conduct; or
 - (ii) incites abhorrent violent conduct; or
 - (iii) instructs in abhorrent violent conduct; or
 - (iv) is material that depicts abhorrent violent conduct; and
 - (c) the Commissioner is satisfied that the availability of the material online is likely to cause significant harm to the Australian community;

the Commissioner may give the provider a written request, to be known as a **blocking request**, requesting the provider to take one or more specified steps to disable access to the material.

Note: See also section 104 (exempt material).

- (2) The following are examples of steps that may be specified in the blocking request:
- (a) steps to block domain names that provide access to the material;
 - (b) steps to block URLs that provide access to the material;
 - (c) steps to block IP addresses that provide access to the material.
- (3) The Commissioner is not required to observe any requirements of procedural fairness in relation to the giving of the blocking request.
- (4) In determining whether the availability of the material online is likely to cause significant harm to the Australian community, the Commissioner must have regard to the following matters:
- (a) the nature of the material;
 - (b) the number of end-users who are likely to access the material;

Section 96

- (c) such other matters (if any) as the Commissioner considers relevant.
- (5) In deciding whether to give the blocking request, the Commissioner must have regard to the following matters:
 - (a) whether any other power conferred on the Commissioner could be used to minimise the likelihood that the availability of the material online could cause significant harm to the Australian community;
 - (b) such other matters (if any) as the Commissioner considers relevant.

96 Duration of blocking request

- (1) A blocking request remains in force for the period specified in the blocking request.
- (2) The specified period must not be longer than 3 months.

Fresh blocking request

- (3) If a blocking request (the **original blocking request**) is in force, this Act does not prevent the Commissioner from giving a fresh blocking request that:
 - (a) is in the same, or substantially the same, terms as the original blocking request; and
 - (b) comes into force immediately after the expiry of the original blocking request.

97 Revocation of blocking request

Scope

- (1) This section applies if a blocking request is in force in relation to an internet service provider.

Revocation

- (2) The Commissioner may, by written notice given to the provider, revoke the blocking request.

98 Notification in relation to domain names and URLs

If:

- (a) a blocking request is in force; and
- (b) the blocking request requests an internet service provider to:
 - (i) take steps to block a domain name; or
 - (ii) take steps to block a URL that relates to a domain name;and
- (c) the person to whom the domain name is registered is known to the Commissioner;

the Commissioner must:

- (d) give a copy of the blocking request to the person; and
- (e) do so as soon as practicable after the blocking request is given to the internet service provider.

Division 3—Blocking notices

99 Blocking notice

- (1) If:
- (a) material can be accessed using an internet carriage service supplied by an internet service provider; and
 - (b) the Commissioner is satisfied that the material:
 - (i) promotes abhorrent violent conduct; or
 - (ii) incites abhorrent violent conduct; or
 - (iii) instructs in abhorrent violent conduct; or
 - (iv) is material that depicts abhorrent violent conduct; and
 - (c) the Commissioner is satisfied that the availability of the material online is likely to cause significant harm to the Australian community;

the Commissioner may give the provider a written notice, to be known as a **blocking notice**, requiring the provider to take one or more specified steps to disable access to the material.

Note: See also section 104 (exempt material).

- (2) The following are examples of steps that may be specified in the blocking notice:
- (a) steps to block domain names that provide access to the material;
 - (b) steps to block URLs that provide access to the material;
 - (c) steps to block IP addresses that provide access to the material.
- (3) The Commissioner is not required to observe any requirements of procedural fairness in relation to the giving of the blocking notice.
- (4) In determining whether the availability of the material online is likely to cause significant harm to the Australian community, the Commissioner must have regard to the following matters:
- (a) the nature of the material;
 - (b) the number of end-users who are likely to access the material;

- (c) such other matters (if any) as the Commissioner considers relevant.
- (5) In deciding whether to give the blocking notice, the Commissioner must have regard to the following matters:
 - (a) whether any other power conferred on the Commissioner could be used to minimise the likelihood that the availability of the material online could cause significant harm to the Australian community;
 - (b) such other matters (if any) as the Commissioner considers relevant.

100 Duration of blocking notice

- (1) A blocking notice remains in force for the period specified in the blocking notice.
- (2) The specified period must not be longer than 3 months.

Fresh blocking notice

- (3) If a blocking notice (the **original blocking notice**) is in force, this Act does not prevent the Commissioner from giving a fresh blocking notice that:
 - (a) is in the same, or substantially the same, terms as the original blocking notice; and
 - (b) comes into force immediately after the expiry of the original blocking notice.

101 Revocation of blocking notice

Scope

- (1) This section applies if a blocking notice is in force in relation to an internet service provider.

Revocation

- (2) The Commissioner may, by written notice given to the provider, revoke the blocking notice.

Section 102

102 Notification in relation to domain names and URLs

If:

- (a) a blocking notice is in force; and
- (b) the blocking notice requires an internet service provider to:
 - (i) take steps to block a domain name; or
 - (ii) take steps to block a URL that relates to a domain name;and
- (c) the person to whom the domain name is registered is known to the Commissioner;

the Commissioner must:

- (d) give a copy of the blocking notice to the person; and
- (e) do so as soon as practicable after the blocking notice is given to the internet service provider.

103 Compliance with blocking notice

A person must comply with a requirement under a blocking notice.

Civil penalty: 500 penalty units.

Division 4—Exempt material**104 Exempt material**

- (1) Subparagraphs 46(1)(c)(v), (vi), (vii) and (viii) and 46(1)(e)(vi), (vii), (viii) and (ix) and subsections 95(1) and 99(1) do not apply to material that can be accessed using a carriage service if:
- (a) the accessibility of the material is necessary for enforcing a law of:
 - (i) the Commonwealth; or
 - (ii) a State; or
 - (iii) a Territory; or
 - (iv) a foreign country; or
 - (v) a part of a foreign country; or
 - (b) the accessibility of the material is necessary for monitoring compliance with, or investigating a contravention of, a law of:
 - (i) the Commonwealth; or
 - (ii) a State; or
 - (iii) a Territory; or
 - (iv) a foreign country; or
 - (v) a part of a foreign country; or
 - (c) the accessibility of the material is for the purposes of proceedings in a court or tribunal; or
 - (d) both:
 - (i) the accessibility of the material is necessary for, or of assistance in, conducting scientific, medical, academic or historical research; and
 - (ii) the accessibility of the material is reasonable in the circumstances for the purpose of conducting that scientific, medical, academic or historical research; or
 - (e) the material relates to a news report, or a current affairs report, that:
 - (i) is in the public interest; and

Section 104

- (ii) is made by a person working in a professional capacity as a journalist; or
 - (f) both:
 - (i) the accessibility of the material is in connection with the performance by a public official of the official's duties or functions; and
 - (ii) the accessibility of the material is reasonable in the circumstances for the purpose of performing that duty or function; or
 - (g) both:
 - (i) the accessibility of the material is in connection with an individual assisting a public official in relation to the performance of the public official's duties or functions; and
 - (ii) the accessibility of the material is reasonable in the circumstances for the purpose of the individual assisting the public official in relation to the performance of the public official's duties or functions; or
 - (h) the accessibility of the material is for the purpose of advocating the lawful procurement of a change to any matter established by law, policy or practice in:
 - (i) the Commonwealth; or
 - (ii) a State; or
 - (iii) a Territory; or
 - (iv) a foreign country; or
 - (v) a part of a foreign country;and the accessibility of the material is reasonable in the circumstances for that purpose; or
 - (i) the accessibility of the material relates to the development, performance, exhibition or distribution, in good faith, of an artistic work.
- (2) For the purposes of this section, **public official** has the same meaning as in the *Criminal Code*.

Part 9—Online content scheme

Division 1—Introduction

105 Simplified outline of this Part

- The provider of a social media service, relevant electronic service or designated internet service may be given a notice (a **removal notice**) requiring the provider to remove certain material.
- A hosting service provider may be given a notice (a **removal notice**) requiring the provider to cease hosting certain material.
- The provider of an internet search engine service may be given a notice (a **link deletion notice**) requiring the provider to cease providing a link to certain material.
- The provider of an app distribution service may be given a notice (an **app removal notice**) requiring the provider to cease enabling end-users to download an app that facilitates the posting of certain material on a social media service, relevant electronic service or designated internet service.
- Bodies and associations that represent sections of the online industry may develop industry codes.
- The Commissioner may make an industry standard.
- The Commissioner may make service provider determinations regulating service providers in the online industry.

106 Class 1 material

- (1) For the purposes of this Act, **class 1 material** means:
- (a) material where the following conditions are satisfied:

Section 106

- (i) the material is a film or the contents of a film;
- (ii) the film has been classified as RC by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*; or
- (b) material where the following conditions are satisfied:
 - (i) the material is a film or the contents of a film;
 - (ii) the film has not been classified by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*;
 - (iii) if the film were to be classified by the Classification Board under that Act—the film would be likely to be classified as RC; or
- (c) material where the following conditions are satisfied:
 - (i) the material is a publication or the contents of a publication;
 - (ii) the publication has been classified as RC by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*;
 - or
- (d) material where the following conditions are satisfied:
 - (i) the material is a publication or the contents of a publication;
 - (ii) the publication has not been classified by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*;
 - (iii) if the publication were to be classified by the Classification Board under that Act—the publication would be likely to be classified as RC; or
- (e) material where the following conditions are satisfied:
 - (i) the material is a computer game;
 - (ii) the computer game has been classified as RC by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*;
 - or
- (f) material where the following conditions are satisfied:
 - (i) the material is a computer game;

- (ii) the computer game has not been classified by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*;
- (iii) if the computer game were to be classified by the Classification Board under that Act—the computer game would be likely to be classified as RC; or
- (g) material where the following conditions are satisfied:
 - (i) the material is not a film, the contents of a film, a computer game, a publication or the contents of a publication;
 - (ii) if the material were to be classified by the Classification Board in a corresponding way to the way in which a film would be classified under the *Classification (Publications, Films and Computer Games) Act 1995*—the material would be likely to be classified as RC.

Note: See also section 160 (Commissioner may obtain advice from the Classification Board).

- (2) Section 22CF of the *Classification (Publications, Films and Computer Games) Act 1995* (which deals with classification using an approved classification tool) applies for the purposes of this section in a corresponding way to the way in which it applies for the purposes of that Act.

107 Class 2 material

- (1) For the purposes of this Act, ***class 2 material*** means:
 - (a) material where the following conditions are satisfied:
 - (i) the material is a film or the contents of a film;
 - (ii) the film has been classified as X 18+ by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*;or
 - (b) material where the following conditions are satisfied:
 - (i) the material is a film or the contents of a film;
 - (ii) the film has not been classified by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*;

Section 107

- (iii) if the film were to be classified by the Classification Board under that Act—the film would be likely to be classified as X 18+; or
 - (c) material where the following conditions are satisfied:
 - (i) the material is a publication or the contents of a publication;
 - (ii) the publication has been classified as Category 2 restricted by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*; or
 - (d) material where the following conditions are satisfied:
 - (i) the material is a publication or the contents of a publication;
 - (ii) the publication has not been classified by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*;
 - (iii) if the publication were to be classified by the Classification Board under that Act—the publication would be likely to be classified as Category 2 restricted; or
 - (e) material where the following conditions are satisfied:
 - (i) the material is not a film, the contents of a film, a computer game, a publication or the contents of a publication;
 - (ii) if the material were to be classified by the Classification Board in a corresponding way to the way in which a film would be classified under the *Classification (Publications, Films and Computer Games) Act 1995*—the material would be likely to be classified as X 18+; or
 - (f) material where the following conditions are satisfied:
 - (i) the material is a film or the contents of a film;
 - (ii) the film has been classified as R 18+ by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*; or
 - (g) material where the following conditions are satisfied:
-

- (i) the material is a film or the contents of a film;
 - (ii) the film has not been classified by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*;
 - (iii) if the film were to be classified by the Classification Board under that Act—the film would be likely to be classified as R 18+; or
- (h) material where the following conditions are satisfied:
- (i) the material is a publication or the contents of a publication;
 - (ii) the publication has been classified as Category 1 restricted by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*; or
- (i) material where the following conditions are satisfied:
- (i) the material is a publication or the contents of a publication;
 - (ii) the publication has not been classified by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*;
 - (iii) if the publication were to be classified by the Classification Board under that Act—the publication would be likely to be classified as Category 1 restricted; or
- (j) material where the following conditions are satisfied:
- (i) the material is a computer game;
 - (ii) the computer game has been classified as R 18+ by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*; or
- (k) material where the following conditions are satisfied:
- (i) the material is a computer game;
 - (ii) the computer game has not been classified by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*;

Section 108

- (iii) if the computer game were to be classified by the Classification Board under that Act—the computer game would be likely to be classified as R 18+; or
- (l) material where the following conditions are satisfied:
 - (i) the material is not a film, the contents of a film, a computer game, a publication or the contents of a publication;
 - (ii) if the material were to be classified by the Classification Board in a corresponding way to the way in which a film would be classified under the *Classification (Publications, Films and Computer Games) Act 1995*—the material would be likely to be classified as R 18+.

Note: See also section 160 (Commissioner may obtain advice from the Classification Board).

- (2) Section 22CF of the *Classification (Publications, Films and Computer Games) Act 1995* (which deals with classification using an approved classification tool) applies for the purposes of this section in a corresponding way to the way in which it applies for the purposes of that Act.

108 Restricted access system

- (1) The Commissioner may, by legislative instrument, declare that a specified access-control system is a ***restricted access system*** in relation to material for the purposes of this Act.

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

- (2) An instrument under subsection (1) may make different provision with respect to different kinds of material.
- (3) Subsection (2) does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (4) In making an instrument under subsection (1), the Commissioner must have regard to:
 - (a) the objective of protecting children from exposure to material that is unsuitable for children; and

Section 108

- (b) the extent to which the instrument would be likely to result in a financial or administrative burden on providers of the following services:
 - (i) social media services;
 - (ii) relevant electronic services;
 - (iii) designated internet services; and
 - (c) such other matters (if any) as the Commissioner considers relevant.
- (5) The Commissioner must ensure that an instrument under subsection (1) is in force at all times after the commencement of this section.

Division 2—Removal notices relating to class 1 material

109 Removal notice given to the provider of a social media service, relevant electronic service or designated internet service

- (1) If:
- (a) material is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the Commissioner is satisfied that the material is or was class 1 material; and
 - (c) the material can be accessed by end-users in Australia; and
 - (d) the service is not:
 - (i) an exempt Parliamentary content service; or
 - (ii) an exempt court/tribunal content service; or
 - (iii) an exempt official-inquiry content service;
- the Commissioner may give the provider of the service a written notice, to be known as a **removal notice**, requiring the provider to:
- (e) take all reasonable steps to ensure the removal of the material from the service; and
 - (f) do so within:
 - (i) 24 hours after the notice was given to the provider; or
 - (ii) such longer period as the Commissioner allows.
- (2) So far as is reasonably practicable, the material must be identified in the removal notice in a way that is sufficient to enable the provider of the service to comply with the notice.

110 Removal notice given to a hosting service provider

- (1) If:
- (a) material is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
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Section 111

- (b) the Commissioner is satisfied that the material is or was class 1 material; and
 - (c) the material can be accessed by end-users in Australia; and
 - (d) the service is not:
 - (i) an exempt Parliamentary content service; or
 - (ii) an exempt court/tribunal content service; or
 - (iii) an exempt official-inquiry content service; and
 - (e) the material is hosted by a hosting service provider;
the Commissioner may give the hosting service provider a written notice, to be known as a **removal notice**, requiring the provider to:
 - (f) take all reasonable steps to cease hosting the material; and
 - (g) do so within:
 - (i) 24 hours after the notice was given to the provider; or
 - (ii) such longer period as the Commissioner allows.
- (2) So far as is reasonably practicable, the material must be identified in the removal notice in a way that is sufficient to enable the hosting service provider to comply with the notice.

111 Compliance with removal notice

A person must comply with a requirement under a removal notice given under section 109 or 110 to the extent that the person is capable of doing so.

Civil penalty: 500 penalty units.

112 Formal warning

The Commissioner may issue a formal warning if a person contravenes section 111.

113 Revocation of removal notice

If a removal notice is in force under section 109 or 110 in relation to:

- (a) the provider of a social media service; or
- (b) the provider of a relevant electronic service; or

Section 113A

- (c) the provider of a designated internet service; or
 - (d) a hosting service provider;
- the Commissioner may, by written notice given to the provider, revoke the removal notice.

113A Service provider notifications

If the Commissioner is satisfied that there were 2 or more occasions during the previous 12 months on which:

- (a) class 1 material is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
- (b) the material can be, or was able to be, accessed by end-users in Australia; and
- (c) the service is not:
 - (i) an exempt Parliamentary content service; or
 - (ii) an exempt court/tribunal content service; or
 - (iii) an exempt official-inquiry content service; and
- (d) the provision of the material contravened the service's terms of use;

the Commissioner may:

- (e) prepare a statement to that effect; and
- (f) publish the statement on the Commissioner's website; and
- (g) give a copy of the statement to the provider of the service.

Division 3—Removal notices relating to class 2 material

114 Removal notice given to the provider of a social media service, relevant electronic service or designated internet service

- (1) If:
- (a) material is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the Commissioner is satisfied that the material is class 2 material covered by paragraph 107(1)(a), (b), (c), (d) or (e); and
 - (c) the material can be accessed by end-users in Australia; and
 - (d) the service is not:
 - (i) an exempt Parliamentary content service; or
 - (ii) an exempt court/tribunal content service; or
 - (iii) an exempt official-inquiry content service; and
 - (e) the service is provided from Australia;
- the Commissioner may give the provider of the service a written notice, to be known as a **removal notice**, requiring the provider to:
- (f) take all reasonable steps to ensure the removal of the material from the service; and
 - (g) do so within:
 - (i) 24 hours after the notice was given to the provider; or
 - (ii) such longer period as the Commissioner allows.
- (2) So far as is reasonably practicable, the material must be identified in the removal notice in a way that is sufficient to enable the provider of the service to comply with the notice.

115 Removal notice given to a hosting service provider

- (1) If:
- (a) material is, or has been, provided on:
 - (i) a social media service; or
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Section 116

- (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the Commissioner is satisfied that the material is class 2 material covered by paragraph 107(1)(a), (b), (c), (d) or (e); and
 - (c) the material can be accessed by end-users in Australia; and
 - (d) the service is not:
 - (i) an exempt Parliamentary content service; or
 - (ii) an exempt court/tribunal content service; or
 - (iii) an exempt official-inquiry content service; and
 - (e) the material is hosted by a hosting service provider; and
 - (f) the material is hosted in Australia;
- the Commissioner may give the hosting service provider a written notice, to be known as a **removal notice**, requiring the provider to:
- (g) take all reasonable steps to cease hosting the material; and
 - (h) do so within:
 - (i) 24 hours after the notice was given to the provider; or
 - (ii) such longer period as the Commissioner allows.
- (2) So far as is reasonably practicable, the material must be identified in the removal notice in a way that is sufficient to enable the hosting service provider to comply with the notice.

116 Compliance with removal notice

A person must comply with a requirement under a removal notice given under section 114 or 115 to the extent that the person is capable of doing so.

Civil penalty: 500 penalty units.

117 Formal warning

The Commissioner may issue a formal warning if a person contravenes section 116.

118 Revocation of removal notice

If a removal notice is in force under section 114 or 115 in relation to:

- (a) the provider of a social media service; or
- (b) the provider of a relevant electronic service; or
- (c) the provider of a designated internet service; or
- (d) a hosting service provider;

the Commissioner may, by written notice given to the provider, revoke the removal notice.

118A Service provider notifications

If the Commissioner is satisfied that there were 2 or more occasions during the previous 12 months on which:

- (a) class 2 material covered by paragraph 107(1)(a), (b), (c), (d) or (e) is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
- (b) the material can be, or was able to be, accessed by end-users in Australia; and
- (c) the service is not:
 - (i) an exempt Parliamentary content service; or
 - (ii) an exempt court/tribunal content service; or
 - (iii) an exempt official-inquiry content service; and
- (d) the service is provided from Australia; and
- (e) the provision of the material contravened the service's terms of use;

the Commissioner may:

- (f) prepare a statement to that effect; and
- (g) publish the statement on the Commissioner's website; and
- (h) give a copy of the statement to the provider of the service.

Division 4—Remedial notices relating to class 2 material

119 Remedial notice given to the provider of a social media service, relevant electronic service or designated internet service

- (1) If:
- (a) material is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the Commissioner is satisfied that the material is class 2 material covered by paragraph 107(1)(f), (g), (h), (i), (j), (k) or (l); and
 - (c) the material can be accessed by end-users in Australia; and
 - (d) the service is not:
 - (i) an exempt Parliamentary content service; or
 - (ii) an exempt court/tribunal content service; or
 - (iii) an exempt official-inquiry content service; and
 - (e) the service is provided from Australia;
- the Commissioner may give the provider of the service a written notice, to be known as a **remedial notice**, requiring the provider to:
- (f) take all reasonable steps to ensure either of the following situations exist in relation to the material:
 - (i) the material is removed from the service;
 - (ii) access to the material is subject to a restricted access system; and
 - (g) do so within:
 - (i) 24 hours after the notice was given to the provider; or
 - (ii) such longer period as the Commissioner allows.
- (2) So far as is reasonably practicable, the material must be identified in the remedial notice in a way that is sufficient to enable the provider of the service to comply with the notice.

120 Remedial notice given to a hosting service provider

- (1) If:
- (a) material is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the Commissioner is satisfied that the material is class 2 material covered by paragraph 107(1)(f), (g), (h), (i), (j), (k) or (l); and
 - (c) the material can be accessed by end-users in Australia; and
 - (d) the service is not:
 - (i) an exempt Parliamentary content service; or
 - (ii) an exempt court/tribunal content service; or
 - (iii) an exempt official-inquiry content service; and
 - (e) the material is hosted by a hosting service provider; and
 - (f) the material is hosted in Australia;
- the Commissioner may give the hosting service provider a written notice, to be known as a **remedial notice**, requiring the provider to:
- (g) take all reasonable steps to ensure either of the following situations exist in relation to the material:
 - (i) the service ceases to host the material;
 - (ii) access to the material is subject to a restricted access system; and
 - (h) do so within:
 - (i) 24 hours after the notice was given to the provider; or
 - (ii) such longer period as the Commissioner allows.
- (2) So far as is reasonably practicable, the material must be identified in the remedial notice in a way that is sufficient to enable the hosting service provider to comply with the notice.

121 Compliance with remedial notice

A person must comply with a requirement under a remedial notice given under section 119 or 120 to the extent that the person is capable of doing so.

Section 122

Civil penalty: 500 penalty units.

122 Formal warning

The Commissioner may issue a formal warning if a person contravenes section 121.

123 Revocation of remedial notice

If a remedial notice is in force under section 119 or 120 in relation to:

- (a) the provider of a social media service; or
- (b) the provider of a relevant electronic service; or
- (c) the provider of a designated internet service; or
- (d) a hosting service provider;

the Commissioner may, by written notice given to the provider, revoke the removal notice.

123A Service provider notifications

If the Commissioner is satisfied that there were 2 or more occasions during the previous 12 months on which:

- (a) class 2 material covered by paragraph 107(1)(f), (g), (h), (i), (j), (k) or (l) is, or has been, provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
- (b) the material can be, or was able to be, accessed by end-users in Australia; and
- (c) access to the material is not, or was not, subject to a restricted access system; and
- (d) the service is not:
 - (i) an exempt Parliamentary content service; or
 - (ii) an exempt court/tribunal content service; or
 - (iii) an exempt official-inquiry content service; and
- (e) the service is provided from Australia; and

(f) the provision of the material contravened the service's terms of use;

the Commissioner may:

- (g) prepare a statement to that effect; and
- (h) publish the statement on the Commissioner's website; and
- (i) give a copy of the statement to the provider of the service.

Division 5—Link deletion notices

124 Link deletion notice

- (1) If:
 - (a) a person provides an internet search engine service; and
 - (b) end-users in Australia can access class 1 material using a link provided by the service;the Commissioner may give the provider of the service a written notice, to be known as a **link deletion notice**, requiring the provider to:
 - (c) cease providing a link to the material using the service; and
 - (d) do so within:
 - (i) 24 hours after the notice was given to the provider; or
 - (ii) such longer period as the Commissioner allows.
- (2) So far as is reasonably practicable, the material must be identified in the link deletion notice in a way that is sufficient to enable the internet search engine service provider to cease providing a link to the material.
- (3) The link deletion notice may also require the internet search engine service provider to:
 - (a) notify the Commissioner that the provider has ceased to provide a link to the material; and
 - (b) do so as soon as practicable after the cessation.
- (4) The Commissioner must not give the link deletion notice unless:
 - (a) the Commissioner is satisfied that there were 2 or more times during the previous 12 months when end-users in Australia could access class 1 material using a link provided by the service; and
 - (b) during the previous 12 months:
 - (i) the Commissioner gave one or more removal notices under section 109 or 110 in relation to class 1 material that could be accessed using a link provided by the service; and

(ii) those removal notices were not complied with.

125 Compliance with link deletion notice

A person must comply with a requirement under a link deletion notice to the extent that the person is capable of doing so.

Civil penalty: 500 penalty units.

126 Formal warning

The Commissioner may issue a formal warning if a person contravenes section 125.

127 Revocation of link deletion notice

If a link deletion notice is in force relation to the provider of an internet search engine service, the Commissioner may, by written notice given to the provider, revoke the link deletion notice.

Division 6—App removal notices

128 App removal notice

- (1) If:
 - (a) a person provides an app distribution service; and
 - (b) the service enables end-users in Australia to download an app that facilitates the posting of class 1 material on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service;the Commissioner may give the provider of the app distribution service a written notice, to be known as an ***app removal notice***, requiring the provider to:
 - (c) cease enabling end-users in Australia to download the app using the service; and
 - (d) do so within:
 - (i) 24 hours after the notice was given to the provider; or
 - (ii) such longer period as the Commissioner allows.
- (2) So far as is reasonably practicable, the material must be identified in the app removal notice in a way that is sufficient to enable the app distribution service provider to comply with the notice.
- (3) The app removal notice may also require the app distribution service provider to:
 - (a) notify the Commissioner that the provider has ceased to enable end-users in Australia to download the app; and
 - (b) do so as soon as practicable after the cessation.
- (4) The Commissioner must not give the app removal notice unless:
 - (a) the Commissioner is satisfied that there were 2 or more times during the previous 12 months when end-users in Australia could use the service to download an app that facilitates the posting of class 1 material; and
 - (b) during the previous 12 months:

- (i) the Commissioner gave one or more removal notices under section 109 or 110 in relation to class 1 material, the posting of which is facilitated by the app; and
- (ii) those removal notices were not complied with.

129 Compliance with app removal notice

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

Civil penalty: 500 penalty units.

130 Formal warning

The Commissioner may issue a formal warning if a person contravenes section 129.

131 Revocation of app removal notice

If an app removal notice is in force in relation to the provider of an app distribution service, the Commissioner may, by written notice given to the provider, revoke the app removal notice.

Division 7—Industry codes and industry standards

Subdivision A—Interpretation

132 Industry codes

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

133 Industry standards

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

134 Online activity

For the purposes of this Division, an *online activity* is an activity that consists of:

- (a) providing a social media service, so far as the service is provided to end-users in Australia; or
- (b) providing a relevant electronic service, so far as the service is provided to end-users in Australia; or
- (c) providing a designated internet service, so far as the service is provided to end-users in Australia; or
- (d) providing an internet search engine service, so far as the service is provided to end-users in Australia; or
- (e) providing an app distribution service, so far as the service is provided to end-users in Australia; or
- (f) providing a hosting service, so far as the service hosts material in Australia; or
- (g) providing an internet carriage service, so far as the service is provided to customers in Australia; or
- (h) manufacturing, supplying, maintaining or installing any of the following equipment:
 - (i) equipment that is for use by end-users in Australia of a social media service in connection with the service;

- (ii) equipment that is for use by end-users in Australia of a relevant electronic service in connection with the service;
- (iii) equipment that is for use by end-users in Australia of a designated internet service in connection with the service;
- (iv) equipment that is for use by end-users in Australia of an internet carriage service in connection with the service.

135 Sections of the online industry

- (1) For the purposes of this Division, *sections of the online industry* are to be ascertained in accordance with this section.
- (2) For the purposes of this Division, each of the following groups is a *section of the online industry*:
 - (a) the group consisting of providers of social media services, so far as those services are provided to end-users in Australia;
 - (b) the group consisting of providers of relevant electronic services, so far as those services are provided to end-users in Australia;
 - (c) the group consisting of providers of designated internet services, so far as those services are provided to end-users in Australia;
 - (d) the group consisting of providers of internet search engine services, so far as those services are provided to end-users in Australia;
 - (e) the group consisting of providers of app distribution services, so far as those services are provided to end-users in Australia;
 - (f) the group consisting of providers of hosting services, so far as those services host material in Australia;
 - (g) the group consisting of providers of internet carriage services, so far as those services are provided to customers in Australia;
 - (h) the group consisting of persons who manufacture, supply, maintain or install any of the following equipment:

Section 136

- (i) equipment that is for use by end-users in Australia of a social media service in connection with the service;
- (ii) equipment that is for use by end-users in Australia of a relevant electronic service in connection with the service;
- (iii) equipment that is for use by end-users in Australia of a designated internet service in connection with the service;
- (iv) equipment that is for use by end-users in Australia of an internet carriage service in connection with the service.

136 Participants in a section of the online industry

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

Subdivision B—General principles relating to industry codes and industry standards

137 Statement of regulatory policy

- (1) The Parliament intends that bodies or associations that the Commissioner is satisfied represent sections of the online industry should develop codes (*industry codes*) that are to apply to participants in the respective sections of the industry in relation to their online activities.
- (2) The Parliament intends that the Commissioner should make reasonable efforts to ensure that, for each section of the online industry, either:
 - (a) an industry code is registered under this Division within 6 months after the commencement of this Division; or
 - (b) an industry standard is registered under this Division within 12 months after the commencement of this Division.

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

- (1) This section sets out examples of matters that may be dealt with by industry codes and industry standards.
- (2) The applicability of a particular example will depend on which section of the online industry is involved.
- (3) The examples are as follows:
 - (a) procedures for dealing with class 1 material, or class 2 material, provided on a social media service;
 - (b) procedures for dealing with class 1 material, or class 2 material, provided on a relevant electronic service;
 - (c) procedures for dealing with class 1 material, or class 2 material, provided on a designated internet service;
 - (d) procedures directed towards the achievement of the objective of ensuring that, in the event that a participant in the providers of internet carriage services section of the online industry becomes aware that a hosting service provider is hosting class 1 material, or class 2 material, in Australia, the hosting service provider is told about the material;
 - (e) procedures to be followed in order to inform producers of online content about their legal responsibilities in relation to that content;
 - (f) procedures directed towards the achievement of the objective of ensuring that online accounts are not provided to children without the consent of a parent or responsible adult;
 - (g) procedures directed towards the achievement of the objective of ensuring that customers have the option of subscribing to a filtered internet carriage service;
 - (h) giving end-users information about the availability, use and appropriate application of online content filtering software;
 - (i) providing end-users with access to technological solutions to help them limit access to class 1 material and class 2 material;
 - (j) providing end-users with advice on how to limit access to class 1 material and class 2 material;

Section 138

- (k) action to be taken to assist in the development and implementation of online content filtering technologies (including labelling technologies);
- (l) promoting awareness of the safety issues associated with social media services;
- (m) promoting awareness of the safety issues associated with relevant electronic services;
- (n) promoting awareness of the safety issues associated with designated internet services;
- (o) procedures to be followed in order to deal with safety issues associated with social media services;
- (p) procedures to be followed in order to deal with safety issues associated with relevant electronic services;
- (q) procedures to be followed in order to deal with safety issues associated with designated internet services;
- (r) giving parents and responsible adults information about how to supervise and control children's access to material provided on social media services;
- (s) giving parents and responsible adults information about how to supervise and control children's access to material provided on relevant electronic services;
- (t) giving parents and responsible adults information about how to supervise and control children's access to material provided on designated internet services;
- (u) telling persons about their rights to make complaints;
- (v) procedures to be followed in order to deal with complaints about class 1 material, or class 2 material, provided on social media services;
- (w) procedures to be followed in order to deal with complaints about class 1 material, or class 2 material, provided on relevant electronic services;
- (x) procedures to be followed in order to deal with complaints about class 1 material, or class 2 material, provided on designated internet services;
- (y) procedures to be followed in order to deal with reports about class 1 material, or class 2 material, provided on social media

- services, where the reports are made by or on behalf of end-users of those services;
- (z) procedures to be followed in order to deal with reports about class 1 material, or class 2 material, provided on relevant electronic services, where the reports are made by or on behalf of end-users of those services;
- (za) procedures to be followed in order to deal with reports about class 1 material, or class 2 material, provided on designated internet services, where the reports are made by or on behalf of end-users of those services;
- (zb) procedures to be followed in order to deal with complaints about unsolicited electronic messages that promote or advertise one or more:
- (i) websites; or
 - (ii) distinct parts of websites; or
 - (iii) apps;
- that enable, or purport to enable, end-users to access class 1 material or class 2 material;
- (zc) if:
- (i) class 2 material is provided on a social media service; and
 - (ii) the service is provided from a foreign country; and
 - (iii) the provider of the service has reasonable grounds to believe that the material is hosted in Australia;
- procedures to be followed to ensure the Commissioner is notified of the material;
- (zd) if:
- (i) class 2 material is provided on a relevant electronic service; and
 - (ii) the service is provided from a foreign country; and
 - (iii) the provider of the service has reasonable grounds to believe that the material is hosted in Australia;
- procedures to be followed to ensure the Commissioner is notified of the material;
- (ze) if:
- (i) class 2 material is provided on a designated internet service; and
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Section 139

- (ii) the service is provided from a foreign country; and
 - (iii) the provider of the service has reasonable grounds to believe that the material is hosted in Australia;
- procedures to be followed to ensure the Commissioner is notified of the material;
- (zf) the referral to the Commissioner of complaints about matters, where the complainant is dissatisfied with the way in which the complaint was dealt with under the code or standard;
 - (zg) ensuring that end-users are provided with information, and support services, relating to online safety for Australians;
 - (zh) the making and retention of material directed towards the achievement of the objective of ensuring that, in the event that new social media services are developed that could put at risk the safety of children who are end-users of the services, the Commissioner is informed about those services;
 - (zi) the making and retention of material directed towards the achievement of the objective of ensuring that, in the event that new relevant electronic services are developed that could put at risk the safety of children who are end-users of the services, the Commissioner is informed about those services;
 - (zj) the making and retention of material directed towards the achievement of the objective of ensuring that, in the event that new designated internet services are developed that could put at risk the safety of children who are end-users of the services, the Commissioner is informed about those services.

139 Escalation of complaints

Scope

- (1) This section applies if an industry code or industry standard deals with the matter referred to in paragraph 138(3)(v), (w) or (x).

Escalation

- (2) The industry code or industry standard, as the case may be, must also deal with the matter referred to in paragraph 138(3)(zf).

Subdivision C—Industry codes

140 Registration of industry codes

Scope

- (1) This section applies if:
- (a) the Commissioner is satisfied that a body or association represents a particular section of the online industry; and
 - (b) that body or association develops an industry code that applies to participants in that section of the industry and deals with one or more matters relating to the online activities of those participants; and
 - (c) the body or association gives a copy of the code to the Commissioner; and
 - (d) the Commissioner is satisfied that:
 - (i) to the extent to which the code deals with one or more matters of substantial relevance to the community—the code provides appropriate community safeguards for that matter or those matters; and
 - (ii) to the extent to which the code deals with one or more matters that are not of substantial relevance to the community—the code deals with that matter or those matters in an appropriate manner; and
 - (e) the Commissioner is satisfied that, before giving the copy of the code to the Commissioner:
 - (i) the body or association published a draft of the code and invited members of the public to make submissions to the body or association about the draft within a specified period; and
 - (ii) the body or association gave consideration to any submissions that were received from members of the public within that period; and
 - (f) the Commissioner is satisfied that, before giving the copy of the code to the Commissioner:
 - (i) the body or association published a draft of the code and invited participants in that section of the industry to

Section 141

- make submissions to the body or association about the draft within a specified period; and
- (ii) the body or association gave consideration to any submissions that were received from participants in that section of the industry within that period; and
- (g) the Commissioner has been consulted about the development of the code.

Registration

- (2) The Commissioner may register the code by including it in the Register of industry codes kept under section 149.

Period of consultation

- (3) A period specified under subparagraph (1)(e)(i) or (1)(f)(i) must run for at least 30 days.

Replacing industry codes

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

141 Commissioner may request codes

- (1) If the Commissioner is satisfied that a body or association represents a particular section of the online industry, the Commissioner may, by written notice given to the body or association, request the body or association to:
 - (a) develop an industry code that applies to participants in that section of the industry and deals with one or more specified matters relating to the online activities of those participants; and
 - (b) give the Commissioner a copy of the code within the period specified in the notice.

- (2) The period specified in a notice under subsection (1) must run for at least 120 days.
- (3) The Commissioner may vary a notice under subsection (1) by extending the period specified in the notice.
- (4) Subsection (3) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901*.
- (5) A notice under subsection (1) may specify indicative targets for achieving progress in the development of the code (for example, a target of 60 days to develop a preliminary draft of the code).

141A Publication of notice where no body or association represents a section of the online industry

- (1) If the Commissioner is satisfied that a particular section of the online industry is not represented by a body or association, the Commissioner may publish a notice in the *Gazette*:
 - (a) stating that, if such a body or association were to come into existence within a specified period, the Commissioner would be likely to give a notice to that body or association under subsection 141(1); and
 - (b) setting out the matter or matters relating to online activities that would be likely to be specified in the subsection 141(1) notice.
- (2) The period specified in a notice under subsection (1) must run for at least 60 days.

142 Replacement of industry codes

- (1) Changes to an industry code are to be achieved by replacing the code instead of varying the code.
- (2) If the replacement code differs only in minor respects from the original code, section 140 has effect, in relation to the registration of the code, as if paragraphs 140(1)(e) and (f) of this Division had not been enacted.

Note: Paragraphs 140(1)(e) and (f) deal with submissions about draft codes.

Section 143

143 Compliance with industry codes

- (1) If:
- (a) a person is a participant in a particular section of the online industry; and
 - (b) the Commissioner is satisfied that the person has contravened, or is contravening, an industry code that:
 - (i) is registered under this Division; and
 - (ii) applies to participants in that section of the industry;
- the Commissioner may, by written notice given to the person, direct the person to comply with the industry code.

- (2) A person must comply with a direction under subsection (1).

Civil penalty for contravention of this subsection: 500 penalty units.

144 Formal warnings—breach of industry codes

Scope

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

Warning

- (2) The Commissioner may issue a formal warning if the person contravenes an industry code registered under this Division.

Subdivision D—Industry standards

145 Commissioner may determine an industry standard

- (1) The Commissioner may, by legislative instrument, determine a standard that applies to participants in a particular section of the online industry if:
- (a) the Commissioner has made a request under section 141 in relation to the development of an industry code and one or more of the following conditions is satisfied:
 - (i) the request is not complied with;

- (ii) if a draft code is developed by the body or association—the draft does not contain appropriate community safeguards to deal with one or more matters specified in the request;
 - (iii) if indicative targets for achieving progress in the development of the code were specified in the notice of request—any of those indicative targets were not met;
 - (iv) the request is complied with, but the Commissioner subsequently refuses to register the code; or
- (b) the Commissioner has published a notice under subsection 141A(1) in relation to a particular section of the online industry that is not represented by a body or association and all of the following conditions are satisfied:
- (i) the notice states that, if such a body or association were to come into existence within a specified period, the Commissioner would be likely to give a notice to that body or association under subsection 141(1);
 - (ii) the notice sets out one or more matters relating to the online activities of the participants in that section of the industry that would be specified in a notice under subsection 141(1);
 - (iii) no such body or association comes into existence within the period specified in the notice; or
- (c) an industry code that applies to participants in a particular section of an online industry has been registered under section 140 for at least 180 days and all of the following conditions are met:
- (i) the Commissioner is satisfied that the code is deficient;
 - (ii) the Commissioner has given the body or association that developed the code a written notice requesting that deficiencies in the code be addressed within a specified period;
 - (iii) the period specified under subparagraph (ii) ends and the Commissioner is satisfied that the deficiencies in the code have not been adequately addressed.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 146

- (1A) For the purposes of subparagraph (1)(c)(i), an industry code that applies to participants in a particular section of an online industry and deals with one or more matters relating to the online activities of those participants is **deficient** if:
- (a) the code is not operating to provide appropriate community safeguards in relation to one or more of those matters; or
 - (b) the code is not otherwise operating to regulate adequately participants in that section of the online industry in relation to that matter or those matters.
- (1B) The Commissioner must not determine a standard under subsection (1) that applies to participants in a particular section of the online industry unless the Commissioner is satisfied that it is necessary or convenient for the Commissioner to determine a standard in order to:
- (a) provide appropriate community safeguards in relation to one or more matters relating to the online activities of those participants; or
 - (b) otherwise regulate adequately participants in that section of the online industry in relation to that matter or those matters.
- (2) A standard under this section is to be known as an **industry standard**.
- (3) The Minister may, by legislative instrument, give the Commissioner a written direction as to the exercise of the Commissioner's powers under this section.

146 Compliance with industry standards

If:

- (a) an industry standard that applies to participants in a particular section of the online industry is registered under this Division; and
- (b) a person is a participant in that section of the online industry; the person must comply with the industry standard.

Civil penalty: 500 penalty units.

147 Formal warnings—breach of industry standards

Scope

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

Warning

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

148 Public consultation on industry standards

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

Subdivision E—Register of industry codes and industry standards

149 Commissioner to maintain Register of industry codes and industry standards

- (1) The Commissioner is to maintain a Register in which the Commissioner includes:
 - (a) all industry codes that the Commissioner decides to register under this Division; and
 - (b) all industry standards; and
 - (c) all requests made under section 141; and
 - (d) all directions under section 143.
- (2) The Register may be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Commissioner's website.

Subdivision F—Miscellaneous

150 Industry standards prevail over inconsistent industry codes

If an industry code is:

- (a) registered under this Division; and
- (b) applicable to a person;

the code has no effect to the extent to which it is inconsistent with an industry standard that is:

- (c) registered under this Division; and
- (d) applicable to the person.

Division 8—Service provider determinations

151 Service provider determinations

- (1) The Commissioner may, by legislative instrument, determine any or all of the following rules:
 - (a) rules that apply to providers of social media services in relation to the provision of social media services;
 - (b) rules that apply to providers of relevant electronic services in relation to the provision of relevant electronic services;
 - (c) rules that apply to providers of designated internet services in relation to the provision of designated internet services;
 - (d) rules that apply to hosting service providers in relation to the provision of hosting services;
 - (e) rules that apply to internet service providers in relation to the supply of internet carriage services.
 - (2) A determination under subsection (1) is called a *service provider determination*.
 - (3) A service provider determination has effect only to the extent that:
 - (a) it is authorised by paragraph 51(v) of the Constitution (either alone or when read together with paragraph 51(xxxix) of the Constitution); or
 - (b) both:
 - (i) it is authorised by section 122 of the Constitution; and
 - (ii) it would have been authorised by paragraph 51(v) of the Constitution (either alone or when read together with paragraph 51(xxxix) of the Constitution) if section 51 of the Constitution extended to the Territories.
 - (4) The Commissioner must not make a service provider determination unless the determination relates to a matter specified in the legislative rules.
 - (5) A service provider determination may make provision for or in relation to a particular matter by empowering the Commissioner to make decisions of an administrative character.
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152 Exemptions from service provider determinations

- (1) The Minister may, by legislative instrument, determine any or all of the following:
 - (a) that a specified provider of a social media service is exempt from service provider determinations;
 - (b) that a specified provider of a relevant electronic service is exempt from service provider determinations;
 - (c) that a specified provider of a designated internet service is exempt from service provider determinations;
 - (d) that a specified hosting service provider is exempt from service provider determinations;
 - (e) that a specified internet service provider is exempt from service provider determinations.
- (2) The Minister may, by legislative instrument, determine any or all of the following:
 - (a) that a specified provider of a social media service is exempt from a specified service provider determination;
 - (b) that a specified provider of a relevant electronic service is exempt from a specified service provider determination;
 - (c) that a specified provider of a designated internet service is exempt from a specified service provider determination;
 - (d) that a specified hosting service provider is exempt from a specified service provider determination;
 - (e) that a specified internet service provider is exempt from a specified service provider determination.
- (3) A determination under this section may be unconditional or subject to such conditions (if any) as are specified in the determination.

153 Compliance with service provider rules

A person must not contravene a service provider rule that applies to the person.

Civil penalty: 500 penalty units.

154 Remedial directions—breach of service provider rules

- (1) This section applies if the Commissioner is satisfied that a person has contravened, or is contravening, a service provider rule that applies to the person.
- (2) The Commissioner may give the person a written direction requiring the person to take specified action directed towards ensuring that the provider does not contravene the rule, or is unlikely to contravene the rule, in the future.
- (3) The following are examples of the kinds of direction that may be given to a person under subsection (2):
 - (a) a direction that the person implement effective administrative systems for monitoring compliance with a service provider rule;
 - (b) a direction that the person implement a system designed to give the person's employees, agents and contractors a reasonable knowledge and understanding of the requirements of a service provider rule, so far as those requirements affect the employees, agents or contractors concerned.
- (4) A person must comply with a direction under subsection (2).

Civil penalty for contravention of this subsection: 500 penalty units.

155 Formal warnings—breach of service provider rules

The Commissioner may issue a formal warning to a person if the Commissioner is satisfied that the person has contravened, or is contravening, a service provider rule that applies to the person.

Division 9—Federal Court orders

156 Federal Court may order a person to cease providing a social media service

- (1) If the Commissioner is satisfied that:
 - (a) a person is the provider of a social media service; and
 - (b) there were 2 or more occasions during the previous 12 months on which the person contravened a civil penalty provision of this Part; and
 - (c) as a result of those contraventions, the continued operation of that social media service represents a significant community safety risk;

the Commissioner may apply to the Federal Court for an order that the person cease providing that social media service.

- (2) If the Federal Court is satisfied, on such an application, that:
 - (a) the person is the provider of a social media service; and
 - (b) there were 2 or more occasions during the previous 12 months on which the person contravened a civil penalty provision of this Part; and
 - (c) as a result of those contraventions, the continued operation of that social media service represents a significant community safety risk;

the Federal Court may order the person to cease providing that social media service.

157 Federal Court may order a person to cease providing a relevant electronic service

- (1) If the Commissioner is satisfied that:
 - (a) a person is the provider of a relevant electronic service; and
 - (b) there were 2 or more occasions during the previous 12 months on which the person contravened a civil penalty provision of this Part; and

- (c) as a result of those contraventions, the continued operation of that relevant electronic service represents a significant community safety risk;
- the Commissioner may apply to the Federal Court for an order that the person cease providing that relevant electronic service.
- (2) If the Federal Court is satisfied, on such an application, that:
- (a) the person is the provider of a relevant electronic service; and
 - (b) there were 2 or more occasions during the previous 12 months on which the person contravened a civil penalty provision of this Part; and
 - (c) as a result of those contraventions, the continued operation of that relevant electronic service represents a significant community safety risk;
- the Federal Court may order the person to cease providing that relevant electronic service.

158 Federal Court may order a person to cease providing a designated internet service

- (1) If the Commissioner is satisfied that:
- (a) a person is the provider of a designated internet service; and
 - (b) there were 2 or more occasions during the previous 12 months on which the person contravened a civil penalty provision of this Part; and
 - (c) as a result of those contraventions, the continued operation of that designated internet service represents a significant community safety risk;
- the Commissioner may apply to the Federal Court for an order that the person cease providing that designated internet service.
- (2) If the Federal Court is satisfied, on such an application, that:
- (a) the person is the provider of a designated internet service; and
 - (b) there were 2 or more occasions during the previous 12 months on which the person contravened a civil penalty provision of this Part; and

Section 159

(c) as a result of those contraventions, the continued operation of that designated internet service represents a significant community safety risk;
the Federal Court may order the person to cease providing that designated internet service.

159 Federal Court may order a person to cease supplying an internet carriage service

- (1) If the Commissioner is satisfied that:
- (a) a person is the supplier of an internet carriage service; and
 - (b) there were 2 or more occasions during the previous 12 months on which the person contravened a civil penalty provision of this Part; and
 - (c) as a result of those contraventions, the continued operation of that internet carriage service represents a significant community safety risk;
- the Commissioner may apply to the Federal Court for an order that the person cease supplying that internet carriage service.
- (2) If the Federal Court is satisfied, on such an application, that:
- (a) the person is the supplier of an internet carriage service; and
 - (b) there were 2 or more occasions during the previous 12 months on which the person contravened a civil penalty provision of this Part; and
 - (c) as a result of those contraventions, the continued operation of that internet carriage service represents a significant community safety risk;
- the Federal Court may order the person to cease supplying that internet carriage service.

Division 10—Commissioner may obtain advice from the Classification Board

160 Commissioner may obtain advice from the Classification Board

- (1) The Commissioner may request the Classification Board to:
- (a) advise the Commissioner whether particular material is class 1 material; or
 - (b) advise the Commissioner whether particular material is class 2 material; or
 - (c) advise the Commissioner whether particular material is class 2 material covered by paragraph 107(1)(a); or
 - (d) advise the Commissioner whether particular material is class 2 material covered by paragraph 107(1)(b); or
 - (e) advise the Commissioner whether particular material is class 2 material covered by paragraph 107(1)(c); or
 - (f) advise the Commissioner whether particular material is class 2 material covered by paragraph 107(1)(d); or
 - (g) advise the Commissioner whether particular material is class 2 material covered by paragraph 107(1)(e); or
 - (h) advise the Commissioner whether particular material is class 2 material covered by paragraph 107(1)(f); or
 - (i) advise the Commissioner whether particular material is class 2 material covered by paragraph 107(1)(g); or
 - (j) advise the Commissioner whether particular material is class 2 material covered by paragraph 107(1)(h); or
 - (k) advise the Commissioner whether particular material is class 2 material covered by paragraph 107(1)(i); or
 - (l) advise the Commissioner whether particular material is class 2 material covered by paragraph 107(1)(j); or
 - (m) advise the Commissioner whether particular material is class 2 material covered by paragraph 107(1)(k); or
 - (n) advise the Commissioner whether particular material is class 2 material covered by paragraph 107(1)(l).

Section 160

- (2) The Classification Board may give the advice requested by the Commissioner.
- (3) Subsection (2) does not, by implication, limit the matters that may be taken into account by the Commissioner in considering:
 - (a) whether particular material is class 1 material; or
 - (b) whether particular material is class 2 material; or
 - (c) whether particular material is class 2 material covered by paragraph 107(1)(a); or
 - (d) whether particular material is class 2 material covered by paragraph 107(1)(b); or
 - (e) whether particular material is class 2 material covered by paragraph 107(1)(c); or
 - (f) whether particular material is class 2 material covered by paragraph 107(1)(d); or
 - (g) whether particular material is class 2 material covered by paragraph 107(1)(e); or
 - (h) whether particular material is class 2 material covered by paragraph 107(1)(f); or
 - (i) whether particular material is class 2 material covered by paragraph 107(1)(g); or
 - (j) whether particular material is class 2 material covered by paragraph 107(1)(h); or
 - (k) whether particular material is class 2 material covered by paragraph 107(1)(i); or
 - (l) whether particular material is class 2 material covered by paragraph 107(1)(j); or
 - (m) whether particular material is class 2 material covered by paragraph 107(1)(k); or
 - (n) whether particular material is class 2 material covered by paragraph 107(1)(l).

Part 10—Enforcement

161 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 following enforcement powers are available:
 - (a) infringement notices;
 - (b) enforceable undertakings;
 - (c) injunctions.

162 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.

Relevant court

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

Section 163

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.

163 Infringement notices

Provisions subject to an infringement notice

- (1) The following provisions of this Act are subject to an infringement notice under Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*:
- (a) section 50;
 - (b) section 53;
 - (c) section 57;
 - (d) section 60;
 - (e) section 67;
 - (f) section 75;
 - (g) section 80;
 - (h) section 83;
 - (i) section 91;
 - (j) section 111;
 - (k) section 116;
 - (l) section 121;
 - (m) section 125;
 - (n) section 129;
 - (o) section 143;
 - (p) section 146.

Note: Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014* creates a framework for using infringement notices in relation to provisions.

Infringement officer

- (2) For the purposes of Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*, a member of the staff of the ACMA authorised, in writing, by the Commissioner for the purposes of this subsection is an infringement officer in relation to the provisions mentioned in subsection (1).

Relevant chief executive

- (3) For the purposes of Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*, the Commissioner is the relevant chief executive in relation to the provisions mentioned in subsection (1).
- (4) The relevant chief executive may, in writing, delegate any or all of the relevant chief executive's powers and functions under Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014* to a person who is:
- (a) a member of the staff of the ACMA; and
 - (b) an SES employee or an acting SES employee.
- (5) A person exercising powers or performing functions under a delegation under subsection (4) must comply with any directions of the relevant chief executive.

Extension to external Territories etc.

- (6) Part 5 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.

164 Enforceable undertakings*Enforceable provisions*

- (1) The following provisions of this Act are enforceable under Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*:
- (a) section 50;

Section 164

- (b) section 53;
- (c) section 57;
- (d) section 60;
- (e) section 67;
- (f) section 75;
- (g) section 80;
- (h) section 83;
- (i) section 91;
- (j) section 103;
- (k) section 111;
- (l) section 116;
- (m) section 121;
- (n) section 125;
- (o) section 129;
- (p) section 143;
- (q) section 146.

Authorised person

- (2) The Commissioner is an authorised person in relation to the provisions mentioned in subsection (1) for the purposes of Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*.

Relevant court

- (3) The Federal Court of Australia and the Federal Circuit Court of Australia are relevant courts in relation to the provisions mentioned in subsection (1) 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 the provisions mentioned in subsection (1), extends to:
 - (a) every external Territory; and
 - (b) acts, omissions, matters and things outside Australia.

165 Injunctions*Enforceable provisions*

- (1) The following provisions are enforceable under Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*:
- (a) section 50;
 - (b) section 53;
 - (c) section 57;
 - (d) section 60;
 - (e) section 67;
 - (f) section 71;
 - (g) section 75;
 - (h) section 80;
 - (i) section 83;
 - (j) section 91;
 - (j) section 103;
 - (l) section 111;
 - (m) section 116;
 - (n) section 121;
 - (o) section 125;
 - (p) section 129;
 - (q) section 143;
 - (r) section 146;
 - (s) section 195.

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 Court of Australia and the Federal Circuit Court of Australia are relevant courts in relation to the provisions mentioned

Section 165

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 11—Administrative provisions relating to the Commissioner

Division 1—Introduction

166 Simplified outline of this Part

- The Commissioner is to be appointed by the Minister.
- The Commissioner may delegate the Commissioner’s 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

167 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.
- (3) The Commissioner holds office on a full-time basis.

168 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*.

169 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
 - (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.

170 Application of finance law

For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*), the Commissioner is an official of the ACMA.

Division 3—Terms and conditions for the Commissioner

171 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*.

172 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.

173 Outside employment

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

174 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.

175 Resignation

- (1) The Commissioner may resign the Commissioner's 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.

176 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 the Commissioner's 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 the Commissioner's creditors; or
 - (iv) makes an assignment of the Commissioner's remuneration for the benefit of the Commissioner's 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 the Commissioner's office (see section 173); or
 - (d) the Commissioner fails, without reasonable excuse, to comply with section 174.

Part 11 Administrative provisions relating to the Commissioner

Division 3 Terms and conditions for the Commissioner

Section 177

177 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

178 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).

179 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.

180 Commissioner has privileges and immunities of the Crown

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

Section 181

181 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.
- (4) Subsection (1) of this section does not apply to a function or power conferred by subsection 220A(1) (which deals with the formulation or variation of the internal review scheme).

182 Delegation by the Commissioner to a contractor engaged by the Commissioner

- (1) The Commissioner may, by writing, delegate any or all of the Commissioner's functions or powers to a person engaged by the Commissioner under subsection 185(1).

- (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.
- (3A) Subsection (1) of this section does not apply to a function or power conferred by subsection 220A(1) (which deals with the formulation or variation of the internal review scheme).
- (3B) Subsection (1) of this section does not apply to a function or power conferred by the internal review scheme (see section 220A).
- (4) Subsection (1) does not apply to a function or power conferred by any of the following provisions:
 - (a) section 49;
 - (b) section 56;
 - (c) section 65;
 - (d) section 66;
 - (e) section 70;
 - (f) section 77;
 - (g) section 78;
 - (h) section 79;
 - (i) section 83;
 - (j) section 88;
 - (k) section 89;
 - (l) section 90;
 - (m) section 99;
 - (n) section 109;
 - (o) section 110;
 - (p) section 114;
 - (q) section 115;
 - (r) section 119;
 - (s) section 120;
 - (t) section 124;
 - (u) section 128;
 - (v) section 143;

Section 183

- (w) section 154;
- (x) section 156;
- (y) section 157;
- (z) section 158;
- (za) section 159;
- (zb) section 194;
- (zc) section 199;
- (zd) section 200;
- (ze) section 203.

- (5) Subsection (1) does not apply to a function or power conferred by the *Regulatory Powers (Standard Provisions) Act 2014*.

183 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) A report under subsection (1) relating to a financial year must set out the following:
- (aa) the number of objection notices given to the Commissioner under section 33 during that year;
 - (a) the number of notices given by the Commissioner under section 49 during that year;
 - (b) the number of notices given by the Commissioner under section 56 during that year;
 - (c) the number of notices given by the Commissioner under section 65 during that year;
 - (d) the number of notices given by the Commissioner under section 66 during that year;
 - (e) the number of notices given by the Commissioner under section 70 during that year;
 - (f) the number of notices given by the Commissioner under section 77 during that year;

- (g) the number of notices given by the Commissioner under section 78 during that year;
- (h) the number of notices given by the Commissioner under section 79 during that year;
- (i) the number of directions given by the Commissioner under section 83 during that year;
- (j) the number of notices given by the Commissioner under section 88 during that year;
- (k) the number of notices given by the Commissioner under section 89 during that year;
- (l) the number of notices given by the Commissioner under section 90 during that year;
- (la) the number of requests made by the Commissioner under section 95 during that year;
- (m) the number of notices given by the Commissioner under section 99 during that year;
- (n) the number of notices given by the Commissioner under section 109 during that year;
- (o) the number of notices given by the Commissioner under section 110 during that year;
- (p) the number of notices given by the Commissioner under section 114 during that year;
- (q) the number of notices given by the Commissioner under section 115 during that year;
- (r) the number of notices given by the Commissioner under section 119 during that year;
- (s) the number of notices given by the Commissioner under section 120 during that year;
- (t) the number of notices given by the Commissioner under section 124 during that year;
- (u) the number of notices given by the Commissioner under section 128 during that year;
- (v) the number of notices given by the Commissioner under section 143 during that year;
- (w) the number of directions given by the Commissioner under section 154 during that year;

Section 183

- (x) the number of applications made by the Commissioner under section 156 during that year;
- (y) the number of applications made by the Commissioner under section 157 during that year;
- (z) the number of applications made by the Commissioner under section 158 during that year;
- (za) the number of applications made by the Commissioner under section 159 during that year;
- (zb) the number of notices given by the Commissioner under section 194 during that year;
- (zc) the number of notices given by the Commissioner under section 199 during that year;
- (zd) the number of notices given by the Commissioner under section 203 during that year;
- (ze) the number of decisions that were reviewed by the Commissioner under the internal review scheme (see section 220A) during that year;
- (zf) the number of applications that were received by the Commissioner under the internal review scheme (see section 220A) during that year;
- (zg) the number of informal notices given, and informal requests made, by the Commissioner to a person in relation to cyber-bullying material targeted at an Australian child during that year;
- (zh) the number of informal notices given, and informal requests made, by the Commissioner to a person in relation to non-consensual sharing of intimate images during that year;
- (zi) the number of informal notices given, and informal requests made, by the Commissioner to a person in relation to cyber-abuse material targeted at an Australian adult during that year;
- (zj) the number of informal notices given, and informal requests made, by the Commissioner to a person in relation to material that depicts abhorrent violent conduct during that year;

- (zk) the number of informal notices given, and informal requests made, by the Commissioner to a person in relation to class 1 material during that year;
- (zl) the number of informal notices given, and informal requests made, by the Commissioner to a person in relation to class 2 material during that year;
- (zm) the number and percentage of complaints made to the Commissioner during that year for cyber-bullying material targeted at an Australian child by ground or category of harm, with such grounds or categories of harm to be determined by the Commissioner;
- (zn) the number and percentage of complaints made to the Commissioner during that year for non-consensual sharing of intimate images by ground or category of harm, with such grounds or categories of harm to be determined by the Commissioner;
- (zo) the number and percentage of complaints made to the Commissioner during that year for cyber-abuse material targeted at an Australian adult by ground or category of harm, with such grounds or categories of harm to be determined by the Commissioner;
- (zp) the number and percentage of complaints made to the Commissioner during that year under the online content scheme by ground or category of harm, with such grounds or categories of harm to be determined by the Commissioner.

183A Advisory committees

- (1) The Commissioner may, by writing, establish advisory committees to assist the Commissioner in performing any of the Commissioner's functions.
- (2) An advisory committee consists of such persons as the Commissioner from time to time appoints to the committee.
- (3) The Commissioner may revoke a person's appointment to an advisory committee.
- (4) The Commissioner may give an advisory committee written directions as to:

Section 184

- (a) the way in which the committee is to carry out its functions;
and
 - (b) the procedures to be followed in relation to meetings.
- (5) An appointment to an advisory committee is not a public office within the meaning of the *Remuneration Tribunal Act 1973*.

184 Assistance to the Commissioner

- (1) The ACMA must:
- (a) assist the Commissioner to perform the Commissioner's functions and exercise the Commissioner's powers; and
 - (b) do so to such extent as the Commissioner reasonably requires.
- (2) The assistance may include the following:
- (a) the provision of advice;
 - (b) the making available of resources and facilities;
 - (c) the making available of the Consumer Consultative Forum established by the ACMA to assist the Commissioner to perform the Commissioner's functions in relation to matters affecting Australians.

Members of the staff of the ACMA

- (3) The ACMA must:
- (a) make available members of the staff of the ACMA to assist the Commissioner to perform the Commissioner's functions and exercise the Commissioner's powers, so long as the Commissioner considers that those members have the skills, qualifications or experience necessary to so assist the Commissioner; and
 - (b) do so to such extent as the Commissioner reasonably requires.
- (4) When performing services for the Commissioner, a member of the staff of the ACMA is subject to the directions of the Commissioner.

Ministerial directions

- (5) 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 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the direction (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (6) The ACMA must comply with a direction under subsection (5).

Deemed members of the staff of the ACMA

- (7) 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.

185 Contractors engaged by the Commissioner

- (1) The Commissioner may, on behalf of the Commonwealth, engage persons to assist the Commissioner to perform the Commissioner's functions and exercise the Commissioner's powers.
- (2) The persons are to be engaged on the terms and conditions that the Commissioner determines in writing.
- (3) When performing services for the Commissioner, a person engaged under subsection (1) is subject to the directions of the Commissioner.

186 Commissioner not subject to direction by the ACMA etc.

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;

Section 187

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

187 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.

188 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 subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the direction (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) A direction under subsection (1) must be of a general nature only.
- (3) The Commissioner must comply with a direction under subsection (1).

Part 12—Online Safety Special Account

189 Simplified outline of this Part

- | |
|--|
| <ul style="list-style-type: none">• The Online Safety Special Account is continued in existence. |
|--|

190 Online Safety Special Account

- (1) The Online Safety Special Account is continued in existence.
- (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.

191 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 Online Safety Special Account.
- (2) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation 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 departmental item (within the meaning of that Act) that relates to the ACMA.

Section 192

192 Purposes of the Account

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

- (a) to enhance online safety for Australians;
- (b) to make grants under paragraph 27(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.

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

Part 13—Information-gathering powers

193 Simplified outline of this Part

- The Commissioner may obtain the following information about an end-user of a social media service, relevant electronic service or designated internet service:
 - (a) information about the identity of the end-user;
 - (b) the contact details of the end-user.

194 Commissioner may obtain end-user identity information or contact details

Scope

- (1) This section applies to a person if:
 - (a) the person is the provider of:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the Commissioner believes on reasonable grounds that the person has:
 - (i) information about the identity of an end-user of the service; or
 - (ii) contact details of an end-user of the service; and
 - (c) the Commissioner believes on reasonable grounds that the information is, or the contact details are, relevant to the operation of this Act.

Requirement

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

Section 195

- (a) if subparagraph (1)(b)(i) applies—to give to the Commissioner, within the period and in the manner and form specified in the notice, any such information; or
- (b) if subparagraph (1)(b)(ii) applies—to give to the Commissioner, within the period and in the manner and form specified in the notice, any such contact details.

195 Compliance with notice

A person must comply with a requirement under section 194 to the extent that the person is capable of doing so.

Civil penalty: 100 penalty units.

196 Self-incrimination

- (1) A person is not excused from giving information or contact details under section 194 on the ground that the information or contact details might tend to incriminate the person.
- (2) However, in the case of an individual:
 - (a) the information or contact details given; or
 - (b) giving the information or contact details; or
 - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information or contact details;is not admissible in evidence against the individual:
 - (d) in civil proceedings for the recovery of a penalty (other than proceedings for the recovery of a penalty under section 195); or
 - (e) in criminal proceedings (other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Part).
- (3) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a penalty for an offence) in relation to giving information or contact details under section 194, the individual is not excused from giving information or contact details under that section on that ground.

Note: A body corporate is not entitled to claim the privilege against self-exposure to a penalty.

Part 14—Investigative powers

197 Simplified outline of this Part

- The Commissioner may exercise certain powers for the purposes of an investigation.

198 Application of this Part

This Part applies to an investigation by the Commissioner under section 31, 34, 37 or 42.

199 Notice requiring appearance for examination

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.

200 Examination on oath or affirmation

- (1) 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.

- (2) 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.
- (3) 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.

201 Examination to take place in private

The examination of a person for the purposes of an investigation must be conducted in private, but the person is entitled to have an adviser present at the examination.

202 Record to be made of examination

- (1) 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.
- (2) 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.

203 Production of documents for inspection

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.

Section 204

204 Protection of persons giving evidence

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.

205 Non-compliance with requirement to give evidence

- (1) A person required to answer a question, to give evidence or to produce documents under this Part must not:
- (a) when required to take an oath or make an affirmation, refuse or fail to take the oath or make the affirmation; or
 - (b) refuse or fail to answer a question that the person is required to answer; or
 - (c) refuse or fail to produce a document that the person is required to produce.

Penalty: Imprisonment for 12 months.

- (2) A person required to answer a question, to give evidence or to produce documents under this Part must not:
- (a) when required to take an oath or make an affirmation, refuse or fail to take the oath or make the affirmation; or
 - (b) refuse or fail to answer a question that the person is required to answer; or
 - (c) refuse or fail to produce a document that the person is required to produce.

Civil penalty: 100 penalty units.

- (3) Subsections (1) and (2) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matters mentioned in this subsection: see subsection 13.3(3) of the *Criminal Code* and section 96 of the *Regulatory Powers (Standard Provisions) Act 2014*.

- (4) Subsections (1) and (2) do not apply to a refusal to answer a question, or a refusal to produce a document, if the answer to the question or the production of the document would tend to incriminate the person.

Section 205

Note: A defendant bears an evidential burden in relation to the matters mentioned in this subsection: see subsection 13.3(3) of the *Criminal Code* and section 96 of the *Regulatory Powers (Standard Provisions) Act 2014*.

- (5) Subsections (1) and (2) do not apply if:
- (a) the person is a journalist; and
 - (b) the answer to the question or the production of the document would tend to disclose the identity of a person who supplied information in confidence to the journalist.

Part 15—Disclosure of information

206 Simplified outline of this Part

- | |
|---|
| <ul style="list-style-type: none">• The Commissioner may disclose information in certain circumstances. |
|---|

Note: See also section 224 (referral of matters to law enforcement agencies).

207 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 this Act.

208 Disclosure to Minister

The Commissioner may disclose information to the Minister.

209 Disclosure to Secretary, or APS employees, for advising the Minister

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

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

210 Disclosure to a member of the staff of the ACMA etc.

The Commissioner may disclose information to:

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

- (c) a person engaged under subsection 185(1); or
 - (d) a consultant engaged under section 187;
- for purposes relating to the performance of the Commissioner's functions or the exercise of the Commissioner's powers.

211 Disclosure to Royal Commissions

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

212 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 Office of the Australian Information Commissioner;
 - (d) 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;
 - (e) the Australian Federal Police;
 - (f) the Director of Public Prosecutions;
 - (g) an authority of a State or Territory responsible for enforcing one or more laws of the State or Territory;

Section 213

- (h) an authority of a foreign country responsible for regulating either or both of the following matters:
 - (i) matters relating to the capacity of individuals to use social media services, relevant electronic services and designated internet services in a safe manner;
 - (ii) matters relating to material that is accessible to, or delivered to, the end-users of social media services, relevant electronic services and designated internet services;
- (i) an authority of a foreign country responsible for enforcing one or more laws of the foreign country relating to either or both of the following matters:
 - (i) matters relating to the capacity of individuals to use social media services, relevant electronic services and designated internet services in a safe manner;
 - (ii) matters relating to material that is accessible to, or delivered to, the end-users of social media services, relevant electronic services and designated internet services.
- (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.

213 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 30.
- (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.

214 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 30.
- (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.

215 Disclosure with consent

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

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

216 Disclosure of publicly available information

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

217 Disclosure of summaries and statistics

The Commissioner may disclose:

- (a) summaries of de-identified information; and
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Section 218

(b) statistics derived from de-identified information.

218 Relationship with Parts 13 and 15 of the *Telecommunications Act 1997*

This Part does not authorise a disclosure of information that is prohibited by Part 13 or 15 of the *Telecommunications Act 1997*.

Part 16—Miscellaneous

219 Simplified outline of this Part

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

220 Review of decisions by the Administrative Appeals Tribunal

Notice under section 49 or 56

- (1) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Commissioner to give a notice under section 49 or 56.

Removal notice—cyber-bullying, intimate images and cyber-abuse

- (2) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Commissioner under section 65, 77 or 88 to give a removal notice to the provider of:
 - (a) a social media service; or
 - (b) a relevant electronic service; or
 - (c) a designated internet service.
- (3) An application under subsection (2) may only be made by:
 - (a) the provider of the social media service, relevant electronic service or designated internet service; or
 - (b) if the material that is the subject of the notice was posted on the service by an end-user of the service—the end-user.
- (4) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Commissioner to refuse to give the provider of:
 - (a) a social media service; or
 - (b) a relevant electronic service; or
 - (c) a designated internet service;

Section 220

a section 65, 77 or 88 removal notice that relates to material provided on the service.

- (5) An application under subsection (4) may only be made:
- (a) by a person who made a section 30, 32 or 36 complaint about the material provided on the service; or
 - (b) in the case of a refusal to give a section 65 or 88 removal notice—by, or with the consent of, the person who was the target of the material provided on the service; or
 - (c) in the case of a refusal to give a section 77 removal notice that relates to an intimate image of a person—by, or with the consent of, that person.
- (6) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Commissioner under section 66, 79 or 90 to give a removal notice to a hosting service provider.
- (7) An application under subsection (6) may only be made by:
- (a) the hosting service provider; or
 - (b) if the material that is the subject of the notice was posted on the service by an end-user of the service—the end-user.
- (8) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Commissioner to refuse to give a hosting service provider a section 66, 79 or 90 removal notice that relates to material hosted by the provider.
- (9) An application under subsection (8) may only be made:
- (a) by a person who made a section 30, 32 or 36 complaint about the material; or
 - (b) in the case of a refusal to give a section 66 or 90 removal notice—by, or with the consent of, the person who was the target of the material provided on the service; or
 - (c) in the case of a refusal to give a section 79 removal notice that relates to an intimate image of a person—by, or with the consent of, that person.

End-user notice

- (10) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Commissioner under section 70 to give an end-user notice.

Removal notice—end-user

- (10A) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Commissioner under section 78 or 89 to give a removal notice.

Removal notice—online content scheme

- (11) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Commissioner under section 109, 110, 114 or 115 to give a removal notice.

Remedial direction

- (12) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Commissioner under section 83 to give a remedial direction.

Blocking notice

- (13) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Commissioner under section 99 to give a blocking notice.

Remedial notice

- (14) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Commissioner under section 119 or 120 to give a remedial notice.

Link deletion notice

- (15) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Commissioner under section 124 to give a link deletion notice.
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Section 220

App removal notice

- (16) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Commissioner under section 128 to give an app removal notice.

Decisions under section 140

- (17) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Commissioner under section 140 to refuse to register an industry code.
- (18) An application under subsection (17) may only be made by the body or association that developed the code.

Decisions under section 143

- (19) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Commissioner under section 143 to:
- (a) give a direction to a person; or
 - (b) vary a direction that is applicable to a person; or
 - (c) refuse to revoke a direction that is applicable to a person.
- (20) An application under subsection (19) may only be made by the person concerned.

Decisions under subsection 151(5) or section 154

- (21) 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 of a kind referred to in subsection 151(5) (which deals with administrative decisions under service provider determinations), where the decision relates to a person;
 - (b) a decision under section 154 to:
 - (i) give a direction to a person; or
 - (ii) vary a direction that is applicable to a person; or
 - (iii) refuse to revoke a direction that is applicable to a person.

- (22) An application under subsection (21) may only be made by the person concerned.

220A Internal review of decisions

- (1) The Commissioner:
- (a) must, by notifiable instrument, formulate a scheme (the *internal review scheme*) for and in relation to the review by the Commissioner of decisions of a kind referred to in section 220; and
 - (b) may, by notifiable instrument, vary the internal review scheme.
- (2) The internal review scheme may empower the Commissioner to:
- (a) on application, review such a decision; and
 - (b) affirm, vary or revoke the decision concerned.
- (3) The internal review scheme may provide that the Commissioner's decision on review of a decision has effect as if it had been made under the provision under which the original decision was made.
- (4) Subsections (2) and (3) do not limit subsection (1).
- (5) The Commissioner must publish the internal review scheme on the Commissioner's website.

221 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 30;
 - (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 31;
 - (c) the making of a complaint under section 32;
 - (d) the giving of an objection notice under section 33;

Section 222

- (e) the making of a statement to, or the giving of a document or information to, the Commissioner in connection with an investigation under section 34;
 - (f) the making of a statement to, or the giving of a document or information to, the Commissioner in connection with a consideration under section 35;
 - (g) the making of a complaint under section 36;
 - (h) the making of a statement to, or the giving of a document or information to, the Commissioner in connection with an investigation under section 37;
 - (i) the making of a complaint under section 38, 39 or 40;
 - (j) the making of a statement to, or the giving of a document or information to, the Commissioner in connection with an investigation under section 42.
- (2) Civil proceedings do not lie against a person in respect of anything done by the person in compliance with:
- (a) an end-user notice; or
 - (b) a removal notice; or
 - (c) a remedial notice; or
 - (d) a link deletion notice; or
 - (e) an app removal notice; or
 - (f) a blocking request; or
 - (g) a blocking notice; or
 - (h) a notice under subsection 194(2).

222 Liability for damages

None of the following:

- (a) the Commissioner;
- (b) 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:

- (c) in the performance or purported performance of any function;
or
- (d) in the exercise or purported exercise of any power;

conferred on the Commissioner by or under this Act.

223 Protection from criminal proceedings—Commissioner, Classification Board etc.

- (1) For the purposes of this section, each of the following is a *protected person*:
- (a) the Commissioner;
 - (aa) a member of an advisory committee established under section 183A;
 - (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 person engaged under subsection 185(1);
 - (e) a consultant engaged under section 187;
 - (f) a member or temporary member of the Classification Board;
 - (g) a member of staff assisting the Classification Board as mentioned in section 88A of the *Classification (Publications, Films and Computer Games) Act 1995*;
 - (h) a consultant engaged to assist in the performance of the functions of the Classification Board.
- (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 or the Classification Board by or under this Act.
- (3) For the purposes of this section, *possession* includes have in custody or control.

Section 224

224 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, relevant electronic service or designated internet service; and
 - (b) the Commissioner is satisfied that the material is of a sufficiently serious nature to warrant referral to a law enforcement agency;

the Commissioner must notify the material to:

- (c) a member of an Australian police force; or
- (d) 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 is to be notified under paragraph (1)(c) to a member of an Australian police force includes (but is not limited to) a manner ascertained in accordance with an arrangement between:
 - (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.

225 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, relevant electronic service or designated internet 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.

226 Copies of material

- (1) The Commissioner may make one or more copies of material for the purposes of:
 - (a) an investigation under section 31, 34, 37 or 42; or
 - (b) a consideration under section 35; or
 - (c) a request under section 160.
- (2) The Commissioner does not infringe copyright if the Commissioner does anything authorised by subsection (1).

227 Compensation for acquisition of property

- (1) If the operation of:
 - (a) this Act; or
 - (b) a legislative instrument made under this Act;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.

Section 228

- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in:
- (a) the Federal Court; or
 - (b) the Supreme Court of a State or Territory;
- for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

228 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.

229 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:
 - (i) the provider of a social media service; or

- (ii) the provider of a relevant electronic service; or
 - (iii) the provider of a designated internet service; or
 - (iv) a hosting service provider; or
 - (v) the provider of an internet search engine service; or
 - (vi) the provider of an app distribution service; or
 - (vii) an internet service provider; and
- (b) there is an individual who is:
- (i) an employee or agent of the provider; and
 - (ii) designated by the provider as the provider'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.

Section 230

230 Instruments under this Act may provide for matters by reference to other instruments

- (1) An instrument under this Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) provisions of any Act:
 - (a) as in force at a particular time; or
 - (b) as in force from time to time.
 - (2) An instrument under this Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matter contained in any other instrument or writing:
 - (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time;even if the other instrument or writing does not yet exist when the instrument under this Act is made.
 - (3) A reference in subsection (2) to any other instrument or writing includes a reference to an instrument or writing:
 - (a) made by any person or body in Australia or elsewhere (including, for example, the Commonwealth, a State or Territory, an officer or authority of the Commonwealth or of a State or Territory, or an overseas entity); and
 - (b) whether of a legislative, administrative or other official nature or of any other nature; and
 - (c) whether or not having any legal force or effect;for example:
 - (d) regulations or rules under an Act; or
 - (e) a State Act, a law of a Territory, or regulations or any other instrument made under such an Act or law; or
 - (f) an international technical standard or performance indicator; or
 - (g) a written agreement or arrangement or an instrument or writing made unilaterally.
 - (4) Nothing in this section limits the generality of anything else in it.
 - (5) Subsections (1) and (2) have effect despite anything in:
 - (a) the *Acts Interpretation Act 1901*; or
-

(b) the *Legislation Act 2003*.

(6) In this section:

instrument under this Act means:

- (a) the legislative rules; or
- (b) any other instrument made under this Act; or
- (c) an industry code (within the meaning of Division 7 of Part 9).

231 This Act does not limit Schedule 8 to the *Broadcasting Services Act 1992*

This Act does not limit the operation of Schedule 8 to the *Broadcasting Services Act 1992*.

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

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

233 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.
- (2) Subsection (1) does not limit the application of section 15A of the *Acts Interpretation Act 1901* to this Act.

234 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.

235 Liability of Australian hosting service providers and internet service providers under State and Territory laws etc.

- (1) A law of a State or Territory, or a rule of common law or equity, has no effect to the extent to which it:

Section 235

- (a) subjects, or would have the effect (whether direct or indirect) of subjecting, an Australian hosting service provider to liability (whether criminal or civil) in respect of hosting particular online content in a case where the provider was not aware of the nature of the online content; or
 - (b) requires, or would have the effect (whether direct or indirect) of requiring, an Australian hosting service provider to monitor, make inquiries about, or keep records of, online content hosted by the provider; or
 - (c) subjects, or would have the effect (whether direct or indirect) of subjecting, an internet service provider to liability (whether criminal or civil) in respect of carrying particular online content in a case where the service provider was not aware of the nature of the online content; or
 - (d) requires, or would have the effect (whether direct or indirect) of requiring, an internet service provider to monitor, make inquiries about, or keep records of, online content carried by the provider.
- (2) The Minister may, by legislative instrument, exempt a specified law of a State or Territory, or a specified rule of common law or equity, from the operation of subsection (1).

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

- (3) An exemption under subsection (2) may be unconditional or subject to such conditions (if any) as are specified in the exemption.

Declaration by Minister

- (4) The Minister may, by legislative instrument, declare that a specified law of a State or Territory, or a specified rule of common law or equity, has no effect to the extent to which the law or rule has a specified effect in relation to an Australian hosting service provider.

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

- (5) The Minister may, by legislative instrument, declare that a specified law of a State or Territory, or a specified rule of common law or equity, has no effect to the extent to which the law or rule has a specified effect in relation to an internet service provider.

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

- (6) A declaration under subsection (4) or (5) has effect only to the extent that:
- (a) it is authorised by paragraph 51(v) of the Constitution (either alone or when read together with paragraph 51(xxxix) of the Constitution); or
 - (b) both:
 - (i) it is authorised by section 122 of the Constitution; and
 - (ii) it would have been authorised by paragraph 51(v) of the Constitution (either alone or when read together with paragraph 51(xxxix) of the Constitution) if section 51 of the Constitution extended to the Territories.

236 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 or the Australian Capital Territory.

237 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.

238 Provider of social media service, relevant electronic service, designated internet service or app distribution service

- (1) For the purposes of this Act, a person does not provide a social media service, relevant electronic service or designated internet
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Section 239

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 an app distribution service merely because the person supplies a carriage service that enables apps to be downloaded.
- (3) For the purposes of this Act, a person does not provide a social media service, relevant electronic service, designated internet service or app distribution service merely because the person provides a billing service, or a fee collection service, in relation to a social media service, relevant electronic service, designated internet service or app distribution service.

239 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.

239A Review of operation of this Act

- (1) Within 3 years after the commencement of this section, the Minister must cause to be conducted an independent review of the operation of this Act.
- (2) The Minister must cause to be prepared a written report of the review.
- (3) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the report is given to the Minister.

240 Legislative rules

- (1) The Minister may, by legislative instrument, 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) directly amend the text of this Act.

*[Minister's second reading speech made in—
House of Representatives on 24 February 2021
Senate on 17 March 2021]*

(22/21)
