



Online Safety (Transitional Provisions and Consequential Amendments) Act 2021

No. 77, 2021

**An Act to deal with transitional and consequential
matters arising from the enactment of the *Online
Safety Act 2021*, and for other purposes**

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

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No. 77, 2021

**An Act to deal with transitional and consequential
matters arising from the enactment of the *Online
Safety Act 2021*, and for other purposes**

[Assented to 23 July 2021]

The Parliament of Australia enacts:

1 Short title

This Act is the *Online Safety (Transitional Provisions and Consequential Amendments) Act 2021*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day after this Act receives the Royal Assent.	24 July 2021
2. Schedule 1	At the same time as the <i>Online Safety Act 2021</i> commences. However, the provisions do not commence at all if the <i>Online Safety Act 2021</i> does not commence.	23 January 2022
3. Schedule 2, Part 1	At the same time as the <i>Online Safety Act 2021</i> commences. However, the provisions do not commence at all if the <i>Online Safety Act 2021</i> does not commence.	23 January 2022
4. Schedule 2, Part 2	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) the commencement of Schedule 3 to the <i>Surveillance Legislation Amendment (Identify and Disrupt) Act 2021</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b)	23 January 2022 (paragraph (a) applies)

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
	does not occur.	
5. Schedule 2, Part 3	At the same time as the <i>Online Safety Act 2021</i> commences. However, the provisions do not commence at all if: (a) the <i>Online Safety Act 2021</i> does not commence; or (b) Schedule 1 to the <i>Export Market Development Grants Legislation Amendment Act 2020</i> commences before the commencement of the <i>Online Safety Act 2021</i> .	Never commenced (paragraph (b) applies)
6 Schedule 2, Part 4	The later of: (a) immediately after the commencement of the <i>Online Safety Act 2021</i> ; and (b) the commencement of the <i>Federal Circuit and Family Court of Australia Act 2021</i> .	23 January 2022 (paragraph (a) applies)
7. Schedule 3	At the same time as the <i>Online Safety Act 2021</i> commences. However, the provisions do not commence at all if the <i>Online Safety Act 2021</i> does not commence.	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 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Repeal of the Enhancing Online Safety Act 2015

Enhancing Online Safety Act 2015

1 The whole of the Act

Repeal the Act.

Schedule 2—Amendments

Part 1—General amendments

A New Tax System (Goods and Services Tax) Act 1999

1 Subparagraph 38-570(3)(a)(ii)

Omit “Schedule 5 to the *Broadcasting Services Act 1992*”, substitute “the *Online Safety Act 2021*”.

Broadcasting Services Act 1992

2 Paragraphs 3(1)(ha), (k), (l) and (m)

Repeal the paragraphs.

3 Subsection 3(2) (definition of *designated content/hosting service provider*)

Repeal the definition.

4 Subsection 3(2) (definition of *internet content*)

Repeal the definition.

5 Subsection 4(1)

Omit “, internet services”.

6 Subsections 4(3) and (3AA)

Repeal the subsections.

7 Subsection 4(4) (definition of *designated content/hosting service*)

Repeal the definition.

8 Subsection 4(4) (definition of *internet carriage service*)

Repeal the definition.

9 Subsection 4(4) (definition of *internet content*)

Repeal the definition.

10 Subsection 4(4) (definition of *internet service provider*)

Repeal the definition.

11 Paragraph 5(1)(a)

Omit “, the internet industry, the commercial content service industry”.

12 Subsection 5(4) (definition of *commercial content service*)

Repeal the definition.

13 Subsection 6(1) (definition of *Commissioner*)

Repeal the definition.

14 Subsection 6(1) (paragraph (b) of the definition of *registered code of practice*)

Repeal the paragraph.

15 Subsection 6(1) (paragraph (c) of the definition of *registered code of practice*)

Omit “Schedule 6; or”, substitute “Schedule 6.”.

16 Subsection 6(1) (paragraph (d) of the definition of *registered code of practice*)

Repeal the paragraph.

17 Subsection 10A(1)

Omit “(1)”.

18 Subsection 10A(2)

Repeal the subsection.

19 Paragraph 130L(e)

Omit “Part 5 of Schedule 5 to this Act”, substitute “Division 7 of Part 9 of the *Online Safety Act 2021*”.

20 Paragraph 130L(fa)

Repeal the paragraph.

21 Part 13 (heading)

Omit “and the Commissioner”.

22 Section 169A

Repeal the section.

23 Subsection 173(1)

Omit “(1)”.

24 Subsection 173(2)

Repeal the subsection.

25 Subsections 174(4), (5) and (6)

Repeal the subsections.

26 Subsections 176(3) and (4)

Repeal the subsections.

27 Subsection 177(2)

Repeal the subsection.

28 Subsection 200(4)

Repeal the subsection.

29 Section 216B

Repeal the section.

30 Schedule 5

Repeal the Schedule.

31 Subclause 2(1) of Schedule 6 (definition of *internet carriage service*)

Omit “Schedule 5”, substitute “the *Online Safety Act 2021*”.

32 Paragraph 24(1)(h) of Schedule 6

Omit “an online provider rule (within the meaning of Schedule 5)”, substitute “a service provider rule (within the meaning of the *Online Safety Act 2021*)”.

33 Schedule 7 (heading)

Omit “Content services”, substitute “Content services definitions”.

34 Part 1 of Schedule 7 (heading)

Repeal the heading.

35 Clause 1 of Schedule 7

Repeal the clause, substitute:

1 Purpose of this Schedule

The purpose of this Schedule is to enable:

- (a) other Acts; and
- (b) other provisions of this Act;

to define certain expressions as having the same meaning as in this Schedule.

36 Clause 2 of Schedule 7 (definitions of *access-control system* and *adult*)

Repeal the definitions.

37 Clause 2 of Schedule 7 (definition of *adult chat service*)

Omit “prohibited content or potential prohibited content”, substitute “content that is class 1 material or content that is class 2 material covered by paragraph 107(1)(a), (b), (c), (d) or (e) of *Online Safety Act 2021*”.

38 Clause 2 of Schedule 7 (definitions of *ancillary subscription television content service, Australia, Australian connection* and *Australian police force*)

Repeal the definitions.

39 Clause 2 of Schedule 7 (definitions of *carriage service intermediary, carriage service provider, child and civil proceeding*)

Repeal the definitions.

40 Clause 2 of Schedule 7

Insert:

class 1 material has the same meaning as in the *Online Safety Act 2021*.

class 2 material has the same meaning as in the *Online Safety Act 2021*.

41 Clause 2 of Schedule 7 (definitions of *classification application, Classification Board, Classification Review Board and classified*)

Repeal the definitions.

42 Clause 2 of Schedule 7 (definitions of *commercial content service provider and computer game*)

Repeal the definitions.

43 Clause 2 of Schedule 7 (definition of *corresponding print publication*)

Repeal the definition.

44 Clause 2 of Schedule 7 (definitions of *data storage device, designated content/hosting service, designated content/hosting service provider, designated content/hosting service provider rule, eligible electronic publication, engage in conduct and evidential burden*)

Repeal the definitions.

45 Clause 2 of Schedule 7 (paragraph (a) of the definition of *exempt internet directory service*)

Omit “prohibited content or potential prohibited content”, substitute “content that is class 1 material or content that is class 2 material covered by paragraph 107(1)(a), (b), (c), (d) or (e) of *Online Safety Act 2021*”.

46 Clause 2 of Schedule 7 (paragraph (a) of the definition of *exempt internet search engine service*)

Omit “prohibited content or potential prohibited content”, substitute “content that is class 1 material or content that is class 2 material covered by paragraph 107(1)(a), (b), (c), (d) or (e) of *Online Safety Act 2021*”.

47 Clause 2 of Schedule 7 (paragraph (b) of the definition of *exempt point-to-point content service*)

Omit “prohibited content or potential prohibited content”, substitute “content that is class 1 material or content that is class 2 material covered by paragraph 107(1)(a), (b), (c), (d) or (e) of *Online Safety Act 2021*”.

48 Clause 2 of Schedule 7 (definitions of *film, final link-deletion notice, final service-cessation notice, final take-down notice, hosting service, hosting service provider, immediate circle, interim link-deletion notice, interim service-cessation notice, interim take-down notice, internet carriage service and internet content*)

Repeal the definitions.

49 Clause 2 of Schedule 7 (definitions of *links service, links service provider, live content, live content service, live content service provider, MA 15+ content, mobile carriage service provider and mobile premium service*)

Repeal the definitions.

50 Clause 2 of Schedule 7 (definitions of *potential prohibited content, prohibited content, provided by a content service, provided to the public, public mobile telecommunications service, R 18+ content and restricted access system*)

Repeal the definitions.

51 Clause 2 of Schedule 7 (definitions of *special link-deletion notice, special service-cessation notice, special take-down notice, stored content and trained content assessor*)

Repeal the definitions.

52 Clauses 3, 4, 6, 8, 9A, 10, 11, 14, 15, 16, 18, and 19 of Schedule 7

Repeal the clauses.

53 Parts 2 to 9 of Schedule 7

Repeal the Parts.

54 Clause 2 of Schedule 8 (definition of *internet carriage service*)

Omit “Schedule 5”, substitute “the *Online Safety Act 2021*”.

55 Clause 30 of Schedule 8

Omit “Schedule 5 or 7”, substitute “Part 9 of the *Online Safety Act 2021*”.

56 Clause 31 of Schedule 8

Repeal the clause.

Crimes Act 1914

57 Subsection 3C(1) (definition of *electronic service*)

Omit “*Enhancing Online Safety Act 2015*”, substitute “*Online Safety Act 2021*”.

58 Subsection 3CAA(3)

Omit “*Enhancing Online Safety Act 2015*”, substitute “*Online Safety Act 2021*”.

Criminal Code Act 1995

59 Paragraphs 273.9(5)(a) and (b) of the *Criminal Code*

Repeal the paragraphs, substitute:

- (a) assisting the eSafety Commissioner to perform the functions, or exercise the powers, conferred on the eSafety Commissioner by Part 9 of the *Online Safety Act 2021*; or
- (b) manufacturing or developing, or updating, content filtering technology (including software) in accordance with:
 - (i) an industry code registered under Division 7 of Part 9 of the *Online Safety Act 2021*; or
 - (ii) an industry standard registered under Division 7 of Part 9 of the *Online Safety Act 2021*.

60 Section 473.1 of the *Criminal Code*

Insert:

Australian hosting service provider has the same meaning as in the *Online Safety Act 2021*.

61 Section 473.1 of the *Criminal Code* (definition of *internet content host*)

Repeal the definition.

62 Section 473.1 of the *Criminal Code* (definition of *internet service provider*)

Omit “Schedule 5 to the *Broadcasting Services Act 1992*”, substitute “the *Online Safety Act 2021*”.

63 Paragraph 473.5(d) of the *Criminal Code*

Omit “internet content host” (wherever occurring), substitute “Australian hosting service provider”.

64 Subsection 474.17(1) of the *Criminal Code* (penalty)

Omit “3 years”, substitute “5 years”.

65 Subsection 474.17A(1) of the *Criminal Code* (penalty)

Omit “5 years”, substitute “6 years”.

66 Paragraph 474.17A(4)(d) of the *Criminal Code*

Repeal the paragraph, substitute:

- (d) before the commission of the underlying offence, 3 or more civil penalty orders were made against the person under the *Regulatory Powers (Standard Provisions) Act 2014* in relation to either or both of the following:
 - (i) contraventions of subsection 75(1) of the *Online Safety Act 2021*;
 - (ii) contraventions of section 91 of the *Online Safety Act 2021* that relate to removal notices given under section 89 of that Act.

67 Paragraph 474.17A(13)(a) of the *Criminal Code*

Repeal the paragraph, substitute:

- (a) a person has been convicted by a court of an offence against subsection (4) on the basis that 3 or more civil penalty orders were made against the person under the *Regulatory Powers (Standard Provisions) Act 2014* in relation to either or both of the following:
 - (i) contraventions of subsection 75(1) of the *Online Safety Act 2021*;
 - (ii) contraventions of section 91 of the *Online Safety Act 2021* that relate to removal notices given under section 89 of that Act; and

68 Paragraphs 474.24(4)(a) and (b) of the *Criminal Code*

Repeal the paragraphs, substitute:

- (a) assisting the eSafety Commissioner to perform the functions, or exercise the powers, conferred on the eSafety Commissioner by Part 9 of the *Online Safety Act 2021*; or
 - (b) manufacturing or developing, or updating, content filtering technology (including software) in accordance with:
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- (i) an industry code registered under Division 7 of Part 9 of the *Online Safety Act 2021*; or
- (ii) an industry standard registered under Division 7 of Part 9 of the *Online Safety Act 2021*.

69 Paragraph 474.25(a) of the *Criminal Code*

Omit “internet content host”, substitute “Australian hosting service provider”.

70 Section 474.30 of the *Criminal Code* (paragraphs (a) and (b) of the definition of *content service*)

Omit “*Enhancing Online Safety Act 2015*”, substitute “*Online Safety Act 2021*”.

71 Section 474.30 of the *Criminal Code* (definition of *hosting service*)

Omit “*Enhancing Online Safety Act 2015*”, substitute “*Online Safety Act 2021*”.

72 Section 474.30 of the *Criminal Code* (definition of *hosting service*)

Omit “9C(a)(ii) and (b)(ii)”, substitute “17(a)(ii) and (b)(ii)”.

73 Paragraph 474.41(1)(a) of the *Criminal Code*

Omit “*Enhancing Online Safety Act 2015*”, substitute “*Online Safety Act 2021*”.

74 Section 474.44 of the *Criminal Code*

Repeal the section, substitute:

474.44 This Subdivision does not limit Part 9 of the *Online Safety Act 2021*

This Subdivision does not limit the operation of Part 9 of the *Online Safety Act 2021*.

Enhancing Online Safety (Non-consensual Sharing of Intimate Images) Act 2018

75 Section 4

Repeal the section.

Freedom of Information Act 1982

76 Subsection 4(1) (paragraph (a) of the definition of exempt internet-content document)

After “Schedule 5 to the *Broadcasting Services Act 1992*”, insert “, as in force before the commencement of the *Online Safety Act 2021*”.

77 Subsection 4(1)

Insert:

exempt online content scheme document means:

- (a) a document containing material (within the meaning of the *Online Safety Act 2021*), or a record of material (within the meaning of that Act), that is online content scheme material; or
- (b) a document that sets out how to access, or that is likely to facilitate access to, material (within the meaning of the *Online Safety Act 2021*) that is online content scheme material (for example, by setting out the name of a website, an IP address, a URL or a password).

78 Subsection 4(1) (subparagraphs (b)(i) and (ii) of the definition of offensive content-service content)

After “that Schedule”, insert “, as in force before the commencement of the *Online Safety Act 2021*”.

79 Subsection 4(1)

Insert:

online content scheme material means material that:

- (a) has been provided on a social media service, relevant electronic service or designated internet service (within the meaning of the *Online Safety Act 2021*); and
- (b) was:
 - (i) class 1 material (within the meaning of the *Online Safety Act 2021*); or
 - (ii) class 2 material (within the meaning of the *Online Safety Act 2021*) that is covered by paragraph 107(1)(a), (b), (c), (d) or (e) of that Act;when it was provided on the service.

80 Subsection 4(1) (definition of offensive internet content)

After “Schedule 5 to the *Broadcasting Services Act 1992*”, insert “, as in force before the commencement of the *Online Safety Act 2021*”.

81 Division 1 of Part II of Schedule 2 (paragraph (a) of the item dealing with Australian Communications and Media Authority)

After “Schedule 7 to the *Broadcasting Services Act 1992*”, insert “, as in force before the commencement of the *Online Safety Act 2021*”.

82 Division 1 of Part II of Schedule 2 (paragraph (b) of the item dealing with Australian Communications and Media Authority)

After “Schedule 5 to that Act”, insert “, as in force before the commencement of the *Online Safety Act 2021*”.

83 Division 1 of Part II of Schedule 2 (at the end of the item dealing with Australian Communications and Media Authority)

Add:

- ; and (c) exempt online content scheme documents concerning the performance of a function, or the exercise of a power, under Part 9 of the *Online Safety Act 2021*.

84 Division 1 of Part II of Schedule 2 (paragraph (a) of the item dealing with Classification Board)

After “Schedule 7 to the *Broadcasting Services Act 1992*”, insert “, as in force before the commencement of the *Online Safety Act 2021*”.

85 Division 1 of Part II of Schedule 2 (paragraph (b) of the item dealing with Classification Board)

After “Schedule 5 to that Act”, insert “, as in force before the commencement of the *Online Safety Act 2021*”.

86 Division 1 of Part II of Schedule 2 (at the end of the item dealing with Classification Board)

Add:

; and (c) exempt online content scheme documents concerning the performance of a function, or the exercise of a power, under Part 9 of the *Online Safety Act 2021*.

87 Division 1 of Part II of Schedule 2 (paragraph (a) of the item dealing with Classification Review Board)

After “Schedule 7 to the *Broadcasting Services Act 1992*”, insert “, as in force before the commencement of the *Online Safety Act 2021*”.

88 Division 1 of Part II of Schedule 2 (paragraph (b) of the item dealing with Classification Review Board)

After “Schedule 5 to that Act”, insert “, as in force before the commencement of the *Online Safety Act 2021*”.

89 Division 1 of Part II of Schedule 2 (paragraph (a) of the item dealing with eSafety Commissioner)

After “Schedule 7 to the *Broadcasting Services Act 1992*”, insert “, as in force before the commencement of the *Online Safety Act 2021*”.

90 Division 1 of Part II of Schedule 2 (paragraph (b) of the item dealing with eSafety Commissioner)

After “Schedule 5 to that Act”, insert “, as in force before the commencement of the *Online Safety Act 2021*”.

91 Division 1 of Part II of Schedule 2 (at the end of the item dealing with eSafety Commissioner)

Add:

- ; and (c) exempt online content scheme documents concerning the performance of a function, or the exercise of a power, under Part 9 of the *Online Safety Act 2021*.

Interactive Gambling Act 2001

92 Section 4 (definition of access)

Omit “Schedule 5 to the *Broadcasting Services Act 1992*”, substitute “the *Online Safety Act 2021*”.

93 Section 4 (definition of *internet content*)

Repeal the definition.

94 Section 4 (definition of *internet service provider*)

Omit “Schedule 5 to the *Broadcasting Services Act 1992*”, substitute “the *Online Safety Act 2021*”.

95 Subsection 36(2)

Omit “Schedule 5 or 7 to the *Broadcasting Services Act 1992*”, substitute “Division 7 of Part 9 of the *Online Safety Act 2021*”.

96 Subsection 36(3)

Omit “Schedule 5 or 7 to the *Broadcasting Services Act 1992*”, substitute “Division 7 of Part 9 of the *Online Safety Act 2021*”.

Telecommunications Act 1997

97 Section 7 (definition of *internet service provider*)

Omit “Schedule 5 to the *Broadcasting Services Act 1992*”, substitute “the *Online Safety Act 2021*”.

Telecommunications (Interception and Access) Act 1979

98 Subparagraph 187A(3)(b)(ii)

Omit “Schedule 5 to the *Broadcasting Services Act 1992*”, substitute “the *Online Safety Act 2021*”.

Tobacco Advertising Prohibition Act 1992

99 Paragraph 16B(1)(d)

Omit “internet content host” (wherever occurring), substitute “Australian hosting service provider”.

100 Subsection 16B(2)

Insert:

Australian hosting service provider has the same meaning as in the *Online Safety Act 2021*.

101 Subsection 16B(2) (definition of *internet content host*)

Repeal the definition.

102 Subsection 16B(2) (definition of *internet service provider*)

Omit “Schedule 5 to the *Broadcasting Services Act 1992*”, substitute “the *Online Safety Act 2021*”.

**Part 2—Amendments contingent on the
commencement of the Surveillance
Legislation Amendment (Identify and
Disrupt) Act 2021**

Crimes Act 1914

103 Section 3ZZUK (definition of *account*)

Omit “*Enhancing Online Safety Act 2015*”, substitute “*Online Safety Act 2021*”.

104 Section 3ZZUK (definition of *electronic service*)

Omit “*Enhancing Online Safety Act 2015*”, substitute “*Online Safety Act 2021*”.

Part 3—Amendments contingent on the non-commencement of the Export Market Development Grants Legislation Amendment Act 2020

Export Market Development Grants Act 1997

105 Section 57A (heading)

Omit “**prohibited content or potential prohibited content**”, substitute “**class 1 material or class 2 material**”.

106 Paragraphs 57A(a) and (b)

Repeal the paragraphs, substitute:

- (a) class 1 material (within the meaning of the *Online Safety Act 2021*); or
- (b) class 2 material (within the meaning of the *Online Safety Act 2021*) that is covered by paragraph 107(1)(a), (b), (c), (d) or (e) of that Act.

107 Section 57A (note)

Omit “, *potential prohibited content* and *prohibited content*”.

108 Subsection 107(1) (definition of *potential prohibited content*)

Repeal the definition.

109 Subsection 107(1) (definition of *prohibited content*)

Repeal the definition.

**Part 4—Amendments contingent on the
commencement of the Federal Circuit and
Family Court of Australia Act 2021**

Online Safety Act 2021

110 Subsection 162(3)

Omit “Federal Circuit Court of Australia”, substitute “Federal Circuit and Family Court of Australia (Division 2)”.

111 Subsection 164(3)

Omit “Federal Circuit Court of Australia”, substitute “Federal Circuit and Family Court of Australia (Division 2)”.

112 Subsection 165(3)

Omit “Federal Circuit Court of Australia”, substitute “Federal Circuit and Family Court of Australia (Division 2)”.

Schedule 3—Transitional and application provisions

Part 1—eSafety Commissioner

1 Transitional—continuity of eSafety Commissioner

The repeal of the *Enhancing Online Safety Act 2015* does not affect the continuity of:

- (a) the office of eSafety Commissioner; or
- (b) the appointment of the eSafety Commissioner; or
- (c) the appointment of a person to act as the eSafety Commissioner; or
- (d) a determination made by the Remuneration Tribunal, so far as the determination relates to the eSafety Commissioner.

2 Transitional—instrument of appointment of the eSafety Commissioner

- (1) This item applies to an instrument of appointment of the eSafety Commissioner under subsection 50(1) of the *Enhancing Online Safety Act 2015* that was in force immediately before the commencement of this item.
- (2) The instrument has effect after the commencement of this item as if it had been made under subsection 167(1) of the *Online Safety Act 2021*.

3 Transitional—instrument of appointment of a person to act as the eSafety Commissioner

- (1) This item applies if an instrument of appointment of a person to act as the eSafety Commissioner under subsection 52(1) of the *Enhancing Online Safety Act 2015* was in force immediately before the commencement of this item.
- (2) The instrument has effect after the commencement of this item as if it had been made under subsection 169(1) of the *Online Safety Act 2021*.

Part 2—Complaints and objections

4 Transitional—complaints about cyber-bullying material (complaint made by an Australian child)

- (1) This item applies to a complaint made under subsection 18(1) of the *Enhancing Online Safety Act 2015* before the commencement of this item if the eSafety Commissioner has neither:
 - (a) taken action in response to the complaint; nor
 - (b) refused to take action in response to the complaint;before the commencement of this item.
- (2) The complaint has effect, after the commencement of this item, as if it were a complaint made under subsection 30(1) of the *Online Safety Act 2021*.

5 Transitional—complaints about cyber-bullying material (complaint made on behalf of an Australian child)

- (1) This item applies to a complaint made under subsection 18(2) of the *Enhancing Online Safety Act 2015* before the commencement of this item if the eSafety Commissioner has neither:
 - (a) taken action in response to the complaint; nor
 - (b) refused to take action in response to the complaint;before the commencement of this item.
- (2) The complaint has effect, after the commencement of this item, as if it were a complaint made under subsection 30(2) of the *Online Safety Act 2021*.

6 Transitional—complaints about cyber-bullying material (complaint made by an adult who was an Australian child)

- (1) This item applies to a complaint made under subsection 18(3) of the *Enhancing Online Safety Act 2015* before the commencement of this item if the eSafety Commissioner has neither:
 - (a) taken action in response to the complaint; nor
 - (b) refused to take action in response to the complaint;

before the commencement of this item.

- (2) The complaint has effect, after the commencement of this item, as if it were a complaint made under subsection 30(3) of the *Online Safety Act 2021*.

7 Transitional—complaints about intimate images (complaint made by a person depicted in an intimate image)

- (1) This item applies to a complaint made under subsection 19A(1) of the *Enhancing Online Safety Act 2015* before the commencement of this item if the eSafety Commissioner has neither:

- (a) taken action in response to the complaint; nor
(b) refused to take action in response to the complaint;

before the commencement of this item.

- (2) The complaint has effect, after the commencement of this item, as if it were a complaint made under subsection 32(1) of the *Online Safety Act 2021*.

8 Transitional—complaints about intimate images (complaint made on behalf of a person depicted in an intimate image)

- (1) This item applies to a complaint made under subsection 19A(3) of the *Enhancing Online Safety Act 2015* before the commencement of this item if the eSafety Commissioner has neither:

- (a) taken action in response to the complaint; nor
(b) refused to take action in response to the complaint;

before the commencement of this item.

- (2) The complaint has effect, after the commencement of this item, as if it were a complaint made under subsection 32(3) of the *Online Safety Act 2021*.

9 Transitional—objection notices (objection notice given by a person depicted in an intimate image)

- (1) This item applies to an objection notice given under subsection 19B(1) of the *Enhancing Online Safety Act 2015* before the commencement of this item if the eSafety Commissioner has neither:
-

- (a) taken action in response to the objection notice; nor
 - (b) refused to take action in response to the objection notice;before the commencement of this item.
- (2) The objection notice has effect, after the commencement of this item, as if it were an objection notice given under subsection 33(1) of the *Online Safety Act 2021*.

10 Transitional—objection notices (objection notice given on behalf of a person depicted in an intimate image)

- (1) This item applies to an objection notice given under subsection 19B(3) of the *Enhancing Online Safety Act 2015* before the commencement of this item if the eSafety Commissioner has neither:
 - (a) taken action in response to the objection notice; nor
 - (b) refused to take action in response to the objection notice;before the commencement of this item.
- (2) The objection notice has effect, after the commencement of this item, as if it were an objection notice given under subsection 33(3) of the *Online Safety Act 2021*.

Part 3—Provision of material etc.

11 Transitional—material etc.

- (1) The following provisions:
- (a) Division 2 of Part 3 of the *Online Safety Act 2021*;
 - (b) Part 5 of that Act;
- do not apply to the provision of material on:
- (c) a social media service; or
 - (d) a relevant electronic service;
- unless the material was provided on the service after the start of 1 July 2015.

Note: The cyber-bullying provisions of the *Enhancing Online Safety Act 2015* commenced on 1 July 2015.

- (2) The following provisions:
- (a) Division 2 of Part 3 of the *Online Safety Act 2021*;
 - (b) Part 5 of that Act;
- do not apply to the provision of material on a designated internet service unless the material was provided on the service after the commencement of this item.

- (3) The following provisions:
- (a) Division 3 of Part 3 of the *Online Safety Act 2021*;
 - (b) Division 3 of Part 6 of that Act;
- do not apply to the provision of an intimate image on:
- (c) a social media service; or
 - (d) a relevant electronic service; or
 - (e) a designated internet service;
- unless the intimate image was provided on the service after the start of 1 September 2018.

Note: The intimate images provisions of the *Enhancing Online Safety Act 2015* commenced on 1 September 2018.

- (4) The following provisions:
- (a) Division 4 of Part 3 of the *Online Safety Act 2021*;
 - (b) Part 7 of that Act;
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do not apply to the provision of material on:

- (c) a social media service; or
- (d) a relevant electronic service; or
- (e) a designated internet service;

unless the material was provided on the service after the commencement of this item.

- (5) Sections 113A, 118A and 123A of the *Online Safety Act 2021* apply in relation to material provided on:
- (a) a social media service; or
 - (b) a relevant electronic service; or
 - (c) a designated internet service;
- after the commencement of this item.

Part 4—Notices

12 Transitional—pre-commencement social media service notices

- (1) Despite the repeal of the following provisions of the *Enhancing Online Safety Act 2015* by this Act:
 - (a) Subdivision B of Division 3 of Part 4;
 - (b) subsections 88(3) and (4);those provisions continue to apply, in relation to a social media service notice that was in force immediately before the commencement of this item, as if those repeals had not happened.
- (2) Despite the repeal of Part 6 of the *Enhancing Online Safety Act 2015* by this Act, that Part continues to apply, in relation to section 36 of that Act, as if that repeal had not happened.

13 Transitional—pre-commencement end-user notices

- (1) Despite the repeal of the following provisions of the *Enhancing Online Safety Act 2015* by this Act:
 - (a) Part 5;
 - (b) subsection 88(7);those provisions continue to apply, in relation to an end-user notice that was in force immediately before the commencement of this item, as if those repeals had not happened.
- (2) Despite the repeal of section 48 of the *Enhancing Online Safety Act 2015* by this Act, that section continues to apply, in relation to section 43 of that Act, as if that repeal had not happened.

14 Transitional—pre-commencement removal notices

- (1) Despite the repeal of the following provisions of the *Enhancing Online Safety Act 2015* by this Act:
 - (a) Division 3 of Part 5A;
 - (b) subsection 88(8);

those provisions continue to apply, in relation to a removal notice that was in force immediately before the commencement of this item, as if those repeals had not happened.

- (2) Despite the repeal of Part 6 of the *Enhancing Online Safety Act 2015* by this Act, that Part continues to apply, in relation to section 44G of that Act, as if that repeal had not happened.

Part 5—Protection from proceedings

15 Transitional—protection from civil proceedings

- (1) Despite the repeal of subsection 89(1) of the *Enhancing Online Safety Act 2015* by this Act, that subsection continues to apply, in relation to an act done before the commencement of this item, as if that repeal had not happened.
 - (2) Despite the repeal of subsection 89(2) of the *Enhancing Online Safety Act 2015* by this Act, that subsection continues to apply, in relation to anything done in compliance with:
 - (a) a request given under section 29 of that Act before the commencement of this item; or
 - (b) a social media service notice given before the commencement of this item; or
 - (c) an end-user notice given before the commencement of this item; or
 - (d) a removal notice given before the commencement of this item;as if that repeal had not happened.
 - (3) Despite the repeal of subclause 88(1) of Schedule 5 to the *Broadcasting Services Act 1992* by this Act, that subclause continues to apply, in relation to anything done before the commencement of this item, as if that repeal had not happened.
 - (4) Despite the repeal of subclause 88(2) of Schedule 5 to the *Broadcasting Services Act 1992* by this Act, that subclause continues to apply, in relation to anything done before the commencement of this item, as if that repeal had not happened.
 - (5) Despite the repeal of subclause 111(1) of Schedule 7 to the *Broadcasting Services Act 1992* by this Act, that subclause continues to apply, in relation to anything done before the commencement of this item, as if that repeal had not happened.
 - (6) Despite the repeal of subclause 111(2) of Schedule 7 to the *Broadcasting Services Act 1992* by this Act, that subclause continues to
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apply, in relation to anything done before the commencement of this item, as if that repeal had not happened.

- (7) Despite the repeal of subclause 111(3) of Schedule 7 to the *Broadcasting Services Act 1992* by this Act, that subclause continues to apply, in relation to anything done before the commencement of this item, as if that repeal had not happened.

16 Transitional—liability for damages

Despite the repeal of section 90 of the *Enhancing Online Safety Act 2015* by this Act, that section continues to apply, in relation to an act or matter in good faith done or omitted to be done:

(a) in the performance or purported performance of any function;
or

(b) in the exercise or purported exercise of any power;

conferred on the eSafety Commissioner by or under:

(c) the repealed *Enhancing Online Safety Act 2015*; or

(d) a provision of the *Broadcasting Services Act 1992* repealed by this Act;

as if the repeal of that section had not happened.

17 Transitional—protection from criminal proceedings

- (1) Despite the repeal of section 91 of the *Enhancing Online Safety Act 2015* by this Act, that section continues to apply, 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 eSafety Commissioner by or under the repealed *Enhancing Online Safety Act 2015*, as if the repeal of that section had not happened.

- (2) Despite the repeal of clause 112 of Schedule 7 to the *Broadcasting Services Act 1992* by this Act, that clause continues to apply, in relation to:

Schedule 3 Transitional and application provisions

Part 5 Protection from proceedings

- (a) the collection of content or material; or
- (b) the possession of content or material; or
- (c) the distribution of content or material; or
- (d) the delivery of content or material; or
- (e) the copying of content or material; or
- (f) the doing of any other thing in relation to content or material;

in connection with the exercise of a power, or the performance of a function, conferred on the eSafety Commissioner by or under a provision of the *Broadcasting Services Act 1992* repealed by this Act, as if the repeal of that clause had not happened.

- (3) For the purposes of this item, ***possession*** includes have in custody or control.

Part 6—Miscellaneous

18 Transitional—copies of material

Despite the repeal of section 94 of the *Enhancing Online Safety Act 2015* by this Act, that section continues to apply, in relation to copies made before the commencement of this item, as if that repeal had not happened.

19 Transitional—disclosure of information

Despite the repeal of Part 9 of the *Enhancing Online Safety Act 2015* by this Act, that Part continues to apply, in relation to information that was obtained by the eSafety Commissioner as a result of the performance of a function, or the exercise of a power, conferred on the eSafety Commissioner by or under:

- (a) the repealed *Enhancing Online Safety Act 2015*; or
- (b) a provision of the *Broadcasting Services Act 1992* repealed by this Act;

as if the repeal of that Part had not happened.

20 Transitional—compensation for acquisition of property

Despite the repeal of section 95 of the *Enhancing Online Safety Act 2015* by this Act, that section continues to apply, in relation to the operation of:

- (a) the repealed *Enhancing Online Safety Act 2015*; or
- (b) legislative rules made under that Act;

as if that repeal had not happened.

21 Application—subsection 273.9(5) of the *Criminal Code*

The amendment of subsection 273.9(5) of the *Criminal Code* made by this Act applies in relation to conduct engaged in after the commencement of this item.

22 Application—subsection 474.24(4) of the *Criminal Code*

The amendment of subsection 474.24(4) of the *Criminal Code* made by this Act applies in relation to conduct engaged in after the commencement of this item.

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

(21/21)

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*Online Safety (Transitional Provisions and Consequential
Amendments) Act 2021*

No. 77, 2021