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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Communications Legislation
Amendment (Content Services) Bill 2007**

No. , 2007

(Communications, Information Technology and the Arts)

**A Bill for an Act to amend the law relating to
communications, and for other purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **communications, and for other purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

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

7 **2 Commencement**

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

12

Commencement information

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

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

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

7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule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

Schedule 1—General content amendments

Part 1—Amendments

Australian Communications and Media Authority Act 2005

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

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

2 Subsection 4(5)

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

3 At the end of section 4

Add:

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

4 Paragraph 10(1)(a)

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

5 Paragraph 53(2)(k)

After “Schedule 5”, insert “or 7”.

6 Paragraph 53(2)(o)

After “Schedule 5”, insert “or 7”.

7 After paragraph 53(2)(p)

Insert:

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

Broadcasting Services Act 1992

8 Title

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

3 **9 After paragraph 3(1)(h)**

4 Insert:

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

7 **10 Subsection 3(2)**

8 Insert:

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

11 **11 Subsection 4(3)**

12 Omit “Internet content hosted in Australia, and”.

13 **12 Paragraph 4(3)(a)**

14 Omit “Internet content hosts and”.

15 **13 After subsection 4(3)**

16 Insert:

17 (3AA) The Parliament also intends that designated content/hosting
18 services be regulated in a manner that:

19 (a) enables public interest considerations to be addressed in a
20 way that does not impose unnecessary financial and
21 administrative burdens on the providers of those services;
22 and

23 (b) will readily accommodate technological change; and

24 (c) encourages:

25 (i) the development of communications technologies and
26 their application; and

27 (ii) the provision of services made practicable by those
28 technologies to the Australian community.

29 **14 Subsection 4(4)**

30 Insert:

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

3 **15 Subsection 4(4) (definition of *Internet content host*)**

4 Repeal the definition.

5 **16 Paragraph 5(1)(a)**

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

8 **17 At the end of section 5**

9 Add:

10 (4) In this section:

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

13 **18 Subsection 6(1) (at the end of the definition of *registered***
14 ***code of practice*)**

15 Add:

16 ; or (d) clause 85 of Schedule 7.

17 **19 After paragraph 130L(f)**

18 Insert:

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

21 **20 After section 216C**

22 Insert:

23 **216D Schedule 7 (content services)**

24 Schedule 7 has effect.

25 **21 Clause 1 of Schedule 5**

26 Repeal the clause.

27 **22 Clause 2 of Schedule 5**

28 Omit:

- 1 • A person may complain to the ACMA about ***prohibited***
2 ***content*** or ***potential prohibited content*** on the Internet, and
3 the ACMA must investigate the complaint.
- 4 • Internet content hosted in Australia is ***prohibited content*** if:
 - 5 (a) the content has been classified RC or X 18+ by the
6 Classification Board; or
 - 7 (b) the content has been classified R 18+ by the
8 Classification Board and access to the content is
9 not subject to a restricted access system.
- 10 • Internet content hosted outside Australia is ***prohibited content***
11 if the Internet content has been classified RC or X 18+ by the
12 Classification Board.
- 13 • Internet content is ***potential prohibited content*** if the content
14 has not been classified by the Classification Board, but if it
15 were to be classified, there is a substantial likelihood that the
16 content would be prohibited content.
- 17 • If the ACMA is satisfied that Internet content hosted in
18 Australia is potential prohibited content, and is likely to be
19 classified RC or X 18+, the ACMA must:
 - 20 (a) request the Classification Board to classify the
21 content; and
 - 22 (b) give the relevant Internet content host an ***interim***
23 ***take-down notice*** directing the host not to host the
24 content pending the classification of the content.
- 25 • If the ACMA is satisfied that Internet content hosted in
26 Australia is potential prohibited content, and is likely to be
27 classified R 18+, the ACMA must request the Classification
28 Board to classify the content.
- 29 • If the ACMA is satisfied that Internet content hosted in
30 Australia is prohibited content, the ACMA must give the

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

3 **23 Clause 2 of Schedule 5**

4 Omit:

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

7 substitute:

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

11 **24 Clause 2 of Schedule 5**

12 Omit:

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

16 substitute:

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

19 **25 Clause 3 of Schedule 5 (definition of *access-control***
20 ***system*)**

21 Repeal the definition.

22 **26 Clause 3 of Schedule 5 (definition of *Classification Review***
23 ***Board*)**

24 Repeal the definition.

25 **27 Clause 3 of Schedule 5 (definition of *classified*)**

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

1 **28 Clause 3 of Schedule 5 (definition of *final take-down***
2 ***notice*)**

3 Repeal the definition.

4 **29 Clause 3 of Schedule 5 (definition of *interim take-down***
5 ***notice*)**

6 Repeal the definition.

7 **30 Clause 3 of Schedule 5 (definition of *potential prohibited***
8 ***content*)**

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

11 **31 Clause 3 of Schedule 5 (definition of *prohibited content*)**

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

14 **32 Clause 3 of Schedule 5 (definition of *restricted access***
15 ***system*)**

16 Repeal the definition.

17 **33 Clause 3 of Schedule 5 (definition of *special take-down***
18 ***notice*)**

19 Repeal the definition.

20 **34 Clauses 4 and 6 of Schedule 5**

21 Repeal the clauses.

22 **35 Part 3 of Schedule 5**

23 Repeal the Part.

24 **36 Clause 22 of Schedule 5**

25 Repeal the clause.

26 **37 Clause 23 of Schedule 5**

27 Omit “, or an Internet content host”.

28 **38 Paragraphs 23(a) and (b) of Schedule 5**

1 Omit “or host”.

2 **39 Clause 27 of Schedule 5**

3 Repeal the clause, substitute:

4 **27 ACMA may investigate matters on its own initiative**

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

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

11 **40 Division 3 of Part 4 of Schedule 5**

12 Repeal the Division.

13 **41 Subclause 40(1) of Schedule 5**

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

15 **42 Paragraph 41(1)(a) of Schedule 5**

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

17 **43 Paragraph 42(1)(a) of Schedule 5**

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

20 **44 Paragraph 44(1)(a) of Schedule 5**

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

23 **45 Clause 52 of Schedule 5**

24 Omit:

- 25

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

27 substitute:

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

46 Clause 55 of Schedule 5

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

47 Clause 56 of Schedule 5

Repeal the clause, substitute:

56 Section of the Internet industry

(1) For the purposes of this Part, a *section of the Internet industry* is to be ascertained in accordance with this clause.

(2) For the purposes of this Part, the group consisting of Internet service providers constitutes a *section of the Internet industry*.

48 Subclause 59(1) of Schedule 5

Repeal the subclause.

49 Subclause 59(4) of Schedule 5

Repeal the subclause.

50 Subclause 60(1) of Schedule 5

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

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

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

Omit “22 or”.

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

Omit “22 or”.

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

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

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

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

3 **55 Paragraph 60(1)(l) of Schedule 5**

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

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

6 Insert:

7 (la) if a determination is in force under subclause (8A) in relation
8 to a device:

9 (i) procedures to be followed in order to inform the users of
10 such a device of the unavailability of Internet content
11 filtering; and

12 (ii) procedures directed towards the achievement of the
13 objective of ensuring that customers have the option of
14 blocking access to the Internet using such a device;

15 **57 Paragraph 60(1)(m) of Schedule 5**

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

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

19 **58 Paragraph 60(2)(d) of Schedule 5**

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

22 **59 After subclause 60(8) of Schedule 5**

23 Insert:

24 *Internet content filtering—devices*

25 (8A) If the Minister is satisfied that Internet content filtering is not
26 viable in relation to access to Internet content using a particular
27 device (for example, a mobile telephone handset), the Minister
28 may, by legislative instrument, determine that paragraphs (1)(j), (k)
29 and (l) and (2)(d) do not apply in relation to access to Internet
30 content using that device.

31 **60 Paragraph 62(1)(h) of Schedule 5**

32 Repeal the paragraph.

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

Repeal the paragraphs.

62 Subclause 80(2) of Schedule 5

Repeal the subclause.

63 Subclause 80(3) of Schedule 5

Omit “or (2)”.

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

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

65 Subclause 83(1) of Schedule 5

Omit “, or an Internet content host,”.

66 Subclause 83(2) of Schedule 5

Omit “or host” (wherever occurring).

67 Subclause 83(3) of Schedule 5

Omit “, or an Internet content host,”.

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

Omit “or host”.

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

Omit “or host’s”.

70 Clause 85 of Schedule 5

Repeal the clause, substitute:

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

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

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

5 **71 Subclause 88(3) of Schedule 5**

6 Repeal the subclause.

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

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

9 **72 Clause 89 of Schedule 5**

10 Repeal the clause.

11 **73 Paragraphs 92(1)(a), (b), (c) and (d) of Schedule 5**

12 Repeal the paragraphs.

13 **74 Subparagraphs 92(1)(g)(i), (ii) and (iii) of Schedule 5**

14 Omit “or an Internet content host”.

15 **75 Paragraph 92(1)(h) of Schedule 5**

16 Omit “or an Internet content host”.

17 **76 Subclause 92(2) of Schedule 5**

18 Omit “Internet content host or”.

19 **77 At the end of the Act**

20 Add:

21 **Schedule 7—Content services**

22 Note: See section 216D.

23 **Part 1—Introduction**

24

25 **1 Simplified outline**

26 The following is a simplified outline of this Schedule:

- 1 • A person may make a complaint to the ACMA about
2 prohibited content, or potential prohibited content, in relation
3 to certain services.
- 4 • The ACMA may take the following action to deal with
5 prohibited content or potential prohibited content:
 - 6 (a) in the case of a hosting service—issue a take-down
7 notice;
 - 8 (b) in the case of a live content service—issue a
9 service-cessation notice;
 - 10 (c) in the case of a links service—issue a link-deletion
11 notice.
- 12 • Content (other than an eligible electronic publication) is
13 ***prohibited content*** if:
 - 14 (a) the content has been classified RC or X 18+ by the
15 Classification Board; or
 - 16 (b) the content has been classified R 18+ by the
17 Classification Board and access to the content is
18 not subject to a restricted access system; or
 - 19 (c) the content has been classified MA 15+ by the
20 Classification Board, access to the content is not
21 subject to a restricted access system, the content
22 does not consist of text and/or one or more still
23 visual images, and the content is provided by a
24 commercial service (other than a news service or a
25 current affairs service); or
 - 26 (d) the content has been classified MA 15+ by the
27 Classification Board, access to the content is not
28 subject to a restricted access system, and the
29 content is provided by a mobile premium service.
- 30 • Content that consists of an eligible electronic publication is
31 ***prohibited content*** if the content has been classified RC,

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

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

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

2 Definitions

In this Schedule:

access includes:

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

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

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

adult means an individual who is 18 or older.

- 1 **adult chat service** means a chat service where, having regard to
2 any or all of the following:
- 3 (a) the name of the chat service;
- 4 (b) the way in which the chat service is advertised or promoted;
- 5 (c) the reputation of the chat service;
- 6 it would be concluded that the majority of the content accessed by
7 end-users of the chat service is reasonably likely to be prohibited
8 content or potential prohibited content.
- 9 **Australia**, when used in a geographical sense, includes all the
10 external Territories.
- 11 **Australian connection** has the meaning given by clause 3.
- 12 **Australian police force** means:
- 13 (a) the Australian Federal Police; or
- 14 (b) the police force of a State or Territory.
- 15 **carriage service** has the same meaning as in the
16 *Telecommunications Act 1997*.
- 17 **carriage service intermediary** has the same meaning as in the
18 *Telecommunications Act 1997*.
- 19 **carriage service provider** has the same meaning as in the
20 *Telecommunications Act 1997*.
- 21 **child** means an individual who has not reached 18 years.
- 22 **civil proceeding** includes a civil action.
- 23 **classification application** means an application under clause 22.
- 24 **Classification Board** means the Classification Board established
25 by the *Classification (Publications, Films and Computer Games)*
26 *Act 1995*.
- 27 **Classification Review Board** means the Classification Review
28 Board established by the *Classification (Publications, Films and*
29 *Computer Games) Act 1995*.
- 30 **classified** means classified under this Schedule.
- 31 **commercial content service** means a content service that:
-

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

5 **commercial content service provider** means a person who provides
6 a commercial content service.

7 Note: See clause 5.

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

10 **content** means content:

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

18 **content service** means:

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

24 but does not include:

- 25 (c) a licensed broadcasting service; or
26 (d) a national broadcasting service; or
27 (e) a re-transmitted broadcasting service; or
28 (f) a licensed datacasting service; or
29 (g) a re-transmitted datacasting service; or
30 (h) an exempt Parliamentary content service; or
31 (i) an exempt court/tribunal content service; or
32 (j) an exempt official-inquiry content service; or
33 (k) an exempt point-to-point content service; or
34 (l) an exempt Internet directory service; or
35 (m) an exempt Internet search engine service; or

- 1 (n) a service that enables end-users to communicate, by means of
2 voice calls, with other end-users; or
3 (o) a service that enables end-users to communicate, by means of
4 video calls, with other end-users; or
5 (p) a service that enables end-users to communicate, by means of
6 email, with other end-users; or
7 (q) an instant messaging service that:
8 (i) enables end-users to communicate with other end-users;
9 and
10 (ii) is not an adult chat service; or
11 (r) an SMS service that:
12 (i) enables end-users to communicate with other end-users;
13 and
14 (ii) is not an adult chat service; or
15 (s) an MMS service that:
16 (i) enables end-users to communicate with other end-users;
17 and
18 (ii) is not an adult chat service; or
19 (t) a service that delivers content by fax; or
20 (u) an exempt data storage service; or
21 (v) an exempt back-up service; or
22 (w) at a time before the commencement of Schedule 2 to the
23 *Communications Legislation Amendment (Content Services)*
24 *Act 2007*—a telephone sex service (within the meaning of
25 Part 9A of the *Telecommunications (Consumer Protection*
26 *and Service Standards) Act 1999*); or
27 (x) a service specified in the regulations.

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

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

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

32 **content service provider** means a person who provides a content
33 service.

34 Note: See clause 5.

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

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

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

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

12 ***designated content/hosting service*** means:

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

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

19 ***designated content/hosting service provider rule*** means:

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

25 ***eligible electronic publication*** has the meaning given by clause 11.

26 ***engage in conduct*** means:

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

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

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

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

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

6 ***exempt Internet directory service*** means an Internet directory
7 service that:

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

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

16 ***exempt Internet search engine service*** means an Internet search
17 engine service that:

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

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

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

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

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

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

(iv) MMS;

where the content is produced or packaged by the provider of the service; and

(b) does not specialise in content that is prohibited content or potential prohibited content; and

(c) is not an adult chat service; and

(d) is not provided on payment of a fee (whether periodical or otherwise); and

(e) is not a service specified in the regulations; and

(f) complies with such other requirements (if any) as are specified in the regulations.

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

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

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

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

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

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

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

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

hosting service has the meaning given by clause 4.

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

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

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

- 1 ***interim service-cessation notice*** means a notice under paragraph
2 56(2)(d) or (3)(d) of this Schedule.
- 3 ***interim take-down notice*** means a notice under paragraph 47(2)(c)
4 or (3)(d) of this Schedule.
- 5 ***Internet carriage service*** has the same meaning as in Schedule 5.
- 6 ***Internet content*** has the same meaning as in Schedule 5.
- 7 ***licensed broadcasting service*** means a broadcasting service
8 provided in accordance with:
9 (a) a licence allocated by the ACMA under this Act; or
10 (b) a class licence determined by the ACMA under this Act.
- 11 ***licensed datacasting service*** means a datacasting service provided
12 by the holder of a datacasting licence that authorises the provision
13 of that service.
- 14 ***links service*** means a content service that:
15 (a) provides one or more links to content; and
16 (b) is provided to the public (whether on payment of a fee or
17 otherwise)
- 18 ***links service provider*** means a person who provides a links
19 service.
- 20 Note: See clause 5.
- 21 ***live content*** does not include stored content.
- 22 ***live content service*** means a content service that:
23 (a) provides live content; and
24 (b) is provided to the public (whether on payment of a fee or
25 otherwise)
- 26 ***live content service provider*** means a person who provides a live
27 content service.
- 28 Note: See clause 5.
- 29 ***MA 15+ content*** has the meaning given by clause 15.
- 30 ***mobile carriage service provider*** means:
31 (a) a carriage service provider who supplies a public mobile
32 telecommunications service; or

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

4 ***mobile premium service*** means a commercial content service
5 where:

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

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

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

21 and includes:

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

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

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

34 and includes:

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

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

5 ***potential prohibited content*** has the meaning given by clause 21.

6 ***prohibited content*** has the meaning given by clause 20.

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

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

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

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

13 ***restricted access system*** has the meaning given by clause 14.

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

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

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

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

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

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

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

28 ***trained content assessor*** has the meaning given by clause 18.

29 ***voice call*** includes:

- 30 (a) if a voice call is not practical for a particular end-user with a
31 disability—a call that is equivalent to a voice call; and

(b) a call that involves a recorded or synthetic voice.

3 Australian connection

Content service

- (1) For the purposes of this Schedule, a content service has an ***Australian connection*** if, and only if:
- (a) any of the content provided by the content service is hosted in Australia; or
 - (b) any live content provided by the content service originates in Australia; or
 - (c) in the case of a content service supplied by way of:
 - (i) a voice call made using a carriage service; or
 - (ii) a video call made using a carriage service;any of the participants in the call (other than an end-user of the service) are physically present in Australia.

Hosting service

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

4 Hosting service

For the purposes of this Schedule, if:

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

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

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

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

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

7 **5 Content service provider**

8 For the purposes of this Schedule, a person does not provide a
9 content service merely because the person supplies a carriage
10 service that enables content to be delivered or accessed.

11 **6 When content is provided by a content service**

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

15 **7 When content service is provided to the public etc.**

16 (1) For the purposes of this Schedule, a content service is **provided to**
17 **the public** if, and only if, the service is provided to at least one
18 person outside the immediate circle of the person who provides the
19 service.

20 (2) For the purposes of this Schedule, a content service that is provided
21 to the public is taken to be different from a content service that is
22 not provided to the public, even if the content provided by the
23 services is identical.

24 **8 Links to content**

25 For the purposes of this Schedule, if:

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

28 (b) the other content service specialises in prohibited content or
29 potential prohibited content; and

30 (c) the other content service provides particular content;
31 then:

- 1 (d) end-users of the first content service are taken to be able to
2 access the content mentioned in paragraph (c) using that link;
3 and
4 (e) that link is taken to be a link to the content mentioned in
5 paragraph (c).

6 **9 Services supplied by way of a voice call or video call**

7 If a service is supplied by way of:

- 8 (a) a voice call made using a carriage service; or
9 (b) a video call made using a carriage service;

10 the service is taken, for the purposes of this Schedule, to be a
11 content service that allows end-users to access the relevant content
12 using the carriage service.

13 **10 Classification of live content etc.**

14 *Recordings of live content*

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

18 *Short duration segments*

- 19 (2) If, on a particular day, live content has a duration of more than:
20 (a) 60 minutes; or
21 (b) if another number of minutes is specified in the regulations—
22 that other number of minutes;
23 each short duration segment of the content provided on that day is
24 taken, for the purposes of:
25 (c) classifying the content under this Schedule; and
26 (d) Part 3 of this Schedule; and
27 (e) paragraph 81(1)(e) of this Schedule;
28 to be different live content from each other short duration segment
29 provided on that day.
- 30 (3) For the purposes of this clause, a ***short duration segment*** of live
31 content is a segment that has a duration of:
32 (a) 60 minutes; or

- 1 (b) if another number of minutes is specified in the regulations—
2 that other number of minutes.
- 3 (4) For the purposes of this clause, it is immaterial when a short
4 duration segment begins.
- 5 (5) For the purposes of this clause, it is immaterial whether short
6 duration segments overlap.
- 7 (6) Regulations made for the purposes of paragraph (2)(b) or (3)(b)
8 may make different provision with respect to different kinds of live
9 content.
- 10 (7) Subclause (6) does not limit subsection 33(3A) of the *Acts*
11 *Interpretation Act 1901*.

12 Eligible electronic publication

- 13 For the purposes of this Schedule, if:
14 (a) content consists of:
15 (i) an electronic edition of a book, magazine or newspaper;
16 or
17 (ii) an audio recording of the text, or abridged text, of a
18 book, magazine or newspaper; and
19 (b) a print edition of the book, magazine or newspaper is or was
20 available to the public (whether by way of purchase or
21 otherwise) in Australia;
22 then:
23 (c) the content is an *eligible electronic publication*; and
24 (d) the print edition of the book, magazine or newspaper is the
25 *corresponding print publication* in relation to the eligible
26 electronic publication.

27 Re-transmitted broadcasting services

- 28 (1) For the purposes of this Schedule, a service is a *re-transmitted*
29 *broadcasting service* if the service does no more than:
30 (a) re-transmit programs that have been previously transmitted
31 by a licensed broadcasting service; or
32 (b) re-transmit programs that have been previously transmitted
33 by a national broadcasting service.

- 1 (2) In determining whether a service is a re-transmitted broadcasting
2 service:
3 (a) ignore any changes to the format in which the programs are
4 transmitted; and
5 (b) ignore any advertising or sponsorship matter; and
6 (c) ignore such other matters (if any) as are specified in the
7 regulations.

8 **13 Re-transmitted datacasting services**

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

20 **14 Restricted access system**

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

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

- 27 (2) An instrument under subclause (1) may make different provision
28 with respect to:
29 (a) R 18+ content; and
30 (b) MA 15+ content.
- 31 (3) Subclause (2) does not limit subsection 33(3A) of the *Acts*
32 *Interpretation Act 1901*.
- 33 (4) In making an instrument under subclause (1), the ACMA must
34 have regard to:

- 1 (a) the objective of protecting children from exposure to content
2 that is unsuitable for children; and
3 (b) the objective of protecting children who have not reached 15
4 years from exposure to content that is unsuitable for children
5 who have not reached 15 years; and
6 (c) such other matters (if any) as the ACMA considers relevant.
- 7 (5) The ACMA must ensure that an instrument under subclause (1) is
8 in force at all times after the commencement of this Schedule.

9 **15 R 18+ content and MA 15+ content**

10 *R 18+ content*

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

23 *MA 15+ content*

- 24 (2) For the purposes of this Schedule, **MA 15+ content** is:
25 (a) content (other than content that consists of an eligible
26 electronic publication) that has been classified MA 15+ by
27 the Classification Board; or
28 (b) content (other than content that consists of an eligible
29 electronic publication) where the following conditions are
30 satisfied:
31 (i) the content has not been classified MA 15+ by the
32 Classification Board;
33 (ii) if the content were to be classified by the Classification
34 Board, there is a substantial likelihood that the content

1 would be classified MA 15+ by the Classification
2 Board.

3 *Classification Board authorised to classify content*

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

7 **16 Content that consists of a film**

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

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

16 **17 Extended meaning of *use***

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

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

21 **18 Trained content assessor**

- 22 (1) For the purposes of this Schedule, an individual is a *trained*
23 *content assessor* if:
24 (a) the individual has, at any time during the preceding 12
25 months, completed training in:
26 (i) the making of assessments of the kinds referred to in
27 paragraphs 81(1)(d) and (f) of this Schedule; and
28 (ii) giving advice of the kind referred to in subparagraph
29 81(1)(e)(ii) of this Schedule; and
30 (b) the training was approved by the Director of the
31 Classification Board under subclause (2) of this clause.

- 1 (2) For the purposes of paragraph (1)(b), the Director of the
2 Classification Board may, by writing, approve specified training.
- 3 (3) An approval under subclause (2) is not a legislative instrument.

4 **19 Extra-territorial application**

- 5 (1) Unless the contrary intention appears, this Schedule extends to
6 acts, omissions, matters and things outside Australia.
- 7 Note: Clause 3 is an example of a contrary intention.
- 8 (2) Section 14.1 of the *Criminal Code* does not apply to an offence
9 against this Schedule.

10 **Part 2—Classification of content**

11 **Division 1—Prohibited content and potential prohibited**
12 **content**

13 **20 Prohibited content**

14 *Content other than eligible electronic publications*

- 15 (1) For the purposes of this Schedule, content (other than content that
16 consists of an eligible electronic publication) is **prohibited content**
17 if:
- 18 (a) the content has been classified RC or X 18+ by the
19 Classification Board; or
- 20 (b) both:
- 21 (i) the content has been classified R 18+ by the
22 Classification Board; and
- 23 (ii) access to the content is not subject to a restricted access
24 system; or
- 25 (c) all of the following conditions are satisfied:
- 26 (i) the content has been classified MA 15+ by the
27 Classification Board;
- 28 (ii) access to the content is not subject to a restricted access
29 system;
- 30 (iii) the content does not consist of text and/or one or more
31 still visual images;

- (iv) access to the content is provided by means of a content service (other than a news service or a current affairs service) that is operated for profit or as part of a profit-making enterprise;
- (v) the content service is provided on payment of a fee (whether periodical or otherwise); or
- (d) all of the following conditions are satisfied:
 - (i) the content has been classified MA 15+ by the Classification Board;
 - (ii) access to the content is not subject to a restricted access system;
 - (iii) access to the content is provided by means of a mobile premium service.

Eligible electronic publications

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

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

21 Potential prohibited content

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

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

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

Division 2—Classification of content

22 Applications for classification of content

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

(ii) a copy of the content.

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

23 Classification of content

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

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

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

Deemed classification

(1) If:

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

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

(2) If:

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

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

Actual classification

(3) If:

- (a) content consists of:

1 (i) the entire unmodified contents of a film; or
2 (ii) a computer game; and
3 (b) the film or computer game has not been classified under the
4 *Classification (Publications, Films and Computer Games)*
5 *Act 1995*;
6 the Classification Board is to classify the content under this
7 Schedule in a corresponding way to the way in which the film or
8 computer game, as the case may be, would be classified under the
9 *Classification (Publications, Films and Computer Games) Act*
10 *1995*.

11 (4) If:
12 (a) content consists of an eligible electronic publication; and
13 (b) the corresponding print publication has not been classified
14 under the *Classification (Publications, Films and Computer*
15 *Games) Act 1995*;
16 the Classification Board is to classify the content under this
17 Schedule in a corresponding way to the way in which the
18 corresponding print publication would be classified under the
19 *Classification (Publications, Films and Computer Games) Act*
20 *1995*.

21 **25 Classification of content that does not consist of a film, a**
22 **computer game or an eligible electronic publication**

23 If content does not consist of:
24 (a) the entire unmodified contents of a film; or
25 (b) a computer game; or
26 (c) an eligible electronic publication;
27 the Classification Board is to classify the content under this
28 Schedule in a corresponding way to the way in which a film would
29 be classified under the *Classification (Publications, Films and*
30 *Computer Games) Act 1995*.

31 **26 Deemed classification of content classified under Schedule 5**

32 If content has been classified by the Classification Board under
33 Schedule 5 (otherwise than because of repealed subclause 12(1) of
34 that Schedule), the content is taken, for the purposes of this
35 Schedule, to have been classified by the Classification Board under

1 this Schedule in the same way as the content was classified under
2 Schedule 5.

3 **27 Fees**

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

8 *Films*

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

17 *Computer games*

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

26 *Eligible electronic publications*

- 27 (5) If content consists of an eligible electronic publication, regulations
28 prescribing fees for the purposes of paragraph 13(1)(d) of the
29 *Classification (Publications, Films and Computer Games) Act*
30 *1995* apply, subject to such modifications (if any) as are specified
31 in regulations made for the purposes of this subclause, in relation
32 to the classification under this Schedule of the content in a
33 corresponding way to the way in which they apply to the
34 classification under that Act of the corresponding print publication.

Content other than films, computer games or eligible electronic publications

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

Fees must not be such as to amount to taxation

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

Definitions

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

Division 3—Reclassification

28 Reclassification of content

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

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

13 **29 Notice of intention to reclassify content**

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

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

4 **Division 4—Review of classification decisions**

5 **Subdivision A—Review of classification of content**

6 **30 Persons who may apply for review**

- 7 (1) If content has been classified by the Classification Board
8 (otherwise than because of subclause 24(1) or (2)), any of the
9 following persons may apply to the Classification Review Board
10 for a review of the classification:
11 (a) the Minister;
12 (b) the ACMA;
13 (c) if a person other than the ACMA applied, under clause 22,
14 for classification of the content—the other person;
15 (d) a person aggrieved by the classification.
- 16 (2) Without limiting paragraph (1)(d), if the classification referred to
17 in that paragraph is a restricted classification, the following persons
18 or bodies are taken to be persons aggrieved by the classification:
19 (a) a person who has engaged in a series of activities relating to,
20 or research into, the contentious aspects of the theme or
21 subject matter of the content concerned;
22 (b) an organisation or association, whether incorporated or not,
23 whose objects or purposes include, and whose activities
24 relate to, the contentious aspects of that theme or subject
25 matter.
- 26 (3) However, a person or body is not aggrieved by a restricted
27 classification because of subclause (2) if the classification was
28 made before:
29 (a) the person engaged in a series of activities relating to, or
30 research into, the contentious aspects of the theme or subject
31 matter of the content concerned; or
32 (b) the organisation or association was formed, or its objects or
33 purposes included and its activities related to, the contentious
34 aspects of that theme or subject matter.

(4) In this clause:

restricted classification means:

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

31 Applications for review

(1) An application for review of a classification must be:

- (a) in writing; and
- (b) made in a form approved in writing by the Convenor of the Classification Review Board; and
- (c) signed by or on behalf of the applicant; and
- (d) except for an application made by the Minister—accompanied by the fee ascertained under subclause (4).

(2) An application by the Minister or the ACMA for review of a classification may be made at any time.

(3) Any other application for review of a classification must be made:

- (a) within 30 days after the applicant is notified of the classification; or
- (b) within such longer period as the Classification Review Board allows.

(4) If:

- (a) the applicant for a review of the classification of content is not covered by paragraph 30(1)(c); and
- (b) a person other than the ACMA applied, under clause 22, for classification of the content;

the Convenor of the Classification Review Board must notify the person mentioned in paragraph (b), in writing, of:

- (c) the application for review; and
- (d) the day on which it will be considered.

1 (5) Regulations prescribing fees for the purposes of paragraph 43(1)(d)
2 of the *Classification (Publications, Films and Computer Games)*
3 *Act 1995* apply, subject to such modifications (if any) as are
4 specified in regulations made for the purposes of this subclause, to
5 a review of a classification under this Schedule in a corresponding
6 way to the way in which they apply to a review of a classification
7 under that Act.

8 (6) A fee under subclause (1) must not be such as to amount to
9 taxation.

10 (7) In this clause:

11 *modifications* includes additions, omissions and substitutions.

12 **32 Classification Review Board may refuse to deal with review**
13 **applications that are frivolous etc.**

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

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

22 **33 Review**

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

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

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

If:

- (a) content consists of:
 - (i) the entire unmodified contents of a film; or
 - (ii) a computer game; and
 - (b) the film or computer game has been classified under the *Classification (Publications, Films and Computer Games) Act 1995*; and
 - (c) the decision to classify the film or computer game is reviewed by the Classification Review Board under that Act; and
 - (d) as a result of the review, the Classification Review Board classifies the film or computer game under that Act;
- this Schedule and Schedule 5 have effect as if the film or computer game had been reclassified by the Classification Board under this Schedule in the same way as the film or computer game was classified under that Act by the Classification Review Board.

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

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

If:

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

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

6 **Division 5—Miscellaneous**

7 **36 Decisions of the Classification Board etc.**

8 (1) Section 57 of the *Classification (Publications, Films and Computer*
9 *Games) Act 1995* applies to the consideration by the Classification
10 Board of a matter arising under this Schedule in a corresponding
11 way to the way in which it applies to the consideration of an
12 application under that Act.

13 (2) To avoid doubt, sections 10, 19, 20, 22, 23A, 24, 25, 26, 27, 28 and
14 44A, and Division 6 of Part 2, of the *Classification (Publications,*
15 *Films and Computer Games) Act 1995* do not apply to a
16 classification under this Schedule.

17 **Part 3—Complaints to, and investigations by, the** 18 **ACMA**

19 **Division 1—Making of complaints to the ACMA**

20 **37 Complaints about prohibited content or potential prohibited** 21 **content**

22 *Complaints about access to prohibited content or potential*
23 *prohibited content*

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

28 *Complaints about hosting services*

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

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

Complaints about links services

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

Content of complaint

- (4) A complaint under subclause (1), (2) or (3) about particular content must:

- (a) identify the content; and
- (b) if the content is stored content—set out how to access the content (for example: set out a URL, a password, or the name of a newsgroup); and

(c) if:

- (i) the content is stored content; and
- (ii) the complainant knows the country or countries in which the content is hosted;

set out the name of that country or those countries; and

- (d) if the content is live content—set out details of how the content was accessed (for example: set out a URL or a password); and

(e) if:

- (i) the content is live content; and
- (ii) the complainant believes that a particular incident depicted by the live content is sufficient to characterise the content as prohibited content or potential prohibited content;

set out the date and approximate time when that incident occurred; and

- (f) set out the complainant's reasons for believing that the content is prohibited content or potential prohibited content; and

- (g) set out such other information (if any) as the ACMA requires.

- (5) The rule in paragraph (4)(b) does not apply to a complaint to the extent (if any) to which finding out how to access the content

1 would cause the complainant to contravene a law of the
2 Commonwealth, a State or a Territory.

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

7 *Timing of complaint about live content*

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

16 *Transitional*

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

20 **38 Complaints relating to breach of a designated content/hosting**
21 **service provider rule etc.**

22 (1) If a person (the *first person*) has reason to believe that another
23 person has:
24 (a) breached a designated content/hosting service provider rule
25 that applies to the other person; or
26 (b) committed an offence against this Schedule; or
27 (c) breached a civil penalty provision of this Schedule;
28 the first person may make a complaint to the ACMA about the
29 matter.

30 (2) If a person has reason to believe that a participant in the content
31 industry (within the meaning of Part 4 of this Schedule) has
32 breached a code registered under that Part that is applicable to the
33 participant, the person may make a complaint to the ACMA about
34 the matter.

39 Form of complaint

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

40 Recordings of live content

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

41 Residency etc. of complainant

- A person is not entitled to make a complaint under this Division unless the person is:
- (a) an individual who resides in Australia; or

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

42 Escalation of complaints made under industry codes etc.

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

Division 2—Investigations by the ACMA

43 Investigation of complaints by the ACMA

- (1) The ACMA must investigate a complaint under Division 1.
- (2) Subclause (1) has effect subject to subclauses (3), (4) and (6).
- (3) The ACMA need not investigate a complaint if:
- (a) the ACMA is satisfied that the complaint is:
 - (i) frivolous; or
 - (ii) vexatious; or
 - (iii) not made in good faith; or
 - (b) the ACMA has reason to believe that the complaint was made for the purpose, or for purposes that include the purpose, of frustrating or undermining the effective administration of this Schedule.
- (4) The ACMA need not investigate, or continue to investigate, a complaint about a matter if:

- 1 (a) a complaint about the matter has been, or could have been,
2 made under:
3 (i) an industry code registered under Part 4; or
4 (ii) an industry standard determined under Part 4; or
5 (iii) a designated content/hosting service provider
6 determination; and
7 (b) clause 42 does not apply to the first-mentioned complaint.
- 8 (5) The ACMA must notify the complainant of the results of an
9 investigation under this clause.
- 10 (6) The ACMA may terminate an investigation under this clause if it is
11 of the opinion that it does not have sufficient information to
12 conclude the investigation.

13 **44 ACMA may investigate matters on its own initiative**

- 14 The ACMA may investigate any of the following matters if the
15 ACMA thinks that it is desirable to do so:
16 (a) whether end-users in Australia can access prohibited content
17 or potential prohibited content provided by a content service;
18 (b) whether a hosting service is hosting prohibited content or
19 potential prohibited content;
20 (c) whether end-users in Australia can access prohibited content
21 or potential prohibited content using a link provided by a
22 links service;
23 (d) whether a person has breached a designated content/hosting
24 service provider rule that applies to the person;
25 (e) whether a person has committed an offence against this
26 Schedule;
27 (f) whether a person has breached a civil penalty provision of
28 this Schedule;
29 (g) whether a participant in the content industry (within the
30 meaning of Part 4 of this Schedule) has breached a code
31 registered under that Part that is applicable to the participant.

32 **45 Conduct of investigations**

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

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

6 **46 Protection from civil proceedings**

- 7 Civil proceedings do not lie against a person in respect of loss,
8 damage or injury of any kind suffered by another person because
9 of any of the following acts done in good faith:
- 10 (a) the making of a complaint under Division 1;
11 (b) the making of a statement to, or the giving of a document or
12 information to, the ACMA in connection with an
13 investigation under this Division.

14 **Division 3—Action to be taken in relation to hosting**
15 **services**

16 **47 Action to be taken in relation to hosting services**

17 *Prohibited content*

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

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

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

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

20 *Potential prohibited content*

- 21 (2) If:
22 (a) in the course of an investigation under Division 2, the ACMA
23 is satisfied that:
24 (i) content hosted by a hosting service provider is potential
25 prohibited content; and
26 (ii) the relevant hosting service has an Australian
27 connection; and
28 (b) the ACMA is satisfied that, if the content were to be
29 classified by the Classification Board, there is a substantial
30 likelihood that:
31 (i) if the content does not consist of an eligible electronic
32 publication—the content would be classified RC or X
33 18+; or
34 (ii) if the content consists of an eligible electronic
35 publication—the content would be classified RC or
36 category 2 restricted;
37 the ACMA must:

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

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

(3) If:

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

the ACMA must:

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

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

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

- 1 (i) the content does not consist of an eligible electronic
2 publication; and
3 (ii) the effect of the classification is that the content is
4 prohibited content because it has been classified RC or
5 X 18+ by the Classification Board;
6 give the hosting service provider a written notice (a *final*
7 *take-down notice*) directing the provider to take such steps as
8 are necessary to ensure that a type A remedial situation exists
9 in relation to the content; and
10 (c) in a case where:
11 (i) the content does not consist of an eligible electronic
12 publication; and
13 (ii) the effect of the classification is that the content is
14 prohibited content because it has been classified R 18+
15 or MA 15+ by the Classification Board;
16 give the hosting service provider a written notice (a *final*
17 *take-down notice*) directing the provider to take such steps as
18 are necessary to ensure that a type B remedial situation exists
19 in relation to the content; and
20 (d) in a case where:
21 (i) the content consists of an eligible electronic publication;
22 and
23 (ii) the effect of the classification is that the content is
24 prohibited content because it has been classified RC,
25 category 2 restricted or category 1 restricted by the
26 Classification Board;
27 give the hosting service provider a written notice (a *final*
28 *take-down notice*) directing the provider to take such steps as
29 are necessary to ensure that a type A remedial situation exists
30 in relation to the content.

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

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

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

Type A remedial situation

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

Type B remedial situation

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

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

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

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

(1) If:

- (a) content has been classified by the Classification Board (otherwise than because of subclause 24(1) or (2)); and
- (b) a final take-down notice relating to the content is applicable to a particular hosting service provider; and
- (c) the Classification Board reclassifies the content; and
- (d) as a result of the reclassification, the content ceases to be prohibited content;

the ACMA must revoke the final take-down notice.

(2) If a final take-down notice is revoked under this clause, the ACMA must give the hosting service provider concerned a written notice stating that the final take-down notice has been revoked.

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

(1) If:

- (a) content consists of:
 - (i) the entire unmodified contents of a film; or
 - (ii) a computer game; and
- (b) the Classification Board reclassifies the film or computer game under the *Classification (Publications, Films and Computer Games) Act 1995*; and
- (c) a final take-down notice relating to the content is applicable to a particular hosting service provider; and
- (d) as a result of the reclassification, the content ceases to be prohibited content;

the ACMA must revoke the final take-down notice.

(2) If a final take-down notice is revoked under this clause, the ACMA must give the hosting service provider concerned a written notice stating that the final take-down notice has been revoked.

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

(1) If:

- (a) content consists of an eligible electronic publication; and

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

12 52 Anti-avoidance—special take-down notices

- 13 (1) If:
14 (a) an interim take-down notice or a final take-down notice
15 relating to particular content is applicable to a particular
16 hosting service provider; and
17 (b) the ACMA is satisfied that the hosting service provider is
18 hosting, or is proposing to host, content (the *similar content*)
19 that is the same as, or substantially similar to, the content
20 identified in the interim take-down notice or the final
21 take-down notice, as the case may be; and
22 (c) the ACMA is satisfied that the similar content is prohibited
23 content or potential prohibited content;
24 the ACMA may:
25 (d) if the interim take-down notice or final take-down notice, as
26 the case may be, was given under paragraph 47(1)(c), (1)(e),
27 (2)(c), (4)(b) or (4)(d) of this Schedule—give the hosting
28 service provider a written notice (a *special take-down notice*)
29 directing the provider to take such steps as are necessary to
30 ensure that a type A remedial situation exists in relation to
31 the similar content at any time when the interim take-down
32 notice or final take-down notice, as the case may be, is in
33 force; or
34 (e) in any other case—give the hosting service provider a written
35 notice (a *special take-down notice*) directing the provider to
36 take such steps as are necessary to ensure that a type B
37 remedial situation exists in relation to the similar content at

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

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

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

Type A remedial situation

(2) For the purposes of the application of this clause to a hosting service provider, a *type A remedial situation* exists in relation to the similar content at a particular time if:

- (a) the provider does not host the similar content; or
- (b) the similar content is not provided by a content service provided to the public (whether on payment of a fee or otherwise).

Type B remedial situation

(3) For the purposes of the application of this clause to a hosting service provider, a *type B remedial situation* exists in relation to content at a particular time if:

- (a) the provider does not host the similar content; or
- (b) the similar content is not provided by a content service provided to the public (whether on payment of a fee or otherwise); or
- (c) access to the similar content is subject to a restricted access system.

53 Compliance with rules relating to prohibited content etc.

Interim take-down notice

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

Final take-down notice

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

Special take-down notice

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

(4) In proceedings relating to a contravention of subclause (3), it is a defence if the hosting service provider proves:

(a) that the provider did not know; and

(b) that the provider could not, with reasonable diligence, have ascertained;

that the relevant content was prohibited content or potential prohibited content.

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

Undertaking

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

Designated content/hosting service provider rule

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

54 Identification of content

Content may be identified in a notice under this Division:

(a) by setting out the content; or

(b) by describing the content; or

(c) in any other way.

55 Application of notices under this Division

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

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

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

56 Action to be taken in relation to live content services

Prohibited content

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

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

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

Potential prohibited content

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

- 1 likelihood that the content would be classified RC or X 18+;
2 and
3 (c) the ACMA has:
4 (i) a recording of the content; or
5 (ii) a copy of such a recording;
6 the ACMA must:
7 (d) give the live content service provider a written notice (an
8 *interim service-cessation notice*) directing the provider to
9 take such steps as are necessary to ensure that a type A
10 remedial situation exists in relation to the live content service
11 until the ACMA notifies the live content provider under
12 subclause (4) of the Classification Board's classification of
13 the content; and
14 (e) apply to the Classification Board under clause 22 for
15 classification of the content.

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

- 17 (3) If:
18 (a) in the course of an investigation under Division 2, the ACMA
19 is satisfied that:
20 (i) live content provided by a live content service is
21 potential prohibited content; and
22 (ii) the live content service has an Australian connection;
23 and
24 (b) the ACMA is satisfied that, if the content were to be
25 classified by the Classification Board, there is a substantial
26 likelihood that the content would be classified R 18+ or MA
27 15+; and
28 (c) the ACMA has:
29 (i) a recording of the content; or
30 (ii) a copy of such a recording;
31 the ACMA must:
32 (d) give the live content service provider a written notice (an
33 *interim service-cessation notice*) directing the provider to
34 take such steps as are necessary to ensure that a type B
35 remedial situation exists in relation to the live content service
36 until the ACMA notifies the live content provider under
37 subclause (4) of the Classification Board's classification of
38 the content; and

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

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

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

- (a) give the relevant live content service provider a written notice setting out the classification; and
- (b) in a case where the effect of the classification is that the content is prohibited content because it has been classified RC or X 18+ by the Classification Board—give the live content service provider a written notice (a *final service-cessation notice*) directing the provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the live content service; and
- (c) in a case where the effect of the classification is that the content is prohibited content because it has been classified R 18+ or MA 15+ by the Classification Board—give the live content service provider a written notice (a *final service-cessation notice*) directing the provider to take such steps as are necessary to ensure that a type B remedial situation exists in relation to the live content service.

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

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

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

Type A remedial situation

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

Type B remedial situation

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

57 Undertaking—alternative to service-cessation notice

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

58 Revocation of service-cessation notices—undertaking

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

- (c) accept the undertaking; and
- (d) revoke the final service-cessation notice or interim service-cessation notice; and
- (e) in the case of an interim service-cessation notice—by written notice given to the Classification Board, determine that the Classification Board is not required to comply with clause 23 in relation to the classification of the content concerned.

- (2) If a final service-cessation notice or interim service-cessation notice is revoked under this clause, the ACMA must give the live content service provider concerned a written notice stating that the notice has been revoked.

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

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

60 Compliance with rules relating to prohibited content etc.

Interim service-cessation notice

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

Final service-cessation notice

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

Undertaking

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

Designated content/hosting service provider rule

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

61 Identification of content

Content may be identified in a notice under this Division:

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

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

62 Action to be taken in relation to links services

Prohibited content

- (1) If, in the course of an investigation under Division 2, the ACMA is satisfied that:
- (a) end-users in Australia can access content using a link provided by a links service; and
 - (b) the content is prohibited content; and
 - (c) the links service has an Australian connection;
- the ACMA must:
- (d) if:
 - (i) the content does not consist of an eligible electronic publication; and

- 1 (ii) the content has been classified RC or X 18+ by the
2 Classification Board;
3 give the links service provider a written notice (a ***final***
4 ***link-deletion notice***) directing the links service provider to
5 take such steps as are necessary to ensure that a type A
6 remedial situation exists in relation to the content; or
7 (e) if:
8 (i) the content does not consist of an eligible electronic
9 publication; and
10 (ii) the content has been classified R 18+ or MA 15+ by the
11 Classification Board;
12 give the links service provider a written notice (a ***final***
13 ***link-deletion notice***) directing the links service provider to
14 take such steps as are necessary to ensure that a type B
15 remedial situation exists in relation to the content; or
16 (f) if:
17 (i) the content consists of an eligible electronic publication;
18 and
19 (ii) the content has been classified RC, category 2 restricted
20 or category 1 restricted by the Classification Board;
21 give the links service provider a written notice (a ***final***
22 ***link-deletion notice***) directing the links service provider to
23 take such steps as are necessary to ensure that a type A
24 remedial situation exists in relation to the content.

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

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

27 *Potential prohibited content*

- 28 (2) If:
29 (a) in the course of an investigation under Division 2, the ACMA
30 is satisfied that:
31 (i) end-users in Australia can access content using a link
32 provided by a links service; and
33 (ii) the content is potential prohibited content; and
34 (iii) the links service has an Australian connection; and
35 (b) the ACMA is satisfied that, if the content were to be
36 classified by the Classification Board, there is a substantial
37 likelihood that:

(i) if the content does not consist of an eligible electronic publication—the content would be classified RC or X 18+; or

(ii) if the content consists of an eligible electronic publication—the content would be classified RC or category 2 restricted;

the ACMA must:

(c) give the links service provider a written notice (an *interim link-deletion notice*) directing the provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the content until the ACMA notifies the links service provider under subclause (4) of the Classification Board’s classification of the content; and

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

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

(3) If:

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

(i) end-users in Australia can access content using a link provided by a links service; and

(ii) the content is potential prohibited content; and

(iii) the links service has an Australian connection; and

(b) the content does not consist of an eligible electronic publication; and

(c) the ACMA is satisfied that, if the content were to be classified by the Classification Board, there is a substantial likelihood that the content would be classified R 18+ or MA 15+;

the ACMA must:

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

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

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

- 1 (4) If, in response to an application made as required by subclause (2)
2 or (3), the ACMA is informed under paragraph 23(b) of the
3 classification of particular content, the ACMA must:
- 4 (a) give the relevant links service provider a written notice
5 setting out the classification; and
- 6 (b) in a case where:
- 7 (i) the content does not consist of an eligible electronic
8 publication; and
- 9 (ii) the effect of the classification is that the content is
10 prohibited content because it has been classified RC or
11 X 18+ by the Classification Board;
- 12 give the links service provider a written notice (a *final*
13 *link-deletion notice*) directing the provider to take such steps
14 as are necessary to ensure that a type A remedial situation
15 exists in relation to the content; and
- 16 (c) in a case where:
- 17 (i) the content does not consist of an eligible electronic
18 publication; and
- 19 (ii) the effect of the classification is that the content is
20 prohibited content because it has been classified R 18+
21 or MA 15+ by the Classification Board;
- 22 give the links service provider a written notice (a *final*
23 *link-deletion notice*) directing the provider to take such steps
24 as are necessary to ensure that a type B remedial situation
25 exists in relation to the content; and
- 26 (d) in a case where:
- 27 (i) the content consists of an eligible electronic publication;
28 and
- 29 (ii) the effect of the classification is that the content is
30 prohibited content because it has been classified RC,
31 category 2 restricted or category 1 restricted by the
32 Classification Board;
- 33 give the links service provider a written notice (a *final*
34 *link-deletion notice*) directing the provider to take such steps
35 as are necessary to ensure that a type A remedial situation
36 exists in relation to the content.

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

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

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

5 *Type A remedial situation*

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

13 *Type B remedial situation*

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

22 **63 Revocation of interim link-deletion notices—voluntary deletion of**
23 **link**

- 24 (1) If:
25 (a) an interim link-deletion notice relating to a link to particular
26 content is applicable to a particular links service provider;
27 and
28 (b) before the Classification Board classifies the content, the
29 provider:
30 (i) ceases to provide a link to the content; and
31 (ii) gives the ACMA a written undertaking not to provide a
32 link to the content;
33 the ACMA may:
34 (c) accept the undertaking; and
35 (d) revoke the interim link-deletion notice; and

(e) by written notice given to the Classification Board, determine that the Classification Board is not required to comply with clause 23 in relation to the classification of the content.

(2) If an interim link-deletion notice is revoked under this clause, the ACMA must give the links service provider concerned a written notice stating that the interim link-deletion notice has been revoked.

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

(1) If:

- (a) content has been classified by the Classification Board (otherwise than because of subclause 24(1) or (2)); and
- (b) a final link-deletion notice relating to a link to the content is applicable to a particular links service provider; and
- (c) the Classification Board reclassifies the content; and
- (d) as a result of the reclassification, the content ceases to be prohibited content;

the ACMA must revoke the final link-deletion notice.

(2) If a final link-deletion notice is revoked under this clause, the ACMA must give the links service provider concerned a written notice stating that the final link-deletion notice has been revoked.

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

(1) If:

- (a) content consists of:
 - (i) the entire unmodified contents of a film; or
 - (ii) a computer game; and
- (b) the Classification Board reclassifies the film or computer game under the *Classification (Publications, Films and Computer Games) Act 1995*; and
- (c) a final link-deletion notice relating to a link to the content is applicable to a particular links service provider; and
- (d) as a result of the reclassification, the content ceases to be prohibited content;

the ACMA must revoke the final link-deletion notice.

- (2) If a final link-deletion notice is revoked under this clause, the ACMA must give the links service provider concerned a written notice stating that the final link-deletion notice has been revoked.

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

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

67 Anti-avoidance—special link-deletion notices

- (1) If:
- (a) an interim link-deletion notice or a final link-deletion notice relating to particular content is applicable to a particular links service provider; and
 - (b) the ACMA is satisfied that the links service provider is providing, or is proposing to provide, a link to content (the *similar content*) that is the same as, or substantially similar to, the content identified in the interim link-deletion notice or the final link-deletion notice, as the case may be; and
 - (c) the ACMA is satisfied that the similar content is prohibited content or potential prohibited content;
- the ACMA may:
- (d) if the interim link-deletion notice or the final link-deletion notice, as the case may be, was given under paragraph 62(1)(d), (1)(f), (2)(c), (4)(b) or (4)(d)—give the links service provider a written notice (a *special link-deletion notice*) directing the provider to take such steps as are necessary to

1 ensure that a type A remedial situation exists in relation to
2 the similar content at any time when the interim link-deletion
3 notice or the final link-deletion notice, as the case may be, is
4 in force; or

- 5 (e) in any other case—give the links service provider a written
6 notice (a ***special link-deletion notice***) directing the provider
7 to take such steps as are necessary to ensure that a type B
8 remedial situation exists in relation to the similar content at
9 any time when the interim link-deletion notice or the final
10 link-deletion notice, as the case may be, is in force.

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

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

13 *Type A remedial situation*

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

22 *Type B remedial situation*

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

68 Compliance with rules relating to prohibited content etc.

Interim link-deletion notice

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

Final link-deletion notice

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

Special link-deletion notice

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

- (4) In proceedings relating to a contravention of subclause (3), it is a defence if the links service provider proves:

- (a) that the provider did not know; and
(b) that the provider could not, with reasonable diligence, have ascertained;

that the relevant content was prohibited content or potential prohibited content.

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

Undertaking

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

Designated content/hosting service provider rule

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

Division 6—Law enforcement agencies

69 Referral of matters to law enforcement agencies

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

Referral to law enforcement agency

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

Previous referral to law enforcement agency under Schedule 5

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

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

(1) If:

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

- (i) content hosted by a hosting service provider is prohibited content or potential prohibited content; and
- (ii) the relevant hosting service has an Australian connection; and

(b) apart from this subclause, the ACMA would be required to take action under subclause 47(1), (2) or (3) in relation to the content; and

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

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

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

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

(1) If:

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

- (i) live content provided by a live content service is potential prohibited content; and
- (ii) the live content service has an Australian connection; and

(b) apart from this subclause, the ACMA would be required to take action under subclause 56(1), (2) or (3) in relation to the content; and

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

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

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

4 **72 Deferral of action in order to avoid prejudicing a criminal**
5 **investigation—links services**

6 (1) If:

7 (a) in the course of an investigation under Division 2, the ACMA
8 is satisfied that:

9 (i) end-users in Australia can access content using a link
10 provided by a links service; and

11 (ii) the content is potential prohibited content; and

12 (iii) the links service has an Australian connection; and

13 (b) apart from this subclause, the ACMA would be required to
14 take action under subclause 62(1), (2) or (3) in relation to the
15 link; and

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

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

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

23 **Part 4—Industry codes and industry standards**

24 **Division 1—Simplified outline**

25 **73 Simplified outline**

26 The following is a simplified outline of this Part:

- | | |
|----|--|
| 27 | • Bodies and associations that represent sections of the content |
| 28 | industry may develop industry codes. |
| 29 | • Industry codes may be registered by the ACMA. |

- Compliance with an industry code is voluntary unless the ACMA directs a particular participant in the content industry to comply with the code.
- The ACMA has a reserve power to make an industry standard if there are no industry codes or if an industry code is deficient.
- Compliance with industry standards is mandatory.

Division 2—Interpretation

74 Industry codes

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

75 Industry standards

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

76 Content activity

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

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

77 Sections of the content industry

- (1) For the purposes of this Part, *sections of the content industry* are to be ascertained in accordance with this clause.

(2) For the purposes of this Part, each of the following groups is a *section of the content industry*:

- (a) hosting service providers, where the relevant hosting services have an Australian connection;
- (b) live content service providers, where the relevant live content services have an Australian connection;
- (c) links service providers, where the relevant links services have an Australian connection;
- (d) commercial content service providers, where the relevant commercial content services have an Australian connection.

78 Participants in a section of the content industry

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

79 Designated body

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

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

80 Statement of regulatory policy

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

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

- (1) The Parliament intends that, for the commercial content service provider section of the content industry, there should be:
- (a) an industry code or an industry standard that deals with; or
 - (b) an industry code and an industry standard that together deal with;
- each of the following matters:
- (c) the engagement of trained content assessors by commercial content service providers;
 - (d) ensuring that content (other than live content or content that consists of an eligible electronic publication) that:
 - (i) has not been classified by the Classification Board; and
 - (ii) would, if it were classified by the Classification Board, be substantially likely to be classified RC, X 18+, R 18+ or MA 15+ by the Classification Board;is not provided by commercial content services (other than news services or current affairs services) unless a trained content assessor has assessed the content for the purposes of categorising the content as:
 - (iii) content that would, if it were classified by the Classification Board, be substantially likely to be classified RC by the Classification Board; or
 - (iv) content that would, if it were classified by the Classification Board, be substantially likely to be classified X 18+ by the Classification Board; or
 - (v) content that would, if it were classified by the Classification Board, be substantially likely to be classified R 18+ by the Classification Board; or
 - (vi) content that would, if it were classified by the Classification Board, be substantially likely to be classified MA 15+ by the Classification Board;
 - (e) ensuring that live content is not provided by commercial content services (other than news services or current affairs services) unless:
 - (i) there is no reasonable likelihood that the live content will be of a kind that would, if it were classified by the Classification Board, be substantially likely to be

classified RC, X 18+, R 18+ or MA 15+ by the
Classification Board; or

- (ii) a trained content assessor has given advice to the
relevant commercial content service provider about
whether the live content is likely to be of a kind that
would, if it were classified by the Classification Board,
be substantially likely to be classified RC, X 18+, R 18+
or MA 15+ by the Classification Board;

- (f) ensuring that content that consists of an eligible electronic
publication that:

- (i) has not been classified by the Classification Board; and
(ii) would, if it were classified by the Classification Board,
be substantially likely to be classified RC or category 2
restricted by the Classification Board;

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

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

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

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

Codes and standards not limited

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

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

- (1) This clause sets out examples of matters that may be dealt with by industry codes and industry standards.
- (2) The applicability of a particular example will depend on which section of the content industry is involved.
- (3) The examples are as follows:
 - (a) procedures to be followed in order to deal with complaints about matters, where the complainant could have made a complaint about the same matter under subclause 37(1), (2) or (3) or 38(1) or (2);
 - (b) telling persons about their rights to make complaints;
 - (c) procedures to be followed in order to assist persons to make complaints;
 - (d) the referral to the ACMA of complaints about matters, where:
 - (i) the complainant could have made a complaint about the same matter under subclause 37(1), (2) or (3) or 38(1) or (2); and
 - (ii) the complainant is dissatisfied with the way in which the complaint was dealt with under the code or standard;
 - (e) advice about the reasons for content having a particular classification;
 - (f) procedures directed towards the achievement of the objective of ensuring that, in the event that a commercial content service provider becomes aware that:
 - (i) prohibited content; or
 - (ii) potential prohibited content;is or was delivered to, or made available for access by, an end-user of a commercial content service provided by another commercial content service provider, the other commercial content service provider is told about the prohibited content or the potential prohibited content, as the case may be;
 - (g) promoting awareness of the safety issues associated with commercial content services or live content services;

- 1 (h) procedures to be followed in order to deal with safety issues
2 associated with commercial content services that are chat
3 services;
4 (i) procedures to be followed in order to assist parents and
5 responsible adults to deal with safety issues associated with
6 children's use of commercial content services that are chat
7 services;
8 (j) giving parents and responsible adults information about how
9 to supervise and control children's access to content provided
10 by commercial content services or live content services;
11 (k) procedures to be followed in order to assist parents and
12 responsible adults to supervise and control children's access
13 to content provided by commercial content services or live
14 content services;
15 (l) procedures to be followed in order to inform producers of
16 content provided by commercial content services or live
17 content services about the legal responsibilities of
18 commercial content service providers in relation to that
19 content;
20 (m) the making and retention of records of content provided by a
21 commercial content service or a live content service;
22 (n) the making and retention of recordings of live content
23 provided by a live content service;
24 (o) procedures directed towards the achievement of the objective
25 of ensuring that, in the event that new content services or live
26 content services are developed that could put at risk the
27 safety of children who are end-users of the services, the
28 ACMA is informed about those services.

29 **83 Escalation of complaints**

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

34 **84 Collection of personal information**

- 35 (1) This clause applies to a provision of an industry code or industry
36 standard if the provision deals with the making and retention of:

- 1 (a) records of content provided by a content service; or
2 (b) recordings of live content provided by a live content service.
- 3 (2) The provision must not authorise the collection of personal
4 information (within the meaning of the *Privacy Act 1988*) about an
5 end-user of a content service.

6 **Division 4—Industry codes**

7 **85 Registration of industry codes**

- 8 (1) This clause applies if:
9 (a) the ACMA is satisfied that a body or association represents a
10 particular section of the content industry; and
11 (b) that body or association develops an industry code that
12 applies to participants in that section of the industry and deals
13 with one or more matters relating to the content activities of
14 those participants; and
15 (c) the body or association gives a copy of the code to the
16 ACMA; and
17 (d) the ACMA is satisfied that:
18 (i) to the extent to which the code deals with one or more
19 matters of substantial relevance to the community—the
20 code provides appropriate community safeguards for
21 that matter or those matters; and
22 (ii) to the extent to which the code deals with one or more
23 matters that are not of substantial relevance to the
24 community—the code deals with that matter or those
25 matters in an appropriate manner; and
26 (e) the ACMA is satisfied that, before giving the copy of the
27 code to the ACMA:
28 (i) the body or association published a draft of the code and
29 invited members of the public to make submissions to
30 the body or association about the draft within a
31 specified period; and
32 (ii) the body or association gave consideration to any
33 submissions that were received from members of the
34 public within that period; and
35 (f) the ACMA is satisfied that, before giving the copy of the
36 code to the ACMA:

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

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

- (2) The ACMA must register the code by including it in the Register of industry codes kept under clause 101.
- (3) A period specified under subparagraph (1)(e)(i) or (1)(f)(i) must run for at least 30 days.
- (4) If:
 - (a) an industry code (the *new code*) is registered under this Part; and
 - (b) the new code is expressed to replace another industry code; the other code ceases to be registered under this Part when the new code is registered.

86 ACMA may request codes

- (1) If the ACMA is satisfied that a body or association represents a particular section of the content industry, the ACMA may, by written notice given to the body or association, request the body or association to:
 - (a) develop an industry code that applies to participants in that section of the industry and deals with one or more specified matters relating to the content activities of those participants; and
 - (b) give the ACMA a copy of the code within the period specified in the notice.
- (2) The period specified in a notice under subclause (1) must run for at least 120 days.

- 1 (3) The ACMA must not make a request under subclause (1) in
2 relation to a particular section of the content industry unless the
3 ACMA is satisfied that:
4 (a) the development of the code is necessary or convenient in
5 order to:
6 (i) provide appropriate community safeguards; or
7 (ii) otherwise deal with the performance or conduct of
8 participants in that section of the industry; and
9 (b) in the absence of the request, it is unlikely that an industry
10 code would be developed within a reasonable period.
- 11 (4) The ACMA may vary a notice under subclause (1) by extending
12 the period specified in the notice.
- 13 (5) Subclause (4) does not limit the application of subsection 33(3) of
14 the *Acts Interpretation Act 1901*.
- 15 (6) A notice under subclause (1) may specify indicative targets for
16 achieving progress in the development of the code (for example, a
17 target of 60 days to develop a preliminary draft of the code).

18 **87 Publication of notice where no body or association represents a**
19 **section of the content industry**

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

32 **88 Replacement of industry codes**

- 33 (1) Changes to an industry code are to be achieved by replacing the
34 code instead of varying the code.

- (2) If the replacement code differs only in minor respects from the original code, clause 85 has effect, in relation to the registration of the code, as if paragraphs 85(1)(e) and (f) of this Schedule had not been enacted.

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

89 Compliance with industry codes

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

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

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

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

90 Formal warnings—breach of industry codes

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

Division 5—Industry standards

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

- (1) This clause applies if:
- (a) the ACMA has made a request under subclause 86(1) in relation to the development of a code that is to:
 - (i) apply to participants in a particular section of the content industry; and

- 1 (ii) deal with one or more matters relating to the content
2 activities of those participants; and
3 (b) any of the following conditions is satisfied:
4 (i) the request is not complied with;
5 (ii) if indicative targets for achieving progress in the
6 development of the code were specified in the notice of
7 request—any of those indicative targets were not met;
8 (iii) the request is complied with, but the ACMA
9 subsequently refuses to register the code; and
10 (c) the ACMA is satisfied that it is necessary or convenient for
11 the ACMA to determine a standard in order to:
12 (i) provide appropriate community safeguards in relation to
13 that matter or those matters; or
14 (ii) otherwise regulate adequately participants in that
15 section of the industry in relation to that matter or those
16 matters.
- 17 (2) The ACMA may, by legislative instrument, determine a standard
18 that applies to participants in that section of the industry and deals
19 with that matter or those matters. A standard under this subclause
20 is to be known as an *industry standard*.
- 21 (3) Before determining an industry standard under this clause, the
22 ACMA must consult the body or association to whom the request
23 mentioned in paragraph (1)(a) was made.
- 24 (4) The Minister may, by legislative instrument, give the ACMA a
25 written direction as to the exercise of its powers under this clause.

26 **92 ACMA may determine industry standard where no industry**
27 **body or association formed**

- 28 (1) This clause applies if:
29 (a) the ACMA is satisfied that a particular section of the content
30 industry is not represented by a body or association; and
31 (b) the ACMA has published a notice under subclause 87(1); and
32 (c) that notice:
33 (i) states that, if such a body or association were to come
34 into existence within a particular period, the ACMA
35 would be likely to give a notice to that body or
36 association under subclause 86(1); and

- 1 (ii) sets out one or more matters relating to the content
2 activities of participants in that section of the industry;
3 and
4 (d) no such body or association comes into existence within that
5 period; and
6 (e) the ACMA is satisfied that it is necessary or convenient for
7 the ACMA to determine a standard in order to:
8 (i) provide appropriate community safeguards in relation to
9 that matter or those matters; or
10 (ii) otherwise regulate adequately participants in that
11 section of the industry in relation to that matter or those
12 matters.
- 13 (2) The ACMA may, by legislative instrument, determine a standard
14 that applies to participants in that section of the industry and deals
15 with that matter or those matters. A standard under this subclause
16 is to be known as an *industry standard*.
- 17 (3) The Minister may, by legislative instrument, give the ACMA a
18 written direction as to the exercise of its powers under this clause.

19 **93 ACMA may determine industry standards—total failure of**
20 **industry codes**

- 21 (1) This clause applies if:
22 (a) an industry code that:
23 (i) applies to participants in a particular section of the
24 content industry; and
25 (ii) deals with one or more matters relating to the content
26 activities of those participants;
27 has been registered under this Part for at least 180 days; and
28 (b) the ACMA is satisfied that the code is totally deficient (as
29 defined by subclause (6)); and
30 (c) the ACMA has given the body or association that developed
31 the code a written notice requesting that deficiencies in the
32 code be addressed within a specified period; and
33 (d) that period ends and the ACMA is satisfied that it is
34 necessary or convenient for the ACMA to determine a
35 standard that applies to participants in that section of the
36 industry and deals with that matter or those matters.

- 1 (2) The period specified in a notice under paragraph (1)(c) must run
2 for at least 30 days.
- 3 (3) The ACMA may, by legislative instrument, determine a standard
4 that applies to participants in that section of the industry and deals
5 with that matter or those matters. A standard under this subclause
6 is to be known as an *industry standard*.
- 7 (4) If the ACMA is satisfied that a body or association represents that
8 section of the industry, the ACMA must consult the body or
9 association before determining an industry standard under
10 subclause (3).
- 11 (5) The industry code ceases to be registered under this Part on the day
12 on which the industry standard comes into force.
- 13 (6) For the purposes of this clause, an industry code that applies to
14 participants in a particular section of the content industry and deals
15 with one or more matters relating to the content activities of those
16 participants is *totally deficient* if, and only if:
17 (a) the code is not operating to provide appropriate community
18 safeguards in relation to that matter or those matters; or
19 (b) the code is not otherwise operating to regulate adequately
20 participants in that section of the industry in relation to that
21 matter or those matters.
- 22 (7) The Minister may, by legislative instrument, give the ACMA a
23 written direction as to the exercise of its powers under this clause.

24 **94 ACMA may determine industry standards—partial failure of**
25 **industry codes**

- 26 (1) This clause applies if:
27 (a) an industry code that:
28 (i) applies to participants in a particular section of the
29 content industry; and
30 (ii) deals with 2 or more matters relating to the content
31 activities of those participants;
32 has been registered under this Part for at least 180 days; and
33 (b) clause 93 does not apply to the code; and
34 (c) the ACMA is satisfied that the code is deficient (as defined
35 by subclause (6)) to the extent to which the code deals with
-

- 1 one or more of those matters (the *deficient matter* or
2 *deficient matters*); and
- 3 (d) the ACMA has given the body or association that developed
4 the code a written notice requesting that deficiencies in the
5 code be addressed within a specified period; and
- 6 (e) that period ends and the ACMA is satisfied that it is
7 necessary or convenient for the ACMA to determine a
8 standard that applies to participants in that section of the
9 industry and deals with the deficient matter or deficient
10 matters.
- 11 (2) The period specified in a notice under paragraph (1)(d) must run
12 for at least 30 days.
- 13 (3) The ACMA may, by legislative instrument, determine a standard
14 that applies to participants in that section of the industry and deals
15 with the deficient matter or deficient matters. A standard under this
16 subclause is to be known as an *industry standard*.
- 17 (4) If the ACMA is satisfied that a body or association represents that
18 section of the industry, the ACMA must consult the body or
19 association before determining an industry standard under
20 subclause (3).
- 21 (5) On and after the day on which the industry standard comes into
22 force, the industry code has no effect to the extent to which it deals
23 with the deficient matter or deficient matters. However, this
24 subclause does not affect:
- 25 (a) the continuing registration of the remainder of the industry
26 code; or
- 27 (b) any investigation, proceeding or remedy in respect of a
28 contravention of the industry code or clause 89 that occurred
29 before that day.
- 30 (6) For the purposes of this clause, an industry code that applies to
31 participants in a particular section of the content industry and deals
32 with 2 or more matters relating to the content activities of those
33 participants is *deficient* to the extent to which it deals with a
34 particular one of those matters if, and only if:
- 35 (a) the code is not operating to provide appropriate community
36 safeguards in relation to that matter; or

1 (b) the code is not otherwise operating to regulate adequately
2 participants in that section of the industry in relation to that
3 matter.

4 (7) The Minister may, by legislative instrument, give the ACMA a
5 written direction as to the exercise of its powers under this clause.

6 **95 Compliance with industry standards**

7 (1) If:

8 (a) an industry standard that applies to participants in a particular
9 section of the content industry is registered under this Part;
10 and

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

13 the person must comply with the industry standard.

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

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

16 **96 Formal warnings—breach of industry standards**

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

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

21 **97 Variation of industry standards**

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

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

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

1 **98 Revocation of industry standards**

- 2 (1) The ACMA may, by legislative instrument, revoke an industry
3 standard.
- 4 (2) If:
- 5 (a) an industry code is registered under this Part; and
- 6 (b) the code is expressed to replace an industry standard;
- 7 the industry standard is revoked when the code is registered.

8 **99 Public consultation on industry standards**

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

26 **100 Consultation with designated body**

- 27 (1) Before determining or varying an industry standard, the ACMA
- 28 must consult the designated body.
- 29 (2) Before revoking an industry standard under subclause 98(1), the
- 30 ACMA must consult the designated body.
- 31 Note: *Designated body* is defined by clause 79.

Division 6—Register of industry codes and industry standards

101 ACMA to maintain Register of industry codes and industry standards

- (1) The ACMA is to maintain a Register in which the ACMA includes:
- (a) all industry codes required to be registered under this Part; and
 - (b) all industry standards; and
 - (c) all requests made under clause 86; and
 - (d) all notices under clause 87; and
 - (e) all directions under clause 89.
- (2) The Register may be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Internet.

Division 7—Miscellaneous

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

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

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

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

1 **Part 5—Designated content/hosting service**
2 **provider determinations**
3

4 **104 Designated content/hosting service provider determinations**

- 5 (1) The ACMA may, by legislative instrument, determine rules that
6 apply to designated content/hosting service providers in relation to
7 the provision of designated content/hosting services.
- 8 (2) A determination under subclause (1) is called a *designated*
9 *content/hosting service provider determination*.
- 10 (3) A designated content/hosting service provider determination has
11 effect only to the extent that:
12 (a) it is authorised by paragraph 51(v) of the Constitution (either
13 alone or when read together with paragraph 51(xxxix) of the
14 Constitution); or
15 (b) both:
16 (i) it is authorised by section 122 of the Constitution; and
17 (ii) it would have been authorised by paragraph 51(v) of the
18 Constitution (either alone or when read together with
19 paragraph 51(xxxix) of the Constitution) if section 51 of
20 the Constitution extended to the Territories.
- 21 (4) The ACMA must not make a designated content/hosting service
22 provider determination unless the determination relates to a matter
23 specified in the regulations.
- 24 (5) A designated content/hosting service provider determination may
25 make provision for or in relation to a particular matter by
26 empowering the ACMA to make decisions of an administrative
27 character.

28 **105 Exemptions from designated content/hosting service provider**
29 **determinations**

- 30 (1) The Minister may, by legislative instrument, determine that a
31 specified designated content/hosting service provider is exempt
32 from designated content/hosting service provider determinations.

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

8 **Part 6—Enforcement**

9

10 **106 Compliance with designated content/hosting service provider** 11 **rules—offence**

- 12 (1) A person commits an offence if:
13 (a) the person is a designated content/hosting service provider;
14 and
15 (b) the person engages in conduct; and
16 (c) the person's conduct contravenes a designated
17 content/hosting service provider rule that applies to the
18 person.
- 19 Penalty: 100 penalty units.
- 20 (2) A person who contravenes subclause (1) commits a separate
21 offence in respect of each day (including a day of a conviction for
22 the offence or any later day) during which the contravention
23 continues.

24 **107 Compliance with designated content/hosting service provider** 25 **rules—civil penalty provision**

- 26 (1) A person must not contravene a designated content/hosting service
27 provider rule if:
28 (a) the person is a designated content/hosting service provider;
29 and
30 (b) the rule applies to the person.
- 31 (2) Subclause (1) is a civil penalty provision.

- 1 (3) A person who contravenes subclause (1) commits a separate
2 contravention of that subclause in respect of each day (including a
3 day of the making of a relevant civil penalty order or any
4 subsequent day) during which the contravention continues.

5 **108 Remedial directions—breach of designated content/hosting**
6 **service provider rules**

- 7 (1) This clause applies if the ACMA is satisfied that a designated
8 content/hosting service provider has contravened, or is
9 contravening, a designated content/hosting service provider rule
10 that applies to the provider.
- 11 (2) The ACMA may give the designated content/hosting service
12 provider a written direction requiring the provider to take specified
13 action directed towards ensuring that the provider does not
14 contravene the rule, or is unlikely to contravene the rule, in the
15 future.
- 16 (3) The following are examples of the kinds of direction that may be
17 given to a designated content/hosting service provider under
18 subclause (2):
- 19 (a) a direction that the provider implement effective
20 administrative systems for monitoring compliance with a
21 designated content/hosting service provider rule;
- 22 (b) a direction that the provider implement a system designed to
23 give the provider's employees, agents and contractors a
24 reasonable knowledge and understanding of the requirements
25 of a designated content/hosting service provider rule, in so
26 far as those requirements affect the employees, agents or
27 contractors concerned.

28 *Offence*

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

33 Penalty: 100 penalty units.

- 34 (5) A person who contravenes subclause (4) commits a separate
35 offence in respect of each day (including a day of a conviction for

1 the offence or any later day) during which the contravention
2 continues.

3 *Civil penalty*

4 (6) A person must comply with a direction under subclause (2).

5 (7) Subclause (6) is a civil penalty provision.

6 (8) A person who contravenes subclause (6) commits a separate
7 contravention of that subclause in respect of each day (including a
8 day of the making of a relevant civil penalty order or any
9 subsequent day) during which the contravention continues.

10 **109 Formal warnings—breach of designated content/hosting service**
11 **provider rules**

12 The ACMA may issue a formal warning to a person if the ACMA
13 is satisfied that the person has contravened, or is contravening, a
14 designated content/hosting service provider rule that applies to the
15 person.

16 **110 Federal Court may order a person to cease providing designated**
17 **content/hosting services**

18 (1) If the ACMA is satisfied that a person is providing a designated
19 content/hosting service otherwise than in accordance with a
20 designated content/hosting service provider rule that applies to the
21 person, the ACMA may apply to the Federal Court for an order
22 that the person cease providing that designated content/hosting
23 service.

24 (2) If the Federal Court is satisfied, on such an application, that the
25 person is providing a designated content/hosting service otherwise
26 than in accordance with a designated content/hosting service
27 provider rule that applies to the person, the Federal Court may
28 order the person to cease providing that designated content/hosting
29 service.

1 **Part 7—Protection from civil and criminal**
2 **proceedings**
3

4 **111 Protection from civil proceedings—service providers**

5 *Hosting service provider*

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

9 *Live content service provider*

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

13 *Links service provider*

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

17 **112 Protection from criminal proceedings—ACMA, Classification**
18 **Board and Classification Review Board**

- 19 (1) For the purposes of this clause, each of the following is a *protected*
20 *person*:

- 21 (a) the ACMA;
22 (b) a member or associate member of the ACMA;
23 (c) a member of the staff of the ACMA;
24 (d) a consultant engaged to assist in the performance of the
25 ACMA's broadcasting, content and datacasting functions (as
26 defined in the *Australian Communications and Media*
27 *Authority Act 2005*);
28 (e) an officer whose services are made available to the ACMA
29 under paragraph 55(1)(a) of the *Australian Communications*
30 *and Media Authority Act 2005*;
31 (f) a member or temporary member of the Classification Board;

- 1 (g) a member of staff assisting the Classification Board or
2 Classification Review Board as mentioned in section 88A of
3 the *Classification (Publications, Films and Computer*
4 *Games) Act 1995*;
- 5 (h) a consultant engaged to assist in the performance of the
6 functions of the Classification Board or the functions of the
7 Classification Review Board;
- 8 (i) an officer whose services are made available to the
9 Classification Board under subsection 54(3) of the
10 *Classification (Publications, Films and Computer Games)*
11 *Act 1995*;
- 12 (j) a member of the Classification Review Board.
- 13 (2) Criminal proceedings do not lie against a protected person for or in
14 relation to:
- 15 (a) the collection of content or material; or
16 (b) the possession of content or material; or
17 (c) the distribution of content or material; or
18 (d) the delivery of content or material; or
19 (e) the copying of content or material; or
20 (f) the doing of any other thing in relation to content or material;
21 in connection with the exercise of a power, or the performance of a
22 function, conferred on the ACMA, the Classification Board or the
23 Classification Review Board by this Schedule or Schedule 5 to this
24 Act.
- 25 *Definition*
- 26 (3) In this clause:
- 27 ***possession*** includes have in custody or control.

Part 8—Review of decisions

113 Review by the Administrative Appeals Tribunal

Decisions under Division 3 of Part 3

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

Decisions under Division 4 of Part 3

- (3) An application may be made to the Administrative Appeals Tribunal for a review of any of the following decisions made by the ACMA:
 - (a) a decision to give a live content service provider an interim service-cessation notice;
 - (b) a decision to give a live content service provider a final service-cessation notice;
 - (c) a decision under subclause 56(2) or (3) to apply to the Classification Board for classification of content provided by a live content service.
- (4) An application under subclause (3) may only be made by the live content service provider concerned.

Decisions under Division 5 of Part 3

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

Decisions under clause 85

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

Decisions under clause 89

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

Decisions under subclause 104(5) or clause 108

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

Part 9—Miscellaneous

114 Additional ACMA functions

The ACMA has the following functions:

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

- (i) multilateral codes of practice; and
- (ii) content labelling technologies;
- (f) to inform itself and advise the Minister on technological developments and service trends in the commercial content services industry.

115 Recordings of content etc.

Recordings of live content

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

Copies of stored content

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

Copyright

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

116 Samples of content to be submitted for classification

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

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

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

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

118 Review

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

119 This Schedule does not limit Schedule 5

This Schedule does not limit the operation of Schedule 5.

1 **120 This Schedule does not limit the *Telecommunications Act 1997***

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

4 **121 Implied freedom of political communication**

5 (1) This Schedule does not apply to the extent (if any) that it would
6 infringe any constitutional doctrine of implied freedom of political
7 communication.

8 (2) Subclause (1) does not limit the application of section 15A of the
9 *Acts Interpretation Act 1901* to this Act.

10 **122 Concurrent operation of State and Territory laws**

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

15 **123 Schedule not to affect performance of State or Territory**
16 **functions**

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

21 ***Criminal Code Act 1995***

22 **78 Subparagraph 474.21(4)(a)(i) of the *Criminal Code***

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

24 **79 Paragraph 474.21(4)(a) of the *Criminal Code***

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

27 **80 Subparagraph 474.24(4)(a)(i) of the *Criminal Code***

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

1 **81 Paragraph 474.24(4)(a) of the *Criminal Code***

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

4 ***Export Market Development Grants Act 1997***

5 **82 Section 40 (cell at table item 18, column headed**
6 **“Expense”)**

7 Repeal the cell, substitute:

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

8 **83 Section 57A**

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

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

14 **84 Section 57A (note)**

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

16 **85 Section 107**

17 Insert:

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

20 **86 Section 107 (definition of *Internet content*)**

21 Repeal the definition.

22 **87 Section 107 (definition of *potential prohibited content*)**

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

24 **88 Section 107 (definition of *prohibited content*)**

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

26 ***Freedom of Information Act 1982***

1 **89 Subsection 4(1)**

2 Insert:

3 *exempt content-service document* means:

- 4 (a) a document containing content, or a record of content (within
5 the meaning of Schedule 7 to the *Broadcasting Services Act*
6 1992), that:
- 7 (i) has been delivered by, or accessed using, a content
8 service (within the meaning of that Schedule); and
9 (ii) was offensive content-service content when it was
10 delivered by, or accessed using, that content service; or
- 11 (b) a document that sets out how to access, or that is likely to
12 facilitate access to, offensive content-service content (for
13 example, by setting out the name of an Internet site, an IP
14 address, a URL or a password).

15 **90 Subsection 4(1)**

16 Insert:

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

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

27 **91 Subsection 4(1) (paragraphs (a) and (b) of the definition of**
28 ***offensive Internet content*)**

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

31 **92 Division 1 of Part II of Schedule 2 (item relating to the**
32 **Attorney-General’s Department)**

33 Repeal the item, substitute:

34 Attorney-General’s Department, in relation to:

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

11 **93 Division 1 of Part II of Schedule 2 (item relating to the**
12 **Australian Communications and Media Authority)**

13 Repeal the item, substitute:

14 Australian Communications and Media Authority, in relation to:

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

21 **94 Division 1 of Part II of Schedule 2 (items relating to the**
22 **Classification Board and the Classification Review**
23 **Board)**

24 Repeal the items, substitute:

25 Classification Board, in relation to:

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

32 Classification Review Board, in relation to:

- 33 (a) exempt content-service documents concerning the
34 performance of a function, or the exercise of a power, under
35 Schedule 7 to the *Broadcasting Services Act 1992*; and

- 1 (b) exempt Internet-content documents concerning the
2 performance of a function, or the exercise of a power, under
3 Schedule 5 to that Act.

4 ***Interactive Gambling Act 2001***

5 **95 Subsections 36(2) and (3)**

6 After “Schedule 5”, insert “or 7”.

7 ***Telecommunications Act 1997***

8 **96 At the end of Division 1 of Part 13**

9 Add:

10 **275A Location information**

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

22 **97 At the end of subsection 291(1)**

23 Add:

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

29 **98 At the end of subsection 291(2)**

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

7 **99 At the end of subsection 291(3)**

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

Part 2—General application and transitional provisions

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

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

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

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

7 **101 Industry codes and standards under Part 5 of Schedule 5**
8 **to the *Broadcasting Services Act 1992*—Internet service**
9 **providers**

10 (1) This item applies to:

- 11 (a) an industry code registered under Part 5 of Schedule 5 to the
12 *Broadcasting Services Act 1992*; or
13 (b) an industry standard under that Part;

14 if:

- 15 (c) the code or standard was in force immediately before the
16 commencement of this item; and
17 (d) the code or standard relates, in whole or in part, to the
18 Internet service provider section of the Internet industry.

19 (2) The amendments of clause 60 of Schedule 5 to the *Broadcasting*
20 *Services Act 1992* made by this Schedule do not affect the continuity of
21 the code or standard to the extent to which it relates to the Internet
22 service provider section of the Internet industry.

23 (3) However, the Parliament intends that the ACMA should, within 90 days
24 after the commencement of this item, take action under Schedule 5 to
25 the *Broadcasting Services Act 1992* directed towards ensuring
26 compliance with clause 60 of that Schedule as amended by this
27 Schedule.

28 **102 Industry codes and standards under Part 5 of Schedule 5**
29 **to the *Broadcasting Services Act 1992*—Internet**
30 **content hosts**

31 (1) This item applies to:

- 32 (a) an industry code registered under Part 5 of Schedule 5 to the
33 *Broadcasting Services Act 1992*; or
34 (b) an industry standard under that Part;

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

12 **103 Transfer of complaints made under repealed subclauses**

13 **22(1) and (2) of Schedule 5 to the *Broadcasting***

14 ***Services Act 1992***

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

29 **104 Transfer of certain investigations under repealed**

30 **clause 27 of Schedule 5 to the *Broadcasting Services***

31 ***Act 1992***

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

- 1 (a) the investigation started before the commencement of this
2 item; and
3 (b) the investigation is pending immediately before the
4 commencement of this item; and
5 (c) the investigation relates to a matter covered by
6 paragraph (1)(a) or (b) of that clause.

- 7 (2) Schedule 7 to the *Broadcasting Services Act 1992* has effect as if
8 clause 44 of that Schedule included a provision that authorised the
9 ACMA to investigate the matter under that clause.

10 **105 Application of amendments—*Export Market***
11 ***Development Grants Act 1997***

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

Part 3—Special transitional provisions

106 Transitional—pre-commencement training of content assessors

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

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

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

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

Schedule 2—Other content amendments

Part 1—Amendments

Broadcasting Services Act 1992

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

Repeal the paragraph.

Telecommunications Act 1997

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

Repeal the paragraph.

Telecommunications (Consumer Protection and Service Standards) Act 1999

3 Section 158A

Repeal the section, substitute:

158A Simplified outline

The following is a simplified outline of this Part:

- This Part regulates the prefixes of numbers used by telephone sex services.
- The supply of other goods and services must not be tied to the supply of a telephone sex service.

4 Subsection 158B(2)

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

1 **5 Subsection 158B(6)**

2 Repeal the subsection.

3 **6 Section 158D**

4 Repeal the section.

5 **7 Paragraphs 158E(1)(a), (b), (c) and (d)**

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

7 **8 Section 158G**

8 Repeal the section.

9 **9 Subsection 158N(1)**

10 Omit “(1)”.

11 **10 Subsection 158N(2)**

12 Repeal the subsection.

Part 2—Transitional provision

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

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

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Schedule 3—Miscellaneous amendments

Telecommunications (Consumer Protection and Service Standards) Act 1999

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

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

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

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