

EXPOSURE DRAFT

2025-2026

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT (07/09/2026)

Online Safety Amendment (Digital Duty of Care) Bill 2026

No. , 2026

*(Infrastructure, Transport, Regional Development, Communications, Sport and the
Arts)*

**A Bill for an Act to amend the *Online Safety Act
2021*, and for related purposes**

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1 **A Bill for an Act to amend the *Online Safety Act***
2 ***2021*, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Online Safety Amendment (Digital Duty of Care)*
6 *Act 2026*.

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

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Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	The day after this Act receives the Royal Assent.	
3. Schedules 2 and 3	The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent.	
1	Note:	This table relates only to the provisions of this Act as originally
2		enacted. It will not be amended to deal with any later amendments of
3		this Act.
4	(2)	Any information in column 3 of the table is not part of this Act.
5		Information may be inserted in this column, or information in it
6		may be edited, in any published version of this Act.
7	3 Schedules	
8	Legislation 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9	repealed as set out in the applicable items in the Schedule	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.	

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Notices for certain material and disclosure of information **Schedule 1**
Take down notices **Part 1**

Schedule 1—Notices for certain material and disclosure of information

Part 1—Take down notices

Division 1—Fake nude material

Online Safety Act 2021

1 Section 5 (after paragraph (e) of the definition of *removal notice*)

Insert:

(ea) section 86B; or

2 After Part 6

Insert:

Part 6A—Fake nude material

86A Simplified outline of this Part

- to be drafted.

86B Removal of fake nude material

- (1) This section applies if the Commissioner is satisfied, on reasonable grounds, that an app or website:
- (a) was designed for the predominant purpose of generating fake nude material; or
 - (b) is being predominantly used to generate fake nude material.

Removal notice given to provider

- (2) The Commissioner may give the provider of an app distribution service or an internet search engine service a written notice (a

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Schedule 1 Notices for certain material and disclosure of information

Part 1 Take down notices

1 *removal notice*), requiring the provider to do one or more of the
2 following:

- 3 (a) remove the app;
4 (b) remove links to the app or website;
5 (c) remove advertising for, information about, or access to, the
6 app or website.

7 **86C Compliance with removal notice**

8 The provider of an app distribution service or an internet search
9 engine service must comply with a removal notice given under
10 section 86B, to the extent that the provider is capable of doing so,
11 within:

- 12 (a) 24 hours after the notice was given to the provider; or
13 (b) such longer period as the Commissioner allows.

14 Civil penalty: 6,000 penalty units.

15 Note: For continuing contraventions of civil penalty provisions, see
16 section 93 of the Regulatory Powers Act.

17 **86D Formal warning**

18 The Commissioner may issue a formal warning if a person
19 contravenes section 86C.

20 **3 After paragraph 163(1)(h)**

21 Insert:

- 22 (ha) section 86C;

23 **4 After paragraph 164(1)(h)**

24 Insert:

- 25 (ha) section 86C;

26 **5 After paragraph 165(1)(i)**

27 Insert:

- 28 (ia) section 86C;

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Notices for certain material and disclosure of information **Schedule 1**
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6 After paragraph 182(4)(i)

Insert:

(ia) section 86B;

7 After paragraph 183(2)(i)

Insert:

(ia) the number of notices given by the Commissioner under section 86B during that year;

8 After subsection 220(10A)

Insert:

Fake nude material removal notice

(10B) An application may be made to the Administrative Review Tribunal for a review of a decision of the Commissioner under section 86B to give the provider of an app distribution service or an internet search engine service a removal notice.

Division 2—Removal notice powers

Online Safety Act 2021

9 Section 5

Insert:

reposted: see subsection 65(2E).

10 After subsection 30(4)

Insert:

(4A) Subsection (4) does not apply if the Commissioner:

(a) has waived the requirement for a complaint to have been made to the provider of the service (see subsection 65(2A));
or

(b) is able to give the removal notice without a complaint having been made to the provider of the service (see subsection 65(2C)).

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Schedule 1 Notices for certain material and disclosure of information

Part 1 Take down notices

11 After subsection 36(3)

Insert:

(3A) Subsection (3) does not apply if the Commissioner:

- (a) has waived the requirement for a complaint to have been made to the provider of the service (see subsection 88(2A)); or
- (b) is able to give the removal notice without a complaint having been made to the provider of the service (see subsection 88(2C)).

12 Subparagraph 65(1)(c)(i)

Omit “48 hours”, substitute “24 hours”.

13 After subsection 65(2)

Insert:

Complaint to provider may be waived

(2A) The Commissioner may, on application, waive the requirement for a complaint to have been made to the provider of the service if the Commissioner is satisfied:

- (a) that the service does not have a functional or accessible complaints mechanism; or
- (b) that requiring the complaint to be made would create a reasonably foreseeable risk of further harm.

(2B) If the Commissioner waives the requirement, paragraphs (1)(b) and (c) do not apply.

When complaint to service provider is not required

(2C) The Commissioner may also give a removal notice under this section in relation to material without a complaint having been made to the provider of the service if:

- (a) a removal notice was given under this section in relation to the material within the previous 6 months; and
- (b) the material has been reposted.

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Notices for certain material and disclosure of information **Schedule 1**
Take down notices **Part 1**

(2D) If the Commissioner is able to give the removal notice without a complaint having been made to the provider of the service, paragraphs (1)(b) and (c) do not apply.

(2E) Material can be *reposted* even if it has been altered, including by:

- (a) making the material longer or shorter; or
- (b) posting the material in a different form, such as screenshots; or
- (c) cropping or adding to the material; or
- (d) changing or removing text, dialogue or commentary.

14 Subparagraph 66(1)(c)(i)

Omit “48 hours”, substitute “24 hours”.

15 After subsection 66(2)

Insert:

Complaint to provider may be waived

(2A) The Commissioner may, on application, waive the requirement for a complaint to have been made to the provider of the service if the Commissioner is satisfied:

- (a) that the service does not have a functional or accessible complaints mechanism; or
- (b) that requiring the complaint to be made would create a reasonably foreseeable risk of further harm.

(2B) If the Commissioner waives the requirement, paragraphs (1)(b) and (c) do not apply.

When complaint to service provider is not required

(2C) The Commissioner may also give a removal notice under this section in relation to material without a complaint having been made to the provider of the service if:

- (a) a removal notice was given under this section in relation to the material within the previous 6 months; and
- (b) the material has been reposted.

Note: Material can be *reposted* even if it has been altered: see subsection 65(2E).

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Schedule 1 Notices for certain material and disclosure of information

Part 1 Take down notices

- 1 (2D) If the Commissioner is able to give the removal notice without a
2 complaint having been made to the provider of the service,
3 paragraphs (1)(b) and (c) do not apply.

4 **16 Subparagraph 88(1)(d)(i)**

- 5 Omit “48 hours”, substitute “24 hours”.

6 **17 After subsection 88(2)**

7 *Complaint to provider may be waived*

- 8 (2A) The Commissioner may, on application, waive the requirement for
9 a complaint to have been made to the provider of the service if the
10 Commissioner is satisfied:

- 11 (a) that the service does not have a functional or accessible
12 complaints mechanism; or
13 (b) that requiring the complaint to be made would create a
14 reasonably foreseeable risk of further harm.

- 15 (2B) If the Commissioner waives the requirement, paragraphs (1)(c) and
16 (d) do not apply.

17 *When complaint to service provider is not required*

- 18 (2C) The Commissioner may also give a removal notice under this
19 section in relation to material without a complaint having been
20 made to the provider of the service if:

- 21 (a) a removal notice was given under this section in relation to
22 the material within the previous 6 months; and
23 (b) the material has been reposted.

24 Note: Material can be **reposted** even if it has been altered: see
25 subsection 65(2E).

- 26 (2D) If the Commissioner is able to give the removal notice without a
27 complaint having been made to the provider of the service,
28 paragraphs (1)(c) and (d) do not apply.

29 **18 Subparagraph 89(1)(d)(i)**

- 30 Omit “48 hours”, substitute “24 hours”.
-

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Notices for certain material and disclosure of information **Schedule 1**
Take down notices **Part 1**

19 After subsection 89(2)

Complaint to provider may be waived

(2A) The Commissioner may, on application, waive the requirement for a complaint to have been made to the provider of the service if the Commissioner is satisfied:

- (a) that the service does not have a functional or accessible complaints mechanism; or
- (b) that requiring the complaint to be made would create a reasonably foreseeable risk of further harm.

(2B) If the Commissioner waives the requirement, paragraphs (1)(c) and (d) do not apply.

When complaint to service provider is not required

(2C) The Commissioner may also give a removal notice under this section in relation to material without a complaint having been made to the provider of the service if:

- (a) a removal notice was given under this section in relation to the material within the previous 6 months; and
- (b) the material has been reposted.

Note: Material can be **reposted** even if it has been altered: see subsection 65(2E).

(2D) If the Commissioner is able to give the removal notice without a complaint having been made to the provider of the service, paragraphs (1)(c) and (d) do not apply.

20 Subparagraph 90(1)(d)(i)

Omit “48 hours”, substitute “24 hours”.

21 After subsection 90(2)

Insert:

Complaint to provider may be waived

(2A) The Commissioner may, on application, waive the requirement for a complaint to have been made to the provider of the service if the Commissioner is satisfied:

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Schedule 1 Notices for certain material and disclosure of information

Part 1 Take down notices

- 1 (a) that the service does not have a functional or accessible
2 complaints mechanism; or
3 (b) that requiring the complaint to be made would create a
4 reasonably foreseeable risk of further harm.
- 5 (2B) If the Commissioner waives the requirement, paragraphs (1)(c) and
6 (d) do not apply.
- 7 *When complaint to service provider is not required*
- 8 (2C) The Commissioner may also give a removal notice under this
9 section in relation to material without a complaint having been
10 made to the provider of the service if:
11 (a) a removal notice was given under this section in relation to
12 the material within the previous 6 months; and
13 (b) the material has been reposted.
- 14 Note: Material can be *reposted* even if it has been altered: see
15 subsection 65(2E).
- 16 (2D) If the Commissioner is able to give the removal notice without a
17 complaint having been made to the provider of the service,
18 paragraphs (1)(c) and (d) do not apply.

22 Application of provisions

- 19 The amendments made by this Schedule to subparagraphs 65(1)(c)(i),
20 66(1)(c)(i), 88(1)(d)(i), 89(1)(d)(i) and 90(1)(d)(i) of the *Online Safety*
21 *Act 2021* do not apply in relation to complaints made to the provider of
22 a service before the commencement of this item.
23

24 Division 3—Links to certain material

25 *Online Safety Act 2021*

26 23 Section 5 (definition of *link deletion notice*)

- 27 Repeal the definition, substitute:
28 *link deletion notice* means a notice under:
29 (a) section 72A; or
30 (b) section 82; or
31 (c) section 92A; or
-

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Notices for certain material and disclosure of information **Schedule 1**
Take down notices **Part 1**

(d) section 124.

24 After section 72

Insert:

72A Link deletion notices

(1) If:

- (a) a person provides an internet search engine service; and
- (b) end-users in Australia can access cyber-bullying material targeted at an Australian child using a link provided by the service;

the Commissioner may give the provider of the service a written notice (the **link deletion notice**), requiring the provider to:

- (c) cease providing a link to the material using the service; and
- (d) do so within:
 - (i) 24 hours after the notice was given to the provider; or
 - (ii) such longer period as the Commissioner allows.

(2) Before the Commissioner gives the link deletion notice, the Commissioner must be reasonably satisfied that giving the notice is appropriate in the circumstances.

(3) So far as is reasonably practicable, the material must be identified in the link deletion notice in a way that is sufficient to enable the internet search engine service provider to cease providing a link to the material.

(4) The link deletion notice may also require the internet search engine service provider to:

- (a) notify the Commissioner that the provider has ceased to provide a link to the material; and
- (b) do so as soon as practicable after the cessation.

(5) The Commissioner must not give the link deletion notice unless a removal notice has been given in relation to the material under section 65 or 66.

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Schedule 1 Notices for certain material and disclosure of information

Part 1 Take down notices

72B Compliance with link deletion notice

A person must comply with a requirement under a link deletion notice given under section 72A to the extent that the person is capable of doing so.

Civil penalty: 6,000 penalty units.

Note: For continuing contraventions of civil penalty provisions, see section 93 of the Regulatory Powers Act.

72C Formal warning

The Commissioner may issue a formal warning if a person contravenes section 72B.

72D Revocation of link deletion notice

The Commissioner must, as soon as practicable by written notice, revoke a link deletion notice given to the provider of an internet search engine service in relation to cyber-bullying material targeted at an Australian child under section 72A if:

- (a) each outstanding removal notice given in relation to the material under section 65 or 66 has been complied with; or
- (b) the Commissioner is satisfied that the link deletion notice is no longer required.

25 After Division 3 of Part 6

Insert:

Division 3A—Link deletion notices

82 Link deletion notice

(1) If:

- (a) a person provides an internet search engine service; and
- (b) end-users in Australia can access an intimate image of a person using a link provided by the service;

the Commissioner may give the provider of the service a written notice (the *link deletion notice*), requiring the provider to:

- (c) cease providing a link to the image using the service; and

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Notices for certain material and disclosure of information **Schedule 1**
Take down notices **Part 1**

- 1 (d) do so within:
2 (i) 24 hours after the notice was given to the provider; or
3 (ii) such longer period as the Commissioner allows.
- 4 (2) Before the Commissioner gives the link deletion notice, the
5 Commissioner must be reasonably satisfied that giving the notice is
6 appropriate in the circumstances.
- 7 (3) So far as is reasonably practicable, the image must be identified in
8 the link deletion notice in a way that is sufficient to enable the
9 internet search engine service provider to cease providing a link to
10 the image.
- 11 (4) The link deletion notice may also require the internet search engine
12 service provider to:
13 (a) notify the Commissioner that the provider has ceased to
14 provide a link to the image; and
15 (b) do so as soon as practicable after the cessation.
- 16 (5) The Commissioner must not give the link deletion notice unless a
17 removal notice has been given in relation to the image under
18 section 77, 78 or 79.

82A Compliance with link deletion notice

20 A person must comply with a requirement under a link deletion
21 notice given under section 82 to the extent that the person is
22 capable of doing so.

23 Civil penalty: 6,000 penalty units.

24 Note: For continuing contraventions of civil penalty provisions, see
25 section 93 of the Regulatory Powers Act.

82B Formal warning

27 The Commissioner may issue a formal warning if a person
28 contravenes section 82A.

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Schedule 1 Notices for certain material and disclosure of information

Part 1 Take down notices

82C Revocation of link deletion notice

The Commissioner must, as soon as practicable by written notice, revoke a link deletion notice given to the provider of an internet search engine service in relation to an intimate image under section 82 if:

- (a) each outstanding removal notice given in relation to the image under section 77, 78 or 79 has been complied with; or
- (b) the Commissioner is satisfied that the link deletion notice is no longer required.

26 After section 92

Insert:

92A Link deletion notices

(1) If:

- (a) a person provides an internet search engine service; and
- (b) end-users in Australia can access cyber-abuse material targeted at an Australian adult using a link provided by the service;

the Commissioner may give the provider of the service a written notice (the ***link deletion notice***), requiring the provider to:

- (c) cease providing a link to the material using the service; and
- (d) do so within:
 - (i) 24 hours after the notice was given to the provider; or
 - (ii) such longer period as the Commissioner allows.

(2) Before the Commissioner gives the link deletion notice, the Commissioner must be reasonably satisfied that giving the notice is appropriate in the circumstances.

(3) So far as is reasonably practicable, the material must be identified in the link deletion notice in a way that is sufficient to enable the internet search engine service provider to cease providing a link to the material.

(4) The link deletion notice may also require the internet search engine service provider to:

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Notices for certain material and disclosure of information **Schedule 1**
Take down notices **Part 1**

- 1 (a) notify the Commissioner that the provider has ceased to
2 provide a link to the material; and
3 (b) do so as soon as practicable after the cessation.
- 4 (5) The Commissioner must not give the link deletion notice unless a
5 removal notice has been given in relation to the material under
6 section 88, 89 or 90.

7 **92B Compliance with link deletion notice**

8 A person must comply with a requirement under a link deletion
9 notice given under section 92A to the extent that the person is
10 capable of doing so.

11 Civil penalty: 6,000 penalty units.

12 Note: For continuing contraventions of civil penalty provisions, see
13 section 93 of the Regulatory Powers Act.

14 **92C Formal warning**

15 The Commissioner may issue a formal warning if a person
16 contravenes section 92B.

17 **92D Revocation of link deletion notice**

18 The Commissioner must, as soon as practicable by written notice,
19 revoke a link deletion notice given to the provider of a search
20 engine service in relation to cyber-abuse material targeted at an
21 Australian adult under section 92A if:

- 22 (a) each outstanding removal notice given in relation to the
23 material under section 88, 89 or 90 has been complied with;
24 or
25 (b) the Commissioner is satisfied that the link deletion notice is
26 no longer required.

27 **27 After subsection 124(1)**

28 Insert:

- 29 (1A) Before the Commissioner gives the link deletion notice, the
30 Commissioner must be reasonably satisfied that giving the notice is
31 appropriate in the circumstances.

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Schedule 1 Notices for certain material and disclosure of information

Part 1 Take down notices

28 Subsection 124(4)

Repeal the subsection, substitute:

- (4) The Commissioner must not give the link deletion unless a removal notice has been given in relation to the material under section 109 or 110.

29 Section 125

After “link deletion notice”, insert “given under section 124”.

30 Section 127

Repeal the section, substitute:

127 Revocation of link deletion notice

The Commissioner must, as soon as practicable by written notice, revoke a link deletion notice given to the provider of an internet search engine service in relation to class 1 material under section 124 if:

- (a) each outstanding removal notice given in relation to the material under section 109 or 110 has been complied with; or
(b) the Commissioner is satisfied that the link deletion notice is no longer required.

31 After paragraph 163(1)(e)

Insert:

- (ea) section 72B;

32 After paragraph 163(1)(g)

Insert:

- (ga) section 82A;

33 After paragraph 163(1)(i)

Insert:

- (ia) section 92B;

34 After paragraph 164(1)(e)

Insert:

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Notices for certain material and disclosure of information **Schedule 1**
Take down notices **Part 1**

1 (ea) section 72B;

2 **35 After paragraph 164(1)(g)**

3 Insert:

4 (ga) section 82A;

5 **36 After paragraph 164(1)(i)**

6 Insert:

7 (ia) section 92B;

8 **37 After paragraph 165(1)(f)**

9 Insert:

10 (fa) section 72B;

11 **38 After paragraph 165(1)(h)**

12 Insert:

13 (ha) section 82A;

14 **39 Paragraph 165(1)(j) (second occurring)**

15 Repeal the paragraph, substitute:

16 (ja) section 92B;

17 (k) section 103;

18 **40 After paragraph 183(2)(e)**

19 Insert:

20 (ea) the number of notices given by the Commissioner under
21 section 72A during that year;

22 **41 After paragraph 183(2)(h)**

23 Insert:

24 (ha) the number of notices given by the Commissioner under
25 section 82 during that year;

26 **42 After paragraph 183(2)(l)**

27 Insert:

28 (laa) the number of notices given by the Commissioner under
29 section 92A during that year;

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Schedule 1 Notices for certain material and disclosure of information

Part 1 Take down notices

- 1 **43 Subsection 220(15)**
2 Omit “section 124”, substitute “section 72A, 82, 92A or 124”.

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Notices for certain material and disclosure of information **Schedule 1**
Disclosure of information **Part 2**

1 **Part 2—Disclosure of information**

2 ***Online Safety Act 2021***

3 **44 Paragraphs 212(1)(a) to (f)**

4 Repeal the paragraphs, substitute:

5 (a) a Commonwealth entity (within the meaning of the *Public*
6 *Governance, Performance and Accountability Act 2013*);

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Schedule 1 Notices for certain material and disclosure of information

Part 3 Other amendments of the Online Safety Act 2021

Part 3—Other amendments of the Online Safety Act 2021

Online Safety Act 2021

45 Section 5

Insert:

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

46 Subsection 63DA(3) (note)

Omit “*Regulatory Powers (Standard Provisions) Act 2014*”, substitute “Regulatory Powers Act”.

47 Subsection 63DB(2) (note)

Omit “*Regulatory Powers (Standard Provisions) Act 2014*”, substitute “Regulatory Powers Act”.

48 Subsections 75(2), (3) and (4) (notes)

Omit “*Regulatory Powers (Standard Provisions) Act 2014*”, substitute “Regulatory Powers Act”.

49 Subsection 143(3)

Omit “*Regulatory Powers (Standard Provisions) Act 2014*”, substitute “Regulatory Powers Act”.

50 Subsection 146(2)

Omit “*Regulatory Powers (Standard Provisions) Act 2014*”, substitute “Regulatory Powers Act”.

51 Section 161

Omit “*Regulatory Powers (Standard Provisions) Act 2014*”, substitute “Regulatory Powers Act”.

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Notices for certain material and disclosure of information **Schedule 1**
Other amendments of the Online Safety Act 2021 **Part 3**

1 **52 Subsection 162(1)**

2 Omit “*Regulatory Powers (Standard Provisions) Act 2014*”, substitute
3 “Regulatory Powers Act”.

4 **53 Subsection 162(1) (note)**

5 Omit “*Regulatory Powers (Standard Provisions) Act 2014*”, substitute
6 “Regulatory Powers Act”.

7 **54 Subsections 162(2), (3) and (4)**

8 Omit “*Regulatory Powers (Standard Provisions) Act 2014*”, substitute
9 “Regulatory Powers Act”.

10 **55 Subsection 163(1)**

11 Omit “*Regulatory Powers (Standard Provisions) Act 2014*”, substitute
12 “Regulatory Powers Act”.

13 **56 Subsection 163(1) (note)**

14 Omit “*Regulatory Powers (Standard Provisions) Act 2014*”, substitute
15 “Regulatory Powers Act”.

16 **57 Subsections 163(2), (3), (4) and (6)**

17 Omit “*Regulatory Powers (Standard Provisions) Act 2014*”, substitute
18 “Regulatory Powers Act”.

19 **58 Subsections 164(1), (2), (3) and (4)**

20 Omit “*Regulatory Powers (Standard Provisions) Act 2014*”, substitute
21 “Regulatory Powers Act”.

22 **59 Subsections 165(1), (2), (3) and (4)**

23 Omit “*Regulatory Powers (Standard Provisions) Act 2014*”, substitute
24 “Regulatory Powers Act”.

25 **60 Subsection 182(5)**

26 Omit “*Regulatory Powers (Standard Provisions) Act 2014*”, substitute
27 “Regulatory Powers Act”.

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Schedule 1 Notices for certain material and disclosure of information

Part 3 Other amendments of the Online Safety Act 2021

1 **61 Subsections 205(3) and (4) (notes)**

2 Omit “*Regulatory Powers (Standard Provisions) Act 2014*”, substitute
3 “Regulatory Powers Act”.

4 **62 Paragraph 228(b)**

5 Omit “*Regulatory Powers (Standard Provisions) Act 2014*”, substitute
6 “Regulatory Powers Act”.

7 **63 Paragraphs 229(1)(b) and (d)**

8 Omit “*Regulatory Powers (Standard Provisions) Act 2014*”, substitute
9 “Regulatory Powers Act”.

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Digital duty of care **Schedule 2**
Amendments of the Online Safety Act 2021 **Part 1**

Schedule 2—Digital duty of care

Part 1—Amendments of the Online Safety Act 2021

Online Safety Act 2021

1 Section 3

Repeal the section, substitute:

3 Objects of this Act

The objects of this Act are to improve and promote online safety for Australians by:

- (a) imposing a duty on persons responsible for online services to ensure a safe online environment; and
- (b) protecting Australian children online; and
- (c) providing complaints schemes or mechanisms to quickly investigate, remove and remediate illegal or seriously harmful material; and
- (d) providing for an eSafety Commissioner to promote, monitor, investigate and enforce compliance with this Act.

2 Section 4

Repeal the section, substitute:

4 Simplified outline of this Act

- to be drafted.

3 Section 5 (note to the definition of *Commissioner*)

Omit “section 26”, substitute “section 166A”.

4 Section 5

Insert:

approved researcher: see subsection 205B(1).

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Schedule 2 Digital duty of care

Part 1 Amendments of the Online Safety Act 2021

1 *Australian university* means a registered higher education provider
2 that, for the purposes of the *Tertiary Education Quality and*
3 *Standards Agency Act 2011*, is registered in the “Australian
4 University” provider category.

5 **Section 5 (definition of *basic online safety expectations*)**

6 Repeal the definition.

7 **Section 5**

8 Insert:

9 *data access rules*: see subsection 205C(2).

10 *data access scheme*: see subsection 205C(1).

11 *design feature*: see subsection 25F(1).

12 *digital duty of care*: see subsection 26(2).

13 *endless-feed feature*: see subsection 25F(4).

14 *feedback feature*: see subsection 25F(5).

15 *harm*: see section 25E.

16 *harmful to children*: see section 25D.

17 *logged-in feature*: see subsection 25F(3).

18 *negative behavioural impacts*: see section 25G.

19 *online safety related research*: see subsection 205B(3).

20 *online service*: see subsection 25A(1).

21 *prescribed online service*: see subsection 26F(2).

22 *reasonably practicable* in relation to a person’s digital duty of
23 care: see section 25H.

24 *recommender feature*: see subsection 25F(2).

25 *responsible* for an online service: see subsection 25A(2).

26 *safe online environment*: see section 25B.

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seriously harmful material and conduct: see section 25C.

sock puppet identity: see section 205G.

time-limited feature: see subsection 25F(6).

transparency reports: see subsection 192C(1).

user empowerment tool: see subsection 26(6).

7 Part 2

Repeal the Part, substitute:

Part 2—Digital duty of care

Division 1—Introduction

25 Simplified outline of this Part

- to be drafted.

Division 2—Key concepts

25A Online services

(1) Each of the following is an *online service*:

- (a) an internet carriage service;
- (b) a social media service;
- (c) a relevant electronic service;
- (d) a designated internet service;
- (e) a hosting service;
- (f) an internet search engine service;
- (g) an app distribution service;
- (h) a service that manufactures, supplies, maintains or installs equipment for use in Australia in connection with any of the following:
 - (i) a social media service;
 - (ii) a relevant electronic service;

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- 1 (iii) a designated internet service;
2 (iv) an internet carriage service;
3 (j) a service that allows users to:
4 (i) generate material by means of artificial intelligence; and
5 (ii) share that material by means of a service mentioned in
6 paragraphs (a) to (g).

7 *Who is responsible for an online service*

- 8 (2) Each of the following is a person **responsible** for an online service:
9 (a) a person who provides the service;
10 (b) a person who is in a position to exercise day-to-day control
11 of the service.

12 *Exemptions for online services*

- 13 (3) The Minister may, by legislative instrument, exempt an online
14 service, or a class of online services, from the operation of one or
15 more provisions of this Part if the Minister is satisfied that the
16 service, or class of services:
17 (a) pose little risk to users of the service in Australia; or
18 (b) are used minimally in Australia.

19 Note: The exemption may, for example, exempt an online service from
20 paragraph 26(3)(b) (requirement to conduct risk assessments).

- 21 (4) The exemption may be subject to such conditions (if any) being
22 satisfied, or such requirements (if any) being met, as are specified
23 in the exemption.
24 (5) The exemption has effect accordingly.

25 **25B A safe online environment**

- 26 (1) A **safe online environment** is an online environment in which:
27 (a) persons in Australia are protected from seriously harmful
28 material and conduct; and
29 (b) children in Australia are protected from:
30 (i) material and conduct that is harmful to children; and
31 (ii) harms associated with the operation of design features
32 of online services; and

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- 1 (c) if the service concerned is a social media service—design
2 features of the service that have negative behavioural impacts
3 do not operate for children in Australia who have not reached
4 16 years of age.

5 *Social media services covered*

- 6 (2) The Minister may, by legislative instrument, determine that an
7 online service:
8 (a) is a social media service for the purposes of this section; or
9 (b) is not a social media service for the purposes of this section.
- 10 (3) The determination:
11 (a) has effect accordingly; but
12 (b) does not otherwise limit the definition of *social media*
13 *service*.

14 Note: For *social media service*, see section 13.

15 **25C Seriously harmful material and conduct**

- 16 (1) *Seriously harmful material and conduct* means the following:
17 (a) material relating to child sexual exploitation or child sexual
18 abuse, including material that depicts, encourages, promotes,
19 incites or instructs such exploitation or abuse;
20 (b) material or conduct relating to grooming, preparing or
21 procuring a child for sexual activity;
22 (c) material or conduct that encourages, promotes, incites or
23 instructs sexual violence;
24 (d) material or conduct that encourages, promotes, incites or
25 instructs extreme violence or cruelty;
26 (e) explicit threats of physical violence, including threats of rape
27 and death threats;
28 (f) material or conduct that is intended to cause serious harm by
29 menacing or harassing an individual;
30 (g) material or conduct that encourages, promotes, incites or
31 instructs individuals to:
32 (i) commit or consider suicide; or
33 (ii) engage in self-harm; or
34 (iii) engage in sadistic online exploitation; or

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- 1 (iv) cause harm to, or engage in cruelty against, animals;
2 (h) material or conduct that advocates for or supports a listed
3 terrorist organisation (within the meaning of
4 subsection 100.1(1) of the *Criminal Code*);
5 (i) material or conduct that counsels, promotes, encourages,
6 urges or praises a terrorist act (within the meaning of
7 subsection 100.1(1) of the *Criminal Code*);
8 (j) material or conduct that encourages, promotes, incites or
9 provides instruction for the commission of a criminal
10 offence;
11 (k) material or conduct that encourages, promotes, urges or
12 instructs illicit drug use;
13 (l) material or conduct that encourages, promotes, incites or
14 instructs abhorrent violent conduct;
15 (m) any other material or conduct, or combination of material and
16 conduct, that is determined under subsection (2).
17 (2) For the purposes of paragraph (1)(m), the Minister may, by
18 legislative instrument, determine material or conduct, or a
19 combination of material and conduct, that the Minister is satisfied
20 may cause serious harm.

21 **25D Harmful to children**

- 22 (1) The following material and conduct is *harmful to children*:
23 (a) pornography;
24 (b) material or conduct that encourages, promotes or provides
25 instruction for disordered eating;
26 (c) material or conduct that encourages or promotes hostile
27 attitudes towards women or gender equality;
28 (d) material or conduct that glorifies crime or encourages
29 dangerous stunts or harmful practices;
30 (e) abuse, harassment or bullying;
31 (f) any other material or conduct, or combination of material and
32 conduct:
33 (i) that could inflict serious harm to a child; or
34 (ii) that is determined under subsection (2).

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- 1 (2) For the purposes of subparagraph (1)(f)(ii), the Minister may, by
2 legislative instrument, determine material or conduct, or a
3 combination of material and conduct, that the Minister is satisfied
4 may cause harm to children.

5 **25E Harm**

- 6 *Harm* can be caused by:
7 (a) material or conduct (whether or not engaged in or
8 experienced by a user of an online service); or
9 (b) any combination of material and conduct.

10 **25F Design features**

- 11 (1) A *design feature* of an online service includes the following:
12 (a) a recommender feature;
13 (b) a logged-in feature;
14 (c) an endless-feed feature;
15 (d) a feedback feature;
16 (e) a time-limited feature.

17 *Recommender feature*

- 18 (2) An online service has a *recommender feature* if the service can:
19 (a) select material by reference to any information that the
20 service has associated with an end-user's account; and
21 (b) display that material to the end-user while the end-user is
22 using the service.

23 *Logged-in features*

- 24 (3) An online service has a *logged-in feature* if the service:
25 (a) has one or more of the following features:
26 (i) an endless-feed feature;
27 (ii) a feedback feature;
28 (iii) a time-limited feature; and
29 (b) does not enable an end-user to access, or be exposed to, at
30 least one such feature unless the end-user is using the service
31 with an account.

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- 1 (4) An online service has an *endless-feed feature* if the service can
2 display material to an end-user:
3 (a) in a feed of material that has no end-point; or
4 (b) in a feed of material that has an end-point, but to which
5 additional material is added:
6 (i) when that end-point is reached; or
7 (ii) at time intervals; or
8 (iii) in response to the end-user's input.
- 9 (5) An online service has a *feedback feature* if the service can display
10 information to an end-user about:
11 (a) the extent to which other end-users have viewed or otherwise
12 engaged with material posted by the end-user on the service;
13 or
14 (b) the extent to which other end-users have opted to receive
15 notifications about the end-user's account or material posted
16 by the end-user on the service.
- 17 (6) An online service has a *time-limited feature* if the service enables
18 an end-user to view material that is available to be viewed on the
19 service only within a limited period after it has been posted.

20 25G Negative behavioural impacts

- 21 (1) The following design features of online services are taken to have
22 *negative behavioural impacts*:
23 (a) a recommender feature;
24 (b) a logged-in feature;
25 (c) an endless-feed feature;
26 (d) a feedback feed feature;
27 (e) a time limited feature;
28 (f) a design feature determined by the Minister under
29 subsection (2).
- 30 (2) The Minister may, by legislative instrument, determine that a
31 design feature of an online service is taken to have negative
32 behavioural impacts.

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25H Reasonably practicable

Reasonably practicable, in relation to a person's digital duty of care, means that which is, or was at a particular time, reasonably able to be done taking into account and weighing up all relevant matters including:

- (a) the likelihood of the harm concerned occurring; and
- (b) the degree of harm that might result; and
- (c) what the person knows, or ought reasonably to know, about:
 - (i) the harm, and the risk of the harm; and
 - (ii) ways of eliminating or minimising the risk; and
- (d) the availability and suitability of ways to eliminate or minimise the risk; and
- (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk:
 - (i) the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk; and
 - (ii) the impact on the level of privacy that an ordinary reasonable person would expect to be afforded, including whether that impact is grossly disproportionate to the risk.

Division 3—The digital duty of care

26 The digital duty of care

Digital duty of care

- (1) A person responsible for an online service must ensure, so far as is reasonably practicable, a safe online environment.

Note: For ***safe online environment***, see section 25B.

- (2) This requirement is the person's ***digital duty of care***.

Mandatory requirements

- (3) To comply with the digital duty of care, the person must also do the following:

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- 1 (a) manage design features of the service appropriately,
2 including by providing user empowerment tools as required;
3 (b) conduct risk assessments in accordance with section 26A;
4 (c) take effective measures as necessary to address those
5 assessments.

6 Note: Failure to comply with this subsection will constitute a breach of the
7 digital duty of care.

8 *User empowerment tools*

- 9 (4) The Minister may, by legislative instrument, require specified
10 online services to provide specified user empowerment tools.

11 Note: For specification by class, see subsection 13(3) of the *Legislation Act*
12 *2003*.

- 13 (5) The online services or user empowerment tools may (without
14 limitation) be specified by reference to any matter.

15 Note: The user empowerment tool may, for example, be specified by
16 reference to the amount or kind of control the tool gives a user of an
17 online service over the operation of particular design features.

- 18 (6) A ***user empowerment tool*** allows a user of an online service to
19 manage the way design features of the service operate for the user,
20 including, for example, by providing control over the kind of
21 content that is recommended for the user.

22 *Exception for lawful private communications*

- 23 (7) The digital duty of care does not require any action to be taken in
24 relation to lawful communications occurring in private solely
25 between consenting adults.

26 **26A Risk assessments**

- 27 (1) A person who provides an online service must conduct a written
28 assessment of the risk of harm posed by the service in Australia.

- 29 (2) The assessment must:

30 (a) identify:

- 31 (i) all reasonably foreseeable risks, including those relevant
32 to the provider's digital duty of care; and

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- 1 (ii) the content that gives rise to those risks; and
- 2 (iii) the design features of the service that give rise to those
- 3 risks; and
- 4 (iv) other systems or processes that give rise to those risks;
- 5 and
- 6 (v) persons who may be affected by those risks; and
- 7 (b) assess the likelihood and potential severity of those risks; and
- 8 (c) document the measures the person has implemented, or
- 9 proposes to implement, to address those risks; and
- 10 (d) record:
 - 11 (i) the provider's assessment of the expected effectiveness
 - 12 of those measures; and
 - 13 (ii) the basis for that assessment; and
 - 14 (iii) the period for which the measures are expected to be
 - 15 effective; and
 - 16 (iv) the period for which the measures are expected to be in
 - 17 place; and
- 18 (e) provide for regular review and reassessment of the
- 19 effectiveness of those measures; and
- 20 (f) meet any additional requirements determined by the
- 21 Commissioner, including requirements relating to the
- 22 following:
 - 23 (i) the manner and form of the assessment;
 - 24 (ii) detail to be included in the assessment;
 - 25 (iii) standards, benchmarks or other metrics to be used in
 - 26 conducting the assessment;
 - 27 (iv) additional matters to be covered by the assessment.
- 28 (3) The assessment must:
 - 29 (a) be conducted:
 - 30 (i) at least annually, or at shorter intervals determined by
 - 31 the Commissioner; and
 - 32 (ii) before making any changes to the service that could
 - 33 introduce new or additional risks (so as to assess the
 - 34 risks posed by those changes); and
 - 35 (b) be retained for at least 6 years; and

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- 1 (c) be made available to the Commissioner within 30 days after
2 the Commissioner requests it.
- 3 (4) The Commissioner may, by legislative instrument, determine the
4 following:
5 (a) requirements for the purposes of paragraph (2)(f);
6 (b) intervals of less than 12 months for the purposes of
7 subparagraph (3)(a)(i).

8 **26B Compliance with the digital duty of care**

9 A person is liable to a civil penalty if the person fails to comply
10 with the person's digital duty of care.

11 Civil penalty: 60,000 penalty units.

12 **26C Formal warning**

13 The Commissioner may issue a formal warning if the
14 Commissioner reasonably believes that a person has failed, or is
15 failing, to comply with the person's digital duty of care.

16 **26D Remedial directions**

17 *Scope*

- 18 (1) This section applies if the Commissioner reasonably believes that a
19 person has failed, or is failing, to comply with the person's digital
20 duty of care.

21 *Remedial direction*

- 22 (2) The Commissioner may give the person a written direction
23 requiring the person to take specified action directed towards
24 ensuring that the person does not fail, or is unlikely to fail, to
25 comply with that duty in the future.

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

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Civil penalty

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

Civil penalty: 60,000 penalty units.

Remedial direction is not a legislative instrument

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

Division 4—Supporting provisions

26E Digital duty of care guidelines

The Commissioner may publish guidelines to assist persons responsible for online services to meet their digital duty of care.

26F Complaint and dispute processes

- (1) A person responsible for a prescribed online service must:
- (a) have complaint and dispute processes that are available equally to all Australians; and
 - (b) comply with any requirements determined by the Commissioner in relation to those processes.
- (2) A ***prescribed online service*** is an online service in a class of online services determined by the Commissioner under subsection (3).
- (3) The Commissioner may, by legislative instrument, determine:
- (b) requirements for the purposes of paragraph (1)(b); and
 - (a) classes of online services for the purposes of subsection (2).

Civil penalty provision

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 6,000 penalty units.

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1 *Formal warning*

- 2 (5) The Commissioner may issue a formal warning if the
3 Commissioner reasonably believes that a person has contravened,
4 or is contravening, subsection (1).

5 **26G Remedial directions**

6 *Scope*

- 7 (1) This section applies if the Commissioner reasonably believes that a
8 person has contravened, or is contravening, subsection 26F(1).

9 *Remedial direction*

- 10 (2) The Commissioner may give the person a written direction
11 requiring the person to take specified action directed towards
12 ensuring that the person does not contravene, or is unlikely to
13 contravene, subsection 26F(1) in the future.

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

16 *Civil penalty*

- 17 (3) A person must comply with a direction given to the person under
18 subsection (2).

19 Civil penalty: 6,000 penalty units.

20 *Remedial direction is not a legislative instrument*

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

22 **Division 5—Miscellaneous**

23 **27A Advice on operation of Part**

- 24 (1) The Commissioner may give advice to the Minister about the
25 following:
26 (a) emerging categories of harm arising from the use of online
27 services;

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- 1 (b) online services of concern in relation to meeting the digital
2 duty of care;
3 (c) the need to make or amend a legislative instrument under this
4 Part;
5 (d) other matters relating to compliance with, or the operation of,
6 this Part.
- 7 (2) The Commissioner may give the advice on the Commissioner's
8 own initiative, or at the request of the Minister.

9 **27B Minister to seek advice from Commissioner**

- 10 (1) Before making a legislative instrument under or for the purposes of
11 a provision covered by subsection (2), the Minister must seek
12 advice from the Commissioner and have regard to that advice.
- 13 (2) This subsection covers the following provisions:
14 (a) subsection 25A(3) (exemptions for online services);
15 (b) subsection 25C(2) (seriously harmful material and conduct);
16 (c) subsection 25D(2) (material and conduct that is harmful to
17 children);
18 (d) subsection 25G(2) (design features that have negative
19 behavioural impacts).

20 **8 Subsection 31(4)**

21 Omit "Part 14", substitute "Division 2 of Part 13".

22 **9 Subsection 34(4)**

23 Omit "Part 14", substitute "Division 2 of Part 13".

24 **10 Subsection 37(4)**

25 Omit "Part 14", substitute "Division 2 of Part 13".

26 **11 Subsection 42(4)**

27 Omit "Part 14", substitute "Division 2 of Part 13".

28 **12 Part 4**

29 Repeal the Part.

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1 **13 Section 63D (penalty)**

2 Omit “30,000 penalty units”, substitute “60,000 penalty units”.

3 **14 Subsection 63DA(1) (penalty)**

4 Omit “30,000 penalty units”, substitute “60,000 penalty units”.

5 **15 Subsection 63DB(1) (penalty)**

6 Omit “30,000 penalty units”, substitute “60,000 penalty units”.

7 **16 Section 67 (penalty)**

8 Repeal the penalty, substitute:

9 Civil penalty: 6,000 penalty units.

10 Note: For continuing contraventions of civil penalty provisions, see
11 section 93 of the Regulatory Powers Act.

12 **17 Subsection 75(1) (penalty)**

13 Repeal the penalty, substitute:

14 Civil penalty: 6,000 penalty units.

15 Note: For continuing contraventions of civil penalty provisions, see
16 section 93 of the Regulatory Powers Act.

17 **18 Section 80 (penalty)**

18 Repeal the penalty, substitute:

19 Civil penalty: 6,000 penalty units.

20 Note: For continuing contraventions of civil penalty provisions, see
21 section 93 of the Regulatory Powers Act.

22 **19 Subsection 83(3) (penalty)**

23 Repeal the penalty, substitute:

24 Civil penalty: 6,000 penalty units.

25 Note: For continuing contraventions of civil penalty provisions, see
26 section 93 of the Regulatory Powers Act.

27 **20 Section 91 (penalty)**

28 Repeal the penalty, substitute:

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1 Civil penalty: 6,000 penalty units.
2 Note: For continuing contraventions of civil penalty provisions, see
3 section 93 of the Regulatory Powers Act.

4 **21 Section 103 (penalty)**

5 Repeal the penalty, substitute:

6 Civil penalty: 6,000 penalty units.
7 Note: For continuing contraventions of civil penalty provisions, see
8 section 93 of the Regulatory Powers Act.

9 **22 Subsection 104(1)**

10 Omit “Subparagraphs 46(1)(c)(v), (vi), (vii) and (viii) and 46(1)(e)(vi),
11 (vii), (viii) and (ix) and subsections”, substitute “Subsections”.

12 **23 Section 111 (penalty)**

13 Repeal the penalty, substitute:

14 Civil penalty: 6,000 penalty units.
15 Note: For continuing contraventions of civil penalty provisions, see
16 section 93 of the Regulatory Powers Act.

17 **24 Section 116 (penalty)**

18 Repeal the penalty, substitute:

19 Civil penalty: 6,000 penalty units.
20 Note: For continuing contraventions of civil penalty provisions, see
21 section 93 of the Regulatory Powers Act.

22 **25 Section 121 (penalty)**

23 Repeal the penalty, substitute:

24 Civil penalty: 6,000 penalty units.
25 Note: For continuing contraventions of civil penalty provisions, see
26 section 93 of the Regulatory Powers Act.

27 **26 Section 125 (penalty)**

28 Repeal the penalty, substitute:

29 Civil penalty: 6,000 penalty units.

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1 Note: For continuing contraventions of civil penalty provisions, see
2 section 93 of the Regulatory Powers Act.

3 **27 Section 129 (penalty)**

4 Repeal the penalty, substitute:

5 Civil penalty: 6,000 penalty units.

6 Note: For continuing contraventions of civil penalty provisions, see
7 section 93 of the Regulatory Powers Act.

8 **28 Subsection 143(2) (penalty)**

9 Repeal the penalty, substitute:

10 Civil penalty: 60,000 penalty units.

11 Note: For continuing contraventions of civil penalty provisions, see
12 section 93 of the Regulatory Powers Act.

13 **29 Subsection 146(1) (penalty)**

14 Repeal the penalty, substitute:

15 Civil penalty: 60,000 penalty units.

16 Note: For continuing contraventions of civil penalty provisions, see
17 section 93 of the Regulatory Powers Act.

18 **30 Paragraphs 163(1)(a) to (d)**

19 Repeal the paragraphs, substitute:

20 (a) section 26B;

21 (b) section 26D;

22 (c) section 26F;

23 (d) section 26G;

24 **31 At the end of subsection 163(1) (before the note)**

25 Add:

26 ; (q) section 192H;

27 (r) section 192N;

28 (s) section 205D;

29 (t) section 205F.

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32 Subsection 163(2)

Repeal the subsection, substitute:

Infringement officer

(2) For the purposes of Part 5 of the Regulatory Powers Act, each of the following is an infringement officer in relation to the provisions mentioned in subsection (1):

- (a) the Commissioner;
- (b) a member of the staff of the ACMA authorised, in writing, by the Commissioner for the purposes of this paragraph.

33 After section 163

Insert:

163A Amount payable under certain infringement notices

(1) Despite subsections 104(2) and (3) of the Regulatory Powers Act, the amount to be stated in an infringement notice for the purposes of paragraph 104(1)(f) of that Act, in relation to a provision covered by subsection (2), is the following:

- (a) if the notice relates to only one alleged contravention of the provision by the person:
 - (i) if the person is an individual—12 penalty units; and
 - (ii) if the person is a body corporate—600 penalty units;
- (b) if the notice relates to more than one alleged contravention of the provision by the person:
 - (i) if the person is an individual—the number of penalty units worked out by multiplying the number of alleged contraventions by 12; and
 - (ii) if the person is a body corporate—the number of penalty units worked out by multiplying the number of alleged contraventions by 600.

(2) This subsection covers the following provisions:

- (a) section 26B (compliance with the digital duty of care);
- (b) section 26D (remedial directions relating to the digital duty of care);
- (c) section 26F (complaint and dispute processes);

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- 1 (d) section 26G (remedial directions relating to complaint and
2 dispute processes);
3 (e) section 192H (compliance with transparency report notices);
4 (f) section 192N (compliance with determinations requiring
5 information publication);
6 (g) section 205D (compliance with data access rules);
7 (h) section 205F (remedial directions relating to data access
8 rules).

34 Paragraphs 164(1)(a) to (d)

- 9 Repeal the paragraphs, substitute:
10 (a) section 26B;
11 (b) section 26D;
12 (c) section 26F;
13 (d) section 26G;

35 At the end of subsection 164(1)

- 16 Add:
17 ; (r) section 205D;
18 (s) section 205F.

36 Paragraphs 165(1)(a) to (d)

- 20 Repeal the paragraphs, substitute:
21 (a) section 26B;
22 (b) section 26D;
23 (c) section 26F;
24 (d) section 26G;

37 After paragraph 165(1)(r)

- 26 Insert:
27 (ra) section 192H;
28 (rb) section 192N;

38 At the end of subsection 165(1)

- 30 Add:
31 ; (t) section 204;

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- 1 (u) section 205D;
2 (v) section 205F.

39 Part 11 (heading)

Repeal the heading, substitute:

Part 11—eSafety Commissioner

40 Section 166

Repeal the section, substitute:

166 Simplified outline of this Part

- | |
|--|
| <ul style="list-style-type: none">• to be drafted. |
|--|

41 After Division 1 of Part 11

Insert:

Division 1A—Establishment and functions

166A eSafety Commissioner

There is to be an eSafety Commissioner.

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

166B Functions of the Commissioner

- (1) The functions of the Commissioner are:
- (a) such functions as are conferred on the Commissioner by:
 - (i) this Act; or
 - (ii) any other law of the Commonwealth; and
 - (b) to promote online safety for Australians, including through the digital duty of care; and
 - (c) to support and encourage the implementation of measures to improve online safety for Australians; and

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- 1 (d) to coordinate activities of Commonwealth Departments,
2 authorities and agencies relating to online safety for
3 Australians; and
- 4 (e) to collect, analyse, interpret and disseminate information
5 relating to online safety for Australians; and
- 6 (f) to support, encourage, conduct, accredit and evaluate
7 educational, promotional and community awareness
8 programs that are relevant to online safety for Australians;
9 and
- 10 (g) to make, on behalf of the Commonwealth, grants of financial
11 assistance in relation to online safety for Australians; and
- 12 (h) to support, encourage, conduct and evaluate research about
13 online safety for Australians; and
- 14 (i) to publish (whether on the internet or otherwise) reports and
15 papers relating to online safety for Australians; and
- 16 (j) to give the Minister reports about online safety for
17 Australians; and
- 18 (k) to advise the Minister about online safety for Australians;
19 and
- 20 (l) to consult and cooperate with other persons, organisations
21 and governments on online safety for Australians; and
- 22 (m) to advise and assist persons in relation to their obligations
23 under this Act; and
- 24 (n) to monitor, investigate and enforce compliance with this Act;
25 and
- 26 (o) to promote compliance with this Act; and
- 27 (p) to formulate, in writing, guidelines or statements that:
28 (i) recommend best practices for persons and bodies
29 involved in online safety for Australians; and
30 (ii) are directed towards facilitating the timely and
31 appropriate resolution of incidents involving material
32 provided on a social media service, relevant electronic
33 service or designated internet service; and
- 34 (q) to promote guidelines and statements formulated under
35 paragraph (p); and
- 36 (r) to formulate, in writing, guidelines for the taking of
37 reasonable steps to prevent children from being subject to

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- 1 design features of online services that have negative
2 behavioural impacts; and
3 (s) to promote guidelines formulated under paragraph (r); and
4 (t) such other functions (if any) as are specified in the legislative
5 rules; and
6 (u) to do anything incidental to or conducive to the performance
7 of any of the above functions.

8 *Grants*

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

18 *Guidelines and statements are not legislative instruments*

- 19 (5) Guidelines and statements formulated under paragraph (1)(p) are
20 not legislative instruments.
21 (6) Guidelines formulated under paragraph (1)(r) are not legislative
22 instruments.

23 **166C Statement of monitoring and enforcement priorities**

- 24 (1) The Commissioner must, as soon as practicable after the beginning
25 of each financial year, prepare a statement of the Commissioner's
26 priorities during the year in relation to monitoring and enforcing
27 compliance with this Act.
28 (2) The statement must be published on the Commissioner's website.
29 (3) The statement is not a legislative instrument.

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- 1 (4) The statement does not limit or affect the performance of the
2 Commissioner's functions or the exercise of the Commissioner's
3 powers.

4 **42 Division 4 of Part 11 (heading)**

5 Repeal the heading, substitute:

6 **Division 4—Commissioner's powers and other matters**

7 **43 Before section 178**

8 Insert:

9 **177A Powers of the Commissioner**

10 The Commissioner has power to do all things necessary or
11 convenient to be done for or in connection with the performance of
12 the Commissioner's functions.

13 **44 Paragraphs 182(4)(a) and (b)**

14 Repeal the paragraphs, substitute:

- 15 (a) section 26D;
16 (b) section 26G;

17 **45 Paragraph 182(4)(ze)**

18 Repeal the paragraph, substitute:
19 (ze) section 205F.

20 **46 Before paragraph 183(2)(aa)**

21 Insert:

- 22 (aaa) the number of directions given by the Commissioner under
23 section 26D during that year;
24 (aab) the number of directions given by the Commissioner under
25 section 26G during that year;

26 **47 Paragraphs 183(2)(a) and (b)**

27 Repeal the paragraphs.

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48 Paragraph 183(2)(zd)

Repeal the paragraph, substitute:

(zd) the number of directions given by the Commissioner under section 205F during that year;

49 After section 183

Insert:

183AA Publication of formal warnings

The Commissioner may publish on the Commissioner’s website a formal warning issued under any of the following:

- (a) section 26C;
- (b) section 26F;
- (c) section 68;
- (d) section 72;
- (e) section 72C;
- (f) section 76;
- (g) section 81;
- (h) section 82B;
- (i) section 84;
- (j) section 86D;
- (k) section 92;
- (l) section 92C;
- (m) section 112;
- (n) section 117;
- (o) section 122;
- (p) section 126;
- (q) section 130;
- (r) section 155;
- (s) section 192J;
- (t) section 192P;
- (u) section 205E.

50 Paragraph 192(b)

Omit “paragraph 27(1)(g)”, substitute “paragraph 166B(1)(g)”.

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1 **51 After Part 12**

2 Insert:

3 **Part 12A—Transparency**

4 **Division 1—Introduction**

5 **192A Simplified outline of this Part**

6

- to be drafted.

Division 2—Transparency reports

192C Requiring transparency reports

Written notices

- (1) The Commissioner may, by written notice given to a provider of an online service, require the provider to prepare and give the Commissioner one or more reports (called *transparency reports*) about the safety of the online service for Australians.

Report must improve or promote transparency

- (2) The Commissioner may give the notice only if the Commissioner is satisfied that doing so would:
- (a) improve or promote transparency or accountability regarding the safety of the online service for Australians; or
 - (b) improve or promote industry best practice.
 - (b) *improve the provider's practices in relation to the service, including by encouraging adoption of industry best practice.*

Matters the Commissioner must consider

- (3) In deciding whether to give the notice, the Commissioner must consider the following:
- (a) whether and to what extent the reports would improve the safety of the online service for Australians;
 - (b) whether and to what extent the reports would promote compliance with this Act;
 - (c) whether and to what extent the reports would improve or address deficiencies in the provider's practices or terms of use;
 - (d) the burden on the provider in preparing the reports;
 - (e) such other matters (if any) as the Commissioner considers relevant.

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192D Content, manner and form

Content

- (1) The notice may require the provider to report on such matters, or address such questions, as are specified in the notice, including (without limitation) in relation to the following:
 - (a) the extent to which the provider is complying with this Act;
 - (b) the effectiveness of measures the provider is taking to comply with this Act;
 - (c) the resources available to the provider that would assist the provider in complying with this Act;
 - (d) the nature and extent of harms associated with the provider's service, including emerging categories of such harms;
 - (e) the features, systems or processes of the provider's service that contribute to the safety of the service for Australians or increase the risk of harms associated with the service;
 - (f) the provider's performance against specified standards, benchmarks or other metrics.

Manner and form

- (2) The notice may specify the manner and form in which a transparency report must be prepared and given to the Commissioner.

192E Reporting intervals

- (1) The notice may require transparency reports to be given on a periodic or non-periodic basis.
- (2) The notice must specify:
 - (a) for periodic reports—the regular intervals to which information contained in the reports must relate; or
 - (b) for non-periodic reports—the interval to which information contained in the report must relate.
- (3) An interval specified for the purposes of paragraph (2)(a) or (b) must be neither shorter than 6 months nor longer than 24 months.

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192F Report timing

- (1) The notice must specify the period within which a transparency report must be given to the Commissioner.
- (2) The period must not be shorter than:
 - (a) 28 days after the day the notice is given; and
 - (b) 28 days after the end of the interval to which the report relates.
- (3) However, the Commissioner may allow a longer period.

192FA Reasons and review rights

The notice must:

- (a) specify that it is given to the provider under subsection 192C(1) of this Act; and
- (b) set out reasons for the giving of the notice; and
- (c) set out the provider's review rights under subsection 220(23).

192G Publication of transparency reports

- (1) The Commissioner may publish a transparency report, or a summary of a transparency report, on the Commissioner's website.
- (2) The published report or summary must not contain information that is:
 - (a) information the disclosure of which could reasonably be expected to found an action by an entity (other than the Commonwealth) for breach of a duty of confidence; or
 - (b) personal information (within the meaning of the *Privacy Act 1988*); or
 - (c) of a kind prescribed by the legislative rules.

192H Compliance with transparency report notices

A person must comply with a notice given to the person under section 192C (requiring transparency reports) to the extent that the person is capable of doing so.

Civil penalty: 6,000 penalty units.

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192J Formal warning

The Commissioner may issue a formal warning if the Commissioner reasonably believes that a person has contravened, or is contravening, section 192H.

192L Self-incrimination

(1) A person is not excused from giving a transparency report under this Division on the ground that the report concerned might tend to incriminate the person.

(2) However, in the case of an individual:

- (a) the report; or
 - (b) giving the report; or
 - (c) any information, document or thing obtained as a direct or indirect consequence of giving the report;
- is not admissible in evidence against the individual:
- (d) in civil proceedings for the recovery of a penalty (other than proceedings for the recovery of a penalty under section 192H); or
 - (e) in criminal proceedings (other than proceedings for an offence against section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to section 192H).

(3) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a penalty for an offence) in relation to giving a transparency report under this Division, the individual is not excused from giving the report under this Division on that ground.

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

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Division 3—Requiring online service providers to publish information

192M Requiring online service providers to publish information

- (1) The Commissioner may, by legislative instrument, determine that each provider of an online service specified in a class of online services is required to publish on a website maintained by or on behalf of the provider specified information, or kinds of information, about the provider's operations or activities relating to the online safety of its users in Australia.

Specified information to be published

- (2) The information or kinds of information specified in the determination may (without limitation) include information about the following:
- (a) any matter related to the provider's digital duty of care, including any risk assessments conducted by the provider in accordance with section 26A or any measures taken to mitigate identified risks;
 - (b) content moderation (including automated content moderation) with respect to the provider's service, including:
 - (i) content moderation decisions; and
 - (ii) the amount and type of content removed from the provider's service; and
 - (iii) the number of staff engaged in content moderation; and
 - (c) complaints or reports received by the provider in relation to the provider's service, including:
 - (i) the number of complaints or reports; and
 - (ii) the type of complaints or reports; and
 - (iii) how the complaints or reports were dealt with; and
 - (iv) the number of complaints not dealt with; and
 - (v) the median time taken to resolve the complaints or reports;
 - (d) the number of Australian user accounts suspended or removed (however described) from the service, including the reasons for the suspension or removal;

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- 1 (e) the average number of active end-users during a specified
2 period.

3 *Specified classes of online services*

- 4 (3) A class of online services may (without limitation) be specified by
5 reference to any matter, including any of the following:
6 (a) the level of risk posed by the class of services to users of the
7 services in Australia;
8 (b) the extent to which Australians have accounts with, or are
9 using, the class of services;
10 (c) whether a provision of, or requirement under, this Act applies
11 in relation to the class of services.

12 *Publication to improve or promote transparency*

- 13 (4) The Commissioner may make a determination under subsection (1)
14 only if the Commissioner is satisfied that doing so would improve
15 or promote:
16 (a) transparency or accountability regarding the safety of online
17 services for Australians; or
18 (b) industry best practice.

19 *Specified periods for publication*

- 20 (5) A determination under subsection (1) may specify a period or
21 periods within which information must be published.

22 *Confidentiality and privacy*

- 23 (6) Nothing in a determination under subsection (1) requires a provider
24 of an online service to publish information that is of a kind
25 specified in the determination for the purposes of this subsection.

26 **192N Compliance with determination**

27 A person must comply with a determination made under
28 section 192M to the extent that the person is capable of doing so.

29 Civil penalty: 6,000 penalty units.

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192P Formal warning

The Commissioner may issue a formal warning if the Commissioner reasonably believes that a person has contravened, or is contravening, section 192N.

52 Before section 193

Insert:

Division 1—End-user information

53 Section 193 (heading)

Omit “Part”, substitute “Division”.

54 Paragraph 196(2)(e)

Omit “Part”, substitute “Division”.

55 At the end of Part 13

Add:

Division 2—Compliance and investigations

197 Simplified outline of this Division

- This Division gives the Commissioner powers to require persons to give information or evidence, produce documents or answer questions that are relevant to certain investigations or to compliance with, or possible contraventions of, this Act.

198 Application of this Division

This Division applies if the Commissioner has reason to believe that a person is capable of giving information or evidence, producing documents or answering questions relevant to:

- (a) an investigation by the Commissioner under section 31, 34, 37 or 42; or

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- 1 (b) compliance with, or a possible contravention of, this Act
2 (other than a provision of Part 4A (social media minimum
3 age)).

4 **199 Notice requiring the giving of information, production of** 5 **documents etc.**

- 6 (1) The Commissioner may, by written notice given to the person,
7 require the person to give to the Commissioner the information or
8 evidence, produce to the Commissioner the documents or answer
9 the questions:
10 (a) within the period and in the manner specified in the notice; or
11 (b) by summoning the person to attend before the Commissioner,
12 or a delegate of the Commissioner named in the notice, at a
13 time and place specified in the notice.
- 14 (2) Without limiting subsection (1), the notice may also require the
15 person to:
16 (a) make relevant documents available for inspection by the
17 Commissioner or a delegate of the Commissioner; or
18 (b) permit the Commissioner or the delegate to make copies of,
19 or take extracts from, those documents.

20 **200 Examination on oath or affirmation**

- 21 (1) If the person is summoned to attend before the Commissioner or a
22 delegate of the Commissioner, the Commissioner or delegate may
23 examine the person on oath or affirmation and, for that purpose:
24 (a) may require the person to take an oath or make an
25 affirmation; and
26 (b) may administer the oath or affirmation.
- 27 (2) The oath or affirmation is to be an oath or affirmation that the
28 statements the person will make will be true to the best of the
29 person's knowledge or belief.
- 30 (3) The Commissioner or delegate may require the person to answer
31 any relevant question put to the person at the examination.

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201 Examination to take place in private

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

202 Record to be made of examination

- (1) If the person is examined by the Commissioner or a delegate of the Commissioner, a record must be made of the examination and the person is entitled to be given a written copy of the record on request.
- (2) If the record of the examination of the person is made in electronic form, the person is, if the person so requests, to be given a copy of the record in that form.
- (3) If the person requests a copy of the record, the record must be given to the person at a time that the Commissioner or delegate considers appropriate.

203 Protection of persons attending before Commissioner

A person summoned to attend before the Commissioner, or a delegate of the Commissioner, to give information or evidence, produce documents or answer questions under this Division has the same protection as a witness in a proceeding in the High Court.

204 Non-compliance with requirement to give information, produce documents etc.

Compliance with notice requirements

- (1) A person contravenes this subsection if the person fails to comply with a notice under section 199.

Compliance with requirement to take oath or make affirmation

- (2) A person contravenes this subsection if the person refuses to take an oath or make an affirmation in accordance with paragraph 200(1)(a).

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Offence

- (3) A person commits an offence if the person contravenes subsection (1) or (2).

Penalty: Imprisonment for 12 months.

Civil penalty

- (4) A person is liable to a civil penalty if the person contravenes subsection (1) or (2).

Civil penalty: 1,000 penalty units.

Note: For continuing contraventions of civil penalty provisions, see section 93 of the Regulatory Powers Act.

Exception

- (5) Subsection (1) does not apply if:
- (a) the person is a journalist; and
 - (b) complying with the requirement of the notice would tend to disclose the identity of a person who supplied information in confidence to the journalist.

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

205 Self-incrimination

- (1) A person is not excused from giving information or evidence, producing a document or answering a question under this Division on the ground that doing so might tend to incriminate the person.

- (2) However, in the case of an individual:
- (a) any information, evidence or answer given or document produced; or
 - (b) the giving of the information or evidence, the production of the document or the answering of the question; or
 - (c) any information, document or thing obtained as a direct or indirect consequence of the giving of the information or evidence, the production of the document or the answering of the question;

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is not admissible in evidence against the individual:

(d) in civil proceedings for the recovery of a penalty, other than proceedings for the recovery of a penalty under section 204; or

(e) in criminal proceedings, other than:

(i) proceedings for an offence against section 204; or

(ii) proceedings for an offence against section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to this Division.

(3) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a penalty for an offence) in relation to giving information or evidence, producing a document or answering a question under this Division, the individual is not excused from giving the information or evidence, producing the document or answering the question under this Division on that ground.

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

56 Part 14

Repeal the Part, substitute:

Part 14—Research and data access

Division 1—Introduction

205A Simplified outline of this Part

To be drafted.

Division 2—Data access schemes

205B Approved researchers and online safety related research

Meaning of approved researcher

(1) A person is an *approved researcher* if the person:

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- 1 (a) is employed by an Australian university; and
2 (b) is approved as an approved researcher under the legislative
3 rules; and
4 (c) meets any other requirements prescribed by the legislative
5 rules.
- 6 (2) Legislative rules made for the purposes of paragraph (1)(b) may
7 make provision for and in relation to the approval by the
8 Commissioner of persons as approved researchers, including
9 (without limitation) provision for and in relation to any one or
10 more of the following:
11 (a) the making of applications for approval;
12 (b) the payment of fees to the Commonwealth in respect of such
13 applications;
14 (c) the grant of approvals, including criteria to be applied, and
15 matters to be considered, in deciding whether to grant
16 approvals;
17 (d) imposing conditions on approvals;
18 (e) the variation and revocation of approvals or conditions on
19 approvals.

20 *Meaning of **online safety related research***

- 21 (3) Research undertaken by an approved researcher is **online safety**
22 **related research** to the extent that the research:
23 (a) relates to one or more matters dealt with by this Act; and
24 (b) is approved by a human research ethics committee (however
25 described) established by, or accessible to, the Australian
26 university that employs the researcher; and
27 (c) is of a kind prescribed by the legislative rules to be in the
28 public interest.

29 **205C Data access rules regarding data access schemes**

- 30 (1) The legislative rules may make provision for, and in relation to,
31 one or more schemes (the **data access schemes**) requiring
32 providers of online services to give approved researchers access to
33 data for the purposes of, or in connection with, undertaking online
34 safety related research.

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- 1 (2) These rules are to be known as the *data access rules*.
- 2 (3) The data access rules may (without limitation) provide for any one
- 3 or more of the following in relation to a data access scheme:
- 4 (a) kinds of data to which providers are required to give
- 5 approved researchers access;
- 6 (b) kinds of online safety related research in respect of which
- 7 providers are required to give approved researchers access to
- 8 data;
- 9 (c) circumstances in which providers are required to give
- 10 approved researchers access to data;
- 11 (d) matters relating to requests by approved researchers to
- 12 providers for access to data, including (without limitation):
- 13 (i) procedures to be followed, or requirements to be met,
- 14 by approved researchers in making, or providers in
- 15 granting, requests; and
- 16 (ii) fees that may be charged by providers before access to
- 17 data is given to approved researchers (which must not
- 18 exceed the reasonable costs arising from providing the
- 19 access); and
- 20 (iii) review or reconsideration of decisions to grant requests;
- 21 (f) how conflicts of interest will be dealt with;
- 22 (g) the privacy, security and confidentiality of data accessed;
- 23 (h) requirements related to ensuring data accessed and the
- 24 research concerned is not used for the purposes of obtaining a
- 25 commercial benefit or advantage.

205D Compliance with data access rules

27 A person who provides an online service must not contravene the

28 data access rules.

29 Civil penalty: 6,000 penalty units.

205E Formal warning

31 The Commissioner may issue a formal warning if the

32 Commissioner reasonably believes that a person has contravened,

33 or is contravening, section 205D.

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205F Remedial directions

Scope

- (1) This section applies if the Commissioner reasonably believes that a person has contravened, or is contravening, section 205D.

Remedial direction

- (2) The Commissioner may give the person a written direction requiring the person to take specified action directed towards ensuring that the person does not contravene, or is unlikely to contravene, section 205D in the future.

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

Civil penalty

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

Civil penalty: 6,000 penalty units.

Remedial direction is not a legislative instrument

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

Division 3—Sock puppet identities

205G Sock puppet identities

A ***sock puppet identity*** is a false or fictitious identity assumed by a person in the course of using, or carrying out any activity in relation to, an online service.

205H Approved researchers may assume sock puppet identities

- (1) An approved researcher may assume a sock puppet identity for the purposes of undertaking online safety related research.
- (2) Subsection (1) has effect despite anything to the contrary in any of the following:

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- 1 (a) any other law (whether written or unwritten) of the
2 Commonwealth, a State or a Territory;
3 (b) any agreement, contract, deed, policy or other document.

4 **205J Commissioner may assume sock puppet identities**

- 5 (1) The Commissioner may assume a sock puppet identity for the
6 purposes of performing the Commissioner's functions or
7 exercising the Commissioner's powers under this Act.
- 8 (2) Subsection (1) has effect despite anything to the contrary in any of
9 the following:
- 10 (a) any other law (whether written or unwritten) of the
11 Commonwealth, a State or a Territory;
12 (b) any agreement, contract, deed, policy or other document.

13 **205K Activities that may be undertaken using sock puppet identities**

- 14 (1) Subsections 205H(1) and 205J(1) authorise (without limitation) the
15 use of sock puppet identities by an approved researcher or the
16 Commissioner to do any one or more of the following to the extent
17 that it is done for a purpose mentioned in whichever of those
18 subsections applies:
- 19 (a) creating and using an account to access an online service;
20 (b) observing, downloading or making a record of any material
21 observed in using an online service;
22 (c) engaging with an online service or a provider of the service;
23 (d) engaging with a user of an online service (but only to the
24 extent necessary to prevent closure of an account with the
25 service);
26 (e) testing the features of an online service;
27 (f) testing an online service's response to actions taken using the
28 online service.
- 29 (2) In addition, subsection 205J(1) authorises (without limitation) the
30 use of sock puppet identities by the Commissioner to generate
31 material using an online service (including by means of artificial
32 intelligence) to the extent that the production, dissemination or
33 possession of that material is not an offence against a law of the
34 Commonwealth, a State or a Territory.

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205L Immunity from civil proceedings

A person is not liable to a civil action, suit or other proceeding for or in relation to an act done, or omitted to be done, in good faith in the exercise or purported exercise of a power under subsection 205H(1) or 205J(1).

57 Subsection 220(1)

Repeal the subsection.

58 Subsection 220(12)

Omit “section 83”, insert “section 26D, 26G, 83 or 205F”.

59 At the end of section 220

Add:

Transparency report notice

- (23) An application may be made to the Administrative Review Tribunal for a review of a decision of the Commissioner to give a notice under subsection 192C(1).

60 After section 220A

Insert:

220B Contravening an offence provision or a civil penalty provision

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the *conduct provision*) commits an offence or is liable to a civil penalty.
- (2) For the purposes of this Act, and the Regulatory Powers Act to the extent that it relates to this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

61 After section 229

Insert:

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229A Points of contact for providers of online services

Written notices

- (1) The Commissioner may, by written notice given to a provider of an online service, require the provider to nominate a person who is ordinarily resident in Australia as a point of contact for the provider.

Determinations

- (2) The Commissioner may, by legislative instrument, determine that each provider of an online service included in a specified class of online services is required to nominate a person who is ordinarily resident in Australia as a point of contact for the provider.

Provider to give details for point of contact as required

- (3) If a notice or determination under this section requires a provider of an online service to nominate a person as a point of contact, the provider must:
- (a) give the Commissioner, before the time specified in the notice or determination, the person's name and such other contact details required by the notice or determination; and
 - (b) inform the Commissioner of any change to those details as soon as practicable after the change occurs.

Effect of notice or determination

- (4) The following paragraphs apply in relation to anything that may or must be done under, or for the purposes of, this Act in relation to the provider:
- (a) the thing may instead be done in relation to the person who is the provider's point of contact;
 - (b) if the thing is done in relation to the provider's point of contact as mentioned in paragraph (a)—the thing is taken to have also been done in relation to the provider.

EXPOSURE DRAFT

Schedule 2 Digital duty of care

Part 1 Amendments of the Online Safety Act 2021

1 *Civil penalty*

2 (5) A person must comply with a notice or determination under this
3 section to the extent that the person is capable of doing so.

4 Civil penalty: 1,000 penalty units.

5 **62 Subsection 239A(1)**

6 Omit “this section”, substitute “the digital duty of care (as imposed by
7 section 26 of this Act as amended by the *Online Safety Amendment*
8 (*Digital Duty of Care*) Act 2026)”.

EXPOSURE DRAFT

Digital duty of care **Schedule 2**
Amendments of other Acts **Part 2**

1 **Part 2—Amendments of other Acts**

2 *Privacy Act 1988*

3 **63 Subsection 6(1) (after paragraph (ab) of the definition of**
4 ***enforcement body*)**

5 Insert:

6 (ac) the eSafety Commissioner; or

EXPOSURE DRAFT

Schedule 2 Digital duty of care

Part 3 Transitional provisions for the digital duty of care

1 **Part 3—Transitional provisions for the digital duty of**
2 **care**

3 **64 Authorisations continue to apply**

4 An authorisation that was in force under subsection 163(2) of the
5 *Online Safety Act 2021* immediately before the commencement of this
6 item continues to be in force (and may be dealt with) on and after that
7 commencement as if it had been made under that subsection as
8 amended by this Schedule.

9 **65 Agreements, guidelines and statements continue to apply**

10 An agreement, guideline or statement under section 27 of the *Online*
11 *Safety Act 2021* that was in force immediately before the
12 commencement of this item continues to be in force (and may be dealt
13 with) on and after that commencement as if it had been made under
14 section 166B of that Act as amended by this Schedule.

15 **66 Monitoring and enforcement statement**

16 Section 166C (statement of monitoring and enforcement priorities) of
17 the *Online Safety Act 2021*, as inserted by this Schedule, does not apply
18 in relation to the financial year in which that section commences.

EXPOSURE DRAFT

Repeal of online content scheme industry codes and standards **Schedule 3**
Amendments of the Online Safety Act 2021 **Part 1**

Schedule 3—Repeal of online content scheme industry codes and standards

Part 1—Amendments of the Online Safety Act 2021

Online Safety Act 2021

1 Section 40

Repeal the section.

2 Paragraphs 42(1)(e)

Omit “online content scheme);”, substitute “online content scheme).”

3 Paragraphs 42(1)(f) and (g)

Repeal the paragraphs.

4 Section 43

Repeal the section.

5 Division 7 of Part 9

Repeal the Division.

6 Paragraphs 163(1)(o) and (p)

Repeal the paragraphs.

7 Paragraphs 164(1)(p) and (q)

Repeal the paragraphs.

8 Paragraphs 165(1)(q) and (r)

Repeal the paragraphs.

9 Paragraph 182(4)(v)

Repeal the paragraph.

10 Paragraph 183(2)(v)

Repeal the paragraph.

EXPOSURE DRAFT

Schedule 3 Repeal of online content scheme industry codes and standards

Part 1 Amendments of the Online Safety Act 2021

1 **11 Subsections 220(17) and (18)**

2 Repeal the subsections.

3 **12 Subsections 220(19) and (20)**

4 Repeal the subsections.

5 **13 Subsection 230(6) (paragraph (b) of the definition of**
6 ***instrument under this Act*)**

7 Omit “Act; or”, substitute “Act.”

8 **14 Subsection 230(6) (paragraph (c) of the definition of**
9 ***instrument under this Act*)**

10 Repeal the paragraph.

EXPOSURE DRAFT

Repeal of online content scheme industry codes and standards **Schedule 3**
Amendments of other Acts **Part 2**

Part 2—Amendments of other Acts

Broadcasting Services Act 1992

15 Paragraph 130L(e)

Repeal the paragraph.

Criminal Code Act 1995

16 Subsection 273.9(5) of the *Criminal Code*

Repeal the subsection, substitute:

- (5) A person is not criminally responsible for an offence against section 273.6 if the person engages in the conduct in good faith for the sole purpose of assisting the eSafety Commissioner to perform the functions, or exercise the powers, conferred on the eSafety Commissioner by Part 9 of the *Online Safety Act 2021*.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

17 Subsection 474.24(4) of the *Criminal Code*

Repeal the subsection, substitute:

- (4) A person is not criminally responsible for an offence against section 474.22, 474.22A, 474.23 or 474.23A if the person engages in the conduct in good faith for the sole purpose of assisting the eSafety Commissioner to perform the functions, or exercise the powers, conferred on the eSafety Commissioner by Part 9 of the *Online Safety Act 2021*.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3).

Interactive Gambling Act 2001

18 Subsections 36(2) and (3)

Repeal the subsections.

EXPOSURE DRAFT

Schedule 3 Repeal of online content scheme industry codes and standards
Part 2 Amendments of other Acts

1