

EXPOSURE DRAFT

2019-2020

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Online Safety Bill 2020

No. , 2020

(Communications, Cyber Safety and the Arts)

**A Bill for an Act relating to online safety for
Australians, and for other purposes**

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

Part 1—Preliminary	1
1	Short title..... 1
2	Commencement..... 2
3	Objects of this Act..... 2
4	Simplified outline of this Act 2
5	Definitions..... 5
6	Cyber-bullying material targeted at an Australian child..... 15
7	Cyber-abuse material targeted at an Australian adult..... 16
8	Determining whether material is offensive..... 17
9	Abhorrent violent material 18
10	When material is provided on a social media service, relevant electronic service or designated internet service 18
11	When material is posted by an end-user of a social media service, relevant electronic service or designated internet service 18
12	When material is removed from a social media service, relevant electronic service or designated internet service 19
13	Social media service..... 19
14	Designated internet service..... 20
15	Intimate image..... 21
16	Non-consensual intimate image of a person 22
17	Hosting service..... 23
18	On-demand program service 23
19	Internet service providers 24
20	Supply of internet carriage service to the public 24
21	Consent..... 25
22	Crown to be bound 25
23	Application of this Act 26
24	Convention on the Rights of the Child 26
Part 2—eSafety Commissioner	27
25	Simplified outline of this Part..... 27
26	eSafety Commissioner..... 27
27	Functions of the Commissioner..... 27
28	Powers of the Commissioner..... 29

EXPOSURE DRAFT

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

EXPOSURE DRAFT

EXPOSURE DRAFT

Division 3—Reporting	51
Subdivision A—Periodic reporting about compliance with basic online safety expectations	51
49	Periodic reporting notice 51
50	Compliance with notice..... 53
51	Formal warning 53
52	Periodic reporting determination 53
53	Compliance with determination..... 54
54	Formal warning 54
55	Service provider notifications..... 54
Subdivision B—Non-periodic reporting about compliance with basic online safety expectations	55
56	Non-periodic reporting notice 55
57	Compliance with notice..... 57
58	Formal warning 57
59	Non-periodic reporting determination 57
60	Compliance with determination..... 58
61	Formal warning 59
62	Service provider notifications..... 59
Subdivision C—Self-incrimination	60
63	Self-incrimination..... 60
Part 5—Cyber-bullying material targeted at an Australian child	61
64	Simplified outline of this Part..... 61
65	Removal notice given to the provider of a social media service, relevant electronic service or designated internet service 61
66	Removal notice given to a hosting service provider 62
67	Compliance with removal notice..... 63
68	Formal warning 63
69	Non-compliance with a removal notice 64
70	End-user notice..... 64
71	Compliance with end-user notice 65
72	Formal warning 65
73	Service provider notifications..... 65
Part 6—Non-consensual sharing of intimate images	67
Division 1—Introduction	67

EXPOSURE DRAFT

74	Simplified outline of this Part.....	67
Division 2—Intimate images must not be posted without consent etc.		
75	Posting an intimate image	68
76	Formal warning	69
Division 3—Removal notices		
77	Removal notice given to the provider of a social media service, relevant electronic service or designated internet service	70
78	Removal notice given to an end-user.....	71
79	Removal notice given to a hosting service provider	72
80	Compliance with removal notice.....	73
81	Formal warning	73
82	Transitional	73
Division 4—Miscellaneous		
83	Remedial direction	75
84	Formal warning	75
85	Service provider notifications.....	75
86	Exempt post of an intimate image	77
Part 7—Cyber-abuse material targeted at an Australian adult		
79	Simplified outline of this Part.....	79
87	Removal notice given to the provider of a social media service, relevant electronic service or designated internet service	79
88	Removal notice given to an end-user.....	80
89	Removal notice given to a hosting service provider	81
90	Compliance with removal notice.....	82
91	Formal warning	83
92	Service provider notifications.....	83
93		
Part 8—Abhorrent violent material		
Division 1—Introduction		
85	Simplified outline of this Part.....	85
94		
Division 2—Blocking requests		
86	Blocking request.....	86
95	Duration of blocking request.....	87
96	Revocation of blocking request	87
97		

EXPOSURE DRAFT

EXPOSURE DRAFT

98	Notification in relation to domain names and URLs	88
Division 3—Blocking notices		89
99	Blocking notice	89
100	Duration of blocking notice	90
101	Revocation of blocking notice	90
102	Notification in relation to domain names and URLs	91
103	Compliance with blocking notice	91
Division 4—Exempt material		92
104	Exempt material	92
Part 9—Online content scheme		94
Division 1—Introduction		94
105	Simplified outline of this Part	94
106	Class 1 material	94
107	Class 2 material	96
108	Restricted access system	99
Division 2—Removal notices relating to class 1 material		101
109	Removal notice given to the provider of a social media service, relevant electronic service or designated internet service	101
110	Removal notice given to a hosting service provider	101
111	Compliance with removal notice	102
112	Formal warning	102
113	Revocation of removal notice	102
Division 3—Removal notices relating to class 2 material		104
114	Removal notice given to the provider of a social media service, relevant electronic service or designated internet service	104
115	Removal notice given to a hosting service provider	104
116	Compliance with removal notice	105
117	Formal warning	105
118	Revocation of removal notice	106
Division 4—Remedial notices relating to class 2 material		107
119	Remedial notice given to the provider of a social media service, relevant electronic service or designated internet service	107

EXPOSURE DRAFT

120	Remedial notice given to a hosting service provider	108
121	Compliance with remedial notice	109
122	Formal warning	109
123	Revocation of remedial notice	109
Division 5—Link deletion notices		110
124	Link deletion notice	110
125	Compliance with link deletion notice	111
126	Formal warning	111
127	Revocation of link deletion notice	111
Division 6—App removal notices		112
128	App removal notice	112
129	Compliance with app removal notice	113
130	Formal warning	113
131	Revocation of app removal notice	113
Division 7—Industry codes and industry standards		114
Subdivision A—Interpretation		114
132	Industry codes	114
133	Industry standards	114
134	Online activity	114
135	Sections of the online industry	115
136	Participants in a section of the online industry .	116
Subdivision B—General principles relating to industry codes and industry standards		116
137	Statement of regulatory policy	116
138	Examples of matters that may be dealt with by industry codes and industry standards	117
139	Escalation of complaints	120
Subdivision C—Industry codes		121
140	Registration of industry codes	121
141	Commissioner may request codes	122
142	Replacement of industry codes	123
143	Compliance with industry codes	123
144	Formal warnings—breach of industry codes	124
Subdivision D—Industry standards		124
145	Commissioner may determine an industry standard	124
146	Compliance with industry standards	125

EXPOSURE DRAFT

EXPOSURE DRAFT

147	Formal warnings—breach of industry standards.....	125
148	Public consultation on industry standards	125
Subdivision E—Register of industry codes and industry standards		126
149	Commissioner to maintain Register of industry codes and industry standards.....	126
Subdivision F—Miscellaneous		126
150	Industry standards prevail over inconsistent industry codes.....	126
Division 8—Service provider determinations		127
151	Service provider determinations.....	127
152	Exemptions from service provider determinations	128
153	Compliance with service provider rules	128
154	Remedial directions—breach of service provider rules.....	129
155	Formal warnings—breach of service provider rules.....	129
Division 9—Federal Court orders		130
156	Federal Court may order a person to cease providing a social media service	130
157	Federal Court may order a person to cease providing a relevant electronic service	130
158	Federal Court may order a person to cease providing a designated internet service	131
159	Federal Court may order a person to cease supplying an internet carriage service	132
Division 10—Commissioner may obtain advice from the Classification Board		133
160	Commissioner may obtain advice from the Classification Board	133
Part 10—Enforcement		135
161	Simplified outline of this Part.....	135
162	Civil penalty provision	135
163	Infringement notices.....	136
164	Enforceable undertakings	137
165	Injunctions.....	139

EXPOSURE DRAFT

Part 11—Administrative provisions relating to the Commissioner	141
Division 1—Introduction	141
166	Simplified outline of this Part..... 141
Division 2—Appointment of the Commissioner	142
167	Appointment of the Commissioner..... 142
168	Period of appointment for the Commissioner... 142
169	Acting appointments..... 142
170	Application of finance law 143
Division 3—Terms and conditions for the Commissioner	144
171	Remuneration and allowances 144
172	Leave of absence 144
173	Outside employment..... 144
174	Disclosure of interests to the Minister 144
175	Resignation..... 145
176	Termination of appointment 145
177	Other terms and conditions..... 146
Division 4—Other matters	147
178	Supplementary powers 147
179	Commissioner’s liabilities are Commonwealth liabilities..... 147
180	Commissioner has privileges and immunities of the Crown..... 147
181	Delegation by the Commissioner to a member of the staff of the ACMA etc. 148
182	Delegation by the Commissioner to a contractor engaged by the Commissioner..... 148
183	Annual report 150
184	Assistance to the Commissioner..... 150
185	Contractors engaged by the Commissioner 151
186	Commissioner not subject to direction by the ACMA etc. 152
187	Consultants..... 152
188	Minister may give directions to the Commissioner 152
Part 12—Online Safety Special Account	153
189	Simplified outline of this Part..... 153
190	Online Safety Special Account..... 153

EXPOSURE DRAFT

EXPOSURE DRAFT

191	Credits to the Account.....	153
192	Purposes of the Account.....	154
Part 13—Information-gathering powers		155
193	Simplified outline of this Part.....	155
194	Commissioner may obtain end-user identity information or contact details.....	155
195	Compliance with notice.....	156
196	Self-incrimination.....	156
Part 14—Investigative powers		158
197	Simplified outline of this Part.....	158
198	Application of this Part.....	158
199	Notice requiring appearance for examination...	158
200	Examination on oath or affirmation.....	158
201	Examination to take place in private	159
202	Record to be made of examination	159
203	Production of documents for inspection	159
204	Protection of persons giving evidence.....	160
205	Non-compliance with requirement to give evidence	160
Part 15—Disclosure of information		162
206	Simplified outline of this Part.....	162
207	Scope.....	162
208	Disclosure to Minister	162
209	Disclosure to Secretary, or APS employees, for advising the Minister	162
210	Disclosure to a member of the staff of the ACMA etc.	162
211	Disclosure to Royal Commissions.....	163
212	Disclosure to certain authorities	163
213	Disclosure to teachers or school principals.....	164
214	Disclosure to parents or guardians.....	165
215	Disclosure with consent.....	165
216	Disclosure of publicly available information....	165
217	Disclosure of summaries and statistics	165
218	Relationship with Part 13 of the <i>Telecommunications Act 1997</i>	166
Part 16—Miscellaneous		167
219	Simplified outline of this Part.....	167

EXPOSURE DRAFT

220	Review of decisions.....	167
221	Protection from civil proceedings.....	170
222	Liability for damages.....	171
223	Protection from criminal proceedings— Commissioner, Classification Board etc.....	172
224	Referral of matters to law enforcement agencies	173
225	Deferral of action in order to avoid prejudicing a criminal investigation	174
226	Copies of material	174
227	Compensation for acquisition of property	174
228	Service of notices by electronic means.....	175
229	Service of notices on contact person etc.....	175
230	Instruments under this Act may provide for matters by reference to other instruments.....	177
231	This Act does not limit Schedule 8 to the <i>Broadcasting Services Act 1992</i>	178
232	This Act does not limit the <i>Telecommunications Act 1997</i>	178
233	Implied freedom of political communication ...	178
234	Concurrent operation of State and Territory laws	179
235	Liability of Australian hosting service providers and internet service providers under State and Territory laws etc.	179
236	This Act not to affect performance of State or Territory functions.....	180
237	Revocation or variation of instruments.....	181
238	Provider of social media service, relevant electronic service, designated internet service or app distribution service	181
239	Extended meaning of use.....	181
240	Legislative rules	181

EXPOSURE DRAFT

EXPOSURE DRAFT

1 **A Bill for an Act relating to online safety for**
2 **Australians, and for other purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**
5

6 **1 Short title**

7 This Act is the *Online Safety Act 2020*.

EXPOSURE DRAFT

Part 1 Preliminary

Section 2

1 **2 Commencement**

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

6

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

7 Note: This table relates only to the provisions of this Act as originally
8 enacted. It will not be amended to deal with any later amendments of
9 this Act.

10 (2) Any information in column 3 of the table is not part of this Act.
11 Information may be inserted in this column, or information in it
12 may be edited, in any published version of this Act.

13 **3 Objects of this Act**

14 The objects of this Act are:
15 (a) to improve online safety for Australians; and
16 (b) to promote online safety for Australians.

17 **4 Simplified outline of this Act**

- 18
- 19
- 20
- There is to be an eSafety Commissioner.
 - The functions of the Commissioner include:
 - (a) promoting online safety for Australians; and

EXPOSURE DRAFT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

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

EXPOSURE DRAFT

Part 1 Preliminary

Section 4

1
2
3
4
5
6
7

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

25
26
27
28
29
30
31
32
33

- (b) a person who posts cyber-abuse material targeted at an Australian adult may be given a notice (a **removal notice**) requiring the person to remove the material;
 - (c) a hosting service provider who hosts cyber-abuse material targeted at an Australian adult may be given a notice (a **removal notice**) requiring the provider to cease hosting the material.
- The complaints and objections system for non-consensual sharing of intimate images includes the following components:
 - (a) a person who posts, or threatens to post, an intimate image may be liable to a civil penalty;
 - (b) the provider of a social media service, relevant electronic service or designated internet service may be given a notice (a **removal notice**) requiring the provider to remove an intimate image from the service;
 - (c) an end-user of a social media service, relevant electronic service or designated internet service who posts an intimate image on the service may be given a notice (a **removal notice**) requiring the end-user to remove the image from the service;
 - (d) a hosting service provider who hosts an intimate image may be given a notice (a **removal notice**) requiring the provider to cease hosting the image.
 - The online content scheme includes the following components:
 - (a) the provider of a social media service, relevant electronic service or designated internet service may be given a notice (a **removal notice**) requiring the provider to remove certain material;
 - (b) a hosting service provider may be given a notice (a **removal notice**) requiring the provider to cease hosting certain material;

EXPOSURE DRAFT

Preliminary **Part 1**

Section 5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

- (c) the provider of an internet search engine service may be given a notice (a *link deletion notice*) requiring the provider to cease providing a link to certain material;
 - (d) the provider of an app distribution service may be given a notice (an *app removal notice*) requiring the provider to cease enabling end-users to download an app that facilitates the posting of certain material on a social media service, relevant electronic service or designated internet service;
 - (e) bodies and associations that represent sections of the online industry may develop industry codes;
 - (f) the Commissioner may make an industry standard;
 - (g) the Commissioner may make service provider determinations regulating service providers in the online industry.
- The Minister may determine basic online safety expectations for social media services, relevant electronic services and designated internet services.
 - An internet service provider may be requested or required to block access to:
 - (a) material that promotes abhorrent violent conduct; or
 - (b) material that incites abhorrent violent conduct; or
 - (c) material that instructs in abhorrent violent conduct; or
 - (d) abhorrent violent material.

25 **5 Definitions**

26 In this Act:

EXPOSURE DRAFT

Part 1 Preliminary

Section 5

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

3 ***abhorrent violent material*** has the meaning given by section 9.

4 ***access*** includes:

5 (a) access that is subject to a pre-condition (for example, the use
6 of a password); and

7 (b) access by way of push technology; and

8 (c) access by way of a standing request.

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

11 (a) persons seeking access to the material have been issued with
12 a Personal Identification Number that provides a means of
13 limiting access by other persons to the material; or

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

17 ***account*** includes:

18 (a) a free account; and

19 (b) a pre-paid account; and

20 (c) anything that may reasonably be regarded as the equivalent
21 of an account.

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

24 ***adult*** means an individual who is 18 or older.

25 ***app*** includes a computer program.

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

29 ***app removal notice*** means a notice given under section 128.

EXPOSURE DRAFT

- 1 ***Appropriation Act*** means an Act appropriating money for
2 expenditure out of the Consolidated Revenue Fund.
- 3 ***Australia***, when used in a geographical sense, includes all the
4 external Territories.
- 5 ***Australian adult*** means an adult who is ordinarily resident in
6 Australia.
- 7 ***Australian child*** means a child who is ordinarily resident in
8 Australia.
- 9 ***Australian hosting service provider*** means a person who provides
10 a hosting service that involves hosting material in Australia.
- 11 ***Australian police force*** means:
12 (a) the Australian Federal Police; or
13 (b) the police force of a State or Territory.
- 14 ***Australians*** means individuals who are ordinarily resident in
15 Australia.
- 16 ***basic online safety expectations*** has the meaning given by section
17 45.
- 18 ***blocking notice*** means a notice under section 99.
- 19 ***blocking request*** means a request under section 95.
- 20 ***broadcasting service*** has the same meaning as in the *Broadcasting*
21 *Services Act 1992*.
- 22 ***carriage service*** has the same meaning as in the
23 *Telecommunications Act 1997*.
- 24 ***child*** means an individual who has not reached 18 years.
- 25 ***civil proceeding*** includes a civil action.
- 26 ***class 1 material*** has the meaning given by section 106.
- 27 ***class 2 material*** has the meaning given by section 107.

EXPOSURE DRAFT

Part 1 Preliminary

Section 5

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

4 **Commissioner** means the eSafety Commissioner.

5 Note: See section 26.

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

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

10 **Convention on the Rights of the Child** means the Convention on
11 the Rights of the Child done at New York on 20 November 1989.

12 Note: The Convention is in Australian Treaty Series 1991 No. 4 ([1991]
13 ATS 4) and could in 2020 be viewed in the Australian Treaties
14 Library on the AustLII website (<http://www.austlii.edu.au>).

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

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

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

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

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

30 **de-identified**: information is *de-identified* if the information is no
31 longer about:

EXPOSURE DRAFT

- 1 (a) an identifiable individual; or
2 (b) an individual who is reasonably identifiable.

3 **designated internet service** has the meaning given by section 14.

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

5 **electronic service** means:

- 6 (a) a service that allows end-users to access material using a
7 carriage service; or
8 (b) a service that delivers material to persons having equipment
9 appropriate for receiving that material, where the delivery of
10 the service is by means of a carriage service;

11 but does not include:

- 12 (c) a broadcasting service; or
13 (d) a datacasting service (within the meaning of the
14 *Broadcasting Services Act 1992*).

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

16 **engage in conduct** means:

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

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

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

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

28 **exempt post**, when used in relation to an intimate image, has the
29 meaning given by section 86.

30 **Federal Court** means the Federal Court of Australia.

EXPOSURE DRAFT

Part 1 Preliminary

Section 5

- 1 **film** has the same meaning as in the *Classification (Publications,*
2 *Films and Computer Games) Act 1995.*
- 3 **hosting service** has the meaning given by section 17.
- 4 **hosting service provider** means a person who provides a hosting
5 service.
- 6 **immediate circle** has the same meaning as in the
7 *Telecommunications Act 1997.*
- 8 **internet carriage service** means a listed carriage service that
9 enables end-users to access the internet.
- 10 **internet service provider** has the meaning given by section 19.
- 11 **intimate image** has the meaning given by section 15.
- 12 **legislative rules** means rules made under section 240.
- 13 **link deletion notice** means a notice given under section 124.
- 14 **listed carriage service** has the same meaning as in the
15 *Telecommunications Act 1997.*
- 16 **material** means material:
17 (a) whether in the form of text; or
18 (b) whether in the form of data; or
19 (c) whether in the form of speech, music or other sounds; or
20 (d) whether in the form of visual images (moving or otherwise);
21 or
22 (e) whether in any other form; or
23 (f) whether in any combination of forms.
- 24 **National Classification Code** means the Code (within the meaning
25 of the *Classification (Publications, Films and Computer Games)*
26 *Act 1995*).
- 27 **non-consensual intimate image of a person** has the meaning given
28 by section 16.

EXPOSURE DRAFT

1 **objection notice** means a notice under section 33.

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

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

7 and includes:

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

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

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

17 **online safety for children** means the capacity of Australian
18 children to use social media services and electronic services in a
19 safe manner, and includes the protection of Australian children
20 using those services from cyber-bullying material targeted at an
21 Australian child.

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

24 **parent**: without limiting who is a parent of anyone for the purposes
25 of this Act, a person is the parent of another person if the other
26 person is a child of the person within the meaning of the *Family*
27 *Law Act 1975*.

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

- 31 (a) a Parliament; or
32 (b) a legislature; or

EXPOSURE DRAFT

Part 1 Preliminary

Section 5

- 1 (c) a committee of a Parliament or legislature;
2 and includes:
3 (d) evidence given before the Parliament, legislature or
4 committee; and
5 (e) a document presented or submitted to the Parliament,
6 legislature or committee; and
7 (f) a document issued or published by, or with the authority of,
8 the Parliament, legislature or committee.

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

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

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

18 ***private sexual material*** means:

- 19 (a) material that:
20 (i) depicts an individual who is, or appears to be, 18 years
21 of age or older and who is engaged in, or appears to be
22 engaged in, a sexual pose or sexual activity (whether or
23 not in the presence of other individuals); and
24 (ii) does so in circumstances that reasonable persons would
25 regard as giving rise to an expectation of privacy; or
26 (b) material the dominant characteristic of which is the depiction
27 of:
28 (i) a sexual organ or the anal region of an individual who
29 is, or appears to be, 18 years of age or older; or
30 (ii) if an individual is a female individual, or a transgender
31 or intersex individual identifying as female, who is, or
32 appears to be, 18 years of age or older—either or both
33 of the individual’s breasts;

EXPOSURE DRAFT

1 where the depiction is in circumstances that reasonable
2 persons would regard as giving rise to an expectation of
3 privacy.

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

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

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

14 **relevant electronic service** means any of the following electronic
15 services:

- 16 (a) a service that enables end-users to communicate, by means of
17 email, with other end-users;
- 18 (b) an instant messaging service that enables end-users to
19 communicate with other end-users;
- 20 (c) an SMS service that enables end-users to communicate with
21 other end-users;
- 22 (d) an MMS service that enables end-users to communicate with
23 other end-users;
- 24 (e) a chat service that enables end-users to communicate with
25 other end-users;
- 26 (f) a service that enables end-users to play online games with
27 other end-users;
- 28 (g) an electronic service specified in the legislative rules.

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

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

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

32 **removal notice** means a notice under:

EXPOSURE DRAFT

Part 1 Preliminary

Section 5

- 1 (a) section 65; or
2 (b) section 66; or
3 (c) section 77; or
4 (d) section 78; or
5 (e) section 79; or
6 (f) section 88; or
7 (g) section 89; or
8 (h) section 90; or
9 (i) section 109; or
10 (j) section 110; or
11 (k) section 114; or
12 (l) section 115.

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

15 **restricted access system** has the meaning given by section 108.

16 **Secretary** means the Secretary of the Department.

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

19 **serious harm to a person's mental health** includes:

- 20 (a) serious psychological harm; and
21 (b) serious distress.

22 **service** includes a website.

23 **service provider determination** means a determination under
24 section 151.

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

27 **social media service** has the meaning given by section 13.

28 **stored material** means material kept on a data storage device. For
29 this purpose, disregard any storage of material on a highly

1 transitory basis as an integral function of the technology used in its
2 transmission.

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

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

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

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

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

13 *use* has a meaning affected by section 239.

14 **6 Cyber-bullying material targeted at an Australian child**

15 (1) For the purposes of this Act, if material satisfies the following
16 conditions:

17 (a) the material is provided on:

18 (i) a social media service; or

19 (ii) a relevant electronic service; or

20 (iii) a designated internet service;

21 (b) an ordinary reasonable person would conclude that:

22 (i) it is likely that the material was intended to have an
23 effect on a particular Australian child; and

24 (ii) the material would be likely to have the effect on the
25 Australian child of seriously threatening, seriously
26 intimidating, seriously harassing or seriously
27 humiliating the Australian child;

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

30 then:

EXPOSURE DRAFT

Part 1 Preliminary

Section 7

- 1 (d) the material is *cyber-bullying material targeted at the*
2 *Australian child*; and
3 (e) the Australian child is the *target* of the material.
- 4 (2) An effect mentioned in subsection (1) may be:
5 (a) a direct result of the material being accessed by, or delivered
6 to, the Australian child; or
7 (b) an indirect result of the material being accessed by, or
8 delivered to, one or more other persons.
- 9 (3) Subsection (1) has effect subject to subsection (4).
- 10 (4) For the purposes of this Act, if:
11 (a) a person is:
12 (i) in a position of authority over an Australian child; and
13 (ii) an end-user of a social media service, relevant
14 electronic service or designated internet service; and
15 (b) in the lawful exercise of that authority, the person posts
16 material on the service; and
17 (c) the posting of the material is reasonable action taken in a
18 reasonable manner;
19 the material is taken not to be cyber-bullying material targeted at
20 the Australian child.

7 Cyber-abuse material targeted at an Australian adult

- 22 (1) For the purposes of this Act, if material satisfies the following
23 conditions:
24 (a) the material is provided on:
25 (i) a social media service; or
26 (ii) a relevant electronic service; or
27 (iii) a designated internet service;
28 (b) an ordinary reasonable person would conclude that it is likely
29 that the material was intended to have an effect of causing
30 serious harm to a particular Australian adult;

- 1 (c) an ordinary reasonable person in the position of the
2 Australian adult would regard the material as being, in all the
3 circumstances, menacing, harassing or offensive;
4 (d) such other conditions (if any) as are set out in the legislative
5 rules;
6 then:
7 (e) the material is *cyber-abuse material targeted at the*
8 *Australian adult*; and
9 (f) the Australian adult is the *target* of the material.

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

- 11 (2) An effect mentioned in paragraph (1)(b) may be:
12 (a) a direct result of the material being accessed by, or delivered
13 to, the Australian adult; or
14 (b) an indirect result of the material being accessed by, or
15 delivered to, one or more other persons.

16 **8 Determining whether material is offensive**

- 17 (1) The matters to be taken into account in deciding for the purposes of
18 this Act whether an ordinary reasonable person in the position of a
19 particular Australian adult would regard particular material as
20 being, in all the circumstances, offensive, include:
21 (a) the standards of morality, decency and propriety generally
22 accepted by reasonable adults; and
23 (b) the literary, artistic or educational merit (if any) of the
24 material; and
25 (c) the general character of the material (including whether it is
26 of a medical, legal or scientific character).
- 27 (2) If:
28 (a) material is provided on:
29 (i) a social media service; or
30 (ii) a relevant electronic service; or
31 (iii) a designated internet service; and
32 (b) the material is private sexual material;

EXPOSURE DRAFT

Part 1 Preliminary

Section 9

1 then, in deciding for the purposes of this Act whether an ordinary
2 reasonable person in the position of a particular Australian adult
3 would regard the material as being, in all the circumstances,
4 offensive, regard must be had to whether the subject, or each of the
5 subjects, of the private sexual material gave consent to the material
6 being provided on the service.

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

8 **9 Abhorrent violent material**

9 (1) For the purposes of this Act, *abhorrent violent material* means
10 material that is:

- 11 (a) audio material; or
- 12 (b) visual material; or
- 13 (c) audio-visual material;

14 that records or streams abhorrent violent conduct.

15 (2) For the purposes of subsection (1), it is immaterial whether the
16 material has been altered.

17 **10 When material is provided on a social media service, relevant** 18 **electronic service or designated internet service**

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

23 **11 When material is posted by an end-user of a social media service,** 24 **relevant electronic service or designated internet service**

25 For the purposes of this Act, material is *posted* on a social media
26 service, relevant electronic service or designated internet service
27 by an end-user if the end-user causes the material to be accessible
28 to, or delivered to, one or more other end-users using the service.

1 **12 When material is removed from a social media service, relevant**
2 **electronic service or designated internet service**

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

7 **13 Social media service**

8 (1) For the purposes of this Act, *social media service* means:

9 (a) an electronic service that satisfies the following conditions:

10 (i) the sole or primary purpose of the service is to enable
11 online social interaction between 2 or more end-users;

12 (ii) the service allows end-users to link to, or interact with,
13 some or all of the other end-users;

14 (iii) the service allows end-users to post material on the
15 service;

16 (iv) such other conditions (if any) as are set out in the
17 legislative rules; or

18 (b) an electronic service specified in the legislative rules;

19 but does not include an exempt service (as defined by
20 subsection (4) or (5)).

21 Note: Online social interaction does not include (for example) online
22 business interaction.

23 (2) For the purposes of subparagraph (1)(a)(i), online social interaction
24 includes online interaction that enables end-users to share material
25 for social purposes.

26 Note: Social purposes does not include (for example) business purposes.

27 (3) In determining whether the condition set out in
28 subparagraph (1)(a)(i) is satisfied, disregard any of the following
29 purposes:

30 (a) the provision of advertising material on the service;

31 (b) the generation of revenue from the provision of advertising
32 material on the service.

EXPOSURE DRAFT

Part 1 Preliminary

Section 14

- 1 *Exempt services*
- 2 (4) For the purposes of this section, a service is an *exempt service* if:
- 3 (a) none of the material on the service is accessible to, or
- 4 delivered to, one or more end-users in Australia; or
- 5 (b) the service is specified in the legislative rules.
- 6 (5) If the Commissioner is satisfied that:
- 7 (a) an electronic service has controls on:
- 8 (i) who can access material, or who can be delivered
- 9 material, provided on the service; or
- 10 (ii) the material that can be posted on the service; and
- 11 (b) those controls will be effective in achieving the result that
- 12 none of the material provided on the service could be
- 13 cyber-bullying material targeted at an Australian child;
- 14 the Commissioner may, by writing, declare that the service is an
- 15 *exempt service* for the purposes of this section.
- 16 (6) A declaration made under subsection (5) is not a legislative
- 17 instrument.

18 **14 Designated internet service**

- 19 (1) For the purposes of this Act, *designated internet service* means:
- 20 (a) a service that allows end-users to access material using an
- 21 internet carriage service; or
- 22 (b) a service that delivers material to persons having equipment
- 23 appropriate for receiving that material, where the delivery of
- 24 the service is by means of an internet carriage service;
- 25 but does not include:
- 26 (c) a social media service; or
- 27 (d) a relevant electronic service; or
- 28 (e) an on-demand program service; or
- 29 (f) a service specified under subsection (2).
- 30 (2) The Minister may, by legislative instrument, specify one or more
- 31 services for the purposes of paragraph (1)(f).

1 **15 Intimate image**

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

4 *Depiction of private parts*

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

16 *Depiction of private activity*

- 17 (3) Material is an *intimate image* of a person if:
18 (a) the material consists of a still visual image or moving visual
19 images; and
20 (b) the material depicts, or appears to depict, the person:
21 (i) in a state of undress; or
22 (ii) using the toilet; or
23 (iii) showering; or
24 (iv) having a bath; or
25 (v) engaged in a sexual act of a kind not ordinarily done in
26 public; or
27 (vi) engaged in any other like activity;
28 in circumstances in which an ordinary reasonable person
29 would reasonably expect to be afforded privacy.

EXPOSURE DRAFT

Part 1 Preliminary

Section 16

1 *Depiction of person without attire of religious or cultural*
2 *significance*

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

13 *Interpretative provisions*

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

16 Non-consensual intimate image of a person

19 For the purposes of this Act, if:

- 20 (a) an intimate image of a person is provided on:
- 21 (i) a social media service; or
- 22 (ii) a relevant electronic service; or
- 23 (iii) a designated internet service; and
- 24 (b) the intimate image was posted on the service by an end-user
25 of the service; and
- 26 (c) the person did not consent to the posting of the intimate
27 image on the service; and
- 28 (d) the posting of the intimate image on the service did not
29 constitute an exempt post;
30

1 the intimate image is a non-consensual intimate image of the
2 person.

3 **17 Hosting service**

4 For the purposes of this Act, if:

5 (a) a person (the *first person*) hosts stored material that has been
6 posted on:

7 (i) a social media service; or

8 (ii) a relevant electronic service; or

9 (iii) a designated internet service; and

10 (b) the first person or another person provides:

11 (i) a social media service; or

12 (ii) a relevant electronic service; or

13 (iii) a designated internet service;

14 on which the hosted material is provided;

15 the hosting of the stored material by the first person is taken to be
16 the provision by the first person of a *hosting service*.

17 **18 On-demand program service**

18 (1) For the purposes of this Act, *on-demand program service* means a
19 service:

20 (a) that is provided to end-users using an internet carriage
21 service; and

22 (b) to the extent to which the service provides material that is
23 identical to a program that has been, or is being, transmitted
24 on:

25 (i) a commercial television broadcasting service provided
26 under a commercial television broadcasting licence; or

27 (ii) a subscription television broadcasting service provided
28 under a subscription television broadcasting licence; or

29 (iii) a subscription television narrowcasting service; or

30 (iv) a television broadcasting service provided by the
31 Australian Broadcasting Corporation; or

EXPOSURE DRAFT

Part 1 Preliminary

Section 19

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

13 **19 Internet service providers**

14 *Basic definition*

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

18 *Declared internet service providers*

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

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

25 **20 Supply of internet carriage service to the public**

- 26 (1) This section sets out the circumstances in which an internet
27 carriage service is taken, for the purposes of section 19, to be
28 supplied to the public.
- 29 (2) If:
-

- 1 (a) an internet carriage service is used for the carriage of
2 material between 2 end-users; and
3 (b) each end-user is outside the immediate circle of the supplier
4 of the service;
5 the service is supplied to the public.

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

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

17 **21 Consent**

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

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

30 **22 Crown to be bound**

31 This Act binds the Crown in each of its capacities.

EXPOSURE DRAFT

Part 1 Preliminary

Section 23

1 **23 Application of this Act**

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

5 **24 Convention on the Rights of the Child**

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

1 **Part 2—eSafety Commissioner**
2

3 **25 Simplified outline of this Part**

- 4
- There is to be an eSafety Commissioner.
 - The functions of the Commissioner include:
 - 6 (a) promoting online safety for Australians; and
 - 7 (b) administering a complaints system for cyber-bullying material targeted at an Australian child; and
 - 8 (c) administering a complaints system for cyber-abuse material targeted at an Australian adult; and
 - 9 (d) administering a complaints and objections system for non-consensual sharing of intimate images; and
 - 10 (e) administering the online content scheme; and
 - 11 (f) coordinating activities of Commonwealth Departments, authorities and agencies relating to online safety for
12
13
14
15
16
Australians.

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

19 **26 eSafety Commissioner**

20 There is to be an eSafety Commissioner.

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

23 **27 Functions of the Commissioner**

- 24 (1) The functions of the Commissioner are:
25 (a) such functions as are conferred on the Commissioner by:
26 (i) this Act; or
27 (ii) any other law of the Commonwealth; and
28 (b) to promote online safety for Australians; and

EXPOSURE DRAFT

Part 2 eSafety Commissioner

Section 27

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

EXPOSURE DRAFT

- 1 (r) such other functions (if any) as are specified in the legislative
2 rules; and
3 (s) to do anything incidental to or conducive to the performance
4 of any of the above functions.

5 *Grants*

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

15 *Guidelines and statements are not legislative instruments*

- 16 (5) Guidelines and statements formulated under paragraph (1)(p) are
17 not legislative instruments.

18 **28 Powers of the Commissioner**

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

22 Note: For supplementary powers, see section 178.

EXPOSURE DRAFT

Part 3 Complaints, objections and investigations

Division 1 Introduction

Section 29

1 **Part 3—Complaints, objections and investigations**

2 **Division 1—Introduction**

3 **29 Simplified outline of this Part**

4

5

6

7

8

9

10

11

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

EXPOSURE DRAFT

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

3 **30 Complaints about cyber-bullying material**

4 *Complaint made by an Australian child*

- 5 (1) If an Australian child has reason to believe that the child was or is
6 the target of cyber-bullying material that has been, or is being,
7 provided on:
8 (a) a particular social media service; or
9 (b) a particular relevant electronic service; or
10 (c) a particular designated internet service;
11 the child may make a complaint to the Commissioner about the
12 matter.

13 *Complaint made on behalf of an Australian child*

- 14 (2) If:
15 (a) a person (the **responsible person**) has reason to believe that
16 cyber-bullying material targeted at an Australian child has
17 been, or is being, provided on:
18 (i) a particular social media service; or
19 (ii) a particular relevant electronic service; or
20 (iii) a particular designated internet service; and
21 (b) either:
22 (i) the responsible person is a parent or guardian of the
23 child; or
24 (ii) the child has authorised the responsible person to make
25 a complaint about the matter;
26 the responsible person may, on behalf of the child, make a
27 complaint to the Commissioner about the matter.

28 *Complaint made by an adult who was an Australian child*

- 29 (3) If:
30 (a) a person is an adult; and
-

EXPOSURE DRAFT

Part 3 Complaints, objections and investigations

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

Section 30

- 1 (b) the person has reason to believe that, when the person was an
2 Australian child, the person was the target of cyber-bullying
3 material that was provided on:
4 (i) a particular social media service; or
5 (ii) a particular relevant electronic service; or
6 (iii) a particular designated internet service;
7 the person may make a complaint to the Commissioner about the
8 matter, so long as:
9 (c) the complaint is made within a reasonable time after the
10 person became aware of the matter; and
11 (d) the complaint is made within 6 months after the person
12 reached 18 years.

Complaint previously made to the service provider

- 13
14 (4) If:
15 (a) a complaint made by a person under this section concerns
16 material that has been, or is being, provided on:
17 (i) a social media service; or
18 (ii) a relevant electronic service; or
19 (iii) a designated internet service; and
20 (b) the person wants the Commissioner to give the provider of
21 the service a section 65 removal notice requiring the provider
22 to remove the material from the service;
23 the complaint under this section must be accompanied by evidence
24 that the material was the subject of a complaint that was previously
25 made to the provider of the service.
26 (5) For the purposes of subsection (4), evidence must be in a form
27 required by the Commissioner.
28 (6) If:
29 (a) a social media service; or
30 (b) a relevant electronic service; or
31 (c) a designated internet service;

EXPOSURE DRAFT

1 issues a receipt or complaint number to a complainant as part of its
2 ordinary business processes, the Commissioner may require
3 evidence to be in the form of the receipt or complaint number.

4 (7) If:

- 5 (a) a social media service; or
- 6 (b) a relevant electronic service; or
- 7 (c) a designated internet service;

8 does not issue a receipt or complaint number to a complainant as
9 part of its ordinary business processes, the Commissioner may
10 require evidence to be:

- 11 (d) in the form of a screen shot; or
- 12 (e) in the form of a statutory declaration; or
- 13 (f) in such other form as the Commissioner specifies.

14 (8) Subsections (6) and (7) do not limit subsection (5).

15 (9) A requirement under subsection (5), (6) or (7) is not a legislative
16 instrument.

17 **31 Investigation of complaints**

18 (1) The Commissioner may investigate a complaint made under
19 section 30.

20 (2) An investigation under this section is to be conducted as the
21 Commissioner thinks fit.

22 (3) The Commissioner may, for the purposes of an investigation,
23 obtain information from such persons, and make such inquiries, as
24 the Commissioner thinks fit.

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

27 *Termination of investigation*

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

EXPOSURE DRAFT

Part 3 Complaints, objections and investigations

Division 3 Complaints about, and objections to, intimate images

Section 32

1 **Division 3—Complaints about, and objections to, intimate**
2 **images**

3 **32 Complaints**

4 *Complaint made by a person depicted in an intimate image*

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

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

- 14 (3) If a person (the **authorised person**) has reason to believe that
15 section 75 has been contravened in relation to an intimate image of
16 another person (the **depicted person**), the authorised person may,
17 on behalf of the depicted person, make a complaint to the
18 Commissioner about the matter, so long as:
- 19 (a) the depicted person has authorised the authorised person to
20 make a complaint about the matter; or
- 21 (b) both:
- 22 (i) the depicted person is a child who has not reached 16
23 years; and
- 24 (ii) the authorised person is a parent or guardian of the
25 depicted person; or
- 26 (c) both:
- 27 (i) the depicted person is in a mental or physical condition
28 (whether temporary or permanent) that makes the
29 depicted person incapable of managing the depicted
30 person's affairs; and
- 31 (ii) the authorised person is a parent or guardian of the
32 depicted person.
-

EXPOSURE DRAFT

Complaints, objections and investigations **Part 3**
Complaints about, and objections to, intimate images **Division 3**

Section 33

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

7 **33 Objection notice**

8 *Objection notice given by a person depicted in an intimate image*

- 9 (1) If a person (the **depicted person**) has reason to believe that:
10 (a) an intimate image of the depicted person is, or has been,
11 provided on:
12 (i) a social media service; or
13 (ii) a relevant electronic service; or
14 (iii) a designated internet service; and
15 (b) the intimate image was posted on the service by an end-user
16 of the service; and
17 (c) the posting of the intimate image on the service did not
18 constitute an exempt post; and
19 (d) any of the following conditions is satisfied:
20 (i) the depicted person is ordinarily resident in Australia;
21 (ii) the end-user is ordinarily resident in Australia;
22 (iii) the intimate image is hosted in Australia by a hosting
23 service;
24 the depicted person may give the Commissioner a notice (an
25 **objection notice**) objecting to the provision of the intimate image
26 on the service.
- 27 (2) The depicted person may give the objection notice even if the
28 depicted person consented to the posting of the intimate image on
29 the service.

EXPOSURE DRAFT

Complaints, objections and investigations **Part 3**
Complaints about, and objections to, intimate images **Division 3**

Section 34

1 (4) The authorised person must make a declaration to the
2 Commissioner to the effect that the authorised person is entitled to
3 give the objection notice on behalf of the depicted person.

4 (5) The authorised person may give the objection notice even if the
5 depicted person consented to the posting of the intimate image on
6 the service.

7 *Transitional*

8 (6) If an intimate image was posted on:
9 (a) a social media service; or
10 (b) a relevant electronic service; or
11 (c) a designated internet service;
12 before the commencement of this section, this section does not
13 apply to the intimate image unless the intimate image was provided
14 on the service after the commencement of this section.

15 **34 Investigation of complaints**

16 (1) The Commissioner may investigate a complaint made to the
17 Commissioner under section 32.

18 (2) An investigation under this section is to be conducted as the
19 Commissioner thinks fit.

20 (3) The Commissioner may, for the purposes of an investigation,
21 obtain information from such persons, and make such inquiries, as
22 the Commissioner thinks fit.

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

25 *Termination of investigation*

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

EXPOSURE DRAFT

Part 3 Complaints, objections and investigations

Division 3 Complaints about, and objections to, intimate images

Section 35

1 **35 Commissioner's response to objection notices**

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

EXPOSURE DRAFT

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

3 **36 Complaints about cyber-abuse material**

4 *Complaint made by an Australian adult*

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

13 *Complaint made on behalf of an Australian adult*

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

25 *Complaint about material that was provided on a service*

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

EXPOSURE DRAFT

Part 3 Complaints, objections and investigations

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

Section 36

- 1 (iii) a designated internet service; and
2 (b) the person wants the Commissioner to give the provider of
3 the service a removal notice under section 88 requiring the
4 provider to remove the material from the service;
5 the complaint under this section must be accompanied by evidence
6 that the material was the subject of a complaint that was previously
7 made to the provider of the service.
- 8 (4) For the purposes of subsection (3), evidence must be in a form
9 required by the Commissioner.
- 10 (5) If:
11 (a) a social media service; or
12 (b) a relevant electronic service; or
13 (c) a designated internet service;
14 issues a receipt or complaint number to a complainant as part of its
15 ordinary business processes, the Commissioner may require
16 evidence to be in the form of the receipt or complaint number.
- 17 (6) If:
18 (a) a social media service; or
19 (b) a relevant electronic service; or
20 (c) a designated internet service;
21 does not issue a receipt or complaint number to a complainant as
22 part of its ordinary business processes, the Commissioner may
23 require evidence to be:
24 (d) in the form of a screen shot; or
25 (e) in the form of a statutory declaration; or
26 (f) in such other form as the Commissioner specifies.
- 27 (7) Subsections (5) and (6) do not limit subsection (4).
- 28 (8) A requirement under subsection (4), (5) or (6) is not a legislative
29 instrument.

EXPOSURE DRAFT

Complaints, objections and investigations **Part 3**
Complaints about cyber-abuse material targeted at an Australian adult **Division 4**

Section 37

1 **37 Investigation of complaints**

- 2 (1) The Commissioner may investigate a complaint made under
3 section 36.
- 4 (2) An investigation under this section is to be conducted as the
5 Commissioner thinks fit.
- 6 (3) The Commissioner may, for the purposes of an investigation,
7 obtain information from such persons, and make such inquiries, as
8 the Commissioner thinks fit.
- 9 (4) Subsections (1), (2) and (3) have effect subject to Part 14 (which
10 confers certain investigative powers on the Commissioner).

11 *Termination of investigation*

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

EXPOSURE DRAFT

Part 3 Complaints, objections and investigations

Division 5 Complaints relating to the online content scheme

Section 38

1 **Division 5—Complaints relating to the online content**
2 **scheme**

3 **38 Complaints about class 1 material or class 2 material**

4 (1) If a person has reason to believe that end-users in Australia can
5 access:

6 (a) class 1 material that is provided on:

7 (i) a particular social media service; or

8 (ii) a particular relevant electronic service; or

9 (iii) a particular designated internet service; or

10 (b) class 2 material that is covered by paragraph 107(1)(a), (b),
11 (c), (d) or (e) and provided on:

12 (i) a particular social media service; or

13 (ii) a particular relevant electronic service; or

14 (iii) a particular designated internet service;

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

17 (2) If a person has reason to believe that:

18 (a) end-users in Australia can access class 2 material that is
19 covered by paragraph 107(1)(f), (g), (h), (i), (j), (k) or (l) and
20 provided on:

21 (i) a particular social media service; or

22 (ii) a particular relevant electronic service; or

23 (iii) a particular designated internet service; and

24 (b) access to the material is not subject to a restricted access
25 system;

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

28 **39 Complaints relating to breach of a service provider rule etc.**

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

EXPOSURE DRAFT

Complaints, objections and investigations **Part 3**
Complaints relating to the online content scheme **Division 5**

Section 40

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

7 **40 Complaints relating to breach of an industry code etc.**

- 8 If a person has reason to believe that a participant in the online
9 industry (within the meaning of Division 7 of Part 9) has breached:
10 (a) a code registered under that Division that is applicable to the
11 participant; or
12 (b) an industry standard registered under that Division that is
13 applicable to the participant;
14 the person may make a complaint to the Commissioner about the
15 matter.

16 **41 Residency etc. of complainant**

- 17 A person is not entitled to make a complaint under this Division
18 unless the person is:
19 (a) an individual who resides in Australia; or
20 (b) a body corporate that carries on activities in Australia; or
21 (c) the Commonwealth, a State or a Territory.

22 **42 Commissioner may investigate matters**

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

EXPOSURE DRAFT

Part 3 Complaints, objections and investigations

Division 5 Complaints relating to the online content scheme

Section 42

- 1 (b) whether end-users in Australia can access class 2 material
2 that is covered by paragraph 107(1)(a), (b), (c), (d) or (e) and
3 provided on:
4 (i) a social media service; or
5 (ii) a relevant electronic service; or
6 (iii) a designated internet service;
7 (c) whether end-users in Australia can access class 2 material
8 that is covered by paragraph 107(1)(f), (g), (h), (i), (j), (k) or
9 (l) and provided on:
10 (i) a social media service; or
11 (ii) a relevant electronic service; or
12 (iii) a designated internet service;
13 and, if so, whether access to the material is subject to a
14 restricted access system;
15 (d) whether a person has breached a service provider rule that
16 applies to the person;
17 (e) whether a person has breached a civil penalty provision of
18 Part 9 (which deals with the online content scheme);
19 (f) whether a participant in the online industry (within the
20 meaning of Division 7 of Part 9) has breached a code
21 registered under that Division that is applicable to the
22 participant;
23 (g) whether a participant in the online industry (within the
24 meaning of Division 7 of Part 9) has breached an industry
25 standard registered under that Division that is applicable to
26 the participant.
- 27 (2) An investigation under this section is to be conducted as the
28 Commissioner thinks fit.
- 29 (3) The Commissioner may, for the purposes of an investigation,
30 obtain information from such persons, and make such inquiries, as
31 the Commissioner thinks fit.
- 32 (4) This section has effect subject to Part 14 (which confers certain
33 investigative powers on the Commissioner).

EXPOSURE DRAFT

Complaints, objections and investigations **Part 3**
Complaints relating to the online content scheme **Division 5**

Section 43

1 **43 Commissioner may refuse to investigate certain matters**

2 (1) If:

3 (a) a person has made a complaint under section 38, 39 or 40;
4 and

5 (b) the complaint is about a particular matter; and

6 (c) the person could have made a complaint about the matter
7 under:

8 (i) an industry code registered under Division 7 of Part 9);

9 or

10 (ii) an industry standard determined under Division 7 of
11 Part 9);

12 the Commissioner may refuse to investigate the matter.

13 (2) Subsection (1) does not, by implication, limit the circumstances in
14 which the Commissioner may refuse to investigate a matter.

EXPOSURE DRAFT

Part 4 Basic online safety expectations

Division 1 Introduction

Section 44

1 **Part 4—Basic online safety expectations**

2 **Division 1—Introduction**

3 **44 Simplified outline of this Part**

4

5

6

- The Minister may determine basic online safety expectations for social media services, relevant electronic services and designated internet services.

7

8

9

10

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

EXPOSURE DRAFT

1 **Division 2—Basic online safety expectations**

2 **45 Basic online safety expectations**

3 *Social media service*

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

7 *Relevant electronic service*

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

12 *Designated internet service*

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

18 *Determination does not impose a legally enforceable duty*

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

21 **46 Core expectations**

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

EXPOSURE DRAFT

Part 4 Basic online safety expectations

Division 2 Basic online safety expectations

Section 46

- 1 (c) the expectation that the provider of the service will take
2 reasonable steps to minimise the extent to which the
3 following material is provided on the service:
4 (i) cyber-bullying material targeted at an Australian child;
5 (ii) cyber-abuse material targeted at an Australian adult;
6 (iii) a non-consensual intimate image of a person;
7 (iv) class 1 material;
8 (v) material that promotes abhorrent violent conduct;
9 (vi) material that incites abhorrent violent conduct;
10 (vii) material that instructs in abhorrent violent conduct;
11 (viii) abhorrent violent material;
- 12 (d) the expectation that the provider of the service will take
13 reasonable steps to ensure that technological or other
14 measures are in effect to prevent access by children to class 2
15 material provided on the service;
- 16 (e) the expectation that the provider of the service will ensure
17 that the service has clear and readily identifiable mechanisms
18 that enable end-users to report, and make complaints about,
19 any of the following material provided on the service:
20 (i) cyber-bullying material targeted at an Australian child;
21 (ii) cyber-abuse material targeted at an Australian adult;
22 (iii) a non-consensual intimate image of a person;
23 (iv) class 1 material;
24 (v) class 2 material;
25 (vi) material that promotes abhorrent violent conduct;
26 (vii) material that incites abhorrent violent conduct;
27 (viii) material that instructs in abhorrent violent conduct;
28 (ix) abhorrent violent material;
- 29 (f) the expectation that the provider of the service will ensure
30 that the service has clear and readily identifiable mechanisms
31 that enable end-users to report, and make complaints about,
32 breaches of the service's terms of use;
- 33 (g) the expectation that, if the Commissioner, by written notice
34 given to the provider of the service, requests the provider to
35 give the Commissioner a statement that sets out the number

EXPOSURE DRAFT

- 1 of complaints made to the provider during a specified period
2 (not shorter than 6 months) about breaches of the service's
3 terms of use, the provider will comply with the request
4 within 30 days after the notice of request is given;
- 5 (h) the expectation that, if the Commissioner, by written notice
6 given to the provider of the service, requests the provider to
7 give the Commissioner a statement that sets out, for each
8 removal notice given to the provider during a specified
9 period (not shorter than 6 months), how long it took the
10 provider to comply with the removal notice, the provider will
11 comply with the request within 30 days after the notice of
12 request is given;
- 13 (i) the expectation that, if the Commissioner, by written notice
14 given to the provider of the service, requests the provider to
15 give the Commissioner specified information relating to the
16 measures taken by the provider to ensure that end-users are
17 able to use the service in a safe manner, the provider will
18 comply with the request within 30 days after the notice of
19 request is given.
- 20 Note 1: For *non-consensual intimate image of a person*, see section 16.
- 21 Note 2: Section 104 provides for exemptions for the following material:
- 22 (a) material that promotes abhorrent violent conduct;
23 (b) material that incites abhorrent violent conduct;
24 (c) material that instructs in abhorrent violent conduct;
25 (d) abhorrent violent material.
- 26 (2) Subsection (1) does not limit the expectations that may be specified
27 in a determination under section 45.

47 Consultation

- 28
- 29 (1) Before making or varying a determination under section 45, the
30 Minister must:
- 31 (a) make a copy of the draft available on the Department's
32 website; and
- 33 (b) publish a notice on the Department's website:
- 34 (i) stating that the Minister has prepared a draft of the
35 determination or variation; and

EXPOSURE DRAFT

Part 4 Basic online safety expectations

Division 2 Basic online safety expectations

Section 48

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

11 **48 Service provider notifications**

12 *Scope*

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

20 *Statement*

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

EXPOSURE DRAFT

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

10 **Division 3—Reporting**

11 **Subdivision A—Periodic reporting about compliance with basic** 12 **online safety expectations**

13 **49 Periodic reporting notice**

14 *Scope*

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

22 *Notice*

- 23 (2) The Commissioner may, by written notice given to the provider of
24 the service, require the provider to:
25 (a) do whichever of the following is specified in the notice:
26 (i) prepare periodic reports about the extent to which the
27 provider complied with the applicable basic online
28 safety expectations during such regular intervals as are
29 specified in the notice;

EXPOSURE DRAFT

Part 4 Basic online safety expectations

Division 3 Reporting

Section 49

- 1 (ii) prepare periodic reports about the extent to which the
2 provider complied with one or more specified
3 applicable basic online safety expectations during such
4 regular intervals as are specified in the notice; and
- 5 (b) prepare those periodic reports in the manner and form
6 specified in the notice; and
- 7 (c) give each of those periodic reports to the Commissioner:
8 (i) within the period ascertained in accordance with the
9 notice in relation to the periodic report concerned; or
10 (ii) if the Commissioner allows a longer period in relation
11 to the periodic report concerned—within that longer
12 period.
- 13 (3) An interval specified under subparagraph (2)(a)(i) or (ii):
14 (a) must not be shorter than 6 months; and
15 (b) must not be longer than 24 months.
- 16 (4) A period ascertained in accordance with the notice as mentioned in
17 subparagraph (2)(c)(i) must not be shorter than 28 days after the
18 end of the interval to which the periodic report relates.
- 19 (5) In deciding whether to give a notice under subsection (2) to the
20 provider of a service, the Commissioner must have regard to the
21 following:
22 (a) the number of occasions during the previous 12 months on
23 which complaints about material provided on the service
24 were made to the Commissioner under this Act;
25 (b) whether the provider has previously contravened a civil
26 penalty provision of this Division;
27 (c) whether there are deficiencies in the provider's practices, so
28 far as those practices relate to the capacity of end-users to use
29 the service in a safe manner;
30 (d) whether there are deficiencies in the service's terms of use,
31 so far as they relate to the capacity of end-users to use the
32 service in a safe manner;
33 (e) whether the provider has agreed to give the Secretary regular
34 reports relating to the capacity of end-users to use the service
35 in a safe manner;
-

EXPOSURE DRAFT

- 1 (f) such other matters (if any) as the Commissioner considers
2 relevant.

3 **50 Compliance with notice**

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

6 Civil penalty: 500 penalty units.

7 **51 Formal warning**

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

10 **52 Periodic reporting determination**

11 *Scope*

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

19 *Determination*

- 20 (2) The Commissioner may, by legislative instrument, determine that
21 each provider of a service included in a specified class of services
22 is required to:
23 (a) do whichever of the following is specified in the
24 determination:
25 (i) prepare periodic reports about the extent to which the
26 provider complied with the applicable basic online
27 safety expectations during such regular intervals as are
28 specified in the determination;

EXPOSURE DRAFT

Part 4 Basic online safety expectations

Division 3 Reporting

Section 53

- 1 (ii) prepare periodic reports about the extent to which the
2 provider complied with one or more specified
3 applicable basic online safety expectations during such
4 regular intervals as are specified in the determination;
5 and
6 (b) prepare those periodic reports in the manner and form
7 specified in the determination; and
8 (c) give each of those periodic reports to the Commissioner:
9 (i) within the period ascertained in accordance with the
10 determination in relation to the periodic report
11 concerned; or
12 (ii) if the Commissioner allows a longer period in relation
13 to the periodic report concerned—within that longer
14 period.
- 15 (3) An interval specified under subparagraph (2)(a)(i) or (ii):
16 (a) must not be shorter than 6 months; and
17 (b) must not be longer than 24 months.
- 18 (4) A period ascertained in accordance with the determination as
19 mentioned in subparagraph (2)(c)(i) must not be shorter than 28
20 days after the end of the interval to which the periodic report
21 relates.

22 **53 Compliance with determination**

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

25 Civil penalty: 500 penalty units.

26 **54 Formal warning**

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

29 **55 Service provider notifications**

30 (1) If:

EXPOSURE DRAFT

- 1 (a) the Commissioner gave a notice under subsection 49(2) to
2 the provider of:
3 (i) a social media service; or
4 (ii) a relevant electronic service; or
5 (iii) a designated internet service; and
6 (b) the provider did not comply with the notice;
7 the Commissioner may:
8 (c) prepare a statement to that effect; and
9 (d) publish the statement on the Commissioner’s website; and
10 (e) give a copy of the statement to the provider of the service.
- 11 (2) If:
12 (a) a determination under subsection 52(2) applies to the
13 provider of:
14 (i) a social media service; or
15 (ii) a relevant electronic service; or
16 (iii) a designated internet service; and
17 (b) the provider did not comply with the determination;
18 the Commissioner may:
19 (c) prepare a statement to that effect; and
20 (d) publish the statement on the Commissioner’s website; and
21 (e) give a copy of the statement to the provider of the service.

22 **Subdivision B—Non-periodic reporting about compliance with** 23 **basic online safety expectations**

24 **56 Non-periodic reporting notice**

25 *Scope*

- 26 (1) This section applies to the following services:
27 (a) a social media service, if there are basic online safety
28 expectations for the service;
29 (b) a relevant electronic service, if there are basic online safety
30 expectations for the service;

EXPOSURE DRAFT

Part 4 Basic online safety expectations

Division 3 Reporting

Section 56

1 (c) a designated internet service, if there are basic online safety
2 expectations for the service.

3 *Notice*

4 (2) The Commissioner may, by written notice given to the provider of
5 the service, require the provider to:

6 (a) do whichever of the following is specified in the notice:

7 (i) prepare a report about the extent to which the provider
8 complied with the applicable basic online safety
9 expectations during the period specified in the notice;

10 (ii) prepare a report about the extent to which the provider
11 complied with one or more specified applicable basic
12 online safety expectations during the period specified in
13 the notice; and

14 (b) prepare the report in the manner and form specified in the
15 notice; and

16 (c) give the report to the Commissioner:

17 (i) within the period specified in the notice; or

18 (ii) if the Commissioner allows a longer period—within that
19 longer period.

20 (3) The period specified under subparagraph (2)(a)(i) or (ii):

21 (a) must not be shorter than 6 months; and

22 (b) must not be longer than 24 months.

23 (4) The period specified in subparagraph (2)(c)(i) must not be shorter
24 than 28 days after the notice is given.

25 (5) In deciding whether to give a notice under subsection (2) to the
26 provider of a service, the Commissioner must have regard to the
27 following:

28 (a) the number of occasions during the previous 12 months on
29 which complaints about material provided on the service
30 were made to the Commissioner under this Act;

31 (b) whether the provider has previously contravened a civil
32 penalty provision of this Division;

EXPOSURE DRAFT

- 1 (c) whether there are deficiencies in the provider’s practices, so
2 far as those practices relate to the capacity of end-users to use
3 the service in a safe manner;
4 (d) whether there are deficiencies in service’s terms of use, so far
5 as they relate to the capacity of end-users to use the service in
6 a safe manner;
7 (e) whether the provider has agreed to give the Secretary regular
8 reports relating to the capacity of end-users to use the service
9 in a safe manner;
10 (f) such other matters (if any) as the Commissioner considers
11 relevant.

12 **57 Compliance with notice**

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

15 Civil penalty: 500 penalty units.

16 **58 Formal warning**

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

19 **59 Non-periodic reporting determination**

20 *Scope*

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

EXPOSURE DRAFT

Part 4 Basic online safety expectations

Division 3 Reporting

Section 60

1

Determination

2

(2) The Commissioner may, by legislative instrument, determine that each provider of a service included in a specified class of services is required to:

3

4

5

(a) do whichever of the following is specified in the determination:

6

7

(i) prepare a report about the extent to which the provider complied with the applicable basic online safety expectations during the period specified in the determination;

8

9

10

11

(ii) prepare a report about the extent to which the provider complied with one or more specified applicable basic online safety expectations during the period specified in the determination; and

12

13

14

15

(b) prepare the report in the manner and form specified in the determination; and

16

17

(c) give the report to the Commissioner:

18

19

20

(i) within the period specified in the determination; or

(ii) if the Commissioner allows a longer period—within that longer period.

21

(3) The period specified under subparagraph (2)(a)(i) or (ii):

22

(a) must not be shorter than 6 months; and

23

(b) must not be longer than 24 months.

24

(4) The period specified in subparagraph (2)(c)(i) must not be shorter than 28 days after the determination is made.

25

26

60 Compliance with determination

27

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

28

29

Civil penalty: 500 penalty units.

EXPOSURE DRAFT

1 **61 Formal warning**

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

4 **62 Service provider notifications**

5 (1) If:

6 (a) the Commissioner gave a notice under subsection 56(2) to
7 the provider of:

8 (i) a social media service; or

9 (ii) a relevant electronic service; or

10 (iii) a designated internet service; and

11 (b) the provider did not comply with the notice;

12 the Commissioner may:

13 (c) prepare a statement to that effect; and

14 (d) publish the statement on the Commissioner's website; and

15 (e) give a copy of the statement to the provider of the service.

16 (2) If:

17 (a) a determination under subsection 59(2) applies to the
18 provider of:

19 (i) a social media service; or

20 (ii) a relevant electronic service; or

21 (iii) a designated internet service; and

22 (b) the provider did not comply with the determination;

23 the Commissioner may:

24 (c) prepare a statement to that effect; and

25 (d) publish the statement on the Commissioner's website; and

26 (e) give a copy of the statement to the provider of the service.

EXPOSURE DRAFT

Part 4 Basic online safety expectations

Division 3 Reporting

Section 63

1 **Subdivision C—Self-incrimination**

2 **63 Self-incrimination**

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

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

6 (a) the report; or

7 (b) giving the report; or

8 (c) any information, document or thing obtained as a direct or
9 indirect consequence of giving the report;

10 is not admissible in evidence against the individual:

11 (d) in civil proceedings for the recovery of a penalty (other than
12 proceedings for the recovery of a penalty under this
13 Division); or

14 (e) in criminal proceedings (other than proceedings for an
15 offence against section 137.1 or 137.2 of the *Criminal Code*
16 that relates to this Division).

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

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

EXPOSURE DRAFT

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

Section 64

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

64 Simplified outline of this Part

- A social media service, relevant electronic service or designated internet service may be given a notice (a *removal notice*) requiring the removal from the service of cyber-bullying material targeted at an Australian child.
- A hosting service provider who hosts cyber-bullying material targeted at an Australian child may be given a notice (a *removal notice*) requiring the provider to cease hosting the material.
- A person who posts cyber-bullying material targeted at an Australian child may be given a notice (an *end-user notice*) requiring the person to do any or all of the following:
 - (a) take all reasonable steps to ensure the removal of the material;
 - (b) refrain from posting any cyber-bullying material for which the child is the target;
 - (c) apologise for posting the material.

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

- (1) If:
- (a) material is provided on:
 - (i) a social media service; or
 - (ii) a relevant electronic service; or
 - (iii) a designated internet service; and
 - (b) the material was the subject of a complaint that was made to the provider of the service; and
 - (c) the material was not removed from the service within:

EXPOSURE DRAFT

Part 5 Cyber-bullying material targeted at an Australian child

Section 66

- 1 (i) 48 hours after the complaint was made; or
2 (ii) such longer period as the Commissioner allows; and
3 (d) a complaint has been made to the Commissioner under
4 section 30 about the material; and
5 (e) the Commissioner is satisfied that the material is or was
6 cyber-bullying material targeted at an Australian child;
7 the Commissioner may give the provider of the service a written
8 notice (a **removal notice**) requiring the provider to:
9 (f) remove the material from the service; and
10 (g) do so within:
11 (i) 24 hours after the removal notice was given to the
12 provider; or
13 (ii) such longer period as the Commissioner allows.

14 Note: For enforcement, see:

- 15 (a) sections 67 and 162 (civil penalty); and
16 (b) section 163 (infringement notices); and
17 (c) section 164 (enforceable undertakings); and
18 (d) section 165 (injunctions).

19 *Notice of refusal to give a removal notice*

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

24 **66 Removal notice given to a hosting service provider**

- 25 (1) If:
26 (a) material is, or has been, provided on:
27 (i) a social media service; or
28 (ii) a relevant electronic service; or
29 (iii) a designated internet service; and
30 (b) the material was the subject of a complaint that was made to
31 the provider of the service; and
32 (c) the material was not removed from the service within:

EXPOSURE DRAFT

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

Section 67

- 1 (i) 48 hours after the complaint was made; or
2 (ii) such longer period as the Commissioner allows; and
3 (d) a complaint has been made to the Commissioner under
4 section 30 about the material; and
5 (e) the Commissioner is satisfied that the material is or was
6 cyber-bullying material targeted at an Australian child; and
7 (f) the material is hosted by a hosting service provider;
8 the Commissioner may give the hosting service provider a written
9 notice, to be known as a **removal notice**, requiring the provider to:
10 (g) take all reasonable steps to cease hosting the material; and
11 (h) do so within:
12 (i) 24 hours after the notice was given to the provider; or
13 (ii) such longer period as the Commissioner allows.
- 14 (2) So far as is reasonably practicable, the material must be identified
15 in the removal notice in a way that is sufficient to enable the
16 hosting service provider to comply with the notice.

17 *Notice of refusal to give a removal notice*

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

22 **67 Compliance with removal notice**

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

26 Civil penalty: 500 penalty units.

27 **68 Formal warning**

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

EXPOSURE DRAFT

Part 5 Cyber-bullying material targeted at an Australian child

Section 69

1 **69 Non-compliance with a removal notice**

2 If the Commissioner is satisfied that:

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

7 has not complied with a removal notice given under section 65 or
8 66, the Commissioner may:

- 9 (e) prepare a statement to that effect; and
10 (f) publish the statement on the Commissioner’s website.

11 **70 End-user notice**

12 (1) If:

- 13 (a) material is, or has been, provided on:
14 (i) a social media service; or
15 (ii) a relevant electronic service; or
16 (iii) a designated internet service; and
17 (b) a complaint has been made to the Commissioner under
18 section 30 about the material; and
19 (c) the Commissioner is satisfied that the material is or was
20 cyber-bullying material targeted at an Australian child; and
21 (d) the material was posted on the service by a particular
22 end-user of the service;

23 the Commissioner may give the end-user a written notice (an
24 *end-user notice*) requiring the end-user to do any or all of the
25 following:

- 26 (e) if the material is provided on the service—to:
27 (i) take all reasonable steps to ensure the removal of the
28 material from the service; and
29 (ii) do so within the period specified in the notice;
30 (f) in any case—to refrain from posting any cyber-bullying
31 material for which the child is the target;
32 (g) in any case—to:

EXPOSURE DRAFT

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

Section 71

- 1 (i) apologise to the child (or, if the child has become an
2 adult, to the adult) for posting the material; and
3 (ii) do so in the manner, and within the period, specified in
4 the notice.

5 *Transitional*

- 6 (2) If material was posted on:
7 (a) a social media service; or
8 (b) a relevant electronic service; or
9 (c) a designated internet service;
10 before the commencement of this section, paragraph (1)(a) does
11 not apply to the material unless the material was provided on the
12 service after the commencement of this section.

13 **71 Compliance with end-user notice**

14 A person must comply with a requirement under an end-user notice
15 to the extent that the person is capable of doing so.

16 Note: For enforcement, see section 165 (injunctions).

17 **72 Formal warning**

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

20 **73 Service provider notifications**

- 21 (1) If:
22 (a) material is provided on:
23 (i) a social media service; or
24 (ii) a relevant electronic service; or
25 (iii) a designated internet service; and
26 (b) the Commissioner is satisfied that the material is or was
27 cyber-bullying material targeted at an Australian child; and
28 (c) a complaint has been made to the Commissioner under
29 section 30 about the material;

EXPOSURE DRAFT

Part 5 Cyber-bullying material targeted at an Australian child

Section 73

- 1 the Commissioner may, with the consent of the complainant, give
2 the provider of the service a written notice that:
- 3 (d) identifies the material; and
4 (e) states the Commissioner is satisfied that the material is
5 cyber-bullying material targeted at an Australian child.
- 6 (2) If the Commissioner is satisfied that there were 2 or more
7 occasions during the previous 12 months on which:
- 8 (a) cyber-bullying material targeted at an Australian child was
9 provided on:
10 (i) a social media service; or
11 (ii) a relevant electronic service; or
12 (iii) a designated internet service; and
13 (b) the provision of the material contravened the service's terms
14 of use;
- 15 the Commissioner may:
- 16 (c) prepare a statement to that effect; and
17 (d) publish the statement on the Commissioner's website; and
18 (e) give a copy of the statement to the provider of the service.

EXPOSURE DRAFT

Non-consensual sharing of intimate images **Part 6**

Introduction **Division 1**

Section 74

1 **Part 6—Non-consensual sharing of intimate images**

2 **Division 1—Introduction**

3 **74 Simplified outline of this Part**

4

5

6

7

8

9

10

11

12

13

14

15

16

17

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

EXPOSURE DRAFT

Part 6 Non-consensual sharing of intimate images

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

Section 75

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

3 **75 Posting an intimate image**

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

12 Civil penalty: 500 penalty units.

13 *Consent*

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

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

20 *Depiction of second person without attire of religious or cultural*
21 *significance*

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

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

EXPOSURE DRAFT

Non-consensual sharing of intimate images **Part 6**
Intimate images must not be posted without consent etc. **Division 2**

Section 76

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

3 *Exempt post*

4 (4) Subsection (1) does not apply if the post of the intimate image is,
5 or would be, an exempt post.

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

10 **76 Formal warning**

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

EXPOSURE DRAFT

Part 6 Non-consensual sharing of intimate images

Division 3 Removal notices

Section 77

1 **Division 3—Removal notices**

2 **77 Removal notice given to the provider of a social media service,**
3 **relevant electronic service or designated internet service**

4 (1) If:

5 (a) an intimate image of a person is, or has been, provided on:

6 (i) a social media service; or

7 (ii) a relevant electronic service; or

8 (iii) a designated internet service; and

9 (b) the intimate image was posted on the service by an end-user
10 of the service; and

11 (c) the intimate image is the subject of:

12 (i) a complaint made to the Commissioner under
13 section 32; or

14 (ii) an objection notice given to the Commissioner under
15 section 33; and

16 (d) if subparagraph (c)(i) applies—the Commissioner is satisfied
17 that the person did not consent to the posting of the intimate
18 image on the service; and

19 (e) the posting of the intimate image on the service did not
20 constitute an exempt post;

21 the Commissioner may give the provider of the service a written
22 notice, to be known as a **removal notice**, requiring the provider to:

23 (f) take all reasonable steps to ensure the removal of the intimate
24 image from the service; and

25 (g) do so within:

26 (i) 24 hours after the notice was given to the provider; or

27 (ii) such longer period as the Commissioner allows.

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

EXPOSURE DRAFT

Non-consensual sharing of intimate images **Part 6**

Removal notices **Division 3**

Section 78

1 *Notice of refusal to give a removal notice*

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

5 (a) if subparagraph (1)(c)(i) applies—the person who made the
6 complaint mentioned in that subparagraph; or

7 (b) if subparagraph (1)(c)(ii) applies—the person who gave the
8 objection notice mentioned in that subparagraph.

9 **78 Removal notice given to an end-user**

10 (1) If:

11 (a) an intimate image of a person is, or has been, provided on:

12 (i) a social media service; or

13 (ii) a relevant electronic service; or

14 (iii) a designated internet service; and

15 (b) the intimate image was posted on the service by an end-user
16 of the service; and

17 (c) the intimate image is the subject of:

18 (i) a complaint made to the Commissioner under
19 section 32; or

20 (ii) an objection notice given to the Commissioner under
21 section 33; and

22 (d) if subparagraph (c)(i) applies—the Commissioner is satisfied
23 that the person did not consent to the posting of the intimate
24 image on the service; and

25 (e) the posting of the intimate image on the service did not
26 constitute an exempt post;

27 the Commissioner may give the end-user a written notice, to be
28 known as a *removal notice*, requiring the end-user to:

29 (f) take all reasonable steps to ensure the removal of the intimate
30 image from the service; and

31 (g) do so within:

32 (i) 24 hours after the notice was given to the end-user; or

33 (ii) such longer period as the Commissioner allows.

EXPOSURE DRAFT

Part 6 Non-consensual sharing of intimate images

Division 3 Removal notices

Section 79

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

4 *Notice of refusal to give a removal notice*

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

12 **79 Removal notice given to a hosting service provider**

- 13 (1) If:
14 (a) an intimate image of a person is, or has been, provided on:
15 (i) a social media service; or
16 (ii) a relevant electronic service; or
17 (iii) a designated internet service; and
18 (b) the intimate image was posted on the service by an end-user
19 of the service; and
20 (c) the intimate image is the subject of:
21 (i) a complaint made to the Commissioner under
22 section 32; or
23 (ii) an objection notice given to the Commissioner under
24 section 33; and
25 (d) if subparagraph (c)(i) applies—the Commissioner is satisfied
26 that the person did not consent to the posting of the intimate
27 image on the service; and
28 (e) the intimate image is hosted by a hosting service provider;
29 and
30 (f) the posting of the intimate image on the service did not
31 constitute an exempt post;
32 the Commissioner may give the hosting service provider a written
33 notice, to be known as a **removal notice**, requiring the provider to:
-

EXPOSURE DRAFT

Non-consensual sharing of intimate images **Part 6**
Removal notices **Division 3**

Section 80

- 1 (g) take all reasonable steps to cease hosting the intimate image;
2 and
3 (h) do so within:
4 (i) 24 hours after the notice was given to the provider; or
5 (ii) such longer period as the Commissioner allows.

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

Notice of refusal to give a removal notice

- 9
10 (3) If the Commissioner decides to refuse to give a removal notice
11 under subsection (1), the Commissioner must give written notice of
12 the refusal to:
13 (a) if subparagraph (1)(c)(i) applies—the person who made the
14 complaint mentioned in that subparagraph; or
15 (b) if subparagraph (1)(c)(ii) applies—the person who gave the
16 objection notice mentioned in that subparagraph.

80 Compliance with removal notice

17
18 A person must comply with a requirement under a removal notice
19 given under section 77, 78 or 79 to the extent that the person is
20 capable of doing so.

21 Civil penalty: 500 penalty units.

81 Formal warning

22
23 The Commissioner may issue a formal warning if a person
24 contravenes section 80.

82 Transitional

25
26 If an intimate image was posted on:
27 (a) a social media service; or
28 (b) a relevant electronic service; or

EXPOSURE DRAFT

Part 6 Non-consensual sharing of intimate images

Division 3 Removal notices

Section 82

1 (c) a designated internet service;
2 before the commencement of this section, this Division does not
3 apply to the intimate image unless the intimate image was provided
4 on the service after the commencement of this section.

EXPOSURE DRAFT

1 **Division 4—Miscellaneous**

2 **83 Remedial direction**

3 *Scope*

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

6 *Remedial direction*

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

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

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

14 Civil penalty: 500 penalty units.

15 *Remedial direction is not a legislative instrument*

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

17 **84 Formal warning**

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

20 **85 Service provider notifications**

- 21 (1) If:
22 (a) an intimate image of a person is, or has been, provided on:
23 (i) a social media service; or
24 (ii) a relevant electronic service; or
25 (iii) a designated internet service; and

EXPOSURE DRAFT

Part 6 Non-consensual sharing of intimate images

Division 4 Miscellaneous

Section 85

- 1 (b) the intimate image was posted on the service by an end-user
2 of the service; and
- 3 (c) the intimate image is the subject of:
4 (i) a complaint made to the Commissioner under
5 section 32; or
6 (ii) an objection notice given to the Commissioner under
7 section 33; and
- 8 (d) if subparagraph (c)(i) applies—the Commissioner is satisfied
9 that the person did not consent to the posting of the intimate
10 image on the service; and
- 11 (e) the posting of the intimate image on the service did not
12 constitute an exempt post;
- 13 the Commissioner may, with the consent of the complainant, give
14 the provider of the service a written notice that:
- 15 (f) identifies the image; and
16 (g) states the Commissioner is satisfied that the person did not
17 consent to the posting of the image on the service.
- 18 (2) If the Commissioner is satisfied that there were 2 or more
19 occasions during the previous 12 months on which:
- 20 (a) an intimate image of a person is, or has been, provided on:
21 (i) a social media service; or
22 (ii) a relevant electronic service; or
23 (iii) a designated internet service; and
- 24 (b) the intimate image was posted on the service by an end-user
25 of the service; and
- 26 (c) the provision of the intimate image contravened the service’s
27 terms of use; and
- 28 (d) the person did not consent to the posting of the intimate
29 image on the service; and
- 30 (e) the posting of the intimate image on the service did not
31 constitute an exempt post;
- 32 the Commissioner may:
- 33 (f) prepare a statement to that effect; and
34 (g) publish the statement on the Commissioner’s website; and
35 (h) give a copy of the statement to the provider of the service.
-

EXPOSURE DRAFT

1 **86 Exempt post of an intimate image**

2 (1) For the purposes of this Act, if an end-user of:

- 3 (a) a social media service; or
4 (b) a relevant electronic service; or
5 (c) a designated internet service;

6 posts an intimate image of a person (the *depicted person*) on the
7 service, the post is an *exempt post* if:

8 (d) the post is necessary for, or of assistance in:

- 9 (i) enforcing a law of the Commonwealth, a State or a
10 Territory; or
11 (ii) monitoring compliance with, or investigating a
12 contravention of, a law of the Commonwealth, a State
13 or a Territory; or

14 (e) the post is for the purposes of proceedings in a court or
15 tribunal; or

16 (f) the post is for a genuine medical or scientific purpose; or

17 (g) an ordinary reasonable person would consider the post
18 acceptable, having regard to the following matters:

- 19 (i) the nature and content of the intimate image;
20 (ii) the circumstances in which the intimate image was
21 posted;
22 (iii) the age, intellectual capacity, vulnerability or other
23 relevant circumstances of the depicted person;
24 (iv) the degree to which the posting of the intimate image
25 affects the privacy of the depicted person;
26 (v) the relationship between the end-user and the depicted
27 person;
28 (vi) whether the depicted person has died, and if so, how
29 much time has elapsed since the depicted person's
30 death;

31 (vii) any other relevant matters; or

32 (h) both:

- 33 (i) the end-user is a protected person (within the meaning
34 of section 223); and

EXPOSURE DRAFT

Part 6 Non-consensual sharing of intimate images

Division 4 Miscellaneous

Section 86

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

EXPOSURE DRAFT

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

Section 87

1 **Part 7—Cyber-abuse material targeted at an**
2 **Australian adult**
3

4 **87 Simplified outline of this Part**

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- The provider of a social media service, a relevant electronic service or a designated internet service may be given a notice (a *removal notice*) requiring the removal from the service of cyber-abuse material targeted at an Australian adult.
 - A person who posts cyber-abuse material targeted at an Australian adult may be given a notice (a *removal notice*) requiring the person to remove the material.
 - A hosting service provider who hosts cyber-abuse material targeted at an Australian adult may be given a notice (a *removal notice*) requiring the provider to cease hosting the material.

16 **88 Removal notice given to the provider of a social media service,**
17 **relevant electronic service or designated internet service**

18 (1) If:

- 19 (a) material is, or has been, provided on:
- 20 (i) a social media service; or
- 21 (ii) a relevant electronic service; or
- 22 (iii) a designated internet service; and
- 23 (b) the Commissioner is satisfied that the material is or was
- 24 cyber-abuse material targeted at an Australian adult; and
- 25 (c) if the provider of the service is known to the adult—the
- 26 material was the subject of a complaint that was made to the
- 27 provider of the service; and
- 28 (d) if such a complaint was made—the material was not removed
- 29 from the service within:
- 30 (i) 48 hours after the complaint was made; or

EXPOSURE DRAFT

Part 7 Cyber-abuse material targeted at an Australian adult

Section 89

- 1 (ii) such longer period as the Commissioner allows; and
2 (e) a complaint has been made to the Commissioner under
3 section 36 about the material; and
4 (f) the material was posted on the service by an end-user of the
5 service;
6 the Commissioner may give the provider of the service a written
7 notice, to be known as a **removal notice**, requiring the provider to:
8 (g) take all reasonable steps to ensure the removal of the material
9 from the service; and
10 (h) do so within:
11 (i) 24 hours after the notice was given to the provider; or
12 (ii) such longer period as the Commissioner allows.
- 13 (2) So far as is reasonably practicable, the material must be identified
14 in the removal notice in a way that is sufficient to enable the
15 provider of the service to comply with the notice.

Notice of refusal to give a removal notice

- 16
17 (3) If the Commissioner decides to refuse to give a removal notice
18 under subsection (1), the Commissioner must give written notice of
19 the refusal to the person who made the complaint to the
20 Commissioner under section 36.

89 Removal notice given to an end-user

- 21
22 (1) If:
23 (a) material is, or has been, provided on:
24 (i) a social media service; or
25 (ii) a relevant electronic service; or
26 (iii) a designated internet service; and
27 (b) the Commissioner is satisfied that the material is or was
28 cyber-abuse material targeted at an Australian adult; and
29 (c) if the provider of the service is known to the adult—the
30 material was the subject of a complaint that was made to the
31 provider of the service; and

EXPOSURE DRAFT

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

Section 90

- 1 (d) if such a complaint was made—the material was not removed
2 from the service within:
3 (i) 48 hours after the complaint was made; or
4 (ii) such longer period as the Commissioner allows; and
5 (e) a complaint has been made to the Commissioner under
6 section 36 about the material; and
7 (f) the material was posted on the service by an end-user of the
8 service;
9 the Commissioner may give the end-user a written notice, to be
10 known as a *removal notice*, requiring the end-user to:
11 (g) take all reasonable steps to ensure the removal of the material
12 from the service; and
13 (h) do so within:
14 (i) 24 hours after the notice was given to the end-user; or
15 (ii) such longer period as the Commissioner allows.
16 (2) So far as is reasonably practicable, the material must be identified
17 in the removal notice in a way that is sufficient to enable the
18 end-user to comply with the notice.

19 *Notice of refusal to give a removal notice*

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

24 **90 Removal notice given to a hosting service provider**

- 25 (1) If:
26 (a) material is, or has been, provided on:
27 (i) a social media service; or
28 (ii) a relevant electronic service; or
29 (iii) a designated internet service; and
30 (b) the Commissioner is satisfied that the material is or was
31 cyber-abuse material targeted at an Australian adult; and

EXPOSURE DRAFT

Part 7 Cyber-abuse material targeted at an Australian adult

Section 91

- 1 (c) if the provider of the service is known to the adult—the
2 material was the subject of a complaint that was made to the
3 provider of the service; and
4 (d) if such a complaint was made—the material was not removed
5 from the service within:
6 (i) 48 hours after the complaint was made; or
7 (ii) such longer period as the Commissioner allows; and
8 (e) a complaint has been made to the Commissioner under
9 section 36 about the material; and
10 (f) the material was posted on the service by an end-user of the
11 service; and
12 (g) the material is hosted by a hosting service provider;
13 the Commissioner may give the hosting service provider a written
14 notice, to be known as a **removal notice**, requiring the provider to:
15 (h) take all reasonable steps to cease hosting the material; and
16 (i) do so within:
17 (i) 24 hours after the notice was given to the provider; or
18 (ii) such longer period as the Commissioner allows.
19 (2) So far as is reasonably practicable, the material must be identified
20 in the removal notice in a way that is sufficient to enable the
21 hosting service provider to comply with the notice.

22 *Notice of refusal to give a removal notice*

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

27 **91 Compliance with removal notice**

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

31 Civil penalty: 500 penalty units.

EXPOSURE DRAFT

1 **92 Formal warning**

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

4 **93 Service provider notifications**

5 (1) If:

- 6 (a) material is, or has been, provided on:
7 (i) a social media service; or
8 (ii) a relevant electronic service; or
9 (iii) a designated internet service; and
10 (b) the Commissioner is satisfied that the material is or was
11 cyber-abuse material targeted at an Australian adult; and
12 (c) a complaint has been made to the Commissioner under
13 section 36 about the material; and
14 (d) the material was posted on the service by an end-user of the
15 service;

16 the Commissioner may, with the consent of the complainant, give
17 the provider of the service a written notice that:

- 18 (e) identifies the material; and
19 (f) states the Commissioner is satisfied that the material is
20 cyber-abuse material targeted at an Australian adult.

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

- 23 (a) cyber-abuse material targeted at an Australian adult was
24 provided on:
25 (i) a social media service; or
26 (ii) a relevant electronic service; or
27 (iii) a designated internet service; and
28 (b) the material was posted on the service by an end-user of the
29 service; and
30 (c) the provision of the material contravened the service's terms
31 of use;

32 the Commissioner may:

EXPOSURE DRAFT

Part 7 Cyber-abuse material targeted at an Australian adult

Section 93

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

EXPOSURE DRAFT

Abhorrent violent material **Part 8**

Introduction **Division 1**

Section 94

1 **Part 8—Abhorrent violent material**

2 **Division 1—Introduction**

3 **94 Simplified outline of this Part**

- 4
- 5
- 6
- 7
- 8
- 9
- An internet service provider may be requested or required to block access to:
 - (a) material that promotes abhorrent violent conduct; or
 - (b) material that incites abhorrent violent conduct; or
 - (c) material that instructs in abhorrent violent conduct; or
 - (d) abhorrent violent material.

EXPOSURE DRAFT

Part 8 Abhorrent violent material

Division 2 Blocking requests

Section 95

1 **Division 2—Blocking requests**

2 **95 Blocking request**

3 (1) If:

4 (a) material can be accessed using an internet carriage service
5 supplied by an internet service provider; and

6 (b) the Commissioner is satisfied that the material:

7 (i) promotes abhorrent violent conduct; or

8 (ii) incites abhorrent violent conduct; or

9 (iii) instructs in abhorrent violent conduct; or

10 (iv) is abhorrent violent material; and

11 (c) the Commissioner is satisfied that the availability of the
12 material online is likely to cause significant harm to the
13 Australian community;

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

17 Note: See also section 104 (exempt material).

18 (2) The following are examples of steps that may be specified in the
19 blocking request:

20 (a) steps to block domain names that provide access to the
21 material;

22 (b) steps to block URLs that provide access to the material;

23 (c) steps to block IP addresses that provide access to the
24 material.

25 (3) The Commissioner is not required to observe any requirements of
26 procedural fairness in relation to the giving of the blocking request.

27 (4) In determining whether the availability of the material online is
28 likely to cause significant harm to the Australian community, the
29 Commissioner must have regard to the following matters:

30 (a) the nature of the material;

31 (b) the number of end-users who are likely to access the
32 material;

EXPOSURE DRAFT

Abhorrent violent material **Part 8**

Blocking requests **Division 2**

Section 96

1 (c) such other matters (if any) as the Commissioner considers
2 relevant.

3 (5) In deciding whether to give the blocking request, the
4 Commissioner must have regard to the following matters:

5 (a) whether any other power conferred on the Commissioner
6 could be used to minimise the likelihood that the availability
7 of the material online could cause significant harm to the
8 Australian community;

9 (b) such other matters (if any) as the Commissioner considers
10 relevant.

11 **96 Duration of blocking request**

12 (1) A blocking request remains in force for the period specified in the
13 blocking request.

14 (2) The specified period must not be longer than 3 months.

15 *Fresh blocking request*

16 (3) If a blocking request (the *original blocking request*) is in force,
17 this Act does not prevent the Commissioner from giving a fresh
18 blocking request that:

19 (a) is in the same, or substantially the same, terms as the original
20 blocking request; and

21 (b) comes into force immediately after the expiry of the original
22 blocking request.

23 **97 Revocation of blocking request**

24 *Scope*

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

EXPOSURE DRAFT

Part 8 Abhorrent violent material

Division 2 Blocking requests

Section 98

1 *Revocation*

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

4 **98 Notification in relation to domain names and URLs**

5 If:

6 (a) a blocking request is in force; and

7 (b) the blocking request requests an internet service provider to:

8 (i) take steps to block a domain name; or

9 (ii) take steps to block a URL that relates to a domain name;
10 and

11 (c) the person to whom the domain name is registered is known
12 to the Commissioner;

13 the Commissioner must:

14 (d) give a copy of the blocking request to the person; and

15 (e) do so as soon as practicable after the blocking request is
16 given to the internet service provider.

EXPOSURE DRAFT

1 **Division 3—Blocking notices**

2 **99 Blocking notice**

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

14 the Commissioner may give the provider a written notice, to be

15 known as a **blocking notice**, requiring the provider to take one or

16 more specified steps to disable access to the material.

17 Note: See also section 104 (exempt material).

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

EXPOSURE DRAFT

Part 8 Abhorrent violent material

Division 3 Blocking notices

Section 100

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

11 **100 Duration of blocking notice**

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

15 *Fresh blocking notice*

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

23 **101 Revocation of blocking notice**

24 *Scope*

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

EXPOSURE DRAFT

Abhorrent violent material **Part 8**

Blocking notices **Division 3**

Section 102

1

Revocation

2

(2) The Commissioner may, by written notice given to the provider,

3

revoke the blocking notice.

4

102 Notification in relation to domain names and URLs

5

If:

6

(a) a blocking notice is in force; and

7

(b) the blocking notice requires an internet service provider to:

8

(i) take steps to block a domain name; or

9

(ii) take steps to block a URL that relates to a domain name;

10

and

11

(c) the person to whom the domain name is registered is known

12

to the Commissioner;

13

the Commissioner must:

14

(d) give a copy of the blocking notice to the person; and

15

(e) do so as soon as practicable after the blocking notice is given

16

to the internet service provider.

17

103 Compliance with blocking notice

18

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

19

Civil penalty: 500 penalty units.

EXPOSURE DRAFT

Part 8 Abhorrent violent material

Division 4 Exempt material

Section 104

1 **Division 4—Exempt material**

2 **104 Exempt material**

- 3 (1) Subparagraphs 46(1)(c)(v), (vi), (vii) and (viii) and 46(1)(e)(vi),
4 (vii), (viii) and (ix) and subsections 95(1) and 99(1) do not apply to
5 material that can be accessed using an internet carriage service if:
6 (a) the accessibility of the material is necessary for enforcing a
7 law of:
8 (i) the Commonwealth; or
9 (ii) a State; or
10 (iii) a Territory; or
11 (iv) a foreign country; or
12 (v) a part of a foreign country; or
13 (b) the accessibility of the material is necessary for monitoring
14 compliance with, or investigating a contravention of, a law
15 of:
16 (i) the Commonwealth; or
17 (ii) a State; or
18 (iii) a Territory; or
19 (iv) a foreign country; or
20 (v) a part of a foreign country; or
21 (c) the accessibility of the material is for the purposes of
22 proceedings in a court or tribunal; or
23 (d) both:
24 (i) the accessibility of the material is necessary for, or of
25 assistance in, conducting scientific, medical, academic
26 or historical research; and
27 (ii) the accessibility of the material is reasonable in the
28 circumstances for the purpose of conducting that
29 scientific, medical, academic or historical research; or
30 (e) the material relates to a news report, or a current affairs
31 report, that:
32 (i) is in the public interest; and

EXPOSURE DRAFT

Abhorrent violent material **Part 8**

Exempt material **Division 4**

Section 104

- 1 (ii) is made by a person working in a professional capacity
2 as a journalist; or
3 (f) both:
4 (i) the accessibility of the material is in connection with the
5 performance by a public official of the official's duties
6 or functions; and
7 (ii) the accessibility of the material is reasonable in the
8 circumstances for the purpose of performing that duty or
9 function; or
10 (g) both:
11 (i) the accessibility of the material is in connection with an
12 individual assisting a public official in relation to the
13 performance of the public official's duties or functions;
14 and
15 (ii) the accessibility of the material is reasonable in the
16 circumstances for the purpose of the individual assisting
17 the public official in relation to the performance of the
18 public official's duties or functions; or
19 (h) the accessibility of the material is for the purpose of
20 advocating the lawful procurement of a change to any matter
21 established by law, policy or practice in:
22 (i) the Commonwealth; or
23 (ii) a State; or
24 (iii) a Territory; or
25 (iv) a foreign country; or
26 (v) a part of a foreign country;
27 and the accessibility of the material is reasonable in the
28 circumstances for that purpose; or
29 (i) the accessibility of the material relates to the development,
30 performance, exhibition or distribution, in good faith, of an
31 artistic work.
- 32 (2) For the purposes of this section, *public official* has the same
33 meaning as in the *Criminal Code*.

EXPOSURE DRAFT

Part 9 Online content scheme

Division 1 Introduction

Section 105

1 **Part 9—Online content scheme**

2 **Division 1—Introduction**

3 **105 Simplified outline of this Part**

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- The provider of a social media service, relevant electronic service or designated internet service may be given a notice (a *removal notice*) requiring the provider to remove certain material.
 - A hosting service provider may be given a notice (a *removal notice*) requiring the provider to cease hosting certain material.
 - The provider of an internet search engine service may be given a notice (a *link deletion notice*) requiring the provider to cease providing a link to certain material.
 - The provider of an app distribution service may be given a notice (an *app removal notice*) requiring the provider to cease enabling end-users to download an app that facilitates the posting of certain material on a social media service, relevant electronic service or designated internet service.
 - Bodies and associations that represent sections of the online industry may develop industry codes.
 - The Commissioner may make an industry standard.
 - The Commissioner may make service provider determinations regulating service providers in the online industry.

24 **106 Class 1 material**

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

EXPOSURE DRAFT

- 1 (i) the material is a film or the contents of a film;
2 (ii) the film has been classified as RC by the Classification
3 Board under the *Classification (Publications, Films and*
4 *Computer Games) Act 1995*; or
5 (b) material where the following conditions are satisfied:
6 (i) the material is a film or the contents of a film;
7 (ii) the film has not been classified by the Classification
8 Board under the *Classification (Publications, Films and*
9 *Computer Games) Act 1995*;
10 (iii) if the film were to be classified by the Classification
11 Board under that Act—the film would be likely to be
12 classified as RC; or
13 (c) material where the following conditions are satisfied:
14 (i) the material is a publication or the contents of a
15 publication;
16 (ii) the publication has been classified as RC by the
17 Classification Board under the *Classification*
18 *(Publications, Films and Computer Games) Act 1995*;
19 or
20 (d) material where the following conditions are satisfied:
21 (i) the material is a publication or the contents of a
22 publication;
23 (ii) the publication has not been classified by the
24 Classification Board under the *Classification*
25 *(Publications, Films and Computer Games) Act 1995*;
26 (iii) if the publication were to be classified by the
27 Classification Board under that Act—the publication
28 would be likely to be classified as RC; or
29 (e) material where the following conditions are satisfied:
30 (i) the material is a computer game;
31 (ii) the computer game has been classified as RC by the
32 Classification Board under the *Classification*
33 *(Publications, Films and Computer Games) Act 1995*;
34 or
35 (f) material where the following conditions are satisfied:
36 (i) the material is a computer game;
-

EXPOSURE DRAFT

Part 9 Online content scheme

Division 1 Introduction

Section 107

- 1 (ii) the computer game has not been classified by the
2 Classification Board under the *Classification*
3 *(Publications, Films and Computer Games) Act 1995*;
- 4 (iii) if the computer game were to be classified by the
5 Classification Board under that Act—the computer
6 game would be likely to be classified as RC; or
- 7 (g) material where the following conditions are satisfied:
- 8 (i) the material is not a film, the contents of a film, a
9 computer game, a publication or the contents of a
10 publication;
- 11 (ii) if the material were to be classified by the Classification
12 Board in a corresponding way to the way in which a
13 film would be classified under the *Classification*
14 *(Publications, Films and Computer Games) Act 1995*—
15 the material would be likely to be classified as RC.
- 16 Note: See also section 160 (Commissioner may obtain advice from the
17 Classification Board).
- 18 (2) Section 22CF of the *Classification (Publications, Films and*
19 *Computer Games) Act 1995* (which deals with classification using
20 an approved classification tool) applies for the purposes of this
21 section in a corresponding way to the way in which it applies for
22 the purposes of that Act.

107 Class 2 material

- 23
- 24 (1) For the purposes of this Act, ***class 2 material*** means:
- 25 (a) material where the following conditions are satisfied:
- 26 (i) the material is a film or the contents of a film;
- 27 (ii) the film has been classified as X 18+ by the
28 Classification Board under the *Classification*
29 *(Publications, Films and Computer Games) Act 1995*;
30 or
- 31 (b) material where the following conditions are satisfied:
- 32 (i) the material is a film or the contents of a film;

EXPOSURE DRAFT

- 1 (ii) the film has not been classified by the Classification
2 Board under the *Classification (Publications, Films and*
3 *Computer Games) Act 1995*;
- 4 (iii) if the film were to be classified by the Classification
5 Board under that Act—the film would be likely to be
6 classified as X 18+; or
- 7 (c) material where the following conditions are satisfied:
- 8 (i) the material is a publication or the contents of a
9 publication;
- 10 (ii) the publication has been classified as Category 2
11 restricted by the Classification Board under the
12 *Classification (Publications, Films and Computer*
13 *Games) Act 1995*; or
- 14 (d) material where the following conditions are satisfied:
- 15 (i) the material is a publication or the contents of a
16 publication;
- 17 (ii) the publication has not been classified by the
18 Classification Board under the *Classification*
19 *(Publications, Films and Computer Games) Act 1995*;
- 20 (iii) if the publication were to be classified by the
21 Classification Board under that Act—the publication
22 would be likely to be classified as Category 2 restricted;
23 or
- 24 (e) material where the following conditions are satisfied:
- 25 (i) the material is not a film, the contents of a film, a
26 computer game, a publication or the contents of a
27 publication;
- 28 (ii) if the material were to be classified by the Classification
29 Board in a corresponding way to the way in which a
30 film would be classified under the *Classification*
31 *(Publications, Films and Computer Games) Act 1995*—
32 the material would be likely to be classified as X 18+;
33 or
- 34 (f) material where the following conditions are satisfied:
- 35 (i) the material is a film or the contents of a film;

EXPOSURE DRAFT

Part 9 Online content scheme

Division 1 Introduction

Section 107

- 1 (ii) the film has been classified as R 18+ by the
2 Classification Board under the *Classification*
3 *(Publications, Films and Computer Games) Act 1995*;
4 or
5 (g) material where the following conditions are satisfied:
6 (i) the material is a film or the contents of a film;
7 (ii) the film has not been classified by the Classification
8 Board under the *Classification (Publications, Films and*
9 *Computer Games) Act 1995*;
10 (iii) if the film were to be classified by the Classification
11 Board under that Act—the film would be likely to be
12 classified as R 18+; or
13 (h) material where the following conditions are satisfied:
14 (i) the material is a publication or the contents of a
15 publication;
16 (ii) the publication has been classified as Category 1
17 restricted by the Classification Board under the
18 *Classification (Publications, Films and Computer*
19 *Games) Act 1995*; or
20 (i) material where the following conditions are satisfied:
21 (i) the material is a publication or the contents of a
22 publication;
23 (ii) the publication has not been classified by the
24 Classification Board under the *Classification*
25 *(Publications, Films and Computer Games) Act 1995*;
26 (iii) if the publication were to be classified by the
27 Classification Board under that Act—the publication
28 would be likely to be classified as Category 1 restricted;
29 or
30 (j) material where the following conditions are satisfied:
31 (i) the material is a computer game;
32 (ii) the computer game has been classified as R 18+ by the
33 Classification Board under the *Classification*
34 *(Publications, Films and Computer Games) Act 1995*;
35 or
36 (k) material where the following conditions are satisfied:
-

EXPOSURE DRAFT

- 1 (i) the material is a computer game;
- 2 (ii) the computer game has not been classified by the
- 3 Classification Board under the *Classification*
- 4 (*Publications, Films and Computer Games*) *Act 1995*;
- 5 (iii) if the computer game were to be classified by the
- 6 Classification Board under that Act—the computer
- 7 game would be likely to be classified as R 18+; or
- 8 (l) material where the following conditions are satisfied:
- 9 (i) the material is not a film, the contents of a film, a
- 10 computer game, a publication or the contents of a
- 11 publication;
- 12 (ii) if the material were to be classified by the Classification
- 13 Board in a corresponding way to the way in which a
- 14 film would be classified under the *Classification*
- 15 (*Publications, Films and Computer Games*) *Act 1995*—
- 16 the material would be likely to be classified as R 18+.
- 17 Note: See also section 160 (Commissioner may obtain advice from the
- 18 Classification Board).
- 19 (2) Section 22CF of the *Classification (Publications, Films and*
- 20 *Computer Games) Act 1995* (which deals with classification using
- 21 an approved classification tool) applies for the purposes of this
- 22 section in a corresponding way to the way in which it applies for
- 23 the purposes of that Act.

108 Restricted access system

- 24
- 25 (1) The Commissioner may, by legislative instrument, declare that a
- 26 specified access-control system is a ***restricted access system*** in
- 27 relation to material for the purposes of this Act.
- 28 Note: For specification by class, see subsection 13(3) of the *Legislation Act*
- 29 *2003*.
- 30 (2) An instrument under subsection (1) may make different provision
- 31 with respect to different kinds of material.
- 32 (3) Subsection (2) does not limit subsection 33(3A) of the *Acts*
- 33 *Interpretation Act 1901*.

EXPOSURE DRAFT

Part 9 Online content scheme

Division 1 Introduction

Section 108

- 1 (4) In making an instrument under subsection (1), the Commissioner
2 must have regard to:
- 3 (a) the objective of protecting children from exposure to material
4 that is unsuitable for children; and
- 5 (b) the extent to which the instrument would be likely to result in
6 a financial or administrative burden on providers of the
7 following services:
- 8 (i) social media services;
- 9 (ii) relevant electronic services;
- 10 (iii) designated internet services; and
- 11 (c) such other matters (if any) as the Commissioner considers
12 relevant.
- 13 (5) The Commissioner must ensure that an instrument under
14 subsection (1) is in force at all times after the commencement of
15 this section.

EXPOSURE DRAFT

1 **Division 2—Removal notices relating to class 1 material**

2 **109 Removal notice given to the provider of a social media service,**
3 **relevant electronic service or designated internet service**

4 (1) If:

5 (a) material is, or has been, provided on:

6 (i) a social media service; or

7 (ii) a relevant electronic service; or

8 (iii) a designated internet service; and

9 (b) the Commissioner is satisfied that the material is or was class
10 1 material; and

11 (c) the material can be accessed by end-users in Australia; and

12 (d) the service is not:

13 (i) an exempt Parliamentary content service; or

14 (ii) an exempt court/tribunal content service; or

15 (iii) an exempt official-inquiry content service;

16 the Commissioner may give the provider of the service a written
17 notice, to be known as a **removal notice**, requiring the provider to:

18 (e) take all reasonable steps to ensure the removal of the material
19 from the service; and

20 (f) do so within:

21 (i) 24 hours after the notice was given to the provider; or

22 (ii) such longer period as the Commissioner allows.

23 (2) So far as is reasonably practicable, the material must be identified
24 in the removal notice in a way that is sufficient to enable the
25 provider of the service to comply with the notice.

26 **110 Removal notice given to a hosting service provider**

27 (1) If:

28 (a) material is, or has been, provided on:

29 (i) a social media service; or

30 (ii) a relevant electronic service; or

31 (iii) a designated internet service; and

EXPOSURE DRAFT

Part 9 Online content scheme

Division 2 Removal notices relating to class 1 material

Section 111

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

111 Compliance with removal notice

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

22 Civil penalty: 500 penalty units.

112 Formal warning

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

113 Revocation of removal notice

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

- 29 (a) the provider of a social media service; or
-

EXPOSURE DRAFT

Online content scheme **Part 9**
Removal notices relating to class 1 material **Division 2**

Section 113

- 1 (b) the provider of a relevant electronic service; or
2 (c) the provider of a designated internet service; or
3 (d) a hosting service provider;
4 the Commissioner may, by written notice given to the provider,
5 revoke the removal notice.

EXPOSURE DRAFT

Part 9 Online content scheme

Division 3 Removal notices relating to class 2 material

Section 114

1 **Division 3—Removal notices relating to class 2 material**

2 **114 Removal notice given to the provider of a social media service,**
3 **relevant electronic service or designated internet service**

4 (1) If:

5 (a) material is, or has been, provided on:

6 (i) a social media service; or

7 (ii) a relevant electronic service; or

8 (iii) a designated internet service; and

9 (b) the Commissioner is satisfied that the material is class 2
10 material covered by paragraph 107(1)(a), (b), (c), (d) or (e);
11 and

12 (c) the material can be accessed by end-users in Australia; and

13 (d) the service is not:

14 (i) an exempt Parliamentary content service; or

15 (ii) an exempt court/tribunal content service; or

16 (iii) an exempt official-inquiry content service; and

17 (e) the service is provided from Australia;

18 the Commissioner may give the provider of the service a written
19 notice, to be known as a **removal notice**, requiring the provider to:

20 (f) take all reasonable steps to ensure the removal of the material
21 from the service; and

22 (g) do so within:

23 (i) 24 hours after the notice was given to the provider; or

24 (ii) such longer period as the Commissioner allows.

25 (2) So far as is reasonably practicable, the material must be identified
26 in the removal notice in a way that is sufficient to enable the
27 provider of the service to comply with the notice.

28 **115 Removal notice given to a hosting service provider**

29 (1) If:

30 (a) material is, or has been, provided on:

31 (i) a social media service; or

EXPOSURE DRAFT

Online content scheme **Part 9**
Removal notices relating to class 2 material **Division 3**

Section 116

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

116 Compliance with removal notice

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

26 Civil penalty: 500 penalty units.

117 Formal warning

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

EXPOSURE DRAFT

Part 9 Online content scheme

Division 3 Removal notices relating to class 2 material

Section 118

1 **118 Revocation of removal notice**

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

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

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

EXPOSURE DRAFT

1 **Division 4—Remedial notices relating to class 2 material**

2 **119 Remedial notice given to the provider of a social media service,**
3 **relevant electronic service or designated internet service**

4 (1) If:

5 (a) material is, or has been, provided on:

6 (i) a social media service; or

7 (ii) a relevant electronic service; or

8 (iii) a designated internet service; and

9 (b) the Commissioner is satisfied that the material is class 2
10 material covered by paragraph 107(1)(f), (g), (h), (i), (j), (k)
11 or (l); and

12 (c) the material can be accessed by end-users in Australia; and

13 (d) the service is not:

14 (i) an exempt Parliamentary content service; or

15 (ii) an exempt court/tribunal content service; or

16 (iii) an exempt official-inquiry content service; and

17 (e) the service is provided from Australia;

18 the Commissioner may give the provider of the service a written
19 notice, to be known as a **remedial notice**, requiring the provider to:

20 (f) take all reasonable steps to ensure either of the following
21 situations exist in relation to the material:

22 (i) the material is removed from the service;

23 (ii) access to the material is subject to a restricted access
24 system; and

25 (g) do so within:

26 (i) 24 hours after the notice was given to the provider; or

27 (ii) such longer period as the Commissioner allows.

28 (2) So far as is reasonably practicable, the material must be identified
29 in the remedial notice in a way that is sufficient to enable the
30 provider of the service to comply with the notice.

EXPOSURE DRAFT

Part 9 Online content scheme

Division 4 Remedial notices relating to class 2 material

Section 120

120 Remedial notice given to a hosting service provider

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

EXPOSURE DRAFT

Online content scheme **Part 9**
Remedial notices relating to class 2 material **Division 4**

Section 121

1 **121 Compliance with remedial notice**

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

5 Civil penalty: 500 penalty units.

6 **122 Formal warning**

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

9 **123 Revocation of remedial notice**

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

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

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

EXPOSURE DRAFT

Part 9 Online content scheme
Division 5 Link deletion notices

Section 124

1 **Division 5—Link deletion notices**

2 **124 Link deletion notice**

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

EXPOSURE DRAFT

1 (ii) those removal notices were not complied with.

2 **125 Compliance with link deletion notice**

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

5 Civil penalty: 500 penalty units.

6 **126 Formal warning**

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

9 **127 Revocation of link deletion notice**

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

EXPOSURE DRAFT

Part 9 Online content scheme

Division 6 App removal notices

Section 128

1 **Division 6—App removal notices**

2 **128 App removal notice**

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

EXPOSURE DRAFT

Online content scheme **Part 9**
App removal notices **Division 6**

Section 129

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

5 **129 Compliance with app removal notice**

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

8 Civil penalty: 500 penalty units.

9 **130 Formal warning**

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

12 **131 Revocation of app removal notice**

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

EXPOSURE DRAFT

Part 9 Online content scheme

Division 7 Industry codes and industry standards

Section 132

1 **Division 7—Industry codes and industry standards**

2 **Subdivision A—Interpretation**

3 **132 Industry codes**

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

7 **133 Industry standards**

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

10 **134 Online activity**

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

- 13 (a) providing a social media service, so far as the service is
14 provided to end-users in Australia; or
15 (b) providing a relevant electronic service, so far as the service is
16 provided to end-users in Australia; or
17 (c) providing a designated internet service, so far as the service
18 is provided to end-users in Australia; or
19 (d) providing an internet search engine service, so far as the
20 service is provided to end-users in Australia; or
21 (e) providing an app distribution service, so far as the service is
22 provided to end-users in Australia; or
23 (f) providing a hosting service, so far as the service hosts
24 material in Australia; or
25 (g) providing an internet carriage service, so far as the service is
26 provided to customers in Australia; or
27 (h) manufacturing, supplying, maintaining or installing any of
28 the following equipment:
29 (i) equipment that is for use by end-users in Australia of a
30 social media service in connection with the service;

EXPOSURE DRAFT

- 1 (ii) equipment that is for use by end-users in Australia of a
2 relevant electronic service in connection with the
3 service;
4 (iii) equipment that is for use by end-users in Australia of a
5 designated internet service in connection with the
6 service;
7 (iv) equipment that is for use by end-users in Australia of an
8 internet carriage service in connection with the service.

9 **135 Sections of the online industry**

- 10 (1) For the purposes of this Division, *sections of the online industry*
11 are to be ascertained in accordance with this section.
- 12 (2) For the purposes of this Division, each of the following groups is a
13 *section of the online industry*:
- 14 (a) the group consisting of providers of social media services, so
15 far as those services are provided to end-users in Australia;
16 (b) the group consisting of providers of relevant electronic
17 services, so far as those services are provided to end-users in
18 Australia;
19 (c) the group consisting of providers of designated internet
20 services, so far as those services are provided to end-users in
21 Australia;
22 (d) the group consisting of providers of internet search engine
23 services, so far as those services are provided to end-users in
24 Australia;
25 (e) the group consisting of providers of app distribution services,
26 so far as those services are provided to end-users in
27 Australia;
28 (f) the group consisting of providers of hosting services, so far
29 as those services host material in Australia;
30 (g) the group consisting of providers of internet carriage
31 services, so far as those services are provided to customers in
32 Australia;
33 (h) the group consisting of persons who manufacture, supply,
34 maintain or install any of the following equipment:

EXPOSURE DRAFT

Part 9 Online content scheme

Division 7 Industry codes and industry standards

Section 136

- 1 (i) equipment that is for use by end-users in Australia of a
2 social media service in connection with the service;
- 3 (ii) equipment that is for use by end-users in Australia of a
4 relevant electronic service in connection with the
5 service;
- 6 (iii) equipment that is for use by end-users in Australia of a
7 designated internet service in connection with the
8 service;
- 9 (iv) equipment that is for use by end-users in Australia of an
10 internet carriage service in connection with the service.

11 **136 Participants in a section of the online industry**

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

15 **Subdivision B—General principles relating to industry codes** 16 **and industry standards**

17 **137 Statement of regulatory policy**

- 18 (1) The Parliament intends that bodies or associations that the
19 Commissioner is satisfied represent sections of the online industry
20 should develop codes (*industry codes*) that are to apply to
21 participants in the respective sections of the industry in relation to
22 their online activities.
- 23 (2) The Parliament intends that the Commissioner should make
24 reasonable efforts to ensure that, for each section of the online
25 industry, either:
- 26 (a) an industry code is registered under this Division within 6
27 months after the commencement of this Division; or
- 28 (b) an industry standard is registered under this Division within
29 12 months after the commencement of this Division.

1 **138 Examples of matters that may be dealt with by industry codes**
2 **and industry standards**

- 3 (1) This section sets out examples of matters that may be dealt with by
4 industry codes and industry standards.
- 5 (2) The applicability of a particular example will depend on which
6 section of the online industry is involved.
- 7 (3) The examples are as follows:
- 8 (a) procedures for dealing with class 1 material, or class 2
9 material, provided on a social media service;
 - 10 (b) procedures for dealing with class 1 material, or class 2
11 material, provided on a relevant electronic service;
 - 12 (c) procedures for dealing with class 1 material, or class 2
13 material, provided on a designated internet service;
 - 14 (d) procedures directed towards the achievement of the objective
15 of ensuring that, in the event that a participant in the
16 providers of internet carriage services section of the online
17 industry becomes aware that a hosting service provider is
18 hosting class 1 material, or class 2 material, in Australia, the
19 hosting service provider is told about the material;
 - 20 (e) procedures to be followed in order to inform producers of
21 online content about their legal responsibilities in relation to
22 that content;
 - 23 (f) procedures directed towards the achievement of the objective
24 of ensuring that online accounts are not provided to children
25 without the consent of a parent or responsible adult;
 - 26 (g) procedures directed towards the achievement of the objective
27 of ensuring that customers have the option of subscribing to a
28 filtered internet carriage service;
 - 29 (h) giving end-users information about the availability, use and
30 appropriate application of online content filtering software;
 - 31 (i) providing end-users with access to technological solutions to
32 help them limit access to class 1 material and class 2
33 material;
 - 34 (j) providing end-users with advice on how to limit access to
35 class 1 material and class 2 material;
-

EXPOSURE DRAFT

Part 9 Online content scheme

Division 7 Industry codes and industry standards

Section 138

- 1 (k) action to be taken to assist in the development and
2 implementation of online content filtering technologies
3 (including labelling technologies);
- 4 (l) promoting awareness of the safety issues associated with
5 social media services;
- 6 (m) promoting awareness of the safety issues associated with
7 relevant electronic services;
- 8 (n) promoting awareness of the safety issues associated with
9 designated internet services;
- 10 (o) procedures to be followed in order to deal with safety issues
11 associated with social media services;
- 12 (p) procedures to be followed in order to deal with safety issues
13 associated with relevant electronic services;
- 14 (q) procedures to be followed in order to deal with safety issues
15 associated with designated internet services;
- 16 (r) giving parents and responsible adults information about how
17 to supervise and control children's access to material
18 provided on social media services;
- 19 (s) giving parents and responsible adults information about how
20 to supervise and control children's access to material
21 provided on relevant electronic services;
- 22 (t) giving parents and responsible adults information about how
23 to supervise and control children's access to material
24 provided on designated internet services;
- 25 (u) telling persons about their rights to make complaints;
- 26 (v) procedures to be followed in order to deal with complaints
27 about class 1 material, or class 2 material, provided on social
28 media services;
- 29 (w) procedures to be followed in order to deal with complaints
30 about class 1 material, or class 2 material, provided on
31 relevant electronic services;
- 32 (x) procedures to be followed in order to deal with complaints
33 about class 1 material, or class 2 material, provided on
34 designated internet services;
- 35 (y) procedures to be followed in order to deal with reports about
36 class 1 material, or class 2 material, provided on social media

EXPOSURE DRAFT

- 1 services, where the reports are made by or on behalf of
2 end-users of those services;
- 3 (z) procedures to be followed in order to deal with reports about
4 class 1 material, or class 2 material, provided on relevant
5 electronic services, where the reports are made by or on
6 behalf of end-users of those services;
- 7 (za) procedures to be followed in order to deal with reports about
8 class 1 material, or class 2 material, provided on designated
9 internet services, where the reports are made by or on behalf
10 of end-users of those services;
- 11 (zb) procedures to be followed in order to deal with complaints
12 about unsolicited electronic messages that promote or
13 advertise one or more:
14 (i) websites; or
15 (ii) distinct parts of websites; or
16 (iii) apps;
17 that enable, or purport to enable, end-users to access class 1
18 material or class 2 material;
- 19 (zc) if:
20 (i) class 2 material is provided on a social media service;
21 and
22 (ii) the service is provided from a foreign country; and
23 (iii) the provider of the service has reasonable grounds to
24 believe that the material is hosted in Australia;
25 procedures to be followed to ensure the Commissioner is
26 notified of the material;
- 27 (zd) if:
28 (i) class 2 material is provided on a relevant electronic
29 service; and
30 (ii) the service is provided from a foreign country; and
31 (iii) the provider of the service has reasonable grounds to
32 believe that the material is hosted in Australia;
33 procedures to be followed to ensure the Commissioner is
34 notified of the material;
- 35 (ze) if:

EXPOSURE DRAFT

Part 9 Online content scheme

Division 7 Industry codes and industry standards

Section 139

- 1 (i) class 2 material is provided on a designated internet
2 service; and
3 (ii) the service is provided from a foreign country; and
4 (iii) the provider of the service has reasonable grounds to
5 believe that the material is hosted in Australia;
6 procedures to be followed to ensure the Commissioner is
7 notified of the material;
8 (zf) the referral to the Commissioner of complaints about matters,
9 where the complainant is dissatisfied with the way in which
10 the complaint was dealt with under the code or standard;
11 (zg) ensuring that end-users are provided with information, and
12 support services, relating to online safety for Australians;
13 (zh) the making and retention of material directed towards the
14 achievement of the objective of ensuring that, in the event
15 that new social media services are developed that could put at
16 risk the safety of children who are end-users of the services,
17 the Commissioner is informed about those services;
18 (zi) the making and retention of material directed towards the
19 achievement of the objective of ensuring that, in the event
20 that new relevant electronic services are developed that could
21 put at risk the safety of children who are end-users of the
22 services, the Commissioner is informed about those services;
23 (zj) the making and retention of material directed towards the
24 achievement of the objective of ensuring that, in the event
25 that new designated internet services are developed that
26 could put at risk the safety of children who are end-users of
27 the services, the Commissioner is informed about those
28 services.

29 **139 Escalation of complaints**

30 *Scope*

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

EXPOSURE DRAFT

1

Escalation

2

(2) The industry code or industry standard, as the case may be, must

3

also deal with the matter referred to in paragraph 138(3)(zf).

4

Subdivision C—Industry codes

5

140 Registration of industry codes

6

Scope

7

(1) This section applies if:

8

(a) the Commissioner is satisfied that a body or association represents a particular section of the online industry; and

9

10

(b) that body or association develops an industry code that applies to participants in that section of the industry and deals

11

12

with one or more matters relating to the online activities of

13

those participants; and

14

(c) the body or association gives a copy of the code to the Commissioner; and

15

16

(d) the Commissioner is satisfied that:

17

(i) to the extent to which the code deals with one or more matters of substantial relevance to the community—the code provides appropriate community safeguards for that matter or those matters; and

18

19

20

21

(ii) to the extent to which the code deals with one or more matters that are not of substantial relevance to the community—the code deals with that matter or those matters in an appropriate manner; and

22

23

24

25

(e) the Commissioner is satisfied that, before giving the copy of the code to the Commissioner:

26

27

(i) the body or association published a draft of the code and invited members of the public to make submissions to the body or association about the draft within a specified period; and

28

29

30

EXPOSURE DRAFT

Part 9 Online content scheme

Division 7 Industry codes and industry standards

Section 141

- 1 (ii) the body or association gave consideration to any
2 submissions that were received from members of the
3 public within that period; and
4 (f) the Commissioner is satisfied that, before giving the copy of
5 the code to the Commissioner:
6 (i) the body or association published a draft of the code and
7 invited participants in that section of the industry to
8 make submissions to the body or association about the
9 draft within a specified period; and
10 (ii) the body or association gave consideration to any
11 submissions that were received from participants in that
12 section of the industry within that period; and
13 (g) the Commissioner has been consulted about the development
14 of the code.

15 *Registration*

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

18 *Period of consultation*

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

21 *Replacing industry codes*

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

28 **141 Commissioner may request codes**

- 29 (1) If the Commissioner is satisfied that a body or association
30 represents a particular section of the online industry, the

EXPOSURE DRAFT

- 1 Commissioner may, by written notice given to the body or
2 association, request the body or association to:
- 3 (a) develop an industry code that applies to participants in that
4 section of the industry and deals with one or more specified
5 matters relating to the online activities of those participants;
6 and
7 (b) give the Commissioner a copy of the code within the period
8 specified in the notice.
- 9 (2) The period specified in a notice under subsection (1) must run for
10 at least 120 days.
- 11 (3) The Commissioner may vary a notice under subsection (1) by
12 extending the period specified in the notice.
- 13 (4) Subsection (3) does not limit the application of subsection 33(3) of
14 the *Acts Interpretation Act 1901*.
- 15 (5) A notice under subsection (1) may specify indicative targets for
16 achieving progress in the development of the code (for example, a
17 target of 60 days to develop a preliminary draft of the code).

18 **142 Replacement of industry codes**

- 19 (1) Changes to an industry code are to be achieved by replacing the
20 code instead of varying the code.
- 21 (2) If the replacement code differs only in minor respects from the
22 original code, section 140 has effect, in relation to the registration
23 of the code, as if paragraphs 140(1)(e) and (f) of this Division had
24 not been enacted.
- 25 Note: Paragraphs 140(1)(e) and (f) deal with submissions about draft codes.

26 **143 Compliance with industry codes**

- 27 (1) If:
28 (a) a person is a participant in a particular section of the online
29 industry; and
-

EXPOSURE DRAFT

Part 9 Online content scheme

Division 7 Industry codes and industry standards

Section 144

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

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

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

10 **144 Formal warnings—breach of industry codes**

11 *Scope*

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

14 *Warning*

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

17 **Subdivision D—Industry standards**

18 **145 Commissioner may determine an industry standard**

- 19 (1) The Commissioner may, by legislative instrument, determine a
20 standard that applies to participants in a particular section of the
21 online industry.

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

- 24 (2) A standard under this section is to be known as an *industry*
25 *standard*.

- 26 (3) The Minister may, by legislative instrument, give the
27 Commissioner a written direction as to the exercise of the
28 Commissioner's powers under this section.

EXPOSURE DRAFT

1 **146 Compliance with industry standards**

2 If:

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

8 Civil penalty: 500 penalty units.

9 **147 Formal warnings—breach of industry standards**

10 *Scope*

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

13 *Warning*

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

16 **148 Public consultation on industry standards**

- 17 (1) Before determining or varying an industry standard, the
18 Commissioner must:
19 (a) make a copy of the draft available on the Commissioner's
20 website; and
21 (b) publish a notice on the Commissioner's website:
22 (i) stating that the Commissioner has prepared a draft of
23 the industry standard or variation; and
24 (ii) inviting interested persons to give written comments
25 about the draft to the Commissioner within the period
26 specified in the notice.
- 27 (2) The period specified in the notice must run for at least 30 days
28 after the publication of the notice.

EXPOSURE DRAFT

Part 9 Online content scheme

Division 7 Industry codes and industry standards

Section 149

1 (3) Subsection (1) does not apply to a variation if the variation is of a
2 minor nature.

3 (4) If interested persons have given comments in accordance with a
4 notice under subsection (1), the Commissioner must have due
5 regard to those comments in determining or varying the industry
6 standard, as the case may be.

7 **Subdivision E—Register of industry codes and industry** 8 **standards**

9 **149 Commissioner to maintain Register of industry codes and** 10 **industry standards**

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

21 **Subdivision F—Miscellaneous**

22 **150 Industry standards prevail over inconsistent industry codes**

- 23 If an industry code is:
- 24 (a) registered under this Division; and
 - 25 (b) applicable to a person;
- 26 the code has no effect to the extent to which it is inconsistent with
27 an industry standard that is:
- 28 (c) registered under this Division; and
 - 29 (d) applicable to the person.

1 **Division 8—Service provider determinations**

2 **151 Service provider determinations**

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

EXPOSURE DRAFT

Part 9 Online content scheme

Division 8 Service provider determinations

Section 152

1 **152 Exemptions from service provider determinations**

- 2 (1) The Minister may, by legislative instrument, determine any or all
3 of the following:
- 4 (a) that a specified provider of a social media service is exempt
5 from service provider determinations;
- 6 (b) that a specified provider of a relevant electronic service is
7 exempt from service provider determinations;
- 8 (c) that a specified provider of a designated internet service is
9 exempt from service provider determinations;
- 10 (d) that a specified hosting service provider is exempt from
11 service provider determinations;
- 12 (e) that a specified internet service provider is exempt from
13 service provider determinations.
- 14 (2) The Minister may, by legislative instrument, determine any or all
15 of the following:
- 16 (a) that a specified provider of a social media service is exempt
17 from a specified service provider determination;
- 18 (b) that a specified provider of a relevant electronic service is
19 exempt from a specified service provider determination;
- 20 (c) that a specified provider of a designated internet service is
21 exempt from a specified service provider determination;
- 22 (d) that a specified hosting service provider is exempt from a
23 specified service provider determination;
- 24 (e) that a specified internet service provider is exempt from a
25 specified service provider determination.
- 26 (3) A determination under this section may be unconditional or subject
27 to such conditions (if any) as are specified in the determination.

28 **153 Compliance with service provider rules**

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

31 Civil penalty: 500 penalty units.

EXPOSURE DRAFT

1 **154 Remedial directions—breach of service provider rules**

- 2 (1) This section applies if the Commissioner is satisfied that a person
3 has contravened, or is contravening, a service provider rule that
4 applies to the person.
- 5 (2) The Commissioner may give the person a written direction
6 requiring the person to take specified action directed towards
7 ensuring that the provider does not contravene the rule, or is
8 unlikely to contravene the rule, in the future.
- 9 (3) The following are examples of the kinds of direction that may be
10 given to a person under subsection (2):
- 11 (a) a direction that the person implement effective administrative
12 systems for monitoring compliance with a service provider
13 rule;
- 14 (b) a direction that the person implement a system designed to
15 give the person's employees, agents and contractors a
16 reasonable knowledge and understanding of the requirements
17 of a service provider rule, so far as those requirements affect
18 the employees, agents or contractors concerned.
- 19 (4) A person must comply with a direction under subsection (2).
- 20 Civil penalty for contravention of this subsection: 500 penalty
21 units.

22 **155 Formal warnings—breach of service provider rules**

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

EXPOSURE DRAFT

Part 9 Online content scheme
Division 9 Federal Court orders

Section 156

1 **Division 9—Federal Court orders**

2 **156 Federal Court may order a person to cease providing a social**
3 **media service**

4 (1) If the Commissioner is satisfied that:
5 (a) a person is the provider of a social media service; and
6 (b) there were 2 or more occasions during the previous 12
7 months on which the person contravened a civil penalty
8 provision of this Part; and
9 (c) as a result of those contraventions, the continued operation of
10 that social media service represents a significant community
11 safety risk;
12 the Commissioner may apply to the Federal Court for an order that
13 the person cease providing that social media service.

14 (2) If the Federal Court is satisfied, on such an application, that:
15 (a) the person is the provider of a social media service; and
16 (b) there were 2 or more occasions during the previous 12
17 months on which the person contravened a civil penalty
18 provision of this Part; and
19 (c) as a result of those contraventions, the continued operation of
20 that social media service represents a significant community
21 safety risk;
22 the Federal Court may order the person to cease providing that
23 social media service.

24 **157 Federal Court may order a person to cease providing a relevant**
25 **electronic service**

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

EXPOSURE DRAFT

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

16 **158 Federal Court may order a person to cease providing a**
17 **designated internet service**

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

EXPOSURE DRAFT

Part 9 Online content scheme

Division 9 Federal Court orders

Section 159

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

6 **159 Federal Court may order a person to cease supplying an** 7 **internet carriage service**

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

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

EXPOSURE DRAFT

1 **Division 10—Commissioner may obtain advice from the**
2 **Classification Board**

3 **160 Commissioner may obtain advice from the Classification Board**

- 4 (1) The Commissioner may request the Classification Board to:
- 5 (a) advise the Commissioner whether particular material is class
6 1 material; or
 - 7 (b) advise the Commissioner whether particular material is class
8 2 material; or
 - 9 (c) advise the Commissioner whether particular material is class
10 2 material covered by paragraph 107(1)(a); or
 - 11 (d) advise the Commissioner whether particular material is class
12 2 material covered by paragraph 107(1)(b); or
 - 13 (e) advise the Commissioner whether particular material is class
14 2 material covered by paragraph 107(1)(c); or
 - 15 (f) advise the Commissioner whether particular material is class
16 2 material covered by paragraph 107(1)(d); or
 - 17 (g) advise the Commissioner whether particular material is class
18 2 material covered by paragraph 107(1)(e); or
 - 19 (h) advise the Commissioner whether particular material is class
20 2 material covered by paragraph 107(1)(f); or
 - 21 (i) advise the Commissioner whether particular material is class
22 2 material covered by paragraph 107(1)(g); or
 - 23 (j) advise the Commissioner whether particular material is class
24 2 material covered by paragraph 107(1)(h); or
 - 25 (k) advise the Commissioner whether particular material is class
26 2 material covered by paragraph 107(1)(i); or
 - 27 (l) advise the Commissioner whether particular material is class
28 2 material covered by paragraph 107(1)(j); or
 - 29 (m) advise the Commissioner whether particular material is class
30 2 material covered by paragraph 107(1)(k); or
 - 31 (n) advise the Commissioner whether particular material is class
32 2 material covered by paragraph 107(1)(l).

EXPOSURE DRAFT

Part 9 Online content scheme

Division 10 Commissioner may obtain advice from the Classification Board

Section 160

- 1 (2) The Classification Board may give the advice requested by the
2 Commissioner.
- 3 (3) Subsection (2) does not, by implication, limit the matters that may
4 be taken into account by the Commissioner in considering:
- 5 (a) whether particular material is class 1 material; or
6 (b) whether particular material is class 2 material; or
7 (c) whether particular material is class 2 material covered by
8 paragraph 107(1)(a); or
9 (d) whether particular material is class 2 material covered by
10 paragraph 107(1)(b); or
11 (e) whether particular material is class 2 material covered by
12 paragraph 107(1)(c); or
13 (f) whether particular material is class 2 material covered by
14 paragraph 107(1)(d); or
15 (g) whether particular material is class 2 material covered by
16 paragraph 107(1)(e); or
17 (h) whether particular material is class 2 material covered by
18 paragraph 107(1)(f); or
19 (i) whether particular material is class 2 material covered by
20 paragraph 107(1)(g); or
21 (j) whether particular material is class 2 material covered by
22 paragraph 107(1)(h); or
23 (k) whether particular material is class 2 material covered by
24 paragraph 107(1)(i); or
25 (l) whether particular material is class 2 material covered by
26 paragraph 107(1)(j); or
27 (m) whether particular material is class 2 material covered by
28 paragraph 107(1)(k); or
29 (n) whether particular material is class 2 material covered by
30 paragraph 107(1)(l).

1 **Part 10—Enforcement**
2

3 **161 Simplified outline of this Part**

- 4
- A civil penalty provision in this Act is enforceable under Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*.
 - The following enforcement powers are available:
 - 8 (a) infringement notices;
 - 9 (b) enforceable undertakings;
 - 10 (c) injunctions.

11 **162 Civil penalty provision**

12 *Enforceable civil penalty provision*

- 13 (1) A civil penalty provision in this Act is enforceable under Part 4 of
14 the *Regulatory Powers (Standard Provisions) Act 2014*.

15 Note: Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*
16 allows a civil penalty provision to be enforced by obtaining an order
17 for a person to pay a pecuniary penalty for the contravention of the
18 provision.

19 *Authorised applicant*

- 20 (2) For the purposes of Part 4 of the *Regulatory Powers (Standard*
21 *Provisions) Act 2014*, the Commissioner is an authorised applicant
22 in relation to a civil penalty provision in this Act.

23 *Relevant court*

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

EXPOSURE DRAFT

Part 10 Enforcement

Section 163

1 *Extension to external Territories etc.*

2 (4) Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*,
3 as it applies in relation to a civil penalty provision in this Act,
4 extends to:

- 5 (a) every external Territory; and
6 (b) acts, omissions, matters and things outside Australia.

7 **163 Infringement notices**

8 *Provisions subject to an infringement notice*

9 (1) The following provisions of this Act are subject to an infringement
10 notice under Part 5 of the *Regulatory Powers (Standard*
11 *Provisions) Act 2014*:

- 12 (a) section 50;
13 (b) section 53;
14 (c) section 57;
15 (d) section 60;
16 (e) section 67;
17 (f) section 75;
18 (g) section 80;
19 (h) section 83;
20 (i) section 91;
21 (j) section 111;
22 (k) section 116;
23 (l) section 121;
24 (m) section 125;
25 (n) section 129;
26 (o) section 143;
27 (p) section 146.

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

1 *Infringement officer*

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

7 *Relevant chief executive*

8 (3) For the purposes of Part 5 of the *Regulatory Powers (Standard*
9 *Provisions) Act 2014*, the Commissioner is the relevant chief
10 executive in relation to the provisions mentioned in subsection (1).

11 (4) The relevant chief executive may, in writing, delegate any or all of
12 the relevant chief executive's powers and functions under Part 5 of
13 the *Regulatory Powers (Standard Provisions) Act 2014* to a person
14 who is:

- 15 (a) a member of the staff of the ACMA; and
16 (b) an SES employee or an acting SES employee.

17 (5) A person exercising powers or performing functions under a
18 delegation under subsection (4) must comply with any directions of
19 the relevant chief executive.

20 *Extension to external Territories etc.*

21 (6) Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*,
22 as it applies in relation to the provisions mentioned in
23 subsection (1), extends to:

- 24 (a) every external Territory; and
25 (b) acts, omissions, matters and things outside Australia.

26 **164 Enforceable undertakings**

27 *Enforceable provisions*

28 (1) The following provisions of this Act are enforceable under Part 6
29 of the *Regulatory Powers (Standard Provisions) Act 2014*:

EXPOSURE DRAFT

Part 10 Enforcement

Section 164

- 1 (a) section 50;
- 2 (b) section 53;
- 3 (c) section 57;
- 4 (d) section 60;
- 5 (e) section 67;
- 6 (f) section 75;
- 7 (g) section 80;
- 8 (h) section 83;
- 9 (i) section 91;
- 10 (j) section 103;
- 11 (k) section 111;
- 12 (l) section 116;
- 13 (m) section 121;
- 14 (n) section 125;
- 15 (o) section 129;
- 16 (p) section 143;
- 17 (q) section 146.

18 *Authorised person*

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

22 *Relevant court*

- 23 (3) The Federal Court of Australia and the Federal Circuit Court of
24 Australia are relevant courts in relation to the provisions mentioned
25 in subsection (1) for the purposes of Part 6 of the *Regulatory*
26 *Powers (Standard Provisions) Act 2014*.

27 *Extension to external Territories etc.*

- 28 (4) Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014*,
29 as it applies in relation to the provisions mentioned in
30 subsection (1), extends to:
31 (a) every external Territory; and

1 (b) acts, omissions, matters and things outside Australia.

2 **165 Injunctions**

3 *Enforceable provisions*

4 (1) The following provisions are enforceable under Part 7 of the
5 *Regulatory Powers (Standard Provisions) Act 2014*:

- 6 (a) section 50;
7 (b) section 53;
8 (c) section 57;
9 (d) section 60;
10 (e) section 67;
11 (f) section 71;
12 (g) section 75;
13 (h) section 80;
14 (i) section 83;
15 (j) section 91;
16 (j) section 103;
17 (l) section 111;
18 (m) section 116;
19 (n) section 121;
20 (o) section 125;
21 (p) section 129;
22 (q) section 143;
23 (r) section 146;
24 (s) section 195.

25 *Authorised person*

26 (2) The Commissioner is an authorised person in relation to the
27 provisions mentioned in subsection (1) for the purposes of Part 7 of
28 the *Regulatory Powers (Standard Provisions) Act 2014*.

EXPOSURE DRAFT

Part 10 Enforcement

Section 165

1

Relevant court

2

- (3) The Federal Court of Australia and the Federal Circuit Court of Australia are relevant courts in relation to the provisions mentioned in subsection (1) for the purposes of Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*.

3

4

5

6

Extension to external Territories etc.

7

- (4) Part 7 of the *Regulatory Powers (Standard Provisions) Act 2014*, as it applies in relation to the provisions mentioned in subsection (1), extends to:

8

9

10

(a) every external Territory; and

11

(b) acts, omissions, matters and things outside Australia.

EXPOSURE DRAFT

Administrative provisions relating to the Commissioner **Part 11**
Introduction **Division 1**

Section 166

1 **Part 11—Administrative provisions relating to the**
2 **Commissioner**

3 **Division 1—Introduction**

4 **166 Simplified outline of this Part**

- 5
- 6
- 7
- 8
- 9
- 10
- The Commissioner is to be appointed by the Minister.
 - The Commissioner may delegate the Commissioner's functions and powers.
 - The Commissioner must prepare an annual report.
 - The ACMA must assist the Commissioner.
 - The Minister may give directions to the Commissioner.

EXPOSURE DRAFT

Part 11 Administrative provisions relating to the Commissioner

Division 2 Appointment of the Commissioner

Section 167

1 **Division 2—Appointment of the Commissioner**

2 **167 Appointment of the Commissioner**

- 3 (1) The Commissioner is to be appointed by the Minister by written
4 instrument.
- 5 (2) A person is not eligible for appointment as the Commissioner
6 unless the Minister is satisfied that the person has:
7 (a) substantial experience or knowledge; and
8 (b) significant standing;
9 in at least one of the following fields:
10 (c) the operation of social media services;
11 (d) the operation of the internet industry;
12 (e) public engagement on issues relating to online safety;
13 (f) public policy in relation to the communications sector.
- 14 (3) The Commissioner holds office on a full-time basis.

15 **168 Period of appointment for the Commissioner**

16 The Commissioner holds office for the period specified in the
17 instrument of appointment. The period must not exceed 5 years.

18 Note: The Commissioner may be reappointed: see the *Acts Interpretation*
19 *Act 1901*.

20 **169 Acting appointments**

- 21 (1) The Minister may appoint a person to act as the Commissioner:
22 (a) during a vacancy in the office of the Commissioner (whether
23 or not an appointment has previously been made to the
24 office); or
25 (b) during any period, or during all periods, when the
26 Commissioner:
27 (i) is absent from duty or from Australia; or
28 (ii) is, for any reason, unable to perform the duties of the
29 office.

EXPOSURE DRAFT

Administrative provisions relating to the Commissioner **Part 11**

Appointment of the Commissioner **Division 2**

Section 170

1 Note: For rules that apply to acting appointments, see section 33A of the
2 *Acts Interpretation Act 1901*.

3 (2) A person is not eligible for appointment to act as the
4 Commissioner unless the person is eligible for appointment as the
5 Commissioner.

6 **170 Application of finance law**

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

EXPOSURE DRAFT

Part 11 Administrative provisions relating to the Commissioner

Division 3 Terms and conditions for the Commissioner

Section 171

1 **Division 3—Terms and conditions for the Commissioner**

2 **171 Remuneration and allowances**

3 (1) The Commissioner is to be paid the remuneration that is
4 determined by the Remuneration Tribunal. If no determination of
5 that remuneration by the Tribunal is in operation, the
6 Commissioner is to be paid the remuneration that is prescribed by
7 the legislative rules.

8 (2) The Commissioner is to be paid the allowances that are prescribed
9 by the legislative rules.

10 (3) This section has effect subject to the *Remuneration Tribunal Act*
11 *1973*.

12 **172 Leave of absence**

13 (1) The Commissioner has the recreation leave entitlements that are
14 determined by the Remuneration Tribunal.

15 (2) The Minister may grant the Commissioner leave of absence (other
16 than recreation leave) on the terms and conditions, as to
17 remuneration or otherwise, that the Minister determines.

18 **173 Outside employment**

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

22 **174 Disclosure of interests to the Minister**

23 The Commissioner must give written notice to the Minister of all
24 interests, pecuniary or otherwise, that the Commissioner has or
25 acquires, and that conflict or could conflict with the proper
26 performance of the Commissioner's functions.

EXPOSURE DRAFT

Administrative provisions relating to the Commissioner **Part 11**
Terms and conditions for the Commissioner **Division 3**

Section 175

175 Resignation

- 1
- 2 (1) The Commissioner may resign the Commissioner's appointment
3 by giving the Minister a written resignation.
- 4 (2) The resignation takes effect on the day it is received by the
5 Minister or, if a later day is specified in the resignation, on that
6 later day.

176 Termination of appointment

- 7
- 8 (1) The Minister may terminate the appointment of the Commissioner:
9 (a) for misbehaviour; or
10 (b) if the Commissioner is unable to perform the duties of the
11 Commissioner's office because of physical or mental
12 incapacity.
- 13 (2) The Minister may terminate the appointment of the Commissioner
14 if:
15 (a) the Commissioner:
16 (i) becomes bankrupt; or
17 (ii) applies to take the benefit of any law for the relief of
18 bankrupt or insolvent debtors; or
19 (iii) compounds with the Commissioner's creditors; or
20 (iv) makes an assignment of the Commissioner's
21 remuneration for the benefit of the Commissioner's
22 creditors; or
23 (b) the Commissioner is absent, except on leave of absence, for
24 14 consecutive days or for 28 days in any 12 months; or
25 (c) the Commissioner engages, except with the Minister's
26 approval, in paid employment outside the duties of the
27 Commissioner's office (see section 173); or
28 (d) the Commissioner fails, without reasonable excuse, to
29 comply with section 174.

EXPOSURE DRAFT

Part 11 Administrative provisions relating to the Commissioner

Division 3 Terms and conditions for the Commissioner

Section 177

1 **177 Other terms and conditions**

2 The Commissioner holds office on the terms and conditions (if
3 any) in relation to matters not covered by this Act that are
4 determined by the Minister.

EXPOSURE DRAFT

Administrative provisions relating to the Commissioner **Part 11**
Other matters **Division 4**

Section 178

1 **Division 4—Other matters**

2 **178 Supplementary powers**

- 3 (1) The powers of the Commissioner include, but are not limited to,
4 the power to enter into contracts.
- 5 (2) Any contract entered into by the Commissioner is to be entered
6 into on behalf of the Commonwealth.
- 7 (3) Any real or personal property held by the Commissioner is held for
8 and on behalf of the Commonwealth.
- 9 (4) Any money received by the Commissioner is received for and on
10 behalf of the Commonwealth.
- 11 (5) The Commissioner cannot hold real or personal property, or
12 money, on trust for a person other than the Commonwealth.
- 13 Note: The Commonwealth may hold real or personal property or money on
14 trust.
- 15 (6) To avoid doubt, a right to sue is taken not to be personal property
16 for the purposes of subsection (3).

17 **179 Commissioner's liabilities are Commonwealth liabilities**

- 18 (1) Any financial liabilities of the Commissioner are taken to be
19 liabilities of the Commonwealth.
- 20 (2) For the purposes of this section, *financial liability* means a liability
21 to pay a person an amount, where the amount, or the method for
22 working out the amount, has been determined.

23 **180 Commissioner has privileges and immunities of the Crown**

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

EXPOSURE DRAFT

Part 11 Administrative provisions relating to the Commissioner

Division 4 Other matters

Section 181

1 **181 Delegation by the Commissioner to a member of the staff of the**
2 **ACMA etc.**

- 3 (1) The Commissioner may, by writing, delegate any or all of the
4 Commissioner's functions or powers to:
- 5 (a) a member of the staff of the ACMA; or
 - 6 (b) a person whose services are made available to the ACMA
7 under paragraph 55(1)(a) of the *Australian Communications*
8 *and Media Authority Act 2005*;
- 9 if the member or person is:
- 10 (c) an SES employee; or
 - 11 (d) an acting SES employee; or
 - 12 (e) an APS employee who holds or performs the duties of:
 - 13 (i) an Executive Level 1 or 2 position; or
 - 14 (ii) an equivalent position; or
 - 15 (f) an APS employee who holds or performs the duties of:
 - 16 (i) an APS 6 position; or
 - 17 (ii) an equivalent position.

18 Note: The expressions *SES employee* and *acting SES employee* are defined
19 in the *Acts Interpretation Act 1901*.

- 20 (2) A delegate must comply with any written directions of the
21 Commissioner.
- 22 (3) Subsection (1) does not apply to a power to make, vary or revoke a
23 legislative instrument.

24 **182 Delegation by the Commissioner to a contractor engaged by the**
25 **Commissioner**

- 26 (1) The Commissioner may, by writing, delegate any or all of the
27 Commissioner's functions or powers to a person engaged by the
28 Commissioner under subsection 185(1).
- 29 (2) A delegate must comply with any written directions of the
30 Commissioner.

EXPOSURE DRAFT

Administrative provisions relating to the Commissioner **Part 11**
Other matters **Division 4**

Section 182

- 1 (3) Subsection (1) does not apply to a power to make, vary or revoke a
2 legislative instrument.
- 3 (4) Subsection (1) does not apply to a function or power conferred by
4 any of the following provisions:
- 5 (a) section 49;
 - 6 (b) section 52;
 - 7 (c) section 56;
 - 8 (d) section 59;
 - 9 (e) section 65;
 - 10 (f) section 66;
 - 11 (g) section 70;
 - 12 (h) section 77;
 - 13 (i) section 78;
 - 14 (j) section 79;
 - 15 (k) section 83;
 - 16 (l) section 88;
 - 17 (m) section 89;
 - 18 (n) section 90;
 - 19 (o) section 95;
 - 20 (p) section 99;
 - 21 (q) section 109;
 - 22 (r) section 110;
 - 23 (s) section 114;
 - 24 (t) section 115;
 - 25 (u) section 119;
 - 26 (v) section 120;
 - 27 (w) section 143;
 - 28 (x) section 145;
 - 29 (y) section 154;
 - 30 (z) section 157;
 - 31 (za) section 158;
 - 32 (zb) section 159;
 - 33 (zc) section 194;

EXPOSURE DRAFT

Part 11 Administrative provisions relating to the Commissioner

Division 4 Other matters

Section 183

- 1 (zd) section 199;
2 (ze) section 200;
3 (zf) section 203.
- 4 (5) Subsection (1) does not apply to a function or power conferred by
5 the *Regulatory Powers (Standard Provisions) Act 2014*.

6 **183 Annual report**

7 The Commissioner must, as soon as practicable after the end of
8 each financial year, prepare and give to the Minister, for
9 presentation to the Parliament, a report on the operations of the
10 Commissioner during that year.

11 Note: See also section 34C of the *Acts Interpretation Act 1901*, which
12 contains extra rules about annual reports.

13 **184 Assistance to the Commissioner**

- 14 (1) The ACMA must:
15 (a) assist the Commissioner to perform the Commissioner's
16 functions and exercise the Commissioner's powers; and
17 (b) do so to such extent as the Commissioner reasonably
18 requires.
- 19 (2) The assistance may include the following:
20 (a) the provision of advice;
21 (b) the making available of resources and facilities.

22 *Members of the staff of the ACMA*

- 23 (3) The ACMA must:
24 (a) make available members of the staff of the ACMA to assist
25 the Commissioner to perform the Commissioner's functions
26 and exercise the Commissioner's powers, so long as the
27 Commissioner considers that those members have the skills,
28 qualifications or experience necessary to so assist the
29 Commissioner; and

EXPOSURE DRAFT

Administrative provisions relating to the Commissioner **Part 11**
Other matters **Division 4**

Section 185

1 (b) do so to such extent as the Commissioner reasonably
2 requires.

3 (4) When performing services for the Commissioner, a member of the
4 staff of the ACMA is subject to the directions of the
5 Commissioner.

6 *Ministerial directions*

7 (5) The Minister may, by legislative instrument, give directions to the
8 ACMA in relation to the performance of its functions, or the
9 exercise of its powers, under this section.

10 Note 1: For variation and revocation, see subsection 33(3) of the *Acts*
11 *Interpretation Act 1901*.

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

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

17 *Deemed members of the staff of the ACMA*

18 (7) For the purposes of this section, if a person is an officer or
19 employee whose services are made available to the ACMA under
20 paragraph 55(1)(a) of the *Australian Communications and Media*
21 *Authority Act 2005*, the person is taken to be a member of the staff
22 of the ACMA.

23 **185 Contractors engaged by the Commissioner**

24 (1) The Commissioner may, on behalf of the Commonwealth, engage
25 persons to assist the Commissioner to perform the Commissioner's
26 functions and exercise the Commissioner's powers.

27 (2) The persons are to be engaged on the terms and conditions that the
28 Commissioner determines in writing.

29 (3) When performing services for the Commissioner, a person engaged
30 under subsection (1) is subject to the directions of the
31 Commissioner.

EXPOSURE DRAFT

Part 11 Administrative provisions relating to the Commissioner

Division 4 Other matters

Section 186

1 **186 Commissioner not subject to direction by the ACMA etc.**

- 2 (1) To avoid doubt, the Commissioner is not subject to direction by:
- 3 (a) the ACMA; or
- 4 (b) a member or associate member of the ACMA; or
- 5 (c) a member of the staff of the ACMA;
- 6 in relation to the performance of a function, or the exercise of a
- 7 power, by the Commissioner.
- 8 (2) Subsection (1) applies regardless of whether or not functions or
- 9 powers are delegated to the Commissioner by the Chair, or a
- 10 member or associate member, of the ACMA.

11 **187 Consultants**

- 12 (1) The Commissioner may, on behalf of the Commonwealth, engage
- 13 persons having suitable qualifications and experience as
- 14 consultants to the Commissioner.
- 15 (2) The consultants are to be engaged on the terms and conditions that
- 16 the Commissioner determines in writing.

17 **188 Minister may give directions to the Commissioner**

- 18 (1) The Minister may, by legislative instrument, give directions to the
- 19 Commissioner about the performance of the Commissioner's
- 20 functions or the exercise of the Commissioner's powers.
- 21 Note 1: For variation and revocation, see subsection 33(3) of the *Acts*
- 22 *Interpretation Act 1901*.
- 23 Note 2: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the
- 24 *Legislation Act 2003* do not apply to the direction (see regulations
- 25 made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that
- 26 Act).
- 27 (2) A direction under subsection (1) must be of a general nature only.
- 28 (3) The Commissioner must comply with a direction under
- 29 subsection (1).

EXPOSURE DRAFT

1 **Part 12—Online Safety Special Account**
2

3 **189 Simplified outline of this Part**

- 4

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

5 **190 Online Safety Special Account**

- 6 (1) The Online Safety Special Account is continued in existence.
7 (2) The Account is a special account for the purposes of the *Public*
8 *Governance, Performance and Accountability Act 2013*.
9 (3) The Account is to be administered by the ACMA.
10 (4) An amount must not be debited from the Account without the
11 written approval of the Commissioner.

12 **191 Credits to the Account**

13 *Determination*

- 14 (1) The Minister may, by writing, determine that a specified amount is
15 to be:
16 (a) debited against the appropriation for the ACMA
17 departmental item in a specified Appropriation Act; and
18 (b) credited to the Online Safety Special Account.
19 (2) A determination under subsection (1) is a legislative instrument,
20 but section 42 (disallowance) of the *Legislation Act 2003* does not
21 apply to the determination.

22 *ACMA departmental item*

- 23 (3) For the purposes of the application of this section to an
24 Appropriation Act, ***ACMA departmental item*** means a
25 departmental item (within the meaning of that Act) that relates to
26 the ACMA.

EXPOSURE DRAFT

Part 12 Online Safety Special Account

Section 192

1 **192 Purposes of the Account**

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

3 (a) to enhance online safety for Australians;

4 (b) to make grants under paragraph 27(1)(g);

5 (c) to pay:

6 (i) remuneration, and other employment-related costs and
7 expenses, in respect of APS employees whose duties
8 relate to the performance of the Commissioner's
9 functions or the exercise of the Commissioner's powers;
10 and

11 (ii) any other costs, expenses and other obligations incurred
12 by the Commonwealth in connection with the
13 performance of the Commissioner's functions or the
14 exercise of the Commissioner's powers.

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

1 **Part 13—Information-gathering powers**
2

3 **193 Simplified outline of this Part**

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

9 **194 Commissioner may obtain end-user identity information or**
10 **contact details**

11 *Scope*

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

25 *Requirement*

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

EXPOSURE DRAFT

Part 13 Information-gathering powers

Section 195

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

7 **195 Compliance with notice**

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

10 Civil penalty: 100 penalty units.

11 **196 Self-incrimination**

12 (1) A person is not excused from giving information or contact details
13 under section 194 on the ground that the information or contact
14 details might tend to incriminate the person.

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

- 16 (a) the information or contact details given; or
17 (b) giving the information or contact details; or
18 (c) any information, document or thing obtained as a direct or
19 indirect consequence of giving the information or contact
20 details;

21 is not admissible in evidence against the individual:

- 22 (d) in civil proceedings for the recovery of a penalty (other than
23 proceedings for the recovery of a penalty under section 195);
24 or
25 (e) in criminal proceedings (other than proceedings for an
26 offence against section 137.1 or 137.2 of the *Criminal Code*
27 that relates to this Part).

28 (3) If, at general law, an individual would otherwise be able to claim
29 the privilege against self-exposure to a penalty (other than a
30 penalty for an offence) in relation to giving information or contact

EXPOSURE DRAFT

Section 196

1 details under section 194, the individual is not excused from giving
2 information or contact details under that section on that ground.
3 Note: A body corporate is not entitled to claim the privilege against
4 self-exposure to a penalty.

EXPOSURE DRAFT

Part 14 Investigative powers

Section 197

1 **Part 14—Investigative powers**
2

3 **197 Simplified outline of this Part**

- 4
 - The Commissioner may exercise certain powers for the
5 purposes of an investigation.

6 **198 Application of this Part**

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

9 **199 Notice requiring appearance for examination**

10 For the purposes of an investigation by the Commissioner, the
11 Commissioner may give a written notice to a person summoning
12 the person:

- 13 (a) to attend before:
14 (i) the Commissioner; or
15 (ii) a delegate of the Commissioner named in the notice;
16 to produce documents or to answer questions; or
17 (b) to provide documents or other information to the
18 Commissioner;
19 relevant to the subject matter of the investigation.

20 **200 Examination on oath or affirmation**

- 21 (1) If a 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 an oath or affirmation to the person.

- 1 (2) The oath or affirmation is to be an oath or affirmation that the
2 statements the person will make will be true to the best of the
3 person's knowledge or belief.
- 4 (3) The Commissioner or delegate may require the person to answer a
5 question that is put to the person at an examination and that is
6 relevant to a matter that the Commissioner is investigating or is to
7 investigate.

8 **201 Examination to take place in private**

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

12 **202 Record to be made of examination**

- 13 (1) If a person is examined by the Commissioner or a delegate of the
14 Commissioner, a record must be made of the examination and the
15 person is entitled to be given a written copy of the record.
- 16 (2) If the record of the examination of a person is made in electronic
17 form, the person is, if the person so requests, to be given a copy of
18 the record in that form.

19 **203 Production of documents for inspection**

20 The Commissioner may, by written notice given to a person,
21 require the person:

22 (a) to make available for inspection by:

23 (i) the Commissioner; or
24 (ii) a delegate of the Commissioner;

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

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

EXPOSURE DRAFT

Part 14 Investigative powers

Section 204

1 **204 Protection of persons giving evidence**

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

5 **205 Non-compliance with requirement to give evidence**

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

14 Penalty: Imprisonment for 12 months.

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

23 Civil penalty: 100 penalty units.

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

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

- 30 (4) Subsections (1) and (2) do not apply to a refusal to answer a
31 question, or a refusal to produce a document, if the answer to the

EXPOSURE DRAFT

1 question or the production of the document would tend to
2 incriminate the person.

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

7 (5) Subsections (1) and (2) do not apply if:

8 (a) the person is a journalist; and

9 (b) the answer to the question or the production of the document
10 would tend to disclose the identity of a person who supplied
11 information in confidence to the journalist.

EXPOSURE DRAFT

Part 15 Disclosure of information

Section 206

Part 15—Disclosure of information

206 Simplified outline of this Part

- The Commissioner may disclose information in certain circumstances.

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

207 Scope

This Part applies to information that was obtained by the Commissioner as a result of the performance of a function, or the exercise of a power, conferred on the Commissioner by or under this Act.

208 Disclosure to Minister

The Commissioner may disclose information to the Minister.

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

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

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

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

The Commissioner may disclose information to:

- a member of the staff of the ACMA; or
- an officer or employee whose services are made available to the ACMA under paragraph 55(1)(a) of the *Australian Communications and Media Authority Act 2005*; or
- a person engaged under subsection 185(1); or

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

4 **211 Disclosure to Royal Commissions**

- 5 (1) The Commissioner may disclose information to a Royal
6 Commission (within the meaning of the *Royal Commissions Act*
7 *1902*).
- 8 (2) The Commissioner may, by writing, impose conditions to be
9 complied with in relation to information disclosed under
10 subsection (1).
- 11 (3) An instrument made under subsection (2) that imposes conditions
12 relating to one particular disclosure identified in the instrument is
13 not a legislative instrument.
- 14 (4) Otherwise, an instrument made under subsection (2) is a legislative
15 instrument.

16 **212 Disclosure to certain authorities**

- 17 (1) The Commissioner may disclose information to any of the
18 following authorities if the Commissioner is satisfied that the
19 information will enable or assist the authority to perform or
20 exercise any of the authority's functions or powers:
- 21 (a) the ACMA;
- 22 (b) the National Children's Commissioner;
- 23 (c) the Secretary of the Department administered by the Minister
24 administering the *Classification (Publications, Films and*
25 *Computer Games) Act 1995* or an APS employee in that
26 Department whose duties relate to that Act;
- 27 (d) the Australian Federal Police;
- 28 (e) the Director of Public Prosecutions;
- 29 (f) an authority of a State or Territory responsible for enforcing
30 one or more laws of the State or Territory;

EXPOSURE DRAFT

Part 15 Disclosure of information

Section 213

- 1 (g) an authority of a foreign country responsible for regulating
2 either or both of the following matters:
3 (i) matters relating to the capacity of individuals to use
4 social media services and electronic services in a safe
5 manner;
6 (ii) matters relating to material that is accessible to, or
7 delivered to, the end-users of social media services and
8 electronic services;
9 (h) an authority of a foreign country responsible for enforcing
10 one or more laws of the foreign country relating to either or
11 both of the following matters:
12 (i) matters relating to the capacity of individuals to use
13 social media services and electronic services in a safe
14 manner;
15 (ii) matters relating to material that is accessible to, or
16 delivered to, the end-users of social media services and
17 electronic services.
- 18 (2) The Commissioner may, by writing, impose conditions to be
19 complied with in relation to information disclosed under
20 subsection (1).
- 21 (3) An instrument made under subsection (2) that imposes conditions
22 relating to one particular disclosure identified in the instrument is
23 not a legislative instrument.
- 24 (4) Otherwise, an instrument made under subsection (2) is a legislative
25 instrument.

26 **213 Disclosure to teachers or school principals**

- 27 (1) The Commissioner may disclose information to a teacher or school
28 principal if the Commissioner is satisfied that the information will
29 assist in the resolution of a complaint made under section 30.
- 30 (2) The Commissioner may, by writing, impose conditions to be
31 complied with in relation to information disclosed under
32 subsection (1).

- 1 (3) An instrument made under subsection (2) that imposes conditions
2 relating to one particular disclosure identified in the instrument is
3 not a legislative instrument.
- 4 (4) Otherwise, an instrument made under subsection (2) is a legislative
5 instrument.

6 **214 Disclosure to parents or guardians**

- 7 (1) The Commissioner may disclose information to a parent or
8 guardian of an Australian child if the Commissioner is satisfied
9 that the information will assist in the resolution of a complaint
10 made under section 30.
- 11 (2) The Commissioner may, by writing, impose conditions to be
12 complied with in relation to information disclosed under
13 subsection (1).
- 14 (3) An instrument made under subsection (2) that imposes conditions
15 relating to one particular disclosure identified in the instrument is
16 not a legislative instrument.
- 17 (4) Otherwise, an instrument made under subsection (2) is a legislative
18 instrument.

19 **215 Disclosure with consent**

- 20 The Commissioner may disclose information that relates to the
21 affairs of a person if:
22 (a) the person has consented to the disclosure; and
23 (b) the disclosure is in accordance with that consent.

24 **216 Disclosure of publicly available information**

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

27 **217 Disclosure of summaries and statistics**

- 28 The Commissioner may disclose:
-

EXPOSURE DRAFT

Part 15 Disclosure of information

Section 218

- 1 (a) summaries of de-identified information; and
2 (b) statistics derived from de-identified information.

3 **218 Relationship with Part 13 of the *Telecommunications Act 1997***

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

1 **Part 16—Miscellaneous**
2

3 **219 Simplified outline of this Part**

- 4
 - This Part deals with miscellaneous matters, such as review of
5 decisions and legislative rules.

6 **220 Review of decisions**

7 *Section 65 removal notice*

- 8 (1) An application may be made to the Administrative Appeals
9 Tribunal for a review of a decision of the Commissioner under
10 section 65 to give a removal notice to the provider of:
11 (a) a social media service; or
12 (b) a relevant electronic service; or
13 (c) a designated internet service.
- 14 (2) An application under subsection (1) may only be made by:
15 (a) the provider of the social media service, relevant electronic
16 service or designated internet service; or
17 (b) the end-user who posted the material that is the subject of the
18 notice.
- 19 (3) An application may be made to the Administrative Appeals
20 Tribunal for a review of a decision of the Commissioner to refuse
21 to give the provider of:
22 (a) a social media service; or
23 (b) a relevant electronic service; or
24 (c) a designated internet service;
25 a section 65 removal notice that relates to material provided on the
26 service.
- 27 (4) An application under subsection (3) may only be made:
28 (a) by a person who made a section 30 complaint about the
29 material provided on the service; or

EXPOSURE DRAFT

Part 16 Miscellaneous

Section 220

1 (b) by, or with the consent of, the person who was the target of
2 the material provided on the service.

3 *Section 66 removal notice*

4 (5) An application may be made to the Administrative Appeals
5 Tribunal for a review of a decision of the Commissioner under
6 section 66 to give a removal notice to a hosting service provider.

7 (6) An application under subsection (5) may only be made by:

8 (a) the hosting service provider; or

9 (b) the end-user who posted the material that is the subject of the
10 notice.

11 (7) An application may be made to the Administrative Appeals
12 Tribunal for a review of a decision of the Commissioner to refuse
13 to give a hosting service provider a section 66 removal notice that
14 relates to material hosted by the provider.

15 (8) An application under subsection (7) may only be made:

16 (a) by a person who made a section 30 complaint about the
17 material; or

18 (b) by, or with the consent of, the person who was the target of
19 the material provided on the service.

20 *End-user notice*

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

24 *Removal notice*

25 (10) An application may be made to the Administrative Appeals
26 Tribunal for a review of a decision of the Commissioner under
27 section 77, 78, 79, 88, 89, 90, 109, 110, 114 or 115 to give a
28 removal notice.

EXPOSURE DRAFT

1

Remedial direction

2

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

3

4

5

Blocking notice

6

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

7

8

9

Remedial notice

10

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

11

12

13

Link deletion notice

14

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

15

16

17

App removal notice

18

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

19

20

21

Decisions under section 140

22

- (16) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Commissioner under section 140 to refuse to register an industry code.

23

24

25

- (17) An application under subsection (16) may only be made by the body or association that developed the code.

26

EXPOSURE DRAFT

Part 16 Miscellaneous

Section 221

1

Decisions under section 143

2

(18) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the Commissioner under section 143 to:

3

4

5

(a) give a direction to a person; or

6

(b) vary a direction that is applicable to a person; or

7

(c) refuse to revoke a direction that is applicable to a person.

8

(19) An application under subsection (18) may only be made by the person concerned.

9

10

Decisions under subsection 151(5) or section 154

11

(20) An application may be made to the Administrative Appeals Tribunal for a review of any of the following decisions made by the Commissioner:

12

13

14

(a) a decision of a kind referred to in subsection 151(5) (which deals with administrative decisions under service provider determinations), where the decision relates to a person;

15

16

17

(b) a decision under section 154 to:

18

(i) give a direction to a person; or

19

(ii) vary a direction that is applicable to a person; or

20

(iii) refuse to revoke a direction that is applicable to a person.

21

22

(21) An application under subsection (20) may only be made by the person concerned.

23

24

221 Protection from civil proceedings

25

(1) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of any of the following acts done in good faith:

26

27

28

(a) the making of a complaint under section 30;

29

(b) the making of a statement to, or the giving of a document or information to, the Commissioner in connection with an investigation under section 31;

30

31

- 1 (c) the making of a complaint under section 32;
2 (d) the giving of an objection notice under section 33;
3 (e) the making of a statement to, or the giving of a document or
4 information to, the Commissioner in connection with an
5 investigation under section 34;
6 (f) the making of a statement to, or the giving of a document or
7 information to, the Commissioner in connection with a
8 consideration under section 35;
9 (g) the making of a complaint under section 36;
10 (h) the making of a statement to, or the giving of a document or
11 information to, the Commissioner in connection with an
12 investigation under section 37;
13 (i) the making of a complaint under section 38, 39 or 40;
14 (j) the making of a statement to, or the giving of a document or
15 information to, the Commissioner in connection with an
16 investigation under section 42.
- 17 (2) Civil proceedings do not lie against a person in respect of anything
18 done by the person in compliance with:
19 (a) an end-user notice; or
20 (b) a removal notice; or
21 (c) a remedial notice; or
22 (d) a link deletion notice; or
23 (e) an app removal notice; or
24 (f) a blocking request; or
25 (g) a blocking notice; or
26 (h) a notice under subsection 194(2).

27 **222 Liability for damages**

- 28 None of the following:
29 (a) the Commissioner;
30 (b) a delegate of the Commissioner;
31 is liable to an action or other proceeding for damages for, or in
32 relation to, an act or matter in good faith done or omitted to be
33 done:

EXPOSURE DRAFT

Part 16 Miscellaneous

Section 223

- 1 (c) in the performance or purported performance of any function;
2 or
3 (d) in the exercise or purported exercise of any power;
4 conferred on the Commissioner by or under this Act.

5 **223 Protection from criminal proceedings—Commissioner, 6 Classification Board etc.**

- 7 (1) For the purposes of this section, each of the following is a
8 *protected person*:
9 (a) the Commissioner;
10 (b) a member of the staff of the ACMA;
11 (c) an officer or employee whose services are made available to
12 the ACMA under paragraph 55(1)(a) of the *Australian*
13 *Communications and Media Authority Act 2005*;
14 (d) a person engaged under subsection 185(1);
15 (e) a consultant engaged under section 187;
16 (f) a member or temporary member of the Classification Board;
17 (g) a member of staff assisting the Classification Board as
18 mentioned in section 88A of the *Classification (Publications,*
19 *Films and Computer Games) Act 1995*;
20 (h) a consultant engaged to assist in the performance of the
21 functions of the Classification Board.
- 22 (2) Criminal proceedings do not lie against a protected person for or in
23 relation to:
24 (a) the collection of material; or
25 (b) the possession of material; or
26 (c) the distribution of material; or
27 (d) the delivery of material; or
28 (e) the copying of material; or
29 (f) the doing of any other thing in relation to material;
30 in connection with the exercise of a power, or the performance of a
31 function, conferred on the Commissioner or the Classification
32 Board by or under this Act.

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

3 **224 Referral of matters to law enforcement agencies**

- 4 (1) If:
5 (a) in the performance of a function, or the exercise of a power,
6 conferred on the Commissioner, the Commissioner becomes
7 aware of particular material provided on a social media
8 service, relevant electronic service or designated internet
9 service; and
10 (b) the Commissioner is satisfied that the material is of a
11 sufficiently serious nature to warrant referral to a law
12 enforcement agency;
13 the Commissioner may notify the material to:
14 (c) a member of an Australian police force; or
15 (d) if there is an arrangement between:
16 (i) the Commissioner; and
17 (ii) the chief (however described) of an Australian police
18 force under which the Commissioner is authorised to
19 notify the material to another person or body;
20 that other person or body.

21 *Referral to law enforcement agency*

- 22 (2) The manner in which material may be notified under
23 paragraph (1)(d) to a member of an Australian police force
24 includes (but is not limited to) a manner ascertained in accordance
25 with an arrangement between:
26 (a) the Commissioner; and
27 (b) the chief (however described) of the police force concerned.
- 28 (3) If a member of an Australian police force is notified of particular
29 material under this section, the member may notify the material to
30 a member of another law enforcement agency.

EXPOSURE DRAFT

Part 16 Miscellaneous

Section 225

- 1 (4) This section does not, by implication, limit the powers of the
2 Commissioner to refer other matters to a member of an Australian
3 police force.

225 Deferral of action in order to avoid prejudicing a criminal investigation

- 4
5
6 If:
7 (a) in the performance of a function, or the exercise of a power,
8 conferred on the Commissioner, the Commissioner becomes
9 aware of particular material provided on a social media
10 service, relevant electronic service or designated internet
11 service; and
12 (b) apart from this section, the Commissioner would be required
13 to take action under this Act in relation to the material; and
14 (c) a member of an Australian police force satisfies the
15 Commissioner that the taking of that action should be
16 deferred until the end of a particular period in order to avoid
17 prejudicing a criminal investigation;
18 the Commissioner may defer taking that action until the end of that
19 period.

226 Copies of material

- 20
21 (1) The Commissioner may make one or more copies of material for
22 the purposes of:
23 (a) an investigation under section 31, 34, 37 or 42; or
24 (b) a consideration under section 35; or
25 (c) a request under section 160.
26 (2) The Commissioner does not infringe copyright if the
27 Commissioner does anything authorised by subsection (1).

227 Compensation for acquisition of property

- 28
29 (1) If the operation of:
30 (a) this Act; or
31 (b) a legislative instrument made under this Act;
-

1 would result in an acquisition of property (within the meaning of
2 paragraph 51(xxxi) of the Constitution) from a person otherwise
3 than on just terms (within the meaning of that paragraph), the
4 Commonwealth is liable to pay a reasonable amount of
5 compensation to the person.

6 (2) If the Commonwealth and the person do not agree on the amount
7 of the compensation, the person may institute proceedings in a
8 court of competent jurisdiction for the recovery from the
9 Commonwealth of such reasonable amount of compensation as the
10 court determines.

11 **228 Service of notices by electronic means**

12 Paragraphs 9(1)(d) and (2)(d) of the *Electronic Transactions Act*
13 *1999* do not apply to a notice under:

- 14 (a) this Act; or
15 (b) the *Regulatory Powers (Standard Provisions) Act 2014*, so
16 far as that Act relates to this Act.

17 Note: Paragraphs 9(1)(d) and (2)(d) of the *Electronic Transactions Act 1999*
18 deal with the consent of the recipient of information to the information
19 being given by way of electronic communication.

20 **229 Service of notices on contact person etc.**

21 *Scope*

- 22 (1) This section applies to:
23 (a) a summons or process in any proceedings under, or
24 connected with, this Act; or
25 (b) a summons or process in any proceedings under, or
26 connected with, the *Regulatory Powers (Standard*
27 *Provisions) Act 2014*, so far as that Act relates to this Act; or
28 (c) a notice under this Act; or
29 (d) a notice under the *Regulatory Powers (Standard Provisions)*
30 *Act 2014*, so far as that Act relates to this Act.

1 *Other matters*

- 2 (4) Subsections (2) and (3) have effect in addition to section 28A of
3 the *Acts Interpretation Act 1901*.

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

6 **230 Instruments under this Act may provide for matters by**
7 **reference to other instruments**

- 8 (1) An instrument under this Act may make provision in relation to a
9 matter by applying, adopting or incorporating (with or without
10 modifications) provisions of any Act:
11 (a) as in force at a particular time; or
12 (b) as in force from time to time.
- 13 (2) An instrument under this Act may make provision in relation to a
14 matter by applying, adopting or incorporating (with or without
15 modifications) matter contained in any other instrument or writing:
16 (a) as in force or existing at a particular time; or
17 (b) as in force or existing from time to time;
18 even if the other instrument or writing does not yet exist when the
19 instrument under this Act is made.
- 20 (3) A reference in subsection (2) to any other instrument or writing
21 includes a reference to an instrument or writing:
22 (a) made by any person or body in Australia or elsewhere
23 (including, for example, the Commonwealth, a State or
24 Territory, an officer or authority of the Commonwealth or of
25 a State or Territory, or an overseas entity); and
26 (b) whether of a legislative, administrative or other official
27 nature or of any other nature; and
28 (c) whether or not having any legal force or effect;
29 for example:
30 (d) regulations or rules under an Act; or
31 (e) a State Act, a law of a Territory, or regulations or any other
32 instrument made under such an Act or law; or

EXPOSURE DRAFT

Part 16 Miscellaneous

Section 231

- 1 (f) an international technical standard or performance indicator;
2 or
3 (g) a written agreement or arrangement or an instrument or
4 writing made unilaterally.

5 (4) Nothing in this section limits the generality of anything else in it.

6 (5) Subsections (1) and (2) have effect despite anything in:

7 (a) the *Acts Interpretation Act 1901*; or

8 (b) the *Legislation Act 2003*.

9 (6) In this section:

10 *instrument under this Act* means:

11 (a) the legislative rules; or

12 (b) any other instrument made under this Act; or

13 (c) an industry code (within the meaning of Division 7 of Part 9).

14 **231 This Act does not limit Schedule 8 to the *Broadcasting Services***
15 ***Act 1992***

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

18 **232 This Act does not limit the *Telecommunications Act 1997***

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

21 **233 Implied freedom of political communication**

22 (1) This Act does not apply to the extent (if any) that it would infringe
23 any constitutional doctrine of implied freedom of political
24 communication.

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

1 **234 Concurrent operation of State and Territory laws**

2 It is the intention of the Parliament that this Act is not to apply to
3 the exclusion of a law of a State or Territory to the extent to which
4 that law is capable of operating concurrently with this Act.

5 **235 Liability of Australian hosting service providers and internet**
6 **service providers under State and Territory laws etc.**

- 7 (1) A law of a State or Territory, or a rule of common law or equity,
8 has no effect to the extent to which it:
- 9 (a) subjects, or would have the effect (whether direct or indirect)
10 of subjecting, an Australian hosting service provider to
11 liability (whether criminal or civil) in respect of hosting
12 particular online content in a case where the provider was not
13 aware of the nature of the online content; or
 - 14 (b) requires, or would have the effect (whether direct or indirect)
15 of requiring, an Australian hosting service provider to
16 monitor, make inquiries about, or keep records of, online
17 content hosted by the provider; or
 - 18 (c) subjects, or would have the effect (whether direct or indirect)
19 of subjecting, an internet service provider to liability
20 (whether criminal or civil) in respect of carrying particular
21 online content in a case where the service provider was not
22 aware of the nature of the online content; or
 - 23 (d) requires, or would have the effect (whether direct or indirect)
24 of requiring, an internet service provider to monitor, make
25 inquiries about, or keep records of, online content carried by
26 the provider.
- 27 (2) The Minister may, by legislative instrument, exempt a specified
28 law of a State or Territory, or a specified rule of common law or
29 equity, from the operation of subsection (1).

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

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

EXPOSURE DRAFT

Part 16 Miscellaneous

Section 236

1 *Declaration by Minister*

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

7 Note: For specification by class, see subsection 13(3) of the *Legislation Act*
8 2003.

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

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

15 (6) A declaration under subsection (4) or (5) has effect only to the
16 extent that:

17 (a) it is authorised by paragraph 51(v) of the Constitution (either
18 alone or when read together with paragraph 51(xxxix) of the
19 Constitution); or

20 (b) both:

21 (i) it is authorised by section 122 of the Constitution; and

22 (ii) it would have been authorised by paragraph 51(v) of the
23 Constitution (either alone or when read together with
24 paragraph 51(xxxix) of the Constitution) if section 51 of
25 the Constitution extended to the Territories.

26 **236 This Act not to affect performance of State or Territory**
27 **functions**

28 A power conferred by this Act must not be exercised in such a way
29 as to prevent the exercise of the powers, or the performance of the
30 functions, of government of a State, the Northern Territory or the
31 Australian Capital Territory.

1 **237 Revocation or variation of instruments**

2 A provision of this Act that expressly authorises the revocation or
3 variation of an instrument does not, by implication, limit the
4 application of subsection 33(3) of the *Acts Interpretation Act 1901*
5 in relation to other instruments under this Act.

6 **238 Provider of social media service, relevant electronic service,
7 designated internet service or app distribution service**

8 (1) For the purposes of this Act, a person does not provide a social
9 media service, relevant electronic service or designated internet
10 service merely because the person supplies a carriage service that
11 enables material to be accessed or delivered.

12 (2) For the purposes of this Act, a person does not provide an app
13 distribution service merely because the person supplies a carriage
14 service that enables apps to be downloaded.

15 (3) For the purposes of this Act, a person does not provide a social
16 media service, relevant electronic service, designated internet
17 service or app distribution service merely because the person
18 provides a billing service, or a fee collection service, in relation to
19 a social media service, relevant electronic service, designated
20 internet service or app distribution service.

21 **239 Extended meaning of use**

22 Unless the contrary intention appears, a reference in this Act to the
23 *use* of a thing is a reference to the use of the thing either:

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

26 **240 Legislative rules**

- 27 (1) The Minister may, by legislative instrument, make rules
28 (*legislative rules*) prescribing matters:
29 (a) required or permitted by this Act to be prescribed by the
30 legislative rules; or

EXPOSURE DRAFT

Part 16 Miscellaneous

Section 240

- 1 (b) necessary or convenient to be prescribed for carrying out or
2 giving effect to this Act.
- 3 (2) To avoid doubt, the legislative rules may not do the following:
- 4 (a) create an offence or civil penalty;
- 5 (b) provide powers of:
- 6 (i) arrest or detention; or
- 7 (ii) entry, search or seizure;
- 8 (c) impose a tax;
- 9 (d) set an amount to be appropriated from the Consolidated
10 Revenue Fund under an appropriation in this Act;
- 11 (e) directly amend the text of this Act.