

Schedule 5—Online services

Note: See section 216B.

Part 1—Introduction

2 Simplified outline

The following is a simplified outline of this Schedule:

- This Schedule sets up a system for regulating certain aspects of the internet industry.
- If the Commissioner is satisfied that internet content hosted outside Australia is prohibited content or potential prohibited content, the Commissioner must:
 - (a) if the Commissioner considers that the content is of a sufficiently serious nature to warrant referral to a law enforcement agency—notify the content to an Australian police force; and
 - (b) notify the content to internet service providers so that the providers can deal with the content in accordance with procedures specified in an industry code or industry standard (for example, procedures for the filtering, by technical means, of such content).
- Bodies and associations that represent the internet service provider section of the internet industry may develop industry codes.
- The Commissioner has a reserve power to make an industry standard if there are no industry codes or if an industry code is deficient.

- The Commissioner may make online provider determinations regulating internet service providers.

3 Definitions

In this Schedule, unless the contrary intention appears:

AAT means the Administrative Appeals Tribunal.

access includes:

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

adult means an individual who is 18 or older.

Australia, when used in a geographical sense, includes all the external Territories.

Australian police force means:

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

child means an individual who is not an adult.

civil proceeding includes a civil action.

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

classified means classified under Schedule 7.

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

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

Clause 3

designated notification scheme means a scheme:

- (a) in the nature of a scheme for substituted service; and
- (b) under which the Commissioner is taken, for the purposes of this Schedule, to have notified each internet service provider of a matter or thing.

Note: For example, the Commissioner may make matters or things available on the internet (with or without security measures).

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

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

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

information means information:

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

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

internet content means information that:

- (a) is kept on a data storage device; and
- (b) is accessed, or available for access, using an internet carriage service;

but does not include:

- (c) ordinary email; or
- (d) information that is transmitted in the form of a broadcasting service.

internet content host means a person who hosts internet content in Australia, or who proposes to host internet content in Australia.

internet service provider has the meaning given by clause 8.

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

online provider rule has the meaning given by clause 79.

ordinary email does not include a posting to a newsgroup.

point-to-multipoint service has the same meaning as in the *Telecommunications Act 1997*.

potential prohibited content has the same meaning as in Schedule 7.

prohibited content has the same meaning as in Schedule 7.

special access-prevention notice means a notice under clause 47.

standard access-prevention notice means a notice under paragraph 40(1)(c) of this Schedule.

5 Internet content that consists of a film

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

- (a) the technique used to embody sounds and/or visual images in the film; and
- (b) the technique used to embody the sounds and/or visual images in a form in which they can be accessed on the internet.

7 Extended meaning of use

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

Clause 7

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

Part 2—Internet service providers

8 Internet service providers

Basic definition

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

Declared internet service providers

- (2) The Minister may, by legislative instrument, declare that a specified person who supplies, or proposes to supply, a specified internet carriage service is an ***internet service provider*** for the purposes of this Schedule. A declaration under this subclause has effect accordingly.

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

9 Supply to the public

- (1) This clause sets out the circumstances in which an internet carriage service is taken, for the purposes of subclause 8(1), to be supplied to the public.
- (2) If:
- (a) an internet carriage service is used for the carriage of information between 2 end-users; and
 - (b) each end-user is outside the immediate circle of the supplier of the service;
- the service is supplied to the public.

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

Clause 9

- (3) If:
- (a) an internet carriage service is used to supply point-to-multipoint services to end-users; and
 - (b) at least one end-user is outside the immediate circle of the supplier of the service;
- the service is supplied to the public.
- (4) If:
- (a) an internet carriage service is used to supply designated content services (other than point-to-multipoint services) to end-users; and
 - (b) at least one end-user is outside the immediate circle of the supplier of the service;
- the service is supplied to the public.
- (5) For the purposes of this clause, a ***designated content service*** is a content service of a kind specified in a determination made by the Minister by legislative instrument.
- (7) In this clause:
- content service*** has the same meaning as in the *Telecommunications Act 1997*.

Part 4—Complaints to, and investigations by, the Commissioner

Division 1—Making of complaints to the Commissioner

23 Complaints about breaches of online provider rules etc.

If a person has reason to believe that an internet service provider:

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

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

24 Form of complaint

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

25 Residency etc. of complainant

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

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

Division 2—Investigations by the Commissioner

27 Commissioner may investigate matters

If the Commissioner thinks that it is desirable to do so, the Commissioner may, on his or her own initiative or in response to a complaint made under Division 1, investigate whether an internet service provider:

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

28 Conduct of investigations

- (1) An investigation under this Division is to be conducted as the Commissioner thinks fit.
- (2) The Commissioner may, for the purposes of an investigation, obtain information from such persons, and make such inquiries, as he or she thinks fit.
- (3) This clause has effect subject to Part 13 of this Act (which confers certain investigative powers on the Commissioner).

29 Protection from civil proceedings

Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of any of the following acts done in good faith:

- (a) the making of a complaint under Division 1;
- (b) the making of a statement to, or the giving of a document or information to, the Commissioner in connection with an investigation under this Division.

Division 4—Action to be taken in relation to a complaint about prohibited content hosted outside Australia

40 Action to be taken in relation to a complaint about prohibited content hosted outside Australia

- (1) If, in the course of an investigation under Division 2 of Part 3 of Schedule 7, the Commissioner is satisfied that internet content hosted outside Australia is prohibited content or potential prohibited content, the Commissioner must:
- (a) if the Commissioner considers the content is of a sufficiently serious nature to warrant referral to a law enforcement agency (whether in or outside Australia)—notify the content to:
 - (i) a member of an Australian police force; or
 - (ii) if there is an arrangement between the Commissioner and the chief (however described) of an Australian police force under which the Commissioner is authorised to notify the content to a another person or body (whether in or outside Australia)—that other person or body; and
 - (b) if a code registered, or standard determined, under Part 5 of this Schedule deals with the matters referred to in subclause 60(2)—notify the content to internet service providers under the designated notification scheme set out in the code or standard, as the case may be; and
 - (c) if paragraph (b) does not apply—give each internet service provider known to the Commissioner a written notice (a ***standard access-prevention notice***) directing the provider to take all reasonable steps to prevent end-users from accessing the content.

Note: The Commissioner may be taken to have given a notice under paragraph (c)—see clause 51.

- (2) For the purposes of paragraph (1)(c), in determining whether particular steps are reasonable, regard must be had to:

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Division 4 Action to be taken in relation to a complaint about prohibited content hosted outside Australia

Clause 40

- (a) the technical and commercial feasibility of taking the steps;
and
 - (b) the matters set out in subsection 4(3).
- (3) Subclause (2) does not, by implication, limit the matters to which regard must be had.

Recognised alternative access-prevention arrangements

- (4) An internet service provider is not required to comply with a standard access-prevention notice in relation to a particular end-user if access by the end-user is subject to a recognised alternative access-prevention arrangement (as defined by subclause (5)) that is applicable to the end-user.
- (5) The Commissioner may, by legislative instrument, declare that a specified arrangement is a ***recognised alternative access-prevention arrangement*** for the purposes of the application of this Division to one or more specified end-users if the Commissioner is satisfied that the arrangement is likely to provide a reasonably effective means of preventing access by those end-users to prohibited content and potential prohibited content.

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

- (6) The following are examples of arrangements that could be declared to be recognised alternative access-prevention arrangements under subclause (5):
 - (a) an arrangement that involves the use of regularly updated internet content filtering software;
 - (b) an arrangement that involves the use of a “family-friendly” filtered internet carriage service.

Referral to law enforcement agency

- (8) The manner in which internet content may be notified under paragraph (1)(a) to a member of an Australian police force includes (but is not limited to) a manner ascertained in accordance with an

arrangement between the Commissioner and the chief (however described) of the police force concerned.

- (9) If a member of an Australian police force is notified of particular internet content under this clause, the member may notify the content to a member of another law enforcement agency (whether in or outside Australia).
- (10) This clause does not, by implication, limit the Commissioner's powers to refer other matters to a member of an Australian police force.

41 Deferral of action in order to avoid prejudicing a criminal investigation

- (1) If:
 - (a) in the course of an investigation under Division 2 of Part 3 of Schedule 7, the Commissioner is satisfied that internet content hosted outside Australia is prohibited content or potential prohibited content; and
 - (b) apart from this subclause, the Commissioner would be required to take action under subclause 40(1) in relation to the content; and
 - (c) a member of an Australian police force satisfies the Commissioner that the taking of that action should be deferred until the end of a particular period in order to avoid prejudicing a criminal investigation;the Commissioner may defer taking that action until the end of that period.
- (2) Subclause (1) has effect despite anything in clause 40.

42 Withdrawal of notification of content—reclassification of internet content

- (1) If:

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Clause 43

- (a) internet content has been classified by the Classification Board (otherwise than because of subclause 24(1) or (2) of Schedule 7); and
 - (b) the internet content has been notified to internet service providers as mentioned in paragraph 40(1)(b) of this Schedule; and
 - (c) the Classification Board reclassifies the internet content; and
 - (d) as a result of the reclassification, the internet content ceases to be prohibited content;
- the notification of the internet content is taken to have been withdrawn.
- (2) If:
- (a) a notification of internet content is withdrawn under subclause (1); and
 - (b) a code registered, or standard determined, under Part 5 of this Schedule deals with the matters referred to in subclause 60(2);
- the Commissioner must notify the withdrawal to internet service providers under the designated notification scheme set out in the code or standard, as the case may be.

43 Withdrawal of notification of content—reclassification of internet content that consists of a film or a computer game

- (1) If:
- (a) internet content consists of:
 - (i) the entire unmodified contents of a film; or
 - (ii) a computer game; and
 - (b) the Classification Board reclassifies the film or computer game under the *Classification (Publications, Films and Computer Games) Act 1995*; and
 - (c) the internet content has been notified to internet service providers as mentioned in paragraph 40(1)(b) of this Schedule; and

(d) as a result of the reclassification, the internet content ceases to be prohibited content;

the notification of the internet content is taken to have been withdrawn.

(2) If:

(a) a notification of internet content is withdrawn under subclause (1); and

(b) a code registered, or standard determined, under Part 5 of this Schedule deals with the matters referred to in subclause 60(2);

the Commissioner must notify the withdrawal to internet service providers under the designated notification scheme set out in the code or standard, as the case may be.

44 Revocation of standard access-prevention notice—reclassification of internet content

(1) If:

(a) internet content has been classified by the Classification Board (otherwise than because of subclause 24(1) or (2) of Schedule 7); and

(b) a standard access-prevention notice relating to the internet content is applicable to a particular internet service provider; and

(c) the Classification Board reclassifies the internet content; and

(d) as a result of the reclassification, the content ceases to be prohibited content;

the Commissioner is taken to have revoked the standard access-prevention notice.

(2) If a standard access-prevention notice is revoked under this clause, the Commissioner must give the internet service provider concerned a written notice stating that the standard access-prevention notice has been revoked.

Note: The Commissioner may be taken to have given a notice under subclause (2)—see clause 51.

Clause 45

45 Revocation of standard access-prevention notice—reclassification of internet content that consists of a film or a computer game

- (1) If:
- (a) internet content consists of:
 - (i) the entire unmodified contents of a film; or
 - (ii) a computer game; and
 - (b) the Classification Board reclassifies the film or computer game under the *Classification (Publications, Films and Computer Games) Act 1995*; and
 - (c) a standard access-prevention notice relating to the internet content is applicable to a particular internet service provider; and
 - (d) as a result of the reclassification, the internet content ceases to be prohibited content;
- the Commissioner is taken to have revoked the standard access-prevention notice.
- (2) If a standard access-prevention notice is revoked under this clause, the Commissioner must give the internet service provider concerned a written notice stating that the standard access-prevention notice has been revoked.

Note: The Commissioner may be taken to have given a notice under subclause (2)—see clause 51.

46 Anti-avoidance—notified internet content

- (1) If:
- (a) particular internet content has been notified to internet service providers as mentioned in paragraph 40(1)(b) of this Schedule; and
 - (b) the notification has not been withdrawn; and
 - (c) the Commissioner is satisfied that internet content (the ***similar internet content***) that is the same as, or substantially similar to, the first-mentioned internet content is being hosted outside Australia; and

- (d) the Commissioner is satisfied that the similar internet content is prohibited content or potential prohibited content; and
 - (e) a code registered, or standard determined, under Part 5 of this Schedule deals with the matters referred to in subclause 60(2);
- the Commissioner must notify the similar internet content to internet service providers under the designated notification scheme set out in the code or standard, as the case may be.
- (2) If:
- (a) particular internet content is notified to internet service providers as mentioned in paragraph 40(1)(b) of this Schedule; and
 - (b) as a result of the application of subclause (1) to that content, the Commissioner notifies similar internet content to internet service providers in accordance with subclause (1); and
 - (c) the notification of the first-mentioned content is withdrawn;
- the notification of the similar internet content is taken to have been withdrawn.
- (3) If:
- (a) a notification of internet content is withdrawn under subclause (2); and
 - (b) a code registered, or standard determined, under Part 5 of this Schedule deals with the matters referred to in subclause 60(2);
- the Commissioner must notify the withdrawal to internet service providers under the designated notification scheme set out in the code or standard, as the case may be.

47 Anti-avoidance—special access-prevention notice

- (1) If:
- (a) a standard access-prevention notice relating to particular internet content is applicable to a particular internet service provider; and

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Clause 47

(b) the Commissioner is satisfied that the internet service provider is supplying an internet carriage service that enables end-users to access internet content (the ***similar internet content***) that is the same as, or substantially similar to, the internet content identified in the standard access-prevention notice; and

(c) the Commissioner is satisfied that the similar internet content is prohibited content or potential prohibited content;

the Commissioner may give the provider a written notice (***special access-prevention notice***) directing the provider to take all reasonable steps to prevent end-users from accessing the similar internet content at any time when the standard access-prevention notice is in force.

Note: The Commissioner may be taken to have given a notice under this clause—see clause 51.

- (2) For the purposes of subclause (1), in determining whether particular steps are reasonable, regard must be had to:
- (a) the technical and commercial feasibility of taking the steps; and
 - (b) the matters set out in subsection 4(3).
- (3) Subclause (2) does not, by implication, limit the matters to which regard must be had.

Recognised alternative access-prevention arrangements

- (4) An internet service provider is not required to comply with a special access-prevention notice in relation to a particular end-user if access by the end-user is subject to a recognised alternative access-prevention arrangement (as defined by subclause 40(5)) that is applicable to the end-user.

48 Compliance with access-prevention notices

Standard access-prevention notice

- (1) An internet service provider must comply with a standard access-prevention notice that applies to the provider as soon as practicable, and in any event by 6 pm on the next business day, after the notice was given to the provider.

Special access-prevention notice

- (2) An internet service provider must comply with a special access-prevention notice that applies to the provider as soon as practicable, and in any event by 6 pm on the next business day, after the notice was given to the provider.

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

49 Notification of internet content

Internet content may be notified in accordance with this Division by:

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

50 Application of notifications under this Division

A notification under this Division applies to particular internet content only to the extent to which the content is accessed, or available for access, from a website, or a distinct part of a website, specified in the notification.

Note: For specification by class, see subsection 33(3AB) of the *Acts Interpretation Act 1901*.

51 Commissioner may be taken to have issued access-prevention notices

- (1) Subject to subclause (2), the Commissioner may, by legislative instrument, formulate a scheme:
 - (a) in the nature of a scheme for substituted service; and
 - (b) under which the Commissioner is taken, for the purposes of this Schedule, to have done any or all of the following:
 - (i) given each internet service provider a standard access-prevention notice under paragraph 40(1)(c) of this Schedule;
 - (ii) in a case where a standard access-prevention notice is revoked under clause 44 or 45—given each internet service provider a notice of the revocation under whichever of subclause 44(2) or 45(2) is applicable;
 - (iii) given each internet service provider a special access-prevention notice under clause 47.
- (2) It is a minimum requirement for a scheme formulated under subclause (1) that each internet service provider be alerted by electronic means to the existence of a notice.

Note: For example, it is not sufficient for the Commissioner to make notices available on the internet (with or without security measures) without notifying internet service providers that a notice has been issued.

- (3) Paragraph 40(1)(c) of this Schedule has effect, in relation to a scheme under subclause (1), as if the reference in that paragraph to each internet service provider known to the Commissioner were a reference to each internet service provider.

Part 5—Industry codes and industry standards

Division 1—Simplified outline

52 Simplified outline

The following is a simplified outline of this Part.

- Bodies and associations that represent the internet service provider section of the internet industry may develop industry codes.
- Industry codes may be registered by the Commissioner.
- Compliance with an industry code is voluntary unless the Commissioner directs a particular participant in the internet industry to comply with the code.
- The Commissioner has a reserve power to make an industry standard if there are no industry codes or if an industry code is deficient.
- Compliance with industry standards is mandatory.

Division 2—Interpretation

53 Industry codes

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

54 Industry standards

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

55 Internet activity

For the purposes of this Part, an *internet activity* is an activity that consists of supplying an internet carriage service.

56 Section of the internet industry

- (1) For the purposes of this Part, a *section of the internet industry* is to be ascertained in accordance with this clause.
- (2) For the purposes of this Part, the group consisting of internet service providers constitutes a *section of the internet industry*.

57 Participants in a section of the internet industry

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

58 Designated body

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

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

59 Statement of regulatory policy

- (2) The Parliament intends that bodies or associations that the Commissioner is satisfied represent the internet service provider section of the internet industry should develop no more than 2 codes (*industry codes*) that are to apply to participants in that section of the industry in relation to the internet activities of the participants.
- (3) The Parliament intends that, for the internet service provider section of the internet industry, one of those industry codes should deal exclusively with the matters set out in subclause 60(2).

60 Matters that must be dealt with by industry codes and industry standards

General matters

- (1) The Parliament intends that, for the internet service provider section of the internet industry, there should be:
 - (a) an industry code or an industry standard that deals with; or
 - (b) an industry code and an industry standard that together deal with;each of the following matters:
 - (c) procedures directed towards the achievement of the objective of ensuring that online accounts are not provided to children without the consent of a parent or responsible adult;
 - (d) giving parents and responsible adults information about how to supervise and control children's access to internet content;
 - (e) procedures to be followed in order to assist parents and responsible adults to supervise and control children's access to internet content;

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Part 5 Industry codes and industry standards

Division 3 General principles relating to industry codes and industry standards

Clause 60

- (f) procedures to be followed in order to inform producers of internet content about their legal responsibilities in relation to that content;
- (g) telling customers about their rights to make complaints under clause 23;
- (h) procedures to be followed in order to assist customers to make complaints under clause 23;
- (i) procedures to be followed in order to deal with complaints about unsolicited email that promotes or advertises one or more:
 - (i) websites; or
 - (ii) distinct parts of websites;that enable, or purport to enable, end-users to access information that is likely to cause offence to a reasonable adult;
- (j) subject to subclause (8A), action to be taken to assist in the development and implementation of internet content filtering technologies (including labelling technologies);
- (k) subject to subclause (8A), giving customers information about the availability, use and appropriate application of internet content filtering software;
- (l) subject to subclause (8A), procedures directed towards the achievement of the objective of ensuring that customers have the option of subscribing to a filtered internet carriage service;
- (la) if a determination is in force under subclause (8A) in relation to a device:
 - (i) procedures to be followed in order to inform the users of such a device of the unavailability of internet content filtering; and
 - (ii) procedures directed towards the achievement of the objective of ensuring that customers have the option of blocking access to the internet using such a device;
- (m) procedures directed towards the achievement of the objective of ensuring that, in the event that a participant in the internet service provider section of the internet industry becomes

aware that an internet content host is hosting prohibited content in Australia, the host is told about the prohibited content.

Other matters

- (2) The Parliament intends that, for the internet service provider section of the internet industry, there should be:
- (a) an industry code or an industry standard that deals with; or
 - (b) an industry code and an industry standard that together deal with;
- each of the following matters:
- (c) the formulation of a designated notification scheme;
 - (d) subject to subclause (8A), procedures to be followed by internet service providers in dealing with internet content notified under paragraph 40(1)(b) of this Schedule or clause 46 (for example, procedures to be followed by a particular class of internet service providers for the filtering, by technical means, of such content).

Designated alternative access-prevention arrangements

- (3) An industry code or an industry standard may provide that an internet service provider is not required to deal with internet content notified under paragraph 40(1)(b) of this Schedule or clause 46 by taking steps to prevent particular end-users from accessing the content if access by the end-users is subject to an arrangement that is declared by the code or standard to be a designated alternative access-prevention arrangement for the purposes of the application of this clause to those end-users.
- (4) An industry code developed by a body or association must not declare that a specified arrangement is a designated alternative access-prevention arrangement for the purposes of the application of this clause to one or more specified end-users unless the body or association is satisfied that the arrangement is likely to provide a reasonably effective means of preventing access by those end-users to prohibited content and potential prohibited content.

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Part 5 Industry codes and industry standards

Division 3 General principles relating to industry codes and industry standards

Clause 60

Note: For specification by class, see subsection 33(3AB) of the *Acts Interpretation Act 1901*.

- (5) An industry standard made by the Commissioner must not declare that a specified arrangement is a designated alternative access-prevention arrangement for the purposes of the application of this clause to one or more specified end-users unless the Commissioner is satisfied that the arrangement is likely to provide a reasonably effective means of preventing access by those end-users to prohibited content and potential prohibited content.

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

- (6) The following are examples of arrangements that could be declared to be designated alternative access-prevention arrangements:
- (a) an arrangement that involves the use of regularly updated internet content filtering software;
 - (b) an arrangement that involves the use of a “family-friendly” filtered internet carriage service.
- (7) For the purposes of this Schedule, if an industry code:
- (a) deals to any extent with procedures to be followed by internet service providers in dealing with internet content notified under paragraph 40(1)(b) of this Schedule or clause 46; and
 - (b) makes provision as mentioned in subclause (3);
- then:
- (c) the code is taken to deal with the matter set out in paragraph (2)(d); and
 - (d) the code is taken to be consistent with subclause (2).
- (8) For the purposes of this Schedule, if an industry standard:
- (a) deals to any extent with procedures to be followed by internet service providers in dealing with internet content notified under paragraph 40(1)(b) of this Schedule or clause 46; and
 - (b) makes provision as mentioned in subclause (3);
- then:
- (c) the standard is taken to deal with the matter set out in paragraph (2)(d); and
-

- (d) the standard is taken to be consistent with subclause (2).

Internet content filtering—devices

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

Clause does not limit matters

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

61 Industry codes and industry standards not to deal with certain matters

For the purposes of this Part, an industry code or an industry standard that deals with a particular matter has no effect to the extent (if any) to which the matter is dealt with by:

- (a) a code registered, or a standard determined, under Part 6 of the *Telecommunications Act 1997*; or
- (b) the Telecommunications Industry Ombudsman scheme (within the meaning of that Act).

Division 4—Industry codes

62 Registration of industry codes

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

- make submissions to the body or association about the draft within a specified period; and
- (ii) the body or association gave consideration to any submissions that were received from participants in that section of the industry within that period; and
- (g) the Commissioner is satisfied that the designated body has been consulted about the development of the code; and
- (i) in a case where the code:
- (i) relates to the internet service provider section of the internet industry; and
 - (ii) does not deal with a matter set out in subclause 60(2); the code is consistent with subclauses 59(2) and 60(1); and
- (j) in a case where the code:
- (i) relates to the internet service provider section of the internet industry; and
 - (ii) deals with a matter set out in subclause 60(2); the code is consistent with subclauses 59(2) and (3) and 60(2).

Note: **Designated body** is defined by clause 58.

- (2) The Commissioner must register the code by including it in the Register of industry codes kept under clause 78.
- (3) A period specified under subparagraph (1)(e)(i) or (1)(f)(i) must run for at least 30 days.
- (4) If:
 - (a) an industry code (the **new code**) is registered under this Part; and
 - (b) the new code is expressed to replace another industry code; the other code ceases to be registered under this Part when the new code is registered.

63 Commissioner may request codes

- (1) If the Commissioner is satisfied that a body or association represents a particular section of the internet industry, the Commissioner may, by written notice given to the body or association, request the body or association to:
 - (a) develop an industry code that applies to participants in that section of the industry and deals with one or more specified matters relating to the internet activities of those participants; and
 - (b) give the Commissioner a copy of the code within the period specified in the notice.
- (2) The period specified in a notice under subclause (1) must run for at least 120 days.
- (3) The Commissioner must not make a request under subclause (1) in relation to a particular section of the internet industry unless the Commissioner is satisfied that:
 - (a) the development of the code is necessary or convenient in order to:
 - (i) provide appropriate community safeguards; or
 - (ii) otherwise deal with the performance or conduct of participants in that section of the industry; and
 - (b) in the absence of the request, it is unlikely that an industry code would be developed within a reasonable period.
- (4) The Commissioner may vary a notice under subclause (1) by extending the period specified in the notice.
- (5) Subclause (4) does not, by implication, limit the application of subsection 33(3) of the *Acts Interpretation Act 1901*.
- (6) A notice under subclause (1) may specify indicative targets for achieving progress in the development of the code (for example, a target of 60 days to develop a preliminary draft of the code).

64 Publication of notice where no body or association represents a section of the internet industry

- (1) If the Commissioner is satisfied that a particular section of the internet industry is not represented by a body or association, the Commissioner may publish a notice in the *Gazette*:
 - (a) stating that, if such a body or association were to come into existence within a specified period, the Commissioner would be likely to give a notice to that body or association under subclause 63(1); and
 - (b) setting out the matter or matters relating to internet activities that would be likely to be specified in the subclause 63(1) notice.
- (2) The period specified in a notice under subclause (1) must run for at least 60 days.

65 Replacement of industry codes

- (1) Changes to an industry code are to be achieved by replacing the code instead of varying the code.
- (2) If the replacement code differs only in minor respects from the original code, clause 62 has effect, in relation to the registration of the code, as if paragraphs 62(1)(e) and (f) of this Schedule had not been enacted.

Note: Paragraphs 62(1)(e) and (f) deal with submissions about draft codes.

66 Compliance with industry codes

- (1) If:
 - (a) a person is a participant in a particular section of the internet industry; and
 - (b) the Commissioner is satisfied that the person has contravened, or is contravening, an industry code that:
 - (i) is registered under this Part; and
 - (ii) applies to participants in that section of the industry;

Schedule 5 Online services

Part 5 Industry codes and industry standards

Division 4 Industry codes

Clause 67

the Commissioner may, by written notice given to the person, direct the person to comply with the industry code.

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

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

67 Formal warnings—breach of industry codes

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

Division 5—Industry standards

68 Commissioner may determine an industry standard if a request for an industry code is not complied with

- (1) This clause applies if:
 - (a) the Commissioner has made a request under subclause 63(1) in relation to the development of a code that is to:
 - (i) apply to participants in a particular section of the internet industry; and
 - (ii) deal with one or more matters relating to the internet activities of those participants; and
 - (b) any of the following conditions is satisfied:
 - (i) the request is not complied with;
 - (ii) if indicative targets for achieving progress in the development of the code were specified in the notice of request—any of those indicative targets were not met;
 - (iii) the request is complied with, but the Commissioner subsequently refuses to register the code; and
 - (c) the Commissioner is satisfied that it is necessary or convenient for the Commissioner to determine a standard in order to:
 - (i) provide appropriate community safeguards in relation to that matter or those matters; or
 - (ii) otherwise regulate adequately participants in that section of the industry in relation to that matter or those matters.
- (2) The Commissioner may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subclause is to be known as an *industry standard*.
- (3) Before determining an industry standard under this clause, the Commissioner must consult the body or association to whom the request mentioned in paragraph (1)(a) was made.

- (5) The Minister may give the Commissioner a written direction as to the exercise of his or her powers under this clause.

69 Commissioner may determine industry standard where no industry body or association formed

- (1) This clause applies if:
- (a) the Commissioner is satisfied that a particular section of the internet industry is not represented by a body or association; and
 - (b) the Commissioner has published a notice under subclause 64(1) relating to that section of the industry; and
 - (c) that notice:
 - (i) states that, if such a body or association were to come into existence within a particular period, the Commissioner would be likely to give a notice to that body or association under subclause 63(1); and
 - (ii) sets out one or more matters relating to the internet activities of the participants in that section of the industry; and
 - (d) no such body or association comes into existence within that period; and
 - (e) the Commissioner is satisfied that it is necessary or convenient for the Commissioner to determine a standard in order to:
 - (i) provide appropriate community safeguards in relation to that matter or those matters; or
 - (ii) otherwise regulate adequately participants in that section of the industry in relation to that matter or those matters.
- (2) The Commissioner may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subclause is to be known as an *industry standard*.

- (4) The Minister may give the Commissioner a written direction as to the exercise of his or her powers under this clause.

70 Commissioner may determine industry standards—total failure of industry codes

- (1) This clause applies if:
- (a) an industry code that:
 - (i) applies to participants in a particular section of the internet industry; and
 - (ii) deals with one or more matters relating to the internet activities of those participants;
 - has been registered under this Part for at least 180 days; and
 - (b) the Commissioner is satisfied that the code is totally deficient (as defined by subclause (7)); and
 - (c) the Commissioner has given the body or association that developed the code a written notice requesting that deficiencies in the code be addressed within a specified period; and
 - (d) that period ends and the Commissioner is satisfied that it is necessary or convenient for the Commissioner to determine a standard that applies to participants in that section of the industry and deals with that matter or those matters.
- (2) The period specified in a notice under paragraph (1)(c) must run for at least 30 days.
- (3) The Commissioner may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subclause is to be known as an *industry standard*.
- (4) If the Commissioner is satisfied that a body or association represents that section of the industry, the Commissioner must consult the body or association before determining an industry standard under subclause (3).

Clause 71

- (6) The industry code ceases to be registered under this Part on the day on which the industry standard comes into force.
- (7) For the purposes of this clause, an industry code that applies to participants in a particular section of the internet industry and deals with one or more matters relating to the internet activities of those participants is ***totally deficient*** if, and only if:
 - (a) the code is not operating to provide appropriate community safeguards in relation to that matter or those matters; or
 - (b) the code is not otherwise operating to regulate adequately participants in that section of the industry in relation to that matter or those matters.
- (8) The Minister may give the Commissioner a written direction as to the exercise of his or her powers under this clause.

71 Commissioner may determine industry standards—partial failure of industry codes

- (1) This clause applies if:
 - (a) an industry code that:
 - (i) applies to participants in a particular section of the internet industry; and
 - (ii) deals with 2 or more matters relating to the internet activities of those participants;
 - has been registered under this Part for at least 180 days; and
 - (b) clause 70 does not apply to the code; and
 - (c) the Commissioner is satisfied that the code is deficient (as defined by subclause (7)) to the extent to which the code deals with one or more of those matters (the ***deficient matter*** or ***deficient matters***); and
 - (d) the Commissioner has given the body or association that developed the code a written notice requesting that deficiencies in the code be addressed within a specified period; and
 - (e) that period ends and the Commissioner is satisfied that it is necessary or convenient for the Commissioner to determine a

standard that applies to participants in that section of the industry and deals with the deficient matter or deficient matters.

- (2) The period specified in a notice under paragraph (1)(c) must run for at least 30 days.
- (3) The Commissioner may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with the deficient matter or deficient matters. A standard under this subclause is to be known as an **industry standard**.
- (4) If the Commissioner is satisfied that a body or association represents that section of the industry, the Commissioner must consult the body or association before determining an industry standard under subclause (3).
- (6) On and after the day on which the industry standard comes into force, the industry code has no effect to the extent to which it deals with the deficient matter or deficient matters. However, this subclause does not affect:
 - (a) the continuing registration of the remainder of the industry code; or
 - (b) any investigation, proceeding or remedy in respect of a contravention of the industry code or clause 66 that occurred before that day.
- (7) For the purposes of this clause, an industry code that applies to participants in a particular section of the internet industry and deals with 2 or more matters relating to the internet activities of those participants is **deficient** to the extent to which it deals with a particular one of those matters if, and only if:
 - (a) the code is not operating to provide appropriate community safeguards in relation to that matter; or
 - (b) the code is not otherwise operating to regulate adequately participants in that section of the industry in relation to that matter.

- (8) The Minister may give the Commissioner a written direction as to the exercise of his or her powers under this clause.

72 Compliance with industry standards

If:

- (a) an industry standard that applies to participants in a particular section of the internet industry is registered under this Part; and
- (b) a person is a participant in that section of the internet industry;

the person must comply with the industry standard.

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

73 Formal warnings—breach of industry standards

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

74 Variation of industry standards

The Commissioner may, by legislative instrument, vary an industry standard that applies to participants in a particular section of the internet industry if the Commissioner is satisfied that it is necessary or convenient to do so to:

- (a) provide appropriate community safeguards in relation to one or more matters relating to the internet activities of those participants; and
- (b) otherwise regulate adequately those participants in relation to one or more matters relating to the internet activities of those participants.

75 Revocation of industry standards

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

77 Consultation with designated body

- (1) Before determining or varying an industry standard, the Commissioner must consult the designated body.
- (2) Before revoking an industry standard under subclause 75(1), the Commissioner must consult the designated body.

Note: **Designated body** is defined by clause 58.

Division 6—Register of industry codes and industry standards

78 Commissioner to maintain Register of industry codes and industry standards

- (1) The Commissioner is to maintain a Register in which the Commissioner includes:
 - (a) all industry codes required to be registered under this Part; and
 - (b) all industry standards; and
 - (c) all requests made under clause 63; and
 - (d) all notices under clause 64; and
 - (e) all directions under clause 66.
- (2) The Register may be maintained by electronic means.
- (3) The Register is to be made available for inspection on the internet.

Part 6—Online provider rules

79 Online provider rules

For the purposes of this Schedule, each of the following is an *online provider rule*:

- (e) the rule set out in subclause 48(1);
- (f) the rule set out in subclause 48(2);
- (g) the rule set out in subclause 66(2);
- (h) the rule set out in clause 72;
- (i) each of the rules (if any) set out in an online provider determination in force under clause 80.

80 Online provider determinations

- (1) The Commissioner may, by legislative instrument, make a determination setting out rules that apply to internet service providers in relation to the supply of internet carriage services.
- (3) A determination under subclause (1) is called an *online provider determination*.
- (4) An online provider determination has effect only to the extent that:
 - (a) it is authorised by paragraph 51(v) of the Constitution (either alone or when read together with paragraph 51(xxxix) of the Constitution); or
 - (b) both:
 - (i) it is authorised by section 122 of the Constitution; and
 - (ii) it would have been authorised by paragraph 51(v) of the Constitution (either alone or when read together with paragraph 51(xxxix) of the Constitution) if section 51 of the Constitution extended to the Territories.

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- (5) The Commissioner must not make an online provider determination unless the determination relates to a matter specified in the regulations.
- (6) The Commissioner must not make an online provider determination if the determination relates to a matter specified in regulations in force for the purposes of subsection 99(3) of the *Telecommunications Act 1997*.
- (7) An online provider determination may make provision for or in relation to a particular matter by empowering the Commissioner to make decisions of an administrative character.

81 Exemptions from online provider determinations

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

82 Compliance with online provider rules

- (1) A person commits an offence if:
 - (a) an online provider rule is applicable to the person; and
 - (b) the person engages in conduct; and
 - (c) the person's conduct contravenes the rule.

Penalty: 50 penalty units.

Note: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this clause.

- (2) In this clause:

engage in conduct means:

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

83 Remedial directions—breach of online provider rules

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

Penalty: 50 penalty units.

Note: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subclause.

- (5) In this clause:

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engage in conduct means:

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

84 Formal warnings—breach of online provider rules

The Commissioner may issue a formal warning if a person contravenes an online provider rule.

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

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

Part 7—Offences

86 Continuing offences

A person who contravenes clause 82 or subclause 83(4) commits a separate offence in respect of each day (including the day of a conviction for the offence or any later day) during which the contravention continues.

87 Conduct by directors, employees and agents

Body corporate

- (1) If, in proceedings for an ancillary offence relating to this Schedule, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
 - (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) that the director, employee or agent had the state of mind.
- (2) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for:
 - (a) an offence against this Schedule; or
 - (b) an ancillary offence relating this Schedule;to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

Person other than a body corporate

- (3) If, in proceedings for an ancillary offence relating to this Schedule, it is necessary to establish the state of mind of a person other than a

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body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
 - (b) that the employee or agent had the state of mind.
- (4) Any conduct engaged in on behalf of a person other than a body corporate by an employee or agent of the person within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for:
- (a) an offence against this Schedule; or
 - (b) an ancillary offence relating this Schedule;
- to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) If:
- (a) a person other than a body corporate is convicted of an offence; and
 - (b) the person would not have been convicted of the offence if subclauses (3) and (4) had not been enacted;
- the person is not liable to be punished by imprisonment for that offence.

State of mind

- (6) A reference in subclause (1) or (3) to the ***state of mind*** of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

Director

- (7) A reference in this clause to a **director** of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, a State or a Territory.

Engaging in conduct

- (8) A reference in this clause to **engaging in conduct** includes a reference to failing or refusing to engage in conduct.

Ancillary offence relating to this Schedule

- (9) A reference in this clause to an **ancillary offence relating to this Schedule** is a reference to an offence created by section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code* that relates to this Schedule.

Part 8—Protection from civil and criminal proceedings

88 Protection from civil proceedings—internet service providers

- (1) Civil proceedings do not lie against an internet service provider in respect of anything done by the provider in compliance with:
 - (a) a code registered under Part 5 of this Schedule; or
 - (b) a standard determined under Part 5 of this Schedule;in so far as the code or standard deals with procedures referred to in paragraph 60(2)(d) of this Schedule.
- (2) Civil proceedings do not lie against an internet service provider in respect of anything done by the provider in compliance with clause 48.

Part 9—Operation of State and Territory laws etc.

90 Concurrent operation of State and Territory laws

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

91 Liability of internet content hosts and internet service providers under State and Territory laws etc.

- (1) A law of a State or Territory, or a rule of common law or equity, has no effect to the extent to which it:
 - (a) subjects, or would have the effect (whether direct or indirect) of subjecting, an internet content host to liability (whether criminal or civil) in respect of hosting particular internet content in a case where the host was not aware of the nature of the internet content; or
 - (b) requires, or would have the effect (whether direct or indirect) of requiring, an internet content host to monitor, make inquiries about, or keep records of, internet content hosted by the host; or
 - (c) subjects, or would have the effect (whether direct or indirect) of subjecting, an internet service provider to liability (whether criminal or civil) in respect of carrying particular internet content in a case where the service provider was not aware of the nature of the internet content; or
 - (d) requires, or would have the effect (whether direct or indirect) of requiring, an internet service provider to monitor, make inquiries about, or keep records of, internet content carried by the provider.
- (2) The Minister may, by legislative instrument, exempt a specified law of a State or Territory, or a specified rule of common law or equity, from the operation of subclause (1).

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

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

Declaration by Minister

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

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

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

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

- (6) A declaration under subclause (4) or (5) has effect only to the extent that:

- (a) it is authorised by paragraph 51(v) of the Constitution (either alone or when read together with paragraph 51(xxxix) of the Constitution); or
- (b) both:
 - (i) it is authorised by section 122 of the Constitution; and
 - (ii) it would have been authorised by paragraph 51(v) of the Constitution (either alone or when read together with paragraph 51(xxxix) of the Constitution) if section 51 of the Constitution extended to the Territories.

Part 10—Review of decisions

92 Review by the AAT

- (1) An application may be made to the AAT for a review of any of the following decisions made by the Commissioner:
 - (e) a decision to give an internet service provider a standard access-prevention notice;
 - (f) a decision to give an internet service provider a special access-prevention notice;
 - (g) a decision under clause 66 or 83 to:
 - (i) give a direction to an internet service provider; or
 - (ii) vary a direction that is applicable to an internet service provider; or
 - (iii) refuse to revoke a direction that is applicable to an internet service provider;
 - (h) a decision of a kind referred to in subclause 80(7) (which deals with decisions under online provider determinations), where the decision relates to an internet service provider.
- (2) An application under subclause (1) may only be made by the internet service provider concerned.
- (3) An application may be made to the AAT for a review of a decision of the Commissioner under clause 62 to refuse to register a code.
- (4) An application under subclause (3) may only be made by the body or association that developed the code.

93 Notification of decisions to include notification of reasons and appeal rights

If the Commissioner makes a decision that is reviewable under clause 92, the Commissioner is to include in the document by which the decision is notified:

- (a) a statement setting out the reasons for the decision; and

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- (b) a statement to the effect that an application may be made to the AAT for a review of the decision.

Part 11—Miscellaneous

94 Additional Commissioner functions

The Commissioner has the following functions:

- (a) to monitor compliance with codes and standards registered under Part 5 of this Schedule;
- (b) to advise and assist parents and responsible adults in relation to the supervision and control of children's access to internet content;
- (c) to conduct and/or co-ordinate community education programs about internet content and internet carriage services, in consultation with relevant industry and consumer groups and government agencies;
- (d) to conduct and/or commission research into issues relating to internet content and internet carriage services;
- (e) to liaise with regulatory and other relevant bodies overseas about co-operative arrangements for the regulation of the internet industry, including (but not limited to) collaborative arrangements to develop:
 - (i) multilateral codes of practice; and
 - (ii) internet content labelling technologies;
- (f) to inform himself or herself and advise the Minister on technological developments and service trends in the internet industry.

96 Schedule not to affect performance of State or Territory functions

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