

2025-2026

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Online Safety Amendment (Digital Duty of Care) Bill 2026

No. , 2026

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

**A Bill for an Act to amend the law relating to online
safety, and for related purposes**

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1 **A Bill for an Act to amend the law relating to online**
2 **safety, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

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

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Schedule 1—Notices for certain material and disclosure of information

Part 1—Take down notices

Division 1—Fake nude material

Online Safety Act 2021

1 Section 4

Omit:

- (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.

substitute:

- (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;
- (d) 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 cyber-bullying material targeted at an Australian child.

2 Section 4

Omit:

- (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.

substitute:

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- (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;
- (d) 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 cyber-abuse material targeted at an Australian adult.

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3 Section 4

Omit:

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- (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.

14

substitute:

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- (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;
- (e) 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 an intimate image.

21
22

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

23
24

Insert:

(ea) section 86B; or

25
26

5 After Part 6

Insert:

Part 6A—Fake nude material

86A Simplified outline of this Part

- The Commissioner may require app distribution services and internet search engine services to take down apps or websites for end-users in Australia if those apps or websites are predominantly designed, and being used, for generating fake nude material.

86B Removal of fake nude material

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

Removal notice given to provider

- (2) The Commissioner may give the provider of an app distribution service or an internet search engine service a written notice (a **removal notice**), requiring the provider to do one or more of the following for end-users of the app or website in Australia:
 - (a) remove the app;
 - (b) remove links to the app or website;
 - (c) remove advertising for, information about, or access to, the app or website;
 - (d) take reasonable steps to identify and remove apps or websites that are substantively the same.
- (3) So far as is reasonably practicable, the app or website must be identified in the removal notice in a way that is sufficient to enable the provider of the service to comply with the notice.

86C Compliance with removal notice

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

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

Civil penalty: 6,000 penalty units.

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

86D Formal warning

The Commissioner may issue a formal warning if a person has contravened, or is contravening, section 86C.

6 After paragraph 163(1)(h)

Insert:

- (ha) section 86C;

7 After paragraph 164(1)(h)

Insert:

- (ha) section 86C;

8 After paragraph 165(1)(i)

Insert:

- (ia) section 86C;

9 After paragraph 182(4)(i)

Insert:

- (ia) section 86B;

10 After paragraph 183(2)(i)

Insert:

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

1 **11 After subsection 220(10A)**

2 Insert:

3 *Fake nude material removal notice*

4 (10B) An application may be made to the Administrative Review
5 Tribunal for a review of a decision of the Commissioner under
6 section 86B to give the provider of an app distribution service or an
7 internet search engine service a removal notice.

8 **Division 2—Removal notice powers**

9 ***Online Safety Act 2021***

10 **12 Section 5**

11 Insert:

12 *reposted*: see subsection 65(2E).

13 **13 After subsection 30(4)**

14 Insert:

- 15 (4A) Subsection (4) does not apply if the Commissioner:
- 16 (a) has waived the requirement for a complaint to have been
17 made to the provider of the service (see subsection 65(2A));
18 or
19 (b) is able to give the removal notice without a complaint having
20 been made to the provider of the service (see
21 subsection 65(2C)).

22 **14 After subsection 36(3)**

23 Insert:

- 24 (3A) Subsection (3) does not apply if the Commissioner:
- 25 (a) has waived the requirement for a complaint to have been
26 made to the provider of the service (see subsection 88(2A));
27 or
28 (b) is able to give the removal notice without a complaint having
29 been made to the provider of the service (see
30 subsection 88(2C)).

15 Subparagraph 65(1)(c)(i)

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

16 After subsection 65(2)

Insert:

Complaint to provider may be waived

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

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

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

When complaint to service provider is not required

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

- (a) a removal notice has previously been given under this section in relation to the material; and
- (b) the material has been reposted.

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

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

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

1 **17 Subparagraph 66(1)(c)(i)**

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

3 **18 After subsection 66(2)**

4 Insert:

5 *Complaint to provider may be waived*

6 (2A) The Commissioner may, on application, waive the requirement for
7 a complaint to have been made to the provider of the service if the
8 Commissioner is satisfied:

9 (a) that the service does not have a functional or accessible
10 complaints mechanism; or

11 (b) that requiring the complaint to be made would create a
12 reasonably foreseeable risk of further harm.

13 (2B) If the Commissioner waives the requirement, paragraphs (1)(b) and
14 (c) do not apply.

15 *When complaint to service provider is not required*

16 (2C) The Commissioner may also give a removal notice under this
17 section in relation to material without a complaint having been
18 made to the provider of the service if:

19 (a) a removal notice has previously been given under this section
20 in relation to the material; and

21 (b) the material has been reposted.

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

24 (2D) If the Commissioner is able to give the removal notice without a
25 complaint having been made to the provider of the service,
26 paragraphs (1)(b) and (c) do not apply.

27 **19 Subparagraph 88(1)(d)(i)**

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

29 **20 After subsection 88(2)**

30 Insert:

Complaint to provider may be waived

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

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

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

When complaint to service provider is not required

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

- (a) a removal notice has previously been given under this section in relation to the material; and
- (b) the material has been reposted.

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

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

21 Subparagraph 89(1)(d)(i)

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

22 After subsection 89(2)

Insert:

Complaint to provider may be waived

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

- (a) that the service does not have a functional or accessible complaints mechanism; or

1 (b) that requiring the complaint to be made would create a
2 reasonably foreseeable risk of further harm.

3 (2B) If the Commissioner waives the requirement, paragraphs (1)(c) and
4 (d) do not apply.

5 *When complaint to service provider is not required*

6 (2C) The Commissioner may also give a removal notice under this
7 section in relation to material without a complaint having been
8 made to the provider of the service if:

9 (a) a removal notice has previously been given under this section
10 in relation to the material; and

11 (b) the material has been reposted.

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

14 (2D) If the Commissioner is able to give the removal notice without a
15 complaint having been made to the provider of the service,
16 paragraphs (1)(c) and (d) do not apply.

17 **23 Subparagraph 90(1)(d)(i)**

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

19 **24 After subsection 90(2)**

20 Insert:

21 *Complaint to provider may be waived*

22 (2A) The Commissioner may, on application, waive the requirement for
23 a complaint to have been made to the provider of the service if the
24 Commissioner is satisfied:

25 (a) that the service does not have a functional or accessible
26 complaints mechanism; or

27 (b) that requiring the complaint to be made would create a
28 reasonably foreseeable risk of further harm.

29 (2B) If the Commissioner waives the requirement, paragraphs (1)(c) and
30 (d) do not apply.

When complaint to service provider is not required

- (2C) The Commissioner may also give a removal notice under this section in relation to material without a complaint having been made to the provider of the service if:
- (a) a removal notice has previously been given under this section in relation to the material; and
 - (b) the material has been reposted.

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

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

25 Application of provisions

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

Division 3—Links to certain material

Online Safety Act 2021

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

Repeal the definition, substitute:

link deletion notice means a notice under:

- (a) section 72A; or
- (b) section 82; or
- (c) section 92A; or
- (d) section 124.

27 After section 72

Insert:

72A Link deletion notices

(1) If:

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

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

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

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

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

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

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

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

72B Compliance with link deletion notice

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

Civil penalty: 6,000 penalty units.

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

3 **72C Formal warning**

4 The Commissioner may issue a formal warning if a person has
5 contravened, or is contravening, section 72B.

6 **72D Revocation of link deletion notice**

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

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

15 **28 After Division 3 of Part 6**

16 Insert:

17 **Division 3A—Link deletion notices**

18 **82 Link deletion notice**

19 (1) If:

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

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

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

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

- 1 (3) So far as is reasonably practicable, the image must be identified in
2 the link deletion notice in a way that is sufficient to enable the
3 internet search engine service provider to cease providing a link to
4 the image.
- 5 (4) The link deletion notice may also require the internet search engine
6 service provider to:
7 (a) notify the Commissioner that the provider has ceased to
8 provide a link to the image; and
9 (b) do so as soon as practicable after the cessation.
- 10 (5) The Commissioner must not give the link deletion notice unless a
11 removal notice has been given in relation to the image under
12 section 77, 78 or 79.

13 **82A Compliance with link deletion notice**

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

17 Civil penalty: 6,000 penalty units.

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

20 **82B Formal warning**

21 The Commissioner may issue a formal warning if a person has
22 contravened, or is contravening, section 82A.

23 **82C Revocation of link deletion notice**

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

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

29 After section 92

Insert:

92A Link deletion notices

(1) If:

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

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

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

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

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

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

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

(5) The Commissioner must not give the link deletion notice unless a removal notice has been given in relation to the material under section 88, 89 or 90.

92B Compliance with link deletion notice

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

Civil penalty: 6,000 penalty units.

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

92C Formal warning

The Commissioner may issue a formal warning if a person has contravened, or is contravening, section 92B.

92D Revocation of link deletion notice

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

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

30 After subsection 124(1)

Insert:

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

31 Subsection 124(4)

Repeal the subsection, substitute:

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

32 Section 125

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

33 Section 126

Omit “contravenes”, substitute “has contravened, or is contravening,”.

34 Section 127

Repeal the section, substitute:

127 Revocation of link deletion notice

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

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

35 After paragraph 163(1)(e)

Insert:

- (ea) section 72B;

36 After paragraph 163(1)(g)

Insert:

- (ga) section 82A;

37 After paragraph 163(1)(i)

Insert:

- (ia) section 92B;

38 After paragraph 164(1)(e)

Insert:

- (ea) section 72B;

39 After paragraph 164(1)(g)

Insert:

1 (ga) section 82A;

2 **40 After paragraph 164(1)(i)**

3 Insert:

4 (ia) section 92B;

5 **41 After paragraph 165(1)(f)**

6 Insert:

7 (fa) section 72B;

8 **42 After paragraph 165(1)(h)**

9 Insert:

10 (ha) section 82A;

11 **43 Paragraph 165(1)(j) (second occurring)**

12 Repeal the paragraph, substitute:

13 (ja) section 92B;

14 (k) section 103;

15 **44 After paragraph 182(4)(e)**

16 Insert:

17 (ea) section 72A;

18 **45 After paragraph 182(4)(h)**

19 Insert:

20 (ha) section 82;

21 **46 After paragraph 182(4)(l)**

22 Insert:

23 (la) section 92A;

24 **47 After paragraph 183(2)(e)**

25 Insert:

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

48 After paragraph 183(2)(h)

Insert:

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

49 After paragraph 183(2)(l)

Insert:

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

50 Subsection 220(15)

Omit “section 124”, substitute “section 72A, 82, 92A or 124”.

1 **Part 2—Disclosure of information**

2 ***Online Safety Act 2021***

3 **51 Paragraphs 212(1)(a) to (f)**

4 Repeal the paragraphs, substitute:

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

1 **Part 3—Updating references to the Regulatory**
2 **Powers (Standard Provisions) Act 2014**

3 ***Online Safety Act 2021***

4 **52 Section 5**

5 Insert:

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

8 **53 Subsection 63DA(3) (note)**

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

11 **54 Subsection 63DB(2) (note)**

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

14 **55 Subsections 63HF(4) and (5) (notes)**

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

17 **56 Subsections 75(2), (3) and (4) (notes)**

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

20 **57 Subsection 143(3)**

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

23 **58 Subsection 146(2)**

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

1 **59 Section 161**

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

4 **60 Subsection 162(1)**

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

7 **61 Subsection 162(1) (note)**

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

10 **62 Subsections 162(2), (3) and (4)**

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

13 **63 Subsection 163(1)**

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

16 **64 Subsection 163(1) (note)**

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

19 **65 Subsections 163(2), (3), (4) and (6)**

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

22 **66 Subsection 163A(1)**

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

25 **67 Subsections 164(1), (2), (3) and (4)**

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

1 **68 Subsections 165(1), (2), (3) and (4)**

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

4 **69 Subsection 182(5)**

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

7 **70 Subsections 205(3) and (4) (notes)**

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

10 **71 Paragraph 228(b)**

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

13 **72 Paragraphs 229(1)(b) and (d)**

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

Part 4—Increased penalties

Online Safety Act 2021

73 Section 67 (penalty)

Repeal the penalty, substitute:

Civil penalty: 6,000 penalty units.

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

74 Subsection 75(1) (penalty)

Repeal the penalty, substitute:

Civil penalty: 6,000 penalty units.

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

75 Section 80 (penalty)

Repeal the penalty, substitute:

Civil penalty: 6,000 penalty units.

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

76 Subsection 83(3) (penalty)

Repeal the penalty, substitute:

Civil penalty: 6,000 penalty units.

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

77 Section 91 (penalty)

Repeal the penalty, substitute:

Civil penalty: 6,000 penalty units.

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

78 Section 103 (penalty)

Repeal the penalty, substitute:

Civil penalty: 6,000 penalty units.

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

79 Section 111 (penalty)

Repeal the penalty, substitute:

Civil penalty: 6,000 penalty units.

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

80 Section 116 (penalty)

Repeal the penalty, substitute:

Civil penalty: 6,000 penalty units.

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

81 Section 121 (penalty)

Repeal the penalty, substitute:

Civil penalty: 6,000 penalty units.

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

82 Section 125 (penalty)

Repeal the penalty, substitute:

Civil penalty: 6,000 penalty units.

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

83 Section 129 (penalty)

Repeal the penalty, substitute:

Civil penalty: 6,000 penalty units.

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

84 Subsection 143(2) (penalty)

Repeal the penalty, substitute:

Civil penalty: 60,000 penalty units.

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

85 Subsection 146(1) (penalty)

Repeal the penalty, substitute:

Civil penalty: 60,000 penalty units.

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

86 Section 153 (penalty)

Omit “500 penalty units”, substitute “6,000 penalty units”.

87 Subsection 154(4) (penalty)

Omit “500 penalty units”, substitute “6,000 penalty units”.

88 Subsection 162(1) (note)

After “Note”, insert “1”.

89 At the end of subsection 162(1)

Add:

Note 2: If a court orders a person to pay a civil penalty to the Commonwealth,
the amount of the penalty is a debt due to the Commonwealth: see
section 83 of the Regulatory Powers Act.

Part 5—Effect of industry codes and standards

Online Safety Act 2021

90 At the end of section 140

Add:

Effect of industry codes

- (5) If, before the commencement of this subsection, an industry code was registered under this Division, the validity of the code is not affected, and is taken never to have been affected, only because a period allowed for the purposes of this Subdivision was shorter than required.

91 At the end of section 145

Add:

Effect of industry standards

- (4) If, before the commencement of this subsection, an industry standard was registered under this Division, the validity of the standard is not affected, and is taken never to have been affected, only because a period allowed for the purposes of this Subdivision was shorter than required.

Schedule 2—Digital duty of care

Part 1—Amendment of the Online Safety Act 2021

Online Safety Act 2021

1 Section 3

Repeal the section, substitute:

3 Objects of this Act

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

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

2 Section 4

Repeal the section, substitute:

4 Simplified outline of this Act

- There is to be an eSafety Commissioner.
- The Commissioner's functions include:
 - (a) promoting online safety for Australians, including through the digital duty of care; and
 - (b) supporting and encouraging the implementation of measures to improve online safety for Australians; and
 - (c) supporting, encouraging, conducting, accrediting and evaluating educational, promotional and community

- 1 awareness programs that are relevant to online safety for
2 Australians; and
- 3 (d) reporting and advising about online safety for
4 Australians; and
- 5 (e) monitoring, investigating and enforcing compliance with
6 this Act.
- 7 • A person responsible for an online service has a digital duty of
8 care to ensure a safe online environment for persons in
9 Australia, including by protecting adults and children from
10 seriously harmful material and conduct and protecting
11 children from material, conduct and design features that are
12 harmful to them.
- 13 • A person responsible for an online service also has other
14 obligations that are separate but related to their digital duty of
15 care. These obligations include conducting risk assessments to
16 assess and mitigate reasonably foreseeable risks for the
17 service and, where required, providing user empowerment
18 tools that give users greater control over how design features
19 operate and influence their online experience.
- 20 • There are age restrictions for certain social media platforms. A
21 provider of such a platform must take reasonable steps to
22 prevent children who have not reached a minimum age from
23 having accounts.
- 24 • The complaints system for cyber-bullying material targeted at
25 an Australian child includes the following components:
- 26 (a) the provider of a social media service, a relevant
27 electronic service or a designated internet service may
28 be given a notice (a **removal notice**) requiring the
29 removal from the service of cyber-bullying material
30 targeted at an Australian child;
- 31 (b) a hosting service provider who hosts cyber-bullying
32 material targeted at an Australian child may be given a
33 notice (a **removal notice**) requiring the provider to cease
34 hosting the material;
- 35 (c) a person who posts cyber-bullying material targeted at
36 an Australian child may be given a notice (an **end-user**

- 1 ***notice***) requiring the person to remove the material,
2 refrain from posting cyber-bullying material or
3 apologise for posting the material;
- 4 (d) the provider of an internet search engine service may be
5 given a notice (a ***link deletion notice***) requiring the
6 provider to cease providing a link to cyber-bullying
7 material targeted at an Australian child.
- 8 • The complaints system for cyber-abuse material targeted at an
9 Australian adult includes the following components:
- 10 (a) the provider of a social media service, a relevant
11 electronic service or a designated internet service may
12 be given a notice (a ***removal notice***) requiring the
13 removal from the service of cyber-abuse material
14 targeted at an Australian adult;
- 15 (b) a person who posts cyber-abuse material targeted at an
16 Australian adult may be given a notice (a ***removal***
17 ***notice***) requiring the person to remove the material;
- 18 (c) a hosting service provider who hosts cyber-abuse
19 material targeted at an Australian adult may be given a
20 notice (a ***removal notice***) requiring the provider to cease
21 hosting the material;
- 22 (d) the provider of an internet search engine service may be
23 given a notice (a ***link deletion notice***) requiring the
24 provider to cease providing a link to cyber-abuse
25 material targeted at an Australian adult.
- 26 • The complaints and objections system for non-consensual
27 sharing of intimate images includes the following
28 components:
- 29 (a) a person who posts, or threatens to post, an intimate
30 image may be liable to a civil penalty;
- 31 (b) the provider of a social media service, relevant
32 electronic service or designated internet service may be
33 given a notice (a ***removal notice***) requiring the provider
34 to remove an intimate image from the service;
- 35 (c) an end-user of a social media service, relevant electronic
36 service or designated internet service who posts an
37 intimate image on the service may be given a notice (a

- 1 **removal notice**) requiring the end-user to remove the
2 image from the service;
- 3 (d) a hosting service provider who hosts an intimate image
4 may be given a notice (a **removal notice**) requiring the
5 provider to cease hosting the image;
- 6 (e) the provider of an internet search engine service may be
7 given a notice (a **link deletion notice**) requiring the
8 provider to cease providing a link to an intimate image.
- 9 • The online content scheme includes the following
10 components:
- 11 (a) the provider of a social media service, relevant
12 electronic service or designated internet service may be
13 given a notice (a **removal notice**) requiring the provider
14 to remove certain material;
- 15 (b) a hosting service provider may be given a notice (a
16 **removal notice**) requiring the provider to cease hosting
17 certain material;
- 18 (c) the provider of an internet search engine service may be
19 given a notice (a **link deletion notice**) requiring the
20 provider to cease providing a link to certain material;
- 21 (d) the provider of an app distribution service may be given
22 a notice (an **app removal notice**) requiring the provider
23 to cease enabling end-users to download an app that
24 facilitates the posting of certain material on a social
25 media service, relevant electronic service or designated
26 internet service;
- 27 (e) the Commissioner may make service provider
28 determinations regulating service providers in the online
29 industry.
- 30 • An internet service provider may be requested or required to
31 block access to:
- 32 (a) material that promotes abhorrent violent conduct; or
33 (b) material that incites abhorrent violent conduct; or
34 (c) material that instructs in abhorrent violent conduct; or
35 (d) material that depicts abhorrent violent conduct.

1 **3 Section 5**

2 Insert:

3 *access control measure* means a design feature of an online service
4 that prevents an Australian user who is not age assured as an adult
5 from accessing, attempting to use, or being exposed to:

6 (a) pornography; or

7 (b) material that describes or depicts specific fetish practices or
8 fantasies.

9 *age assurance measure* means a method, or a range of methods,
10 used by an online service for determining or assessing a user's age.

11 *approved researcher*: see subsection 205B(1).

12 *Australian university* means a registered higher education provider
13 that, for the purposes of the *Tertiary Education Quality and*
14 *Standards Agency Act 2011*, is registered in the "Australian
15 University" provider category.

16 **4 Section 5 (definition of *basic online safety expectations*)**

17 Repeal the definition.

18 **5 Section 5 (note to the definition of *Commissioner*)**

19 Omit "section 26", substitute "section 166A".

20 **6 Section 5**

21 Insert:

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

23 *data access schemes*: see subsection 205C(1).

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

25 *endless-feed feature*: see subsection 25G(5).

26 *excluded material*: see section 25F.

27 *feedback feature*: see subsections 25G(6) and (7).

- 1 ***gender-based violence*** means any form of physical or non-physical
2 violence, harassment, abuse or threats, based on gender, that results
3 in, or is likely to result in, harm, coercion, control, fear or
4 deprivation of liberty or autonomy.
- 5 ***harm***: a person can be ***harmed*** by online material or conduct even
6 if the person does not experience the material or engage in the
7 conduct as a user of an online service.
- 8 ***harmful to children***: see section 25E.
- 9 ***logged-in feature***: see subsection 25G(4).
- 10 ***negative behavioural impacts***: see subsection 25G(1).
- 11 ***online safety related research***: see subsection 205B(4).
- 12 ***online service***: see subsection 25B(1).
- 13 ***prescribed online service***: see subsection 27G(2).
- 14 ***recommender feature***: see subsection 25G(3).
- 15 ***responsible*** for an online service: see subsection 25B(2).
- 16 ***safe online environment***: see section 25C.
- 17 ***serious Commonwealth offence*** means an offence against a law of
18 the Commonwealth that is punishable on conviction by
19 imprisonment for a period of 3 years or more.
- 20 ***seriously harmful material or conduct***: see section 25D.
- 21 ***sock puppet identity***: see section 205G.
- 22 ***time-limited feature***: see subsection 25G(8).
- 23 ***transparency reports***: see subsection 192B(1).
- 24 ***user empowerment tool***: see subsection 27A(5).

7 Subsection 20(1)

25 After “section 19”, insert “and paragraph 25B(1)(a)”.

26

1 **8 Part 2**

2 Repeal the Part, substitute:

3 **Part 2—Digital duty of care**

4 **Division 1—Introduction**

5 **25 Simplified outline of this Part**

- | | |
|----|--|
| 6 | • A person responsible for an online service has a digital duty of |
| 7 | care to ensure a safe online environment in which persons in |
| 8 | Australia are protected from seriously harmful material and |
| 9 | conduct and children are protected from material and conduct |
| 10 | that is harmful to children. |
| 11 | • The digital duty of care also requires protection of children |
| 12 | from harms associated with design features of the service and, |
| 13 | for children under 16 years of age, prevention of access and |
| 14 | exposure to design features that have negative behavioural |
| 15 | impacts. |
| 16 | • For the purposes of complying with the digital duty of care, |
| 17 | risk assessments must be conducted to identify and assess |
| 18 | reasonably foreseeable risks, and the measures to be taken to |
| 19 | mitigate those risks. |
| 20 | • Online services may be required to provide user |
| 21 | empowerment tools to their users in Australia. These tools |
| 22 | allow users to manage the way design features of the service |
| 23 | operate, including, for example, by giving users control over |
| 24 | whether content is recommended to them and the kind of |
| 25 | content that is recommended. |
| 26 | • A person responsible for an online service is also required, in |
| 27 | certain circumstances, to implement appropriate age assurance |
| 28 | measures and access control measures to prevent children |
| 29 | from accessing pornography or material that describes or |
| 30 | depicts specific fetish practices or fantasies. |

1 **25A Application**

2 *Authorities and agencies of States and Territories*

- 3 (1) This Part does not apply in relation to an authority or agency of a
4 State or Territory to the extent that the agency or authority:
5 (a) is the provider of an online service; or
6 (b) exercises the greatest degree of day-to-day control over an
7 online service.

8 *Remedial directions*

- 9 (2) A direction given by the Commissioner under this Part requiring a
10 person to take specified action directed towards ensuring that the
11 person does not fail, or is unlikely to fail, to comply with this Part
12 does not require the person to take an action to the extent that it has
13 no impact on users in Australia of the online service concerned.

14 **Division 2—Key concepts**

15 **25B Online services**

- 16 (1) Each of the following is an **online service**:
17 (a) an internet carriage service that is supplied to the public;
18 (b) a social media service;
19 (c) a relevant electronic service;
20 (d) a designated internet service;
21 (e) a hosting service;
22 (f) an internet search engine service;
23 (g) an app distribution service;
24 (h) a service that generates material using artificial intelligence
25 and that uses an internet carriage service in the course of
26 doing so;
27 (i) a service that manufactures, supplies, maintains or installs
28 equipment that:
29 (i) is for use in Australia; and
30 (ii) enables, or is a component of a system that enables, the
31 transmission or receipt of communications using an
32 internet carriage service.

Note: For circumstances in which an internet carriage service is taken to be supplied to the public, see section 20.

*Who is **responsible** for an online service*

- (2) Each of the following is a person **responsible** for an online service:
- (a) the person who provides the service;
 - (b) for an online service mentioned in any of paragraphs (1)(a) to (h)—the person who exercises the greatest degree of day-to-day control over the service.

Note: **Provider** of a social media service, age-restricted social media platform, relevant electronic service, designated internet service or app distribution service has a meaning affected by section 238.

Exemptions for online services

- (3) The Minister may, by legislative instrument, exempt an online service, or a class of online services, from the operation of one or more provisions of this Part if the Minister is satisfied that the service, or class of services, pose little risk to users of the service or services in Australia.

Note: The exemption may, for example, exempt an online service from subsection 27(1) (requirement to conduct risk assessments).

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

25C A safe online environment

- (1) A **safe online environment** is an online environment in which:
- (a) persons in Australia are protected from seriously harmful material and conduct; and
 - (b) children in Australia are protected from:
 - (i) material and conduct that is harmful to children; and
 - (ii) harms associated with access or exposure to design features of online services; and
 - (c) if the service concerned is a social media service—children in Australia who have not reached 16 years of age do not

1 have access to, and are not exposed to, design features of the
2 service that have negative behavioural impacts.

3 *Social media services covered*

- 4 (2) The Minister may, by legislative instrument, determine that an
5 online service:
6 (a) is taken to be a social media service for the purposes of this
7 section; or
8 (b) is taken not to be a social media service for the purposes of
9 this section.

- 10 (3) The determination has effect accordingly.

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

12 **25D Seriously harmful material and conduct**

- 13 (1) *Seriously harmful material or conduct* means any of the
14 following:
15 (a) material or conduct that depicts, encourages, promotes,
16 incites or instructs child sexual exploitation or child sexual
17 abuse;
18 (b) material or conduct that encourages, promotes, incites or
19 instructs grooming or procuring a child for sexual activity;
20 (c) material or conduct that encourages, promotes, incites or
21 instructs sexual violence;
22 (d) fake nude material created without the consent of a person
23 depicted;
24 (e) posting, or threatening to post, an intimate image of another
25 person without the consent of the other person;
26 (f) material or conduct that encourages, promotes, incites or
27 instructs extreme violence or cruelty;
28 (g) explicit threats of physical violence, including threats of rape
29 and death threats;
30 (h) material or conduct that encourages, promotes, incites or
31 instructs gender-based violence;
32 (i) material or conduct that is reasonably likely to cause serious
33 harm by menacing or harassing an individual;

- 1 (j) material or conduct that encourages, promotes, incites or
2 instructs individuals to:
3 (i) consider suicide or take their own life (otherwise than in
4 the context of voluntary assisted dying); or
5 (ii) engage in self-harm; or
6 (iii) engage in sadistic online exploitation; or
7 (iv) cause harm to, or engage in cruelty against, animals;
8 (k) material or conduct that advocates for or supports a listed
9 terrorist organisation (within the meaning of
10 subsection 100.1(1) of the *Criminal Code*);
11 (l) material or conduct that counsels, promotes, encourages,
12 urges or praises a terrorist act (within the meaning of
13 subsection 100.1(1) of the *Criminal Code*);
14 (m) material or conduct that encourages, promotes, incites or
15 instructs the commission of a serious Commonwealth offence
16 that is reasonably likely to cause serious harm;
17 (n) violent extremist material (within the meaning of the
18 *Criminal Code*);
19 (o) material or conduct that encourages, promotes, incites or
20 instructs abhorrent violent conduct.
- 21 (2) ***Seriously harmful material or conduct*** does not include excluded
22 material.

23 **25E Harmful to children**

- 24 (1) The following material and conduct is ***harmful to children***:
25 (a) pornography;
26 (b) material or conduct that encourages, promotes or instructs
27 disordered eating;
28 (c) material or conduct that encourages or promotes hostile
29 attitudes towards women or gender equality;
30 (d) material or conduct that glorifies crime or encourages
31 dangerous stunts or seriously harmful practices;
32 (e) abuse, harassment or bullying;
33 (f) any other material or conduct, or combination of material and
34 conduct, that may cause serious harm to children.

- 1 (2) Material or conduct that is *harmful to children* does not include
2 excluded material.

3 **25F Excluded material**

- 4 (1) *Excluded material* means any of the following:
- 5 (a) material that is produced or disseminated in connection with
6 the performance by a public official of the official's duties or
7 functions;
 - 8 (b) material that is used for the purposes of proceedings in a
9 court or tribunal;
 - 10 (c) material that is produced for the sole or dominant purpose of
11 entertaining individuals and is contained in:
 - 12 (i) a television program provided by a national television
13 broadcasting service or a commercial television
14 broadcasting service; or
 - 15 (ii) a radio program provided by a national radio
16 broadcasting service or a commercial radio broadcasting
17 service; or
 - 18 (iii) audiovisual content made available by a broadcasting
19 video on demand service; or
 - 20 (iv) a film or computer game classified under the
21 *Classification (Publications, Films and Computer*
22 *Games) Act 1995*;
 - 23 (d) professional news material;
 - 24 (e) material that is necessary for, or of assistance in, conducting
25 scientific, medical, academic or historical research;
 - 26 (f) material that is:
 - 27 (i) produced, performed or disseminated for a literary,
28 artistic or educational purpose; and
 - 29 (ii) not contrary to the public interest;
 - 30 (g) material that is necessary for, or of assistance in, protecting
31 or promoting public health and safety;
 - 32 (h) material that is necessary for, or of assistance in, reducing
33 harms to individuals;
 - 34 (i) material that is in the public interest.
- 35 (2) Material generated by a person using a feature of a computer game
36 is not *excluded material* (despite subparagraph (1)(c)(iv)).

Note: This material is commonly known as user generated content.

Interpretation

(3) In this section:

audiovisual content has the same meaning as in Part 9E of the *Broadcasting Services Act 1992*.

broadcasting video on demand service has the same meaning as in Part 9E of the *Broadcasting Services Act 1992*.

commercial radio broadcasting service has the same meaning as in the *Broadcasting Services Act 1992*.

commercial television broadcasting service has the same meaning as in the *Broadcasting Services Act 1992*.

national radio broadcasting service has the same meaning as in the *Broadcasting Services Act 1992*.

national television broadcasting service has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

news material means material that reports, investigates or explains any of the following:

- (a) issues or events that are relevant in engaging persons in public debate and in informing democratic decision-making;
- (b) current issues or events of public significance for persons at a local, regional, national or international level;
- (c) current issues or events of interest to persons.

professional news material means news material produced by a person who:

- (a) produces, and publishes online, news material in any of the following formats:
 - (i) a newspaper;
 - (ii) a magazine;
 - (iii) a television program or channel;
 - (iv) a radio program or channel;
 - (v) a website or part of a website;

- 1 (vi) a program of audio, visual (animated or otherwise) or
2 audiovisual content designed to be distributed over the
3 internet; and
4 (b) is subject to any of the following:
5 (i) the rules of the Australian Press Council Standards of
6 Practice or the Independent Media Council Code of
7 Conduct;
8 (ii) the rules of the Commercial Television Industry Code of
9 Practice, the Commercial Radio Code of Practice, the
10 Community Radio Broadcasting Codes of Practice or
11 the Subscription Broadcast Television Codes of
12 Practice;
13 (iii) rules of a code of practice mentioned in
14 paragraph 8(1)(e) of the *Australian Broadcasting*
15 *Corporation Act 1983* or paragraph 10(1)(j) of the
16 *Special Broadcasting Service Act 1991*;
17 (iv) rules or internal editorial standards that are analogous to
18 the rules mentioned in subparagraph (i), (ii) or (iii) of
19 this paragraph to the extent that they relate to the
20 provision of quality journalism; and
21 (c) has editorial independence from the subjects of the person's
22 news coverage.

23 ***public official*** has the same meaning as in the *Criminal Code*.

24 **25G Design features that have negative behavioural impacts**

- 25 (1) Each of the following design features of an online service has
26 ***negative behavioural impacts***:
27 (a) a recommender feature;
28 (b) a logged-in feature;
29 (c) a design feature determined by the Minister under
30 subsection (2).
31 (2) The Minister may, by legislative instrument, determine that a
32 design feature of an online service has negative behavioural
33 impacts.

Recommender feature

- (3) A **recommender feature** is a design feature of an online service that enables the service to:
- (a) select material by reference to any information that the service has associated with an end-user's account; and
 - (b) display that material to the end-user while the end-user is using the service.

Logged-in feature

- (4) A **logged-in feature** is an endless-feed feature, a feedback feature or a time-limited feature of an online service that an end-user is able to access, or be exposed to, only when the end-user is using the service with an account.
- (5) An **endless-feed feature** is a design feature of an online service that enables the service to display material to an end-user:
- (a) in a feed of material that has no end-point; or
 - (b) in a feed of material that has an end-point, but to which additional material is added:
 - (i) when that end-point is reached; or
 - (ii) at time intervals; or
 - (iii) in response to the end-user's input.
- (6) A **feedback feature** is a design feature of an online service that enables the service to display information to an end-user about:
- (a) the extent to which other end-users have viewed or otherwise engaged with material posted by the end-user on the service; or
 - (b) the extent to which other end-users have opted to receive notifications about the end-user's account or material posted by the end-user on the service.
- (7) To avoid doubt, neither of the following is a **feedback feature**:
- (a) a notification that a particular communication has been read or received;
 - (b) a mark put on a communication by a relevant electronic service.

- (8) A *time-limited feature* is a design feature of an online service that enables an end-user to view material that is available to be viewed on the service only within a limited period after it has been posted.

Division 3—The digital duty of care

26 The digital duty of care

Digital duty of care

- (1) A person responsible for an online service must take appropriate action to ensure a safe online environment, including by taking effective measures to mitigate risks identified in risk assessments conducted in accordance with section 27.

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

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

26A Determining what is appropriate and effective

- (1) In determining whether action or measures are appropriate or effective for the purposes of complying with the digital duty of care, the matters to be taken into account include the following:
- (a) the extent to which the action or measures achieve or would achieve a safe online environment;
 - (b) in relation to seriously harmful material:
 - (i) the nature of the material and the extent to which exposure to the material would be inconsistent with a safe online environment; and
 - (ii) the extent to which the action or measures will or may reasonably be expected to reduce the risk that the online service will be used to solicit, generate, access, distribute or store the material;
 - (c) in relation to material that is harmful to children:
 - (i) the nature of the material and the extent to which children's exposure to the material would be inconsistent with a safe online environment; and
 - (ii) the extent to which the action or measures will or may reasonably be expected to reduce the risk of children's exposure to the material or associated conduct;

- 1 (d) the impact on the security of the online service;
2 (e) whether the action or measures are or would be proportionate
3 to the level of risk.
- 4 (2) For the purposes of paragraph (e), in deciding whether the action or
5 measures are or would be proportionate to the level of risk, take
6 into account the likelihood of harm occurring, and the degree of
7 harm that might result.
- 8 (3) For the purposes of subsection (1), the cost of the action or
9 measures must not be taken into account.

10 **26B Exception for lawful private communications**

11 The digital duty of care does not require any action to be taken in
12 relation to lawful communications occurring in private solely
13 between consenting adults.

14 **26C Compliance with the digital duty of care**

15 A person must not fail to comply with the person's digital duty of
16 care.

17 Civil penalty: 60,000 penalty units.

18 **26D Formal warnings**

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

22 **26E Remedial directions—digital duty of care**

23 *Scope*

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

Remedial directions

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

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

Civil penalty

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

Civil penalty: 6,000 penalty units.

Remedial direction is not a legislative instrument

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

Division 4—Other requirements

27 Risk assessments

- (1) For the purposes of complying with their digital duty of care, a person responsible for an online service must ensure that written risk assessments are conducted for the service.
- (2) The risk assessments must:
- (a) identify:
 - (i) reasonably foreseeable risks; and
 - (ii) the material or conduct that gives rise to those risks; and
 - (iii) the design features of the service that give rise to those risks; and
 - (iv) other systems or processes that give rise to those risks; and
 - (v) persons who may be affected by those risks; and
 - (b) assess the likelihood and potential severity of those risks; and
 - (c) document the measures the person has implemented, or proposes to implement, to mitigate those risks; and
 - (d) record:

- 1 (i) an assessment of the expected effectiveness of those
2 measures; and
3 (ii) the basis for that assessment; and
4 (iii) the period for which the measures are expected to be
5 effective; and
6 (iv) the period for which the measures are expected to be in
7 place; and
8 (e) provide for regular review and reassessment of the
9 effectiveness of those measures; and
10 (f) meet any additional requirements determined by the
11 Commissioner, including requirements relating to the
12 following:
13 (i) the manner and form of the assessment;
14 (ii) detail to be included in the assessment;
15 (iii) standards, benchmarks or other metrics to be used in
16 conducting the assessment;
17 (iv) additional matters to be covered by the assessment.
- 18 (3) The risk assessments must:
19 (a) be conducted:
20 (i) at least annually, or at shorter intervals determined by
21 the Commissioner; and
22 (ii) before making any significant changes to the service
23 that could introduce new or additional risks (so as to
24 assess the risks posed by those changes); and
25 (b) be retained for at least 6 years; and
26 (c) be made available to the Commissioner within 30 days after
27 the Commissioner requests them.
- 28 (4) The Commissioner may, by legislative instrument, determine the
29 following:
30 (a) requirements for the purposes of paragraph (2)(f);
31 (b) intervals of less than 12 months for the purposes of
32 subparagraph (3)(a)(i).

33 **27A User empowerment tools**

- 34 (1) The Minister may, by legislative instrument:

- 1 (a) require a specified online service to provide users of the
2 service in Australia with a specified user empowerment tool;
3 and
4 (b) prescribe requirements for, and in relation to, the tool.

- 5 (2) The online service or user empowerment tool may (without
6 limitation) be specified by reference to any matter.

7 Note 1: The user empowerment tool may, for example, be specified by
8 reference to the amount or kind of control the tool gives a user of an
9 online service over the operation of particular design features.

10 Note 2: For specification by class, see subsection 13(3) of the *Legislation Act*
11 *2003*.

- 12 (3) However, before specifying the user empowerment tool, the
13 Minister must be satisfied that the tool is necessary to protect users
14 of the service in Australia from harms associated with access or
15 exposure to a design feature of the service.

16 *Content not to be considered*

- 17 (4) In making an instrument under subsection (1) in relation to an
18 online service, the Minister must not take into account any material
19 that has been, is or will be accessible to, or delivered to, a user
20 using the service.

21 *Meaning of user empowerment tool*

- 22 (5) A ***user empowerment tool*** is a tool that allows a user of an online
23 service to manage the way design features of the service operate
24 for the user, including, for example, by providing control over the
25 kind of content that is recommended for the user.

26 **27B Compliance—risk assessments and user empowerment tools**

- 27 (1) A person responsible for an online service must not fail to:
28 (a) conduct risk assessments in accordance with section 27; or
29 (b) ensure that the service provides user empowerment tools as
30 required by an instrument made under subsection 27A(1).

31 Civil penalty: 60,000 penalty units.

1 *Formal warnings*

- 2 (2) The Commissioner may issue a formal warning if the
3 Commissioner reasonably believes that a person responsible for an
4 online service has failed, or is failing, to:
5 (a) conduct risk assessments in accordance with section 27; or
6 (b) ensure that the service provides user empowerment tools as
7 required by an instrument made under subsection 27A(1).

8 **27C Remedial directions—risk assessments and user empowerment**
9 **tools**

10 *Scope*

- 11 (1) This section applies if the Commissioner reasonably believes that a
12 person responsible for an online service has failed, or is failing, to:
13 (a) conduct risk assessments in accordance with section 27; or
14 (b) ensure that the service provides user empowerment tools as
15 required by an instrument made under subsection 27A(1).

16 *Remedial directions*

- 17 (2) The Commissioner may give the person a written direction
18 requiring the person to take specified action directed towards
19 ensuring that the person does not fail, or is unlikely to fail, to do
20 those things in the future.

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

23 *Civil penalty*

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

26 Civil penalty: 6,000 penalty units.

27 *Remedial direction is not a legislative instrument*

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

27D Age assurance and access control measures

(1) This section applies if there is a reasonably foreseeable risk that a child could access, or be exposed to, either of the following through an online service:

- (a) pornography;
- (b) material that describes or depicts specific fetish practices or fantasies.

(2) Each person responsible for the service must, where technically feasible and reasonably practicable, ensure that the following are implemented for users of the service in Australia:

- (a) a choice of one of at least 2 appropriate age assurance measures;
- (b) access control measures.

Note: For *age assurance measure* and *access control measure*, see section 5.

27E Compliance—age assurance and access control measures

(1) A person responsible for an online service must not fail to comply with section 27D (age assurance measures and access control measures).

Civil penalty: 60,000 penalty units.

Formal warnings

(2) The Commissioner may issue a formal warning if the Commissioner reasonably believes that a person responsible for an online service has failed, or is failing, to implement either of the following in accordance with section 27D:

- (a) appropriate age assurance measures;
- (b) access control measures.

1 **27F Remedial directions—age assurance and access control**
2 **measures**

3 *Scope*

- 4 (1) This section applies if the Commissioner reasonably believes that a
5 person responsible for an online service has failed, or is failing, to
6 implement either of the following in accordance with section 27D:
7 (a) appropriate age assurance measures;
8 (b) access control measures.

9 *Remedial directions*

- 10 (2) The Commissioner may give the person a written direction
11 requiring the person to take specified action directed towards
12 ensuring that the person does not fail, or is unlikely to fail, to do
13 those things in the future.

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

16 *Civil penalty*

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

19 Civil penalty: 6,000 penalty units.

20 *Remedial direction is not a legislative instrument*

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

22 **27G Complaint and dispute processes**

- 23 (1) A person responsible for a prescribed online service must:
24 (a) have complaint and dispute processes that are available
25 equally to all individuals in Australia; and
26 (b) comply with any requirements determined by the
27 Commissioner in relation to those processes.

- 28 (2) A ***prescribed online service*** is an online service in a class of online
29 services determined by the Commissioner under subsection (3).

- 1 (3) The Commissioner may, by legislative instrument, determine:
2 (a) requirements for the purposes of paragraph (1)(b); or
3 (b) classes of online services for the purposes of subsection (2).
- 4 (4) The Commissioner must consult the Privacy Commissioner before
5 doing so.
- 6 *Civil penalty*
- 7 (5) A person must not contravene subsection (1).
8 Civil penalty: 6,000 penalty units.
- 9 *Formal warning*
- 10 (6) The Commissioner may issue a formal warning if the
11 Commissioner reasonably believes that a person has contravened,
12 or is contravening, subsection (1).

13 **27H Remedial directions—complaint and dispute processes**

- 14 *Scope*
- 15 (1) This section applies if the Commissioner reasonably believes that a
16 person has contravened, or is contravening, subsection 27G(1).
- 17 *Remedial directions*
- 18 (2) The Commissioner may give the person a written direction
19 requiring the person to take specified action directed towards
20 ensuring that the person does not contravene, or is unlikely to
21 contravene, subsection 27G(1) in the future.
- 22 Note: For variation or revocation, see subsection 33(3) of the *Acts*
23 *Interpretation Act 1901*.
- 24 *Civil penalty*
- 25 (3) A person must comply with a direction given to the person under
26 subsection (2).
27 Civil penalty: 6,000 penalty units.

Remedial direction is not a legislative instrument

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

Division 5—Supporting provisions

28 Digital duty of care guidelines

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

28A Functions and parameters of design features

- (1) The Commissioner may, by written notice given to a person responsible for an online service, require the person to do either or both of the following:
- (a) provide information in relation to the functions of a feature, system or process of the service;
 - (b) give a person nominated in the notice the access to the service required for the nominated person to report to the Commissioner on the features, systems and processes of the service.
- (2) The Commissioner must not nominate a person for the purposes of paragraph (1)(b) unless the Commissioner is satisfied that the person has skills and experience required to access and report on the features, systems and processes of the service.
- (3) The notice may (without limitation) require the person responsible for the online service to provide information in relation to:
- (a) the decision-making algorithms of the feature, system or process used to select, order, recommend, promote, restrict or moderate material, accounts or search results; and
 - (b) the circumstances in which the feature, system or process requires human review or intervention.

Civil penalty

- (4) A person responsible for an online service must comply with a notice under subsection (1) to the extent that the person is capable of doing so.

1 Civil penalty: 6,000 penalty units.

2 *Formal warning*

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

6 **28B Minister to seek advice from Commissioner**

7 (1) Before making a legislative instrument under or for the purposes of
8 a provision covered by subsection (2), the Minister must seek
9 advice from the Commissioner and have regard to that advice.

10 (2) This subsection covers the following provisions:

11 (a) subsection 25B(3) (exemptions for online services);

12 (b) subsection 25C(2) (social media services covered);

13 (c) subsection 25G(2) (design features that have negative
14 behavioural impacts);

15 (d) subsection 27A(1) (user empowerment tools).

16 (3) To avoid doubt, this section does not limit the persons from whom
17 the Minister may seek advice.

18 **28C Advice on operation of Part**

19 (1) The Commissioner may give advice to the Minister about the
20 following:

21 (a) emerging categories of harm arising from the use of online
22 services;

23 (b) online services of concern in relation to meeting the digital
24 duty of care;

25 (c) the need to make or amend a legislative instrument under this
26 Part;

27 (d) other matters relating to compliance with, or the operation of,
28 this Part.

29 (2) The Commissioner may give the advice on the Commissioner's
30 own initiative, or at the request of the Minister.

31 (3) This section does not limit, and is not limited by, section 28B.

9 Subsection 31(4)

Omit “Part 14”, substitute “Division 2 of Part 13”.

10 Subsection 34(4)

Omit “Part 14”, substitute “Division 2 of Part 13”.

11 Subsection 37(4)

Omit “Part 14”, substitute “Division 2 of Part 13”.

12 Subsection 42(4)

Omit “Part 14”, substitute “Division 2 of Part 13”.

13 Part 4

Repeal the Part.

14 Subsection 104(1)

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

15 Paragraphs 163(1)(a) to (d)

Repeal the paragraphs, substitute:

- (a) section 26E;
- (aa) section 27B;
- (ab) section 27C;
- (ac) section 27E;
- (ad) section 27F;
- (b) section 27G;
- (c) section 27H;
- (d) section 28A;

16 At the end of subsection 163(1) (before the note)

Add:

- ; (q) section 192H;
- (r) section 192M;
- (s) section 205D;
- (t) section 205F.

1 **17 Subsection 163(2)**

2 Repeal the subsection, substitute:

3 *Infringement officer*

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

7 (a) the Commissioner;

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

10 **18 Section 163A (at the end of the heading)**

11 Add “—social media minimum age”.

12 **19 After section 163A**

13 Insert:

14 **163AA Amount payable under certain infringement notices—digital**
15 **duty of care etc.**

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

20 (a) if the notice relates to only one alleged contravention of the
21 provision by the person:

22 (i) if the person is not a body corporate—12 penalty units;
23 or

24 (ii) if the person is a body corporate—600 penalty units;

25 (b) if the notice relates to more than one alleged contravention of
26 the provision by the person:

27 (i) if the person is not a body corporate—the number of
28 penalty units worked out by multiplying the number of
29 alleged contraventions by 12; or

30 (ii) if the person is a body corporate—the number of
31 penalty units worked out by multiplying the number of
32 alleged contraventions by 600.

1 (2) This subsection covers the following provisions:

- 2 (a) section 26E (remedial directions—digital duty of care);
3 (b) section 27B (compliance—risk assessments and user
4 empowerment tools);
5 (c) section 27C (remedial directions—risk assessments and user
6 empowerment tools);
7 (d) section 27E (compliance—age assurance and access control
8 measures);
9 (e) section 27F (remedial directions—age assurance and access
10 control measures);
11 (f) section 27G (complaint and dispute processes);
12 (g) section 27H (remedial directions—complaint and dispute
13 processes);
14 (h) section 28A (functions and parameters of design features);
15 (i) section 192H (compliance with transparency report notices);
16 (j) section 192M (compliance with determinations requiring
17 information publication);
18 (k) section 205D (compliance with data access rules);
19 (l) section 205F (remedial directions—data access rules).

20 **20 Paragraphs 164(1)(a) to (d)**

21 Repeal the paragraphs, substitute:

- 22 (a) section 26C;
23 (aa) section 26E;
24 (ab) section 27B;
25 (ac) section 27C;
26 (ad) section 27E;
27 (b) section 27F;
28 (c) section 27G;
29 (d) section 27H;

30 **21 At the end of subsection 164(1)**

31 Add:

- 32 ; (r) section 205D;
33 (s) section 205F.

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

Repeal the paragraphs, substitute:

- (a) section 26C;
- (aa) section 26E;
- (ab) section 27B;
- (ac) section 27C;
- (ad) section 27E;
- (ae) section 27F;
- (b) section 27G;
- (c) section 27H;
- (d) section 28A;

23 After paragraph 165(1)(r)

Insert:

- (ra) section 192H;
- (rb) section 192M;

24 At the end of subsection 165(1)

Add:

- ; (t) section 204;
- (u) section 205D;
- (v) section 205F.

25 Part 11 (heading)

Repeal the heading, substitute:

Part 11—eSafety Commissioner

26 Section 166

Repeal the section, substitute:

166 Simplified outline of this Part

- There is to be an eSafety Commissioner.
- The Commissioner’s functions include:

- (a) promoting online safety for Australians, including through the digital duty of care; and
 - (b) supporting and encouraging the implementation of measures to improve online safety for Australians; and
 - (c) supporting, encouraging, conducting, accrediting and evaluating educational, promotional and community awareness programs that are relevant to online safety for Australians; and
 - (d) reporting and advising about online safety for Australians.
- The Commissioner must also prepare an annual statement on the Commissioner's priorities for the year in relation to monitoring and enforcing compliance with this Act.

27 After Division 1 of Part 11

Insert:

Division 1A—Establishment and functions

166A eSafety Commissioner

There is to be an eSafety Commissioner.

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

166B Functions of the Commissioner

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

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

- (i) prevent age-restricted users having accounts with age-restricted social media platforms; or
- (ii) prevent children who have not reached 16 years of age from having access or exposure to design features of online services that have negative behavioural impacts; and
- (s) to promote guidelines formulated under paragraph (r); and
- (t) such other functions (if any) as are specified in the legislative rules; and
- (u) to do anything incidental to or conducive to the performance of any of the above functions.

Grants

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

Guidelines and statements are not legislative instruments

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

166C Statement of monitoring and enforcement priorities

- (1) The Commissioner must, as soon as practicable after the beginning of each financial year, prepare a statement of the Commissioner's priorities for the year in relation to monitoring and enforcing compliance with this Act.
- (2) The statement must be published on the Commissioner's website.

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

5 **28 Division 4 of Part 11 (heading)**

6 Repeal the heading, substitute:

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

8 **29 Before section 178**

9 Insert:

10 **177A Powers of the Commissioner**

11 The Commissioner has power to do all things necessary or

12 convenient to be done for or in connection with the performance of

13 the Commissioner's functions.

14 **30 Paragraphs 182(4)(a) and (b)**

15 Repeal the paragraphs, substitute:

- 16 (a) section 26E;
- 17 (aa) section 27C;
- 18 (ab) section 27F;
- 19 (ac) section 27G;
- 20 (ad) section 27H;
- 21 (b) section 28A;

22 **31 After paragraph 182(4)(za)**

23 Insert:

- 24 (zaa) section 192B;
- 25 (zab) section 192L;

26 **32 Paragraph 182(4)(ze)**

27 Repeal the paragraph, substitute:

- 28 (ze) section 205F;

1 (zf) section 229A.

2 **33 Before paragraph 183(2)(aa)**

3 Insert:

4 (aaa) the number of directions given by the Commissioner under
5 section 26E during that year;

6 (aab) the number of directions given by the Commissioner under
7 section 27C during that year;

8 (aac) the number of directions given by the Commissioner under
9 section 27F during that year;

10 (aad) the number of directions given by the Commissioner under
11 section 27H during that year;

12 **34 Paragraphs 183(2)(a) and (b)**

13 Repeal the paragraphs.

14 **35 Paragraph 183(2)(zd)**

15 Repeal the paragraph, substitute:

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

18 **36 After section 183**

19 Insert:

20 **183AA Publication of formal warnings**

21 The Commissioner may publish on the Commissioner's website a
22 formal warning issued under this Act.

23 **37 Paragraph 192(b)**

24 Omit "paragraph 27(1)(g)", substitute "paragraph 166B(1)(g)".

25 **38 After Part 12**

26 Insert:

Part 12A—Transparency

Division 1—Introduction

192A Simplified outline of this Part

- The Commissioner may require a person responsible for an online service to give reports about the safety of the service for Australians. The reports may cover matters such as compliance with this Act, harms associated with the service and safety measures being taken.
- The Commissioner may also require a person responsible for an online service to publish information about their online safety related operations or activities. The published information may cover matters such as compliance with the person’s digital duty of care, content moderation and complaints received about the service.

Division 2—Transparency reports

192B Requiring transparency reports

Written notices

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

Report must improve or promote transparency

- (2) The Commissioner may give the notice only if the Commissioner is satisfied that doing so would:
 - (a) improve or promote transparency or accountability regarding the safety of the online service for Australians; or
 - (b) improve or promote industry best practice.

Matters the Commissioner must consider

- (3) In deciding whether to give the notice, the Commissioner must consider the following:
- (a) whether and to what extent the reports would promote compliance with this Act;
 - (b) the burden of preparing the reports;
 - (c) such other matters (if any) as the Commissioner considers relevant.

192C Content, manner and form

Content

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

Manner and form

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

192D Reporting intervals

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

192E Report timing

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

192F Reasons and review rights

- The notice must:
- (a) specify that it is given to a person responsible for the online service under subsection 192B(1) of this Act; and
 - (b) set out reasons for the giving of the notice; and
 - (c) set out the person's review rights under subsection 220(23).

192G Publication of transparency reports

The Commissioner may publish a transparency report, or a summary of a transparency report, on the Commissioner's website.

1 **192H Compliance with transparency report notices**

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

5 Civil penalty: 6,000 penalty units.

6 **192J Formal warning**

7 The Commissioner may issue a formal warning if the
8 Commissioner reasonably believes that a person has contravened,
9 or is contravening, section 192H (compliance with transparency
10 report notices).

11 **192K Self-incrimination**

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

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

16 (a) the report; or

17 (b) giving the report; or

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

20 is not admissible in evidence against the individual:

21 (d) in civil proceedings for the recovery of a penalty (other than
22 proceedings for the recovery of a penalty under
23 section 192H); or

24 (e) in criminal proceedings (other than proceedings for an
25 offence against section 137.1, 137.2 or 149.1 of the *Criminal*
26 *Code* that relates to section 192H).

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

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

Division 3—Requiring information about online services to be published

192L Requiring information about online services to be published

- (1) The Commissioner may, by legislative instrument, require a person responsible for an online service specified in a class of online services to ensure that information, or kinds of information, about operations or activities relating to the online safety of users of the service in Australia is published on a website maintained by or on behalf of the person or service.

Specified information to be published

- (2) The information or kinds of information specified in the determination may (without limitation) include information about the following:
- (a) any matter related to the person's digital duty of care, including any risk assessments conducted in relation to the service in accordance with section 27 or any measures taken to mitigate identified risks;
 - (b) content moderation (including automated content moderation) with respect to the service, including:
 - (i) content moderation decisions; and
 - (ii) the amount and type of material removed from the service; and
 - (iii) the number of staff engaged in content moderation for the service;
 - (c) complaints or reports received in relation to the service, including:
 - (i) the number of complaints or reports; and
 - (ii) the type of complaints or reports; and
 - (iii) how the complaints or reports were dealt with; and
 - (iv) the number of complaints not dealt with; and
 - (v) the median time taken to resolve the complaints or reports;
 - (d) the number of Australian user accounts suspended or removed (however described) from the service, including the reasons for the suspension or removal;

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

3 *Specified classes of online services*

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

12 *Publication to improve or promote transparency*

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

19 *Specified periods for publication*

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

22 **192M Compliance with determination**

23 A person must comply with an instrument made under
24 subsection 192L(1) to the extent that the person is capable of doing
25 so.

26 Civil penalty: 6,000 penalty units.

27 **192N Formal warning**

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

39 Before section 193

Insert:

Division 1—End-user information

40 Section 193 (heading)

Omit “Part”, substitute “Division”.

41 Paragraph 196(2)(e)

Omit “Part”, substitute “Division”.

42 At the end of Part 13

Add:

Division 2—Compliance and investigations

197 Simplified outline of this Division

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

198 Application of this Division

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

- (a) an investigation by the Commissioner under section 31, 34, 37 or 42; or
- (b) compliance with, or a possible contravention of, this Act (other than a provision of Part 4A (social media minimum age)).

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

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

200 Examination on oath or affirmation

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

201 Examination to take place in private

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

202 Record to be made of examination

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

203 Protection of persons attending before Commissioner

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

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

Compliance with notice requirements

- (1) A person contravenes this subsection if the person:
 - (a) fails to comply with a notice under section 199; or
 - (b) refuses or fails to answer a question that the person is required to answer under subsection 200(3).

Compliance with requirement to take oath or make affirmation

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

Offence

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

1 Penalty: Imprisonment for 12 months.

2 *Civil penalty*

3 (4) A person must not contravene subsection (1) or (2).

4 Civil penalty: 1,000 penalty units.

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

7 *Exception*

8 (5) Subsection (1) does not apply if:

- 9 (a) the person is a journalist; and
10 (b) complying with the requirement of the notice would tend to
11 disclose the identity of a person who supplied information in
12 confidence to the journalist.

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

16 **205 Self-incrimination**

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

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

- 21 (a) any information, evidence or answer given or document
22 produced; or
23 (b) the giving of the information or evidence, the production of
24 the document or the answering of the question; or
25 (c) any information, document or thing obtained as a direct or
26 indirect consequence of the giving of the information or
27 evidence, the production of the document or the answering of
28 the question;

29 is not admissible in evidence against the individual:

- 30 (d) in civil proceedings for the recovery of a penalty, other than
31 proceedings for the recovery of a penalty under section 204;
32 or
33 (e) in criminal proceedings, other than:

- (i) proceedings for an offence against section 204; or
(ii) proceedings for an offence against section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to this Division.

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

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

43 Part 14

Repeal the Part, substitute:

Part 14—Research and data access

Division 1—Introduction

205A Simplified outline of this Part

- A data access scheme may require a person responsible for an online service to give an approved researcher access to data for the purposes of undertaking online safety related research. The data must be relevant to the online safety of users of the service in Australia.
- Approved researchers and the Commissioner may assume sock puppet identities for undertaking online safety related research and for performing functions and exercising powers under this Act, respectively. The kinds of activities approved researchers and the Commissioner can undertake using sock puppet identities are set out in section 205K and include observing material on, and testing features of, an online service.

- To promote transparency and accountability, the Commissioner is required to prepare annual statements summarising the Commissioner's sock puppet activities in the previous year and setting out priorities and strategies for the year ahead.

Division 2—Data access schemes

205B Approved researchers and online safety related research

*Meaning of **approved researcher***

- (1) A person is an **approved researcher** if the person:
 - (a) is employed by an Australian university; and
 - (b) is approved as an approved researcher under the legislative rules; and
 - (c) meets any other requirements prescribed by the legislative rules.
- (2) Legislative rules made for the purposes of paragraph (1)(b) may make provision for and in relation to the approval by the Commissioner of persons as approved researchers.
- (3) Without limiting subsection (2), the rules may provide grounds for the Commissioner to revoke approvals, including, for example, where an approved researcher has contravened data access rules.

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

- (4) Research undertaken by an approved researcher is **online safety related research** to the extent that the research:
 - (a) is relevant to the online safety of users of online services in Australia; and
 - (b) is approved by a human research ethics committee (however described) established by, or accessible to, the Australian university that employs the researcher; and
 - (c) is of a kind prescribed by the legislative rules to be in the public interest; and
 - (d) meets any other requirements prescribed by the legislative rules.

1 **205C Data access rules regarding data access schemes**

- 2 (1) The legislative rules may make provision for, and in relation to,
3 one or more schemes (the *data access schemes*) requiring persons
4 responsible for online services to give approved researchers access
5 to data for the purposes of, or in connection with, undertaking
6 online safety related research.
- 7 (2) These rules are to be known as the *data access rules*.
- 8 (3) In making data access rules providing for a data access scheme, the
9 Minister must be satisfied that the access to data provided by the
10 scheme would be reasonable in all of the circumstances.
- 11 (4) The data access rules may (without limitation) provide for any one
12 or more of the following in relation to a data access scheme:
13 (a) kinds of data (subject to subsection (5)) to which approved
14 researchers must be given access, including (without
15 limitation):
16 (i) the decision-making algorithms of a feature, system or
17 process of an online service used to select, order,
18 recommend, promote, restrict or moderate material,
19 accounts or search results; and
20 (ii) the circumstances in which such features, systems or
21 processes require human review or intervention;
22 (b) kinds of online safety related research in respect of which
23 approved researchers are to be given access to data;
24 (c) circumstances in which approved researchers are to be given
25 access to data;
26 (d) matters relating to requests by approved researchers for
27 access to data, including (without limitation):
28 (i) procedures to be followed, or requirements to be met,
29 by approved researchers in making requests; and
30 (ii) procedures to be followed, or requirements to be met, in
31 granting requests; and
32 (iii) fees that may be charged before access to data is given
33 to approved researchers (which must not exceed the
34 reasonable costs arising from providing the access); and
35 (iv) review or reconsideration of decisions to grant requests;

- 1 (e) procedures to be followed, or requirements to be met, by
2 approved researchers in accessing, or persons responsible for
3 online services in giving access to, data;
4 (f) how conflicts of interest will be dealt with;
5 (g) the privacy, security and confidentiality of data accessed.
- 6 (5) A data access scheme must not require a person responsible for an
7 online service to give an approved researcher access to data other
8 than data relevant to the online safety of users of the service in
9 Australia.
- 10 (6) Data accessed by an approved researcher under a data access
11 scheme must not be used by the researcher for the purposes of
12 obtaining a commercial benefit or advantage.

13 **205D Compliance with data access rules**

14 A person responsible for an online service must not contravene the
15 data access rules.

16 Civil penalty: 6,000 penalty units.

17 **205E Formal warning**

18 The Commissioner may issue a formal warning if the
19 Commissioner reasonably believes that a person has contravened,
20 or is contravening, section 205D.

21 **205F Remedial directions—data access rules**

22 *Scope*

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

25 *Remedial directions*

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

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

Civil penalty

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

Civil penalty: 6,000 penalty units.

Remedial direction is not a legislative instrument

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

Division 3—Sock puppet identities

205G Sock puppet identities

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

205H Approved researchers may assume sock puppet identities

- (1) An approved researcher may assume a sock puppet identity for the purposes of undertaking online safety related research.
- (2) The approved researcher may use the sock puppet identity:
 - (a) only in accordance with section 205K; and
 - (b) despite anything to the contrary in any agreement, contract or deed.

205J Commissioner may assume sock puppet identities

- (1) The Commissioner may assume a sock puppet identity for the purposes of performing the Commissioner's functions or exercising the Commissioner's powers under this Act.
- (2) The Commissioner may use the sock puppet identity:
 - (a) only in accordance with section 205K; and
 - (b) despite anything to the contrary in any agreement, contract or deed.

205K Activities that may be undertaken using sock puppet identities

- (1) Sections 205H and 205J authorise the use of sock puppet identities by an approved researcher or the Commissioner to do any one or more of the following to the extent that it is done for a purpose mentioned in whichever of those sections applies:
- (a) creating and using an account to access an online service;
 - (b) observing, downloading or making a record of any material accessed using an online service;
 - (c) engaging with an online service or a person responsible for the service;
 - (d) engaging with a user of an online service (but only to the extent necessary to prevent closure of an account with the service);
 - (e) testing the features of an online service;
 - (f) testing an online service's response to actions taken using the online service.

- (2) In addition, the Commissioner may use sock puppet identities to test whether an online service is able to, or allows users to, generate (including by means of artificial intelligence) material the production, dissemination or possession of which is an offence against a law of the Commonwealth, a State or a Territory.

Policies for using sock puppet identities

- (3) The Commissioner must, in consultation with the Commissioner of the Australian Federal Police, determine and maintain policies to be followed in using sock puppet identities under this Division.

205L Immunity from civil proceedings

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

205M Annual statement on sock puppet activities

- (1) The Commissioner must, as soon as practicable after the beginning of each financial year, prepare a statement:

- 1 (a) setting out the Commissioner’s priorities and strategies for
2 the year in relation to activities under section 205J; and
3 (b) summarising, in general terms, the Commissioner’s activities
4 under section 205J during the previous financial year.
- 5 (2) The Commissioner must publish the statement on the
6 Commissioner’s website.
- 7 (3) The statement is not a legislative instrument.
- 8 (4) The statement does not limit or affect the performance of the
9 Commissioner’s functions or the exercise of the Commissioner’s
10 powers.

11 **44 Subsection 220(1)**

12 Repeal the subsection, substitute:

13 *Notice under section 28A*

- 14 (1) An application may be made to the Administrative Review
15 Tribunal for a review of a decision of the Commissioner to give a
16 notice under section 28A.

17 **45 Subsection 220(12)**

18 Omit “section 83”, substitute “section 26E, 27C, 27F, 27H, 83 or
19 205F”.

20 **46 At the end of section 220**

21 Add:

22 *Transparency report notice*

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

26 **47 After section 220A**

27 Insert:

1 **220B Contravening an offence provision or a civil penalty provision**

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

9 **48 Subparagraph 229(2)(a)(vii)**

10 Omit “provider; and”, substitute “provider; or”.

11 **49 At the end of paragraph 229(2)(a)**

12 Add:

- 13 (viii) a person responsible for an online service; and

14 **50 After section 229**

15 Insert:

16 **229A Points of contact for online services**

- 17 (1) The Commissioner may, by written notice given to a person
18 responsible for an online service, require the person to nominate a
19 point of contact for the service.
- 20 (2) If a notice under this section requires a person responsible for an
21 online service to nominate a point of contact, the person must:
- 22 (a) give the Commissioner, before the time specified in the
23 notice, the point of contact’s name and such other contact
24 details required by the notice; and
- 25 (b) inform the Commissioner of any change to those details as
26 soon as practicable after the change occurs.

27 **51 Subsection 239A(1)**

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

1 **Part 2—Amendments of other Acts**

2 *Age Discrimination Act 2004*

3 **52 Schedule 2 (table item 8A)**

4 Repeal the item, substitute:

8A *Online Safety Act 2021*

Parts 2 and 4A and
paragraphs
166B(1)(r) and (s)

5 *Privacy Act 1988*

6 **53 Subsection 6(1) (after paragraph (ab) of the definition of**
7 *enforcement body*)

8 Insert:

9 (ac) the eSafety Commissioner; or

1 **Part 3—Transitional provisions**

2 **54 Authorisations continue to apply**

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

8 **55 Agreements, guidelines and statements continue to apply**

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

14 **56 Monitoring and enforcement statement**

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

18 **57 Office of eSafety Commissioner**

19 The amendments made by this Schedule do not affect the continuity of
20 the office of the eSafety Commissioner.

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

Part 1—Amendment of the Online Safety Act 2021

Online Safety Act 2021

1 Section 40

Repeal the section.

2 Paragraph 42(1)(e)

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

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

Repeal the paragraphs.

4 Section 43

Repeal the section.

5 Division 7 of Part 9

Repeal the Division.

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

Repeal the paragraphs.

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

Repeal the paragraphs.

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

Repeal the paragraphs.

9 Paragraph 182(4)(v)

Repeal the paragraph.

10 Paragraph 183(2)(v)

Repeal the paragraph.

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

2 Repeal the subsections.

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

4 Repeal the subsections.

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

7 Omit “Act; or”, substitute “Act.”.

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

10 Repeal the paragraph.

Part 2—Amendments of other Acts

Broadcasting Services Act 1992

15 Paragraph 130L(e)

Repeal the paragraph.

Criminal Code Act 1995

16 Paragraph 273.9(5)(b) of the *Criminal Code*

Repeal the paragraph, substitute:

(b) manufacturing or developing, or updating, content filtering technology (including software) for the purposes of compliance with the person's, or another person's, digital duty of care (within the meaning of the *Online Safety Act 2021*).

17 Paragraph 474.24(4)(b) of the *Criminal Code*

Repeal the paragraph, substitute:

(b) manufacturing or developing, or updating, content filtering technology (including software) for the purposes of compliance with the person's, or another person's, digital duty of care (within the meaning of the *Online Safety Act 2021*).

Interactive Gambling Act 2001

18 Subsections 36(2) and (3)

Repeal the subsections.