



# **Broadcasting Services Amendment (Online Services) Act 1999**

**No. 90, 1999**

**An Act to amend the *Broadcasting Services Act 1992*, and for other purposes**



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## **An Act to amend the *Broadcasting Services Act 1992*, and for other purposes**

[Assented to 16 July 1999]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Broadcasting Services Amendment (Online Services) Act 1999*.

### **2 Commencement**

This Act commences on the day on which it receives the Royal Assent.

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### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendment of the Broadcasting Services Act 1992**

### **1 Title**

After “**broadcasting services**”, insert “**and online services**”.

### **2 At the end of section 3**

Add:

- ; and (k) to provide a means for addressing complaints about certain Internet content; and
- (l) to restrict access to certain Internet content that is likely to cause offence to a reasonable adult; and
- (m) to protect children from exposure to Internet content that is unsuitable for children.

(2) In this section:

*Internet content* has the same meaning as in Schedule 5.

### **3 Subsection 4(1)**

After “**broadcasting services**” (wherever occurring), insert “**and Internet services**”.

### **4 At the end of section 4**

Add:

- (3) The Parliament also intends that Internet content hosted in Australia, and Internet carriage services supplied to end-users in Australia, be regulated in a manner that:
  - (a) enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on Internet content hosts and Internet service providers; and
  - (b) will readily accommodate technological change; and
  - (c) encourages:
    - (i) the development of Internet technologies and their application; and

- (ii) the provision of services made practicable by those technologies to the Australian community; and
- (iii) the supply of Internet carriage services at performance standards that reasonably meet the social, industrial and commercial needs of the Australian community.

(4) In this section:

*Internet carriage service* has the same meaning as in Schedule 5.

*Internet content* has the same meaning as in Schedule 5.

*Internet content host* has the same meaning as in Schedule 5.

*Internet service provider* has the same meaning as in Schedule 5.

### **5 Paragraph 5(1)(a)**

After “broadcasting industry”, insert “and the Internet industry”.

### **6 At the end of section 5**

Add:

(3) This section does not, by implication, limit the functions and powers of:

- (a) the Australian Communications Authority; or
- (b) the Australian Competition and Consumer Commission; or
- (c) any other body or person who has regulatory responsibilities in relation to the Internet industry.

### **7 After section 216A**

Insert:

#### **216B Schedule 5 (online services)**

Schedule 5 has effect.

### **8 Paragraph 18(2)(j) of Schedule 3**

After “notice”, insert “(other than a notice under Schedule 5)”.

### **9 At the end of subclause 18(2) of Schedule 3**

Add:

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- ; or (m) formulate, vary or revoke a scheme under clause 51 of Schedule 5; or
- (n) determine, vary or revoke an industry standard under Schedule 5; or
- (o) determine, vary or revoke an online provider determination under Schedule 5.

## **10 At the end of the Act**

Add:

### **Schedule 5—Online services**

Note: See section 216B.

## **Part 1—Introduction**

### **1 Explanation of the context of this Schedule**

- (1) This clause explains, in simplified form, the context of this Schedule within the proposed Australian scheme for dealing with content on the Internet.

#### *This Schedule*

- (2) The first component of the proposed scheme is this Schedule, which regulates Internet service providers and Internet content hosts, but does not impose any obligations on:
  - (a) producers of content; or
  - (b) persons who upload or access content.

#### *State/Territory laws and section 85ZE of the Crimes Act 1914*

- (3) The second component of the proposed scheme will be:
  - (a) State/Territory laws that impose obligations on:
    - (i) producers of content; and
    - (ii) persons who upload or access content; and
  - (b) section 85ZE of the *Crimes Act 1914*.

*Non-legislative initiatives*

- (4) The third component of the proposed scheme will be a range of non-legislative initiatives directed towards:
- (a) monitoring content on the Internet; and
  - (b) educating and advising the public about content on the Internet.

## 2 Simplified outline

The following is a simplified outline of this Schedule:

- This Schedule sets up a system for regulating certain aspects of the Internet industry.
- A person may complain to the ABA about *prohibited content* or *potential prohibited content* on the Internet, and the ABA must investigate the complaint.
- Internet content hosted in Australia is *prohibited content* if:
  - (a) the content has been classified RC (Refused Classification) or X by the Classification Board; or
  - (b) the content has been classified R by the Classification Board and access to the content is not subject to a restricted access system.
- Internet content hosted outside Australia is *prohibited content* if the Internet content has been classified RC (Refused Classification) or X by the Classification Board.
- Internet content is *potential prohibited content* if the content has not been classified by the Classification Board, but if it were to be classified, there is a substantial likelihood that the content would be prohibited content.
- If the ABA is satisfied that Internet content hosted in Australia is potential prohibited content, and is likely to be classified RC or X, the ABA must:

- (a) request the Classification Board to classify the content; and
  - (b) give the relevant Internet content host an *interim take-down notice* directing the host not to host the content pending the classification of the content.
- If the ABA is satisfied that Internet content hosted in Australia is potential prohibited content, and is likely to be classified R, the ABA must request the Classification Board to classify the content.
- If the ABA is satisfied that Internet content hosted in Australia is prohibited content, the ABA must give the relevant Internet content host a *final take-down notice* directing the host not to host the prohibited content.
- If the ABA is satisfied that Internet content hosted outside Australia is prohibited content or potential prohibited content, the ABA must:
  - (a) if the ABA considers that the content is of a sufficiently serious nature to warrant referral to a law enforcement agency—notify the content to an Australian police force; and
  - (b) notify the content to Internet service providers so that the providers can deal with the content in accordance with procedures specified in an industry code or industry standard (for example, procedures for the filtering, by technical means, of such content).
- Bodies and associations that represent sections of the Internet industry may develop industry codes.
- The ABA has a reserve power to make an industry standard if there are no industry codes or if an industry code is deficient.

- |   |
|---|
| <ul style="list-style-type: none"><li>• The ABA may make online provider determinations regulating Internet service providers and Internet content hosts.</li></ul> |
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### 3 Definitions

In this Schedule, unless the contrary intention appears:

**AAT** means the Administrative Appeals Tribunal.

**access** includes:

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

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

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

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

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

**Australian police force** means:

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

**business day** means a day that is not a Saturday, a Sunday or a public holiday in the place concerned.

**child** means an individual who is not an adult.

**civil proceeding** includes a civil action.

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

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

**classified** means classified under this Schedule.

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

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

**designated notification scheme** means a scheme:

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

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

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

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

**final take-down notice** means a notice under subclause 30(1) or paragraph 30(4)(b) of this Schedule.

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

**information** means information:

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

(f) whether in any combination of forms.

***interim take-down notice*** means a notice under subparagraph 30(2)(a)(i) of this Schedule.

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

***Internet content*** means information that:

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

but does not include:

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

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

***Internet service provider*** has the meaning given by clause 8.

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

***online provider rule*** has the meaning given by clause 79.

***ordinary electronic mail*** does not include a posting to a newsgroup.

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

***potential prohibited content*** has the meaning given by clause 11.

***prohibited content*** has the meaning given by clause 10.

***restricted access system*** has the meaning given by clause 4.

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

***special take-down notice*** means a notice under clause 36.

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

#### **4 Restricted access system**

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

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (2) In making an instrument under subclause (1), the ABA must have regard to:
  - (a) the objective of protecting children from exposure to Internet content that is unsuitable for children; and
  - (b) such other matters (if any) as the ABA considers relevant.
- (3) An instrument under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

#### **5 Internet content that consists of a film**

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

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

#### **6 Replacement of X classification**

- (1) If the *Classification (Publications, Films and Computer Games) Act 1995* is amended by replacing the classification X with another classification, this Schedule has effect as if each reference in this Schedule to the classification X were a reference to the other classification.
- (2) To avoid doubt, the rule in subclause (1) applies even if the other classification is not equivalent to the classification X.

## 7 Extended meaning of *use*

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

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

## Part 2—Internet service providers

### 8 Internet service providers

#### *Basic definition*

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

#### *Declared Internet service providers*

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

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (3) An instrument under subclause (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### 9 Supply to the public

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



the service is supplied to the public.

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

(3) If:

- (a) an Internet carriage service is used to supply point-to-multipoint services to end-users; and
- (b) at least one end-user is outside the immediate circle of the supplier of the service;

the service is supplied to the public.

(4) If:

- (a) an Internet carriage service is used to supply designated content services (other than point-to-multipoint services) to end-users; and
- (b) at least one end-user is outside the immediate circle of the supplier of the service;

the service is supplied to the public.

(5) For the purposes of this clause, a **designated content service** is a content service of a kind specified in a written determination made by the Minister.

(6) A determination under subclause (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(7) In this clause:

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

## Part 3—Prohibited content

### Division 1—Prohibited content and potential prohibited content

#### 10 Prohibited content

##### *Internet content hosted in Australia*

- (1) For the purposes of this Schedule, Internet content hosted in Australia is **prohibited content** if:
  - (a) the Internet content has been classified RC or X by the Classification Board; or
  - (b) both:
    - (i) the Internet content has been classified R by the Classification Board; and
    - (ii) access to the Internet content is not subject to a restricted access system.

##### *Internet content hosted outside Australia*

- (2) For the purposes of this Schedule, Internet content hosted outside Australia is **prohibited content** if the Internet content has been classified RC or X by the Classification Board.

Note: **Classified** means classified under this Schedule—see clause 3.

#### 11 Potential prohibited content

- (1) For the purposes of this Schedule, Internet content is **potential prohibited content** if:
  - (a) the Internet content has not been classified by the Classification Board; and
  - (b) if the Internet content were to be classified by the Classification Board, there is a substantial likelihood that the Internet content would be prohibited content.
- (2) In determining whether particular Internet content is potential prohibited content, it is to be assumed that this Schedule authorised the Classification Board to classify the Internet content.

## **12 Classification of Internet content that consists of a film or a computer game**

### *Deemed classification*

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

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

### *Actual classification*

- (2) If:
- (a) Internet content consists of:
    - (i) the entire unmodified contents of a film; or
    - (ii) a computer game; and
  - (b) the film or computer game has not been classified under the *Classification (Publications, Films and Computer Games) Act 1995*;

the Classification Board is to classify the Internet content under this Schedule in a corresponding way to the way in which the film or computer game, as the case may be, would be classified under the *Classification (Publications, Films and Computer Games) Act 1995*.

## **13 Classification of Internet content that does not consist of a film or a computer game**

If Internet content does not consist of:

- (a) the entire unmodified contents of a film; or
- (b) a computer game;

the Classification Board is to classify the Internet content under this Schedule in a corresponding way to the way in which a film

would be classified under the *Classification (Publications, Films and Computer Games) Act 1995*.

## **Division 2—Reclassification**

### **14 Reclassification of Internet content**

- (1) If Internet content has been classified by the Classification Board (otherwise than because of subclause 12(1)):
  - (a) the Classification Board must not reclassify the content within the 2-year period beginning on the day on which the classification occurred; and
  - (b) after that 2-year period, the Classification Board may reclassify the content.
- (2) The Classification Board may act under paragraph (1)(b):
  - (a) if required to do so by the Minister or the ABA; or
  - (b) on the Classification Board's own initiative.
- (3) If the Minister or the ABA requires the Classification Board to act under paragraph (1)(b), the Classification Board must do so.
- (4) If Internet content is reclassified by the Classification Board, the Classification Board must notify the ABA accordingly.

### **15 Notice of intention to reclassify Internet content**

- (1) If:
  - (a) Internet content has been classified by the Classification Board (otherwise than because of subclause 12(1)); and
  - (b) the Classification Board intends to reclassify the content;then:
  - (c) the Director of the Classification Board must give notice of that intention, inviting submissions about the matter; and
  - (d) the Director of the Classification Board must cause the contents of the notice to be published, in such manner as the Director decides, at least 30 days before the Classification Board proposes to consider the matter; and
  - (e) the Director of the Classification Board must give a copy of the notice to the Minister and to the ABA at least 30 days

before the Classification Board proposes to consider the matter.

- (2) A notice under paragraph (1)(c) must specify the day on which the Board proposes to consider the matter.
- (3) The matters that the Classification Board is to take into account in reclassifying the Internet content include issues raised in submissions made to the Classification Board about the matter.

### **Division 3—Review of classification decisions**

#### **Subdivision A—Review of classification of Internet content**

##### **16 Persons who may apply for review**

If Internet content has been classified by the Classification Board (otherwise than because of subclause 12(1)), any of the following persons may apply to the Classification Review Board for a review of the classification:

- (a) the Minister;
- (b) the ABA;
- (c) an Internet service provider who supplies an Internet carriage service that enables end-users to access the content;
- (d) an Internet content host who hosts the content in Australia, or proposes to host the content in Australia;
- (e) a person aggrieved by the classification.

##### **17 Applications for review**

- (1) An application for review of a classification must be:
  - (a) in writing; and
  - (b) made in a form approved in writing by the Convenor of the Classification Review Board; and
  - (c) signed by or on behalf of the applicant; and
  - (d) except for an application made by the Minister—accompanied by the fee ascertained under subclause (4).
- (2) An application by the Minister or the ABA for review of a classification may be made at any time.

- (3) Any other application for review of a classification must be made:
  - (a) within 30 days after the applicant became aware of the classification; or
  - (b) within such longer period as the Classification Review Board allows.
- (4) Regulations prescribing fees for the purposes of paragraph 43(1)(d) of the *Classification (Publications, Films and Computer Games) Act 1995* apply, subject to such modifications (if any) as are specified in regulations made for the purposes of this subclause, to a review of a classification under this Schedule in a corresponding way to the way in which they apply to a review of a classification under that Act.
- (5) A fee under subclause (1) must not be such as to amount to taxation.
- (6) In this clause:  
*modifications* includes additions, omissions and substitutions.

## 18 Review

- (1) For the purposes of reviewing a classification of Internet content, the Classification Review Board:
  - (a) may exercise all the powers and discretions that are conferred on the Classification Board by this Schedule; and
  - (b) must make a decision in writing:
    - (i) confirming the classification; or
    - (ii) reclassifying the content.
- (2) If the Classification Review Board reclassifies the Internet content, this Schedule (other than this Subdivision) has effect as if the content had been reclassified by the Classification Board.

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

### **19 Review of classification of Internet content that consists of a film or a computer game**

If:

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

## **Division 4—Miscellaneous**

### **20 Fees for classification of Internet content**

- (1) The ABA is liable to pay fees in respect of the classification under this Schedule of Internet content.
- (2) The amount of a fee payable under subclause (1) is ascertained under whichever of subclause (3), (4) or (5) is applicable.

#### *Films*

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

#### *Computer games*

- (4) If Internet content consists of a computer game, regulations prescribing fees for the purposes of paragraph 17(1)(d) of the *Classification (Publications, Films and Computer Games) Act*

*1995* apply, subject to such modifications (if any) as are specified in regulations made for the purposes of this subclause, in relation to the classification under this Schedule of the content in a corresponding way to the way in which they apply to the classification under that Act of the computer game.

*Content other than films or computer games*

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

*Fees must not be such as to amount to taxation*

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

*Definitions*

- (7) In this clause:
- classification under this Schedule*** means classification under this Schedule that is sought by the ABA (otherwise than by way of an application under clause 16).

***modifications*** includes additions, omissions and substitutions.

## **21 Decisions of the Classification Board etc.**

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



- (2) To avoid doubt, sections 10, 19, 20, 22, 25, 26, 27 and 28 of the *Classification (Publications, Films and Computer Games) Act 1995* do not apply to a classification under this Schedule.

## **Part 4—Complaints to, and investigations by, the ABA**

### **Division 1—Making of complaints to the ABA**

#### **22 Complaints about prohibited content or potential prohibited content**

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

- (1) If a person has reason to believe that end-users in Australia can access prohibited content or potential prohibited content using an Internet carriage service, the person may make a complaint to the ABA about the matter.

*Complaints relating to Internet content hosts*

- (2) If a person has reason to believe that an Internet content host is:
- (a) hosting prohibited content in Australia; or
  - (b) hosting potential prohibited content in Australia;
- the person may make a complaint to the ABA about the matter.

*Content of complaint*

- (3) A complaint under subclause (1) or (2) about particular Internet content must:
- (a) identify the Internet content; and
  - (b) set out how to access the Internet content (for example: set out a URL, a password, or the name of a newsgroup); and
  - (c) if the complainant knows the country or countries in which the Internet content is hosted—set out the name of that country or those countries; and
  - (d) set out the complainant's reasons for believing that the Internet content is prohibited content or potential prohibited content; and

- (e) set out such other information (if any) as the ABA requires.
- (4) The rule in paragraph (3)(b) does not apply to a complaint to the extent (if any) to which finding out how to access the Internet content would cause the complainant to contravene a law of a State or Territory.

*Transitional*

- (5) A person is not entitled to make a complaint under subclause (1) or (2) about something that occurs before 1 January 2000.

### **23 Complaints about breaches of online provider rules etc.**

If a person has reason to believe that an Internet service provider, or an Internet content host:

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

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

### **24 Form of complaint**

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

### **25 Residency etc. of complainant**

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

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

## **Division 2—Investigations by the ABA**

### **26 Investigation of complaints by the ABA**

- (1) The ABA must investigate a complaint under Division 1.
- (2) However, the ABA need not investigate the complaint if:
  - (a) the ABA is satisfied that the complaint is:
    - (i) frivolous; or
    - (ii) vexatious; or
    - (iii) not made in good faith; or
  - (b) the ABA has reason to believe that the complaint was made for the purpose, or for purposes that include the purpose, of frustrating or undermining the effective administration of this Schedule.
- (3) The ABA must notify the complainant of the results of such an investigation.
- (4) The ABA may terminate such an investigation if it is of the opinion that it does not have sufficient information to conclude the investigation.

### **27 ABA may investigate matters on its own initiative**

- (1) The ABA may investigate any of the following matters if the ABA thinks that it is desirable to do so:
  - (a) whether an Internet service provider is supplying an Internet carriage service that enables end-users to access prohibited content or potential prohibited content;
  - (b) whether an Internet content host is hosting prohibited content, or potential prohibited content, in Australia;
  - (c) whether an Internet service provider, or an Internet content host:
    - (i) has contravened a code registered under Part 5 of this Schedule that is applicable to the provider or host; or
    - (ii) has contravened an online provider rule that is applicable to the provider or host.
- (2) Paragraphs (1)(a) and (b) do not authorise the ABA to investigate something that occurs before 1 January 2000.

## **28 Conduct of investigations**

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

## **29 Protection from civil proceedings**

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

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

## **Division 3—Action to be taken in relation to a complaint about prohibited content hosted in Australia**

### **30 Action to be taken in relation to a complaint about prohibited content hosted in Australia**

#### *Prohibited content*

- (1) If, in the course of an investigation under Division 2, the ABA is satisfied that Internet content hosted in Australia is prohibited content, the ABA must give the relevant Internet content host a written notice (a *final take-down notice*) directing the Internet content host not to host the prohibited content.

#### *Potential prohibited content*

- (2) The following provisions have effect if, in the course of an investigation under Division 2, the ABA is satisfied that Internet content hosted in Australia is potential prohibited content:

- (a) if the ABA is satisfied that, if the Internet content were to be classified by the Classification Board, there is a substantial likelihood that the Internet content would be classified RC or X—the ABA must:
    - (i) give the relevant Internet content host a written notice (an *interim take-down notice*) directing the Internet content host not to host the Internet content until the ABA notifies the host under subclause (4) of the Classification Board’s classification of the Internet content; and
    - (ii) request the Classification Board to classify the Internet content;
  - (b) if the ABA is satisfied that, if the Internet content were to be classified by the Classification Board, there is a substantial likelihood that the Internet content would be classified R—the ABA must request the Classification Board to classify the Internet content.
- (3) If the Classification Board receives a request under paragraph (2)(a) or (b) to classify particular Internet content, the Classification Board must:
- (a) classify the content; and
  - (b) inform the ABA, in writing, of its classification.
- (4) If the ABA is informed under paragraph (3)(b) of the classification of particular Internet content, the ABA must:
- (a) give the relevant Internet content host a written notice setting out the classification; and
  - (b) in a case where the effect of the classification is that the Internet content is prohibited content—give the Internet content host a written notice (a *final take-down notice*) directing the host not to host the prohibited content.
- (5) If the ABA requests the Classification Board to classify particular Internet content:
- (a) the ABA must give the Classification Board:
    - (i) sufficient information about the content to enable the Classification Board to access the content; or
    - (ii) a copy of the content; and

- (b) the ABA must give the Classification Board sufficient information about the content to enable the Classification Board to classify the content; and
  - (c) the ABA may, at the request of the Classification Board or on its own initiative, give the Classification Board additional information about the content if the ABA is of the opinion that the additional information would be likely to facilitate the classification of the content.
- (6) If the ABA makes a decision under paragraph (2)(b) to request the Classification Board to classify Internet content, the ABA must give the relevant Internet content host a written notice setting out the decision.

### **31 Deferral of action in order to avoid prejudicing a criminal investigation**

- (1) If:
- (a) in the course of an investigation under Division 2, the ABA is satisfied that Internet content hosted in Australia is prohibited content or potential prohibited content; and
  - (b) apart from this subclause, the ABA would be required to take action under subclause 30(1) or (2) in relation to the content; and
  - (c) a member of an Australian police force satisfies the ABA that the taking of that action should be deferred until the end of a particular period in order to avoid prejudicing a criminal investigation;
- the ABA may defer taking that action until the end of that period.
- (2) Subclause (1) has effect despite anything in clause 30.

### **32 Revocation of final take-down notices—subsequent implementation of restricted access system for R-rated content**

- (1) If:
- (a) a final take-down notice relating to particular Internet content is applicable to a particular Internet content host; and
  - (b) the Internet content has been classified R by the Classification Board; and

- (c) at the time when the final take-down notice was issued, access to the Internet content was not subject to a restricted access system; and
  - (d) the Internet content host satisfies the ABA that:
    - (i) at a later time when the final take-down notice was in force, a restricted access system was implemented in relation to the Internet content; and
    - (ii) as a result of that implementation, the content ceases to be prohibited content;the ABA must revoke the final take-down notice.
- (2) If a final take-down notice is revoked under this clause, the ABA must give the Internet content host concerned a written notice stating that the final take-down notice has been revoked.

### **33 Revocation of interim take-down notices—voluntary withdrawal of Internet content**

- (1) If:
- (a) an interim take-down notice relating to particular Internet content is applicable to a particular Internet content host; and
  - (b) before the Classification Board classifies the Internet content, the Internet content host:
    - (i) ceases to host the Internet content; and
    - (ii) gives the ABA a written undertaking not to host the Internet content;the ABA may:
    - (c) accept the undertaking; and
    - (d) revoke the interim take-down notice; and
    - (e) by written notice given to the Classification Board, determine that the Classification Board is not required to comply with subclause 30(3) in relation to the classification of the Internet content.
- (2) If an interim take-down notice is revoked under this clause, the ABA must give the Internet content host concerned a written notice stating that the interim take-down notice has been revoked.

**34 Revocation of take-down notices—reclassification of Internet content**

- (1) If:
- (a) Internet content has been classified by the Classification Board (otherwise than because of subclause 12(1)); and
  - (b) a final take-down notice relating to the Internet content is applicable to a particular Internet content host; and
  - (c) the Classification Board reclassifies the Internet content; and
  - (d) as a result of the reclassification, the content ceases to be prohibited content;
- the ABA must revoke the final take-down notice.
- (2) If a final take-down notice is revoked under this clause, the ABA must give the Internet content host concerned a written notice stating that the final take-down notice has been revoked.

**35 Revocation of take-down notices—reclassification of Internet content that consists of a film or a computer game**

- (1) If:
- (a) Internet content consists of:
    - (i) the entire unmodified contents of a film; or
    - (ii) a computer game; and
  - (b) the Classification Board reclassifies the film or computer game under the *Classification (Publications, Films and Computer Games) Act 1995*; and
  - (c) a final take-down notice relating to the Internet content is applicable to a particular Internet content host; and
  - (d) as a result of the reclassification, the Internet content ceases to be prohibited content;
- the ABA must revoke the final take-down notice.
- (2) If a final take-down notice is revoked under this clause, the ABA must give the Internet content host concerned a written notice stating that the final take-down notice has been revoked.

**36 Anti-avoidance—special take-down notices**

If:

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- (a) an interim take-down notice or a final take-down notice relating to particular Internet content is applicable to a particular Internet content host; and
  - (b) the ABA is satisfied that the Internet content host is hosting in Australia, or is proposing to host in Australia, Internet content (the *similar Internet content*) that is the same as, or substantially similar to, the Internet content identified in the interim take-down notice or the final take-down notice, as the case may be; and
  - (c) the ABA is satisfied that the similar Internet content is prohibited content or potential prohibited content;
- the ABA may give the Internet content host a written notice (a *special take-down notice*) directing the host not to host the similar Internet content at any time when the interim take-down notice or final take-down notice, as the case may be, is in force.

### **37 Compliance with rules relating to prohibited content etc.**

#### *Interim take-down notice*

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

#### *Final take-down notice*

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

#### *Special take-down notice*

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

#### *Undertaking*

- (4) An Internet content host must comply with an undertaking given by the host and accepted under clause 33.

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

### **38 Identification of Internet content**

Internet content may be identified in a notice under this Division:

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

### **39 Application of notices under this Division**

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

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

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

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

- (1) If, in the course of an investigation under Division 2, the ABA is satisfied that Internet content hosted outside Australia is prohibited content or potential prohibited content, the ABA must:
  - (a) if the ABA considers the content is of a sufficiently serious nature to warrant referral to a law enforcement agency (whether in or outside Australia)—notify the content to:
    - (i) a member of an Australian police force; or
    - (ii) if there is an arrangement between the ABA and the chief (however described) of an Australian police force under which the ABA is authorised to notify the content to a another person or body (whether in or outside Australia)—that other person or body; and
  - (b) if a code registered, or standard determined, under Part 5 of this Schedule deals with the matters referred to in subclause 60(2)—notify the content to Internet service providers under the designated notification scheme set out in the code or standard, as the case may be; and

(c) if paragraph (b) does not apply—give each Internet service provider known to the ABA a written notice (a ***standard access-prevention notice***) directing the provider to take all reasonable steps to prevent end-users from accessing the content.

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

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

*Recognised alternative access-prevention arrangements*

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

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

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

- (7) An instrument under subclause (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

*Referral to law enforcement agency*

- (8) The manner in which Internet content may be notified under paragraph (1)(a) to a member of an Australian police force includes (but is not limited to) a manner ascertained in accordance with an arrangement between the ABA and the chief (however described) of the police force concerned.
- (9) If a member of an Australian police force is notified of particular Internet content under this clause, the member may notify the content to a member of another law enforcement agency (whether in or outside Australia).
- (10) This clause does not, by implication, limit the ABA's powers to refer other matters to a member of an Australian police force.

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

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

**42 Withdrawal of notification of content—reclassification of Internet content**

- (1) If:
- (a) Internet content has been classified by the Classification Board (otherwise than because of subclause 12(1)); and

- (b) the Internet content has been notified to Internet service providers as mentioned in paragraph 40(1)(b) of this Schedule; and
- (c) the Classification Board reclassifies the Internet content; and
- (d) as a result of the reclassification, the Internet content ceases to be prohibited content;

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

(2) If:

- (a) a notification of Internet content is withdrawn under subclause (1); and
- (b) a code registered, or standard determined, under Part 5 of this Schedule deals with the matters referred to in subclause 60(2);

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

#### **43 Withdrawal of notification of content—reclassification of Internet content that consists of a film or a computer game**

(1) If:

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

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

(2) If:

- (a) a notification of Internet content is withdrawn under subclause (1); and
- (b) a code registered, or standard determined, under Part 5 of this Schedule deals with the matters referred to in subclause 60(2);

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

**44 Revocation of standard access-prevention notice—reclassification of Internet content**

- (1) If:
  - (a) Internet content has been classified by the Classification Board (otherwise than because of subclause 12(1)); and
  - (b) a standard access-prevention notice relating to the Internet content is applicable to a particular Internet service provider; and
  - (c) the Classification Board reclassifies the Internet content; and
  - (d) as a result of the reclassification, the content ceases to be prohibited content;

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

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

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

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

- (1) If:
  - (a) Internet content consists of:
    - (i) the entire unmodified contents of a film; or
    - (ii) a computer game; and

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

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

#### **46 Anti-avoidance—notified Internet content**

- (1) If:
- (a) particular Internet content has been notified to Internet service providers as mentioned in paragraph 40(1)(b) of this Schedule; and
  - (b) the notification has not been withdrawn; and
  - (c) the ABA is satisfied that Internet content (the *similar Internet content*) that is the same as, or substantially similar to, the first-mentioned Internet content is being hosted outside Australia; and
  - (d) the ABA is satisfied that the similar Internet content is prohibited content or potential prohibited content; and
  - (e) a code registered, or standard determined, under Part 5 of this Schedule deals with the matters referred to in subclause 60(2);
- the ABA must notify the similar Internet content to Internet service providers under the designated notification scheme set out in the code or standard, as the case may be.

- (2) If:

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

#### **47 Anti-avoidance—special access-prevention notice**

- (1) If:
- (a) a standard access-prevention notice relating to particular Internet content is applicable to a particular Internet service provider; and
  - (b) the ABA is satisfied that the Internet service provider is supplying an Internet carriage service that enables end-users to access Internet content (the *similar Internet content*) that is the same as, or substantially similar to, the Internet content identified in the standard access-prevention notice; and
  - (c) the ABA is satisfied that the similar Internet content is prohibited content or potential prohibited content;
- the ABA may give the provider a written notice (*special access-prevention notice*) directing the provider to take all reasonable steps to prevent end-users from accessing the similar Internet content at any time when the standard access-prevention notice is in force.

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



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

*Recognised alternative access-prevention arrangements*

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

#### **48 Compliance with access-prevention notices**

*Standard access-prevention notice*

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

*Special access-prevention notice*

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

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

#### **49 Notification of Internet content**

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

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

## 50 Application of notifications under this Division

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

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

## 51 ABA may be taken to have issued access-prevention notices

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

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

- (3) Paragraph 40(1)(c) of this Schedule has effect, in relation to a scheme under subclause (1), as if the reference in that paragraph to each Internet service provider known to the ABA were a reference to each Internet service provider.
- (4) An instrument under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **Part 5—Industry codes and industry standards**

### **Division 1—Simplified outline**

#### **52 Simplified outline**

The following is a simplified outline of this Part.

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

### **Division 2—Interpretation**

#### **53 Industry codes**

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

#### **54 Industry standards**

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

#### **55 Internet activity**

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

- (a) supplying an Internet carriage service; or

- (b) hosting Internet content in Australia.

### 56 Sections of the Internet industry

- (1) For the purposes of this Part, *sections of the Internet industry* are to be ascertained in accordance with this clause.
- (2) For the purposes of this Part, each of the following groups is a *section of the Internet industry*:
  - (a) Internet service providers;
  - (b) Internet content hosts.

### 57 Participants in a section of the Internet industry

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

### 58 Designated body

- (1) The Minister may, by written instrument, declare that a specified body or association is the *designated body* for the purposes of this Part. The declaration has effect accordingly.
- (2) An instrument under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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

### 59 Statement of regulatory policy

- (1) The Parliament intends that bodies or associations that the ABA is satisfied represent the Internet content host section of the Internet industry should develop a single code (*industry code*) that is to apply to participants in that section of the industry in relation to the Internet activities of the participants.
- (2) The Parliament intends that bodies or associations that the ABA is satisfied represent the Internet service provider section of the Internet industry should develop no more than 2 codes (*industry*

*codes*) that are to apply to participants in that section of the industry in relation to the Internet activities of the participants.

- (3) The Parliament intends that, for the Internet service provider section of the Internet industry, one of those industry codes should deal exclusively with the matters set out in subclause 60(2).
- (4) The Parliament intends that the ABA should make reasonable efforts to ensure that, for each section of the Internet industry, either:
  - (a) an industry code is registered under this Part before 1 January 2000; or
  - (b) an industry standard is registered under this Part before 31 March 2000.

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

*Both sections of the Internet industry*

- (1) The Parliament intends that, for both sections of the Internet industry, there should be:
  - (a) an industry code or an industry standard that deals with; or
  - (b) an industry code and an industry standard that together deal with;each of the following matters:
  - (c) procedures directed towards the achievement of the objective of ensuring that online accounts are not provided to children without the consent of a parent or responsible adult;
  - (d) giving parents and responsible adults information about how to supervise and control children's access to Internet content;
  - (e) procedures to be followed in order to assist parents and responsible adults to supervise and control children's access to Internet content;
  - (f) procedures to be followed in order to inform producers of Internet content about their legal responsibilities in relation to that content;
  - (g) telling customers about their rights to make complaints under clause 22 or 23;
  - (h) procedures to be followed in order to assist customers to make complaints under clause 22 or 23;

- (i) procedures to be followed in order to deal with complaints about unsolicited electronic mail that promotes or advertises one or more:
  - (i) Internet sites; or
  - (ii) distinct parts of Internet sites;that enable, or purport to enable, end-users to access information that is likely to cause offence to a reasonable adult;
- (j) action to be taken to assist in the development and implementation of Internet content filtering technologies (including labelling technologies);
- (k) giving customers information about the availability, use and appropriate application of Internet content filtering software;
- (l) procedures directed towards the achievement of the objective of ensuring that customers have the option of subscribing to a filtered Internet carriage service;
- (m) procedures directed towards the achievement of the objective of ensuring that, in the event that a participant in the relevant section of the Internet industry becomes aware that an Internet content host is hosting prohibited content in Australia, the host is told about the prohibited content.

*Internet service provider section of the Internet industry*

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

*Designated alternative access-prevention arrangements*

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

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

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

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (6) The following are examples of arrangements that could be declared to be designated alternative access-prevention arrangements:
- (a) an arrangement that involves the use of regularly updated Internet content filtering software;
  - (b) an arrangement that involves the use of a “family-friendly” filtered Internet carriage service.
- (7) For the purposes of this Schedule, if an industry code:
- (a) deals to any extent with procedures to be followed by Internet service providers in dealing with Internet content notified under paragraph 40(1)(b) of this Schedule or clause 46; and

- (b) makes provision as mentioned in subclause (3);  
then:
  - (c) the code is taken to deal with the matter set out in paragraph (2)(d); and
  - (d) the code is taken to be consistent with subclause (2).
- (8) For the purposes of this Schedule, if an industry standard:
  - (a) deals to any extent with procedures to be followed by Internet service providers in dealing with Internet content notified under paragraph 40(1)(b) of this Schedule or clause 46; and
  - (b) makes provision as mentioned in subclause (3);  
then:
    - (c) the standard is taken to deal with the matter set out in paragraph (2)(d); and
    - (d) the standard is taken to be consistent with subclause (2).

*Clause does not limit matters*

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

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

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

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

## **Division 4—Industry codes**

### **62 Registration of industry codes**

- (1) This clause applies if:
    - (a) the ABA is satisfied that a body or association represents a particular section of the Internet industry; and
-



- (b) that body or association develops an industry code that applies to participants in that section of the industry and deals with one or more matters relating to the Internet activities of those participants; and
- (c) the body or association gives a copy of the code to the ABA; and
- (d) the ABA is satisfied that:
  - (i) to the extent to which the code deals with one or more matters of substantial relevance to the community—the code provides appropriate community safeguards for that matter or those matters; and
  - (ii) to the extent to which the code deals with one or more matters that are not of substantial relevance to the community—the code deals with that matter or those matters in an appropriate manner; and
- (e) the ABA is satisfied that, before giving the copy of the code to the ABA:
  - (i) the body or association published a draft of the code and invited members of the public to make submissions to the body or association about the draft within a specified period; and
  - (ii) the body or association gave consideration to any submissions that were received from members of the public within that period; and
- (f) the ABA is satisfied that, before giving the copy of the code to the ABA:
  - (i) the body or association published a draft of the code and invited participants in that section of the industry to make submissions to the body or association about the draft within a specified period; and
  - (ii) the body or association gave consideration to any submissions that were received from participants in that section of the industry within that period; and
- (g) the ABA is satisfied that the designated body has been consulted about the development of the code; and
- (h) in a case where the code relates to the Internet content host section of the Internet industry—the ABA is satisfied that the code is consistent with subclauses 59(1) and 60(1); and
- (i) in a case where the code:

- (i) relates to the Internet service provider section of the Internet industry; and
- (ii) does not deal with a matter set out in subclause 60(2); the code is consistent with subclauses 59(2) and 60(1); and
- (j) in a case where the code:
  - (i) relates to the Internet service provider section of the Internet industry; and
  - (ii) deals with a matter set out in subclause 60(2); the code is consistent with subclauses 59(2) and (3) and 60(2).

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

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

### 63 ABA may request codes

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

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

#### **64 Publication of notice where no body or association represents a section of the Internet industry**

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

#### **65 Replacement of industry codes**

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

- (2) If the replacement code differs only in minor respects from the original code, clause 62 has effect, in relation to the registration of the code, as if paragraphs 62(1)(e) and (f) of this Schedule had not been enacted.

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

## **66 Compliance with industry codes**

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

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

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

## **67 Formal warnings—breach of industry codes**

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

## **Division 5—Industry standards**

### **68 ABA may determine an industry standard if a request for an industry code is not complied with**

- (1) This clause applies if:
- (a) the ABA has made a request under subclause 63(1) in relation to the development of a code that is to:
    - (i) apply to participants in a particular section of the Internet industry; and
    - (ii) deal with one or more matters relating to the Internet activities of those participants; and

- (b) any of the following conditions is satisfied:
    - (i) the request is not complied with;
    - (ii) if indicative targets for achieving progress in the development of the code were specified in the notice of request—any of those indicative targets were not met;
    - (iii) the request is complied with, but the ABA subsequently refuses to register the code; and
  - (c) the ABA is satisfied that it is necessary or convenient for the ABA to determine a standard in order to:
    - (i) provide appropriate community safeguards in relation to that matter or those matters; or
    - (ii) otherwise regulate adequately participants in that section of the industry in relation to that matter or those matters.
- (2) The ABA may, by written instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subclause is to be known as an **industry standard**.
  - (3) Before determining an industry standard under this clause, the ABA must consult the body or association to whom the request mentioned in paragraph (1)(a) was made.
  - (4) A standard under subclause (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
  - (5) The Minister may give the ABA a written direction as to the exercise of its powers under this clause.

**69 ABA may determine industry standard where no industry body or association formed**

- (1) This clause applies if:
  - (a) the ABA is satisfied that a particular section of the Internet industry is not represented by a body or association; and
  - (b) the ABA has published a notice under subclause 64(1) relating to that section of the industry; and
  - (c) that notice:
    - (i) states that, if such a body or association were to come into existence within a particular period, the ABA

- would be likely to give a notice to that body or association under subclause 63(1); and
- (ii) sets out one or more matters relating to the Internet activities of the participants in that section of the industry; and
- (d) no such body or association comes into existence within that period; and
- (e) the ABA is satisfied that it is necessary or convenient for the ABA to determine a standard in order to:
- (i) provide appropriate community safeguards in relation to that matter or those matters; or
  - (ii) otherwise regulate adequately participants in that section of the industry in relation to that matter or those matters.
- (2) The ABA may, by written instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subclause is to be known as an *industry standard*.
- (3) A standard under subclause (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) The Minister may give the ABA a written direction as to the exercise of its powers under this clause.

**70 ABA may determine industry standards—total failure of industry codes**

- (1) This clause applies if:
- (a) an industry code that:
    - (i) applies to participants in a particular section of the Internet industry; and
    - (ii) deals with one or more matters relating to the Internet activities of those participants;has been registered under this Part for at least 180 days; and
  - (b) the ABA is satisfied that the code is totally deficient (as defined by subclause (7)); and
  - (c) the ABA has given the body or association that developed the code a written notice requesting that deficiencies in the code be addressed within a specified period; and

- (d) that period ends and the ABA is satisfied that it is necessary or convenient for the ABA to determine a standard that applies to participants in that section of the industry and deals with that matter or those matters.
- (2) The period specified in a notice under paragraph (1)(c) must run for at least 30 days.
- (3) The ABA may, by written instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subclause is to be known as an *industry standard*.
- (4) If the ABA is satisfied that a body or association represents that section of the industry, the ABA must consult the body or association before determining an industry standard under subclause (3).
- (5) A standard under subclause (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) The industry code ceases to be registered under this Part on the day on which the industry standard comes into force.
- (7) For the purposes of this clause, an industry code that applies to participants in a particular section of the Internet industry and deals with one or more matters relating to the Internet activities of those participants is *totally deficient* if, and only if:
  - (a) the code is not operating to provide appropriate community safeguards in relation to that matter or those matters; or
  - (b) the code is not otherwise operating to regulate adequately participants in that section of the industry in relation to that matter or those matters.
- (8) The Minister may give the ABA a written direction as to the exercise of its powers under this clause.

**71 ABA may determine industry standards—partial failure of industry codes**

- (1) This clause applies if:
  - (a) an industry code that:

- (i) applies to participants in a particular section of the Internet industry; and
  - (ii) deals with 2 or more matters relating to the Internet activities of those participants;
- has been registered under this Part for at least 180 days; and
- (b) clause 70 does not apply to the code; and
  - (c) the ABA is satisfied that the code is deficient (as defined by subclause (7)) to the extent to which the code deals with one or more of those matters (the *deficient matter* or *deficient matters*); and
  - (d) the ABA has given the body or association that developed the code a written notice requesting that deficiencies in the code be addressed within a specified period; and
  - (e) that period ends and the ABA is satisfied that it is necessary or convenient for the ABA to determine a standard that applies to participants in that section of the industry and deals with the deficient matter or deficient matters.
- (2) The period specified in a notice under paragraph (1)(c) must run for at least 30 days.
  - (3) The ABA may, by written instrument, determine a standard that applies to participants in that section of the industry and deals with the deficient matter or deficient matters. A standard under this subclause is to be known as an *industry standard*.
  - (4) If the ABA is satisfied that a body or association represents that section of the industry, the ABA must consult the body or association before determining an industry standard under subclause (3).
  - (5) A standard under subclause (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
  - (6) On and after the day on which the industry standard comes into force, the industry code has no effect to the extent to which it deals with the deficient matter or deficient matters. However, this subclause does not affect:
    - (a) the continuing registration of the remainder of the industry code; or



- (b) any investigation, proceeding or remedy in respect of a contravention of the industry code or clause 66 that occurred before that day.
- (7) For the purposes of this clause, an industry code that applies to participants in a particular section of the Internet industry and deals with 2 or more matters relating to the Internet activities of those participants is *deficient* to the extent to which it deals with a particular one of those matters if, and only if:
  - (a) the code is not operating to provide appropriate community safeguards in relation to that matter; or
  - (b) the code is not otherwise operating to regulate adequately participants in that section of the industry in relation to that matter.
- (8) The Minister may give the ABA a written direction as to the exercise of its powers under this clause.

## **72 Compliance with industry standards**

If:

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

the person must comply with the industry standard.

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

## **73 Formal warnings—breach of industry standards**

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

## **74 Variation of industry standards**

- (1) The ABA may, by written instrument, vary an industry standard that applies to participants in a particular section of the Internet

industry if it is satisfied that it is necessary or convenient to do so to:

- (a) provide appropriate community safeguards in relation to one or more matters relating to the Internet activities of those participants; and
  - (b) otherwise regulate adequately those participants in relation to one or more matters relating to the Internet activities of those participants.
- (2) An instrument under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **75 Revocation of industry standards**

- (1) The ABA may, by written instrument, revoke an industry standard.
- (2) If:
- (a) an industry code is registered under this Part; and
  - (b) the code is expressed to replace an industry standard;
- the industry standard is revoked when the code is registered.
- (3) An instrument under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **76 Public consultation on industry standards**

- (1) Before determining or varying an industry standard, the ABA must:
- (a) cause to be published in a newspaper circulating in each State a notice:
    - (i) stating that the ABA has prepared a draft of the industry standard or variation; and
    - (ii) stating that free copies of the draft will be made available to members of the public during normal office hours throughout the period specified in the notice; and
    - (iii) specifying the place or places where the copies will be available; and
    - (iv) inviting interested persons to give written comments about the draft to the ABA within the period specified under subparagraph (ii); and

- (b) make copies of the draft available in accordance with the notice.
- (2) The period specified under subparagraph (1)(a)(ii) must run for at least 30 days after the publication of the notice.
- (3) Subclause (1) does not apply to a variation if the variation is of a minor nature.
- (4) If interested persons have given comments in accordance with a notice under subclause (1), the ABA must have due regard to those comments in determining or varying the industry standard, as the case may be.
- (5) In this clause:  
*State* includes the Northern Territory and the Australian Capital Territory.

### **77 Consultation with designated body**

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

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

## **Division 6—Register of industry codes and industry standards**

### **78 ABA to maintain Register of industry codes and industry standards**

- (1) The ABA is to maintain a Register in which the ABA includes:
  - (a) all industry codes required to be registered under this Part; and
  - (b) all industry standards; and
  - (c) all requests made under clause 63; and
  - (d) all notices under clause 64; and
  - (e) all directions under clause 66.

- (2) The Register may be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Internet.

## Part 6—Online provider rules

### 79 Online provider rules

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

- (a) the rule set out in subclause 37(1);
- (b) the rule set out in subclause 37(2);
- (c) the rule set out in subclause 37(3);
- (d) the rule set out in subclause 37(4);
- (e) the rule set out in subclause 48(1);
- (f) the rule set out in subclause 48(2);
- (g) the rule set out in subclause 66(2);
- (h) the rule set out in clause 72;
- (i) each of the rules (if any) set out in an online provider determination in force under clause 80.

### 80 Online provider determinations

- (1) The ABA may make a written determination setting out rules that apply to Internet service providers in relation to the supply of Internet carriage services.
- (2) The ABA may make a written determination setting out rules that apply to Internet content hosts in relation to the hosting of Internet content in Australia.
- (3) A determination under subclause (1) or (2) is called an *online provider determination*.
- (4) An online provider determination has effect only to the extent that:
  - (a) it is authorised by paragraph 51(v) of the Constitution (either alone or when read together with paragraph 51(xxxix) of the Constitution); or
  - (b) both:
    - (i) it is authorised by section 122 of the Constitution; and

- (ii) it would have been authorised by paragraph 51(v) of the Constitution (either alone or when read together with paragraph 51(xxxix) of the Constitution) if section 51 of the Constitution extended to the Territories.
- (5) The ABA must not make an online provider determination unless the determination relates to a matter specified in the regulations.
- (6) The ABA must not make an online provider determination if the determination relates to a matter specified in regulations in force for the purposes of subsection 99(3) of the *Telecommunications Act 1997*.
- (7) An online provider determination may make provision for or in relation to a particular matter by empowering the ABA to make decisions of an administrative character.
- (8) An online provider determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **81 Exemptions from online provider determinations**

- (1) The Minister may, by written instrument, determine that a specified Internet service provider, or a specified Internet content host, is exempt from online provider determinations.
- (2) The Minister may, by written instrument, determine that a specified Internet service provider, or a specified Internet content host, is exempt from a specified online provider determination.
- (3) A determination under this clause may be unconditional or subject to such conditions (if any) as are specified in the determination.
- (4) A determination under this clause has effect accordingly.
- (5) A determination under this clause is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **82 Compliance with online provider rules**

A person is guilty of an offence if:

- (a) an online provider rule is applicable to the person; and
- (b) the person contravenes the rule.

Penalty: 50 penalty units.

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

### **83 Remedial directions—breach of online provider rules**

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

Penalty for contravention of this subclause: 50 penalty units.

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

### **84 Formal warnings—breach of online provider rules**

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

### **85 Federal Court may order a person to cease supplying Internet carriage services or cease hosting Internet content**

- (1) If the ABA is satisfied that:
- (a) a person who is an Internet service provider is supplying an Internet carriage service otherwise than in accordance with an online provider rule; or
  - (b) a person who is an Internet content host is hosting Internet content in Australia otherwise than in accordance with an online provider rule;

the ABA may apply to the Federal Court for an order that the person cease supplying that Internet carriage service or cease hosting that Internet content in Australia, as the case requires.

- (2) If the Federal Court is satisfied, on such an application, that the person is:
- (a) supplying an Internet carriage service otherwise than in accordance with the online provider rule; or
  - (b) hosting Internet content in Australia otherwise than in accordance with the online provider rule;

the Federal Court may order the person to cease supplying that Internet carriage service or cease hosting that Internet content in Australia, as the case requires.

## **Part 7—Offences**

### **86 Continuing offences**

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

### **87 Conduct by directors, employees and agents**

#### *Body corporate*

- (1) If, in proceedings for an ancillary offence relating to this Schedule, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

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

*Person other than a body corporate*

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



(b) the person would not have been convicted of the offence if subclauses (3) and (4) had not been enacted;  
the person is not liable to be punished by imprisonment for that offence.

*State of mind*

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

*Director*

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

*Engaging in conduct*

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

*Ancillary offence relating to this Schedule*

- (9) A reference in this clause to an *ancillary offence relating to this Schedule* is a reference to an offence created by section 5, 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914* that relates to this Schedule.

## **Part 8—Protection from civil and criminal proceedings**

### **88 Protection from civil proceedings—Internet service providers and Internet content hosts**

#### *Internet service provider*

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

#### *Internet content host*

- (3) Civil proceedings do not lie against an Internet content host in respect of anything done by the host in compliance with clause 37.

### **89 Protection from criminal proceedings—ABA, Classification Board and Classification Review Board**

- (1) For the purposes of this clause, each of the following is a *protected person*:
  - (a) the ABA;
  - (b) a member or associate member of the ABA;
  - (c) a member of the staff of the ABA;
  - (d) a consultant engaged to assist in the performance of the ABA's functions;
  - (e) an officer whose services are made available to the ABA under subsection 165(3);
  - (f) a member or temporary member of the Classification Board;
  - (g) a member of the staff of the Classification Board;

- (h) a consultant engaged to assist in the performance of the Classification Board's functions;
  - (i) an officer whose services are made available to the Classification Board under subsection 54(3) of the *Classification (Publications, Films and Computer Games) Act 1995*;
  - (j) a member of the Classification Review Board.
- (2) Criminal proceedings do not lie against a protected person for or in relation to:
- (a) the collection of information or material; or
  - (b) the possession of information or material; or
  - (c) the distribution of information or material; or
  - (d) the delivery of information or material; or
  - (e) the copying of information or material; or
  - (f) the doing of any other thing in relation to information or material;
- in connection with the exercise of a power, or the performance of a function, conferred on the ABA, the Classification Board or the Classification Review Board by this Schedule.

*Definition*

- (3) In this clause:

*possession* includes have in custody or control.

## **Part 9—Operation of State and Territory laws etc.**

### **90 Concurrent operation of State and Territory laws**

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

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

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

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

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

*Declaration by Minister*

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

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

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

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (6) A declaration under subclause (4) or (5) has effect only to the extent that:
- (a) it is authorised by paragraph 51(v) of the Constitution (either alone or when read together with paragraph 51(xxxix) of the Constitution); or
  - (b) both:
    - (i) it is authorised by section 122 of the Constitution; and
    - (ii) it would have been authorised by paragraph 51(v) of the Constitution (either alone or when read together with paragraph 51(xxxix) of the Constitution) if section 51 of the Constitution extended to the Territories.
- (7) An instrument under subclause (2), (4) or (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **Part 10—Review of decisions**

### **92 Review by the AAT**

- (1) An application may be made to the AAT for a review of any of the following decisions made by the ABA:
- (a) a decision to give an Internet content host an interim take-down notice;
  - (b) a decision to give an Internet content host a final take-down notice;
  - (c) a decision to give an Internet content host a special take-down notice;
  - (d) a decision under paragraph 30(2)(b) of this Schedule to request the Classification Board to classify Internet content hosted in Australia by an Internet content host;
  - (e) a decision to give an Internet service provider a standard access-prevention notice;

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

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

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

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

## **Part 11—Miscellaneous**

### **94 Additional ABA functions**

The ABA has the following functions:

- (a) to monitor compliance with codes and standards registered under Part 5 of this Schedule;

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

### **95 Review before 1 January 2003**

- (1) Before 1 January 2003, the Minister must cause to be conducted a review of the operation of this Schedule.
- (2) The following matters are to be taken into account in conducting a review under subclause (1):
  - (a) the general development of Internet content filtering technologies;
  - (b) whether Internet content filtering technologies have developed to a point where it is practicable to use those technologies to prevent end-users from accessing R-rated information hosted outside Australia that is not subject to a restricted access system;
  - (c) any other relevant matters.
- (3) The Minister must cause to be prepared a report of a review under subclause (1).
- (4) The Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

- (5) The Parliament acknowledges the Government's policy intention that, in the event that Internet content filtering technologies develop to a point where it is practicable to use those technologies to prevent end-users from accessing R-rated information hosted outside Australia that is not subject to a restricted access system, legislation will be introduced into the Parliament to:
- (a) extend subclause 10(1) to Internet content hosted outside Australia; and
  - (b) repeal subclause 10(2).

**96 Schedule not to affect performance of State or Territory functions**

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



## **Schedule 2—Amendment of the Crimes Act 1914**

### **1 At the end of section 85ZE**

Add:

- (2) Paragraph (1)(b) does not apply to the use of a carriage service to carry Internet content.
- (3) This section is not intended to limit or exclude the concurrent operation of any law of a State or Territory.
- (4) In this section:

***Internet content*** has the same meaning as in Schedule 5 to the *Broadcasting Services Act 1992*.

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*[Minister's second reading speech made in—  
Senate on 21 April 1999  
House of Representatives on 21 June 1999]*

(77/99)