

1998-99

The Parliament of the
Commonwealth of Australia

THE SENATE

As read a third time

**Broadcasting Services Amendment
(Online Services) Bill 1999**

No. , 1999

**A Bill for an Act to amend the *Broadcasting
Services Act 1992*, and for other purposes**

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1 THIS Bill originated in the Senate; and,
2 having this day passed, is now ready for
3 presentation to the House of
4 Representatives for its concurrence.

5 HARRY EVANS
6 *Clerk of the Senate*

7 The Senate
8 26 May 1999

9 **A Bill for an Act to amend the *Broadcasting***
10 ***Services Act 1992, and for other purposes***

11 The Parliament of Australia enacts:

12 **1 Short title**

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

15 **2 Commencement**

16 This Act commences on the day on which it receives the Royal
17 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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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

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

6 (4) In this section:

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

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

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

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

11 **5 Paragraph 5(1)(a)**

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

13 **6 At the end of section 5**

14 Add:

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

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

21 **7 After section 216A**

22 Insert:

23 **216B Schedule 5 (online services)**

24 Schedule 5 has effect.

25 **8 Paragraph 18(2)(j) of Schedule 3**

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

27 **9 At the end of subclause 18(2) of Schedule 3**

28 Add:

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

7 **10 At the end of the Act**

8 Add:

9 **Schedule 5—Online services**

10 Note: See section 216B.

11 **Part 1—Introduction**

12
13 **1 Explanation of the context of this Schedule**

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

17 *This Schedule*

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

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

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

1 *Non-legislative initiatives*

2 (4) The third component of the proposed scheme will be a range of
3 non-legislative initiatives directed towards:

- 4 (a) monitoring content on the Internet; and
5 (b) educating and advising the public about content on the
6 Internet.

7 **2 Simplified outline**

8 The following is a simplified outline of this Schedule:

- 9 • This Schedule sets up a system for regulating certain aspects
10 of the Internet industry.
- 11 • A person may complain to the ABA about *prohibited content*
12 or *potential prohibited content* on the Internet, and the ABA
13 must investigate the complaint.
- 14 • Internet content hosted in Australia is *prohibited content* if:
- 15 (a) the content has been classified RC (Refused
16 Classification) or X by the Classification Board; or
- 17 (b) the content has been classified R by the
18 Classification Board and access to the content is
19 not subject to a restricted access system.
- 20 • Internet content hosted outside Australia is *prohibited content*
21 if the Internet content has been classified RC (Refused
22 Classification) or X by the Classification Board.
- 23 • Internet content is *potential prohibited content* if the content
24 has not been classified by the Classification Board, but if it
25 were to be classified, there is a substantial likelihood that the
26 content would be prohibited content.
- 27 • If the ABA is satisfied that Internet content hosted in
28 Australia is potential prohibited content, and is likely to be
29 classified RC or X, the ABA must:

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- (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.

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- The ABA may make online provider determinations regulating Internet service providers and Internet content hosts.

4 **3 Definitions**

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In this Schedule, unless the contrary intention appears:

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AAT means the Administrative Appeals Tribunal.

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access includes:

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

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10

(b) access by way of push technology; and

11

(c) access by way of a standing request.

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

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(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

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(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.

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adult means an individual who is 18 or older.

22

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

23

24

Australian police force means:

25

(a) the Australian Federal Police; or

26

(b) the police force of a State or Territory.

27

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

28

29

child means an individual who is not an adult.

30

civil proceeding includes a civil action.

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

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

7 **classified** means classified under this Schedule.

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

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

13 **designated notification scheme** means a scheme:

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

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

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

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

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

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

28 **information** means information:

- 29 (a) whether in the form of text; or
30 (b) whether in the form of data; or
31 (c) whether in the form of speech, music or other sounds; or
32 (d) whether in the form of visual images (animated or
33 otherwise); or

1 (e) whether in any other form; or

2 (f) whether in any combination of forms.

3 ***interim take-down notice*** means a notice under subparagraph
4 30(2)(a)(i) of this Schedule.

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

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

8 (a) is kept on a data storage device; and

9 (b) is accessed, or available for access, using an Internet carriage
10 service;

11 but does not include:

12 (c) ordinary electronic mail; or

13 (d) information that is transmitted in the form of a broadcasting
14 service.

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

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

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

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

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

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

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

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

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

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

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

1 *standard access-prevention notice* means a notice under paragraph
2 40(1)(c) of this Schedule.

3 **4 Restricted access system**

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

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

10 (2) In making an instrument under subclause (1), the ABA must have
11 regard to:

12 (a) the objective of protecting children from exposure to Internet
13 content that is unsuitable for children; and

14 (b) such other matters (if any) as the ABA considers relevant.

15 (3) An instrument under subclause (1) is a disallowable instrument for
16 the purposes of section 46A of the *Acts Interpretation Act 1901*.

17 **5 Internet content that consists of a film**

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

21 (a) the technique used to embody sounds and/or visual images in
22 the film; and

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

26 **6 Replacement of X classification**

27 (1) If the *Classification (Publications, Films and Computer Games)*
28 *Act 1995* is amended by replacing the classification X with another
29 classification, this Schedule has effect as if each reference in this
30 Schedule to the classification X were a reference to the other
31 classification.

- 1 (2) To avoid doubt, the rule in subclause (1) applies even if the other
2 classification is not equivalent to the classification X.

3 **7 Extended meaning of *use***

- 4 Unless the contrary intention appears, a reference in this Schedule
5 to the *use* of a thing is a reference to the use of the thing either:
6 (a) in isolation; or
7 (b) in conjunction with one or more other things.

8 **Part 2—Internet service providers**
9

10 **8 Internet service providers**

11 *Basic definition*

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

15 *Declared Internet service providers*

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

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

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

25 **9 Supply to the public**

- 26 (1) This clause sets out the circumstances in which an Internet carriage
27 service is taken, for the purposes of subclause 8(1), to be supplied
28 to the public.

- 29 (2) If:

- 1 (a) an Internet carriage service is used for the carriage of
2 information between 2 end-users; and
3 (b) each end-user is outside the immediate circle of the supplier
4 of the service;
5 the service is supplied to the public.
- 6 Note: If a company makes Internet content available for access on the
7 Internet, and an individual obtains access to the content using an
8 Internet carriage service, the company and the individual are
9 end-users in relation to the carriage of the content by the Internet
10 carriage service.
- 11 (3) If:
12 (a) an Internet carriage service is used to supply
13 point-to-multipoint services to end-users; and
14 (b) at least one end-user is outside the immediate circle of the
15 supplier of the service;
16 the service is supplied to the public.
- 17 (4) If:
18 (a) an Internet carriage service is used to supply designated
19 content services (other than point-to-multipoint services) to
20 end-users; and
21 (b) at least one end-user is outside the immediate circle of the
22 supplier of the service;
23 the service is supplied to the public.
- 24 (5) For the purposes of this clause, a ***designated content service*** is a
25 content service of a kind specified in a written determination made
26 by the Minister.
- 27 (6) A determination under subclause (5) is a disallowable instrument
28 for the purposes of section 46A of the *Acts Interpretation Act*
29 *1901*.
- 30 (7) In this clause:
31 ***content service*** has the same meaning as in the
32 *Telecommunications Act 1997*.

1 **Part 3—Prohibited content**

2 **Division 1—Prohibited content and potential prohibited**
3 **content**

4 **10 Prohibited content**

5 *Internet content hosted in Australia*

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

15 *Internet content hosted outside Australia*

- 16 (2) For the purposes of this Schedule, Internet content hosted outside
17 Australia is ***prohibited content*** if the Internet content has been
18 classified RC or X by the Classification Board.
19 Note: ***Classified*** means classified under this Schedule—see clause 3.

20 **11 Potential prohibited content**

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

1 **12 Classification of Internet content that consists of a film or a**
2 **computer game**

3 *Deemed classification*

4 (1) If:

5 (a) Internet content consists of:

6 (i) the entire unmodified contents of a film; or

7 (ii) a computer game; and

8 (b) the film or computer game has been classified under the
9 *Classification (Publications, Films and Computer Games)*
10 *Act 1995*;

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

15 *Actual classification*

16 (2) If:

17 (a) Internet content consists of:

18 (i) the entire unmodified contents of a film; or

19 (ii) a computer game; and

20 (b) the film or computer game has not been classified under the
21 *Classification (Publications, Films and Computer Games)*
22 *Act 1995*;

23 the Classification Board is to classify the Internet content under
24 this Schedule in a corresponding way to the way in which the film
25 or computer game, as the case may be, would be classified under
26 the *Classification (Publications, Films and Computer Games) Act*
27 *1995*.

28 **13 Classification of Internet content that does not consist of a film or**
29 **a computer game**

30 If Internet content does not consist of:

31 (a) the entire unmodified contents of a film; or

32 (b) a computer game;

1 the Classification Board is to classify the Internet content under
2 this Schedule in a corresponding way to the way in which a film
3 would be classified under the *Classification (Publications, Films
4 and Computer Games) Act 1995*.

5 **Division 2—Reclassification**

6 **14 Reclassification of Internet content**

7 (1) If Internet content has been classified by the Classification Board
8 (otherwise than because of subclause 12(1)):

9 (a) the Classification Board must not reclassify the content
10 within the 2-year period beginning on the day on which the
11 classification occurred; and

12 (b) after that 2-year period, the Classification Board may
13 reclassify the content.

14 (2) The Classification Board may act under paragraph (1)(b):

15 (a) if required to do so by the Minister or the ABA; or

16 (b) on the Classification Board's own initiative.

17 (3) If the Minister or the ABA requires the Classification Board to act
18 under paragraph (1)(b), the Classification Board must do so.

19 (4) If Internet content is reclassified by the Classification Board, the
20 Classification Board must notify the ABA accordingly.

21 **15 Notice of intention to reclassify Internet content**

22 (1) If:

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

25 (b) the Classification Board intends to reclassify the content;

26 then:

27 (c) the Director of the Classification Board must give notice of
28 that intention, inviting submissions about the matter; and

29 (d) the Director of the Classification Board must cause the
30 contents of the notice to be published, in such manner as the
31 Director decides, at least 30 days before the Classification
32 Board proposes to consider the matter; and

- 1 (e) the Director of the Classification Board must give a copy of
2 the notice to the Minister and to the ABA at least 30 days
3 before the Classification Board proposes to consider the
4 matter.
- 5 (2) A notice under paragraph (1)(c) must specify the day on which the
6 Board proposes to consider the matter.
- 7 (3) The matters that the Classification Board is to take into account in
8 reclassifying the Internet content include issues raised in
9 submissions made to the Classification Board about the matter.

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

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

12 **16 Persons who may apply for review**

- 13 If Internet content has been classified by the Classification Board
14 (otherwise than because of subclause 12(1)), any of the following
15 persons may apply to the Classification Review Board for a review
16 of the classification:
- 17 (a) the Minister;
 - 18 (b) the ABA;
 - 19 (c) an Internet service provider who supplies an Internet carriage
20 service that enables end-users to access the content;
 - 21 (d) an Internet content host who hosts the content in Australia, or
22 proposes to host the content in Australia;
 - 23 (e) a person aggrieved by the classification.

24 **17 Applications for review**

- 25 (1) An application for review of a classification must be:
- 26 (a) in writing; and
 - 27 (b) made in a form approved in writing by the Convenor of the
28 Classification Review Board; and
 - 29 (c) signed by or on behalf of the applicant; and
 - 30 (d) except for an application made by the Minister—
31 accompanied by the fee ascertained under subclause (4).

- 1 (2) An application by the Minister or the ABA for review of a
2 classification may be made at any time.
- 3 (3) Any other application for review of a classification must be made:
4 (a) within 30 days after the applicant became aware of the
5 classification; or
6 (b) within such longer period as the Classification Review Board
7 allows.
- 8 (4) Regulations prescribing fees for the purposes of paragraph
9 43(1)(d) of the *Classification (Publications, Films and Computer*
10 *Games) Act 1995* apply, subject to such modifications (if any) as
11 are specified in regulations made for the purposes of this
12 subclause, to a review of a classification under this Schedule in a
13 corresponding way to the way in which they apply to a review of a
14 classification under that Act.
- 15 (5) A fee under subclause (1) must not be such as to amount to
16 taxation.
- 17 (6) In this clause:
18 *modifications* includes additions, omissions and substitutions.

19 **18 Review**

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

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

3 **19 Review of classification of Internet content that consists of a film**
4 **or a computer game**

5 If:

6 (a) Internet content consists of:

7 (i) the entire unmodified contents of a film; or

8 (ii) a computer game; and

9 (b) the film or computer game has been classified under the
10 *Classification (Publications, Films and Computer Games)*
11 *Act 1995*; and

12 (c) the decision to classify the film or computer game is
13 reviewed by the Classification Review Board under that Act;
14 and

15 (d) as a result of the review, the Classification Review Board
16 classifies the film or computer game under that Act;

17 this Schedule has effect as if the film or computer game had been
18 classified by the Classification Board under this Schedule in the
19 same way as the film or computer game was classified under that
20 Act by the Classification Review Board.

21 **Division 4—Miscellaneous**

22 **20 Fees for classification of Internet content**

23 (1) The ABA is liable to pay fees in respect of the classification under
24 this Schedule of Internet content.

25 (2) The amount of a fee payable under subclause (1) is ascertained
26 under whichever of subclause (3), (4) or (5) is applicable.

27 *Films*

28 (3) If Internet content consists of the entire unmodified contents of a
29 film, regulations prescribing fees for the purposes of paragraph
30 14(1)(d) of the *Classification (Publications, Films and Computer*
31 *Games) Act 1995* apply, subject to such modifications (if any) as
32 are specified in regulations made for the purposes of this

1 subclause, in relation to the classification under this Schedule of
2 the content in a corresponding way to the way in which they apply
3 to the classification under that Act of the film.

4 *Computer games*

5 (4) If Internet content consists of a computer game, regulations
6 prescribing fees for the purposes of paragraph 17(1)(d) of the
7 *Classification (Publications, Films and Computer Games) Act*
8 *1995* apply, subject to such modifications (if any) as are specified
9 in regulations made for the purposes of this subclause, in relation
10 to the classification under this Schedule of the content in a
11 corresponding way to the way in which they apply to the
12 classification under that Act of the computer game.

13 *Content other than films or computer games*

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

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

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

27 *Definitions*

28 (7) In this clause:

29 ***classification under this Schedule*** means classification under this
30 Schedule that is sought by the ABA (otherwise than by way of an
31 application under clause 16).

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

1 **21 Decisions of the Classification Board etc.**

- 2 (1) Section 57 of the *Classification (Publications, Films and*
3 *Computer Games) Act 1995* applies to the consideration by the
4 Classification Board of a matter arising under this Schedule in a
5 corresponding way to the way in which it applies to the
6 consideration of an application under that Act.
- 7 (2) To avoid doubt, sections 10, 19, 20, 22, 25, 26, 27 and 28 of the
8 *Classification (Publications, Films and Computer Games) Act*
9 *1995* do not apply to a classification under this Schedule.

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

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

13 **22 Complaints about prohibited content or potential prohibited**
14 **content**

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

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

21 *Complaints relating to Internet content hosts*

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

26 *Content of complaint*

- 27 (3) A complaint under subclause (1) or (2) about particular Internet
28 content must:
29 (a) identify the Internet content; and

- 1 (b) set out how to access the Internet content (for example: set
2 out a URL, a password, or the name of a newsgroup); and
3 (c) if the complainant knows the country or countries in which
4 the Internet content is hosted—set out the name of that
5 country or those countries; and
6 (d) set out the complainant’s reasons for believing that the
7 Internet content is prohibited content or potential prohibited
8 content; and
9 (e) set out such other information (if any) as the ABA requires.

- 10 (4) The rule in paragraph (3)(b) does not apply to a complaint to the
11 extent (if any) to which finding out how to access the Internet
12 content would cause the complainant to contravene a law of a State
13 or Territory.

14 *Transitional*

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

17 **23 Complaints about breaches of online provider rules etc.**

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

- 20 (a) has contravened a code registered under Part 5 of this
21 Schedule that is applicable to the provider or host; or
22 (b) has contravened an online provider rule that is applicable to
23 the provider or host;
24 the person may make a complaint to the ABA about the matter.

25 **24 Form of complaint**

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

1 **25 Residency etc. of complainant**

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

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

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

8 **26 Investigation of complaints by the ABA**

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

24 **27 ABA may investigate matters on its own initiative**

- 25 (1) The ABA may investigate any of the following matters if the ABA
26 thinks that it is desirable to do so:
27 (a) whether an Internet service provider is supplying an Internet
28 carriage service that enables end-users to access prohibited
29 content or potential prohibited content;
30 (b) whether an Internet content host is hosting prohibited
31 content, or potential prohibited content, in Australia;

- 1 (c) whether an Internet service provider, or an Internet content
2 host:
3 (i) has contravened a code registered under Part 5 of this
4 Schedule that is applicable to the provider or host; or
5 (ii) has contravened an online provider rule that is
6 applicable to the provider or host.
- 7 (2) Paragraphs (1)(a) and (b) do not authorise the ABA to investigate
8 something that occurs before 1 January 2000.

9 **28 Conduct of investigations**

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

17 **29 Protection from civil proceedings**

- 18 Civil proceedings do not lie against a person in respect of loss,
19 damage or injury of any kind suffered by another person because
20 of any of the following acts done in good faith:
21 (a) the making of a complaint under Division 1;
22 (b) the making of a statement to, or the giving of a document or
23 information to, the ABA in connection with an investigation
24 under this Division.

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

3 **30 Action to be taken in relation to a complaint about prohibited**
4 **content hosted in Australia**

5 *Prohibited content*

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

11 *Potential prohibited content*

- 12 (2) The following provisions have effect if, in the course of an
13 investigation under Division 2, the ABA is satisfied that Internet
14 content hosted in Australia is potential prohibited content:
- 15 (a) if the ABA is satisfied that, if the Internet content were to be
16 classified by the Classification Board, there is a substantial
17 likelihood that the Internet content would be classified RC or
18 X—the ABA must:
- 19 (i) give the relevant Internet content host a written notice
20 (an *interim take-down notice*) directing the Internet
21 content host not to host the Internet content until the
22 ABA notifies the host under subclause (4) of the
23 Classification Board’s classification of the Internet
24 content; and
- 25 (ii) request the Classification Board to classify the Internet
26 content;
- 27 (b) if the ABA is satisfied that, if the Internet content were to be
28 classified by the Classification Board, there is a substantial
29 likelihood that the Internet content would be classified R—
30 the ABA must request the Classification Board to classify the
31 Internet content.
- 32 (3) If the Classification Board receives a request under paragraph
33 (2)(a) or (b) to classify particular Internet content, the
34 Classification Board must:
-

- 1 (a) classify the content; and
2 (b) inform the ABA, in writing, of its classification.
- 3 (4) If the ABA is informed under paragraph (3)(b) of the classification
4 of particular Internet content, the ABA must:
5 (a) give the relevant Internet content host a written notice setting
6 out the classification; and
7 (b) in a case where the effect of the classification is that the
8 Internet content is prohibited content—give the Internet
9 content host a written notice (a *final take-down notice*)
10 directing the host not to host the prohibited content.
- 11 (5) If the ABA requests the Classification Board to classify particular
12 Internet content:
13 (a) the ABA must give the Classification Board:
14 (i) sufficient information about the content to enable the
15 Classification Board to access the content; or
16 (ii) a copy of the content; and
17 (b) the ABA must give the Classification Board sufficient
18 information about the content to enable the Classification
19 Board to classify the content; and
20 (c) the ABA may, at the request of the Classification Board or
21 on its own initiative, give the Classification Board additional
22 information about the content if the ABA is of the opinion
23 that the additional information would be likely to facilitate
24 the classification of the content.
- 25 (6) If the ABA makes a decision under paragraph (2)(b) to request the
26 Classification Board to classify Internet content, the ABA must
27 give the relevant Internet content host a written notice setting out
28 the decision.

29 **31 Deferral of action in order to avoid prejudicing a criminal**
30 **investigation**

- 31 (1) If:
32 (a) in the course of an investigation under Division 2, the ABA
33 is satisfied that Internet content hosted in Australia is
34 prohibited content or potential prohibited content; and
-

- 1 (b) apart from this subclause, the ABA would be required to take
2 action under subclause 30(1) or (2) in relation to the content;
3 and
4 (c) a member of an Australian police force satisfies the ABA
5 that the taking of that action should be deferred until the end
6 of a particular period in order to avoid prejudicing a criminal
7 investigation;
8 the ABA may defer taking that action until the end of that period.

9 (2) Subclause (1) has effect despite anything in clause 30.

10 **32 Revocation of final take-down notices—subsequent**
11 **implementation of restricted access system for R-rated**
12 **content**

- 13 (1) If:
14 (a) a final take-down notice relating to particular Internet content
15 is applicable to a particular Internet content host; and
16 (b) the Internet content has been classified R by the
17 Classification Board; and
18 (c) at the time when the final take-down notice was issued,
19 access to the Internet content was not subject to a restricted
20 access system; and
21 (d) the Internet content host satisfies the ABA that:
22 (i) at a later time when the final take-down notice was in
23 force, a restricted access system was implemented in
24 relation to the Internet content; and
25 (ii) as a result of that implementation, the content ceases to
26 be prohibited content;
27 the ABA must revoke the final take-down notice.

28 (2) If a final take-down notice is revoked under this clause, the ABA
29 must give the Internet content host concerned a written notice
30 stating that the final take-down notice has been revoked.

31 **33 Revocation of interim take-down notices—voluntary withdrawal**
32 **of Internet content**

- 33 (1) If:

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

18 **34 Revocation of take-down notices—reclassification of Internet**
19 **content**

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

32 **35 Revocation of take-down notices—reclassification of Internet**
33 **content that consists of a film or a computer game**

- 34 (1) If:
-

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

15 **36 Anti-avoidance—special take-down notices**

- 16 If:
17 (a) an interim take-down notice or a final take-down notice
18 relating to particular Internet content is applicable to a
19 particular Internet content host; and
20 (b) the ABA is satisfied that the Internet content host is hosting
21 in Australia, or is proposing to host in Australia, Internet
22 content (the *similar Internet content*) that is the same as, or
23 substantially similar to, the Internet content identified in the
24 interim take-down notice or the final take-down notice, as the
25 case may be; and
26 (c) the ABA is satisfied that the similar Internet content is
27 prohibited content or potential prohibited content;
28 the ABA may give the Internet content host a written notice (a
29 *special take-down notice*) directing the host not to host the similar
30 Internet content at any time when the interim take-down notice or
31 final take-down notice, as the case may be, is in force.

1 **37 Compliance with rules relating to prohibited content etc.**

2 *Interim take-down notice*

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

7 *Final take-down notice*

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

12 *Special take-down notice*

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

17 *Undertaking*

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

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

21 **38 Identification of Internet content**

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

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

26 **39 Application of notices under this Division**

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

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

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

5 **40 Action to be taken in relation to a complaint about prohibited**
6 **content hosted outside Australia**

7 (1) If, in the course of an investigation under Division 2, the ABA is
8 satisfied that Internet content hosted outside Australia is prohibited
9 content or potential prohibited content, the ABA must:

- 10 (a) if the ABA considers the content is of a sufficiently serious
11 nature to warrant referral to a law enforcement agency
12 (whether in or outside Australia)—notify the content to:
13 (i) a member of an Australian police force; or
14 (ii) if there is an arrangement between the ABA and the
15 chief (however described) of an Australian police force
16 under which the ABA is authorised to notify the content
17 to a another person or body (whether in or outside
18 Australia)—that other person or body; and
19 (b) if a code registered, or standard determined, under Part 5 of
20 this Schedule deals with the matters referred to in subclause
21 60(2)—notify the content to Internet service providers under
22 the designated notification scheme set out in the code or
23 standard, as the case may be; and
24 (c) if paragraph (b) does not apply—give each Internet service
25 provider known to the ABA a written notice (a ***standard***
26 ***access-prevention notice***) directing the provider to take all
27 reasonable steps to prevent end-users from accessing the
28 content.

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

- 31 (2) For the purposes of paragraph (1)(c), in determining whether
32 particular steps are reasonable, regard must be had to:
33 (a) the technical and commercial feasibility of taking the steps;
34 and
35 (b) the matters set out in subsection 4(3).

1 (3) Subclause (2) does not, by implication, limit the matters to which
2 regard must be had.

3 *Recognised alternative access-prevention arrangements*

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

9 (5) The ABA may, by written instrument, declare that a specified
10 arrangement is a ***recognised alternative access-prevention***
11 ***arrangement*** for the purposes of the application of this Division to
12 one or more specified end-users if the ABA is satisfied that the
13 arrangement is likely to provide a reasonably effective means of
14 preventing access by those end-users to prohibited content and
15 potential prohibited content.

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

18 (6) The following are examples of arrangements that could be declared
19 to be recognised alternative access-prevention arrangements under
20 subclause (5):

- 21 (a) an arrangement that involves the use of regularly updated
22 Internet content filtering software;
23 (b) an arrangement that involves the use of a “family-friendly”
24 filtered Internet carriage service.

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

27 *Referral to law enforcement agency*

28 (8) The manner in which Internet content may be notified under
29 paragraph (1)(a) to a member of an Australian police force
30 includes (but is not limited to) a manner ascertained in accordance
31 with an arrangement between the ABA and the chief (however
32 described) of the police force concerned.

33 (9) If a member of an Australian police force is notified of particular
34 Internet content under this clause, the member may notify the

1 content to a member of another law enforcement agency (whether
2 in or outside Australia).

3 (10) This clause does not, by implication, limit the ABA's powers to
4 refer other matters to a member of an Australian police force.

5 **41 Deferral of action in order to avoid prejudicing a criminal**
6 **investigation**

7 (1) If:

- 8 (a) in the course of an investigation under Division 2, the ABA
9 is satisfied that Internet content hosted outside Australia is
10 prohibited content or potential prohibited content; and
11 (b) apart from this subclause, the ABA would be required to take
12 action under subclause 40(1) in relation to the content; and
13 (c) a member of an Australian police force satisfies the ABA
14 that the taking of that action should be deferred until the end
15 of a particular period in order to avoid prejudicing a criminal
16 investigation;

17 the ABA may defer taking that action until the end of that period.

18 (2) Subclause (1) has effect despite anything in clause 40.

19 **42 Withdrawal of notification of content—reclassification of**
20 **Internet content**

21 (1) If:

- 22 (a) Internet content has been classified by the Classification
23 Board (otherwise than because of subclause 12(1)); and
24 (b) the Internet content has been notified to Internet service
25 providers as mentioned in paragraph 40(1)(b) of this
26 Schedule; and
27 (c) the Classification Board reclassifies the Internet content; and
28 (d) as a result of the reclassification, the Internet content ceases
29 to be prohibited content;

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

32 (2) If:

- 1 (a) a notification of Internet content is withdrawn under
2 subclause (1); and
3 (b) a code registered, or standard determined, under Part 5 of this
4 Schedule deals with the matters referred to in subclause
5 60(2);
6 the ABA must notify the withdrawal to Internet service providers
7 under the designated notification scheme set out in the code or
8 standard, as the case may be.

9 **43 Withdrawal of notification of content—reclassification of**
10 **Internet content that consists of a film or a computer**
11 **game**

- 12 (1) If:
13 (a) Internet content consists of:
14 (i) the entire unmodified contents of a film; or
15 (ii) a computer game; and
16 (b) the Classification Board reclassifies the film or computer
17 game under the *Classification (Publications, Films and*
18 *Computer Games) Act 1995*; and
19 (c) the Internet content has been notified to Internet service
20 providers as mentioned in paragraph 40(1)(b) of this
21 Schedule; and
22 (d) as a result of the reclassification, the Internet content ceases
23 to be prohibited content;
24 the notification of the Internet content is taken to have been
25 withdrawn.
- 26 (2) If:
27 (a) a notification of Internet content is withdrawn under
28 subclause (1); and
29 (b) a code registered, or standard determined, under Part 5 of this
30 Schedule deals with the matters referred to in subclause
31 60(2);
32 the ABA must notify the withdrawal to Internet service providers
33 under the designated notification scheme set out in the code or
34 standard, as the case may be.

1 **44 Revocation of standard access-prevention notice—reclassification**
2 **of Internet content**

- 3 (1) If:
- 4 (a) Internet content has been classified by the Classification
 - 5 Board (otherwise than because of subclause 12(1)); and
 - 6 (b) a standard access-prevention notice relating to the Internet
 - 7 content is applicable to a particular Internet service provider;
 - 8 and
 - 9 (c) the Classification Board reclassifies the Internet content; and
 - 10 (d) as a result of the reclassification, the content ceases to be
 - 11 prohibited content;
- 12 the ABA is taken to have revoked the standard access-prevention
- 13 notice.
- 14 (2) If a standard access-prevention notice is revoked under this clause,
- 15 the ABA must give the Internet service provider concerned a
- 16 written notice stating that the standard access-prevention notice
- 17 has been revoked.
- 18 Note: The ABA may be taken to have given a notice under subclause (2)—
- 19 see clause 51.

20 **45 Revocation of standard access-prevention notice—reclassification**
21 **of Internet content that consists of a film or a computer**
22 **game**

- 23 (1) If:
- 24 (a) Internet content consists of:
 - 25 (i) the entire unmodified contents of a film; or
 - 26 (ii) a computer game; and
 - 27 (b) the Classification Board reclassifies the film or computer
 - 28 game under the *Classification (Publications, Films and*
 - 29 *Computer Games) Act 1995*; and
 - 30 (c) a standard access-prevention notice relating to the Internet
 - 31 content is applicable to a particular Internet service provider;
 - 32 and
 - 33 (d) as a result of the reclassification, the Internet content ceases
 - 34 to be prohibited content;

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

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

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

9 **46 Anti-avoidance—notified Internet content**

10 (1) If:

- 11 (a) particular Internet content has been notified to Internet
12 service providers as mentioned in paragraph 40(1)(b) of this
13 Schedule; and
14 (b) the notification has not been withdrawn; and
15 (c) the ABA is satisfied that Internet content (the *similar*
16 *Internet content*) that is the same as, or substantially similar
17 to, the first-mentioned Internet content is being hosted
18 outside Australia; and
19 (d) the ABA is satisfied that the similar Internet content is
20 prohibited content or potential prohibited content; and
21 (e) a code registered, or standard determined, under Part 5 of this
22 Schedule deals with the matters referred to in subclause
23 60(2);

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

27 (2) If:

- 28 (a) particular Internet content is notified to Internet service
29 providers as mentioned in paragraph 40(1)(b) of this
30 Schedule; and
31 (b) as a result of the application of subclause (1) to that content,
32 the ABA notifies similar Internet content to Internet service
33 providers in accordance with subclause (1); and
34 (c) the notification of the first-mentioned content is withdrawn;
35 the notification of the similar Internet content is taken to have been
36 withdrawn.
-

- 1 (3) If:
2 (a) a notification of Internet content is withdrawn under
3 subclause (2); and
4 (b) a code registered, or standard determined, under Part 5 of this
5 Schedule deals with the matters referred to in subclause
6 60(2);
7 the ABA must notify the withdrawal to Internet service providers
8 under the designated notification scheme set out in the code or
9 standard, as the case may be.

10 **47 Anti-avoidance—special access-prevention notice**

- 11 (1) If:
12 (a) a standard access-prevention notice relating to particular
13 Internet content is applicable to a particular Internet service
14 provider; and
15 (b) the ABA is satisfied that the Internet service provider is
16 supplying an Internet carriage service that enables end-users
17 to access Internet content (the *similar Internet content*) that
18 is the same as, or substantially similar to, the Internet content
19 identified in the standard-access prevention notice; and
20 (c) the ABA is satisfied that the similar Internet content is
21 prohibited content or potential prohibited content;
22 the ABA may give the provider a written notice (*special*
23 *access-prevention notice*) directing the provider to take all
24 reasonable steps to prevent end-users from accessing the similar
25 Internet content at any time when the standard access-prevention
26 notice is in force.
27 Note: The ABA may be taken to have given a notice under this clause—see
28 clause 51.
- 29 (2) For the purposes of subclause (1), in determining whether
30 particular steps are reasonable, regard must be had to:
31 (a) the technical and commercial feasibility of taking the steps;
32 and
33 (b) the matters set out in subsection 4(3).
- 34 (3) Subclause (2) does not, by implication, limit the matters to which
35 regard must be had.

1 *Recognised alternative access-prevention arrangements*

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

7 **48 Compliance with access-prevention notices**

8 *Standard access-prevention notice*

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

13 *Special access-prevention notice*

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

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

19 **49 Notification of Internet content**

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

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

25 **50 Application of notifications under this Division**

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

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

1 **51 ABA may be taken to have issued access-prevention notices**

2 (1) Subject to subclause (2), the ABA may, by written instrument,
3 formulate a scheme:

4 (a) in the nature of a scheme for substituted service; and

5 (b) under which the ABA is taken, for the purposes of this
6 Schedule, to have done any or all of the following:

7 (i) given each Internet service provider a standard
8 access-prevention notice under paragraph 40(1)(c) of
9 this Schedule;

10 (ii) in a case where a standard access-prevention notice is
11 revoked under clause 44 or 45—given each Internet
12 service provider a notice of the revocation under
13 whichever of subclause 44(2) or 45(2) is applicable;

14 (iii) given each Internet service provider a special
15 access-prevention notice under clause 47.

16 (2) It is a minimum requirement for a scheme formulated under
17 subclause (1) that each Internet service provider be alerted by
18 electronic means to the existence of a notice.

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

22 (3) Paragraph 40(1)(c) of this Schedule has effect, in relation to a
23 scheme under subclause (1), as if the reference in that paragraph to
24 each Internet service provider known to the ABA were a reference
25 to each Internet service provider.

26 (4) An instrument under subclause (1) is a disallowable instrument for
27 the purposes of section 46A of the *Acts Interpretation Act 1901*.

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

29 **Division 1—Simplified outline**

30 **52 Simplified outline**

31 The following is a simplified outline of this Part.

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- 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.

10 **Division 2—Interpretation**

11 **53 Industry codes**

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

15 **54 Industry standards**

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

18 **55 Internet activity**

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

- 21 (a) supplying an Internet carriage service; or
22 (b) hosting Internet content in Australia.

23 **56 Sections of the Internet industry**

24 (1) For the purposes of this Part, *sections of the Internet industry* are
25 to be ascertained in accordance with this clause.

26 (2) For the purposes of this Part, each of the following groups is a
27 *section of the Internet industry*:

- 1 (a) Internet service providers;
2 (b) Internet content hosts.

3 **57 Participants in a section of the Internet industry**

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

7 **58 Designated body**

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

13 **Division 3—General principles relating to industry codes**
14 **and industry standards**

15 **59 Statement of regulatory policy**

- 16 (1) The Parliament intends that bodies or associations that the ABA is
17 satisfied represent the Internet content host section of the Internet
18 industry should develop a single code (*industry code*) that is to
19 apply to participants in that section of the industry in relation to the
20 Internet activities of the participants.
21 (2) The Parliament intends that bodies or associations that the ABA is
22 satisfied represent the Internet service provider section of the
23 Internet industry should develop no more than 2 codes (*industry*
24 *codes*) that are to apply to participants in that section of the
25 industry in relation to the Internet activities of the participants.
26 (3) The Parliament intends that, for the Internet service provider
27 section of the Internet industry, one of those industry codes should
28 deal exclusively with the matters set out in subclause 60(2).
29 (4) The Parliament intends that the ABA should make reasonable
30 efforts to ensure that, for each section of the Internet industry,
31 either:

- 1 (a) an industry code is registered under this Part before 1
2 January 2000; or
3 (b) an industry standard is registered under this Part before 31
4 March 2000.

5 **60 Matters that must be dealt with by industry codes and industry**
6 **standards**

7 *Both sections of the Internet industry*

- 8 (1) The Parliament intends that, for both sections of the Internet
9 industry, there should be:
10 (a) an industry code or an industry standard that deals with; or
11 (b) an industry code and an industry standard that together deal
12 with;
13 each of the following matters:
14 (c) procedures directed towards the achievement of the objective
15 of ensuring that online accounts are not provided to children
16 without the consent of a parent or responsible adult;
17 (d) giving parents and responsible adults information about how
18 to supervise and control children's access to Internet content;
19 (e) procedures to be followed in order to assist parents and
20 responsible adults to supervise and control children's access
21 to Internet content;
22 (f) procedures to be followed in order to inform producers of
23 Internet content about their legal responsibilities in relation
24 to that content;
25 (g) telling customers about their rights to make complaints under
26 clause 22 or 23;
27 (h) procedures to be followed in order to assist customers to
28 make complaints under clause 22 or 23;
29 (i) procedures to be followed in order to deal with complaints
30 about unsolicited electronic mail that promotes or advertises
31 one or more:
32 (i) Internet sites; or
33 (ii) distinct parts of Internet sites;
34 that enable, or purport to enable, end-users to access
35 information that is likely to cause offence to a reasonable
36 adult;
-

- 1 (j) action to be taken to assist in the development and
2 implementation of Internet content filtering technologies
3 (including labelling technologies);
4 (k) giving customers information about the availability, use and
5 appropriate application of Internet content filtering software;
6 (l) procedures directed towards the achievement of the objective
7 of ensuring that customers have the option of subscribing to
8 a filtered Internet carriage service;
9 (m) procedures directed towards the achievement of the objective
10 of ensuring that, in the event that a participant in the relevant
11 section of the Internet industry becomes aware that an
12 Internet content host is hosting prohibited content in
13 Australia, the host is told about the prohibited content.

14 *Internet service provider section of the Internet industry*

- 15 (2) The Parliament intends that, for the Internet service provider
16 section of the Internet industry, there should be:
17 (a) an industry code or an industry standard that deals with; or
18 (b) an industry code and an industry standard that together deal
19 with;
20 each of the following matters:
21 (c) the formulation of a designated notification scheme;
22 (d) procedures to be followed by Internet service providers in
23 dealing with Internet content notified under paragraph
24 40(1)(b) of this Schedule or clause 46 (for example,
25 procedures to be followed by a particular class of Internet
26 service providers for the filtering, by technical means, of
27 such content).

28 *Designated alternative access-prevention arrangements*

- 29 (3) An industry code or an industry standard may provide that an
30 Internet service provider is not required to deal with Internet
31 content notified under paragraph 40(1)(b) of this Schedule or
32 clause 46 by taking steps to prevent particular end-users from
33 accessing the content if access by the end-users is subject to an
34 arrangement that is declared by the code or standard to be a
35 designated alternative access-prevention arrangement for the
36 purposes of the application of this clause to those end-users.

1 (4) An industry code developed by a body or association must not
2 declare that a specified arrangement is a designated alternative
3 access-prevention arrangement for the purposes of the application
4 of this clause to one or more specified end-users unless the body or
5 association is satisfied that the arrangement is likely to provide a
6 reasonably effective means of preventing access by those
7 end-users to prohibited content and potential prohibited content.

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

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

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

19 (6) The following are examples of arrangements that could be declared
20 to be designated alternative access-prevention arrangements:

- 21 (a) an arrangement that involves the use of regularly updated
22 Internet content filtering software;
23 (b) an arrangement that involves the use of a “family-friendly”
24 filtered Internet carriage service.

25 (7) For the purposes of this Schedule, if an industry code:

26 (a) deals to any extent with procedures to be followed by
27 Internet service providers in dealing with Internet content
28 notified under paragraph 40(1)(b) of this Schedule or clause
29 46; and

30 (b) makes provision as mentioned in subclause (3);

31 then:

32 (c) the code is taken to deal with the matter set out in paragraph
33 (2)(d); and

34 (d) the code is taken to be consistent with subclause (2).

35 (8) For the purposes of this Schedule, if an industry standard:

36 (a) deals to any extent with procedures to be followed by
37 Internet service providers in dealing with Internet content

1 notified under paragraph 40(1)(b) of this Schedule or clause
2 46; and

3 (b) makes provision as mentioned in subclause (3);

4 then:

5 (c) the standard is taken to deal with the matter set out in
6 paragraph (2)(d); and

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

8 *Clause does not limit matters*

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

11 **61 Industry codes and industry standards not to deal with certain**
12 **matters**

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

16 (a) a code registered, or a standard determined, under Part 6 of
17 the *Telecommunications Act 1997*; or

18 (b) the Telecommunications Industry Ombudsman scheme
19 (within the meaning of that Act).

20 **Division 4—Industry codes**

21 **62 Registration of industry codes**

22 (1) This clause applies if:

23 (a) the ABA is satisfied that a body or association represents a
24 particular section of the Internet industry; and

25 (b) that body or association develops an industry code that
26 applies to participants in that section of the industry and
27 deals with one or more matters relating to the Internet
28 activities of those participants; and

29 (c) the body or association gives a copy of the code to the ABA;
30 and

31 (d) the ABA is satisfied that:

- 1 (i) to the extent to which the code deals with one or more
2 matters of substantial relevance to the community—the
3 code provides appropriate community safeguards for
4 that matter or those matters; and
- 5 (ii) to the extent to which the code deals with one or more
6 matters that are not of substantial relevance to the
7 community—the code deals with that matter or those
8 matters in an appropriate manner; and
- 9 (e) the ABA is satisfied that, before giving the copy of the code
10 to the ABA:
- 11 (i) the body or association published a draft of the code
12 and invited members of the public to make submissions
13 to the body or association about the draft within a
14 specified period; and
- 15 (ii) the body or association gave consideration to any
16 submissions that were received from members of the
17 public within that period; and
- 18 (f) the ABA is satisfied that, before giving the copy of the code
19 to the ABA:
- 20 (i) the body or association published a draft of the code
21 and invited participants in that section of the industry to
22 make submissions to the body or association about the
23 draft within a specified period; and
- 24 (ii) the body or association gave consideration to any
25 submissions that were received from participants in that
26 section of the industry within that period; and
- 27 (g) the ABA is satisfied that the designated body has been
28 consulted about the development of the code; and
- 29 (h) in a case where the code relates to the Internet content host
30 section of the Internet industry—the ABA is satisfied that the
31 code is consistent with subclauses 59(1) and 60(1); and
- 32 (i) in a case where the code:
- 33 (i) relates to the Internet service provider section of the
34 Internet industry; and
- 35 (ii) does not deal with a matter set out in subclause 60(2);
36 the code is consistent with subclauses 59(2) and 60(1); and
- 37 (j) in a case where the code:
-

- 1 (i) relates to the Internet service provider section of the
2 Internet industry; and
3 (ii) deals with a matter set out in subclause 60(2);
4 the code is consistent with subclauses 59(2) and (3) and
5 60(2).

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

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

17 **63 ABA may request codes**

- 18 (1) If the ABA is satisfied that a body or association represents a
19 particular section of the Internet industry, the ABA may, by
20 written notice given to the body or association, request the body or
21 association to:
- 22 (a) develop an industry code that applies to participants in that
23 section of the industry and deals with one or more specified
24 matters relating to the Internet activities of those participants;
25 and
26 (b) give the ABA a copy of the code within the period specified
27 in the notice.
- 28 (2) The period specified in a notice under subclause (1) must run for at
29 least 120 days.
- 30 (3) The ABA must not make a request under subclause (1) in relation
31 to a particular section of the Internet industry unless the ABA is
32 satisfied that:
- 33 (a) the development of the code is necessary or convenient in
34 order to:
-

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

13 **64 Publication of notice where no body or association represents a**
14 **section of the Internet industry**

- 15 (1) If the ABA is satisfied that a particular section of the Internet
16 industry is not represented by a body or association, the ABA may
17 publish a notice in the *Gazette*:
18 (a) stating that, if such a body or association were to come into
19 existence within a specified period, the ABA would be likely
20 to give a notice to that body or association under subclause
21 63(1); and
22 (b) setting out the matter or matters relating to Internet activities
23 that would be likely to be specified in the subclause 63(1)
24 notice.
- 25 (2) The period specified in a notice under subclause (1) must run for at
26 least 60 days.

27 **65 Replacement of industry codes**

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

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

2 **66 Compliance with industry codes**

3 (1) If:

4 (a) a person is a participant in a particular section of the Internet
5 industry; and

6 (b) the ABA is satisfied that the person has contravened, or is
7 contravening, an industry code that:

8 (i) is registered under this Part; and

9 (ii) applies to participants in that section of the industry;

10 the ABA may, by written notice given to the person, direct the
11 person to comply with the industry code.

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

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

14 **67 Formal warnings—breach of industry codes**

15 (1) This clause applies to a person who is a participant in a particular
16 section of the Internet industry.

17 (2) The ABA may issue a formal warning if the person contravenes an
18 industry code registered under this Part.

19 **Division 5—Industry standards**

20 **68 ABA may determine an industry standard if a request for an**
21 **industry code is not complied with**

22 (1) This clause applies if:

23 (a) the ABA has made a request under subclause 63(1) in
24 relation to the development of a code that is to:

25 (i) apply to participants in a particular section of the
26 Internet industry; and

27 (ii) deal with one or more matters relating to the Internet
28 activities of those participants; and

29 (b) any of the following conditions is satisfied:

30 (i) the request is not complied with;

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

24 **69 ABA may determine industry standard where no industry body**
25 **or association formed**

- 26 (1) This clause applies if:
27 (a) the ABA is satisfied that a particular section of the Internet
28 industry is not represented by a body or association; and
29 (b) the ABA has published a notice under subclause 64(1)
30 relating to that section of the industry; and
31 (c) that notice:
32 (i) states that, if such a body or association were to come
33 into existence within a particular period, the ABA
34 would be likely to give a notice to that body or
35 association under subclause 63(1); and
-

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

21 **70 ABA may determine industry standards—total failure of**
22 **industry codes**

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

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

30 **71 ABA may determine industry standards—partial failure of**
31 **industry codes**

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

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

1 (b) any investigation, proceeding or remedy in respect of a
2 contravention of the industry code or clause 66 that occurred
3 before that day.

4 (7) For the purposes of this clause, an industry code that applies to
5 participants in a particular section of the Internet industry and
6 deals with 2 or more matters relating to the Internet activities of
7 those participants is *deficient* to the extent to which it deals with a
8 particular one of those matters if, and only if:

9 (a) the code is not operating to provide appropriate community
10 safeguards in relation to that matter; or

11 (b) the code is not otherwise operating to regulate adequately
12 participants in that section of the industry in relation to that
13 matter.

14 (8) The Minister may give the ABA a written direction as to the
15 exercise of its powers under this clause.

16 **72 Compliance with industry standards**

17 If:

18 (a) an industry standard that applies to participants in a
19 particular section of the Internet industry is registered under
20 this Part; and

21 (b) a person is a participant in that section of the Internet
22 industry;

23 the person must comply with the industry standard.

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

25 **73 Formal warnings—breach of industry standards**

26 (1) This clause applies to a person who is a participant in a particular
27 section of the Internet industry.

28 (2) The ABA may issue a formal warning if the person contravenes an
29 industry standard registered under this Part.

30 **74 Variation of industry standards**

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

- 1 industry if it is satisfied that it is necessary or convenient to do so
2 to:
- 3 (a) provide appropriate community safeguards in relation to one
4 or more matters relating to the Internet activities of those
5 participants; and
 - 6 (b) otherwise regulate adequately those participants in relation to
7 one or more matters relating to the Internet activities of those
8 participants.
- 9 (2) An instrument under subclause (1) is a disallowable instrument for
10 the purposes of section 46A of the *Acts Interpretation Act 1901*.

11 **75 Revocation of industry standards**

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

19 **76 Public consultation on industry standards**

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

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

14 **77 Consultation with designated body**

- 15 (1) Before determining or varying an industry standard, the ABA must
16 consult the designated body.
- 17 (2) Before revoking an industry standard under subclause 75(1), the
18 ABA must consult the designated body.
- 19 Note: *Designated body* is defined by clause 58.

20 **Division 6—Register of industry codes and industry**
21 **standards**

22 **78 ABA to maintain Register of industry codes and industry**
23 **standards**

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

1 (2) The Register may be maintained by electronic means.

2 (3) The Register is to be made available for inspection on the Internet.

3 **Part 6—Online provider rules**
4

5 **79 Online provider rules**

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

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

18 **80 Online provider determinations**

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

- 1 (i) it is authorised by section 122 of the Constitution; and
2 (ii) it would have been authorised by paragraph 51(v) of the
3 Constitution (either alone or when read together with
4 paragraph 51(xxxix) of the Constitution) if section 51 of
5 the Constitution extended to the Territories.
- 6 (5) The ABA must not make an online provider determination unless
7 the determination relates to a matter specified in the regulations.
- 8 (6) The ABA must not make an online provider determination if the
9 determination relates to a matter specified in regulations in force
10 for the purposes of subsection 99(3) of the *Telecommunications*
11 *Act 1997*.
- 12 (7) An online provider determination may make provision for or in
13 relation to a particular matter by empowering the ABA to make
14 decisions of an administrative character.
- 15 (8) An online provider determination is a disallowable instrument for
16 the purposes of section 46A of the *Acts Interpretation Act 1901*.

17 **81 Exemptions from online provider determinations**

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

29 **82 Compliance with online provider rules**

- 30 A person is guilty of an offence if:
31 (a) an online provider rule is applicable to the person; and
-

1 (b) the person contravenes the rule.

2 Penalty: 50 penalty units.

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

6 **83 Remedial directions—breach of online provider rules**

7 (1) This clause applies if an Internet service provider, or an Internet
8 content host, has contravened, or is contravening, an online
9 provider rule.

10 (2) The ABA may give the provider or host a written direction
11 requiring the provider or host to take specified action directed
12 towards ensuring that the provider or host does not contravene the
13 rule, or is unlikely to contravene the rule, in the future.

14 (3) The following are examples of the kinds of direction that may be
15 given to an Internet service provider, or an Internet content host,
16 under subclause (2):

17 (a) a direction that the provider or host implement effective
18 administrative systems for monitoring compliance with an
19 online provider rule;

20 (b) a direction that the provider or host implement a system
21 designed to give the provider's or host's employees, agents
22 and contractors a reasonable knowledge and understanding
23 of the requirements of an online provider rule, in so far as
24 those requirements affect the employees, agents or
25 contractors concerned.

26 (4) A person is guilty of an offence if:

27 (a) the person is subject to a direction under subclause (2); and

28 (b) the person contravenes the direction.

29 Penalty for contravention of this subclause: 50 penalty units.

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

1 **84 Formal warnings—breach of online provider rules**

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

4 **85 Federal Court may order a person to cease supplying Internet
5 carriage services or cease hosting Internet content**

6 (1) If the ABA is satisfied that:

7 (a) a person who is an Internet service provider is supplying an
8 Internet carriage service otherwise than in accordance with
9 an online provider rule; or

10 (b) a person who is an Internet content host is hosting Internet
11 content in Australia otherwise than in accordance with an
12 online provider rule;

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

16 (2) If the Federal Court is satisfied, on such an application, that the
17 person is:

18 (a) supplying an Internet carriage service otherwise than in
19 accordance with the online provider rule; or

20 (b) hosting Internet content in Australia otherwise than in
21 accordance with the online provider rule;

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

25 **Part 7—Offences**
26

27 **86 Continuing offences**

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

1 **87 Conduct by directors, employees and agents**

2 *Body corporate*

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

- 6 (a) that the conduct was engaged in by a director, employee or
7 agent of the body corporate within the scope of his or her
8 actual or apparent authority; and
9 (b) that the director, employee or agent had the state of mind.

10 (2) Any conduct engaged in on behalf of a body corporate by a
11 director, employee or agent of the body corporate within the scope
12 of his or her actual or apparent authority is taken, for the purposes
13 of a prosecution for:

- 14 (a) an offence against this Schedule; or
15 (b) an ancillary offence relating this Schedule;
16 to have been engaged in also by the body corporate unless the
17 body corporate establishes that the body corporate took reasonable
18 precautions and exercised due diligence to avoid the conduct.

19 *Person other than a body corporate*

20 (3) If, in proceedings for an ancillary offence relating to this Schedule,
21 it is necessary to establish the state of mind of a person other than
22 a body corporate in relation to particular conduct, it is sufficient to
23 show:

- 24 (a) that the conduct was engaged in by an employee or agent of
25 the person within the scope of his or her actual or apparent
26 authority; and
27 (b) that the employee or agent had the state of mind.

28 (4) Any conduct engaged in on behalf of a person other than a body
29 corporate by an employee or agent of the person within the scope
30 of his or her actual or apparent authority is taken, for the purposes
31 of a prosecution for:

- 32 (a) an offence against this Schedule; or
33 (b) an ancillary offence relating this Schedule;

1 to have been engaged in also by the first-mentioned person unless
2 the first-mentioned person establishes that the first-mentioned
3 person took reasonable precautions and exercised due diligence to
4 avoid the conduct.

5 (5) If:

- 6 (a) a person other than a body corporate is convicted of an
7 offence; and
8 (b) the person would not have been convicted of the offence if
9 subclauses (3) and (4) had not been enacted;
10 the person is not liable to be punished by imprisonment for that
11 offence.

12 *State of mind*

13 (6) A reference in subclause (1) or (3) to the *state of mind* of a person
14 includes a reference to:

- 15 (a) the knowledge, intention, opinion, belief or purpose of the
16 person; and
17 (b) the person's reasons for the intention, opinion, belief or
18 purpose.

19 *Director*

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

24 *Engaging in conduct*

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

27 *Ancillary offence relating to this Schedule*

28 (9) A reference in this clause to an *ancillary offence relating to this*
29 *Schedule* is a reference to an offence created by section 5, 6, 7 or
30 7A or subsection 86(1) of the *Crimes Act 1914* that relates to this
31 Schedule.

1 **Part 8—Protection from civil and criminal**
2 **proceedings**
3

4 **88 Protection from civil proceedings—Internet service providers**
5 **and Internet content hosts**

6 *Internet service provider*

- 7 (1) Civil proceedings do not lie against an Internet service provider in
8 respect of anything done by the provider in compliance with:
9 (a) a code registered under Part 5 of this Schedule; or
10 (b) a standard determined under Part 5 of this Schedule;
11 in so far as the code or standard deals with procedures referred to
12 in paragraph 60(2)(d) of this Schedule.
- 13 (2) Civil proceedings do not lie against an Internet service provider in
14 respect of anything done by the provider in compliance with clause
15 48.

16 *Internet content host*

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

19 **89 Protection from criminal proceedings—ABA, Classification**
20 **Board and Classification Review Board**

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

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

20 *Definition*

- 21 (3) In this clause:
- 22 *possession* includes have in custody or control.

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

24

25 **90 Concurrent operation of State and Territory laws**

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

1 **91 Liability of Internet content hosts and Internet service providers**
2 **under State and Territory laws etc.**

- 3 (1) A law of a State or Territory, or a rule of common law or equity,
4 has no effect to the extent to which it:
- 5 (a) subjects, or would have the effect (whether direct or indirect)
6 of subjecting, an Internet content host to liability (whether
7 criminal or civil) in respect of hosting particular Internet
8 content in a case where the host was not aware of the nature
9 of the Internet content; or
- 10 (b) requires, or would have the effect (whether direct or indirect)
11 of requiring, an Internet content host to monitor, make
12 inquiries about, or keep records of, Internet content hosted by
13 the host; or
- 14 (c) subjects, or would have the effect (whether direct or indirect)
15 of subjecting, an Internet service provider to liability
16 (whether criminal or civil) in respect of carrying particular
17 Internet content in a case where the service provider was not
18 aware of the nature of the Internet content; or
- 19 (d) requires, or would have the effect (whether direct or indirect)
20 of requiring, an Internet service provider to monitor, make
21 inquiries about, or keep records of, Internet content carried
22 by the provider.
- 23 (2) The Minister may, by written instrument, exempt a specified law
24 of a State or Territory, or a specified rule of common law or
25 equity, from the operation of subclause (1).

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

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

30 *Declaration by Minister*

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

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

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

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

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

9 (a) it is authorised by paragraph 51(v) of the Constitution (either
10 alone or when read together with paragraph 51(xxxix) of the
11 Constitution); or

12 (b) both:

13 (i) it is authorised by section 122 of the Constitution; and

14 (ii) it would have been authorised by paragraph 51(v) of the
15 Constitution (either alone or when read together with
16 paragraph 51(xxxix) of the Constitution) if section 51 of
17 the Constitution extended to the Territories.

18 (7) An instrument under subclause (2), (4) or (5) is a disallowable
19 instrument for the purposes of section 46A of the *Acts*
20 *Interpretation Act 1901*.

21 **Part 10—Review of decisions**

22

23 **92 Review by the AAT**

24 (1) An application may be made to the AAT for a review of any of the
25 following decisions made by the ABA:

26 (a) a decision to give an Internet content host an interim
27 take-down notice;

28 (b) a decision to give an Internet content host a final take-down
29 notice;

30 (c) a decision to give an Internet content host a special
31 take-down notice;

32 (d) a decision under paragraph 30(2)(b) of this Schedule to
33 request the Classification Board to classify Internet content
34 hosted in Australia by an Internet content host;

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

22 **93 Notification of decisions to include notification of reasons and**
23 **appeal rights**

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

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

30 **Part 11—Miscellaneous**
31

1 **94 Additional ABA functions**

2 The ABA has the following functions:

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

22 **95 Review before 1 January 2003**

- 23 (1) Before 1 January 2003, the Minister must cause to be conducted a
24 review of the operation of this Schedule.
- 25 (2) The following matters are to be taken into account in conducting a
26 review under subclause (1):
- 27 (a) the general development of Internet content filtering
28 technologies;
- 29 (b) whether Internet content filtering technologies have
30 developed to a point where it is practicable to use those
31 technologies to prevent end-users from accessing R-rated
32 information hosted outside Australia that is not subject to a
33 restricted access system;
- 34 (c) any other relevant matters.

- 1 (3) The Minister must cause to be prepared a report of a review under
2 subclause (1).
- 3 (4) The Minister must cause copies of the report to be laid before each
4 House of the Parliament within 15 sitting days of that House after
5 the completion of the preparation of the report.
- 6 (5) The Parliament acknowledges the Government's policy intention
7 that, in the event that Internet content filtering technologies
8 develop to a point where it is practicable to use those technologies
9 to prevent end-users from accessing R-rated information hosted
10 outside Australia that is not subject to a restricted access system,
11 legislation will be introduced into the Parliament to:
- 12 (a) extend subclause 10(1) to Internet content hosted outside
13 Australia; and
14 (b) repeal subclause 10(2).

15 **96 Schedule not to affect performance of State or Territory**
16 **functions**

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

1
2
3
4

Schedule 2—Amendment of the Crimes Act 1914

1 At the end of section 85ZE

6

Add:

7
8

(2) Paragraph (1)(b) does not apply to the use of a carriage service to carry Internet content.

9
10

(3) This section is not intended to limit or exclude the concurrent operation of any law of a State or Territory.

11

(4) In this section:

12
13

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