



# **Online Safety (Transitional Provisions and Consequential Amendments) Act 2021**

**No. 77, 2021**

**An Act to deal with transitional and consequential  
matters arising from the enactment of the *Online  
Safety Act 2021*, and for other purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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**An Act to deal with transitional and consequential  
matters arising from the enactment of the *Online  
Safety Act 2021*, and for other purposes**

*[Assented to 23 July 2021]*

The Parliament of Australia enacts:

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## 1 Short title

This Act is the *Online Safety (Transitional Provisions and Consequential Amendments) Act 2021*.

## 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day after this Act receives the Royal Assent.	24 July 2021
2. Schedule 1	At the same time as the <i>Online Safety Act 2021</i> commences. However, the provisions do not commence at all if the <i>Online Safety Act 2021</i> does not commence.	
3. Schedule 2, Part 1	At the same time as the <i>Online Safety Act 2021</i> commences. However, the provisions do not commence at all if the <i>Online Safety Act 2021</i> does not commence.	
4. Schedule 2, Part 2	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) the commencement of Schedule 3 to the <i>Surveillance Legislation Amendment (Identify and Disrupt) Act 2021</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b)	

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
	does not occur.	
5. Schedule 2, Part 3	At the same time as the <i>Online Safety Act 2021</i> commences. However, the provisions do not commence at all if: (a) the <i>Online Safety Act 2021</i> does not commence; or (b) Schedule 1 to the <i>Export Market Development Grants Legislation Amendment Act 2020</i> commences before the commencement of the <i>Online Safety Act 2021</i> .	
6 Schedule 2, Part 4	The later of: (a) immediately after the commencement of the <i>Online Safety Act 2021</i> ; and (b) the commencement of the <i>Federal Circuit and Family Court of Australia Act 2021</i> .	
7. Schedule 3	At the same time as the <i>Online Safety Act 2021</i> commences. However, the provisions do not commence at all if the <i>Online Safety Act 2021</i> does not commence.	

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

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

### 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.



## **Schedule 1—Repeal of the Enhancing Online Safety Act 2015**

### *Enhancing Online Safety Act 2015*

#### **1 The whole of the Act**

Repeal the Act.

## Schedule 2—Amendments

### Part 1—General amendments

#### *A New Tax System (Goods and Services Tax) Act 1999*

**1 Subparagraph 38-570(3)(a)(ii)**

Omit “Schedule 5 to the *Broadcasting Services Act 1992*”, substitute “the *Online Safety Act 2021*”.

#### *Broadcasting Services Act 1992*

**2 Paragraphs 3(1)(ha), (k), (l) and (m)**

Repeal the paragraphs.

**3 Subsection 3(2) (definition of *designated content/hosting service provider*)**

Repeal the definition.

**4 Subsection 3(2) (definition of *internet content*)**

Repeal the definition.

**5 Subsection 4(1)**

Omit “, internet services”.

**6 Subsections 4(3) and (3AA)**

Repeal the subsections.

**7 Subsection 4(4) (definition of *designated content/hosting service*)**

Repeal the definition.

**8 Subsection 4(4) (definition of *internet carriage service*)**

Repeal the definition.

**9 Subsection 4(4) (definition of *internet content*)**

Repeal the definition.

**10 Subsection 4(4) (definition of *internet service provider*)**

Repeal the definition.

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

Omit “, the internet industry, the commercial content service industry”.

**12 Subsection 5(4) (definition of *commercial content service*)**

Repeal the definition.

**13 Subsection 6(1) (definition of *Commissioner*)**

Repeal the definition.

**14 Subsection 6(1) (paragraph (b) of the definition of *registered code of practice*)**

Repeal the paragraph.

**15 Subsection 6(1) (paragraph (c) of the definition of *registered code of practice*)**

Omit “Schedule 6; or”, substitute “Schedule 6.”.

**16 Subsection 6(1) (paragraph (d) of the definition of *registered code of practice*)**

Repeal the paragraph.

**17 Subsection 10A(1)**

Omit “(1)”.

**18 Subsection 10A(2)**

Repeal the subsection.

**19 Paragraph 130L(e)**

Omit “Part 5 of Schedule 5 to this Act”, substitute “Division 7 of Part 9 of the *Online Safety Act 2021*”.

**20 Paragraph 130L(fa)**

Repeal the paragraph.

**21 Part 13 (heading)**

Omit “and the Commissioner”.

**22 Section 169A**

Repeal the section.

**23 Subsection 173(1)**

Omit “(1)”.

**24 Subsection 173(2)**

Repeal the subsection.

**25 Subsections 174(4), (5) and (6)**

Repeal the subsections.

**26 Subsections 176(3) and (4)**

Repeal the subsections.

**27 Subsection 177(2)**

Repeal the subsection.

**28 Subsection 200(4)**

Repeal the subsection.

**29 Section 216B**

Repeal the section.

**30 Schedule 5**

Repeal the Schedule.

**31 Subclause 2(1) of Schedule 6 (definition of *internet carriage service*)**

Omit “Schedule 5”, substitute “the *Online Safety Act 2021*”.

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**32 Paragraph 24(1)(h) of Schedule 6**

Omit “an online provider rule (within the meaning of Schedule 5)”, substitute “a service provider rule (within the meaning of the *Online Safety Act 2021*)”.

**33 Schedule 7 (heading)**

Omit “Content services”, substitute “Content services definitions”.

**34 Part 1 of Schedule 7 (heading)**

Repeal the heading.

**35 Clause 1 of Schedule 7**

Repeal the clause, substitute:

**1 Purpose of this Schedule**

The purpose of this Schedule is to enable:

- (a) other Acts; and
- (b) other provisions of this Act;

to define certain expressions as having the same meaning as in this Schedule.

**36 Clause 2 of Schedule 7 (definitions of *access-control system* and *adult*)**

Repeal the definitions.

**37 Clause 2 of Schedule 7 (definition of *adult chat service*)**

Omit “prohibited content or potential prohibited content”, substitute “content that is class 1 material or content that is class 2 material covered by paragraph 107(1)(a), (b), (c), (d) or (e) of *Online Safety Act 2021*”.

**38 Clause 2 of Schedule 7 (definitions of *ancillary subscription television content service, Australia, Australian connection* and *Australian police force*)**

Repeal the definitions.

**39 Clause 2 of Schedule 7 (definitions of *carriage service intermediary, carriage service provider, child and civil proceeding*)**

Repeal the definitions.

**40 Clause 2 of Schedule 7**

Insert:

*class 1 material* has the same meaning as in the *Online Safety Act 2021*.

*class 2 material* has the same meaning as in the *Online Safety Act 2021*.

**41 Clause 2 of Schedule 7 (definitions of *classification application, Classification Board, Classification Review Board and classified*)**

Repeal the definitions.

**42 Clause 2 of Schedule 7 (definitions of *commercial content service provider and computer game*)**

Repeal the definitions.

**43 Clause 2 of Schedule 7 (definition of *corresponding print publication*)**

Repeal the definition.

**44 Clause 2 of Schedule 7 (definitions of *data storage device, designated content/hosting service, designated content/hosting service provider, designated content/hosting service provider rule, eligible electronic publication, engage in conduct and evidential burden*)**

Repeal the definitions.

**45 Clause 2 of Schedule 7 (paragraph (a) of the definition of *exempt internet directory service*)**

Omit “prohibited content or potential prohibited content”, substitute “content that is class 1 material or content that is class 2 material covered by paragraph 107(1)(a), (b), (c), (d) or (e) of *Online Safety Act 2021*”.

**46 Clause 2 of Schedule 7 (paragraph (a) of the definition of *exempt internet search engine service*)**

Omit “prohibited content or potential prohibited content”, substitute “content that is class 1 material or content that is class 2 material covered by paragraph 107(1)(a), (b), (c), (d) or (e) of *Online Safety Act 2021*”.

**47 Clause 2 of Schedule 7 (paragraph (b) of the definition of *exempt point-to-point content service*)**

Omit “prohibited content or potential prohibited content”, substitute “content that is class 1 material or content that is class 2 material covered by paragraph 107(1)(a), (b), (c), (d) or (e) of *Online Safety Act 2021*”.

**48 Clause 2 of Schedule 7 (definitions of *film, final link-deletion notice, final service-cessation notice, final take-down notice, hosting service, hosting service provider, immediate circle, interim link-deletion notice, interim service-cessation notice, interim take-down notice, internet carriage service and internet content*)**

Repeal the definitions.

**49 Clause 2 of Schedule 7 (definitions of *links service, links service provider, live content, live content service, live content service provider, MA 15+ content, mobile carriage service provider and mobile premium service*)**

Repeal the definitions.

**50 Clause 2 of Schedule 7 (definitions of *potential prohibited content, prohibited content, provided by a content service, provided to the public, public mobile telecommunications service, R 18+ content and restricted access system*)**

Repeal the definitions.

**51 Clause 2 of Schedule 7 (definitions of *special link-deletion notice, special service-cessation notice, special take-down notice, stored content and trained content assessor*)**

Repeal the definitions.

**52 Clauses 3, 4, 6, 8, 9A, 10, 11, 14, 15, 16, 18, and 19 of Schedule 7**

Repeal the clauses.

**53 Parts 2 to 9 of Schedule 7**

Repeal the Parts.

**54 Clause 2 of Schedule 8 (definition of *internet carriage service*)**

Omit “Schedule 5”, substitute “the *Online Safety Act 2021*”.

**55 Clause 30 of Schedule 8**

Omit “Schedule 5 or 7”, substitute “Part 9 of the *Online Safety Act 2021*”.

**56 Clause 31 of Schedule 8**

Repeal the clause.

***Crimes Act 1914***

**57 Subsection 3C(1) (definition of *electronic service*)**

Omit “*Enhancing Online Safety Act 2015*”, substitute “*Online Safety Act 2021*”.



**58 Subsection 3CAA(3)**

Omit “*Enhancing Online Safety Act 2015*”, substitute “*Online Safety Act 2021*”.

***Criminal Code Act 1995***

**59 Paragraphs 273.9(5)(a) and (b) of the *Criminal Code***

Repeal the paragraphs, substitute:

- (a) assisting the eSafety Commissioner to perform the functions, or exercise the powers, conferred on the eSafety Commissioner by Part 9 of the *Online Safety Act 2021*; or
- (b) manufacturing or developing, or updating, content filtering technology (including software) in accordance with:
  - (i) an industry code registered under Division 7 of Part 9 of the *Online Safety Act 2021*; or
  - (ii) an industry standard registered under Division 7 of Part 9 of the *Online Safety Act 2021*.

**60 Section 473.1 of the *Criminal Code***

Insert:

*Australian hosting service provider* has the same meaning as in the *Online Safety Act 2021*.

**61 Section 473.1 of the *Criminal Code* (definition of *internet content host*)**

Repeal the definition.

**62 Section 473.1 of the *Criminal Code* (definition of *internet service provider*)**

Omit “Schedule 5 to the *Broadcasting Services Act 1992*”, substitute “the *Online Safety Act 2021*”.

**63 Paragraph 473.5(d) of the *Criminal Code***

Omit “internet content host” (wherever occurring), substitute “Australian hosting service provider”.

**64 Subsection 474.17(1) of the *Criminal Code* (penalty)**

Omit “3 years”, substitute “5 years”.

**65 Subsection 474.17A(1) of the *Criminal Code* (penalty)**

Omit “5 years”, substitute “6 years”.

**66 Paragraph 474.17A(4)(d) of the *Criminal Code***

Repeal the paragraph, substitute:

- (d) before the commission of the underlying offence, 3 or more civil penalty orders were made against the person under the *Regulatory Powers (Standard Provisions) Act 2014* in relation to either or both of the following:
  - (i) contraventions of subsection 75(1) of the *Online Safety Act 2021*;
  - (ii) contraventions of section 91 of the *Online Safety Act 2021* that relate to removal notices given under section 89 of that Act.

**67 Paragraph 474.17A(13)(a) of the *Criminal Code***

Repeal the paragraph, substitute:

- (a) a person has been convicted by a court of an offence against subsection (4) on the basis that 3 or more civil penalty orders were made against the person under the *Regulatory Powers (Standard Provisions) Act 2014* in relation to either or both of the following:
  - (i) contraventions of subsection 75(1) of the *Online Safety Act 2021*;
  - (ii) contraventions of section 91 of the *Online Safety Act 2021* that relate to removal notices given under section 89 of that Act; and

**68 Paragraphs 474.24(4)(a) and (b) of the *Criminal Code***

Repeal the paragraphs, substitute:

- (a) assisting the eSafety Commissioner to perform the functions, or exercise the powers, conferred on the eSafety Commissioner by Part 9 of the *Online Safety Act 2021*; or
  - (b) manufacturing or developing, or updating, content filtering technology (including software) in accordance with:
-

- (i) an industry code registered under Division 7 of Part 9 of the *Online Safety Act 2021*; or
- (ii) an industry standard registered under Division 7 of Part 9 of the *Online Safety Act 2021*.

**69 Paragraph 474.25(a) of the *Criminal Code***

Omit “internet content host”, substitute “Australian hosting service provider”.

**70 Section 474.30 of the *Criminal Code* (paragraphs (a) and (b) of the definition of *content service*)**

Omit “*Enhancing Online Safety Act 2015*”, substitute “*Online Safety Act 2021*”.

**71 Section 474.30 of the *Criminal Code* (definition of *hosting service*)**

Omit “*Enhancing Online Safety Act 2015*”, substitute “*Online Safety Act 2021*”.

**72 Section 474.30 of the *Criminal Code* (definition of *hosting service*)**

Omit “9C(a)(ii) and (b)(ii)”, substitute “17(a)(ii) and (b)(ii)”.

**73 Paragraph 474.41(1)(a) of the *Criminal Code***

Omit “*Enhancing Online Safety Act 2015*”, substitute “*Online Safety Act 2021*”.

**74 Section 474.44 of the *Criminal Code***

Repeal the section, substitute:

**474.44 This Subdivision does not limit Part 9 of the *Online Safety Act 2021***

This Subdivision does not limit the operation of Part 9 of the *Online Safety Act 2021*.

***Enhancing Online Safety (Non-consensual Sharing of Intimate Images) Act 2018***

**75 Section 4**

Repeal the section.

***Freedom of Information Act 1982***

**76 Subsection 4(1) (paragraph (a) of the definition of exempt internet-content document)**

After “Schedule 5 to the *Broadcasting Services Act 1992*”, insert “, as in force before the commencement of the *Online Safety Act 2021*”.

**77 Subsection 4(1)**

Insert:

***exempt online content scheme document*** means:

- (a) a document containing material (within the meaning of the *Online Safety Act 2021*), or a record of material (within the meaning of that Act), that is online content scheme material; or
- (b) a document that sets out how to access, or that is likely to facilitate access to, material (within the meaning of the *Online Safety Act 2021*) that is online content scheme material (for example, by setting out the name of a website, an IP address, a URL or a password).

**78 Subsection 4(1) (subparagraphs (b)(i) and (ii) of the definition of offensive content-service content)**

After “that Schedule”, insert “, as in force before the commencement of the *Online Safety Act 2021*”.

**79 Subsection 4(1)**

Insert:

***online content scheme material*** means material that:

- (a) has been provided on a social media service, relevant electronic service or designated internet service (within the meaning of the *Online Safety Act 2021*); and
- (b) was:
  - (i) class 1 material (within the meaning of the *Online Safety Act 2021*); or
  - (ii) class 2 material (within the meaning of the *Online Safety Act 2021*) that is covered by paragraph 107(1)(a), (b), (c), (d) or (e) of that Act;when it was provided on the service.

**80 Subsection 4(1) (definition of *offensive internet content*)**

After “Schedule 5 to the *Broadcasting Services Act 1992*”, insert “, as in force before the commencement of the *Online Safety Act 2021*”.

**81 Division 1 of Part II of Schedule 2 (paragraph (a) of the item dealing with Australian Communications and Media Authority)**

After “Schedule 7 to the *Broadcasting Services Act 1992*”, insert “, as in force before the commencement of the *Online Safety Act 2021*”.

**82 Division 1 of Part II of Schedule 2 (paragraph (b) of the item dealing with Australian Communications and Media Authority)**

After “Schedule 5 to that Act”, insert “, as in force before the commencement of the *Online Safety Act 2021*”.

**83 Division 1 of Part II of Schedule 2 (at the end of the item dealing with Australian Communications and Media Authority)**

Add:

- ; and (c) exempt online content scheme documents concerning the performance of a function, or the exercise of a power, under Part 9 of the *Online Safety Act 2021*.

**84 Division 1 of Part II of Schedule 2 (paragraph (a) of the item dealing with Classification Board)**

After “Schedule 7 to the *Broadcasting Services Act 1992*”, insert “, as in force before the commencement of the *Online Safety Act 2021*”.

**85 Division 1 of Part II of Schedule 2 (paragraph (b) of the item dealing with Classification Board)**

After “Schedule 5 to that Act”, insert “, as in force before the commencement of the *Online Safety Act 2021*”.

**86 Division 1 of Part II of Schedule 2 (at the end of the item dealing with Classification Board)**

Add:

; and (c) exempt online content scheme documents concerning the performance of a function, or the exercise of a power, under Part 9 of the *Online Safety Act 2021*.

**87 Division 1 of Part II of Schedule 2 (paragraph (a) of the item dealing with Classification Review Board)**

After “Schedule 7 to the *Broadcasting Services Act 1992*”, insert “, as in force before the commencement of the *Online Safety Act 2021*”.

**88 Division 1 of Part II of Schedule 2 (paragraph (b) of the item dealing with Classification Review Board)**

After “Schedule 5 to that Act”, insert “, as in force before the commencement of the *Online Safety Act 2021*”.

**89 Division 1 of Part II of Schedule 2 (paragraph (a) of the item dealing with eSafety Commissioner)**

After “Schedule 7 to the *Broadcasting Services Act 1992*”, insert “, as in force before the commencement of the *Online Safety Act 2021*”.

**90 Division 1 of Part II of Schedule 2 (paragraph (b) of the item dealing with eSafety Commissioner)**

After “Schedule 5 to that Act”, insert “, as in force before the commencement of the *Online Safety Act 2021*”.

**91 Division 1 of Part II of Schedule 2 (at the end of the item dealing with eSafety Commissioner)**

Add:

- ; and (c) exempt online content scheme documents concerning the performance of a function, or the exercise of a power, under Part 9 of the *Online Safety Act 2021*.

***Interactive Gambling Act 2001***

**92 Section 4 (definition of access)**

Omit “Schedule 5 to the *Broadcasting Services Act 1992*”, substitute “the *Online Safety Act 2021*”.

**93 Section 4 (definition of *internet content*)**

Repeal the definition.

**94 Section 4 (definition of *internet service provider*)**

Omit “Schedule 5 to the *Broadcasting Services Act 1992*”, substitute “the *Online Safety Act 2021*”.

**95 Subsection 36(2)**

Omit “Schedule 5 or 7 to the *Broadcasting Services Act 1992*”, substitute “Division 7 of Part 9 of the *Online Safety Act 2021*”.

**96 Subsection 36(3)**

Omit “Schedule 5 or 7 to the *Broadcasting Services Act 1992*”, substitute “Division 7 of Part 9 of the *Online Safety Act 2021*”.

***Telecommunications Act 1997***

**97 Section 7 (definition of *internet service provider*)**

Omit “Schedule 5 to the *Broadcasting Services Act 1992*”, substitute “the *Online Safety Act 2021*”.

***Telecommunications (Interception and Access) Act 1979***

**98 Subparagraph 187A(3)(b)(ii)**

Omit “Schedule 5 to the *Broadcasting Services Act 1992*”, substitute “the *Online Safety Act 2021*”.

***Tobacco Advertising Prohibition Act 1992***

**99 Paragraph 16B(1)(d)**

Omit “internet content host” (wherever occurring), substitute “Australian hosting service provider”.

**100 Subsection 16B(2)**

Insert:

*Australian hosting service provider* has the same meaning as in the *Online Safety Act 2021*.

**101 Subsection 16B(2) (definition of *internet content host*)**

Repeal the definition.

**102 Subsection 16B(2) (definition of *internet service provider*)**

Omit “Schedule 5 to the *Broadcasting Services Act 1992*”, substitute “the *Online Safety Act 2021*”.



**Part 2—Amendments contingent on the  
commencement of the Surveillance  
Legislation Amendment (Identify and  
Disrupt) Act 2021**

*Crimes Act 1914*

**103 Section 3ZZUK (definition of *account*)**

Omit “*Enhancing Online Safety Act 2015*”, substitute “*Online Safety Act 2021*”.

**104 Section 3ZZUK (definition of *electronic service*)**

Omit “*Enhancing Online Safety Act 2015*”, substitute “*Online Safety Act 2021*”.

**Part 3—Amendments contingent on the  
non-commencement of the Export Market  
Development Grants Legislation  
Amendment Act 2020**

*Export Market Development Grants Act 1997*

**105 Section 57A (heading)**

Omit “**prohibited content or potential prohibited content**”, substitute  
“**class 1 material or class 2 material**”.

**106 Paragraphs 57A(a) and (b)**

Repeal the paragraphs, substitute:

- (a) class 1 material (within the meaning of the *Online Safety Act 2021*); or
- (b) class 2 material (within the meaning of the *Online Safety Act 2021*) that is covered by paragraph 107(1)(a), (b), (c), (d) or (e) of that Act.

**107 Section 57A (note)**

Omit “, *potential prohibited content* and *prohibited content*”.

**108 Subsection 107(1) (definition of *potential prohibited content*)**

Repeal the definition.

**109 Subsection 107(1) (definition of *prohibited content*)**

Repeal the definition.

**Part 4—Amendments contingent on the  
commencement of the Federal Circuit and  
Family Court of Australia Act 2021**

***Online Safety Act 2021***

**110 Subsection 162(3)**

Omit “Federal Circuit Court of Australia”, substitute “Federal Circuit and Family Court of Australia (Division 2)”.

**111 Subsection 164(3)**

Omit “Federal Circuit Court of Australia”, substitute “Federal Circuit and Family Court of Australia (Division 2)”.

**112 Subsection 165(3)**

Omit “Federal Circuit Court of Australia”, substitute “Federal Circuit and Family Court of Australia (Division 2)”.

## Schedule 3—Transitional and application provisions

### Part 1—eSafety Commissioner

#### 1 Transitional—continuity of eSafety Commissioner

The repeal of the *Enhancing Online Safety Act 2015* does not affect the continuity of:

- (a) the office of eSafety Commissioner; or
- (b) the appointment of the eSafety Commissioner; or
- (c) the appointment of a person to act as the eSafety Commissioner; or
- (d) a determination made by the Remuneration Tribunal, so far as the determination relates to the eSafety Commissioner.

#### 2 Transitional—instrument of appointment of the eSafety Commissioner

- (1) This item applies to an instrument of appointment of the eSafety Commissioner under subsection 50(1) of the *Enhancing Online Safety Act 2015* that was in force immediately before the commencement of this item.
- (2) The instrument has effect after the commencement of this item as if it had been made under subsection 167(1) of the *Online Safety Act 2021*.

#### 3 Transitional—instrument of appointment of a person to act as the eSafety Commissioner

- (1) This item applies if an instrument of appointment of a person to act as the eSafety Commissioner under subsection 52(1) of the *Enhancing Online Safety Act 2015* was in force immediately before the commencement of this item.
- (2) The instrument has effect after the commencement of this item as if it had been made under subsection 169(1) of the *Online Safety Act 2021*.

## **Part 2—Complaints and objections**

### **4 Transitional—complaints about cyber-bullying material (complaint made by an Australian child)**

- (1) This item applies to a complaint made under subsection 18(1) of the *Enhancing Online Safety Act 2015* before the commencement of this item if the eSafety Commissioner has neither:
  - (a) taken action in response to the complaint; nor
  - (b) refused to take action in response to the complaint;before the commencement of this item.
- (2) The complaint has effect, after the commencement of this item, as if it were a complaint made under subsection 30(1) of the *Online Safety Act 2021*.

### **5 Transitional—complaints about cyber-bullying material (complaint made on behalf of an Australian child)**

- (1) This item applies to a complaint made under subsection 18(2) of the *Enhancing Online Safety Act 2015* before the commencement of this item if the eSafety Commissioner has neither:
  - (a) taken action in response to the complaint; nor
  - (b) refused to take action in response to the complaint;before the commencement of this item.
- (2) The complaint has effect, after the commencement of this item, as if it were a complaint made under subsection 30(2) of the *Online Safety Act 2021*.

### **6 Transitional—complaints about cyber-bullying material (complaint made by an adult who was an Australian child)**

- (1) This item applies to a complaint made under subsection 18(3) of the *Enhancing Online Safety Act 2015* before the commencement of this item if the eSafety Commissioner has neither:
    - (a) taken action in response to the complaint; nor
    - (b) refused to take action in response to the complaint;
-

before the commencement of this item.

- (2) The complaint has effect, after the commencement of this item, as if it were a complaint made under subsection 30(3) of the *Online Safety Act 2021*.

**7 Transitional—complaints about intimate images (complaint made by a person depicted in an intimate image)**

- (1) This item applies to a complaint made under subsection 19A(1) of the *Enhancing Online Safety Act 2015* before the commencement of this item if the eSafety Commissioner has neither:

- (a) taken action in response to the complaint; nor  
(b) refused to take action in response to the complaint;

before the commencement of this item.

- (2) The complaint has effect, after the commencement of this item, as if it were a complaint made under subsection 32(1) of the *Online Safety Act 2021*.

**8 Transitional—complaints about intimate images (complaint made on behalf of a person depicted in an intimate image)**

- (1) This item applies to a complaint made under subsection 19A(3) of the *Enhancing Online Safety Act 2015* before the commencement of this item if the eSafety Commissioner has neither:

- (a) taken action in response to the complaint; nor  
(b) refused to take action in response to the complaint;

before the commencement of this item.

- (2) The complaint has effect, after the commencement of this item, as if it were a complaint made under subsection 32(3) of the *Online Safety Act 2021*.

**9 Transitional—objection notices (objection notice given by a person depicted in an intimate image)**

- (1) This item applies to an objection notice given under subsection 19B(1) of the *Enhancing Online Safety Act 2015* before the commencement of this item if the eSafety Commissioner has neither:
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- (a) taken action in response to the objection notice; nor
  - (b) refused to take action in response to the objection notice;before the commencement of this item.
- (2) The objection notice has effect, after the commencement of this item, as if it were an objection notice given under subsection 33(1) of the *Online Safety Act 2021*.

**10 Transitional—objection notices (objection notice given on behalf of a person depicted in an intimate image)**

- (1) This item applies to an objection notice given under subsection 19B(3) of the *Enhancing Online Safety Act 2015* before the commencement of this item if the eSafety Commissioner has neither:
  - (a) taken action in response to the objection notice; nor
  - (b) refused to take action in response to the objection notice;before the commencement of this item.
- (2) The objection notice has effect, after the commencement of this item, as if it were an objection notice given under subsection 33(3) of the *Online Safety Act 2021*.

## **Part 3—Provision of material etc.**

### **11 Transitional—material etc.**

- (1) The following provisions:
- (a) Division 2 of Part 3 of the *Online Safety Act 2021*;
  - (b) Part 5 of that Act;
- do not apply to the provision of material on:
- (c) a social media service; or
  - (d) a relevant electronic service;
- unless the material was provided on the service after the start of 1 July 2015.

Note: The cyber-bullying provisions of the *Enhancing Online Safety Act 2015* commenced on 1 July 2015.

- (2) The following provisions:
- (a) Division 2 of Part 3 of the *Online Safety Act 2021*;
  - (b) Part 5 of that Act;
- do not apply to the provision of material on a designated internet service unless the material was provided on the service after the commencement of this item.

- (3) The following provisions:
- (a) Division 3 of Part 3 of the *Online Safety Act 2021*;
  - (b) Division 3 of Part 6 of that Act;
- do not apply to the provision of an intimate image on:
- (c) a social media service; or
  - (d) a relevant electronic service; or
  - (e) a designated internet service;
- unless the intimate image was provided on the service after the start of 1 September 2018.

Note: The intimate images provisions of the *Enhancing Online Safety Act 2015* commenced on 1 September 2018.

- (4) The following provisions:
- (a) Division 4 of Part 3 of the *Online Safety Act 2021*;
  - (b) Part 7 of that Act;
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do not apply to the provision of material on:

- (c) a social media service; or
- (d) a relevant electronic service; or
- (e) a designated internet service;

unless the material was provided on the service after the commencement of this item.

- (5) Sections 113A, 118A and 123A of the *Online Safety Act 2021* apply in relation to material provided on:
- (a) a social media service; or
  - (b) a relevant electronic service; or
  - (c) a designated internet service;
- after the commencement of this item.

## Part 4—Notices

### 12 Transitional—pre-commencement social media service notices

- (1) Despite the repeal of the following provisions of the *Enhancing Online Safety Act 2015* by this Act:
  - (a) Subdivision B of Division 3 of Part 4;
  - (b) subsections 88(3) and (4);those provisions continue to apply, in relation to a social media service notice that was in force immediately before the commencement of this item, as if those repeals had not happened.
- (2) Despite the repeal of Part 6 of the *Enhancing Online Safety Act 2015* by this Act, that Part continues to apply, in relation to section 36 of that Act, as if that repeal had not happened.

### 13 Transitional—pre-commencement end-user notices

- (1) Despite the repeal of the following provisions of the *Enhancing Online Safety Act 2015* by this Act:
  - (a) Part 5;
  - (b) subsection 88(7);those provisions continue to apply, in relation to an end-user notice that was in force immediately before the commencement of this item, as if those repeals had not happened.
- (2) Despite the repeal of section 48 of the *Enhancing Online Safety Act 2015* by this Act, that section continues to apply, in relation to section 43 of that Act, as if that repeal had not happened.

### 14 Transitional—pre-commencement removal notices

- (1) Despite the repeal of the following provisions of the *Enhancing Online Safety Act 2015* by this Act:
  - (a) Division 3 of Part 5A;
  - (b) subsection 88(8);

those provisions continue to apply, in relation to a removal notice that was in force immediately before the commencement of this item, as if those repeals had not happened.

- (2) Despite the repeal of Part 6 of the *Enhancing Online Safety Act 2015* by this Act, that Part continues to apply, in relation to section 44G of that Act, as if that repeal had not happened.

## Part 5—Protection from proceedings

### 15 Transitional—protection from civil proceedings

- (1) Despite the repeal of subsection 89(1) of the *Enhancing Online Safety Act 2015* by this Act, that subsection continues to apply, in relation to an act done before the commencement of this item, as if that repeal had not happened.
- (2) Despite the repeal of subsection 89(2) of the *Enhancing Online Safety Act 2015* by this Act, that subsection continues to apply, in relation to anything done in compliance with:
  - (a) a request given under section 29 of that Act before the commencement of this item; or
  - (b) a social media service notice given before the commencement of this item; or
  - (c) an end-user notice given before the commencement of this item; or
  - (d) a removal notice given before the commencement of this item;as if that repeal had not happened.
- (3) Despite the repeal of subclause 88(1) of Schedule 5 to the *Broadcasting Services Act 1992* by this Act, that subclause continues to apply, in relation to anything done before the commencement of this item, as if that repeal had not happened.
- (4) Despite the repeal of subclause 88(2) of Schedule 5 to the *Broadcasting Services Act 1992* by this Act, that subclause continues to apply, in relation to anything done before the commencement of this item, as if that repeal had not happened.
- (5) Despite the repeal of subclause 111(1) of Schedule 7 to the *Broadcasting Services Act 1992* by this Act, that subclause continues to apply, in relation to anything done before the commencement of this item, as if that repeal had not happened.
- (6) Despite the repeal of subclause 111(2) of Schedule 7 to the *Broadcasting Services Act 1992* by this Act, that subclause continues to

apply, in relation to anything done before the commencement of this item, as if that repeal had not happened.

- (7) Despite the repeal of subclause 111(3) of Schedule 7 to the *Broadcasting Services Act 1992* by this Act, that subclause continues to apply, in relation to anything done before the commencement of this item, as if that repeal had not happened.

## **16 Transitional—liability for damages**

Despite the repeal of section 90 of the *Enhancing Online Safety Act 2015* by this Act, that section continues to apply, in relation to an act or matter in good faith done or omitted to be done:

(a) in the performance or purported performance of any function;  
or

(b) in the exercise or purported exercise of any power;

conferred on the eSafety Commissioner by or under:

(c) the repealed *Enhancing Online Safety Act 2015*; or

(d) a provision of the *Broadcasting Services Act 1992* repealed by this Act;

as if the repeal of that section had not happened.

## **17 Transitional—protection from criminal proceedings**

- (1) Despite the repeal of section 91 of the *Enhancing Online Safety Act 2015* by this Act, that section continues to apply, in relation to:

(a) the collection of material; or

(b) the possession of material; or

(c) the distribution of material; or

(d) the delivery of material; or

(e) the copying of material; or

(f) the doing of any other thing in relation to material;

in connection with the exercise of a power, or the performance of a function, conferred on the eSafety Commissioner by or under the repealed *Enhancing Online Safety Act 2015*, as if the repeal of that section had not happened.

- (2) Despite the repeal of clause 112 of Schedule 7 to the *Broadcasting Services Act 1992* by this Act, that clause continues to apply, in relation to:

**Schedule 3** Transitional and application provisions

**Part 5** Protection from proceedings

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- (a) the collection of content or material; or
- (b) the possession of content or material; or
- (c) the distribution of content or material; or
- (d) the delivery of content or material; or
- (e) the copying of content or material; or
- (f) the doing of any other thing in relation to content or material;

in connection with the exercise of a power, or the performance of a function, conferred on the eSafety Commissioner by or under a provision of the *Broadcasting Services Act 1992* repealed by this Act, as if the repeal of that clause had not happened.

- (3) For the purposes of this item, ***possession*** includes have in custody or control.

## **Part 6—Miscellaneous**

### **18 Transitional—copies of material**

Despite the repeal of section 94 of the *Enhancing Online Safety Act 2015* by this Act, that section continues to apply, in relation to copies made before the commencement of this item, as if that repeal had not happened.

### **19 Transitional—disclosure of information**

Despite the repeal of Part 9 of the *Enhancing Online Safety Act 2015* by this Act, that Part continues to apply, in relation to information that was obtained by the eSafety Commissioner as a result of the performance of a function, or the exercise of a power, conferred on the eSafety Commissioner by or under:

- (a) the repealed *Enhancing Online Safety Act 2015*; or
- (b) a provision of the *Broadcasting Services Act 1992* repealed by this Act;

as if the repeal of that Part had not happened.

### **20 Transitional—compensation for acquisition of property**

Despite the repeal of section 95 of the *Enhancing Online Safety Act 2015* by this Act, that section continues to apply, in relation to the operation of:

- (a) the repealed *Enhancing Online Safety Act 2015*; or
- (b) legislative rules made under that Act;

as if that repeal had not happened.

### **21 Application—subsection 273.9(5) of the *Criminal Code***

The amendment of subsection 273.9(5) of the *Criminal Code* made by this Act applies in relation to conduct engaged in after the commencement of this item.

### **22 Application—subsection 474.24(4) of the *Criminal Code***

The amendment of subsection 474.24(4) of the *Criminal Code* made by this Act applies in relation to conduct engaged in after the commencement of this item.

**Schedule 3** Transitional and application provisions  
**Part 6** Miscellaneous

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*[Minister's second reading speech made in—  
House of Representatives on 24 February 2021  
Senate on 17 March 2021]*

(21/21)

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