



# **Communications Legislation Amendment (Online Content Services and Other Measures) Act 2018**

**No. 28, 2018**

**An Act to amend the law relating to  
communications, 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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## Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	2
	<b>Schedule 1—Online content services</b>	<b>3</b>
	<i>Australian Communications and Media Authority Act 2005</i>	3
	<i>Broadcasting Services Act 1992</i>	3
	<i>Enhancing Online Safety Act 2015</i>	34





# **Communications Legislation Amendment (Online Content Services and Other Measures) Act 2018**

**No. 28, 2018**

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## **An Act to amend the law relating to communications, and for other purposes**

*[Assented to 11 April 2018]*

The Parliament of Australia enacts:

### **1 Short title**

This Act is the *Communications Legislation Amendment (Online Content Services and Other Measures) Act 2018*.

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*No. 28, 2018      Communications Legislation Amendment (Online Content Services and  
Other Measures) Act 2018      1*

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## 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.

<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>
1. The whole of this Act	The day after this Act receives the Royal Assent.	12 April 2018

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Online content services**

### ***Australian Communications and Media Authority Act 2005***

#### **1 After paragraph 10(1)(m)**

Insert:

(ma) to monitor compliance with the online content service provider rules;

#### **2 Paragraph 53(2)(k)**

After “Part 9C of that Act”, insert “, a notice under Schedule 8 to that Act or a notice under any other provision of that Act so far as that provision relates to Schedule 8 to that Act”.

### ***Broadcasting Services Act 1992***

#### **3 After paragraph 3(1)(ha)**

Insert:

(hb) to ensure online content service providers respect community standards in relation to gambling promotional content; and

#### **4 After paragraph 3(1)(i)**

Insert:

(ia) to provide a means for addressing complaints about gambling promotional content provided on online content services; and

#### **5 Subsection 3(2)**

Insert:

***gambling promotional content*** has the same meaning as in Schedule 8.

***online content service*** has the same meaning as in Schedule 8.

***online content service provider*** has the same meaning as in Schedule 8.

## 6 Subsection 4(1)

Omit “and internet services” (wherever occurring), substitute “, internet services and online content services”.

## 7 After subsection 4(3AA)

Insert:

- (3AB) The Parliament also intends that gambling promotional content provided on online content services be regulated in a manner that:
- (a) enables public interest considerations in relation to gambling promotional content to be addressed in a way that does not impose unnecessary financial and administrative burdens on the providers of online content services; and
  - (b) will readily accommodate technological change; and
  - (c) encourages the provision of online content services to the Australian community; and
  - (d) encourages the development of technologies relating to online content services.

## 8 Subsection 4(4)

Insert:

*gambling promotional content* has the same meaning as in Schedule 8.

*online content service* has the same meaning as in Schedule 8.

*online content service provider* has the same meaning as in Schedule 8.

## 9 Paragraph 5(1)(a)

Omit “and the commercial content service industry”, substitute “, the commercial content service industry and the online content service industry”.

## 10 Subsection 5(4)

Insert:

*online content service* has the same meaning as in Schedule 8.

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## **11 Subsection 6(1)**

Insert:

*gambling promotion program standard* means a standard determined by the ACMA under section 125A.

## **12 Subsection 6(1) (at the end of the definition of *program standards*)**

Add “, and includes a gambling promotion program standard”.

## **13 After section 125**

Insert:

### **125A ACMA must determine a gambling promotion program standard if directed by the Minister**

*Ministerial direction*

- (1) The Minister may, by legislative instrument, give the ACMA a direction to:
  - (a) determine a gambling promotion program standard that complies with the requirements specified in the direction; and
  - (b) do so within a period specified in the direction.
- (2) The ACMA must comply with a direction under subsection (1).
- (3) The ACMA must not determine a gambling promotion program standard unless it does so in accordance with a direction under subsection (1).

*Determination of a gambling promotion program standard*

- (4) The ACMA may, by legislative instrument, determine a standard, to be known as a gambling promotion program standard, prescribing matters required or permitted by this Act to be prescribed by a gambling promotion program standard.

*Prohibiting or regulating gambling promotional content*

- (5) A gambling promotion program standard may make provision for or in relation to prohibiting or regulating the broadcast of gambling promotional content:
- (a) on broadcasting services provided by any or all of the following:
    - (i) commercial television broadcasting licensees;
    - (ii) commercial radio broadcasting licensees;
    - (iii) subscription television broadcasting licensees;
    - (iv) providers of subscription radio narrowcasting services;
    - (v) providers of subscription television narrowcasting services; and
  - (b) in conjunction with live coverage of a sporting event.

Note: See also subsection 33(3A) of the *Acts Interpretation Act 1901*.

*Explanatory matter*

- (6) A gambling promotion program standard may make provision for or in relation to requiring any or all of the following:
- (a) commercial television broadcasting licensees;
  - (b) commercial radio broadcasting licensees;
  - (c) subscription television broadcasting licensees;
  - (d) providers of subscription radio narrowcasting services;
  - (e) providers of subscription television narrowcasting services;
- to ensure that, if live coverage of a sporting event is, or is to be, broadcast on a broadcasting service provided by the licensee or provider, explanatory matter that relates to the following is provided by the licensee or provider in a manner specified in the standard:
- (f) whether a gambling promotion program standard made for the purposes of subsection (5) applies in relation to that live coverage;
  - (g) if so, how the gambling promotion program standard applies in relation to that live coverage.

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*Record-keeping*

- (7) A gambling promotion program standard may make provision for or in relation to requiring any or all of the following:
- (a) commercial television broadcasting licensees;
  - (b) commercial radio broadcasting licensees;
  - (c) subscription television broadcasting licensees;
  - (d) providers of subscription radio narrowcasting services;
  - (e) providers of subscription television narrowcasting services;
- to ensure that, if live coverage of a sporting event is, or is to be, broadcast on a broadcasting service provided by the licensee or provider, the licensee or provider will:
- (f) make records that:
    - (i) are of a kind or kinds specified in the standard; and
    - (ii) are sufficient to enable compliance by the licensee or provider with a gambling promotion program standard made for the purposes of subsection (5) or (6) to be readily ascertained; and
  - (g) retain those records for the period ascertained in accordance with the first-mentioned standard; and
  - (h) make those retained records available to the ACMA on request.

Note: See also subsection 33(3A) of the *Acts Interpretation Act 1901*.

- (8) For the purposes of subparagraph (7)(f)(i), each of the following is an example of a kind of record:
- (a) a written record;
  - (b) an audio record;
  - (c) an audio-visual record.

*Accidental or incidental broadcast of gambling promotional content*

- (9) A gambling promotion program standard does not apply in relation to the broadcasting of gambling promotional content on a broadcasting service if:
- (a) the gambling promotional content is broadcast as an accidental or incidental accompaniment to the broadcasting of other matter; and

- (b) the licensee or provider of the broadcasting service does not receive any direct or indirect benefit (whether financial or not) for broadcasting the gambling promotional content (in addition to any direct or indirect benefit that the licensee or provider receives for broadcasting the other matter).

*Live coverage of a sporting event*

- (10) For the purposes of this section, if:
  - (a) live coverage of a sporting event is broadcast on a broadcasting service; and
  - (b) there is an unscheduled break in the sporting event; any matter broadcast on the service during the break is taken to be live coverage of the sporting event.

*Gambling promotional content broadcast in conjunction with live coverage of a sporting event*

- (11) For the purposes of this section, gambling promotional content (other than a commentator betting odds promotion or a representative venue-based promotion) is broadcast on a broadcasting service in conjunction with live coverage of a sporting event if, and only if, the content is broadcast on the service during the period:
    - (a) beginning 5 minutes before the scheduled start of the sporting event; and
    - (b) ending 5 minutes after the conclusion of the sporting event.
  - (12) However, if coverage of the sporting event is delayed, this section has effect as if there were a corresponding delay to the period mentioned in subsection (11).
  - (13) For the purposes of this section, gambling promotional content that consists of a commentator betting odds promotion or a representative venue-based promotion is broadcast on a broadcasting service in conjunction with live coverage of a sporting event if, and only if, the promotion is broadcast on the service during the period:
    - (a) beginning 30 minutes before the scheduled start of the sporting event; and
    - (b) ending 30 minutes after the conclusion of the sporting event.
-

- (14) However, if coverage of the sporting event is delayed, this section has effect as if there were a corresponding delay to the period mentioned in subsection (13).

*Administrative decisions*

- (15) A gambling promotion program standard may make provision for or in relation to a particular matter by empowering the ACMA to make decisions of an administrative character.

*This section does not limit section 125*

- (16) This section does not limit the operation of section 125.

*Implied freedom of political communication*

- (17) The provisions of:
- (a) this section; and
  - (b) a gambling promotion program standard;
- have no effect to the extent (if any) that their operation would infringe any constitutional doctrine of implied freedom of political communication.
- (18) Subsection (17) does not limit the application of section 15A of the *Acts Interpretation Act 1901* to this Act.

*Acquisition of property*

- (19) The provisions of:
- (a) this section; and
  - (b) a gambling promotion program standard;
- have no effect to the extent (if any) to which their operation would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph).

*Sporting event*

- (20) Subclause 19(1) of Schedule 8 applies in relation to this section in a corresponding way to the way in which it applies in relation to that Schedule.
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- (21) Online content service provider rules made for the purposes of subclause 19(2) of Schedule 8 apply in relation to this section in a corresponding way to the way in which they apply in relation to that Schedule.
- (22) Online content service provider rules made for the purposes of subclause 19(3) of Schedule 8 apply in relation to this section in a corresponding way to the way in which they apply in relation to that Schedule.

*Scheduled start of a sporting event*

- (23) Online content service provider rules made for the purposes of clause 22 of Schedule 8 apply in relation to this section in a corresponding way to the way in which they apply in relation to that Schedule.

*Conclusion of a sporting event*

- (24) Online content service provider rules made for the purposes of clause 23 of Schedule 8 apply in relation to this section in a corresponding way to the way in which they apply in relation to that Schedule.

*Definitions*

- (25) In this section:

**commentator betting odds promotion** means gambling promotional content to the extent to which it consists of the provision of betting odds (however described) by a commentator.

**conclusion**, in relation to a sporting event, has a meaning affected by subsection (24).

**coverage** has the same meaning as in Schedule 8.

**gambling promotional content** means:

- (a) advertising matter; or
  - (b) sponsorship matter; or
  - (c) promotional matter;
- that relates to a gambling service.

***gambling service*** has the same meaning as in Schedule 8.

***gambling service provider*** means a person who provides a gambling service.

***in conjunction with***, when used in relation to live coverage of a sporting event, has the meaning given by subsections (11) to (14).

***live***, in relation to coverage of a sporting event, has the same meaning as in Schedule 8.

***representative venue-based promotion*** means gambling promotional content to the extent to which it consists of:

- (a) visual images (whether animated or otherwise) of a representative of a gambling service provider; or
  - (b) speech of a representative of a gambling service provider;
- where those visual images, or that speech, as the case may be, gives the impression that the representative is at, or around, the venue of a sporting event.

***scheduled start***, in relation to a sporting event, has a meaning affected by subsection (23).

***sporting event*** has a meaning affected by subsections (20), (21) and (22).

#### **14 Subsection 204(1) (at the end of the table)**

Add:

Refusal to make an exemption determination	Subclause 15(1) or (2) of Schedule 8	The provider of the online content service to which the determination relates
Variation of an exemption determination	Subclause 15(1) or (2) of Schedule 8	The provider of the online content service to which the determination relates
Revocation of an exemption determination	Subclause 15(1) or (2) of Schedule 8	The provider of the online content service to which the determination relates

Refusal to make an exemption determination	Subclause 15(3) or (4) of Schedule 8	The person to whom the determination relates
Variation of an exemption determination	Subclause 15(3) or (4) of Schedule 8	The person to whom the determination relates
Revocation of an exemption determination	Subclause 15(3) or (4) of Schedule 8	The person to whom the determination relates
To give a remedial direction	Subclause 26(2) of Schedule 8	The person to whom the direction was given
Variation of a remedial direction	Subclause 26(2) of Schedule 8	The person to whom the direction was given
Refusal to revoke a remedial direction	Subclause 26(2) of Schedule 8	The person to whom the direction was given

**15 At the end of section 204**

Add:

*Decisions under a gambling promotion program standard*

- (3) An application may be made to the Administrative Appeals Tribunal for review of a decision made by the ACMA under a gambling promotion program standard, so long as the standard provides that the decision is a reviewable decision for the purposes of this section.

*Decisions under the online content service provider rules*

- (4) An application may be made to the Administrative Appeals Tribunal for review of a decision made by the ACMA under the online content service provider rules, so long as those rules provide that the decision is a reviewable decision for the purposes of this section.

*Online content service provider rules*

- (5) In this section:



*online content service provider rules* has the same meaning as in Schedule 8.

**16 Subsection 205F(4)**

After “205E(1)”, insert “or subclause 25(1) or 26(4) of Schedule 8”.

**17 Subsection 205F(5)**

After “205AG(1)”, insert “or subclause 25(1) or 26(4) of Schedule 8”.

**18 After subsection 205F(5B)**

Insert:

(5C) The pecuniary penalty payable by a person in respect of:

- (a) a contravention of subclause 25(1) of Schedule 8; or
- (b) a contravention of section 205E that relates to a contravention of subclause 25(1) of Schedule 8;

must not exceed:

- (c) if the person is a body corporate—300 penalty units; or
- (d) if the person is not a body corporate—60 penalty units.

(5D) The pecuniary penalty payable by a person in respect of:

- (a) a contravention of subclause 26(4) of Schedule 8; or
- (b) a contravention of section 205E that relates to a contravention of subclause 26(4) of Schedule 8;

must not exceed:

- (c) if the person is a body corporate—2,000 penalty units; or
- (d) if the person is not a body corporate—400 penalty units.

**19 Before paragraph 205ZA(a)**

Insert:

- (aa) if the infringement notice relates to subclause 25(1) of Schedule 8 and the person is a body corporate—60 penalty units; or

**20 Paragraph 205ZA(a)**

After “if”, insert “the infringement notice does not relate to subclause 25(1) of Schedule 8 and”.

## **21 After section 216D**

Insert:

### **216E Schedule 8 (online content services)**

Schedule 8 has effect.

## **22 At the end of the Act**

Add:

# **Schedule 8—Online content services**

Note: See section 216E.

## **Part 1—Introduction**

### **1 Simplified outline of this Schedule**

- The ACMA may make online content service provider rules about gambling promotional content provided on an online content service in conjunction with live coverage of a sporting event.
- The ACMA may exempt an online content service, or an online content service provider, from the online content service provider rules.
- If an online content service provider contravenes the online content service provider rules, the provider may become liable to pay a civil penalty.
- The ACMA may give a remedial direction to an online content service provider if the provider contravenes the online content service provider rules.

### **2 Definitions**

In this Schedule:

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**access** includes:

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

**account** includes:

- (a) a free account; and
- (b) a pre-paid account; and
- (c) anything that may reasonably be regarded as the equivalent of an account.

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

**bet** includes wager.

**commentator betting odds promotion** means gambling promotional content to the extent to which it consists of the provision of betting odds (however described) by a commentator.

**conclusion**, in relation to a sporting event, has a meaning affected by clause 23.

**content** means content:

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

**coverage** means coverage that involves either or both of the following:

- (a) animated visual images;
- (b) audio.

**exempt online simulcast service** has the meaning given by clause 4.

**gambling promotional content** means:

- (a) advertising content; or
- (b) sponsorship content; or
- (c) promotional content;

that relates to a gambling service.

**gambling service** has the meaning given by clause 18.

**gambling service provider** means a person who provides a gambling service.

**game** includes an electronic game.

**geographical link to Australia** has the meaning given by clause 5.

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

**in conjunction with**, when used in relation to live coverage of a sporting event, has the meaning given by clause 21.

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

**live**, in relation to coverage of a sporting event, means:

- (a) live (within the ordinary meaning of that expression); or
- (b) delayed, so long as the coverage:
  - (i) is provided as if it were live (within the ordinary meaning of that expression); and
  - (ii) begins no later than the conclusion of the sporting event.

**lottery** includes an electronic lottery.

**online content service** has the meaning given by clause 3.

**online content service provider** means a person who provides an online content service.

Note: See clause 6.

**online content service provider rules** means rules made under clause 11.

**provided on an online content service** has the meaning given by clause 7.

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***provided to the public***, in relation to a service, has the meaning given by clause 8.

***representative venue-based promotion*** means gambling promotional content to the extent to which it consists of:

- (a) visual images (whether animated or otherwise) of a representative of a gambling service provider; or
- (b) speech of a representative of a gambling service provider; where those visual images, or that speech, as the case may be, gives the impression that the representative is at, or around, the venue of a sporting event.

***scheduled start***, in relation to a sporting event, has a meaning affected by clause 22.

***service*** includes a website.

Note: See also clause 17.

***sporting event*** has a meaning affected by clause 19.

***ticket*** includes an electronic ticket.

***using*** has a meaning affected by clause 9.

***voice call*** includes:

- (a) if a voice call is not practical for a particular end-user with a disability—a call that is equivalent to a voice call; and
- (b) a call that involves a recorded or synthetic voice.

### **3 Online content service**

- (1) For the purposes of this Schedule, ***online content service*** means:
  - (a) a service that delivers content to persons having equipment appropriate for receiving that content, where the delivery of the service is by means of an internet carriage service; or
  - (b) a service that allows end-users to access content using an internet carriage service;where the service:
  - (c) is provided to the public (whether on payment of a fee or otherwise); and
  - (d) has a geographical link to Australia;

but does not include a service to the extent to which it is:

- (e) an exempt online simulcast service; or
- (f) an exempt Parliamentary content service (within the meaning of Schedule 7); or
- (g) an exempt court/tribunal content service (within the meaning of Schedule 7); or
- (h) an exempt official-inquiry content service (within the meaning of Schedule 7); or
- (i) a service that enables end-users to communicate, by means of voice calls, with other end-users; or
- (j) a service that enables end-users to communicate, by means of video calls, with other end-users; or
- (k) a service that enables end-users to communicate, by means of email, with other end-users; or
- (l) an instant messaging service that enables end-users to communicate with other end-users; or
- (m) an SMS service that enables end-users to communicate with other end-users; or
- (n) an MMS service that enables end-users to communicate with other end-users; or
- (o) a service that delivers content by fax; or
- (p) an exempt data storage service (within the meaning of Schedule 7); or
- (q) an exempt back-up service (within the meaning of Schedule 7); or
- (r) a service determined under subclause (2).

Note 1: **SMS** is short for short message service.

Note 2: **MMS** is short for multimedia message service.

- (2) The ACMA may, by legislative instrument, determine one or more services for the purposes of paragraph (1)(r).

#### 4 Exempt online simulcast service

- (1) For the purposes of this Schedule, **exempt online simulcast service** means a service, or a part of a service, that is provided to end-users using an internet carriage service, and that:

- 
- (a) does no more than provide a stream of content that is identical to the stream of programs transmitted on:
    - (i) a commercial television broadcasting service provided under a commercial television broadcasting licence; or
    - (ii) a commercial radio broadcasting service provided under a commercial radio broadcasting licence; or
    - (iii) a subscription television broadcasting service provided under a subscription television broadcasting licence; or
    - (iv) a subscription radio narrowcasting service; or
    - (v) a subscription television narrowcasting service; or
    - (vi) a broadcasting service provided by the Special Broadcasting Service Corporation; and
  - (b) provides that stream of content simultaneously, or almost simultaneously, with the transmission of that stream of programs.
- (2) For the purposes of subclause (1), in determining whether a stream of content is identical to a stream of programs, disregard any differences that are attributable to the technical characteristics of the provision or transmission (for example, video resolution or sound quality).
- (3) For the purposes of subclause (1), in determining whether a stream of content is identical to a stream of programs, disregard the presence or absence of:
- (a) a watermark-type logo; or
  - (b) a watermark-type insignia;
- that is not gambling promotional content.

## **5 Geographical link to Australia**

- (1) For the purposes of this Schedule, a service has a ***geographical link to Australia*** if an ordinary reasonable person would conclude that:
- (a) the service is targeted at individuals who are physically present in Australia; or
  - (b) any of the content provided on the service is likely to appeal to the public, or a section of the public, in Australia.

- (2) For the purposes of this clause, content is **provided on** a service if the content is:
- (a) delivered by the service; or
  - (b) accessible to end-users using the service.

## 6 Online content service provider

- (1) For the purposes of this Schedule, a person does not provide an online content service merely because the person supplies an internet carriage service that enables content to be delivered or accessed.
- (2) For the purposes of this Schedule, a person does not provide an online content service merely because the person provides a billing service, or a fee collection service, in relation to an online content service.

## 7 When content is provided on an online content service

- (1) For the purposes of this Schedule, content is **provided on** an online content service if the content is:
- (a) delivered by the online content service; or
  - (b) accessible to end-users using the online content service.
- (2) For the purposes of this Schedule, content is **provided on** an online content service to an end-user if the content is:
- (a) delivered to the end-user by the online content service; or
  - (b) accessible to the end-user using the online content service.

## 8 When a service is provided to the public etc.

- (1) For the purposes of this Schedule, a service is **provided to the public** if, and only if, the service is provided to at least one person outside the immediate circle of the person who provides the service.
- (2) For the purposes of this Schedule, a service that is provided to the public is taken to be different from a service that is not provided to the public, even if the content provided on the services is identical.



## **9 Extended meaning of using**

A reference in this Schedule to *using* a thing is a reference to using the thing either:

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

## **10 Extra-territorial application**

This Schedule extends to acts, omissions, matters and things outside Australia.

# **Part 2—Online content service provider rules**

## **11 Online content service provider rules**

The ACMA may, by legislative instrument, make rules (the *online content service provider rules*) prescribing matters required or permitted by this Act to be prescribed by the online content service provider rules.

## **12 Administrative decisions**

The online content service provider rules may make provision for or in relation to a particular matter by empowering the ACMA to make decisions of an administrative character.

# **Part 3—Gambling promotional content**

## **Division 1—Online content service provider rules relating to gambling promotional content**

## **13 Gambling promotional content**

*Prohibiting or regulating gambling promotional content*

- (1) The online content service provider rules may make provision for or in relation to prohibiting or regulating gambling promotional

content provided on online content services in conjunction with live coverage of a sporting event.

Note: See also subsection 33(3A) of the *Acts Interpretation Act 1901*.

*Explanatory content*

- (2) The online content service provider rules may make provision for or in relation to requiring online content services providers to ensure that, if:
- (a) the provider provides an online content service; and
  - (b) content that consists of live coverage of a sporting event is, or is to be, provided on the service;
- explanatory content that relates to the following is provided on the service:
- (c) whether online content service provider rules made for the purposes of subclause (1) apply in relation to that live coverage;
  - (d) if so, how those rules apply in relation to that live coverage.

*Record-keeping*

- (3) The online content service provider rules may make provision for or in relation to requiring online content service providers to ensure that, if:
- (a) the provider provides an online content service; and
  - (b) content that consists of live coverage of a sporting event is, or is to be, provided on the service;
- the provider will:
- (c) make records that:
    - (i) are of a kind or kinds specified in those rules; and
    - (ii) are sufficient to enable compliance by the provider with online content service provider rules made for the purposes of subclause (1) or (2) to be readily ascertained; and
  - (d) retain those records for the period ascertained in accordance with the first-mentioned rules; and
  - (e) make those retained records available to the ACMA on request.

Note: See also subsection 33(3A) of the *Acts Interpretation Act 1901*.

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- (4) For the purposes of subparagraph (3)(c)(i), each of the following is an example of a kind of record:
- (a) a written record;
  - (b) an audio record;
  - (c) an audio-visual record.

*End-user physically present in Australia*

- (5) Online content service provider rules made for the purposes of subclause (1) or (2) do not apply in relation to content provided on an online content service to an end-user unless the end-user is physically present in Australia.

#### **14 Accidental or incidental provision of gambling promotional content**

The online content service provider rules do not apply in relation to the provision of gambling promotional content on an online content service if:

- (a) the gambling promotional content is provided as an accidental or incidental accompaniment to the provision of other content; and
- (b) the provider of the online content service does not receive any direct or indirect benefit (whether financial or not) for providing the gambling promotional content (in addition to any direct or indirect benefit that the provider receives for providing the other content).

#### **15 Individual exemptions from online content service provider rules**

- (1) The ACMA may, by writing, determine that a specified online content service is exempt from online content service provider rules made for the purposes of subclause 13(1) or (2).
- (2) The ACMA may, by writing, determine that a specified online content service is exempt from one or more specified provisions of online content service provider rules made for the purposes of subclause 13(1) or (2).

- (3) The ACMA may, by writing, determine that a specified online content service provider is exempt from online content service provider rules made for the purposes of subclause 13(1) or (2).
- (4) The ACMA may, by writing, determine that a specified online content service provider is exempt from one or more specified provisions of online content service provider rules made for the purposes of subclause 13(1) or (2).

*Decision-making criteria*

- (5) In deciding whether to make a determination under subclause (1) or (2) in relation to an online content service, the ACMA must have regard to:
  - (a) whether the online content service is a small online content service; and
  - (b) whether a failure to make the determination would be likely to have a substantial adverse effect on the financial circumstances of the provider of the online content service; and
  - (c) the likely impact of a failure to make the determination on the quantity and quality of content provided on the online content service; and
  - (d) such other matters (if any) as the ACMA considers relevant.
- (6) In deciding whether to make a determination under subclause (3) or (4) in relation to an online content service provider, the ACMA must have regard to:
  - (a) whether the online content services provided by the provider are small online content services; and
  - (b) whether a failure to make the determination would be likely to have a substantial adverse effect on the financial circumstances of the provider; and
  - (c) the likely impact of a failure to make the determination on the quantity and quality of the content provided on the online content services provided by the provider; and
  - (d) such other matters (if any) as the ACMA considers relevant.

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*Small online content service*

- (7) For the purposes of this clause, in determining whether an online content service is a small online content service, the ACMA must have regard to:
- (a) if the service has accounts for end-users—the number of accounts that are held by end-users who are ordinarily resident in Australia; and
  - (b) if the service does not have accounts for end-users—the number of end-users who are ordinarily resident in Australia; and
  - (c) such other matters (if any) as the ACMA considers relevant.
- (8) For the purposes of paragraphs (7)(a) and (b), the ACMA may make such assumptions and estimates as the ACMA considers reasonable.
- (9) The ACMA may publish on the ACMA’s website a statement that explains the ACMA’s approach to the administration of subclauses (7) and (8).
- (10) A statement under subclause (9) is not a legislative instrument.

*Other matters*

- (11) A determination under this clause may be:
- (a) unconditional; or
  - (b) subject to such conditions (if any) as are specified in the determination.
- (12) If the ACMA makes a determination under subclause (1), (2), (3) or (4), the ACMA must publish a copy of the determination on the ACMA’s website.
- (13) Subsection 13(3) of the *Legislation Act 2003* does not apply to subclause (1), (2), (3) or (4).
- (14) A determination made under subclause (1), (2), (3) or (4) is not a legislative instrument.

## 16 Class exemptions from online content service provider rules

- (1) The ACMA may, by legislative instrument, determine that online content services included in a specified class of online content services are exempt from online content service provider rules made for the purposes of subclause 13(1) or (2).
- (2) The ACMA may, by legislative instrument, determine that online content services included in a specified class of online content services are exempt from one or more specified provisions of online content service provider rules made for the purposes of subclause 13(1) or (2).
- (3) The ACMA may, by legislative instrument, determine that online content service providers included in a specified class of online content service providers are exempt from online content service provider rules made for the purposes of subclause 13(1) or (2).
- (4) The ACMA may, by legislative instrument, determine that online content service providers included in a specified class of online content service providers are exempt from one or more specified provisions of online content service provider rules made for the purposes of subclause 13(1) or (2).
- (5) A determination under this clause may be:
  - (a) unconditional; or
  - (b) subject to such conditions (if any) as are specified in the determination.

## Division 2—Interpretive provisions

### 17 When a part of an online content service is taken to be an online content service in its own right

- (1) For the purposes of the application of this Schedule to a sporting event, if content that consists of live coverage of the sporting event is, or is to be, provided on a distinct part of an online content service (the *overall online content service*):
  - (a) that part is taken to be an online content service in its own right; and

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- (b) that part is taken not to be included in the overall online content service.
- (2) For the purposes of subclause (1), it is immaterial whether:
- (a) gambling promotional content; or
  - (b) any other content;
- is, or is to be, provided on that part.

## **18 Gambling service**

For the purposes of this Schedule, **gambling service** means:

- (a) a service for the placing, making, receiving or acceptance of bets; or
- (b) a service the sole or dominant purpose of which is to introduce individuals who wish to make or place bets to individuals who are willing to receive or accept those bets; or
- (c) a service for the conduct of a lottery; or
- (d) a service for the supply of lottery tickets; or
- (e) a service for the conduct of a game, where:
  - (i) the game is played for money or anything else of value; and
  - (ii) the game is a game of chance or of mixed chance and skill; and
  - (iii) a customer of the service gives or agrees to give consideration to play or enter the game; or
- (f) a gambling service (within the ordinary meaning of that expression) that is not covered by any of the above paragraphs.

## **19 Sporting event**

- (1) Each of the following is taken to be a **sporting event** for the purposes of this Schedule:
- (a) the Summer Olympic Games;
  - (b) the Winter Olympic Games;
  - (c) the Commonwealth Games;
  - (d) any similar games.

- (2) The online content service provider rules may provide that a specified thing is taken to be a *sporting event* for the purposes of this Schedule.
- (3) The online content service provider rules may provide that a specified thing is taken not to be a *sporting event* for the purposes of this Schedule.
- (4) The following are examples of things that may be specified in the online content service provider rules made for the purposes of subclause (2) or (3):
  - (a) a match;
  - (b) a series of matches;
  - (c) a race;
  - (d) a series of races;
  - (e) a stage;
  - (f) a time trial;
  - (g) a qualification session;
  - (h) a tournament;
  - (i) a round.
- (5) For the purposes of this clause, *thing* includes a series of things.

## **20 Live coverage of a sporting event**

For the purposes of this Schedule, if:

- (a) content that consists of live coverage of a sporting event is provided on an online content service; and
  - (b) there is an unscheduled break in the sporting event;
- any content provided on the service during the break is taken to be content that consists of live coverage of the sporting event.

## **21 Gambling promotional content provided in conjunction with live coverage of a sporting event**

- (1) For the purposes of this Schedule, gambling promotional content (other than a commentator betting odds promotion or a representative venue-based promotion) is provided on an online content service in conjunction with live coverage of a sporting



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event if, and only if, the content is provided on the service during the period:

- (a) beginning 5 minutes before the scheduled start of the sporting event; and
  - (b) ending 5 minutes after the conclusion of the sporting event.
- (2) However, if coverage of the sporting event is delayed, this clause has effect as if there were a corresponding delay to the period mentioned in subclause (1).
- (3) For the purposes of this Schedule, gambling promotional content that consists of a commentator betting odds promotion or a representative venue-based promotion is provided on an online content service in conjunction with live coverage of a sporting event if, and only if, the promotion is provided on the service during the period:
- (a) beginning 30 minutes before the scheduled start of the sporting event; and
  - (b) ending 30 minutes after the conclusion of the sporting event.
- (4) However, if coverage of the sporting event is delayed, this clause has effect as if there were a corresponding delay to the period mentioned in subclause (3).

## **22 Scheduled start of a sporting event**

The online content service provider rules may provide that, for the purposes of the application of this Schedule to a specified sporting event, ***scheduled start*** has the meaning given by the online content service provider rules.

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

## **23 Conclusion of a sporting event**

The online content service provider rules may provide that, for the purposes of the application of this Schedule to a specified sporting event, ***conclusion*** has the meaning given by the online content service provider rules.

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

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## Part 4—Complaints

### 24 Complaints to ACMA—online content service provider rules

- (1) If a person has reason to believe that an online content service provider has contravened the online content service provider rules, the person may make a complaint to the ACMA about the matter.
- (2) The ACMA may conduct an investigation into the complaint if it thinks that it is desirable to do so, but is not required to conduct an investigation.

Note: One of the ACMA's functions is to monitor compliance with the online content service provider rules.

## Part 5—Enforcement

### 25 Compliance with the online content service provider rules

- (1) An online content service provider must not contravene the online content service provider rules.

*Civil penalty provision*

- (2) Subclause (1) is a civil penalty provision.
- (3) An online content service provider who contravenes subclause (1) commits a separate contravention of that subclause in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

*Designated infringement notice provision*

- (4) Subclause (1) is a designated infringement notice provision.

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**26 Remedial directions—breach of the online content service provider rules***Scope*

- (1) This clause applies if an online content service provider has contravened, or is contravening, the online content service provider rules.

*Remedial directions*

- (2) The ACMA may give the provider a written direction requiring the provider to take specified action directed towards ensuring that the provider does not contravene the online content service provider rules, or is unlikely to contravene the online content service provider rules, in the future.

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

- (3) The following are examples of the kinds of direction that may be given to an online content service provider under subclause (2):
- (a) a direction that the provider implement effective administrative systems for monitoring compliance with the online content service provider rules;
  - (b) a direction that the provider implement a system designed to give the provider's employees, agents and contractors a reasonable knowledge and understanding of the requirements of the online content service provider rules, in so far as those requirements affect the employees, agents or contractors concerned.
- (4) An online content service provider must not contravene a direction under subclause (2).

*Civil penalty provision*

- (5) Subclause (4) is a civil penalty provision.
- (6) An online content service provider who contravenes subclause (4) commits a separate contravention of that subclause in respect of each day (including a day of the making of a relevant civil penalty

order or any subsequent day) during which the contravention continues.

*Notice*

- (7) For the purposes of this Act and the *Australian Communications and Media Authority Act 2005*, a direction under subclause (2) is taken to be a notice under this Schedule.

## **Part 6—Miscellaneous**

### **27 Minister may direct the ACMA about the exercise of its powers**

- (1) The Minister may, by legislative instrument, give the ACMA a direction about the exercise of the powers conferred on the ACMA by this Schedule (other than Part 4 or 5).
- (2) The ACMA must comply with a direction under subclause (1).

### **28 Service of notices by electronic means**

Paragraphs 9(1)(d) and (2)(d) of the *Electronic Transactions Act 1999* do not apply to:

- (a) a notice under this Schedule; or  
(b) a notice under any other provision of this Act, so far as that provision relates to this Schedule.

Note: Paragraphs 9(1)(d) and (2)(d) of the *Electronic Transactions Act 1999* deal with the consent of the recipient of information to the information being given by way of electronic communication.

### **29 Service of summons, process or notice on corporations incorporated outside Australia**

*Scope*

- (1) This clause applies to:
- (a) a summons or process in any proceedings under, or connected with, this Schedule; or  
(b) a notice under this Schedule; or

(c) a notice under any other provision of this Act, so far as that provision relates to this Schedule;

where:

- (d) the summons, process or notice, as the case may be, is required to be served on, or given to, a body corporate incorporated outside Australia; and
- (e) the body corporate does not have a registered office or a principal office in Australia; and
- (f) the body corporate has an agent in Australia.

*Service*

- (2) The summons, process or notice, as the case may be, is taken to have been served on, or given to, the body corporate if it is served on, or given to, the agent.
- (3) Subclause (2) has effect in addition to section 28A of the *Acts Interpretation Act 1901*.

Note: Section 28A of the *Acts Interpretation Act 1901* deals with the service of documents.

### **30 This Schedule does not limit Schedule 5 or 7**

This Schedule does not limit the operation of Schedule 5 or 7.

### **31 Schedule 5 or 7 does not limit this Schedule**

Schedule 5 or 7 does not limit the operation of this Schedule.

### **32 Implied freedom of political communication**

- (1) The provisions of:
  - (a) this Schedule; and
  - (b) the online content service provider rules;have no effect to the extent (if any) that their operation would infringe any constitutional doctrine of implied freedom of political communication.
- (2) Subclause (1) does not limit the application of section 15A of the *Acts Interpretation Act 1901* to this Act.

### **33 Acquisition of property**

The provisions of:

- (a) this Schedule; and
- (b) the online content service provider rules;

have no effect to the extent (if any) to which their operation would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph).

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

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

### **35 Schedule not to affect performance of State or Territory functions**

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

## ***Enhancing Online Safety Act 2015***

### **23 Section 98 (heading)**

Repeal the heading, substitute:

### **98 This Act does not limit Schedule 5, 7 or 8 to the *Broadcasting Services Act 1992***

### **24 Section 98**

Omit “or 7”, substitute “, 7 or 8”.

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*[Minister's second reading speech made in—  
Senate on 6 December 2017  
House of Representatives on 28 March 2018]*

(269/17)

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*No. 28, 2018      Communications Legislation Amendment (Online Content Services and  
Other Measures) Act 2018      35*