

ONLINE SAFETY BILL 2024

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SECOND SCHEDULE

A BILL

i n t i t u l e d

An Act to enhance and promote online safety in Malaysia by regulating harmful content and providing for duties and obligations of the applications service providers, content applications service providers and network service providers, and to provide for related matters.

[]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Online Safety Act 2024.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Application

2. (1) Subject to subsection (2), this Act shall apply to—

(a) any applications service which utilizes internet access service that enables communications between users;

(b) any content applications service which utilizes internet access service to provide content; and

(c) any network service.

(2) This Act shall not apply to a private messaging feature of any applications service and content applications service.

(3) For the purposes of subsection (2), “private messaging feature” means a feature that allows a user to communicate a content to a specific and limited number of recipients determined by the user and may contain any other characteristics as may be prescribed.

Territorial and extra-territorial application

3. (1) This Act shall apply within and outside Malaysia.

(2) Notwithstanding subsection (1), this Act shall apply to any person beyond the geographical limits of Malaysia and the territorial waters of Malaysia if such person provides any applications service, content applications service or network service in a place within Malaysia and is a licensee under the Communications and Multimedia Act 1998 [*Act 588*].

(3) For the purposes of this section, “place” means a point of any nature or description whether on land, in the atmosphere, in outer space, underground, underwater, at sea or anywhere else.

(4) For the purposes of this section, a place that is—

(a) in or below the stratosphere; and

(b) above the geographical limits of Malaysia and her territorial waters,

is taken to be a place within the geographical limits of Malaysia and her territorial waters.

Interpretation

4. In this Act, unless the context otherwise requires—

“this Act” includes any subsidiary legislation made under this Act;

“communications data” has the meaning assigned to it in the Communications and Multimedia Act 1998;

“prescribed” means prescribed by the Minister by regulations made under this Act;

“Committee” means the Online Safety Committee established under section 5;

“child” means a person who is under the age of eighteen years;

“content” has the meaning assigned to it in the Communications and Multimedia Act 1998;

“harmful content” means any of the contents as specified in the First Schedule;

“priority harmful content” means the harmful content as specified in the Second Schedule;

“code” means a code issued by the Commission under section 80;

“Minister” means the Minister charged with the responsibility for communications;

“authorized officer” means any police officer, or any public officer or officer of the Commission authorized in writing by the Minister under section 52;

“licensed applications service provider” means an applications service provider licensed under the Communications and Multimedia Act 1998;

“licensed content applications service provider” means a content applications service provider licensed under the Communications and Multimedia Act 1998;

“licensed network service provider” means a network service provider licensed under the Communications and Multimedia Act 1998;

“user” means—

- (a) a user of the applications service provided by a licensed applications service provider; or
- (b) a user of the content applications service provided by a licensed content applications service provider;

“applications service” has the meaning assigned to it in the Communications and Multimedia Act 1998;

“content applications service” has the meaning assigned to it in the Communications and Multimedia Act 1998;

“network service” has the meaning assigned to it in the Communications and Multimedia Act 1998;

“communications system” has the meaning assigned to it in the Communications and Multimedia Act 1998;

“Commission” means the Malaysian Communications and Multimedia Commission established under section 4 of the Malaysian Communications and Multimedia Commission Act 1998 [*Act 589*].

PART II

ONLINE SAFETY COMMITTEE

Establishment of Committee

5. (1) A committee by the name of “Online Safety Committee” is established.

(2) The Committee shall consist of the following members:

- (a) a Chairman and Deputy Chairman;
- (b) one representative from the Ministry charged with the responsibility for communications;
- (c) one representative from the Ministry charged with the responsibility for home affairs;
- (d) one representative from the Ministry charged with the responsibility for digital related matters;
- (e) one representative from the Ministry charged with the responsibility for education;
- (f) one representative from the Ministry charged with the responsibility for women, family and community development;
- (g) one representative from the Royal Malaysia Police;
- (h) one representative from the National Security Council;
- (i) the Chief Children Commissioner or his representative from amongst the Children Commissioners;
- (j) one representative each from amongst the licensed applications service providers, licensed content applications service providers and licensed network service providers;
- (k) one representative from amongst persons with disabilities;
and
- (l) not more than five persons with appropriate experience, knowledge or expertise in matters relating to online safety.

(3) The members of the Committee referred to in paragraphs (2)(a), (j), (k) and (l) shall be appointed by the Minister.

(4) The members of the Committee appointed under paragraphs (2)(a), (j), (k) and (l) shall hold office for a term not exceeding three years and shall be eligible for reappointment upon expiry of their term of office for a term not exceeding three years.

(5) For the purposes of paragraph (2)(i), the “Chief Children Commissioner” and “Children Commissioner” mean the Chief Children Commissioner and the Children Commissioner designated under section 6A of the Human Rights Commission of Malaysia Act 1999 [Act 597].

(6) For the purposes of this Part, “Minister” means the Minister charged with the responsibility for law.

Allowances for members of Committee

6. The members of the Committee shall be paid such allowances as the Minister may determine after consultation with the Minister of Finance.

Revocation of appointment and resignation of members of Committee

7. (1) The Minister may at any time revoke the appointment of any member of the Committee referred to in paragraphs 5(2)(a), (j), (k) and (l) without assigning any reason.

(2) A member of the Committee referred to in paragraphs 5(2)(a), (j), (k) and (l) may, at any time, resign from his appointment by giving a notice in writing to the Minister.

Vacation of office of members of Committee

8. The office of a member of the Committee referred to in paragraphs 5(2)(a), (j), (k) and (l) shall be vacated—

(a) if he dies;

- (b) if there has been proved against him, or he has been convicted on, a charge in respect of—
 - (i) an offence involving fraud, dishonesty or moral turpitude;
 - (ii) an offence under any law relating to corruption; or
 - (iii) any other offence punishable with imprisonment, whether in itself only or in addition to or in lieu of a fine, for more than two years;
- (c) if his conduct, whether in connection with his duties as a member of the Committee or otherwise, has been such as to bring discredit on the Committee;
- (d) if he becomes a bankrupt or insolvent;
- (e) if he becomes of unsound mind or is otherwise incapable of discharging his duties;
- (f) in the case of the Chairman, if he absents himself from three consecutive meetings of the Committee without leave in writing of the Minister;
- (g) in the case of a member of the Committee other than the Chairman, if he absents himself from three consecutive meetings of the Committee without leave in writing of the Chairman;
- (h) if his appointment has been revoked by the Minister; or
- (i) if his resignation has been accepted by the Minister.

Temporary exercise of functions of Chairman

9. (1) The Deputy Chairman shall act as the Chairman for the period when—

- (a) the office of the Chairman is vacant;

- (b) the Chairman is absent from duty or from Malaysia; or
- (c) the Chairman is, for any other reason, unable to carry out his functions.

(2) The Deputy Chairman shall, during the period in which he is carrying out the functions of the Chairman under this section, be deemed to be the Chairman.

Functions of Committee

10. (1) The Committee shall have the functions to advise and give recommendations to the Commission on matters relating to online safety including—

- (a) the determination of types of harmful content;
- (b) the determination of priority harmful content;
- (c) methods to analyze and measures to mitigate, the risk of users being exposed to harmful content;
- (d) research approach pertaining to harmful content; and
- (e) best practices to encourage accountability of the licensed applications service provider, licensed content applications service provider and licensed network service provider.

(2) The Committee shall have all such powers as may be necessary for, or in connection with, or reasonably incidental to, the performance of its functions under this Act.

Meetings of Committee

11. (1) The Committee shall convene its meeting as often as the Chairman may determine and the meeting shall be held at the time and place as determined by the Chairman.

(2) The Chairman shall preside at all meetings of the Committee.

(3) If the Chairman is absent from any meeting of the Committee, he may direct the Deputy Chairman to replace him as the chairman of the meeting.

(4) The quorum of the Committee shall be seven and shall consist of at least one member appointed under paragraph 5(2)(j) and one member appointed under paragraph 5(2)(l).

(5) The Chairman may authorize the use of a live video link, live television link or any other electronic means of communication for the purposes of any meeting of the Committee.

(6) The Committee may determine its own procedure.

Committee may invite others to attend meetings

12. The Committee may invite any person to attend meetings of the Committee to provide opinion to the Committee on any matter under discussion.

PART III

DUTIES OF LICENSED APPLICATIONS SERVICE PROVIDER AND LICENSED CONTENT APPLICATIONS SERVICE PROVIDER

Duty to implement measures to mitigate risk of exposure to harmful content

13. (1) A licensed applications service provider and licensed content applications service provider shall implement the measures as specified in the code to mitigate the risk of users being exposed to harmful content.

(2) Notwithstanding subsection (1), the licensed applications service provider or licensed content applications service provider may implement any alternative measures other than the measures specified in the code if the licensed applications service provider or licensed content applications service provider proves to the satisfaction of the Commission that the alternative measures will better mitigate the risk of users being exposed to harmful content.

(3) The measures implemented under this section shall not unreasonably or disproportionately limit a user's expression.

Duty to issue guidelines to user

14. (1) A licensed applications service provider and licensed content applications service provider shall issue guidelines to users which shall include—

- (a) a description of measures implemented by the licensed applications service provider and licensed content applications service provider under section 13; and
- (b) terms of use as a guide to users when using the service of the licensed applications service provider and licensed content applications service provider.

(2) The licensed applications service provider and licensed content applications service provider shall make available on their services the guidelines issued under subsection (1) and ensure that the guidelines are clear, easily accessible and understood, and regularly updated.

Duty to enable user to manage online safety

15. (1) A licensed applications service provider and licensed content applications service provider shall make available on their services sufficient tools and settings to enable users to manage their online safety.

(2) The tools and settings referred to in subsection (1) shall include the tools for the users to prevent or limit other users from identifying, locating or communicating with them on the service of the licensed applications service provider and licensed content applications service provider.

Duty to make available mechanism for reporting harmful content

16. A licensed applications service provider and licensed content applications service provider shall make available on their services a mechanism that enable users to make a report to the licensed applications service provider or licensed content applications service provider regarding any content that the users believe is a harmful content available on the service of the licensed applications service provider or licensed content applications service provider.

Duty to make available mechanism for user assistance

17. (1) A licensed applications service provider and licensed content applications service provider shall make available on their services a mechanism for user assistance which is easily accessible to all types of users and responsive at all times.

(2) The mechanism for user assistance referred to in subsection (1) shall be, among others, for the following purposes:

(a) for the users to raise their concerns with respect to online safety, including measures implemented by the licensed applications service provider and licensed content applications service provider under section 13;

(b) for the users to obtain any other information on the mechanisms with respect to online safety available on the service of the licensed applications service provider and licensed content applications service provider within the period as may be prescribed; and

(c) for the users to make any inquiry.

Duty to protect online safety of child user

18. (1) A licensed applications service provider and licensed content applications service provider shall implement the measures as specified in the code to ensure safe use of their services by child users.

(2) Notwithstanding subsection (1), the licensed applications service provider or licensed content applications service provider may implement any alternative measures other than the measures specified in the code if the licensed applications service provider or licensed content applications service provider proves to the satisfaction of the Commission that the alternative measures will better ensure safe use of its service by child users.

(3) The measures implemented under this section shall include measures to ensure safe design and operation of the service that is, in the opinion of the licensed applications service provider or licensed content applications service provider, likely to be accessed by child users—

- (a) to prevent access of a user identified to be a child to a content suspected to be a harmful content;
- (b) to limit the ability of a user identified to be an adult from communicating with a user identified to be a child;
- (c) to limit features that increase, sustain or extend the use of its service by a user identified to be a child;
- (d) to prevent a user identified to be an adult from viewing the personal information of a user identified to be a child that is available on its service; and
- (e) to control personalized recommendation systems suitable for child users.

Duty to establish mechanism for making priority harmful content inaccessible

19. A licensed applications service provider and licensed content applications service provider shall establish a mechanism for making priority harmful content available on their services inaccessible to all users.

Duty to prepare Online Safety Plan

20. (1) A licensed applications service provider and licensed content applications service provider shall prepare an Online Safety Plan on their compliance of the duties under this Part.

(2) The Online Safety Plan referred to in subsection (1) shall be prepared within the period and in such form and contain the information, as may be prescribed.

(3) A licensed applications service provider and licensed content applications service provider shall make available on their services the Online Safety Plan prepared under subsection (1) and ensure that the Online Safety Plan is easily accessible and regularly updated.

(4) The Online Safety Plan prepared and made available under this section shall not contain any personal information of any user.

(5) A copy of the Online Safety Plan prepared under subsection (1) shall be submitted to the Commission.

PART IV

REPORTING OF HARMFUL CONTENT

Report to licensed applications service provider and licensed content applications service provider

21. (1) A user may make a report to a licensed applications service provider or licensed content applications service provider regarding any content which he believes is a harmful content available on the service of the licensed applications service provider or licensed content applications service provider in such form and manner as may be determined by the licensed applications service provider or licensed content applications service provider.

(2) Upon receipt of the report made under subsection (1), the licensed applications service provider or licensed content applications service provider shall within the period as may be prescribed—

- (a) acknowledge receipt of the report;
- (b) notify in writing the status of the report to the user who made the report; and
- (c) assess the report.

(3) Upon assessment of the report made under subsection (1), the licensed applications service provider or licensed content applications service provider shall dismiss the report if the licensed applications service provider or licensed content applications service provider—

- (a) is of the opinion that the report is frivolous, vexatious or not made in good faith or the subject matter of the report is trivial; or
- (b) determines that the subject matter of the report is or has already been the subject matter of another report made to the licensed applications service provider or licensed content applications service provider.

(4) Where the report is dismissed under subsection (3), the licensed applications service provider or licensed content applications service provider shall notify in writing the user who made the report of such dismissal.

(5) The user who is aggrieved by the dismissal of the report under subsection (3) may, by request to the licensed applications service provider or licensed content applications service provider, inquire into the dismissal from the licensed applications service provider or licensed content applications service provider within the period as may be prescribed and give reasons as to why his report should not be dismissed by the licensed applications service provider or licensed content applications service provider.

(6) Upon receipt of the inquiry together with the reasons from the aggrieved user under subsection (5), the licensed applications service provider or licensed content applications service provider may review its decision made under subsection (3) and decide whether the dismissal should be maintained or further action should be taken under section 22 or 23.

(7) Any decision of the licensed applications service provider or licensed content applications service provider made under subsection (6) in respect of the inquiry shall be notified in writing to the aggrieved user within the period as may be prescribed.

Report to licensed applications service provider and licensed content applications service provider on priority harmful content

22. (1) Where the report made by a user under subsection 21(1) is not dismissed under subsection 21(3) or (6) and the licensed applications service provider or licensed content applications service provider is of the opinion that the content being the subject matter of the report is a priority harmful content, the licensed applications service provider or licensed content applications service provider shall immediately make the content inaccessible on its service to all users for a period as may be prescribed.

(2) Before the period referred to in subsection (1) expires, the licensed applications service provider or licensed content applications service provider shall determine on reasonable grounds if the content made inaccessible on its service under subsection (1) is a priority harmful content.

(3) Where the licensed applications service provider or licensed content applications service provider determines under subsection (2) that the content made inaccessible on its service under subsection (1)—

(a) is a priority harmful content, the licensed applications service provider or licensed content applications service provider shall, within the period as may be prescribed, make the priority harmful content be permanently inaccessible on its service to all users; or

(b) is not a priority harmful content, the licensed applications service provider or licensed content applications service provider may, within the period as may be prescribed, make the content accessible again on its service to all users.

(4) Any action taken by the licensed applications service provider or licensed content applications service provider under this section shall be notified in writing to the user who made the report regarding the content and the user who communicated the content on the service of the licensed applications service provider or licensed content applications service provider.

(5) The user who is aggrieved by the action taken by the licensed applications service provider or licensed content applications service provider under this section may, by request to the licensed applications service provider or licensed content applications service provider, inquire into such action from the licensed applications service provider or licensed content applications service provider within the period as may be prescribed.

(6) Upon receipt of the inquiry from the aggrieved user under subsection (5), the licensed applications service provider or licensed content applications service provider may review its decision on the action taken in relation to the inquiry.

(7) Any decision of the licensed applications service provider or licensed content applications service provider made under subsection (6) in respect of the inquiry shall be notified in writing to the aggrieved user within the period as may be prescribed.

Report to licensed applications service provider and licensed content applications service provider on harmful content

23. (1) Where the report made by a user under subsection 21(1) is not dismissed under subsection 21(3) or (6) and the licensed applications service provider or licensed content applications service provider is of the opinion that the content being the subject matter of the report is a harmful content, the licensed applications service provider or licensed content applications service provider may make the content inaccessible on its service to all users within and for a period as may be prescribed.

(2) Where the licensed applications service provider or licensed content applications service provider makes the content inaccessible on its service for the period as prescribed under subsection (1), the licensed applications service provider or licensed content applications service provider shall, before the period expires, determine on reasonable grounds if the content made inaccessible is a harmful content.

(3) Where the licensed applications service provider or licensed content applications service provider determines under subsection (2) that the content made inaccessible on its service under subsection (1)—

(a) is a harmful content, the licensed applications service provider or licensed content applications service provider shall, within the period as may be prescribed, make the harmful content be permanently inaccessible on its service to all users; or

(b) is not a harmful content, the licensed applications service provider or licensed content applications service provider shall, within the period as may be prescribed, make the content accessible again on its service to all users.

(4) Any action taken by the licensed applications service provider or licensed content applications service provider under this section shall be notified in writing to the user who made the report regarding the content and the user who communicated the content on the service of the licensed applications service provider or licensed content applications service provider.

(5) The user who is aggrieved by the action taken by the licensed applications service provider or licensed content applications service provider under this section may, by request to the licensed applications service provider or licensed content applications service provider, inquire into such action from the licensed applications service provider or licensed content applications service provider within the period as may be prescribed.

(6) Upon receipt of the inquiry from the aggrieved user under subsection (5), the licensed applications service provider or licensed content applications service provider may review its decision on the action taken in relation to the inquiry.

(7) Any decision of the licensed applications service provider or licensed content applications service provider made under subsection (6) in respect of the inquiry shall be notified in writing to the aggrieved user within the period as may be prescribed.

(8) If it comes to the knowledge of the Commission that the licensed applications service provider or licensed content applications service provider has not made the content referred to in subsection (1) inaccessible on its service to all users, despite the determination made by the licensed applications service provider or licensed content applications service provider under subsection (2) that the content is a harmful content, the Commission may, in the interest of the public, issue a written instruction to the licensed applications service provider or licensed content applications service provider requiring the licensed applications service provider or licensed content applications service provider to make the content permanently inaccessible on its service within the period as specified in the written instruction.

(9) Any licensed applications service provider or licensed content applications service provider which fails to comply with a written instruction issued by the Commission under subsection (8) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit and shall be liable to a further fine not exceeding one hundred thousand ringgit for every day or part of a day during which the offence continues after conviction.

Report to Commission

24. (1) A user may make a report to the Commission in such form and manner as may be determined by the Commission—

(a) regarding any content which he believes is a harmful content available on the service of a licensed applications service provider or licensed content applications service provider regardless of whether a report has been made by him under section 21 to the licensed applications service provider or licensed content applications service provider regarding the same content; or

(b) regarding any content which he believes is a harmful content available online other than on the service of a licensed applications service provider or licensed content applications service provider.

(2) Upon receipt of the report made under subsection (1), the Commission shall within the period as may be prescribed—

- (a) acknowledge receipt of the report;
- (b) notify in writing the status of the report to the user who made the report; and
- (c) assess the report.

(3) Upon assessment of the report made under subsection (1), the Commission shall dismiss the report if the Commission—

- (a) is of the opinion that the report is frivolous, vexatious or not made in good faith or the subject matter of the report is trivial; or
- (b) determines that the subject matter of the report is or has already been the subject matter of another report made to the Commission.

(4) Where the report is dismissed under subsection (3), the Commission shall notify in writing the user who made the report of such dismissal.

(5) The user who is aggrieved by the dismissal of the report under subsection (3) may, by request to the Commission, inquire into the dismissal from the Commission within the period as may be prescribed and give reasons as to why his report should not be dismissed by the Commission.

(6) Upon receipt of the inquiry together with the reasons from the aggrieved user under subsection (5), the Commission may review its decision made under subsection (3) and decide whether the dismissal should be maintained or further action should be taken under section 25.

(7) Any decision of the Commission made under subsection (6) in respect of the inquiry shall be notified in writing to the aggrieved user within the period as may be prescribed.

Report to Commission on harmful content

25. (1) Where the report made by a user under subsection 24(1) is not dismissed under subsection 24(3) or (6) and the Commission determines on reasonable grounds that the content being the subject matter of the report is a harmful content including priority harmful content, the Commission shall—

- (a) where the harmful content is available on the service of a licensed applications service provider or licensed content applications service provider, issue a written instruction to the licensed applications service provider or licensed content applications service provider requiring the licensed applications service provider or licensed content applications service provider to make the content permanently inaccessible on its service to all users within the period as may be specified in the written instruction; or
- (b) where the harmful content is available online other than on the service of a licensed applications service provider or licensed content applications service provider, issue a written instruction to the relevant licensed network service provider requiring the licensed network service provider to restrict the relevant parts of its network service within the period as may be specified in the written instruction so as to make the content permanently inaccessible to all users.

(2) Any action taken by the licensed applications service provider, licensed content applications service provider or licensed network service provider pursuant to the written instruction under subsection (1) shall be notified in writing to the Commission and the Commission shall notify the same in writing to the user who made the report regarding the content.

(3) The licensed applications service provider or licensed content applications service provider to which the written instruction was issued under subsection (1) shall notify in writing the user who communicated the content on its service of the action it has taken pursuant to the written instruction.

(4) Any licensed applications service provider, licensed content applications service provider or licensed network service provider which fails to comply with a written instruction issued by the Commission under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit and shall be liable to a further fine not exceeding one hundred thousand ringgit for every day or part of a day during which the offence continues after conviction.

(5) Where the Commission determines on reasonable grounds that the content being the subject matter of the report made under subsection 24(1) is not a harmful content, the Commission shall notify in writing the user who made the report of its determination.

Action by licensed applications service provider or licensed content applications service provider on its own motion

26. (1) A licensed applications service provider or licensed content applications service provider may, regardless of whether a report has been made by a user under section 21 or 24, on its own motion make any content inaccessible on its service in the manner as it may determine if the licensed applications service provider or licensed content applications service provider has reasonable grounds to believe that the content is a priority harmful content.

(2) Where a content has been made inaccessible under subsection (1), the licensed applications service provider or licensed content applications service provider shall notify in writing the user who communicated the content on its service.

(3) The user aggrieved by the action taken by the licensed applications service provider or licensed content applications service provider under subsection (1) may, by request to the licensed applications service provider or licensed content applications service provider, inquire into such action from the licensed applications service provider or licensed content applications service provider within the period as may be prescribed.

(4) Upon receipt of the inquiry from the aggrieved user under subsection (3), the licensed applications service provider or licensed content applications service provider may review its decision on the action taken in relation to the inquiry.

(5) Any decision of the licensed applications service provider or licensed content applications service provider made under subsection (4) in respect of the inquiry shall be notified to the aggrieved user within the period as may be prescribed.

Commission may issue written instruction to make content accessible

27. Notwithstanding any provision of this Act, if it comes to the knowledge of the Commission that the licensed applications service provider or licensed content applications service provider has made any content available on its service inaccessible, the Commission may, in the interest of the public, issue a written instruction to the licensed applications service provider or licensed content applications service provider requiring the licensed applications service provider or licensed content applications service provider to make the content accessible again on its service to all users within the period as may be specified in the written instruction.

Inconsistency between written instruction or determination of Commission and action by licensed applications service provider or licensed content applications service provider

28. Where a user makes a report to a licensed applications service provider or licensed content applications service provider under section 21 and at the same time makes a report to the Commission under section 24 regarding the same content which the user believes is a harmful content, and there is inconsistency between the action taken by the licensed applications service provider or licensed content applications service provider under section 22 or section 23 and the written instruction issued by the Commission under subsection 25(1) or section 27 or the determination made by the Commission referred to in subsection 25(5) in respect of the report, the written instruction issued or the determination made by the Commission shall prevail.

Notification to user on report to enforcement agency

29. Where a licensed applications service provider or licensed content applications service provider makes a report to any enforcement agency in relation to a content being the subject matter of a report made by a user to the licensed applications service provider or licensed content applications service provider under section 21, the licensed applications service provider or licensed content applications service provider shall not disclose to the user who made the report any information relating to the report made to the enforcement agency.

PART V

POWERS OF THE COMMISSION

Power to issue directions

30. (1) The Commission may issue directions in writing to any licensed applications service provider, licensed content applications service provider or licensed network service provider regarding the compliance of any of the provisions of this Act by the licensed applications service provider, licensed content applications service provider or licensed network service provider.

(2) Before issuing the directions under subsection (1), the Commission shall issue a notice in writing to the licensed applications service provider, licensed content applications service provider or licensed network service provider specifying the nature of the required compliance.

(3) Upon receipt of the notice in writing under subsection (2), the licensed applications service provider, licensed content applications service provider or licensed network service provider may make a submission in respect of the required compliance, orally or in writing, within the period as specified in the notice.

(4) The Commission shall take into consideration any submission made by the licensed applications service provider, licensed content applications service provider or licensed network service provider before issuing the directions under subsection (1).

(5) The licensed applications service provider, licensed content applications service provider or licensed network service provider shall comply with the directions issued by the Commission under this section.

(6) The directions under this section shall be registered by the Commission as soon as practicable from the date of the issuance of the directions and shall be effective from the date of registration or such later date as the Commission may specify in the directions.

(7) The directions shall expire on such date as the Commission may specify in the directions or, if no date is specified, the directions shall be in operation until revoked.

(8) The Commission may modify, vary or revoke the directions issued under this section and the procedures set out under this section shall apply in respect of any modification, variation or revocation of the directions.

(9) Any licensed applications service provider, licensed content applications service provider or licensed network service provider which fails to comply with the directions issued by the Commission under this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit and shall be liable to a further fine not exceeding one hundred thousand ringgit for every day or part of a day during which the offence continues after conviction.

Register of directions

31. (1) The Commission shall maintain a register of all directions issued by the Commission under section 30 both in physical form and in electronic media.

(2) A licensed applications service provider, licensed content applications service provider or licensed network service provider may, upon payment of a prescribed fee—

(a) inspect the register of the directions; and

(b) make a copy of, or take extracts from, the register of the directions.

(3) If the licensed applications service provider, licensed content applications service provider or licensed network service provider requests that a copy or extracts from the register of directions be provided in an electronic media, the Commission may provide such copy or extracts—

- (a) on a data processing device; or
- (b) by way of electronic transmission.

Power to gather information

32. (1) Notwithstanding any other written law, if the Commission has reasonable grounds to believe that any person—

- (a) has any information, particulars or document that is relevant to the performance of the Commission’s functions and powers under this Act; or
- (b) is capable of giving any evidence which the Commission has reasonable grounds to believe that the evidence is relevant to the performance of the Commission’s functions and powers under this Act,

the Commission may, by notice in writing, direct that person—

- (A) to give any such information or particulars to the Commission in the form and manner and within the period as may be specified in the notice or such extended period as the Commission may grant;
- (B) to produce any such document, whether in physical form or in electronic media, to the Commission in the manner and within the period as may be specified in the notice or such extended period as the Commission may grant;
- (C) to make copies of any such document and to produce those copies to the Commission in the manner and within the period as may be specified in the notice or such extended period as the Commission may grant;

- (D) if the person is an individual, to appear before an authorized officer at the time and place as may be specified in the notice to give any evidence, either orally or in writing, and produce any document, whether in physical form or in electronic media, in the manner and within the period as specified in the notice or such extended period as the Commission may grant;
 - (E) if the person is a body corporate or a public body, to cause a competent officer of the body corporate or public body to appear before an authorized officer at the time and place specified in the notice to give any evidence, either orally or in writing, and produce any document, whether in physical form or in electronic media, in the manner and within the period as may be specified in the notice or such extended period as the Commission may grant; or
 - (F) if the person is a partnership, to cause an individual who is a partner in the partnership or an employee of the partnership to appear before an authorized officer at the time and place specified in the notice to give any evidence, either orally or in writing, and produce any document, whether in physical form or in electronic media, in the manner and within the period as may be specified in the notice or such extended period as the Commission may grant.
- (2) Where the Commission directs any person to produce any document under subsection (1) and the document is not in the custody of that person, that person shall—
- (a) state, to the best of his knowledge and belief, where the document may be found; and
 - (b) identify, to the best of his knowledge and belief, the last person who had custody of the document and state, to the best of his knowledge and belief, where that person who had custody of the document may be found.

(3) Any person directed to give or produce any information, particulars or documents or copies of any document under subsection (1), shall ensure that the information, particulars or documents or copies of the document given or produced are true, accurate, complete and not misleading and such person shall provide an express representation to that effect, including a declaration that he is not aware of any other information, particulars or document which would make the information, particulars or document given or produced untrue or misleading.

(4) Where any person discloses any information or particulars or produces any document in response to a notice in writing under this section, such person, his agent or employee, or any other person acting on his behalf or under his directions, shall not, by reason only of such disclosure or production, be liable to prosecution for any offence under any written law, or to any proceedings or claim by any person under any law or under any contract, agreement or arrangement, or otherwise.

(5) Subsection (4) shall not bar, prevent or prohibit the institution of any prosecution for any offence as provided by this section or for the disclosure or production of false information or document in relation to a notice in writing under this section furnished to the Commission pursuant to this section.

(6) Any person who fails to comply with the directions of the Commission under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit and shall be liable to a further fine not exceeding one hundred thousand ringgit for every day or part of a day during which the offence continues after conviction.

(7) Any person who contravenes subsection (2) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit.

(8) Any person who intentionally alters, suppresses or destroys any information, particulars or documents which he has been directed to give or produce pursuant to a notice in writing under this section commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit.

Proof of compliance

33. (1) The Commission may direct any person to produce or give all such evidence and information as the person may have relating to his compliance with any of the provisions of this Act to the Commission and such person shall comply with the directions of the Commission.

(2) Subsection (1) shall not affect any other power conferred on the Commission under this Act.

Commission may retain document

34. (1) The Commission may take, and retain for as long as is necessary, possession of a document produced or given under this Act.

(2) The person who should have been entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Commission to be a true copy.

(3) Notwithstanding any other written law, the certified copy of the document referred to in subsection (2) shall be received as evidence by all courts and tribunals as if it were the original.

(4) Until a certified copy is supplied, the Commission shall, at such times and places as the Commission thinks appropriate, permit the person who should have been entitled to possession of the document, or a person authorized by that person, to inspect and make copies of, or take extracts from, the document.

Powers of Commission shall be in addition to powers under Communications and Multimedia Act 1998 and Malaysian Communications and Multimedia Commission Act 1998

35. The functions and powers of the Commission under this Act shall be in addition to, and not in derogation of, the functions and powers of the Commission under the Communications and Multimedia Act 1998 and Malaysian Communications and Multimedia Commission Act 1998.

PART VI

UNDERTAKING AND NOTICE OF NON-COMPLIANCE

Undertaking by licensed applications service provider and licensed content applications service provider

36. (1) A licensed applications service provider or licensed content applications service provider may, before a notice of non-compliance is issued to the licensed applications service provider or licensed content applications service provider under section 37, provide an undertaking to the Commission regarding the compliance of any of its duties under Part III in such form as may be prescribed.

(2) Any licensed applications service provider or licensed content applications service provider which provides the undertaking under subsection (1) shall comply with the undertaking.

Notice of non-compliance

37. (1) Where the Commission has reasonable grounds to believe that a licensed applications service provider or licensed content applications service provider has failed to comply with any of its duties under Part III, the Commission shall issue a notice of non-compliance in writing to the licensed applications service provider or licensed content applications service provider in the manner as the Commission may determine.

(2) The notice of non-compliance issued under subsection (1) shall contain the following particulars:

- (a) details of the non-compliance;
- (b) the amount of financial penalty to be paid in respect of the non-compliance; and
- (c) any other particulars as the Commission thinks necessary.

(3) Upon receipt of the notice of non-compliance under subsection (1), the licensed applications service provider or licensed content applications service provider—

- (a) shall pay the amount of financial penalty as specified in the notice of non-compliance within the period as may be specified in the notice; or

- (b) may apply to the Commission for a review by way of representation in respect of the notice of non-compliance within the period and in such manner as the Commission may determine if the licensed applications service provider or licensed content applications service provider does not wish to pay the amount of financial penalty specified in the notice of non-compliance.

Review by Commission

38. (1) Upon receipt of an application for a review by way of representation against the notice of non-compliance issued under section 37, the Commission shall review the notice of non-compliance and may—

- (a) dismiss the application for the review of the notice of non-compliance;
- (b) withdraw the notice of non-compliance;
- (c) vary the amount of the financial penalty to be paid in respect of the non-compliance and specify the period in which the varied financial penalty to be paid; or
- (d) impose any conditions as the Commission deems fit.

(2) Any decision of the review made by the Commission under this section shall be notified in writing to the licensed applications service provider or licensed content applications service provider which applied for the review.

(3) The licensed applications service provider or licensed content applications service provider which applied for the review shall abide by the decision of the review made by the Commission under this section.

Financial penalty for non-compliance of duties

39. (1) The Commission may impose a financial penalty on a licensed applications service provider or licensed content applications service provider for any non-compliance of any of its duties under Part III.

(2) Any licensed applications service provider or licensed content applications service provider which fails to comply with any of its duties under Part III shall be liable to pay to the Commission a financial penalty an amount of which not exceeding ten million ringgit.

(3) Any financial penalty due and payable under this section may be recovered as a civil debt due to the Commission.

PART VII

ONLINE SAFETY APPEAL TRIBUNAL

Establishment of Online Safety Appeal Tribunal

40. (1) There shall be established an Online Safety Appeal Tribunal for the purpose of reviewing—

- (a) any written instruction issued by the Commission referred to in subsection 23(8) or 25(1) or section 27;
- (b) any determination made by the Commission referred to in subsection 25(5);
- (c) any directions issued by the Commission under section 30; and
- (d) any decision of a review of a notice of non-compliance made by the Commission under section 38.

(2) The Minister shall, by order published in the *Gazette*, appoint the members of the Online Safety Appeal Tribunal as follows:

- (a) a Chairman who shall be appointed from amongst the Judges of the High Court; and
- (b) at least two other members, or such greater even number of members from amongst persons who have knowledge or experience in the field of communications and multimedia, engineering, law, economics or commerce or public administration or in any other fields as the Minister deems fit.

(3) A member of the Online Safety Appeal Tribunal shall hold office for a term not exceeding three years and shall be eligible for reappointment upon expiry of his term of office.

Appeal to Online Safety Appeal Tribunal

41. (1) A person who is aggrieved by—

- (a) any written instruction issued by the Commission under subsection 23(8) or 25(1) or section 27;
- (b) any determination made by the Commission referred to in subsection 25(5);
- (c) any directions issued by the Commission under section 30; or
- (d) any decision of a review of a notice of non-compliance made by the Commission under section 38,

may appeal against such written instruction, determination, directions or decision to the Online Safety Appeal Tribunal within the period and in such manner as may be prescribed.

(2) The Online Safety Appeal Tribunal may, after reviewing the matters referred to in paragraphs (1)(a) to (d), confirm or set aside the written instruction, determination, directions or decision appealed against.

Revocation of appointment and resignation of members of Online Safety Appeal Tribunal

42. (1) The Minister may at any time revoke the appointment of any member of the Online Safety Appeal Tribunal if—

- (a) he resigns his office;
- (b) he becomes of unsound mind or otherwise incapable of performing his duties or managing his affairs;
- (c) he becomes bankrupt or insolvent;

- (d) he is prohibited from being a director of a company under any written law relating to companies;
- (e) he has been convicted of an offence, under any law, by a court in Malaysia;
- (f) he is guilty of serious misconduct in relation to his duties;
- (g) he fails to carry out his obligation under section 50; or
- (h) his performance has been unsatisfactory for a significant period of time.

(2) A member of the Online Safety Appeal Tribunal may, at any time, resign from his appointment by giving a notice in writing to the Minister.

Vacation of office of members of Online Safety Appeal Tribunal

43. (1) The office of a member of the Online Safety Appeal Tribunal shall be vacated—

- (a) if he dies;
- (b) if he resigns or otherwise vacates his office before the expiry of the term for which he is appointed; or
- (c) if his appointment is revoked.

(2) The Minister shall appoint a person in accordance with section 40 to replace the Chairman or any other member during the vacancy in the office of the Chairman or any other member.

(3) The Minister shall appoint a person in accordance with section 40 to act as the Chairman or any other member for the period when—

- (a) the office of the Chairman or any other member is vacant;

- (b) the Chairman or any other member is absent from duty or from Malaysia; or
- (c) the Chairman or any other member is, for any other reason, unable to carry out his functions.

(4) The exercise of the powers, or the performance of the functions, of the Online Safety Appeal Tribunal is not affected only because of there being a vacancy in the membership of the Online Safety Appeal Tribunal.

Allowances for members of Online Safety Appeal Tribunal

44. The members of the Online Safety Appeal Tribunal shall be paid such allowances as the Minister may determine after consultation with the Minister of Finance.

Quorum of Online Safety Appeal Tribunal

45. The quorum of the Online Safety Appeal Tribunal shall consist of—

- (a) the Chairman; and
- (b) at least two other members, or any greater even number of members not exceeding four.

Decision of Online Safety Appeal Tribunal

46. (1) Any decision of the Online Safety Appeal Tribunal on any matter shall be decided by the votes of the majority of members of the Online Safety Appeal Tribunal present.

(2) The decision of the Online Safety Appeal Tribunal is final and binding and is not subject to further appeal.

Enforcement of decision of Online Safety Appeal Tribunal

47. Any decision of the Online Safety Appeal Tribunal may be enforced in the same manner as a judgment or an order of the High Court.

Powers of Online Safety Appeal Tribunal

- 48.** (1) The Online Safety Appeal Tribunal shall have the power—
- (a) to summon parties to its proceedings or any other person to attend before it to give evidence in respect of an appeal;
 - (b) to procure and receive evidence on oath or affirmation, whether written or oral and examine all such persons as witnesses as the Online Safety Appeal Tribunal thinks necessary to procure, receive or examine;
 - (c) where a person is so summoned, to require the production of any book, paper, document, record or other thing in his possession or under his control and which the Online Safety Appeal Tribunal may consider necessary for the purposes of the appeal;
 - (d) to administer any oath, affirmation or statutory declaration, as the case may require;
 - (e) where a person is so summoned, to allow the payment for any reasonable expenses incurred in connection with his attendance;
 - (f) to admit evidence or reject evidence adduced, whether written or oral, and whether admissible or inadmissible under the provisions of any written law for the time being in force relating to the admissibility of evidence;
 - (g) to adjourn the hearing of an appeal from time to time, including the power to adjourn to consider its decision; and
 - (h) to generally direct and do all such things as may be necessary or expedient for the expeditious decision of the appeal.
- (2) The Online Safety Appeal Tribunal shall have the power of a subordinate court with regard to the enforcement of attendance of witnesses, hearing evidence on oath or affirmation and punishment for contempt.

Suspension of members of Online Safety Appeal Tribunal

49. The Minister may suspend any member of the Online Safety Appeal Tribunal on the ground of misbehaviour or incapacity.

Disclosure of interest

50. (1) A member of the Online Safety Appeal Tribunal shall disclose, as soon as practicable, to the Chairman any interest, whether substantial or not, which may conflict with the member's duties as a member of the Online Safety Appeal Tribunal, in a particular matter.

(2) If the Chairman is of the opinion that the member's interest is in conflict with the member's duties, the Chairman shall inform all the parties to the matter of the conflict.

(3) If none of the parties to the matter objects to the conflict, the member may continue to execute his duties as a member of the Online Safety Appeal Tribunal in relation to that matter.

(4) If a party to the matter objects to the conflict, the member shall not continue to execute his duties as a member of the Online Safety Appeal Tribunal in relation to that matter.

(5) The failure by any member to disclose his interest in a particular matter shall subject him to the disciplinary actions under section 42 or 49.

Secretary to Online Safety Appeal Tribunal

51. (1) The Minister shall designate a public officer as the Secretary to the Online Safety Appeal Tribunal to assist the Online Safety Appeal Tribunal in carrying out its functions and powers under this Act.

(2) The Minister may designate such number of other public officers as the Minister thinks fit to assist the Secretary to the Online Safety Appeal Tribunal in carrying out his function under subsection (1).

(3) For the purposes of this Act, the Secretary of the Online Safety Appeal Tribunal and the officers designated under subsection (2) shall be deemed to be officers of the Online Safety Appeal Tribunal.

PART VIII

ENFORCEMENT

Authorization of public officer or officer of Commission

52. (1) The Minister may in writing authorize any public officer or officer of the Commission to exercise the powers of enforcement under this Act.

(2) Any such officer authorized under subsection (1) shall be deemed to be a public servant within the meaning of the Penal Code [*Act 574*].

(3) There shall be issued to each authorized officer and authority card to be signed by the Minister.

(4) Whenever such authorized officer exercises any of the powers under this Act, he shall on demand produce to the person against whom the power is being exercised the authority card issued to him under subsection (3).

Power to investigate

53. (1) An authorized officer shall have all the powers necessary to carry out an investigation into any non-compliance or commission of an offence under this Act.

(2) In any case relating to the commission of an offence under this Act, an authorized officer carrying out an investigation may exercise all or any of the special powers in relation to police investigation in seizeable cases given by the Criminal Procedure Code [*Act 593*].

Search and seizure with warrant

54. (1) If it appears to a Magistrate, upon written information on oath and after such inquiry as he considers necessary, that there is reasonable cause to believe that an offence under this Act is being or has been committed on any premises, or that any evidence or thing which is necessary to the conduct of an

investigation into an offence may be found in any premises, the Magistrate may issue a warrant authorizing any authorized officer named in it, to enter the premises at any reasonable time by day or by night, with or without assistance and if need be by force, and there to search for and seize any such evidence or thing.

(2) Without affecting the generality of subsection (1), the warrant issued by the Magistrate may authorize the search and seizure of—

- (a) any book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet or notice, which contains or are reasonably suspected to contain information as to any offence so suspected to have been committed; or
- (b) any other document, facility, apparatus, equipment, device, thing or matter that is reasonably believed to furnish evidence of the commission of the offence.

(3) An authorized officer conducting a search under subsection (1) may, for the purpose of investigating into the offence, search any person who is in or on the premises.

(4) An authorized officer making a search on a person under subsection (3) may seize, or take possession of, and place in safe custody all things, other than the necessary clothing, found upon the person, and any other things, for which there is reason to believe that they are the instruments or evidence of the crime, and in so far as the search is for the investigation of an offence all such things may be detained until the discharge or acquittal of the person.

(5) Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

(6) If, by reason of its nature, size or amount, it is not practicable to remove any book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter seized under this section, the seizing officer shall, by any means, seal such book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device or matter in the premises or container in which it is found.

(7) A person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (6) or removes any book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device or matter under seal or attempts to do so commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit.

(8) If a search under this section indicates that there is any interference-causing equipment, radio apparatus or radio-sensitive equipment, the authorized officer may direct that necessary steps be taken to ensure an interference-free environment.

Search and seizure without warrant

55. If an authorized officer in any of the circumstances referred to in section 54 has reasonable cause to believe that by reason of delay in obtaining a search warrant under that section the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed, the officer may enter the premises and exercise in, upon and in respect of the premises all the powers referred to in section 54 in as full and ample a manner as if he were authorized to do so by a warrant issued under that section.

Warrant admissible notwithstanding defect

56. A search warrant issued under this Act shall be valid and enforceable notwithstanding any defect, mistake or omission in the search warrant or in the application for such warrant and any book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter seized under such warrant shall be admissible in evidence in any proceedings under this Act.

Access to computerized data

57. (1) Any authorized officer conducting a search under this Act shall be given access to computerized data whether stored in a computer or otherwise.

(2) For the purposes of this section, an authorized officer shall be provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable comprehension of the computerized data.

List of thing seized

58. (1) Except as provided in subsection (2), where any book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter is seized pursuant to this Act, the authorized officer making the seizure—

(a) shall prepare—

- (i) a list of the book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter seized and shall sign the list; and
- (ii) a notice in writing of the seizure containing the grounds for the seizure and shall sign the notice; and

(b) shall, as soon as practicable, serve a copy of the list of the book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter seized and the notice in writing of the seizure to the occupier of the premises which have been searched, or to his agent or servant at those premises.

(2) The notice in writing of the seizure shall not be required to be served pursuant to paragraph (1)(b) where the seizure is made in the presence of the person against whom proceedings under this Act are intended to be taken, or in the presence of the owner of such property or his agent, as the case may be.

(3) If the premises are unoccupied, the authorized officer shall post a copy of the list of the book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter seized conspicuously on the premises.

Release of thing seized

59. (1) If any book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter has been seized under this Act, the authorized officer who effected the seizure may, after referring to the Public Prosecutor, release the book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter to the person as he determines to be lawfully entitled to the book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter if he is satisfied that the book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter is not liable to forfeiture under this Act and is not otherwise required for the purposes of any proceedings under this Act, or for the purpose of any prosecution under any other law, and in such event neither the officer effecting the seizure, nor the Government or any person acting on behalf of the Government, shall be liable to any proceedings by any person if the seizure and the release of the book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter had been effected in good faith.

(2) A record in writing shall be made by the officer effecting the release of any book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter under subsection (1) specifying in detail the circumstances of, and the reason for, the release, and he shall send a copy of the record to the Public Prosecutor within seven days of the release.

Preservation of communications data

60. (1) If an authorized officer is satisfied that—

- (a) communications data is reasonably required for the purposes of an investigation; and
- (b) there is a risk that the communications data may be destroyed or rendered inaccessible,

the authorized officer may, by notice in writing given to a person in control of the communications system, require the person to ensure that the communications data specified in the notice be preserved for the period and in the manner as may be specified in the notice in writing.

(2) The person to whom the notice in writing was given under subsection (1)—

- (a) shall preserve the communications data specified in the notice for the period and in the manner as may be specified in the notice; and
- (b) shall not disclose the existence and content of the notice, the procedure, method, manner or any matter related to the preservation of communications data under subsection (1) without lawful authority.

(3) A person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit and shall be liable to a further fine not exceeding one hundred thousand ringgit for every day or part of a day during which the offence continues after conviction.

Disclosure of stored communications data

61. (1) If an authorized officer is satisfied that any communications data is reasonably required for the purposes of an investigation into an offence under this Act, the authorized officer may, by notice in writing given to a person in control of the communications system, require the person to disclose such communications data in the manner as specified in the notice.

(2) The person to whom the notice in writing was given under subsection (1)—

- (a) shall disclose such communications data in the manner as specified in the notice; and
- (b) shall not disclose the existence and content of the notice, the procedure, method, manner or any matter related to the disclosure of communications data under subsection (1) without lawful authority.

(3) A person who contravenes subsection (2) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit and shall be liable to a further fine not exceeding one hundred thousand ringgit for every day or part of a day during which the offence continues after conviction.

Obstruction

62. Any person who—

- (a) refuses any authorized officer access to any premises which such authorized officer is entitled to have under this Act or in the execution of any duty imposed or power conferred by this Act;
- (b) assaults, obstructs, hinders or delays any authorized officer in effecting any entry which the authorized officer is entitled to effect under this Act, or in the execution of any duty imposed or power conferred by this Act;
- (c) refuses to give any authorized officer any information relating to an offence or suspected offence under this Act or any other information which the person has in his knowledge or power to give;
- (d) rescues or endeavours to rescue or causes to be rescued anything which has been duly seized; or
- (e) destroys anything to prevent the seizure or the securing of the things,

commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit.

Additional power

63. An authorized officer shall, for the purposes of the execution of this Act, have the powers to do all or any of the following:

- (a) to require the production of book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter kept by a licensed applications service provider, licensed content applications service provider or licensed network service provider or any other person and to inspect, examine and to download, make copies or take extracts from them;
- (b) to require the production of any identification document from any person in relation to any case or offence under this Act; and
- (c) to make such inquiry as may be necessary to ascertain whether the provisions of this Act have been complied with.

Power to require attendance of person acquainted with case

64. (1) An authorized officer making an investigation under this Act may, by order in writing, require the attendance before himself of a person who appears to the authorized officer to be acquainted with the circumstances of the case, and the person shall attend as so required.

(2) If the person fails to attend as required, the authorized officer may report the failure to a Magistrate who shall issue a warrant to secure the attendance of the person.

Examination of person acquainted with case

65. (1) An authorized officer making an investigation under this Act may examine orally a person supposed to be acquainted with the facts and circumstances of the case.

(2) The person shall be legally bound to answer all questions relating to the case put to him by the authorized officer, but the person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not the statement is made wholly or partly in answer to questions.

(4) The authorized officer examining a person under subsection (1) shall first inform that person of the provisions of subsections (2) and (3).

(5) A statement made by a person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumbprint, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any corrections he may wish.

Admissibility of statement in evidence

66. (1) If any person is charged with an offence under this Act, any statement, whether the statement amounts to a confession or not or whether it is oral or in writing, made at any time, whether before or after the person is charged and whether in the course of an investigation under this Act or not and whether or not wholly or partly in answer to questions, by that person to or in the hearing of an authorized officer and whether or not interpreted to him by another officer or other person, shall be admissible in evidence at his trial and, if the person charged tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit.

(2) No statement under subsection (1) shall be admissible or used—

(a) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against such person proceeding from a person in authority and sufficient in the opinion of the court to give the person charged grounds which

would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him; or

- (b) in the case of a statement made by the person after his arrest, unless the court is satisfied that he was cautioned in the following words or words to the like effect:

“It is my duty to warn you that you are not obliged to say anything or to answer any question, but anything you say, whether in answer to a question or not, may be given in evidence”.

(3) A statement made by a person before there is time to caution him shall not be rendered inadmissible in evidence merely by reason of his not having been cautioned if he is cautioned as soon as possible after that.

Forfeiture

67. (1) Any book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter seized under this Act may be liable to forfeiture.

(2) An order for the forfeiture or for the release of any book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter liable to forfeiture under this section shall be made by the court before which the prosecution with regard to it has been held and an order for the forfeiture of the book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device or matter shall be made if it is proved to the satisfaction of the court that an offence under this Act, has been committed and that the book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter was used in the commission of the offence despite the fact that no person may have been convicted of the offence or breach.

(3) If there is no prosecution with regard to any book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter seized in the exercise of any power conferred under this Act, the book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter shall be taken or deemed to be forfeited at the expiration of twelve months from the date it was seized unless a claim to it is made before that date in the manner provided in this section.

(4) A person asserting that he is the owner of any book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter seized under this Act and that the book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter is not liable to forfeiture may personally or by his agent authorized in writing by him give written notice to the Commission or any authorized officer of his claim.

(5) Upon receipt of a notice under subsection (4), the Commission or any authorized officer shall, after such enquiry as may be necessary, direct that the book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter be released or forfeited or refer the case to a Sessions Court Judge for decision.

(6) The Sessions Court Judge to whom the case is referred shall issue a summons requiring the person asserting that he is the owner of the book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter and the person from whom the book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter were seized to appear before him and upon his appearance or default to appear, due service of the summons being proved, the Sessions Court Judge shall proceed to the examination of the case and on proof that an offence under this Act has been committed and that the book, account, document, computerized data, signboard, card, letter, pamphlet,

leaflet, notice, facility, apparatus, equipment, device, thing or matter was the subject matter or was used in the commission of the offence, shall order the book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter to be forfeited or may, in the absence of such proof, order the release of the book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter to the person entitled to it.

(7) Any book, account, document, computerized data, signboard, card, letter, pamphlet, leaflet, notice, facility, apparatus, equipment, device, thing or matter forfeited or deemed to be forfeited shall be delivered to the Commission or an authorized officer who shall dispose of it in the manner as the Commission deems fit.

Jurisdiction to try offence

68. Notwithstanding any written law to the contrary, a Sessions Court shall have jurisdiction to try any offence under this Act.

PART IX

MISCELLANEOUS

Interworking with other authority

69. The Minister may direct the Commission regarding the interworking arrangements between the Commission and any other authority in Malaysia or in a foreign jurisdiction, or between the Commission and any international organization.

Judicial review

70. (1) A person who is aggrieved or whose interest is adversely affected by a decision or other action of the Minister or the Commission may apply to the High Court for a judicial review of such decision or other action.

(2) A person shall not apply to the court for a judicial review unless that person has first exhausted all other remedies provided under this Act.

Power to exempt

71. The Minister may, by order published in the *Gazette*, exempt, subject to such conditions as the Minister deems fit to impose, any licensed applications service provider, licensed content applications service provider or licensed network service provider or class of licensed applications service provider, licensed content applications service provider or licensed network service provider from all or any of the provisions of this Act.

Prosecution

72. No prosecution shall be instituted for an offence under this Act without the consent in writing of the Public Prosecutor.

Liability of director, etc., of company, etc.

73. Where any person who commits an offence under this Act is a company, limited liability partnership, firm, society or other body of persons, a person who at the time of the commission of the offence was a director, compliance officer, partner, manager, secretary or other similar officer of the company, limited liability partnership, firm, society or other body of persons or was purporting to act in the capacity or was in any manner or to any extent responsible for the management of any of the affairs of the company, limited liability partnership, firm, society or other body of persons or was assisting in its management—

- (a) may be charged severally or jointly in the same proceedings with the company, limited liability partnership, firm, society or other body of persons; and

(b) if the company, limited liability partnership, firm, society or other body of persons is found guilty of the offence, shall be deemed to be guilty of the offence and shall be liable to the same punishment or penalty as an individual unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—

(i) that the offence was committed without his knowledge; or

(ii) that the offence was committed without his consent or connivance and that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

Compounding of offence

74. (1) The Minister may, with the approval of the Public Prosecutor, make regulations prescribing—

(a) any offence under this Act as an offence which may be compounded; and

(b) the method and procedure for compounding such offence.

(2) The Chairman of the Commission may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under this Act prescribed to be a compoundable offence by making an offer in writing to the person suspected to have committed the offence to compound the offence upon payment to the Chairman of the Commission of an amount of money not exceeding fifty per centum of the amount of maximum fine for that offence within such time as may be specified in his offer.

(3) An offer under subsection (2) may be made at any time after the offence has been committed but before any prosecution for it has been instituted.

(4) If the amount specified in the offer is not paid within the time specified in the offer, or such extended time as the Chairman of the Commission may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(5) Where an offence has been compounded under this section—

(a) no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made; and

(b) any document or thing seized in connection with the offence may be released by the Chairman of the Commission, subject to such terms as the Chairman of the Commission thinks fit.

(6) All sums of money received by the Chairman of the Commission under this section shall be paid into and form part of the Federal Consolidated Fund.

Obligation of secrecy

75. (1) Except for the purposes of this Part or for the purposes of any civil or criminal proceedings under any written law or where authorized by the Minister—

(a) the Chairman of the Committee, any other member of the Committee, the Chairman of the Online Safety Appeal Tribunal, any other member of the Online Safety Appeal Tribunal, the Secretary to the Online Safety Appeal Tribunal or any officer of the Online Safety Appeal Tribunal shall not, during the time he serves as such Chairman, member, Secretary or officer, disclose any information obtained by him in the course of his duties; and

(b) no other person who has, by any means, access to any information or document relating to the affairs of the Committee or the Online Safety Appeal Tribunal shall disclose such information or document.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding three months or to both.

Public servant

76. The Chairman of the Committee, every other member of the Committee, the Chairman of the Online Safety Appeal Tribunal, every other member of the Online Safety Appeal Tribunal, the Secretary to the Online Safety Appeal Tribunal or any officer of the Online Safety Appeal Tribunal while discharging his duties as the Chairman, member, secretary or officer, shall be deemed to be a public servant within the meaning of the Penal Code.

Application of Public Authorities Protection Act 1948

77. The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Committee, Online Safety Appeal Tribunal, the Chairman of the Committee, any other member of the Committee, the Chairman of the Online Safety Appeal Tribunal, any other member of the Online Safety Appeal Tribunal, the Secretary to the Online Safety Appeal Tribunal or any officer of the Online Safety Appeal Tribunal in respect of any act, neglect or default done or committed by it or him in good faith or any omission by it or him in good faith in such capacity.

Act or omission done in good faith

78. No action or suit shall be instituted or maintained in any court against—

- (a) the Committee or the Online Safety Appeal Tribunal;
- (b) the Chairman of the Committee or any other member of the Committee;
- (c) the Chairman of the Online Safety Appeal Tribunal or any other member of the Online Safety Appeal Tribunal;

- (d) the Secretary to the Online Safety Appeal Tribunal or any other officer of the Online Safety Appeal Tribunal; or
- (e) any person authorized to act for and on behalf of the Committee or the Online Safety Appeal Tribunal,

for any act or omission done in good faith in the performance of its or his functions and in the exercise of its or his powers under this Act.

Protection of officer and other person

79. No action, suit or prosecution or other proceedings shall lie or be brought, instituted or maintained in any court against—

- (a) the Commission or any authorized officer or any other person in respect of any act ordered or done for the purpose of carrying into effect this Act; and
- (b) any other person in respect of any act done or purported to be done by him under the order, directions or instruction of the Commission or any authorized officer if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served by it.

Power to issue guidelines and code

80. (1) The Commission may issue any guidelines as may be expedient or necessary for the better carrying out of the provisions of this Act and for the purpose of ensuring compliance with this Act.

(2) Without prejudice to subsection (1), the Commission may issue any code for the purposes of compliance of duties under Part III by the licensed applications service provider or licensed content applications service provider.

(3) Every guidelines and code issued under this Act shall be published by the Commission in the manner as may be determined by the Commission.

(4) The Commission may revoke, vary, revise or amend the whole or any part of any guidelines or code issued under this section.

Power to make regulations

81. (1) The Minister may make regulations as may be necessary or expedient for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations—

- (a) to prescribe other characteristics of a private messaging feature of an applications service or content applications service;
- (b) to prescribe the period for the users to obtain any other information on the mechanisms with respect to online safety available on the service of the licensed applications service provider or licensed content applications service provider;
- (c) to prescribe the period for the preparation of and form of the Online Safety Plan and the information to be contained in the Online Safety Plan;
- (d) to prescribe the period for actions to be taken in respect of the report on harmful content made to the licensed applications service provider or licensed content applications service provider or to the Commission;
- (e) to prescribe the period for the users to make an inquiry in respect of a report on harmful content to the licensed applications service provider or licensed content applications service provider or to the Commission and for the notification of the decision in respect of the inquiry;

- (f) to prescribe the period for the licensed applications service provider or licensed content applications service provider to make a priority harmful content or harmful content or any other content on its service inaccessible or accessible to users;
- (g) to prescribe the fees payable under this Act, including any processing fees;
- (h) to prescribe the form of undertaking provided to the Commission;
- (i) to provide for matters relating to the Online Safety Appeal Tribunal including—
 - (i) the period and manner for any appeal to the Online Safety Appeal Tribunal by a person who is aggrieved by the written instruction, determination, directions or decision issued or made by the Commission;
 - (ii) the procedures and the conduct of hearing of the Online Safety Appeal Tribunal;
 - (iii) the funding of the Online Safety Appeal Tribunal;
 - (iv) the procedures for the appointment of members of the Online Safety Appeal Tribunal including the appointment of any person to act as any member of the Online Safety Appeal Tribunal;
 - (v) the employment of officers of the Online Safety Appeal Tribunal;
- (j) to provide for any other matters required by this Act to be prescribed.

(3) Any regulations made under this Act may prescribe an act or omission in contravention of the regulations to be an offence and may prescribe penalties of a fine not exceeding one million ringgit.

Power to amend First Schedule and Second Schedule

82. (1) The Minister may, on the recommendation of the Commission, by order published in the *Gazette*, amend the First Schedule and the Second Schedule.

(2) In giving the recommendation under subsection (1), the Commission shall consult the Committee.

Power to specify form and manner of submission

83. Where under any provision of this Act any person is required to submit, produce or give to the Commission any information, records, particulars or documents, the Commission may specify that such information, records, particulars or documents shall be submitted, produced or given in such form and manner and within such period or at such intervals as the Commission may specify.

Service or notification of written instruction, etc.

84. (1) Every written instruction, notice in writing, directions or any other document required by this Act to be served on or notified to any person may be served or notified—

- (a) personally upon the person;
- (b) by sending it to the person by registered post; or
- (c) by way of electronic transmission.

(2) A written instruction, notice in writing, directions or other document sent to a person by registered post shall be deemed to have been served on or notified to that person at the time at which it would have been delivered to that person in the ordinary course of the post if the written instruction, notice in writing, directions or other document was addressed—

- (a) in the case of a company, a firm, a society, an association or other body of persons—
 - (i) to its registered office;

(ii) to its last-known address; or

(iii) to any person authorized by it to accept service of process; and

(b) in the case of an individual, to his last-known address.

(3) Where a person has given his consent for a written instruction, notice in writing, directions or other document to be served on or notified to him through the electronic service, the written instruction, notice in writing, directions or other document shall be deemed to have been served and notified at the time when the electronic notice is transmitted to his account through the electronic service.

FIRST SCHEDULE

[Section 4]

HARMFUL CONTENT

1. Content on child sexual abuse material as provided for under section 4 of the Sexual Offences against Children Act 2017 [Act 792]
2. Content on financial fraud
3. Obscene content including content that may give rise to a feeling of disgust due to lewd portrayal which may offend a person's manner on decency and modesty
4. Indecent content including content which is profane in nature, improper and against generally accepted behavior or culture
5. Content that may cause harassment, distress, fear or alarm by way of threatening, abusive or insulting words or communication or act
6. Content that may incite violence or terrorism
7. Content that may induce a child to cause harm to himself
8. Content that may promote feelings of ill-will or hostility amongst the public at large or may disturb public tranquility
9. Content that promotes the use or sale of dangerous drugs

Notes:

- (a) For the purposes of paragraph 2, a content that promotes awareness or education relating to financial fraud is not a content on financial fraud
- (b) For the purposes of paragraph 3 and 4, a content that portrays private parts for education, scientific or medical purposes is not an obscene or indecent content
- (c) For the purposes of paragraph 9, a content that promotes awareness or education relating to drug abuse is not a content that promotes the use or sale of dangerous drugs

SECOND SCHEDULE

[Section 4]

PRIORITY HARMFUL CONTENT

“Priority harmful content” means the contents referred to in paragraphs 1 and 2 of the First Schedule.

EXPLANATORY STATEMENT

This Bill (“the proposed Act”) seeks to enhance and promote online safety in Malaysia by regulating harmful content, outlining the duties and obligations of applications service providers, content applications service providers and network service providers, and to provide for related matters. The proposed Act which is applicable to the applications service providers, content applications service providers and network service providers licensed under the Communications and Multimedia Act 1998 [*Act 588*] and to be implemented and enforced by the Malaysian Communications and Multimedia Commission (“Commission”) aims to reduce harmful content available online and mitigate its potential detrimental effects.

PART I

- 2. Part I of the proposed Act deals with preliminary matters.
- 3. *Clause 1* contains the short title of the proposed Act and provision on the commencement of the proposed Act.

4. *Clause 2* seeks to provide for the application provision of the proposed Act. It is important to emphasize that the proposed Act shall apply only to applications service and content applications service which utilizes the internet. Thus excluding any other content applications services from the application of the proposed Act. This *clause* also provides that the proposed Act shall not apply to a private messaging feature of any applications service and content applications service in line with the protection of privacy.
5. *Clause 3* seeks to provide for the territorial and extra-territorial application of the proposed Act.
6. *Clause 4* contains the definitions of certain words and expressions used in the proposed Act.

PART II

7. Part II of the proposed Act deals with the establishment of the Online Safety Committee (“Committee”).
8. *Clause 5* seeks to provide for the establishment and membership of the Committee.
9. *Clause 6* seeks to provide for the allowances of the members of the Committee.
10. *Clause 7* seeks to provide for the revocation and resignation of members of the Committee appointed under paragraphs 5(2)(a), (j), (k) and (l) of the proposed Act, namely the Chairman and Deputy Chairman of the Committee, representative from amongst the licensed applications service providers, content applications service providers and network service providers, representative from amongst the persons with disabilities and from amongst persons with appropriate experience, knowledge or expertise in matters relating to online safety.
11. *Clause 8* seeks to provide for the vacation of office of the members of the Committee appointed under paragraphs 5(2)(a), (j), (k) and (l) of the proposed Act.
12. *Clause 9* seeks to provide for the circumstances in which the Deputy Chairman of the Committee shall temporarily exercise the functions of the Chairman of the Committee.
13. *Clause 10* seeks to provide for the functions of the Committee that is to advise and give recommendation to the Commission on matters relating to online safety.
14. *Clause 11* seeks to provide for meetings of the Committee. This *clause* also seeks to provide that the Committee may determine its own procedure.
15. *Clause 12* seeks to provide that the Committee may invite any person to attend its meetings for the purpose of providing opinion to the Committee on any matter under discussion.

PART III

16. Part III of the proposed Act deals with duties of the licensed applications service providers and licensed content applications service providers.

17. *Clause 13* seeks to provide for the duty of a licensed applications service provider and licensed content applications service provider to implement measures to mitigate the risk of users being exposed to harmful content.

18. *Clause 14* seeks to provide for the duty of a licensed applications service provider and licensed content applications service provider to issue guidelines to users which includes terms of use as a guide to users when using their services.

19. *Clause 15* seeks to provide for the duty of a licensed applications service provider and licensed content applications service provider to make available on their services sufficient tools and setting to enable users to manage their online safety.

20. *Clause 16* seeks to provide for the duty of a licensed applications service provider and content applications service provider to make available on their services a mechanism that enable users to make a report to them regarding any content that the users believe is a harmful content available on their services.

21. *Clause 17* seeks to provide for the duty of a licensed applications service provider and licensed content applications service provider to make available on their services a mechanism for user assistance which is easily accessible to all types of users and responsive at all times.

22. *Clause 18* seeks to provide for the duty of a licensed applications service provider and licensed content applications service provider to implement measures to ensure safe use of their services by child users.

23. *Clause 19* seeks to provide for the duty of a licensed applications service provider and licensed content applications service provider to establish a mechanism for making priority harmful content available on their services inaccessible to all users.

24. *Clause 20* seeks to provide for the duty of a licensed applications service provider and licensed content applications service provider to prepare an Online Safety Plan on the compliance of their duties under Part III of the proposed Act. The Online Safety Plan shall be made available on their services and shall be easily accessible and regularly updated. A copy of the Online Safety Plan shall be submitted to the Commission.

PART IV

25. Part IV of the proposed Act deals with reporting of harmful content.

26. *Clause 21* seeks to provide that a user may make a report to a licensed applications service provider or licensed content applications service provider regarding any content which he believes is a harmful content available on

the service of the licensed applications service provider or licensed content applications service provider. This *clause* also provides for the circumstances in which the licensed applications service provider or licensed content applications service provider shall dismiss the report and for the user aggrieved by the dismissal of the report to inquire into the dismissal.

27. *Clause 22* seeks to provide for the action to be taken by a licensed applications service provider or licensed content applications service provider where the licensed applications service provider or licensed content applications service provider is of the opinion that the content being the subject matter of the report made under *clause 21* is a priority harmful content.

28. *Clause 23* seeks to provide for the action to be taken by a licensed applications service provider or licensed content applications service provider where the licensed applications service provider or licensed content applications service provider determines on reasonable grounds that the content being the subject matter of the report made under *clause 21* is a harmful content.

29. *Clause 24* seeks to provide that a user may make a report to the Commission regarding any content which he believes is a harmful content available on the service of a licensed applications service provider or licensed content applications service provider or available online other than on the service of a licensed applications service provider or licensed content applications service provider. This *clause* also provides for the circumstances in which the Commission shall dismiss the report and for the user aggrieved by the dismissal of the report to inquire into the dismissal.

30. *Clause 25* seeks to provide for the action to be taken by the Commission where the Commission determines on reasonable grounds that the content being the subject matter of the report made under *clause 24* is a harmful content including priority harmful content.

31. *Clause 26* seeks to provide that a licensed applications service provider or licensed content applications service provider may, regardless of whether any report regarding harmful content has been made by a user to the licensed applications service provider or licensed content applications service provider under *clause 21* or to the Commission under *clause 24*, on its own motion make any content inaccessible on its service if the licensed applications service provider or licensed content applications service provider has reasonable grounds to believe that the content is a priority harmful content.

32. *Clause 27* seeks to empower the Commission to issue a written instruction to a licensed applications service provider or licensed content applications service provider to make any content accessible on the service of the licensed applications service provider or licensed content applications service provider if it comes to the knowledge of the Commission that the licensed applications service provider or licensed content applications service provider has made the content inaccessible.

33. *Clause 28* seeks to provide that where a user makes a report to a licensed applications service provider or licensed content applications service provider under *clause 21* and at the same time makes a report to the Commission under *clause 24* in respect of the same content which the user believes is a harmful content, and there is inconsistency between the action taken by the licensed applications service provider or licensed content applications service provider under *clause 22* or *clause 23* in respect of the report and the written instruction issued by the Commission under *subclause 25(1)* or *clause 27* or the determination made by the Commission referred to in *subclause 25(5)*, the written instruction and the determination by the Commission shall prevail.

34. *Clause 29* seeks to provide that a licensed applications service provider or licensed content applications service provider which makes a report to any enforcement agency in relation to any content being the subject matter of a report by a user under *clause 21* shall not disclose to the user any information relating to the report made to the enforcement agency.

PART V

35. Part V of the proposed Act deals with the powers of the Commission under the proposed Act.

36. *Clause 30* seeks to empower the Commission to issue directions in writing to any licensed applications service provider, licensed content applications service provider or licensed network service provider regarding its compliance with any of the provisions of the proposed Act. Any licensed applications service provider, licensed content applications service provider or licensed network service provider who fails to comply with the directions issued under this *clause* commits an offence.

37. *Clause 31* seeks to provide for the registration of all directions issued by the Commission under *clause 30*.

38. *Clause 32* seeks to require any person to produce any information, particulars or documents to the Commission or to give any evidence before the Commission if the Commission has reasonable grounds to believe that such person has any information, particulars or documents that is relevant to the performance of the Commission's functions and powers under the proposed Act or is capable of giving evidence which the Commission has reasonable grounds to believe is relevant to the performance of the Commission's functions and powers under the proposed Act.

39. *Clause 33* seeks to empower the Commission to direct any person to produce to the Commission all such evidence and provide all information relating to the compliance of such person with any of the provisions of the proposed Act to the Commission and such person shall comply with the directions of the Commission.

40. *Clause 34* seeks to empower the Commission to take, and retain for as long as necessary, possession of a document given or produced under the proposed Act.

41. *Clause 35* seeks to provide that the functions and powers of the Commission under the proposed Act are in addition to, and not in derogation of, the functions and powers of the Commission under the Multimedia and Communications Act 1998 and Malaysian Communications and Multimedia Commission Act 1998 [Act 589].

PART VI

42. Part VI of the proposed Act deals with the undertaking by a licensed applications service provider and licensed content applications service provider and issuance of notice of non-compliance by the Commission.

43. *Clause 36* seeks to provide that a licensed applications service provider or licensed content applications service provider may provide an undertaking to the Commission regarding the compliance of any of its duties under Part III of the proposed Act before a notice of non-compliance is issued by the Commission under *clause 37*. This *clause* does not provide for any penalty for failure to comply with the undertaking so as to encourage compliance of the licensed applications service provider or licensed content applications service provider with its duties under Part III of the proposed Act.

44. *Clause 37* seeks to provide for the issuance of notice of non-compliance by the Commission to a licensed applications service provider or licensed content applications service provider if the Commission has reasonable grounds to believe that the licensed applications service provider or licensed content applications service provider has failed to comply with any of its duties under Part III of the proposed Act. This *clause* also seeks to provide for the particulars to be included in the notice of non-compliance and for the actions to be taken by the licensed applications service provider or licensed content applications service provider upon receipt of the notice of non-compliance.

45. *Clause 38* seeks to provide for the review of a notice of non-compliance by the Commission upon receipt of the application by the licensed applications service provider or licensed content applications service provider who is served with a notice of non-compliance.

46. *Clause 39* seeks to provide for the power of the Commission to impose a financial penalty on a licensed applications service provider or licensed content applications service provider for any non-compliance of any of its duties under Part III of the proposed Act. This *clause* also provides that any licensed applications service provider or licensed content applications service provider which fails to comply with any of its duties under Part III of the proposed Act shall be liable to pay to the Commission a financial penalty not exceeding ten million ringgit.

PART VII

47. Part VII of the proposed Act deals with Online Safety Appeal Tribunal.

48. *Clause 40* seeks to provide for the establishment and membership of the Online Safety Appeal Tribunal.

49. *Clause 41* seeks to allow any person who is aggrieved by the written instruction issued by the Commission under *subclause 23(8)* or *25(1)* or *clause 27* or by the determination made by the Commission referred to in *subclause 25(5)* or by the directions issued by the Commission under *clause 30* or by the decision of a review of a notice of non-compliance made under *clause 38* to appeal against such written instruction, determination, directions or decision to the Online Safety Appeal Tribunal.

50. *Clause 42* seeks to provide for the revocation of appointment and resignation of the members of the Online Safety Appeal Tribunal.

51. *Clause 43* seeks to provide for the vacation of office of the members of the Online Safety Appeal Tribunal. This *clause* also seeks to provide that any person may be appointed by the Minister in accordance with *clause 40* to temporarily exercise the functions of the Chairman or any members of the Online Safety Appeal Tribunal.

52. *Clause 44* seeks to provide for the allowances of the members of the Online Safety Appeal Tribunal.

53. *Clause 45* seeks to provide for the quorum of the Online Safety Appeal Tribunal.

54. *Clause 46* seeks to provide that the decision of the Online Safety Appeal Tribunal on any matter shall be decided on a majority of votes of the members of the Online Safety Appeal Tribunal present and shall be final and binding and is not subject to further appeal.

55. *Clause 47* seeks to provide that any decision of the Online Safety Appeal Tribunal may be enforced in the same manner as a judgment or an order of the High Court.

56. *Clause 48* seeks to provide for the powers of the Online Safety Appeal Tribunal under the proposed Act.

57. *Clause 49* seeks to provide for the suspension of any member of the Online Safety Appeal Tribunal by the Minister on the ground of misbehaviour or incapacity.

58. *Clause 50* seeks to require any member of the Online Safety Appeal Tribunal to disclose to the Chairman of the Online Safety Appeal Tribunal if the member has any interest, substantial or not, which may conflict with the member's duties as a member of the Online Safety Appeal Tribunal.

59. *Clause 51* seeks to provide for the designation of a public officer as the Secretary to the Online Safety Appeal Tribunal for the purpose of assisting the Online Safety Appeal Tribunal in carrying out its functions under the proposed Act.

PART VIII

60. Part VIII of the proposed Act deals with enforcement provisions.
61. *Clause 52* seeks to provide that the Minister may authorize any public officer or officer of the Commission to exercise the powers of enforcement under the proposed Act.
62. *Clause 53* seeks to provide for the power of investigation of an authorized officer into any non-compliance or commission of an offence under the proposed Act.
63. *Clause 54* deals with the provision relating to search and seizure with warrant.
64. *Clause 55* deals with the provision relating to search and seizure without warrant.
65. *Clause 56* seeks to provide that a search warrant issued under the proposed Act shall be valid and enforceable notwithstanding any defect, mistake or omission in the search warrant.
66. *Clause 57* seeks to provide for access to computerized data by an authorized officer.
67. *Clause 58* seeks to require an authorized officer to prepare a list of things seized in the course of his investigation.
68. *Clause 59* seeks to provide for the release of things seized under the proposed Act.
69. *Clause 60* seeks to empower an authorized officer to require any person in control of a communications system to preserve the communications data for a period and in the manner as may be specified.
70. *Clause 61* seeks to empower an authorized officer to require any person in control of a communications system to disclose communications data in a specified manner.
71. *Clause 62* seeks to provide that it shall be an offence for any person who obstructs any authorized officer in the execution of their duties under the proposed Act.
72. *Clause 63* seeks to provide for additional powers of an authorized officer for the purposes of the execution of the proposed Act.
73. *Clause 64* seeks to provide that an authorized officer may require of any person who is acquainted with the facts and circumstances of a case being investigated by the authorized officer to attend before him.

74. *Clause 65* seeks to provide that an authorized officer may examine any person supposed to be acquainted with the facts and circumstances of a case being investigated by the authorized officer.

75. *Clause 66* seeks to provide for the admissibility of evidence of a statement made by a person to an authorized officer in the course of an investigation made under the proposed Act.

76. *Clause 67* deals with the provision relating to the forfeiture of things seized under the proposed Act.

77. *Clause 68* seeks to provide that a Sessions Court shall have the jurisdiction to try an offence under the proposed Act.

PART IX

78. Part IX of the proposed Act contains miscellaneous provisions.

79. *Clause 69* seeks to provide that the Minister may direct the Commission regarding any interworking arrangements between the Commission with other authorities or any international organizations.

80. *Clause 70* seeks to provide that an application for judicial review to the High Court may be made by a person who is aggrieved or whose interest is adversely affected by a decision or other action of the Minister or the Commission.

81. *Clause 71* seeks to provide for the power of the Minister to exempt any licensed applications service provider, licensed content applications service provider or licensed network service provider or class of licensed applications service provider, licensed content applications service provider or licensed network service provider from any or all of the provisions of the proposed Act.

82. *Clause 72* seeks to provide that no prosecution shall be instituted for any offence under the proposed Act without the consent in writing of the Public Prosecutor.

83. *Clause 73* deals with the liability of a director, compliance officer, partner, manager, secretary or other similar officer in respect of an offence committed by a company, limited liability partnership, firm, society or other body of person under the proposed Act.

84. *Clause 74* seeks to provide for the compounding of offences under the proposed Act.

85. *Clause 75* seeks to provide for the obligation of secrecy of the Chairman of the Committee, other members of the Committee, the Chairman of the Online Safety Appeal Tribunal, other members of the Online Safety Appeal Tribunal, the Secretary to the Online Safety Appeal Tribunal and any officer of the Online Safety Appeal Tribunal.

86. *Clause 76* seeks to provide that the Chairman of the Committee, every other member of the Committee, Chairman of the Online Safety Appeal Tribunal, every other member of the Online Safety Appeal Tribunal, the Secretary to the Online Safety Appeal Tribunal and any officer of the Online Safety Appeal Tribunal, while discharging their duties as the Chairman, members, Secretary and officers, shall be deemed to be public servants within the meaning of the Penal Code.

87. *Clause 77* seeks to provide for the application of the Public Authorities Protection Act 1948 [*Act 198*] for the purposes of the proposed Act.

88. *Clause 78* seeks to provide that no action or suit shall be instituted or maintained in any court for any act or omission done in good faith in the performance of the functions and in the exercise of the powers under the proposed Act by the Committee, the Chairman of the Committee, other members of the Committee, the Online Safety Appeal Tribunal, the Chairman of the Online Safety Appeal Tribunal, other members of the Online Safety Appeal Tribunal, the Secretary to the Online Safety Appeal Tribunal or any officer of the Online Safety Appeal Tribunal in respect of any act or omission done in good faith by him in such capacity.

89. *Clause 79* seeks to provide for protection of the Commission or an authorized officer or any other person against any action or prosecution to be brought, instituted or maintained in any court.

90. *Clause 80* seeks to empower the Commission to issue any guidelines and code for the better carrying out of the provisions of the proposed Act and for the purposes of compliance of duties under Part III of the proposed Act.

91. *Clause 81* seeks to empower the Minister to make regulations under the proposed Act.

92. *Clause 82* seeks to empower the Minister to amend the First Schedule and Second Schedule to the proposed Act on the recommendation by the Commission. In giving the recommendation to the Minister, the Commission shall consult the Committee.

93. *Clause 83* seeks to empower the Commission to specify the form and manner of submission of any information, records, particulars or documents to the Commission.

94. *Clause 84* seeks to provide for the manner of service and notification of written instruction, notice in writing, directions or any other documents required to be served or notified under the proposed Act.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.