

# Code of Conduct Amendment Bill 2017

*The Parliament of Australia enacts:*

## 1. Short title

This Act may be cited as the Code of Conduct Amendment Bill 2017.

## 2. Commencement

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

## 3. Objects

The object of this Act is to amend the HomeBroadband (Code of Conduct) Act 2017 to improve the framework for the operation of the Code of Conduct, and for related purposes.

## 4. Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1 – Amendments

### *HomeBroadband (Code of Conduct) Act 2017*

*The whole of the Act*

Omit all text, substitute:

## **1 Preliminary**

### **1. Short title**

This act may be cited as the *Code of Conduct Act 2017*.

### **2. Commencement**

This Act commences as soon as it receives Royal Assent.

### **3. Objects**

The objects of this act are to:

- 1.) Introduce a code of conduct for all members to follow.
- 2.) Attempt to encourage an environment which is civil, and free of abusive behaviour; but not stifling of expression.
- 3.) Introduce methods of punishment for members who violate the code of conduct.

### **4. Supremacy of Code**

Except as expressly provided, notwithstanding anything to the contrary in any other Act, present or future, no member may be investigated, sentenced, punished or otherwise held to account under any legislation, regulations, torts, common law or anything else other than this Act.

## **5. Transitional provisions**

- (1) Any person banned, kicked, muted or otherwise punished in any AustraliaSim subreddit, Discord or other space, or upon whom any other punishment, penalty or sanction has been placed, irrespective of whether that penalty would have been possible under this Act, may appeal to the moderators under the Schedule to this Act, as if that sanction were a penalty imposed by a moderator for a breach of standards.
- (2) In making a determination in relation to an appeal under subsection (1), the moderators may affirm the original determination and/or penalty only if it would have been permissible under this Act.

**Example 1:** A ban pre-dating this Act may be appealed to the moderators.

**Example 2:** If the offence for which that ban was imposed would not have been a breach of standards under this Act, the ban must be overturned.

**Example 3:** If the offence for which that ban was imposed would have been a breach of standards under this Act, but that ban was not of a form permitted as a penalty under this Act, the ban must be substituted with a penalty permissible under this Act.

## **6. Schedules**

Every item in a Schedule to this Act has effect according to its terms.

# **Schedule 1 – Code of Conduct Rules**

## **1 Introduction**

1.1 The purpose of these rules is to prescribe standards regulating the conduct of AustraliaSim members, and provide penalties for breaches of those standards in a procedurally fair manner.

1.2 By participating in AustraliaSim, you agree to abide by these rules, as may be amended or replaced from time to time.

## **2 Standards**

### **2.1 Guiding principles**

Members shall—

2.1.1 treat each other with respect at all times, regardless of any disagreement, political or personal;

2.1.2 maintain the right to be open with each other while adhering to these guidelines;

2.1.3 accept that judgements under these guidelines are just, and while opposition may be voiced, the legitimacy of decisions should be challenged only in accordance with these rules.

## **2.2 Prescribed breaches**

Members shall not—

- 2.2.1 abuse other members, verbally or textually;
- 2.2.2 harass other members, in any manner;
- 2.2.3 spam the discord or any official subreddit;
- 2.2.4 threaten other members with prosecution under these guidelines unduly;
- 2.2.5 attempt to use this code to persecute those they disagree with;
- 2.2.6 attempt to circumvent a penalty duly imposed under these rules by means of an alternative account.

## **2.3 Exemptions**

The following shall be exempt from this Act—

- 2.3.1 satirical publications;
  - 2.3.1.1 Unless said publications are continually harassing of single individuals, then protection shall be removed, at moderator discretion.
- 2.3.2 anything said in good faith in discussion or debate, believed beyond reasonable doubt to be the truth, as determined by the moderators or investigators.

## **3 Prescribed penalties**

The penalty for a breach of these standards shall be one or more of—

- 3.1 a formal warning;
- 3.2 removal of speaking and/or posting privileges in Discord and official subreddits for a period not exceeding one week;
- 3.3 suspension from participation in Discord and official subreddits for a period not exceeding one week;
- 3.4 suspension from participation in Discord and official subreddits for a period not exceeding one year.

## 4 Determining breaches of standards

### 4.1 At moderators' discretion

Any moderator may, at their own discretion, determine that a person (the *respondent*) has committed a breach of these standards. However, application of the penalty specified in rule 3.4 shall require the approval of a joint sitting of parliament.

### 4.2 At request of complainant

4.2.1 Any person (the *complainant*) who believes that another person (the *respondent*) has committed a breach of these standards may lodge a complaint against the respondent by serving the moderators with their complaint and the evidence supporting the complaint.

4.2.2 If a complaint is lodged, the moderators must determine whether the complaint is frivolous or vexatious and—

4.2.2.1 if the complaint is determined to be frivolous or vexatious—immediately dismiss the complaint without need for further action; or

4.2.2.2 otherwise—determine whether the respondent has committed the alleged breach.

4.2.3 Where a determination is made under rule 4.2.2.1, the moderators must serve the complainant with a notice setting out—

4.2.3.1 that the complaint has been dismissed as frivolous or vexatious;

4.2.3.2 the reasons for the determination; and

4.2.3.3 their rights under these rules.

### 4.3 Parties to be informed

4.3.1 In determining whether a breach has been committed, the investigators must—

4.3.1.1 inform each party to the determination that the respondent is being investigated for a breach of these standards and the details of the alleged breach;

4.3.1.2 inform each party of their rights under these rules;

4.3.1.3 except as provided by rule 4.4, give each party a reasonable opportunity to serve the investigators with a response before making a determination; and

4.3.1.4 take into account all evidence received and enquiries made, and any mitigating or aggravating factors, when making a determination.

4.2.4 Where a determination is made under rule 4.1, 4.2.2.2 or 4.4, the investigators must serve each party to the determination with a notice setting out—

4.2.4.1 the outcome of the determination;

4.2.4.2 the reasons for the determination; and

4.2.4.3 their rights under these rules.

## 4.4 Immediate determination due to necessity

In circumstances where failing to act immediately to impose a penalty on the respondent would pose a serious and imminent risk to the safety or wellbeing of members, then notwithstanding rule 4.3.3, the investigators may determine immediately that a breach of these standards has been committed.

## 4.5 Penalty imposed after positive determination

4.5.1 Where it is determined that the respondent has committed a breach of these standards, the investigators shall determine and impose a penalty prescribed by rule 3. 4.5.2

Except as provided by rule 4.5.3, the investigators shall impose penalties in accordance with a “3 strike system” as follows:

4.5.2.1 For a member with no existing formal warnings, the penalty in rule 3.1 (formal warning) shall be imposed.

4.5.2.2 For a member with one existing formal warning, the penalty in rule 3.1 (formal warning) shall be imposed a second time.

4.5.2.3 For a member with two existing formal warnings, the penalty in one of rules 3.2, 3.3 and 3.4 may be imposed.

4.5.3 In exceptional circumstances, then in spite of rule 4.3.2, the investigators may immediately—

4.5.3.1 impose the penalty in one of rules 3.2 and 3.3, provided that a joint sitting of Parliament approves of the imposition of that penalty; and/or

**Note:** As provided by rule 7.1, the approval must be made in a timely manner. If the Parliament fails to approve, or rejects, the imposition of that penalty, that penalty shall be voided.

4.5.2.1 request that a joint sitting of Parliament approve the immediate imposition of the penalty in rule 3.4 (suspension for one year).

4.5.4 If a penalty under rule 4.5.3 is voided because the Parliament fails to approve, or rejects, the imposition of that penalty, the investigators must substitute another penalty.

## 5 Reconsideration of determinations

### 5.1 Circumstances for reconsideration

5.1.1 A determination may only be reconsidered in the case of—

5.1.1.1 a determination made under rule 4.4;

5.1.1.2 a genuine character change that renders the original penalty imposed excessive.

5.1.1.2.1 should a further breach occur after this reconsideration has been granted, the warning period will be twice the usual prescribed.

5.1.2 A request for a reconsideration must be lodged before the expiry of the original penalty imposed.

## 5.2 Process for reconsideration

5.2.1 A respondent may request a reconsideration of a determination listed in rule 5.1 (the *original determination*) by serving the investigators of the original determination with the request and the evidence supporting the reconsideration.

5.2.2 If a reconsideration has been requested under rule 5.2.1, the investigators who made the original determination shall consider the request as if it were a complaint under rule 4.2, and a reference in that rule to the moderators were a reference to the investigators of the original decision, and determine whether to—

5.2.2.1 affirm the original determination;

5.2.2.2 vary the original determination; or

5.2.2.3 set aside the original determination and substitute another determination.

5.2.3 Where a determination is made under rule 5.2.2, the investigators must serve each party to the determination with a notice setting out—

5.2.3.1 the outcome of the determination;

5.2.3.2 the reasons for the determination; and

5.2.3.3 their rights under these rules.

## 6 Review of determinations

### 6.1 Reviewable determinations

6.1.1 In this rule, a *reviewable determination* is any determination made by investigators under these rules, unless specified otherwise, including:

6.1.1.1 a determination under rule 4.1 or 4.2.2.2 that a breach of standards has or has not been committed;

6.1.1.2 a determination under rule 4.2.2.1 that a complaint is frivolous or vexatious;

6.1.1.3 a determination under rule 4.4 that a breach of standards has been committed;

6.1.1.4 a determination under rule 5.2.2 regarding a reconsideration;

6.1.1.5 a determination under rule 6.3.3 regarding a review; or

6.1.1.6 subsequent to a determination that a breach has been committed, the penalty imposed for that breach.

6.1.2 A request for a review must be lodged before the expiry of the original penalty imposed.

### 6.2 Avenue of appeal

6.2.1 A reviewable determination made by a single investigator who is not the head moderator may be appealed to the head moderator, unless a reconsideration could be requested under rule 5.2.1.

6.2.2 A reviewable determination made by the head moderator may be appealed to the moderators.

6.2.3 A reviewable determination made by a group of investigators may be appealed to a judicial review panel.

6.2.4 For the purposes of this subrule, if a person or persons to whom a reviewable determination could be reviewed fail to make a determination on that reviewable determination in a reasonable time, that person or persons may be considered to have affirmed the reviewable determination.

**Example:** A reviewable determination made by a moderator who is not the head moderator may not be appealed to the moderators unless firstly appealed to the head moderator, or the head moderator has failed to act.

## 6.3 Process of review

6.3.1 A review of a reviewable determination may be requested on one or more of the following grounds:

6.3.1.1 a reasonable apprehension of bias on the part of one or more investigators of the determination;

6.3.1.2 that the penalty imposed is excessive;

6.3.1.3 new evidence of a substantial nature, not being reasonably available to the person at the time of the original determination;

6.3.1.4 that the determination is so illogical that it could not have been reasonably made; or

6.3.1.5 that the provisions of these rules were not complied with.

6.3.2 A person (the *appellant*) affected by a reviewable determination (the *original determination*) may request a review of that original determination by serving the request and the evidence supporting the request to—

6.3.2.1 in the case of an appeal to a judicial review panel—the High Court, who shall cause a judicial review panel to be appointed pursuant to rule 6.4; or

6.3.2.2 otherwise—the person or persons to whom the determination may be appealed.

6.3.3 If a review has been requested under rule 6.3.2, the investigators responsible for the review shall consider the request as if it were a complaint under rule 4.2, and a reference in that rule to the moderators were a reference to the investigators of the review, and determine whether to—

6.3.3.1 affirm the original determination;

6.3.3.2 vary the original determination; or

6.3.3.3 set aside the original determination and substitute another determination.

6.3.4 Where a determination is made under rule 6.3.3, the investigators must serve each party to the determination with a notice setting out—

6.3.4.1 the outcome of the determination;

6.3.4.2 the reasons for the determination; and

6.3.4.3 their rights under these rules.

## 6.4 Judicial review panel

### 6.4.1 Interpretation

This subrule applies only to reviews conducted by a judicial review panel.

### 6.4.2 Composition of panel

6.4.2.1 A judicial review panel shall be composed of—

6.4.2.1.1 a member of the House of Representatives; 6.4.2.1.2

a member of the Senate; and

6.4.2.1.3 a member of the judiciary.

6.4.2.2 For the purposes of rule 6.4.2.1, a reference to a member of a House of Parliament which has no members at the current time is to be read as a reference to a member of a House of Parliament at the time that that House last had members.

**Example:** If the House of Representatives has been dissolved for an election, then rule 6.4.2.1.1 shall be read as referring to a person who was a member of the House of Representatives immediately prior to the dissolution of the House.

### 6.4.3 Appointment of panel

6.4.3.1 If a judicial review panel is required to be appointed to conduct a review under rule 6.3.2, the High Court shall appoint a judicial review panel in accordance with rule 6.4.2 to consider that review.

6.4.3.2 After appointing a panel under rule 6.4.3.1, the High Court shall serve each party to the review with a notice setting out—

6.4.3.2.1 the composition of the appointed judicial review panel; and

6.4.3.2.1 their rights under these rules.

### 6.4.4 Objection to appointments

6.4.4.1 A party to a review who has a reasonable apprehension of bias on the part of one or more members of the judicial review panel may serve the High Court with an objection to that panel member and the evidence supporting the objection.

6.4.4.2 Upon receiving an objection under rule 6.4.4.1, the High Court shall determine whether to—

6.4.4.2.1 without making a finding, appoint a substitute panel member in accordance with rule 6.4.2; or

6.4.4.2.2 appoint a *hearing officer* (a person of good standing within the community) who shall determine whether to—

6.4.4.2.2.1 dismiss the objection if satisfied that it is not substantiated; or



6.4.4.2.2.2 uphold the objection if satisfied that there is a reasonable apprehension of bias, and direct the High Court to appoint a substitute panel member in accordance with rule 6.4.2.

6.4.4.3 The High Court shall serve the parties to the review with the outcome of any objection under rule 6.4.4.2.

6.4.4.4 A determination under rule 6.4.4.2 is final.

## **7 Miscellaneous**

### **7.1 Actions must be timely**

Where a person or persons are required to perform an action under these rules, including to make a determination or to serve a document, that action must be performed within a reasonable time.

### **7.2 Manner of making determination in a group**

7.2.1 Where a group of persons, such as the moderators or a judicial review panel, is empowered under these rules to make a determination, that group may decide the manner in which a determination is to be made by a motion agreed to by a majority of all members of that group.

7.2.2 If no such decision has been made, a determination shall be made by that group by a motion agreed to by a majority of all members of that group.

7.2.3 A decision under this subrule as to the manner in which a determination is to be made is not a reviewable determination for the purposes of rule 6.1.1.

### **7.3 Investigators may make enquiries**

Where a person or persons are empowered to make a determination, they may make any enquiries they feel to be necessary in order to make the determination.

## **7.4 Interpretation**

### **7.4.1 Definitions**

In the Act and these rules, unless the contrary intention appears— *abuse* means to use language in a deliberately insulting way, to spread malicious falsehoods.

*breach* means any action determined to be a breach of these standards pursuant to rule 4.

*Constitution* means the Constitution of AustraliaSim.

**determination** includes any subsequent penalty imposed as a result of that determination.

**discord** means the AustraliaSim Discord server and all channels within; as well as private messages via the Discord app, directly pertaining to AustraliaSim business.

**harass** means a repeated pattern of targeted negative behaviour towards an individual.

**head moderator** means the Governor-General or in their absence the longest serving moderator. **high court** means the moderators of AustraliaSim who are not the Governor-General. **investigators** means the moderator, moderators or judiciary responsible for making a determination. **member** means a person who is a member of AustraliaSim, including the moderators. **moderators** means the Justices and Governor-General of AustraliaSim.

**officially recognised media** means any media publication who have the #media role on the AustraliaSim Discord server. **official subreddit** means /r/australiasim, /r/australiasimlower, /r/australiasimupper, /r/australiasimpress. **parties** means—

- (1) in the case of a review—the appellant, the investigators in the original determination, the respondent in the original determination, and the complainant in the original determination (if any); or
- (2) otherwise—the respondent, and the complainant (if any).

**person** means the real-life identity of a person, encompassing all accounts operated by that person.

**satirical publication** means any officially recognised media publication commenting on events and people using absurdity and exaggeration for humorous purposes.

**spam** means—

- (1) the repeated, unnecessary sending or posting of messages;
- (2) the sending or posting of content irrelevant to the Discord channel or subreddit.

## 7.4.2 Rules of interpretation

These rules shall be read and construed subject to the Constitution and *Acts Interpretation Act 1901*. If a provision of these rules is inconsistent with these, the latter shall prevail to the extent of the inconsistency.

7.4.2.1 Where these rules require or permit a document or information to be served, irrespective of the expression used, on a person or persons, then—

- 7.4.2.1.1 the document or information shall be served—

7.4.2.1.1.1 in the case of the moderators—by sending it to the moderators via Reddit modmail or Discord private message; or

7.4.2.1.1.2 in any other case—by sending it to the person or persons via Reddit or Discord private message; and—

7.4.2.1.2 the service shall be deemed to have been effected by correctly addressing and sending the message and, unless the contrary is proved, to have been effected at the time the message was sent.

### **7.4.3 Discretionary application of provisions**

While the provisions of these rules should not be departed from without due cause and great caution, every situation is different, and there may be situations where a literal reading of these provisions is inappropriate. Members should exercise common sense in their behaviour, and moderators should exercise their discretion in taking into account any mitigating or aggravating factors in a judgement. At all times, however, the spirit of these rules must be upheld.