

South Australia

Children (Social Media Safety) Bill 2024

A BILL FOR

An Act to protect children from harm by restricting access to social media.

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The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Children (Social Media Safety) Act 2024*.

2—Act to bind

This Act comes into operation on a day to be fixed by proclamation.

3—Interpretation

(1) In this Act—

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access to a social media service includes any use of such a service but does not include access that is only for the purposes of establishing the age of the person or whether the person has parental consent to access the service;

child means a person under the age of 16 years;

compensation order means an order under section 11;

duty of care under this Act—see section 8;

electronic service means —

- (a) a service that allows end-users to access material using a carriage service; or
- (b) a service that delivers material to persons having equipment appropriate for receiving that material, where the delivery of the service is by means of a carriage service;

but does not include:

- (c) a broadcasting service; or
- (d) a datacasting service (within the meaning of the *Broadcasting Services Act 1992*);

exempt social media service means any social media service which is designated by a notice published by the Minister as an exempt social media service or which is a member of a class of social media services so designated by the Minister;

Fund means the *Children's Online Safety Fund* established under section 13;

online social interaction includes online interaction that enables users to share material for social purposes;

parent, of a child or young person, includes—

- (a) a step-parent; and
- (b) a person who stands in *loco parentis* to the child or young person;

provider of a social media service is a person who makes the service available for use by persons in South Australia and includes persons who participate in the provision of the service in South Australia;

Regulator means the Regulator appointed under this Act;

relevant electronic service means

- (a) any of the following electronic services:
 - (i) a service that enables end-users to communicate, by means of email, with other end-users;
 - (ii) an instant messaging service that enables end-users to communicate with other end-users;
 - (iii) an SMS service that enables end-users to communicate with other end-users;
 - (iv) an MMS service that enables end-users to communicate with other end-users;
 - (v) a chat service that enables end-users to communicate with other end-users;
 - (vi) a service that enables end-users to play online games with other end-users;
 - (vii) a service, or service of a class, prescribed by the regulations;

social media service means—

- (a) an electronic service that satisfies 1 or more of the following conditions:
 - (i) the sole or primary purpose of the service is to enable online social interaction between 2 or more users;
 - (ii) the service allows users to link to or interact, or interact with, some or all of the other users;
 - (iii) the service allows users to post material on the service;
 - (iv) the service is a relevant electronic service;
 - (v) the service satisfied any other conditions prescribed by the regulations; or
 - (b) a service, or service of a class, prescribed by the regulations; but does not include an exempt social media service;
- (2) In determining what the sole or primary purpose of a service is for the purposes of paragraph (a)(i) of the definition of ***social media service*** in subsection (1), the purposes of advertising, or generating revenue from advertising are to be disregarded.

4—The application of the Act

- (1) This Act applies to any person wherever located who provides or offers to provide or allows access to a social media service to end users within this State.
- (2) The duties of care imposed on social media service providers by this Act apply with respect to children domiciled within this State or who have resided in the State for a continuous period of more than three (3) months.

Note: The Act is not intended to apply to children visiting South Australia on a temporary basis.

5—Objects and principles

- (1) The objects of this Act are to prevent or mitigate the risk of psychological and other harms to children flowing from unrestricted access to social media platforms and services.
- (2) The paramount consideration in the administration, operation and enforcement of this Act must be to ensure that children are protected from the risk of harm.

6—The Regulator of Child Social Media Safety

- (1) There will be a Regulator of Child Social Media Safety.
- (2) The Regulator will be appointed by the Governor on the recommendation of the Minister and is an agency of the Crown.
- (3) The person appointed as Regulator—
 - (a) should have a detailed understanding of social media services and the issues affecting child social media safety;
 - (b) may be a public service employee.

7—Powers of the Regulator

The Regulator has power to do all things necessary or convenient to be done for or in connection with the performance of the Regulator's functions.

Drafting Note: The final bill would include administrative provisions such as the terms and conditions the Regulator's appointment and its functions.

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8—Duties of care on providers of social media services.

- (1) A provider of a social media service which is not an exempt social media service has a duty of care to prevent access to that service in this State by:
 - (i) any child domiciled in the State who is under the age of 14 years; and
 - (ii) any child domiciled in the State who is aged 14 or 15 years unless the provider has been notified that a parent of the child consents to the child's access to the service.
- (2) A provider of social media has a duty of care to take all reasonable steps to prevent access to that service in this State by:
 - (i) any child domiciled in the State who is under the age of 14 years; and

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- (ii) any child domiciled in the State who is aged 14 or 15 years unless the provider has been notified that a parent of the child consents to the child's access to the service.

9—Complaints about a breach of the duty of care

If a person has reason to believe that a child domiciled in this State has been or is being provided with access to a social media service which is not an exempt social media service contrary to the duty of care imposed by section 8(1), then the person may, on behalf of the child, make a complaint to the Regulator about the breach.

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10—Infringement Notice

- (1) If the Regulator believes on reasonable grounds that a provider of a social media service has contravened a duty of care under section 8, the Regulator may give to the person an infringement notice for the alleged contravention.
- (2) The infringement notice must state the amount that is payable under the notice.
- (3) The amount stated in the notice for the purposes of paragraph (2) shall be prescribed in the Regulations.
- (4) Where the amount specified in the infringement notice is paid, it shall be paid into the Fund, established under section 13.

<i>Drafting Note: The final bill would include provisions in relation to the Regulator's powers.</i>

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11—Enforcement of duties of care

- (1) If, on application by the Regulator, the Supreme Court is satisfied, on the balance of probabilities, that a provider of social media has breached a duty of care under this Act, the Court may—
 - (a) make a declaration to that effect; and
 - (b) order the payment of compensation by the provider in accordance with the prescribed scale; and
 - (c) in the event that the Court is satisfied that the breach of duty was wilful or reckless, or was a repeated breach, impose a civil penalty;
 - (d) make any ancillary orders the Court thinks fit including an injunction.
- (2) The regulations may prescribe a scale of compensation amounts for the purposes of this section, with such amounts increasing according to the scope and seriousness of any breach of the duty of care under this Act.

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- (3) All compensation ordered to be paid under this section is payable to the Fund in accordance with section 13.
 - (4) The Regulations may prescribe civil penalties which may be imposed by the Supreme Court in the case of wilful or reckless or repeated breaches of the duties imposed by this Act.

Drafting Note: *The final bill could include additional provisions for the Regulator to issue remedial notices and to agree upon enforceable undertakings.*

- (5) A breach of the duty of care under section 8(1) of this Act in relation to a social media service is established, for the purposes of this section, by evidence that a person has been able to access the social media service in this State without being required to establish that the person—
 - (a) is not a child under the age of 14 years; and
 - (b) is not a child aged 14 or 15 years who is accessing the service without the consent of a parent.
- (6) It is a defence to an action by the Regulator for a breach of the duty of care under section 8(1) of this Act if the provider of the social media service proves that, at the time of the breach, the provider had taken all reasonable steps to prevent access to its social media service.
- (7) A breach of the duty of care imposed by subsection 8(2) of the Act occurs where the provider of a social media service fails to take or maintain reasonable steps to provide access to that service in South Australia as required by subsection 8(2).
- (8) The regulations may prescribe measures that will, or will not, be taken to constitute reasonable steps for the purposes of establishing the defence under subsection (6) and for the purposes of complying with the duty under subsection 8(2).

12—Damages

- (1) If—
 - (a) a provider of social media breaches the duty under this Act; and
 - (b) a child to whom the duty of care under this Act applies—
 - (i) has access to the social media service contrary to the provisions of section 8; and
 - (ii) suffers mental or physical harm as a result of that access,

the breach of duty of care is actionable as a tort by the child (and damages may be awarded against the provider as if the breach of duty of care constituted negligence by the provider).

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- (2) An action may be brought under this section on behalf of the child by—
 - (a) a parent of the child; or
 - (b) the Regulator (in the Regulator's absolute discretion).

13—Children's Online Safety Fund

- (1) The *Children's Online Safety Fund* is established.
- (2) The Fund will consist of—
 - (a) any compensation amounts paid under this Act; and
 - (b) any amounts paid pursuant to an infringement notice under this Act; and
 - (c) income and accretions from investment of money from the Fund; and
 - (d) any money appropriated by Parliament for the purposes of the Fund.
- (3) Any money in the Fund that is not for the time being required for the purposes of the Fund may be invested by the Regulator in any manner approved by the Minister.
- (4) The Regulator may apply any portion of the Fund towards—
 - (a) paying any costs or expenses incurred in the administration or enforcement of this Act (including any costs and expenses incurred in relation to the identification of social media services that should be exempt social media services under this Act); and
 - (b) research into the provision of safe and beneficial social media services for children; and
 - (c) discretionary payments for the benefit of children who have, in the opinion of the Regulator, suffered mental or physical harm as a result of a breach of the duty of care under this Act; and
 - (d) education programs relating to social media safety for children; and
 - (e) any other prescribed purposes.
- (5) The Regulator must keep proper accounts of receipts and payments in relation to the Fund.
- (6) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Fund.

14—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
