

DRAFT FOR CONSULTATION

Online Safety (Duties for Providers of Internet-Based Services) Bill

Member's Bill

Explanatory note

General policy statement

The online environment is an increasingly difficult place for New Zealanders to navigate safely. On a number of online platforms, it has become increasingly easy for users to come across illegal and other harmful content including sexual content, criminal offending, extreme violence, extremism and terrorism, and material encouraging eating disorders or self-harm. In many cases, this harmful content is actively recommended by the platform's algorithms and processes. This content can be particularly harmful to young people, women, rainbow, ethnic communities, and Māori.

In addition, many people using platforms are subject to abuse, harassment and violence. This can be on their streams or feeds, in the comment section of posts, or in private messages. In the majority of cases, the complaint systems on these platforms are not responsive to complaints and there is no transparency about any actions that have been taken.

Up until this point, online safety has largely been governed in New Zealand by the Harmful Digital Communications Act 2015. This makes end users responsible when they share harmful content but does not place commensurate obligations on service providers to ensure that users are not exposed to harmful content or that harmful content is dealt with in an appropriate manner.

Many online service providers use algorithms to identify and provide users with content that they are likely to engage. The business model of these companies is designed around the use of that data so that they can sell targeted advertising. This means that they have a financial incentive to keep end users engaged. This model is not driven by safety but by engagement - which means that high-engagement content is recommended or shared by the platform regardless of how safe it is. For example, an algorithm may identify that a user is a teenage girl and provide her with content relating to eat-

ing disorders. It may identify a teenage boy and provide misogynistic or violent extremist content.

Where these algorithms are not designed with safety in mind, feeds can quickly become filled with harmful content in place of safe or innocuous content. This Bill seeks to ensure that all New Zealanders are protected from this kind of harm.

This Bill sets out three duties for online service providers in the interest of creating safe online environments. These are duties regarding the safe use of services, safety by design, and duties regarding transparency.

Duties regarding the safe use of services provide that online service providers must take reasonable steps to minimise the provision of harmful material, prevent children from accessing harmful material, and ensure that end users are able to use the service safely, i.e. without being exposed to harmful material or harassment.

Duties to ensure safety by design mean that when online service providers design services and features, they take into account safety considerations and provide in-built terms of service, complaint handling, and detection measures for harmful content. Where these features are not present, there is a heightened risk to end users. This Bill would provide that online services have an obligation to mitigate that risk.

Transparency duties require that service providers are required to conduct regular reporting on the steps they take to ensure a service is safe by design and that end users are able to use the service safely and makes them accountable to the Commerce Commission in a regulatory capacity.

This Bill is based on provisions from the Online Safety Act 2021 (Aust), the Online Safety Act 2023 (UK), and the Digital Services Act (EU).

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force 6 months after Royal assent.

Part 1

Preliminary provisions

Clause 3 states the purpose of the Bill.

Clause 4 defines terms used in the Bill.

Clause 5 provides that the Bill, when enacted, will bind the Crown.

Part 2

Duties of Providers

Subpart 1—Duties regarding safe use of services

Clause 6 provides that a provider must take reasonable steps to ensure safe use of its service. It identifies what steps would be considered reasonable to achieve this.

Clause 7 provides that a provider must take all reasonable steps to minimise provision of harmful material on its service. Harmful material is defined in *clause 4*.

Clause 8 provides that a provider must take all reasonable steps to prevent access by children to harmful material on its service. This is to highlight that a higher standard of protection should be provided for children in regards to online safety.

Subpart 2—Duties to ensure safety by design

Clause 9 provides that a provider must take reasonable steps to ensure that the best interest of the child are a primary consideration when designing a service. This includes considering the best interest of the child when introducing any new functionality or algorithmic change to the service.

Clause 10 specifies that a provider must ensure it has an internal complaint-handling system to address complaints by end users.

Clause 11 specifies that a provider must ensure its service has terms of use and conduct requirements.

Clause 12 specifies that if a provider's service uses encryption, they must take reasonable steps to develop and implement processes to detect and address material or activity on the service that is unlawful or harmful.

Clause 13 specifies that a provider must take reasonable steps to consider end user safety and incorporate safety measures in the design, implementation, and maintenance of generative artificial intelligence capabilities provided on its service.

Subpart 3—Duties regarding transparency

Clause 14 requires providers to prepare and publish regular transparency reports that outline the steps the provider is taking to ensure that end users are able to use the service safely.

Clause 15 requires a provider to provide specified information requested by the Commission. The Commission may use the information for the purpose of commissioning further guidance and research on transparency and accountability measures related to online safety.

Clause 16 requires a provider to have a designated contact point in New Zealand for the purposes of the Act, regardless of whether the provider has staff in New Zealand.

Subpart 4—Offences relating to duties

Clause 17 provides for the offence of failing to comply with any of the duties in this Act.

Clause 18 provides for a separate, specific, offence of failing to comply with the duty to protect children from harmful material.

Part 3

Application of Commerce Act 1986

Application of Commerce Act 1986

Clause 19 provides that certain provisions of Part 6 of the Commerce Act 1986 (relating to enforcement, remedies, and appeals) apply with any necessary modifications.

Clause 20 provides that certain provisions of Part 7 of that Act (relating to a range of miscellaneous provisions) apply with any necessary modifications.

Provisions based on Commerce Act 1986

Clause 21 provides for the ways in which the Commission can monitor providers' compliance with the duties in this Bill.

Clause 22 provides the Commission with a range of additional investigation and information-gathering powers. For example, the Commission may, by notice in writing, require any person to produce or supply any documents that the Commission has reason to believe may be relevant to an investigation, audit, or inquiry.

Clause 23 provides for offences relating to those powers.

Part 4

Regulations and review

Clause 24 provides that regulations may be made for the purposes of the Bill.

Clause 25 requires the Bill, once enacted, to be reviewed as soon as practicable after the third anniversary of its commencement.

Reuben Davidson

Online Safety (Duties for Providers of Internet-Based Services) Bill

Member's Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Online Safety (Duties for Providers of Internet-Based Services) Act **2025**.

2 Commencement

This Act comes into force 6 months after Royal assent.

Part 1

Preliminary provisions

3 Purpose

- (1) The purpose of this Act is to improve the safety of certain internet-based services for end users of these services in New Zealand.
- (2) To achieve that purpose, this Act imposes duties which require providers of services regulated by this Act to identify, mitigate, and manage risks of harm from—
 - (a) illegal or harmful content and activity; and
 - (b) content and activity that is harmful to children.

4 Interpretation

In this Act, unless the context otherwise requires,—

child safety risk assessment means an assessment of the service to determine the following matters:

- (a) the service's user base, including the number of users who are children in different age groups:
- (b) the level of risk of child users of the service encountering harmful or illegal material:
- (c) the extent to which the design and operation of the service, in particular its functionalities, affects the level of risk of harm that may be suffered by children

end user in relation to a service provided by a provider, means a person who is the ultimate recipient of that service

harmful material means material that describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the material on a provider's service is likely to be injurious to the public good

provider means the provider of a service, to the extent that the services are available to end users in New Zealand

service means the following provider services:

- (a) an internet search engine service:
- (b) a social media platform:
- (c) a designated internet service.

5 Act binds the Crown

This Act binds the Crown.

Part 2

Duties of Providers

Subpart 1—Duties regarding safe use of services

6 Provider must take reasonable steps to ensure safe use

- (1) A provider must take all reasonable steps to—
 - (a) ensure end users are able to use the service safely; and
 - (b) ensure that harmful material is restricted on the service.
- (2) Without limiting **subsection (1)**, reasonable steps include the following:
 - (a) developing and implementing processes to detect, moderate, report, and remove material on the service that is unlawful or harmful:
 - (b) continually improving technology and practices relating to the safety of end users:
 - (c) assessing whether business decisions will have a significant adverse impact on the ability of end users to safely use the service and in such circumstances, appropriately mitigating the impact:
 - (d) investing in systems, tools, and processes to improve the prevention and detection of material or activity on the service that is unlawful or harmful:
 - (e) having regard to any relevant guidance material made available by the Commission.

7 Provider must take reasonable steps to minimise availability of certain material

A provider must take all reasonable steps to minimise the extent to which the following material is available on the service:

- (a) cyber-bullying material:
- (b) non-consensual intimate images of an identifiable individual, whether real or synthesized:
- (c) material that promotes, incites, instructs, or depicts violence:
- (d) harmful or illegal material.

8 Provider must take reasonable steps to prevent access by children to harmful material

- (1) A provider must take all reasonable steps to ensure that it has measures in effect to prevent children accessing material of the sort listed in **section 7**.
- (2) Without limiting **subsection (1)**, reasonable steps include:
 - (a) implementing appropriate age assurance mechanisms:
 - (b) conducting child safety risk assessments:

- (c) continually seeking to develop, support, and implement technologies and processes for preventing access by children to harmful material.

Subpart 2—Duties to ensure safety by design

9 Provider must take reasonable steps to ensure best interests of child are a primary consideration

- (1) A provider must take all reasonable steps to ensure that the best interests of the child are a primary consideration in the design and operation of any service that is likely to be accessed by children.
- (2) Before making any significant change to any aspect of a service's design or operation, a provider must carry out a further suitable and sufficient child safety risk assessment of that proposed change.

10 Provider must ensure service has internal complaint-handling system

- (1) A provider must have an internal complaint-handling system that enables end users to report, and make complaints about, any of the following:
 - (a) cyber-bullying material;
 - (b) non-consensual intimate images of an identifiable individual, whether real or synthesized;
 - (c) material that promotes, incites, instructs or depicts, violence;
 - (d) harmful or illegal material;
 - (e) any breach of the service's terms of use.
- (2) A provider must, within a reasonable period of time—
 - (a) review and respond to reports and complaints; and
 - (b) take reasonable steps to provide feedback on the action it has taken to address the complaint.
- (3) A provider's internal complaint-handling system must provide for appeals to an independent decision-maker in respect of first-instance decisions in respect of the following:
 - (a) moderation;
 - (b) reports of illegal and harmful content that were rejected;
 - (c) a provider's failure to comply with the any of the duties set out in this Act.

11 Provider must ensure service has terms of use and conduct requirements

- (1) A provider must ensure its service has:
 - (a) terms of use; and
 - (b) policies and procedures in relation to the safety of end users:

- (c) standards of conduct for end users (including in relation to material that may be posted using the service by end users); and
 - (d) policies and procedures in relation to the moderation of conduct and enforcement of those standards.
- (2) A provider must take reasonable steps to detect breaches of its terms of use, policies and procedures in relation to the safety of end users, and standards of conduct for end users.

12 Provider must take reasonable steps regarding encrypted services

- (1) If a provider's service uses encryption, they must take reasonable steps to develop and implement processes to detect and address material or activity on the service that is unlawful or harmful.
- (2) **Subsection (1)** does not require the provider to—
 - (a) implement or build a systemic weakness, or a systemic vulnerability, into a form of encrypted service; or
 - (b) build a new decryption capability in relation to encrypted services; or
 - (c) render methods of encryption less effective.

13 Provider must take reasonable steps regarding generative artificial intelligence capabilities

- (1) A provider must take reasonable steps to incorporate safety measures in the design, implementation, and maintenance of generative artificial intelligence capabilities provided on its service.
- (2) If a service uses or enables the use of generative artificial intelligence capabilities, the provider must take reasonable steps to proactively minimise the extent to which generative artificial intelligence capabilities may be used to produce material or facilitate that is unlawful or harmful.
- (3) Without limiting **subsection (1) or (2)**, reasonable steps for the purpose of this section must include the following:
 - (a) ensuring that assessments of safety risks and impacts are undertaken, identified risks are appropriately mitigated, and safety review processes are implemented throughout the design, development, and deployment of generative artificial intelligence capabilities;
 - (b) providing educational or explanatory tools (including when new features are integrated) to end-users that promote understanding of generative artificial intelligence capabilities on the service and any risks associated with the capabilities;
 - (c) ensuring, to the extent reasonably practicable, that generative artificial intelligence capabilities can detect and prevent the execution of prompts that generate unlawful or harmful material.

Subpart 3—Duties regarding transparency

14 Duty to develop transparency reports

A provider must prepare and publish regular transparency reports that outline the steps the provider is taking to ensure the safety of end users while using the service, including:

- (a) the use of online safety tools and processes:
- (b) providing data on the prevalence of harmful material or activity on the service:
- (c) the provider's responsiveness to reports and complaints:
- (d) how the provider is enforcing its terms of use, policies and procedures, and standards of conduct.

15 Duty to provide information

- (1) If the Commission, by written notice to a provider, requests information specified in **subsection (2)**, the provider must comply with the request within 30 days after the notice of the request is given.
- (2) The information requested may include:
 - (a) the number of complaints made to the provider during a specified period (not shorter than 6 months) about breaches of the provider's terms of use and what those complaints relate to:
 - (b) details of the measures taken by the provider to ensure the safety of end users while using the service:
 - (c) a report on the performance on online safety measures that the provider has announced publicly:
 - (d) a report on the number of active end users of the service in New Zealand during a specified period, with the number of active end users who are children identified separately.
- (3) The Commission may only use information it collects under this section for the purpose of commissioning further guidance and research on transparency and accountability measures related to online safety.

16 Provider must have designated contact

- (1) A provider must ensure that there is a person in New Zealand who is:
 - (a) an employee or agent of the provider; and
 - (b) designated as the provider's contact for the purpose of the Act.
- (2) The provider must ensure that the following details of the contact are notified to the Commission:
 - (a) the contact's full name; and
 - (b) a physical address; and

- (c) an email address; and
 - (d) a phone number.
- (3) For the purposes of **subsection (1)**, a provider must have a designated contact regardless of whether the provider has staff physically located in New Zealand.

Subpart 4—Offences relating to duties

17 Offence of failing to comply with duty

- (1) A person commits an offence against this section if the person—
- (a) has a duty under **subparts 1 to 3**; and
 - (b) fails to comply with that duty.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$20,000.

18 Offence of failing to comply with duty to protect children from harmful material

- (1) A person commits an offence against this section if—
- (a) the person has a duty under **subparts 1 to 3**; and
 - (b) the person fails to comply with that duty; and
 - (c) that failure exposes a child to harmful material.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$50,000.

Part 3

Application of the Commerce Act 1986

Application of Commerce Act 1986

19 Application of Part 6 of Commerce Act 1986 (enforcement, remedies, and appeals)

The following provisions of the Commerce Act apply with any necessary modifications:

- (a) section 74A (Commission may accept undertakings):
- (b) section 74B (matters included in undertakings):
- (c) section 74C (enforcement of undertakings):
- (d) section 79 (evidence not otherwise admissible):
- (e) section 90 (conduct by employees, agents, and others).

20 Application of Part 7 of Commerce Act 1986 (miscellaneous provisions)

The following provisions of the Commerce Act 1986 apply with any necessary modifications:

- (a) section 98 (Commission may require person to supply information or documents or give evidence):
- (b) section 99 (powers of Commission to take evidence):
- (c) section 100A (Commission may state case for opinion of High Court):
- (d) section 101 (notices):
- (e) section 102 (service of notices):
- (f) section 104 (determinations of Commission):
- (g) section 106 (proceedings privileged):
- (h) section 106A (judicial notice):
- (i) section 109 (Commission may prescribe forms).

Provisions based on Commerce Act 1986

21 Monitoring compliance with duties

- (1) For the purpose of monitoring compliance with any duty imposed by or under this Act, the Commission may, in addition to exercising its powers under this Act and under the Commerce Act 1986, issue a written notice to a provider requiring it to provide any or all of the following:
 - (a) a written statement that states whether the provider has complied with the duty:
 - (b) a report on the written statement that is signed by an auditor or other assurance practitioner in accordance with any form specified by the Commission:
 - (c) sufficient information to enable the Commission to properly determine whether all applicable requirements have been complied with:
 - (d) a certificate, in the form specified by the Commission and signed by at least 1 director of the participant, confirming the truth and accuracy of any information provided under this section.
- (2) The provider must comply with the notice within the time frame, and in the manner, specified in the notice.

22 Investigation and information-gathering powers

For the purpose of performing or exercising its functions, duties, and powers under this Act, the Commission may, in addition to exercising its powers under this Act and the Commerce Act 1986—

- (a) investigate any of the following:

- (i) how effectively and efficiently providers are complying with the duties in this Act:
 - (ii) how any determination, code, standard, direction, or other regulatory measure being considered by the Commission may be applied, or how any regulatory measure has been applied, in considered proposed regulatory measures:
- (b) examine, consider, or investigate any activity, cost, revenue, margin, transfer, asset valuation, circumstance, or even that is occurring or that has occurred during the previous 7 years:
- (c) by notice in writing, require any person—
 - (i) to prepare and produce forecasts, forward plans, or other information; and
 - (ii) to apply any methodologies specified by the Commission in the preparation of forecasts, forward plans, or other information:
- (d) by notice in writing, require any person that the Commission has reason to believe may have information or documents relevant to an investigation, audit, or inquiry to do either of both of the following:
 - (i) produce or supply to the Commission any documents or information that the Commission has reason to believe may be relevant to the investigation, audit, or inquiry:
 - (ii) answer any questions about any matter that the Commission has reason to believe may be relevant to the investigation, audit, or inquiry:
- (e) by notice in writing, require any person, at the time and place specified in the notice, to produce or supply to the Commission an expert opinion from an appropriately qualified person, or a member of a class of appropriately qualified persons, as determined by the Commission in relation to the matters in paragraphs **(a)**, **(b)**, **(c)** and **(d)(i)**.

23 Offences relating to certain investigation and information-gathering powers

- (1) A person must not,—
 - (a) without reasonable excuse, refuse or fail to comply with a notice under **section 21 or 22** of this Act or section 98 of the Commerce Act 1986; or
 - (b) in purported compliance with such a notice, provide information, or produce a document, or give evidence, knowing it to be false or misleading.
- (2) A person must not attempt to deceive or knowingly mislead the Commission in relation to any matter before it.

- (3) A person must not, having been required to appear before the Commission in accordance with section 98(1)(c) of the Commerce Act 1986,—
 - (a) without reasonable excuse, refuse or fail to appear before the Commission to give evidence or;
 - (b) refuse to take an oath or make an affirmation as a witness; or
 - (c) refuse to answer any question; or
 - (d) refuse to produce to the Commission any document that that person is required to produce.
- (4) A person who contravenes **subsection (1), (2), or (3)** commits an offence and is liable on conviction to,—
 - (a) in the case of an individual, a fine not exceeding \$100,000; or
 - (b) in any other case, a fine not exceeding \$300,000.
- (5) A proceeding for an offence against **subsection (4)** may be commenced within 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.

Part 4

Regulations and review

24 Regulations

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
 - (a) providing for anything this Act says may or must be provided for by regulations;
 - (b) specifying a designated internet service;
 - (c) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.
- (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

25 Review of operation of Act

- (1) As soon as practicable after the third anniversary of the commencement of this Act, the chief executive must—
 - (a) review the operation of this Act; and
 - (b) consider whether any amendments to this Act are necessary or desirable; and
 - (c) report the findings of the review to the Minister.
- (2) As soon as practicable after receiving the report, the Minister must present a copy of the report to the House of Representatives.