

DRAFT FOR CONSULTATION

Social Media (Age-Restricted Users) Bill

Member's Bill

Explanatory note

General policy statement

This Bill seeks to protect young New Zealanders from the harms of social media by regulating access for individuals under the age of 16. The policy aims to:

- reduce the risks to young people of cyberbullying, harmful content, and online exploitation
- safeguard young users' privacy from commercial exploitation and data breaches
- encourage healthier social interactions and offline activities.

There are signs that social media use can have a negative impact on young people.

The Bill mandates that social media platforms implement strict age verification measures to prevent under-16s from creating accounts. It introduces regulatory oversight to ensure compliance and penalise non-compliant platforms. Additionally, it promotes digital literacy and public awareness programs to educate parents and children on safe online behaviour.

This approach is essential given the increasing negative impacts of social media on young users. Aligning with international efforts, including Australia's recent policy shift, the Bill provides a proactive, enforceable solution to safeguard children while fostering a safer digital environment.

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 the terms used in the Bill.

Clause 5 defines *social media platform* for the purpose of the Bill.

Clause 6 provides that the Bill, when enacted, will bind the Crown.

Part 2

Provider Duties

Subpart 1—Provider must take reasonable steps

Clause 7 provides that a provider of an age-restricted social media platform must take all reasonable steps to prevent age-restricted users from having accounts with their platform.

Clause 8 identifies what constitutes reasonable steps in relation to the obligation placed on providers by *clause 7*.

Subpart 2—Enforcement

Clause 9 outlines when a court may make a pecuniary penalty against a provider for failing to prevent age-restricted users from having accounts with their age-restricted social media platform.

Clause 10 outlines the maximum amount of pecuniary penalty that can be ordered by the court.

Clause 11 outlines the considerations that the court must consider when determining the amount of a pecuniary penalty.

Clause 12 provides the defences available to a provider if they fail to take reasonable steps to prevent age-restricted users from having accounts with their age-restricted social media platform.

Clause 13 provides that the proceedings under this subpart are civil proceedings and the rules of court and rules of evidence and procedure for civil proceedings apply (including the standard of proof).

Part 3

Regulations and review

Clause 14 provides that regulations may be made for the purposes of this Bill.

Clause 15 requires the Bill, once enacted, to be reviewed as soon as practicable after the third anniversary of its commencement.

Catherine Wedd

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- (2) For the purposes of **subparagraph (1)(a)(i)**, online social interaction includes online social interactions that enables end-users to share material for social purposes.
- (3) In determining whether the condition set out in **subparagraph (1)(a)(i)** is satisfied, disregard the following purposes:
- (a) the provision of advertising material on the service;
 - (b) the generation of revenue from the provision of advertising material on the platform.
- (4) For the purposes of this section, a platform is an **exempt platform** if:
- (a) none of the material on the platform is accessible to, or delivered to, one or more end-users in New Zealand; or
 - (b) the platform is specified in regulations.

6 Act binds the Crown

This Act binds the Crown.

Part 2 Provider duties

Subpart 1—Provider must take reasonable steps

7 Provider must take reasonable steps to prevent age-restricted users from having accounts

A provider of an age-restricted social media platform must take all reasonable steps to prevent an age-restricted user from being an account-holder with their age-restricted social media platform.

8 What constitutes reasonable steps

Without limiting **section 7**, **reasonable steps** means that which is, or was, at a particular time, reasonably able to be done by a provider in relation to preventing an age-restricted user from being an account-holder with their age-restricted social media platform, taking into account and weighing up all relevant matters, including—

- (a) the privacy of the age-restricted user; and
- (b) the reliability of the method used for a person to assure the provider that they are not an age-restricted user.

Subpart 2—Enforcement

9 When court may make pecuniary penalty order

The court may, on the application of the chief executive, order a provider to pay to the Crown the pecuniary penalty that the court determines to be appropriate if the court is satisfied that the provider has contravened **section 7**.

10 Maximum amount of pecuniary penalty

The maximum amount of a pecuniary penalty that a provider may be ordered to pay for contravening section 6 is \$2,000,000.

11 Considerations for court

In determining whether to make an order, and the amount of any pecuniary penalty to be paid, the court must have regard to the following matters:

- (a) the extent to which the provider's conduct undermines the purposes of this Act:
- (b) any harm caused to an age-restricted user as a result of the provider's failure to prevent them from accessing their age-restricted social media platform:
- (c) whether the provider has taken steps to mitigate their failure:
- (d) whether the provider's conduct was intentional or reckless:
- (e) the circumstances of the provider's conduct:
- (f) whether the provider has previously engaged in similar conduct:
- (g) any other matters the court considered relevant.

12 Defence for failure to prevent age-restricted user from accessing age-restricted social media platforms

It is a defence for a provider to prove that their failure to prevent an age-restricted user from accessing their age-restricted social media platform was due to reasonable reliance on information provided by an age-restricted user.

13 Rules of civil procedure and civil standard of proof apply

The proceedings under this subpart are civil proceedings and the rules of court and rules of evidence and procedure for civil proceedings apply (including the standard of proof).

Part 3 Regulations and review

14 Regulations

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:

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- (a) providing for anything this Act says may or must be provided for by regulations:
 - (b) designating a social media platform as an age-restricted social media platform:
 - (c) designating an electronic platform as a social media platform:
 - (d) specifying an exempt social media platform:
 - (e) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.
- (2) For the purposes of **subsection (1)(b)** and the Minister may only make regulations under that subsection if—
- (a) the Minister is satisfied that it is reasonably necessary to do so in order to minimise harm to age-restricted users; and
 - (b) the Minister has received advice from the chief executive and has had regard to that advice; and
 - (c) the Minister has consulted with providers of platforms proposed to be designated as an age-restricted social media platform; and
 - (d) the Minister has received advice from any other entity that the Minister consider relevant and has had regard to such advice.
- (3) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

15 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.