



FAQ: Protecting children from the harms of social media

What is being decided?

We are seeking your feedback on draft framework legislation to protect children from the harms of social media.

Background

In May 2024, the State Government appointed former Chief Justice of the High Court of Australia the Honourable Robert French AC to conduct a legal examination into children's access to social media.

The Terms of Reference directed Mr French AC to examine the legal, regulatory, and technological pathways for the State Government to impose a ban for children under 14 and to introduce parental consent requirements for children aged 14 and 15.

On 8 September 2024, Mr French AC delivered his report (**'the Report'**) to the Premier of South Australia. In his report, Mr French AC sets out the features of a potential legislative pathway to achieve a ban and a framework draft Bill.

The draft Bill proposes to protect children from negative experiences on social media by:

- imposing duties of care on providers of social media to:
 - prevent access to social media by children under 14 or by children aged 14 and 15 without their parent or guardian's consent; and
 - take 'reasonable steps' to prevent children in those age groups from accessing social media (or accessing social media services without consent);
- providing for social media platforms which do not pose a risk of harm to be exempt from those duties of care;
- allowing options for a Regulator to enforce a breach, including issuing infringement notices (fines) against providers of social media services.

The community will be able to provide feedback on the draft Bill until 04 October.

What is social media?

Social media is an evolving concept. Because of this, social media has been defined in many different ways. Generally, social media services are considered to be online platforms that allow users to interact with each other, link to each other or post content for others to view or interact with.

Examples of popular social media sites include:

- Facebook
- Instagram
- Tik Tok
- Snapchat
- X (formerly known as Twitter)
- YouTube
- Reddit
- Pinterest

The Report sets out examples of how other jurisdictions have defined 'social media' in legislation. The Report outlines five different options for the definition of social media in the framework draft bill. Those options are set out further below.

What are the risks of social media for children?

Concern is rising over the risks associated with children's unrestricted access to social media. The harms posed to children by social media include:

- Personal safety harms:
 - direct and indirect threats or facilitation of violence;
 - intimidation;
 - viral challenges;
- Health and wellbeing harms:
 - self-harm and suicidal material;
 - material promoting eating disorders;
 - exposure to developmentally inappropriate conduct;
- Harms to dignity:
 - insulting and demeaning comments;
 - cyberbullying;
 - trolling;
- Privacy harms:
 - doxing;

- sexual extortion;
- image-based abuse;
- deep-fake imagery;
- Harms involving discrimination;
 - hate speech;
 - racism;
 - misogyny;
 - sexual harassment;
 - homophobia and transphobia;
- Harms involving perception and manipulation;
 - grooming of children;
 - misinformation.

What are the impacts of these risks?

Clinicians who were consulted as part of the Report emphasised that most children are not developmentally prepared for the material they can access on social media.

Exposure to social media can cause children to experience depression, anxiety, and self-esteem issues. There are also wider impacts, as the harms of social media can manifest into anti-social behaviours by children within our communities.

What are the benefits of social media for children?

Social media can allow children to interact with their family, friends and community, to both share and understand their experiences and the experiences of others. It can also serve as a formal and informal education tool.

Do all social media services put children at risk?

Not all social media services pose a high risk of harm to children. The framework draft bill allows for 'exempt social media services' so children can still benefit from the world of social media in lower risk environments.

Exempt social media services are discussed further below.

How is social media regulated in Australia?

There is currently no South Australian legislation which deals with social media and online safety. The Online Safety Act 2021 (Cth) ('**Online Safety Act**') is the main piece of Commonwealth legislation which regulates social media in Australia. The objects of the *Online Safety Act* are to improve and promote online safety for Australians.

The *Online Safety Act* creates the Commonwealth regulator, the eSafety Commissioner. The eSafety Commissioner has a broad range of powers which include dealing with complaints for cyber-bullying material targeting an Australian child. The

eSafety Commissioner also can determine basic online safety expectations for different sections of the online industry, including social media services.

The *Online Safety Act* does not restrict access to social media services by children of a particular age group in anyway. Under the *Online Safety Act*, children are currently restricted from accessing particular classes of harmful content, including online pornography.

The Online Safety Act is supported by other Commonwealth Acts including the [Telecommunications Act 1997](#) and the [Privacy Act 1988](#).

Does the South Australian government have the power to regulate social media?

The Report concludes it is within the South Australian parliament's power to make legislation which creates age restriction on access to social media services in South Australia. The Commonwealth *Online Safety Act* provides for the possibility of concurrent State laws.

Are there currently any age-based restrictions on children's access to social media in Australia?

Most major social media providers have their own community guidelines and policies. Those community guidelines generally require users to be over the age of 13 years old to create an account.

Is there a national approach to the regulation of children's access to social media?

Following the release of the Report, the Commonwealth has committed to adopting South Australia's proposal, and to introduce legislation by the end of the year to enforce a minimum age for access to social media.

South Australia is ready to work with Federal and State and Territory Governments on national uniform legislation.

How do social media services currently determine the age of users?

Most social media service providers require users to provide their date of birth to demonstrate that they are over 13 years of age. Some platforms also currently use human moderation and artificial intelligence technology to identify users who are under the age of 13.

Why aren't existing safeguards enough?

There is continued concern among experts, the community and parents about the adverse impact social media has on children's well-being, mental health, and development. Current safety safeguards are not keeping up with community expectations and the rising number of incidents associated with the harmful impacts of social media.

Children are accessing social media sites at very young ages. Research from the eSafety Commissioner shows almost a quarter of 8 to 10-year-olds accessed social media once a week (or more often).

More needs to be done now to reduce the risk of psychological harms to children from social media.

How would an age restriction work under the framework draft bill?

The framework draft bill proposes placing two duties of care on social media service providers.

Under the first duty social media service providers will be required to:

- prevent children under the age of 14 from accessing social media services, and
- children aged 14 and 15 from accessing social media services without the consent of a parent or guardian.

The second duty will require social media service providers to take reasonable steps to ensure children of those age groups do not have access to social media or access without the consent of a parent (as the case requires).

What is a ‘duty of care’?

A duty of care is a legal obligation to take all reasonable steps to do or not do something. There are existing duties of care at common law and in legislation in South Australia.

A duty of care generally places an obligation on a person (including a corporation or government body) to not cause foreseeable harm to another person.

What would be a breach of the duties of care under the framework draft bill?

A breach of the first duty of care would require the Regulator to prove that a child under the ages as set out in the legislation has accessed social media (or accessed social media without a parent or guardian’s consent). This would generally come to the attention of the Regulator as a result of a complaint about a child accessing a social media site.

A breach of the second duty of care would be proven by the Regulator demonstrating a social media service provider has not taken all the positive steps reasonable to prevent access to social media by children (or accessed social media without a parent or guardian’s consent) under the ages set out in the legislation. The Regulator would not necessarily need to show that a particular child has accessed a social media service to prove a breach of the second duty.

Will there be any defences available?

Yes. It will be a defence to the first duty for a social media service provider to demonstrate that they have taken all reasonable steps to prevent a child accessing the social media service.

What are ‘reasonable steps’?

Age assurance and age verification technology are still developing. The draft Bill does not define what ‘reasonable steps’ are. This would allow the Regulator to consider the latest in age assurance technology at the time of the breach. The Regulator could publish guidelines for what might constitute ‘reasonable steps.’

Why are there two duties of care proposed?

A breach of the first duty would require proof that a child under the age as set out in the legislation has accessed social media services.

The second duty would not require the Regulator to prove that a particular child has accessed a social media service. The second duty would allow the regulator to undertake ‘spot checks’ to ensure that social media service providers are taking all the reasonable steps to prevent children from accessing their service.

What are ‘age assurance’ and ‘age verification’?

‘Age assurance’ describes a broad range of processes which can be used to establish or predict the age (or age range) of a person. Examples include:

- a person self reporting their age (date of birth);
- confirmation of their age by another person (such as a parent);
- use of biometric information (such as facial recognition);
- use of behavioural or online signals (such as gesture patterns).

‘Age verification’ is a technical process for identifying a person’s age using identifiable information. Examples include:

- tokens or licences;
- third party verification;
- digital government IDs.

How will parental consent work under the proposed changes?

The framework draft bill does not propose a particular method for social media service providers to verify the consent of parents or guardians for children aged 14 or 15 accessing social media services. Under the framework draft bill, the Regulator could publish guidelines on the reasonable steps required to establish parental consent.

Will the changes be compatible with existing online safety laws?

Yes. The framework draft bill is intended to operate together with the *Online Safety Act* to ensure the safety of all South Australians online. The framework draft bill uses definitions and concepts which align with the *Online Safety Act* to achieve maximal regulatory compatibility.

Do any other jurisdictions place duties of care on social media service providers?

Yes. The United Kingdom’s *Online Safety Act 2023* places a duty of care on different online service providers to identify, mitigate and manage risks of harm from illegal content and content that is harmful to children. The United States of America has also

recently proposed legislation (*Kids Online Safety Act*) which places a duty of care on providers (including social media service providers).

How will the Regulator ensure social media providers are complying with their duties of care to children?

The framework draft bill allows South Australian adults to make a complaint to the Regulator if they believe a provider has breached its duty of care and allowed a child to access a social media service. It also empowers the regulator to regularly check that social media service providers are doing their part and taking all reasonable steps to prevent South Australian children from accessing social media.

If the Regulator has reason to believe that a social media service has breached a duty of care, the Regulator could issue a remedial notice to require the provider to take all reasonable steps to prevent that breach within 24 hours (or a longer period of time as specified by the Regulator).

If a remedial notice was not complied with by the provider, the Regulator could take further enforcement action. The enforcement options which could be open to the Regulator are set out below.

What kinds of penalties will be imposed?

If a social media provider is found by a Regulator to have breached a duty of care, the Regulator could issue an infringement notice (fine). This could be done without going to court.

The Regulator could also apply to the Supreme Court for other orders to hold social media platforms to account, including:

- a declaration that a social media service provider has breached a duty of care;
- an order requiring social media service provider pay compensation to a special fund;
- an injunction requiring a social media service provider take steps to remedy the breach of the duty of care;
- issuing a civil penalty against a social media service provider for wilful or reckless or repeated breaches of the duties of care.

How much will the social media companies have to pay?

There is no fixed dollar amount for infringement notices, compensation orders and civil penalties under the framework draft bill.

The maximum civil penalties for most breaches of the Online Safety Act are currently set at \$782,500. The penalties under the *Online Safety Act* are currently being considered by the Commonwealth Statutory Review being undertaken by Ms Delia Rickards PSM.

The penalties for breaches of online safety legislation in Ireland, the European Union and the United Kingdom attract much higher penalties, including penalties based on a percentage of a platform's global earnings.

The amounts to be paid by social media service providers could be set out in the final legislation or regulations.

Will social media service providers be held criminally responsible under the proposed changes?

No. The penalties proposed under this ban, including any financial penalty, will be civil in nature.

What are the options for creating a Regulator?

The framework draft bill does not specify who the Regulator would be. The Report sets out some different options for who the Regulator could be. The South Australian government could, for example:

- establish a new state-based Regulator;
- give the regulatory powers to an existing state-based authority (such as the South Australian Children's Commissioner or the Commissioner for Consumer Affairs);
- agree with the Commonwealth to give the regulatory powers to an established Commonwealth authority (such as the eSafety Commissioner).

Who will be affected by these changes?

Children under the age of 16 years living in South Australia, their parents, and social media service providers will be impacted by these changes. The duties of care do not apply to children who are here temporarily (such as children vacationing in South Australia).

What responsibilities will be placed on children and their families?

The primary focus of the framework draft bill is to impose a duty of care on social media providers to not allow access to their platforms, so there will be no additional duties on children or their families to ensure they do not access social media sites. The obligation will be placed on social media providers to not allow children to use their services.

Will a child get in trouble for accessing social media?

No. Importantly, there will not be a penalty against children or their families for gaining access to a social media service. If a child does so, the penalties outlined above will only apply to social media providers.

What types of social media services will be restricted?

Alongside the framework draft bill, the Report sets out five different potential options to define 'social media.' The definition included in the framework draft bill includes chat services and online gaming services.

Prescriptively defining 'social media' in legislation would make it difficult for the Regulator to keep up with the ever-evolving landscape of social media services. The scope of 'social media' could continue to be calibrated by exempting social media

services with a lower risk of harm to children from the duties of care under the legislation.

The concept of 'exempt social media service' is set out further below.

Will there be exemptions?

Yes, certain social media services could be exempt from the duties of care under the framework draft bill. The services which are exempt are not exhaustively defined in the legislation itself. Under the framework draft bill, the Minister could designate services (or classes of services) which could be exempt from the restrictions on access. Exempt services would generally be those which pose a lower risk of harm to children and which are beneficial to them. Exempt social media services could include (for example):

- services which have the sole or primary purpose of providing educational materials covered by the curriculum for students in South Australia; and
- services which have the sole or primary purpose of providing health services.

The report sets out some examples of services which are currently used by students in South Australian schools to collaborate in a closed environment.