

2019-2020-2021

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Social Media (Basic Expectations and  
Defamation) Bill 2021**

**No.     , 2021**

*(Dr Webster)*

**A Bill for an Act about social media services, and  
for related purposes**



---

# Contents

<b>Part 1—Preliminary</b>	1
1 Short title .....	1
2 Commencement .....	2
3 Definitions .....	2
4 Application of this Act .....	4
<b>Part 2—Complaints and investigations about defamatory posts</b>	5
5 Complaints .....	5
6 Investigation of complaints .....	6
7 Commissioner’s response to complaints.....	6
<b>Part 3—Basic expectations</b>	7
<b>Division 1—Basic expectations</b>	7
8 Basic expectations .....	7
9 Matters to which Minister must have regard .....	7
10 Consultation.....	7
11 Service provider notifications.....	8
<b>Division 2—Reporting</b>	10
<b>Subdivision A—Periodic reporting about compliance with basic expectations</b>	10
12 Periodic reporting notice .....	10
13 Compliance with notice .....	11
14 Formal warning .....	11
15 Periodic reporting determination .....	12
16 Compliance with determination.....	13
17 Formal warning .....	13
18 Service provider notifications.....	13
<b>Subdivision B—Non periodic reporting about compliance with basic expectations</b>	14
19 Non periodic reporting notice.....	14
20 Compliance with notice .....	15
21 Formal warning .....	15
22 Non periodic reporting determination.....	16
23 Compliance with determination.....	17
24 Formal warning .....	17
25 Service provider notifications.....	17
<b>Subdivision C—Self incrimination</b>	18

---

26	Self incrimination .....	18
<b>Part 4—Defamatory material</b>		19
27	Defamation notice given to provider of a social media service.....	19
28	Consequence of defamation notices—providers liable for defamation.....	20
<b>Part 5—Enforcement</b>		21
29	Civil penalty provisions.....	21
30	Infringement notices.....	21
31	Enforceable undertakings .....	22
32	Injunctions .....	23
<b>Part 6—Information-gathering powers</b>		25
33	Commissioner may obtain end-user identity information or contact details.....	25
34	Compliance with notice .....	25
35	Self incrimination .....	26
<b>Part 7—Investigative powers</b>		27
36	Application of this Part.....	27
37	Notice requiring appearance for examination .....	27
38	Examination on oath or affirmation.....	27
39	Examination to take place in private.....	28
40	Record to be made of examination .....	28
41	Production of documents for inspection .....	28
42	Protection of persons giving evidence .....	28
43	Non compliance with requirement to give evidence.....	29
<b>Part 8—Miscellaneous</b>		31
44	Review of decisions.....	31
45	Protection from civil proceedings.....	31
46	Liability for damages.....	32
47	Copies of material.....	32
48	Implied freedom of political communication.....	32
49	Concurrent operation of State and Territory laws.....	32
50	This Act not to affect performance of State or Territory functions .....	33
51	Legislative rules .....	33

---

1 **A Bill for an Act about social media services, and**  
2 **for related purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**  
5

6 **1 Short title**

7 This Act is the *Social Media (Basic Expectations and Defamation)*  
8 *Act 2021*.

Section 2

---

1 **2 Commencement**

2 (1) Each provision of this Act specified in column 1 of the table  
3 commences, or is taken to have commenced, in accordance with  
4 column 2 of the table. Any other statement in column 2 has effect  
5 according to its terms.  
6

---

**Commencement information**

---

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	A single day to be fixed by Proclamation. However: (a) subject to paragraph (b), if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period; and (b) if the provisions would otherwise commence before the <i>Online Safety Act 2021</i> commences, the provisions commence at the same time as that Act.	

---

7 Note: This table relates only to the provisions of this Act as originally  
8 enacted. It will not be amended to deal with any later amendments of  
9 this Act.

10 (2) Any information in column 3 of the table is not part of this Act.  
11 Information may be inserted in this column, or information in it  
12 may be edited, in any published version of this Act.

13 **3 Definitions**

14 In this Act:

15 *ACMA* means the Australian Communications and Media  
16 Authority.

17 *Australia*, when used in a geographical sense, includes all the  
18 external Territories.

---

- 1            **Australian** means an individual who is ordinarily resident in  
2            Australia.
- 3            **basic expectations** has the meaning given by section 8.
- 4            **civil penalty provision** has the same meaning as in the Regulatory  
5            Powers Act.
- 6            **Commissioner** means the eSafety Commissioner.
- 7            **defamation notice** means a notice given under section 27.
- 8            **engage in conduct** means:  
9            (a) do an act; or  
10           (b) omit to perform an act.
- 11           **legislative rules** means rules made under section 51.
- 12           **material** has the same meaning as in the *Online Safety Act 2021*.
- 13           **philosophical** includes political.
- 14           **posted** by an end-user of a social media service has the same  
15           meaning as in the *Online Safety Act 2021*.
- 16           **provider** of a social media service has the same meaning as in the  
17           *Online Safety Act 2021*.
- 18           **Regulatory Powers Act** means the *Regulatory Powers (Standard*  
19           *Provisions) Act 2014*.
- 20           **removed** from a social media service has the same meaning as in  
21           the *Online Safety Act 2021*.
- 22           **Secretary** means the Secretary of the Department.
- 23           **social media service** has the same meaning as in the *Online Safety*  
24           *Act 2021*.
- 25           Note:        A service is not a **social media service** if none of the material on the  
26           service is accessible to, or delivered to, one or more end-users in  
27           Australia: see paragraph 13(4)(a) of the *Online Safety Act 2021*.

**Part 1** Preliminary

Section 4

---

1                    *terms of use* has the same meaning as in the *Online Safety Act*  
2                    *2021*.

3                    **4 Application of this Act**

4                    (1) This Act extends to every external Territory.

5                    (2) This Act extends to acts, omissions, matters and things outside  
6                    Australia.



---

## 1 **Part 2—Complaints and investigations about** 2 **defamatory posts** 3

### 4 **5 Complaints**

- 5 (1) If an Australian has reason to believe that he or she is being  
6 defamed by material posted on a particular social media service, he  
7 or she may make a complaint to the Commissioner about the  
8 matter.
- 9 (2) If the person wants the Commissioner to give the provider of the  
10 service a defamation notice under section 30, the complaint under  
11 this section must be accompanied by evidence that the material was  
12 the subject of a complaint that was previously made to the provider  
13 of the service.
- 14 (3) For the purposes of subsection (2), evidence must be in a form  
15 required by the Commissioner.
- 16 (4) If a social media service issues a receipt or complaint number to a  
17 complainant as part of its ordinary business processes, the  
18 Commissioner may require evidence to be in the form of the  
19 receipt or complaint number.
- 20 (5) If a social media service does not issue a receipt or complaint  
21 number to a complainant as part of its ordinary business processes,  
22 the Commissioner may require evidence to be:  
23 (a) in the form of a screen shot; or  
24 (b) in the form of a statutory declaration; or  
25 (c) in such other form as the Commissioner specifies.
- 26 (6) Subsections (4) and (5) do not limit subsection (3).
- 27 (7) A requirement under subsection (3), (4) or (5) is not a legislative  
28 instrument.

Section 6

---

1       **6 Investigation of complaints**

2               (1) The Commissioner may investigate a complaint made under  
3               section 5.

4               (2) An investigation under this section is to be conducted as the  
5               Commissioner thinks fit.

6               (3) The Commissioner may, for the purposes of an investigation,  
7               obtain information from such persons, and make such inquiries, as  
8               the Commissioner thinks fit.

9               (4) Subsections (1), (2) and (3) have effect subject to Part 8 (which  
10              confers certain investigative powers on the Commissioner).

11                       *Termination of investigation*

12              (5) The Commissioner may terminate an investigation under this  
13              section.

14       **7 Commissioner's response to complaints**

15                      If a complaint is made to the Commissioner under section 5 in  
16                      relation to material, the Commissioner may consider whether to  
17                      give a defamation notice in relation to the material.

1 **Part 3—Basic expectations**

2 **Division 1—Basic expectations**

3 **8 Basic expectations**

- 4 (1) The Minister may, by legislative instrument, determine that the  
5 basic expectations for a social media service are the expectations  
6 specified in the determination.
- 7 (2) A determination under this section does not impose a duty that is  
8 enforceable by proceedings in a court.

9 **9 Matters to which Minister must have regard**

- 10 (1) In making a determination under section 11, the Minister must  
11 have regard to the following:
- 12 (a) the importance of social media services:
- 13 (i) as a source of information for Australians; and  
14 (ii) for the sharing of ideas and opinions within the  
15 Australian community;
- 16 (b) the value of truth and free debate;
- 17 (c) the harmfulness of defamation;
- 18 (d) the importance of preventing social media services from  
19 being used to facilitate unlawful conduct;
- 20 (e) any other matters specified in the legislative rules for the  
21 purposes of this paragraph.
- 22 (2) Subsection (1) does not limit the matters to which the Minister may  
23 have regard.

24 **10 Consultation**

- 25 (1) Before making or varying a determination under section 11, the  
26 Minister must:

**Section 11**

---

- 1 (a) make a copy of the draft available on the Department’s  
2 website; and  
3 (b) publish a notice on the Department’s website:  
4 (i) stating that the Minister has prepared a draft of the  
5 determination or variation; and  
6 (ii) inviting interested persons to give written comments  
7 about the draft to the Minister within the period  
8 specified in the notice.
- 9 (2) The period specified in the notice must run for at least 30 days  
10 after the publication of the notice.
- 11 (3) Subsection (1) does not apply to a variation if the variation is of a  
12 minor nature.
- 13 (4) If interested persons have given comments in accordance with a  
14 notice under subsection (1), the Minister must have due regard to  
15 those comments in making or varying the determination.

**11 Service provider notifications**

*Scope*

- 17  
18 (1) This section applies to a social media service if there are basic  
19 expectations for the service.

*Statement*

- 20  
21 (2) If the Commissioner is satisfied that the provider of a service has  
22 contravened one or more basic expectations for the service, the  
23 Commissioner may:  
24 (a) prepare a statement to that effect; and  
25 (b) give a copy of the statement to the provider of the service;  
26 and  
27 (c) if the Commissioner considers that it is appropriate to publish  
28 the statement—publish the statement on the Commissioner’s  
29 website.

Section 11

---

- 1                   (3) If the Commissioner is satisfied that the provider of a service has  
2                   complied with the basic expectations for the service at all times  
3                   during a particular period, the Commissioner may:  
4                   (a) prepare a statement to that effect; and  
5                   (b) give a copy of the statement to the provider of the service;  
6                   and  
7                   (c) if the Commissioner considers that it is appropriate to publish  
8                   the statement—publish the statement on the Commissioner’s  
9                   website.

1 **Division 2—Reporting**

2 **Subdivision A—Periodic reporting about compliance with basic**  
3 **expectations**

4 **12 Periodic reporting notice**

5 *Scope*

- 6 (1) This section applies to a social media service if there are basic  
7 expectations for the service.

8 *Notice*

- 9 (2) The Commissioner may, by written notice given to the provider of  
10 the service, require the provider to:
- 11 (a) do whichever of the following is specified in the notice:
- 12 (i) prepare periodic reports about the extent to which the  
13 provider complied with the applicable basic  
14 expectations during such regular intervals as are  
15 specified in the notice;
- 16 (ii) prepare periodic reports about the extent to which the  
17 provider complied with one or more specified  
18 applicable basic expectations during such regular  
19 intervals as are specified in the notice; and
- 20 (b) prepare those periodic reports in the manner and form  
21 specified in the notice; and
- 22 (c) give each of those periodic reports to the Commissioner:
- 23 (i) within the period ascertained in accordance with the  
24 notice in relation to the periodic report concerned; or
- 25 (ii) if the Commissioner allows a longer period in relation  
26 to the periodic report concerned—within that longer  
27 period.
- 28 (3) An interval specified under subparagraph (2)(a)(i) or (ii):  
29 (a) must not be shorter than 6 months; and

- 1 (b) must not be longer than 24 months.
- 2 (4) A period ascertained in accordance with the notice as mentioned in  
3 subparagraph (2)(c)(i) must not be shorter than 28 days after the  
4 end of the interval to which the periodic report relates.
- 5 (5) In deciding whether to give a notice under subsection (2) to the  
6 provider of a service, the Commissioner must have regard to the  
7 following:
- 8 (a) the number of occasions during the previous 12 months on  
9 which complaints about material posted on the service were  
10 made to the Commissioner under this Act;
- 11 (b) whether the provider has previously contravened a civil  
12 penalty provision of this Division;
- 13 (c) whether there are deficiencies in the provider's practices, so  
14 far as those practices relate to the capacity of end-users to use  
15 the service in a manner that is consistent with the objects of  
16 this Act;
- 17 (d) whether there are deficiencies in the service's terms of use,  
18 so far as they relate to the capacity of end-users to use the  
19 service in a manner that is consistent with the objects of this  
20 Act;
- 21 (e) whether the provider has agreed to give the Secretary regular  
22 reports relating to the capacity of end-users to use the service  
23 in a manner that is consistent with the objects of this Act;
- 24 (f) such other matters (if any) as the Commissioner considers  
25 relevant.

### 26 **13 Compliance with notice**

27 A person must comply with a notice under subsection 12(2) to the  
28 extent that the person is capable of doing so.

29 Civil penalty: 500 penalty units.

### 30 **14 Formal warning**

31 The Commissioner may issue a formal warning if a person  
32 contravenes section 13.

1 **15 Periodic reporting determination**

2 *Scope*

- 3 (1) This section applies to a social media service if there are basic  
4 expectations for the service.

5 *Determination*

- 6 (2) The Commissioner may, by legislative instrument, determine that  
7 each provider of a service included in a specified class of services  
8 is required to:
- 9 (a) do whichever of the following is specified in the  
10 determination:
    - 11 (i) prepare periodic reports about the extent to which the  
12 provider complied with the applicable basic  
13 expectations during such regular intervals as are  
14 specified in the determination;
    - 15 (ii) prepare periodic reports about the extent to which the  
16 provider complied with one or more specified  
17 applicable basic expectations during such regular  
18 intervals as are specified in the determination; and
  - 19 (b) prepare those periodic reports in the manner and form  
20 specified in the determination; and
  - 21 (c) give each of those periodic reports to the Commissioner:
    - 22 (i) within the period ascertained in accordance with the  
23 determination in relation to the periodic report  
24 concerned; or
    - 25 (ii) if the Commissioner allows a longer period in relation  
26 to the periodic report concerned—within that longer  
27 period.
- 28 (3) An interval specified under subparagraph (2)(a)(i) or (ii):
- 29 (a) must not be shorter than 6 months; and
  - 30 (b) must not be longer than 24 months.
- 31 (4) A period ascertained in accordance with the determination as  
32 mentioned in subparagraph (2)(c)(i) must not be shorter than 28



1 days after the end of the interval to which the periodic report  
2 relates.

3 **16 Compliance with determination**

4 A person must comply with a determination under subsection 15(2)  
5 to the extent that the person is capable of doing so.

6 Civil penalty: 500 penalty units.

7 **17 Formal warning**

8 The Commissioner may issue a formal warning if a person  
9 contravenes section 16.

10 **18 Service provider notifications**

11 (1) If:

12 (a) the Commissioner gave a notice under subsection 12(2) to  
13 the provider of a social media service; and

14 (b) the provider did not comply with the notice;

15 the Commissioner may:

16 (c) prepare a statement to that effect; and

17 (d) publish the statement on the Commissioner's website; and

18 (e) give a copy of the statement to the provider of the service.

19 (2) If:

20 (a) a determination under subsection 15(2) applies to the  
21 provider of a social media service; and

22 (b) the provider did not comply with the determination;

23 the Commissioner may:

24 (c) prepare a statement to that effect; and

25 (d) publish the statement on the Commissioner's website; and

26 (e) give a copy of the statement to the provider of the service.

1           **Subdivision B—Non periodic reporting about compliance with**  
2                           **basic expectations**

3           **19 Non periodic reporting notice**

4                           *Scope*

- 5                           (1) This section applies to a social media service if there are basic  
6                           expectations for the service.

7                           *Notice*

- 8                           (2) The Commissioner may, by written notice given to the provider of  
9                           the service, require the provider to:

- 10                           (a) do whichever of the following is specified in the notice:

- 11                                   (i) prepare a report about the extent to which the provider  
12                                   complied with the applicable basic expectations during  
13                                   the period specified in the notice;

- 14                                   (ii) prepare a report about the extent to which the provider  
15                                   complied with one or more specified applicable basic  
16                                   expectations during the period specified in the notice;  
17                                   and

- 18                           (b) prepare the report in the manner and form specified in the  
19                           notice; and

- 20                           (c) give the report to the Commissioner:

- 21                                   (i) within the period specified in the notice; or

- 22                                   (ii) if the Commissioner allows a longer period—within that  
23                                   longer period.

- 24                           (3) The period specified under subparagraph (2)(a)(i) or (ii):

- 25                                   (a) must not be shorter than 6 months; and

- 26                                   (b) must not be longer than 24 months.

- 27                           (4) The period specified in subparagraph (2)(c)(i) must not be shorter  
28                           than 28 days after the notice is given.

- 1 (5) In deciding whether to give a notice under subsection (2) to the  
2 provider of a service, the Commissioner must have regard to the  
3 following:
- 4 (a) the number of occasions during the previous 12 months on  
5 which complaints about material posted on the service were  
6 made to the Commissioner under this Act;
- 7 (b) whether the provider has previously contravened a civil  
8 penalty provision of this Division;
- 9 (c) whether there are deficiencies in the provider's practices, so  
10 far as those practices relate to the capacity of end-users to use  
11 the service in a manner consistent with the objects of this  
12 Act;
- 13 (d) whether there are deficiencies in service's terms of use, so far  
14 as they relate to the capacity of end-users to use the service in  
15 a manner consistent with the objects of this Act;
- 16 (e) whether the provider has agreed to give the Secretary regular  
17 reports relating to the capacity of end-users to use the service  
18 in a manner consistent with the objects of this Act;
- 19 (f) such other matters (if any) as the Commissioner considers  
20 relevant.

21 **20 Compliance with notice**

22 A person must comply with a notice under subsection 19(2) to the  
23 extent that the person is capable of doing so.

24 Civil penalty: 500 penalty units.

25 **21 Formal warning**

26 The Commissioner may issue a formal warning if a person  
27 contravenes section 20.

Section 22

---

1       **22 Non periodic reporting determination**

2                       *Scope*

3               (1) This section applies to a social media service if there are basic  
4               expectations for the service.

5                       *Determination*

6               (2) The Commissioner may, by legislative instrument, determine that  
7               each provider of a service included in a specified class of services  
8               is required to:

9                       (a) do whichever of the following is specified in the  
10                      determination:

11                               (i) prepare a report about the extent to which the provider  
12                               complied with the applicable basic expectations during  
13                               the period specified in the determination;

14                               (ii) prepare a report about the extent to which the provider  
15                               complied with one or more specified applicable basic  
16                               expectations during the period specified in the  
17                               determination; and

18                       (b) prepare the report in the manner and form specified in the  
19                       determination; and

20                       (c) give the report to the Commissioner:

21                               (i) within the period specified in the determination; or

22                               (ii) if the Commissioner allows a longer period—within that  
23                               longer period.

24               (3) The period specified under subparagraph (2)(a)(i) or (ii):

25                       (a) must not be shorter than 6 months; and

26                       (b) must not be longer than 24 months.

27               (4) The period specified in subparagraph (2)(c)(i) must not be shorter  
28               than 28 days after the determination is made.

1     **23 Compliance with determination**

2                     A person must comply with a determination under subsection 22(2)  
3                     to the extent that the person is capable of doing so.

4                     Civil penalty:             500 penalty units.

5     **24 Formal warning**

6                     The Commissioner may issue a formal warning if a person  
7                     contravenes section 23.

8     **25 Service provider notifications**

9                     (1) If:

- 10                     (a) the Commissioner gave a notice under subsection 19(2) to  
11                     the provider of a social media service; and  
12                     (b) the provider did not comply with the notice;  
13                     the Commissioner may:  
14                     (c) prepare a statement to that effect; and  
15                     (d) publish the statement on the Commissioner’s website; and  
16                     (e) give a copy of the statement to the provider of the service.

17                     (2) If:

- 18                     (a) a determination under subsection 22(2) applies to the  
19                     provider of a social media service; and  
20                     (b) the provider did not comply with the determination;  
21                     the Commissioner may:  
22                     (c) prepare a statement to that effect; and  
23                     (d) publish the statement on the Commissioner’s website; and  
24                     (e) give a copy of the statement to the provider of the service.

1 **Subdivision C—Self incrimination**

2 **26 Self incrimination**

3 (1) A person is not excused from giving a report under this Division on  
4 the ground that the report might tend to incriminate the person.

5 (2) However, in the case of an individual:

6 (a) the report; or

7 (b) giving the report; or

8 (c) any information, document or thing obtained as a direct or  
9 indirect consequence of giving the report;

10 is not admissible in evidence against the individual:

11 (d) in civil proceedings for the recovery of a penalty (other than  
12 proceedings for the recovery of a penalty under this  
13 Division); or

14 (e) in criminal proceedings (other than proceedings for an  
15 offence against section 137.1 or 137.2 of the *Criminal Code*  
16 that relates to this Division).

17 (3) If, at general law, an individual would otherwise be able to claim  
18 the privilege against self exposure to a penalty (other than a  
19 penalty for an offence) in relation to giving a report under this  
20 Division, the individual is not excused from giving the report under  
21 this Division on that ground.

22 Note: A body corporate is not entitled to claim the privilege against self  
23 exposure to a penalty.

**Part 4—Defamatory material****27 Defamation notice given to provider of a social media service**

- (1) If:
- (a) material is, or has been, posted on a social media service; and
  - (b) the material was the subject of a complaint that was made to the provider of the service; and
  - (c) the material was not removed from the service within:
    - (i) 48 hours after the complaint was made; or
    - (ii) such longer period as the Commissioner allows; and
  - (d) a complaint has been made to the Commissioner under section 5 about the material; and
  - (e) the Commissioner is satisfied that it is reasonably likely that the material defamed or defames the complainant; and
  - (f) the complainant is an Australian;
- the Commissioner may give the provider of the service a written notice (a *defamation notice*) that:
- (g) identifies the material and the complainant; and
  - (h) states that the Commissioner is satisfied that it is reasonably likely that the material defames the complainant; and
  - (i) explains the effect of section 28.
- (2) So far as is reasonably practicable, the material must be identified in the defamation notice in a way that is sufficient to enable the provider of the service to remove the material.

*Notice of refusal to give a defamation notice*

- (3) If the Commissioner decides to refuse to give a defamation notice under subsection (1), the Commissioner must give written notice of the refusal to the person who made a section 5 complaint about the material concerned.

Section 28

---

1 **28 Consequence of defamation notices—providers liable for**  
2 **defamation**

3 (1) If:

4 (a) the Commissioner gives a defamation notice to the provider  
5 of a social media service in relation to material posted on the  
6 service; and

7 (b) the material is not removed from the service within:

8 (i) 48 hours after the defamation notice is given; or

9 (ii) such longer period as the Commissioner allows; and

10 (c) the end-user who posted the material is liable to an action for  
11 defamation for publishing the material;

12 the provider is jointly and severally liable with the end-user for that  
13 defamation.

14 (2) If damages are awarded against the provider because of  
15 subsection (1), the provider may recover the amount of the  
16 damages from the end-user.

17 (3) This section does not limit any liability the provider would have  
18 apart from this section.



1 **Part 5—Enforcement**  
2

3 **29 Civil penalty provisions**

4 *Enforceable civil penalty provisions*

- 5 (1) Each civil penalty provision of this Act is enforceable under Part 4  
6 of the Regulatory Powers Act.

7 Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to  
8 be enforced by obtaining an order for a person to pay a pecuniary  
9 penalty for the contravention of the provision.

10 *Authorised applicant*

- 11 (2) For the purposes of Part 4 of the Regulatory Powers Act, the  
12 Commissioner is an authorised applicant in relation to a civil  
13 penalty provisions of this Act.
- 14 (3) For the purposes of Part 4 of the Regulatory Powers Act, the  
15 Federal Court of Australia and the Federal Circuit and Family  
16 Court of Australia are relevant courts in relation to a civil penalty  
17 provision of this Act.

18 *Extension to external Territories etc.*

- 19 (4) Part 4 of the Regulatory Powers Act, as it applies in relation to a  
20 civil penalty provision in this Act, extends to:  
21 (a) every external Territory; and  
22 (b) acts, omissions, matters and things outside Australia.

23 **30 Infringement notices**

24 *Provisions subject to an infringement notice*

- 25 (1) A civil penalty provision of this Act is subject to an infringement  
26 notice under Part 5 of the Regulatory Powers Act.

Section 31

---

1 Note: Part 5 of the Regulatory Powers Act creates a framework for using  
2 infringement notices in relation to provisions.

3 *Infringement officer*

4 (2) For the purposes of Part 5 of the Regulatory Powers Act, a member  
5 of the staff of the ACMA authorised, in writing, by the  
6 Commissioner for the purposes of this subsection is an  
7 infringement officer in relation to the provisions mentioned in  
8 subsection (1).

9 *Relevant chief executive*

10 (3) For the purposes of Part 5 of the Regulatory Powers Act, the  
11 Commissioner is the relevant chief executive in relation to the  
12 provisions mentioned in subsection (1).

13 (4) The relevant chief executive may, in writing, delegate any or all of  
14 the relevant chief executive's powers and functions under Part 5 of  
15 the Regulatory Powers Act to a person who is:

- 16 (a) a member of the staff of the ACMA; and  
17 (b) an SES employee or acting SES employee.

18 (5) A person exercising powers or performing functions under a  
19 delegation under subsection (4) must comply with any directions of  
20 the relevant chief executive.

21 *Extension to external Territories etc.*

22 (6) Part 5 of the Regulatory Powers Act, as it applies in relation to the  
23 provisions mentioned in subsection (1), extends to:

- 24 (a) every external Territory; and  
25 (b) acts, omissions, matters and things outside Australia.

26 **31 Enforceable undertakings**

27 *Enforceable provisions*

28 (1) The civil penalty provisions of this Act are enforceable under  
29 Part 6 of the Regulatory Powers Act.

## Section 32

1 Note: Part 6 of the Regulatory Powers Act creates a framework for  
 2 accepting and enforcing undertakings relating to compliance with  
 3 provisions.

4 *Authorised person*

5 (2) The Commissioner is an authorised person in relation to the  
 6 provisions mentioned in subsection (1) for the purposes of Part 6 of  
 7 the Regulatory Powers Act.

8 *Relevant court*

9 (3) The Federal Court of Australian and the Federal Circuit and Family  
 10 Court of Australia are relevant courts in relation to the provisions  
 11 mentioned in subsection (1) for the purposes of Part 6 of the  
 12 Regulatory Powers Act.

13 *Extension to external Territories etc.*

14 (4) Part 6 of the Regulatory Powers Act, as it applies in relation to the  
 15 provisions mentioned in subsection (1), extends to:  
 16 (a) every external Territory; and  
 17 (b) acts, omissions, matters and things outside Australia.

18 **32 Injunctions**

19 *Enforceable provisions*

20 (1) A civil penalty provision of this Act is enforceable under Part 7 of  
 21 the Regulatory Powers Act.

22 Note: Part 7 of the Regulatory Powers Act creates a framework for using  
 23 injunctions to enforce provisions.

24 *Authorised person*

25 (2) The Commissioner is an authorised person in relation to the  
 26 provisions mentioned in subsection (1) for the purposes of Part 7 of  
 27 the Regulatory Powers Act.

Section 32

---

1                                    *Relevant court*

2                                    (3) The Federal Court of Australia and the Federal Circuit and Family  
3                                    Court of Australia are relevant courts in relation to the provisions  
4                                    mentioned in subsection (1) for the purposes of Part 7 of the  
5                                    Regulatory Powers Act.

6                                    *Extension to external Territories etc.*

7                                    (4) Part 7 of the Regulatory Powers Act, as it applies in relation to the  
8                                    provisions mentioned in subsection (1), extends to:  
9                                    (a) every external Territory; and  
10                                    (b) acts, omissions, matters and things outside Australia.

**Part 6—Information-gathering powers****33 Commissioner may obtain end-user identity information or contact details***Scope*

- (1) This section applies to a person if:
- (a) the person is the provider of a social media service; and
  - (b) the Commissioner believes on reasonable grounds that the person has:
    - (i) information about the identity of an end-user of the service; or
    - (ii) contact details of an end-user of the service; and
  - (c) the Commissioner believes on reasonable grounds that the information is, or the contact details are, relevant to the operation of this Act.

*Requirement*

- (2) The Commissioner may, by written notice given to the person, require the person:
- (a) if subparagraph (1)(b)(i) applies—to give to the Commissioner, within the period and in the manner and form specified in the notice, any such information; or
  - (b) if subparagraph (1)(b)(ii) applies—to give to the Commissioner, within the period and in the manner and form specified in the notice, any such contact details.

**34 Compliance with notice**

A person must comply with a requirement under section 33 to the extent that the person is capable of doing so.

Civil penalty:           100 penalty units.

Section 35

---

1 **35 Self incrimination**

2 (1) A person is not excused from giving information or contact details  
3 under section 33 on the ground that the information or contact  
4 details might tend to incriminate the person.

5 (2) However, in the case of an individual:

6 (a) the information or contact details given; or

7 (b) giving the information or contact details; or

8 (c) any information, document or thing obtained as a direct or  
9 indirect consequence of giving the information or contact  
10 details;

11 is not admissible in evidence against the individual:

12 (d) in civil proceedings for the recovery of a penalty (other than  
13 proceedings for the recovery of a penalty under section 195);  
14 or

15 (e) in criminal proceedings (other than proceedings for an  
16 offence against section 137.1 or 137.2 of the *Criminal Code*  
17 that relates to this Part).

18 (3) If, at general law, an individual would otherwise be able to claim  
19 the privilege against self exposure to a penalty (other than a  
20 penalty for an offence) in relation to giving information or contact  
21 details under section 40, the individual is not excused from giving  
22 information or contact details under that section on that ground.

23 Note: A body corporate is not entitled to claim the privilege against self  
24 exposure to a penalty.

**Part 7—Investigative powers****36 Application of this Part**

This Part applies to an investigation by the Commissioner under section 6.

**37 Notice requiring appearance for examination**

For the purposes of an investigation by the Commissioner, the Commissioner may give a written notice to a person summoning the person:

- (a) to attend before:
    - (i) the Commissioner; or
    - (ii) a delegate of the Commissioner named in the notice; to produce documents or to answer questions; or
  - (b) to provide documents or other information to the Commissioner;
- relevant to the subject matter of the investigation.

**38 Examination on oath or affirmation**

- (1) If a person is summoned to attend before the Commissioner or a delegate of the Commissioner, the Commissioner or delegate may examine the person on oath or affirmation and, for that purpose:
  - (a) may require the person to take an oath or make an affirmation; and
  - (b) may administer an oath or affirmation to the person.
- (2) The oath or affirmation is to be an oath or affirmation that the statements the person will make will be true to the best of the person's knowledge or belief.
- (3) The Commissioner or delegate may require the person to answer a question that is put to the person at an examination and that is

Section 39

---

1 relevant to a matter that the Commissioner is investigating or is to  
2 investigate.

3 **39 Examination to take place in private**

4 The examination of a person for the purposes of an investigation  
5 must be conducted in private, but the person is entitled to have an  
6 adviser present at the examination.

7 **40 Record to be made of examination**

8 (1) If a person is examined by the Commissioner or a delegate of the  
9 Commissioner, a record must be made of the examination and the  
10 person is entitled to be given a written copy of the record.

11 (2) If the record of the examination of a person is made in electronic  
12 form, the person is, if the person so requests, to be given a copy of  
13 the record in that form.

14 **41 Production of documents for inspection**

15 The Commissioner may, by written notice given to a person,  
16 require the person:

- 17 (a) to make available for inspection by:  
18 (i) the Commissioner; or  
19 (ii) a delegate of the Commissioner;  
20 any documents in the possession of the person that may  
21 contain information relevant to the subject matter of an  
22 investigation by the Commissioner; and  
23 (b) to permit the Commissioner or the delegate, as the case may  
24 be, to make copies of any such documents.

25 **42 Protection of persons giving evidence**

26 A person who gives evidence or produces documents at an  
27 investigation by the Commissioner has the same protection as a  
28 witness in a proceeding in the High Court.



---

**43 Non compliance with requirement to give evidence**

- 1
- 2 (1) A person required to answer a question, to give evidence or to  
3 produce documents under this Part must not:
- 4 (a) when required to take an oath or make an affirmation, refuse  
5 or fail to take the oath or make the affirmation; or
- 6 (b) refuse or fail to answer a question that the person is required  
7 to answer; or
- 8 (c) refuse or fail to produce a document that the person is  
9 required to produce.

10 Penalty: Imprisonment for 12 months.

- 11 (2) A person required to answer a question, to give evidence or to  
12 produce documents under this Part must not:
- 13 (a) when required to take an oath or make an affirmation, refuse  
14 or fail to take the oath or make the affirmation; or
- 15 (b) refuse or fail to answer a question that the person is required  
16 to answer; or
- 17 (c) refuse or fail to produce a document that the person is  
18 required to produce.

19 Civil penalty: 100 penalty units.

- 20 (3) Subsections (1) and (2) do not apply if the person has a reasonable  
21 excuse.

22 Note: A defendant bears an evidential burden in relation to the matters  
23 mentioned in this subsection: see subsection 13.3(3) of the *Criminal*  
24 *Code* and section 96 of the Regulatory Powers Act.

- 25 (4) Subsections (1) and (2) do not apply to a refusal to answer a  
26 question, or a refusal to produce a document, if the answer to the  
27 question or the production of the document would tend to  
28 incriminate the person.

29 Note: A defendant bears an evidential burden in relation to the matters  
30 mentioned in this subsection: see subsection 13.3(3) of the *Criminal*  
31 *Code* and section 96 of the Regulatory Powers Act.

- 32 (5) Subsections (1) and (2) do not apply if:

**Section 43**

---

- 1                   (a) the person is a journalist; and
- 2                   (b) the answer to the question or the production of the document
- 3                         would tend to disclose the identity of a person who supplied
- 4                         information in confidence to the journalist.

**Part 8—Miscellaneous****44 Review of decisions**

- (1) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Commissioner under section 27 to give defamation notices.
- (2) An application under subsection (1) of this section in relation to a defamation notice may only be made by:
- (a) the provider of the social media service to which the notice was given; or
  - (b) the end-user who posted the material the subject of the notice.
- (3) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Commissioner not to give defamation notices that relate to material posted on a social media service.
- (4) An application under subsection (3) may only be made by a person who made a section 5 complaint about the relevant material.

**45 Protection from civil proceedings**

- (1) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of any of the following acts done in good faith:
- (a) the making of a complaint under section 5;
  - (b) the making of a statement to, or the giving of a document or information to, the Commissioner in connection with an investigation under section 6.
- (2) Civil proceedings do not lie against a person in respect of anything done by the person:
- (a) for the purposes of removing material specified in a defamation notice; or

Section 46

---

1 (b) in compliance with a notice under subsection 33(2).

2 **46 Liability for damages**

3 None of the following:

4 (a) the Commissioner;

5 (b) a delegate of the Commissioner;

6 is liable to an action or other proceeding for damages for, or in  
7 relation to, an act or matter in good faith done or omitted to be  
8 done:

9 (c) in the performance or purported performance of any function;  
10 or

11 (d) in the exercise or purported exercise of any power;  
12 conferred on the Commissioner by or under this Act.

13 **47 Copies of material**

14 (1) The Commissioner may make one or more copies of material for  
15 the purposes of an investigation under section 6.

16 (2) The Commissioner does not infringe copyright if the  
17 Commissioner does anything authorised by subsection (1).

18 **48 Implied freedom of political communication**

19 (1) This Act does not apply to the extent (if any) that it would infringe  
20 any constitutional doctrine of implied freedom of political  
21 communication.

22 (2) Subsection (1) does not limit the application of section 15A of the  
23 *Acts Interpretation Act 1901* to this Act.

24 **49 Concurrent operation of State and Territory laws**

25 It is the intention of the Parliament that this Act is not to apply to  
26 the exclusion of a law of a State or Territory to the extent to which  
27 that law is capable of operating concurrently with this Act.

**50 This Act not to affect performance of State or Territory functions**

2 A power conferred by this Act must not be exercised in such a way  
3 as to prevent the exercise of the powers, or the performance of the  
4 functions, of government of a State, the Northern Territory or the  
5 Australian Capital Territory.

**51 Legislative rules**

- 7 (1) The Minister may, by legislative instrument (and subject to  
8 subsection (2)), make rules (*legislative rules*) prescribing matters:  
9 (a) required or permitted by this Act to be prescribed by the  
10 legislative rules; or  
11 (b) necessary or convenient to be prescribed for carrying out or  
12 giving effect to this Act.
- 13 (2) To avoid doubt, the legislative rules may not do the following:  
14 (a) create an offence or civil penalty;  
15 (b) provide powers of:  
16 (i) arrest or detention; or  
17 (ii) entry, search or seizure;  
18 (c) impose a tax;  
19 (d) set an amount to be appropriated from the Consolidated  
20 Revenue Fund under an appropriation in this Act;  
21 (e) amend this Act.