

2019-2020-2021-2022

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Social Media (Anti-Trolling) Bill 2022

No. , 2022

(Attorney-General)

**A Bill for an Act relating to defamatory material
posted on social media services, and for related
purposes**

Contents

Part 1—Introduction	1
1 Short title.....	1
2 Commencement.....	2
3 Simplified outline of this Act.....	3
4 Constitutional basis of this Act.....	4
5 Additional operation of this Act.....	4
6 Definitions.....	4
7 When material is posted on a page of a social media service.....	7
8 When material is removed from a page of a social media service.....	7
9 When material is posted in Australia.....	7
10 Tort of defamation etc.....	7
11 Crown to be bound.....	8
12 Geographical application of this Act.....	8
Part 2—Liability	9
13 Simplified outline of this Part.....	9
14 Liability of page owner for defamation—third-party material.....	9
15 Liability for defamation—publisher.....	9
16 Liability for defamation—defence for the provider of a social media service etc.....	11
17 Complaints scheme—prescribed requirements.....	12
Part 3—End-user information disclosure orders	16
18 Simplified outline of this Part.....	16
19 End-user information disclosure orders.....	16
20 Practice and procedure.....	18
Part 4—Nominated entities	20
21 Simplified outline of this Part.....	20
22 Nominated entity of the provider of a social media service.....	20
23 Continuing contraventions.....	21
Part 5—Miscellaneous	22
24 Simplified outline of this Part.....	22
25 Attorney-General may intervene in a proceeding.....	22
26 Civil penalty provision.....	23
27 Concurrent operation of State and Territory laws.....	24
28 Implied freedom of political communication.....	24
29 Provider of a social media service.....	24

30	Application of section 14—material posted on a page of a social media service.....	25
31	Application of other provisions—material posted on a page of a social media service.....	25
32	Legislative rules	25

**A Bill for an Act relating to defamatory material
posted on social media services, and for related
purposes**

The Parliament of Australia enacts:

Part 1—Introduction

1 Short title

This Act is the *Social Media (Anti-Trolling) Act 2022*.

Section 2

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Section 3	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Sections 4 to 12	A single day to be fixed by Proclamation. However, 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.	
4. Section 13	At the same time as the provisions covered by table item 2.	
5. Section 14	At the same time as the provisions covered by table item 3.	
6. Sections 15 to 17	At the same time as the provisions covered by table item 2.	
7. Parts 3 and 4	At the same time as the provisions covered by table item 2.	
8. Sections 24 to 26	At the same time as the provisions covered by table item 2.	

Section 3

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
9. Sections 27 to 30	At the same time as the provisions covered by table item 3.	
10. Section 31	At the same time as the provisions covered by table item 2.	
11. Section 32	At the same time as the provisions covered by table item 3.	

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

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

3 Simplified outline of this Act

- For the purposes of the general law of the tort of defamation:
 - (a) an Australian person who maintains or administers a page of a social media service is taken to not be a publisher of third party material posted on the page; and
 - (b) if material is posted on a page of a social media service (and the material is posted in Australia), the provider of the social media service is taken to be a publisher of the material.
- If the provider of a social media service is a publisher of material posted on a page of the social media service, the provider of the social media service has a defence in a defamation proceeding relating to the material if certain conditions are satisfied.
- If a person has posted material on a page of a social media service, an application may be made to a court for an end-user information disclosure order that requires the provider of the social media service (or the provider's nominated entity) to

Section 4

disclose the poster's relevant contact details or country location data to the applicant for the order.

- If the provider of a social media service is a foreign body corporate and the service has at least 250,000 Australian account-holders (or the service is specified in the legislative rules), the provider of the social media service must have a nominated entity in Australia.

4 Constitutional basis of this Act

This Act relies on the Commonwealth's legislative powers under paragraph 51(v) (communications) of the Constitution.

5 Additional operation of this Act

- (1) In addition to section 4, this Act also has effect as provided by this section.

Corporations

- (2) This Act also has the effect it would have if a reference to a social media service were expressly confined to a social media service provided by a corporation to which paragraph 51(xx) of the Constitution applies.
- (3) Section 19 also has the effect it would have if a reference to a nominated entity were expressly confined to a nominated entity that is a corporation to which paragraph 51(xx) of the Constitution applies.

6 Definitions

In this Act:

access has the same meaning as in the *Online Safety Act 2021*.

account includes:

- (a) a free account; and
- (b) a pre-paid account; and

- (c) anything that may reasonably be regarded as the equivalent of an account.

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

Australian court means:

- (a) the High Court; or
- (b) a court created by the Parliament; or
- (c) a court of a State or Territory.

Australian person means:

- (a) an Australian citizen; or
- (b) an individual who is, within the meaning of the *Migration Act 1958*, the holder of a permanent visa; or
- (c) a body corporate incorporated in Australia.

carriage service has the same meaning as in the *Telecommunications Act 1997*.

country location data of a person who has posted material on a page of a social media service means:

- (a) if the person appears to have been located in Australia when the person posted the material, according to the geolocation technology deployed by the provider of the service—a statement to that effect; or
- (b) if the person appears to have been located outside Australia when the person posted the material, according to the geolocation technology deployed by the provider of the service—a statement to that effect.

electronic service has the same meaning as in the *Online Safety Act 2021*.

end-user information disclosure order means an order under section 19.

exempt service means an electronic service specified in the legislative rules.

Section 6

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

general law means the common law, and equity, in Australia.

legislative rules means rules made under section 32.

material has the same meaning as in the *Online Safety Act 2021*.

nominated entity of the provider of a social media service has the meaning given by section 22.

page of a social media service means:

- (a) a page (however described) of the service; or
- (b) any other distinct part of the service.

posted has the meaning given by section 7.

posted in Australia has the meaning given by section 9.

proceeding means a proceeding before an Australian court.

provider of a social media service has a meaning affected by section 29.

related body corporate has the same meaning as in the *Corporations Act 2001*.

relevant contact details of a person means:

- (a) either:
 - (i) the name of the person; or
 - (ii) the name by which the person is usually known; and
- (b) an email address that can be used to contact the person; and
- (c) a phone number that can be used to contact the person; and
- (d) such other details (if any) as are specified in the legislative rules.

remove from a page of a social media service has the meaning given by section 8.

social media service means:

- (a) an electronic service that:

- (i) is a social media service (within the meaning of the *Online Safety Act 2021*); and
 - (ii) satisfies such other conditions (if any) as are set out in the legislative rules; or
- (b) an electronic service specified in the legislative rules; but does not include an exempt service.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

7 When material is posted on a page of a social media service

For the purposes of this Act, material is *posted* on a page of a social media service by a person if the person causes the material to be accessible to one or more end-users accessing the page.

8 When material is removed from a page of a social media service

For the purposes of this Act, material is *removed* from a page of a social media service if the material is not accessible to any of the end-users accessing the page.

9 When material is posted in Australia

For the purposes of this Act, if:

- (a) an end-user of a social media service has posted material on a page of the service; and
 - (b) the end-user appears to have been located in Australia when the end-user posted the material, according to the geolocation technology deployed by the provider of the service;
- the material is *posted in Australia*.

10 Tort of defamation etc.

- (1) This Act relates to the tort of defamation at general law.
- (2) This Act does not affect the operation of the general law in relation to the tort of defamation except to the extent that this Act provides otherwise (whether expressly or by necessary implication).

Section 11

- (3) This Act does not affect the operation of a law of a State or Territory that relates to defamation except to the extent that this Act provides otherwise (whether expressly or by necessary implication).

Note: See also section 27.

11 Crown to be bound

This Act binds the Crown in each of its capacities.

12 Geographical application of this Act

- (1) This Act extends to every external Territory.
- (2) This Act extends to acts, omissions, matters and things outside Australia.

Part 2—Liability

13 Simplified outline of this Part

- For the purposes of the general law of the tort of defamation:
 - (a) an Australian person who maintains or administers a page of a social media service is taken to not be a publisher of third-party material posted on the page; and
 - (b) if material is posted on a page of a social media service (and the material is posted in Australia), the provider of the social media service is taken to be a publisher of the material.
- If the provider of a social media service is a publisher of material posted on a page of the social media service, the provider of the social media service has a defence in a defamation proceeding relating to the material if certain conditions are satisfied.

14 Liability of page owner for defamation—third-party material

If:

- (a) an end-user of a social media service (the *page owner*) maintains or administers a page of the social media service; and
- (b) another end-user has posted material on the page; and
- (c) the page owner is an Australian person;

then, for the purposes of the general law of the tort of defamation, the page owner is taken not to be a publisher of the material.

15 Liability for defamation—publisher

Third-party material—social media service

(1) If:

Section 15

- (a) an end-user of a social media service maintains or administers a page of the social media service; and
 - (b) another end-user has posted material on the page; and
 - (c) the material was posted in Australia;
- then, for the purposes of the general law of the tort of defamation, the provider of the social media service is taken to be a publisher of the material.

Page owner material—social media service

- (2) If:
- (a) an end-user of a social media service (the *page owner*) maintains or administers a page of the social media service; and
 - (b) the page owner has posted material on the page; and
 - (c) the material was posted in Australia;
- then, for the purposes of the general law of the tort of defamation, the provider of the social media service is taken to be a publisher of the material.

Defences etc.

- (3) If:
- (a) a person has posted material on a page of a social media service; and
 - (b) the material was posted in Australia; and
 - (c) the provider of the social media service is a publisher of the material (whether because of subsection (1) or (2) or otherwise); and
 - (d) the provider of the social media service is a party to a defamation proceeding that relates to the material;
- then, in the defamation proceeding:
- (e) section 235 of the *Online Safety Act 2021* does not apply; and
 - (f) the defence of innocent dissemination (whether under general law or a law of a State or Territory) is not available to the provider of the social media service.

16 Liability for defamation—defence for the provider of a social media service etc.*Scope*

- (1) This section applies if:
 - (a) a person (the *poster*) has posted material on a page of a social media service; and
 - (b) the provider of the social media service is a publisher of the material (whether because of subsection 15(1) or (2) or otherwise); and
 - (c) a person (the *applicant*) has instituted a defamation proceeding that relates to the material; and
 - (d) any of the following persons is a defendant to the proceeding:
 - (i) the provider;
 - (ii) a related body corporate of the provider;
 - (iii) the nominated entity of the provider.

Defence

- (2) Subject to subsection (3), in the defamation proceeding (so far as it is a proceeding against a defendant referred to in paragraph (1)(d)), it is a defence if the defendant proves that:
 - (a) the material was posted in Australia; and
 - (b) the social media service has a complaints scheme that meets the prescribed requirements (see section 17); and
 - (c) in a case where the applicant (or a person acting on behalf of the applicant) made a complaint to the provider under the complaints scheme about the material—the provider complied with the complaints scheme in relation to the handling of the complaint (including by disclosing the country location data of the poster to the applicant (see paragraph 17(1)(d)); and
 - (d) any of the following conditions is satisfied:
 - (i) under the complaints scheme, the applicant (or a person acting on behalf of the applicant) has requested the provider to disclose the relevant contact details of the poster to the applicant in order to assist the applicant in

Section 17

- relation to the potential institution by the applicant of a defamation proceeding against the poster in relation to the material, and the provider has disclosed the relevant contact details of the poster to the applicant;
- (ii) in a case where an end-user information disclosure order was made against the provider, or the nominated entity of the provider, as a result of the material—the provider or nominated entity has disclosed the relevant contact details and country location data of the poster to the applicant, and has otherwise complied with the end-user information disclosure order;
 - (iii) the applicant (or a person acting on behalf of the applicant) has not applied to a court for an end-user information disclosure order against the provider, or the nominated entity of the provider, as a result of the material; and
- (e) in a case where the provider satisfied the conditions set out in paragraphs 22(1)(a) and (b) at the time when the material was posted—the provider complied with subsection 22(1) (nominated entity of the provider) at the time when the material was posted.

Exception

- (3) If the poster is:
- (a) the provider; or
 - (b) a related body corporate of the provider; or
 - (c) the nominated entity of the provider;
- subsection (2) does not apply so far as the defamation proceeding is a proceeding against the poster.

17 Complaints scheme—prescribed requirements

- (1) For the purposes of this Part, a complaints scheme of a social media service ***meets the prescribed requirements*** if, under the scheme, the following rules apply if a person (the ***complainant***) has reason to believe that there may be a right for the complainant to obtain relief against an end-user of the service (the ***poster***) in a

defamation proceeding that relates to material posted on a page of the service by the poster:

- (a) the complainant (or, if allowed by the legislative rules, a person acting on behalf of the prospective complainant) can make a complaint (a *defamation complaint*) to the provider of the service about the material;
- (b) in a case where the material was posted in Australia—the provider is required:
 - (i) to inform the poster that the material is the subject of a defamation complaint; and
 - (ii) to do so within 72 hours after the defamation complaint was made;
- (c) in a case where the material was posted in Australia—the provider is required:
 - (i) to notify the complainant that the poster has been informed that the material is the subject of a defamation complaint; and
 - (ii) to do so within 72 hours after the defamation complaint was made;
- (d) the provider is required:
 - (i) to disclose the country location data of the poster to the complainant in order to assist the complainant in relation to the potential institution by the complainant of a defamation proceeding against the poster in relation to the material; and
 - (ii) to do so within 72 hours after the defamation complaint was made;
- (e) in a case where the material was posted in Australia—the provider may, with the consent of the poster, remove the material from the page;
- (f) in a case where the material was posted in Australia—the provider is required:
 - (i) to notify the complainant of the outcome of the handling of the defamation complaint; and
 - (ii) to do so within 72 hours after the occurrence of the outcome;

Section 17

- (g) in a case where the material was posted in Australia and the complainant is dissatisfied with the handling of the defamation complaint:
 - (i) the complainant (or, if allowed by the legislative rules, a person acting on behalf of the complainant) may request the provider to disclose the relevant contact details of the poster to the complainant in order to assist the complainant in relation to the potential institution by the complainant of a defamation proceeding against the poster in relation to the material; and
 - (ii) the provider is required to ask the poster, within 72 hours after the request was made by the complainant (or a person acting on behalf of the complainant), whether the poster consents to the disclosure of the relevant contact details of the poster to the complainant; and
 - (iii) if, after the defamation complaint was made, the poster consents to the disclosure of the relevant contact details of the poster to the complainant—the provider may disclose the relevant contact details of the poster to the complainant;
- (h) such other requirements (if any) as are set out in the legislative rules;
- (i) despite any of the rules set out in the preceding paragraphs, the provider is not required to take any action in response to:
 - (i) the defamation complaint; or
 - (ii) a request by the complainant to disclose the relevant contact details of the poster to the complainant;if the provider reasonably believes that the defamation complaint or the request, as the case may be, does not genuinely relate to the potential institution by the complainant of a defamation proceeding against the poster in relation to the material.

Note: See also section 22 (nominated entity of the provider).

- (2) The provider of a social media service is, by force of this subsection, authorised to disclose the country location data of the poster in the circumstances mentioned in paragraph (1)(d).

- (3) The provider of a social media service is not subject to any civil liability for disclosing the country location data of the poster in the circumstances mentioned in paragraph (1)(d).
- (4) The provider of a social media service is, by force of this subsection, authorised to disclose the relevant contact details of the poster in the circumstances mentioned in subparagraph (1)(g)(iii).
- (5) The provider of a social media service is not subject to any civil liability for disclosing the relevant contact details of the poster in the circumstances mentioned in subparagraph (1)(g)(iii).

Manner and form requirements

- (6) The legislative rules may provide that, to be effective, the action of informing the poster as mentioned in paragraph (1)(b) must be done in a manner and form prescribed by the legislative rules.
- (7) The legislative rules may provide that, to be effective, the action of notifying the complainant as mentioned in paragraph (1)(c) must be done in a manner and form prescribed by the legislative rules.
- (8) The legislative rules may provide that, to be effective, the action of disclosing country location data as mentioned in paragraph (1)(d) must be done in a manner and form prescribed by the legislative rules.
- (9) The legislative rules may provide that, to be effective, the action of notifying the complainant as mentioned in paragraph (1)(f) must be done in a manner and form prescribed by the legislative rules.
- (10) The legislative rules may provide that, to be effective, the action of asking the poster as mentioned in subparagraph (1)(g)(ii) must be done in a manner and form prescribed by the legislative rules.

Part 3—End-user information disclosure orders

18 Simplified outline of this Part

- If a person has posted material on a page of a social media service, an application may be made to a court for an end-user information disclosure order that requires the provider of the social media service (or the provider's nominated entity) to disclose the poster's relevant contact details or country location data to the applicant for the order.

19 End-user information disclosure orders

Application for order

- (1) If:
- (a) a person (the *poster*) has posted material on a page of a social media service; and
 - (b) an Australian person (the *prospective applicant*) reasonably believes that there may be a right for the prospective applicant to obtain relief against the poster in a defamation proceeding that relates to the material; and
 - (c) any of the following conditions is satisfied:
 - (i) the prospective applicant is unable to ascertain the relevant contact details of the poster;
 - (ii) the prospective applicant is unable to ascertain whether the material was posted in Australia;
 - (iii) the prospective applicant reasonably believes that the material was posted in Australia; and
 - (d) if the prospective applicant were to institute a defamation proceeding that relates to the material—an Australian court would have jurisdiction in the proceeding;
the prospective applicant (or, if allowed by the legislative rules, a person acting on behalf of the prospective applicant) may apply to:
 - (e) a court mentioned in paragraph (d); or

(f) the Federal Circuit and Family Court of Australia (Division 2);
for an order under subsection (2).

Order

- (2) If an application is made to a court under subsection (1), and the prospective applicant (or a person acting on behalf of the prospective applicant) satisfies the court:
- (a) of the matter mentioned in paragraph (1)(a); and
 - (b) that there are reasonable grounds to believe that there may be a right for the prospective applicant to obtain relief against the poster in a defamation proceeding that relates to the material; and
 - (c) that any of the conditions set out in paragraph (1)(c) is satisfied; and
 - (d) of the matter mentioned in paragraph (1)(d);
- then:
- (e) in a case where the prospective applicant is unable to ascertain the relevant contact details of the poster—the court may order the provider of the social media service or the nominated entity of the provider to give to the prospective applicant, within the period specified in the order, any relevant contact details of the poster:
 - (i) that are held by the provider or the nominated entity, as the case requires; or
 - (ii) to which the provider or the nominated entity, as the case requires, has access;
 unless the material was not posted in Australia; and
 - (f) in a case where:
 - (i) the prospective applicant is unable to ascertain whether the material was posted in Australia; or
 - (ii) the prospective applicant reasonably believes that the material was posted in Australia;
 the court may order the provider of the social media service or the nominated entity of the provider to give to the prospective applicant, within the period specified in the order, any country location data of the poster:

Section 20

- (iii) that is held by the provider or the nominated entity, as the case requires; or
- (iv) to which the provider or the nominated entity, as the case requires, has access.

Note 1: Section 6 defines *end-user information disclosure order* to mean an order under this section.

Note 2: If an end-user information disclosure order is made against the provider, or the nominated entity of the provider, the provider will not have a defence under section 16 unless the provider or nominated entity disclosed the relevant contact details and country location data of the poster, and has otherwise complied with the end-user information disclosure order—see paragraph 16(2)(d).

- (3) The court may refuse to make an order under this section requiring the disclosure of the poster's relevant contact details or country location data if the court is satisfied that the disclosure of the relevant contact details or country location data, as the case may be, is likely to present a risk to the poster's safety.
- (4) Subsection (3) does not limit the court's power to refuse to make an order under this section.

Other powers not limited

- (5) The power conferred on the court under this section is in addition to, and not instead of, any other powers of the court.

Substantive defamation jurisdiction of the Federal Circuit and Family Court of Australia (Division 2)

- (6) In determining whether the Federal Circuit and Family Court of Australia (Division 2) has jurisdiction in a defamation proceeding, disregard the conferral on the court of the power to make an end-user information disclosure order.

20 Practice and procedure

- (1) The legislative rules may:
 - (a) provide for, or in relation to, the practice and procedure to be followed in a court in relation to:

- (i) the making of applications for end-user information disclosure orders; or
 - (ii) the hearing and determination of such applications; or
 - (b) provide for, or in relation to, all matters and things incidental to any such practice or procedure.
- (2) Subsection (1) does not, by implication, limit a power to make rules of court.

Part 4—Nominated entities

21 Simplified outline of this Part

- If the provider of a social media service is a foreign body corporate and the service has at least 250,000 Australian account-holders (or the service is specified in the legislative rules), the provider of the social media service must have a nominated entity in Australia.

22 Nominated entity of the provider of a social media service

- (1) If:
- (a) the provider of a social media service is a body corporate incorporated in a foreign country; and
 - (b) either:
 - (i) there are at least 250,000 Australian persons who hold accounts with the service; or
 - (ii) the service is specified in the legislative rules;
- the provider must ensure that there is another body corporate that:
- (c) is an agent of the provider; and
 - (d) is incorporated in Australia; and
 - (e) has an office in Australia; and
 - (f) has access to:
 - (i) the relevant contact details of end-users of the service who have posted material on pages of the service in circumstances where the material was posted in Australia; and
 - (ii) the country location data of end-users of the service who have posted material on pages of the service in circumstances where the material was posted in Australia; and
 - (g) if the service has a complaints scheme that meets the prescribed requirements (see section 17)—has authority to

receive, on behalf of the provider, complaints and requests made under the scheme by Australian persons; and

- (h) if the provider has one or more related bodies corporate that are incorporated in Australia—is one of those related bodies corporate.

Civil penalty: 500 penalty units.

- (2) The other body corporate is to be known as the ***nominated entity*** of the provider of the social media service.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

23 Continuing contraventions

- (1) A person who contravenes subsection 22(1) commits a separate contravention of that provision in respect of each day during which the contravention continues (including the day the relevant civil penalty order is made or any later day).
- (2) The pecuniary penalty payable under Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014* for such a separate contravention in respect of a particular day must not exceed 5% of the maximum pecuniary penalty that could have been imposed for the contravention if subsection (1) of this section had not been enacted.

Part 5—Miscellaneous

24 Simplified outline of this Part

- This Part deals with miscellaneous matters such as:
 - (a) the power of the Attorney-General to intervene in proceedings; and
 - (b) the concurrent operation of State and Territory laws; and
 - (c) the implied freedom of political communication; and
 - (d) the making of legislative rules.

25 Attorney-General may intervene in a proceeding

- (1) If:
 - (a) a person (the *poster*) has posted material on a page of a social media service; and
 - (b) an Australian person has instituted a defamation proceeding that relates to the material; and
 - (c) the provider of the social media service is a party to the defamation proceeding; and
 - (d) the proceeding is before an Australian court that is exercising federal jurisdiction;the Attorney-General may, on behalf of the Commonwealth, intervene in the proceeding if the Attorney-General believes it is in the public interest to do so.
- (2) The Attorney-General may, on behalf of the Commonwealth, intervene in a proceeding before an Australian court in a matter arising under this Act.
- (3) If the Attorney-General intervenes under subsection (1) or (2) in a proceeding, the court may, in the proceeding, make such order as to costs against the Commonwealth as the court thinks fit.

- (4) If the Attorney-General intervenes under subsection (1) or (2) in a proceeding, the Attorney-General is taken to be a party to the proceeding.
- (5) If:
- (a) the Attorney-General intervenes under subsection (1) or (2) in a proceeding instituted by an Australian person (the **applicant**); and
 - (b) in the opinion of the Attorney-General, a decision of the court in the proceeding will:
 - (i) settle an uncertain area or question of Commonwealth law; or
 - (ii) resolve an important question that arises under a Commonwealth law and affects the rights of a section of the public which is, or a group of individuals who are, socially or economically disadvantaged;
- the Attorney-General may authorise the payment to the applicant by the Commonwealth of such costs as the Attorney-General considers were reasonably incurred by the applicant in relation to the proceeding.

26 Civil penalty provision

Enforceable civil penalty provision

- (1) A civil penalty provision in this Act is enforceable under Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*.

Note: Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014* allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, the Attorney-General is an authorised applicant in relation to a civil penalty provision in this Act.
- (3) An authorised applicant may, in writing, delegate the authorised applicant's powers and functions under Part 4 of the *Regulatory*

Section 27

Powers (Standard Provisions) Act 2014 in relation to a civil penalty provision in this Act to the Secretary of the Department.

Relevant court

- (4) For the purposes of Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, the Federal Court of Australia and the Federal Circuit and Family Court of Australia (Division 2) are relevant courts in relation to a civil penalty provision in this Act.

Extension to external Territories etc.

- (5) Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, as it applies in relation to a civil penalty provision in this Act, extends to:
- (a) every external Territory; and
 - (b) acts, omissions, matters and things outside Australia.

27 Concurrent operation of State and Territory laws

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

28 Implied freedom of political communication

- (1) This Act does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.
- (2) Subsection (1) does not limit the application of section 15A of the *Acts Interpretation Act 1901* to this Act.

29 Provider of a social media service

- (1) For the purposes of this Act, a person does not provide a social media service merely because the person supplies a carriage service that enables material to be accessed or delivered.

- (2) For the purposes of this Act, a person does not provide a social media service merely because the person provides a billing service, or a fee collection service, in relation to a social media service.

30 Application of section 14—material posted on a page of a social media service

Section 14 does not apply in relation to material posted on a page of a social media service before the commencement of that section.

31 Application of other provisions—material posted on a page of a social media service

Sections 15, 16, 17, 19, 22 and 25 do not apply in relation to material posted on a page of a social media service before the commencement of those sections.

32 Legislative rules

- (1) The Minister may, by legislative instrument, make rules (*legislative rules*) prescribing matters:
- (a) required or permitted by this Act to be prescribed by the legislative rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the legislative rules may not do the following:
- (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.