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Submission to the Online Safety Amendment (Digital Duty of Care) Bill 2026 Consultation

22 September 2026



To Whom It May Concern,

Enclosed is our submission in response to the Exposure Draft of the Online Safety Amendment (Digital Duty of Care) Bill 2026, released for public consultation on 8 September 2026. We oppose this Bill and recommend that it not proceed in any form. Should the Department or the Government nonetheless choose to proceed, our submission sets out the amendments we consider necessary at a minimum.

With over 95,000 signatories, the Canberra Declaration is a grassroots network that exists to champion the Judaeo-Christian beliefs and values that undergird Australia. We believe that freedom of speech is the birthright of every Australian, and this submission reflects that conviction as much as any other we have made.

We note that the Department has indicated individual submissions to this consultation will not be published, and that a summary of feedback may be released instead. We ask that the concerns raised in this submission, and the amendments we recommend, be given genuine and specific consideration in that summary and in any resulting advice to Government, rather than a general acknowledgment that concerns were received. Part 7 of our submission addresses why we consider this distinction important.

Should this Bill proceed to formal introduction and a parliamentary inquiry, we would be glad to make a presentation as part of that process.

Thank you for taking the time to review our submission.

Yours sincerely,

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Executive Summary

The Canberra Declaration opposes the Online Safety Amendment (Digital Duty of Care) Bill 2026 and recommends that it not proceed. The Bill is presented as a child safety measure. Its actual text goes considerably further, and does so in ways this submission sets out in detail.

The Canberra Declaration is a Christian advocacy organisation. One of the main channels through which we reach our supporters, publish our commentary, and conduct our advocacy is social media, principally through our news and commentary site, *The Daily Declaration*. We have opposed comparable legislation before, including the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024, which was withdrawn after failing to secure support in the Senate. This Bill revives the same basic structure under a different name, and we oppose it for related reasons.

Part 1 of this submission addresses the Bill's central defect: it does not define "harm" beyond a small number of categories that are already unlawful. Beyond those categories, the Minister may declare further categories of harm by legislative instrument, subject only to the Minister's own satisfaction. One such category already in the Bill, material that "encourages or promotes hostile attitudes towards women or gender equality," describes a viewpoint rather than any unlawful conduct. The Bill protects private adult communications explicitly. It protects lawful political and religious communication nowhere.

Part 2 examines who exercises this discretion. The government's own policy paper contemplates that the Minister's power may be delegated to the eSafety Commissioner, but the Bill's operative text does not achieve this. We also examine the existing record of how comparable powers already available to the eSafety Commissioner have been used, including a case in which an independent tribunal found the eSafety Commissioner had acted against lawful political speech.

Part 3 addresses the Bill's penalties and deadlines. A very large civil penalty, a short compliance window, and a broad power to issue fresh removal notices for altered reposts combine to give platforms a strong incentive to remove lawful content rather than risk a fine, a documented effect of comparable regulatory designs overseas.

Part 4 addresses the political context in which this Bill has been developed, including public statements connecting the Bill to the electoral rise of One Nation, and a documented pattern of professional consequences already facing Australians who hold one side of a debate the Bill's own harm categories touch on directly.

Part 5 addresses the process by which this Bill is being advanced: a parliamentary majority that does not require public support to pass it, a citizen's detailed objection met with a reply that recited safety talking points without addressing it, and a public campaign credited with

building the case for the Bill that is, in overwhelming majority, funded by the Government itself.

Our recommendations follow this submission. The first and primary recommendation is that this Bill be rejected outright. The remainder apply only if that recommendation is not accepted.

1. The Bill's Definition of “Harm”

The Digital Duty of Care rests entirely on the concept of “harm.” Every obligation placed on service providers, every penalty, and every power given to the eSafety Commissioner (eSafety) depends on how that term is defined. This section examines how the exposure draft defines harm, how much of that definition is left to the Minister’s discretion, and why we consider this a serious deficiency in the Bill.

Seriously harmful material and conduct

Proposed section 25C(1) lists a number of categories of “seriously harmful material and conduct.” These include child sexual exploitation and abuse material, grooming, incitement to sexual or extreme violence, explicit threats of rape or death, material encouraging suicide or self-harm, terrorist material, and material that incites the commission of a criminal offence.¹ We have no objection to any of these categories. They describe conduct that is already unlawful, or closely connected to conduct that is already unlawful, and there is no controversy in requiring platforms to address it.

Paragraph 25C(1)(m), however, adds a further category: “any other material or conduct, or combination of material and conduct, that is determined under subsection (2).”² Subsection (2) provides that the Minister may, by legislative instrument, determine material or conduct that the Minister “is satisfied may cause serious harm.”³ This is the only test the Bill imposes. There is no requirement that the material be unlawful, no requirement that a court has made a finding about it, and no requirement that Parliament debate the new category before it takes effect. The Minister’s own satisfaction is sufficient.

Material harmful to children

A similar structure appears in proposed section 25D, which defines material harmful to children. Most of the listed categories are uncontroversial: pornography, material promoting disordered eating, and material glorifying crime or dangerous stunts.⁴ One category, however, is different in kind from the rest. Paragraph 25D(1)(c) provides that “material or conduct that encourages or promotes hostile attitudes towards women or gender equality” is harmful to children.⁵

This is not a description of unlawful conduct. It is a description of a viewpoint. Under existing Australian law, it is entirely lawful to teach that a husband and wife hold different responsibilities within marriage, to argue against gender quotas in public life, or to argue

¹Online Safety Amendment (Digital Duty of Care) Bill 2026 (Cth), Exposure Draft (8 September 2026), sch 2, proposed s 25C(1)(a)–(l).

²Ibid, proposed s 25C(1)(m).

³Ibid, proposed s 25C(2).

⁴Ibid, proposed s 25D(1)(a), (b), (d).

⁵Ibid, proposed s 25D(1)(c).

that biological males should not compete in women's sport. None of these positions is a crime. Whether any of them would be treated as a "hostile attitude" under this Bill depends entirely on the same ministerial satisfaction test described above. The Coalition's own analysis of the exposure draft makes the same point: "The draft includes concepts such as material that 'encourages or promotes hostile attitudes towards women or gender equality' and 'harmful practices'. Protecting children is essential, but poorly defined tests risk catching legitimate political, religious, cultural and social debate."⁶

The Institute of Public Affairs has reached a similar conclusion. Dr Andrew Bushnell's research note on the Bill states: "The meaning of 'serious harms' is vague, subjective, and will expand over time."⁷ In a companion piece, Bushnell writes: "The Duty is built around a vague idea of harm, which is clearly intended to go beyond violent and illegal content to capture legitimate speech that the government just does not like."⁸

The absence of free speech safeguards in the Bill's operative text

The government's policy paper accompanying the exposure draft states that any binding rule made by the Minister under this framework "will be required to include a statement of the rule's compatibility with Australia's human rights obligations, including freedom of expression," and that such rules will be subject to parliamentary scrutiny as disallowable legislative instruments.⁹

However, we have reviewed the full text of the exposure draft, which runs to 75 pages, and confirm that the words "freedom of expression," "human rights," "compatibility," and "scrutiny" do not appear anywhere in its operative provisions.¹⁰ Whatever safeguard the government intends, it is described only in the accompanying policy document. It does not appear in the Bill that would actually become law.

A policy commitment made outside the legislation can be revised or abandoned without any parliamentary process at all. A safeguard that matters should be written into the Bill itself.

A shift from content regulation to risk management

⁶Liberal Party of Australia, "Coalition opposes Labor's digital duty of care bill in its current form" (Media Release, 10 September 2026) <<https://www.liberal.org.au/2026/09/10/coalition-opposes-labors-digital-duty-of-care-bill-its-current-form>>.

⁷Andrew Bushnell, "Five Reasons the Digital Duty of Care will enable government censorship of the internet", Institute of Public Affairs (7 September 2026) <<https://ipa.org.au/research/australian-way-of-life/five-reasons-the-digital-duty-of-care-will-enable-government-censorship-of-the-internet>>.

⁸Andrew Bushnell, "The 'Alborithm' will crush freedom of speech online and damage democracy", Institute of Public Affairs (7 September 2026) <<https://ipa.org.au/read/the-alborithm-will-crush-freedom-of-speech-online-and-damage-democracy>>.

⁹Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts (Cth), A Digital Duty of Care for Australia — Developing a duty of care framework for online services used by Australians (May 2026) 3.

¹⁰Based on a full-text review of the Exposure Draft of the Online Safety Amendment (Digital Duty of Care) Bill 2026 (8 September 2026), 75 pages. The terms "freedom of expression", "human rights", "compatibility"/"compatible", and "scrutiny" do not appear anywhere in the Bill's operative provisions. The commitments described in the accompanying policy paper appear only in that paper: see n 5 above.

The current approach to online safety regulation in Australia operates largely on a complaint's basis: content is published, a complaint is made, and a regulator or court then makes a determination. The Digital Duty of Care changes this model substantially. Senator Alex Antic has described the change as follows: "Fundamentally, this means the regulation of online spaces would shift from tangible content regulation to a risk management model, making it subjective."¹¹

Under a risk-based model, a platform is not assessed on individual pieces of content but on whether its systems and processes adequately anticipate and prevent harm before it occurs. The government's own framework paper confirms that "frequent instances of harmful content or activity on a service, or a service's failure to appropriately address instances of harmful content or activity, may be considered evidence of breach of the Duty."¹² Given the size of the civil penalties available under the Bill, we consider it likely that platforms will respond to this incentive by removing or restricting any content that resembles the categories the Minister has identified, whether or not that specific content would ultimately be found to breach the Duty.¹³

Comparison with the Misinformation and Disinformation Bill 2024

The structure of this Bill bears a strong resemblance to the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024, which was withdrawn in November 2024 after it failed to secure support in the Senate.¹⁴ The Canberra Declaration opposed that Bill in the strongest terms, describing it in our submission at the time as "an exercise in hubris" that would divide the nation "in two, insulating an elite class of journalists and government actors from the legitimate scrutiny of independent news outlets, citizen journalists and everyday Australians."¹⁵

The Digital Duty of Care does not use the word "misinformation". Senator Antic has nonetheless described it as "Misinfo and Disinfo 2.0."¹⁶ We think the comparison is apt. The 2024 Bill asked the Australian Communications and Media Authority to define "misinformation." Yet that Bill defined "misinformation" as "content on the digital service" that "is reasonably likely to cause or contribute to serious harm."¹⁷ The word

¹¹Alex Antic, "Misinfo and Disinfo 2.0: Transcript on the Digital Duty of Care Bill" (video transcript, 2026), source article supplied for this submission.

¹²A Digital Duty of Care for Australia (n 9) 2.

¹³This inference follows from the civil penalty regime and the risk-assessment obligations described in ss 26A–26D of the Bill and Part 3 of A Digital Duty of Care for Australia (n 9) 6–7.

¹⁴Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 (Cth), withdrawn November 2024.

¹⁵Canberra Declaration, Submission on the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 (11 October 2024) 43.

¹⁶Alex Antic (n 11).

¹⁷Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 (Cth), s 7(1d).

“misinformation” has been dropped. But the central concern — combatting “harm” — is identical.

In addition, both bills empower a single regulatory office to determine, after material has already been published, whether a lawful opinion falls within a category the office itself defines.

This Bill asks the Minister to define “serious harm,” and, as Part 2 of this submission sets out, the government’s own policy paper contemplates eSafety performing that same function, though the Bill’s text does not actually give the Commissioner that power. The name of the regulated category has changed. The structure of the power has not.

The case for broad protection of speech

Senator Antic has also addressed the underlying principle at stake: “Freedom of expression necessitates the possibility of offending people.”¹⁸ We agree with this proposition, and consider it foundational to any free society. If speech may be restricted whenever it causes offence, discomfort, or psychological distress to some part of the audience, the amount of speech genuinely protected from government interference will always be smaller than the amount of speech Australians actually need to conduct public debate.

This is a live concern for the people this organisation represents. Christian teaching on marriage, sexuality, the sanctity of human life, and the created distinction between male and female is frequently regarded by secular commentators as offensive, and increasingly, as harmful. Under a framework in which the Minister may create new categories of harm by legislative instrument, there is no guarantee that lawful religious teaching of this kind will remain outside the scope of the Duty.

The exception for private communications

Proposed section 26(7) states: “The digital duty of care does not require any action to be taken in relation to lawful communications occurring in private solely between consenting adults.”¹⁹

This is the only category of lawful communication given explicit protection under the Bill. The government has evidently judged it necessary to place private adult communications beyond the Minister’s reach, and has drafted a clause to achieve that outcome. No equivalent clause protects lawful political communication, lawful religious teaching, or lawful public debate on any other subject. If the government intends that this framework should never be used to restrict legitimate political or religious speech, we submit that the

¹⁸Alex Antic (n 11).

¹⁹Online Safety Amendment (Digital Duty of Care) Bill 2026 (Cth), Exposure Draft (8 September 2026), sch 2, proposed s 26(7).

appropriate response is to include an express protection to that effect, comparable to the one already provided for private communications.

Concerns raised by members of Parliament

Opposition to this aspect of the Bill has not been confined to advocacy organisations. On 10 September 2026, Opposition Leader Angus Taylor stated at a press conference: “This exposure draft, this bill, is unacceptable in its current form because the reality is it’s providing a blank cheque for political censorship to the minister, to the government.”²⁰ He repeated the point later in the same appearance: “What’s objectionable in this legislation is that it’s a blank cheque for political censorship. That’s not Australia.”²¹

Senator Matt Canavan made a related observation: “No politician should get to decide for themselves what lawful speech is harmful and then pressure platforms to make it disappear.”²² Senator Sarah Henderson, the Shadow Minister for Communications, added: “Protecting children online is one of the most important jobs we have, but it does not give Anika Wells a blank cheque to determine what lawful material Australians should be protected from seeing.”²³

Senator Pauline Hanson, writing from a different part of the political spectrum, raised a similar concern: “A government that cannot be trusted to tell Australians the truth should not be given more power over what Australians can see and say online... All this talk from Albanese about a digital duty of care and controlling algorithms is just cover for what it really is.”²⁴

Minister Wells’ own public statements have not resolved this concern. Asked who would decide what constitutes a new serious harm, she stated: “the test for what would constitute a new serious harm would ultimately be made by me.”²⁵ Asked on the ABC’s Insiders program what limits applied to that determination, given that the Bill does not itself define harm, the Minister’s answer described only the procedural safeguards of consultation and parliamentary disallowance: “Firstly, I must consult with the [e]Safety Commissioner. Secondly, when I make the rule, any member or senator can move a disallowance motion.”²⁶ Neither answer provides a substantive definition of harm. Both confirm that the definition will be supplied by the Minister of the day, on a case-by-case basis.

The implied freedom of political communication

²⁰The Hon Angus Taylor MP, Joint Press Conference, Parliament House, Canberra (10 September 2026).

²¹Ibid.

²²Senator Matt Canavan, quoted in Liberal Party of Australia (n 6).

²³Senator Sarah Henderson, quoted in Liberal Party of Australia (n 6).

²⁴Senator Pauline Hanson, X (formerly Twitter), 8 September 2026, 20:50 UTC
<<https://x.com/PaulineHansonOz/status/2097427308487569441>>.

²⁵The Hon Anika Wells MP, quoted in Liberal Party of Australia (n 6).

²⁶The Hon Anika Wells MP, Insiders, ABC television (13 September 2026).

This framework also raises a constitutional difficulty. The Australian Constitution does not contain a general bill of rights, but the High Court has held that it protects, by necessary implication, freedom of communication on matters of government and politics. In *Lange v Australian Broadcasting Corporation*, the Court held unanimously: “Freedom of communication on matters of government and politics is an indispensable incident of that system of representative government which the Constitution creates by directing that the members of the House of Representatives and the Senate shall be ‘directly chosen by the people’ of the Commonwealth and the States, respectively.”²⁷ The Court continued: “sections 7 and 24 and the related sections of the Constitution necessarily protect that freedom of communication between the people concerning political or government matters which enables the people to exercise a free and informed choice as electors.”²⁸

This implied freedom operates as a limitation on legislative power rather than as a personal right that an individual may enforce directly.²⁹ A law that effectively burdens political communication must be reasonably appropriate and adapted to a legitimate end compatible with representative government, a test refined in later authorities such as *McCloy v New South Wales* into an inquiry as to the suitability, necessity, and adequacy of the burden imposed.³⁰ A duty which requires platforms to identify and suppress “hostile attitudes” toward a designated social position, and which allows the Minister to create further categories of “serious harm” without any requirement that the conduct be unlawful or judicially tested, is capable of constituting a content-based burden on political and religious communication. This is a question the Parliament should resolve before the Bill proceeds, rather than a matter to be left to future litigation.

Case study: correspondence with the Minister

The practical consequences of an undefined harm standard are illustrated by the experience of Dr Paul Tyson, a constituent of Minister Wells and a retired academic philosopher, who wrote to the Minister directly about the Bill. Dr Tyson, who opposes so-called “gender affirming care” on behalf of his own daughter, wrote: “So if you gain sweeping on-line censorship powers, I can expect to be de-platformed by on-line service providers who do not want a \$100 million fine. This is seriously ideologically restrictive public debate censorship.”³¹

²⁷*Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 559 (the Court).

²⁸*Ibid* 560.

²⁹*Ibid*; see also *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106.

³⁰*McCloy v New South Wales* (2015) 257 CLR 178; see also *Coleman v Power* (2004) 220 CLR 1; *LibertyWorks Inc v Commonwealth* (2021) 274 CLR 1.

³¹Dr Paul Tyson, “Letter to the Hon Anika Wells MP on the Digital Duty of Care Bill” (Substack, 11 September 2026), reproduced in “They Didn’t Want to Hear It: My Visit to Anika Wells’ Office on Digital Duty of Care”, source article supplied for this submission.

How the Minister's office responded to this letter, and what that response illustrates about how such concerns are received, is addressed in Part 5 of this submission.

This concern is shared by others outside our own organisation. Dr Joanna Howe has stated: "Anyone who opposes the political establishment, such as our movement or One Nation, will have no means to reach everyday Australians directly with the truth."³² Former MP George Christensen has drawn a distinction between the Bill's stated purpose and its likely effect: "It's being sold as a way to make tech giants more 'responsible', but don't be fooled. This is not about stopping child predators or cracking down on online crime. That's already illegal, and we already have laws for that. The Digital Duty of Care push is all about censorship."³³

Conclusion

The Digital Duty of Care does not define "harm" beyond a small number of categories that are already unlawful; beyond those, the definition is left to the Minister's own satisfaction. That gap, and the absence of any protection for lawful political and religious speech to match the one already given to private communications, is the foundation for every other concern raised in this submission. Recommendations 2 to 5 set out the minimum fix.

³²Dr Joanna Howe, quoted in "Labor's Digital Duty of Care: A Trojan Horse Against Faith and Free Speech", source article supplied for this submission.

³³George Christensen, quoted in *ibid.*

2. Discretion and the Record of Existing Powers

Part 1 of this submission addressed the absence of any real definition of “harm” in the Bill. This section addresses a related but distinct problem: who exercises the discretion that fills that gap, on what authority, and how comparable discretion already available to eSafety has been exercised in practice.

Who holds the power to determine new categories of harm

As set out in Part 1, proposed section 25C(2) provides that the Minister may, by legislative instrument, determine further categories of “seriously harmful” material.³⁴ Proposed section 25D(2) gives the Minister an equivalent power in relation to material harmful to children.³⁵ Both powers are expressed as powers of the Minister. Neither section refers to eSafety.

A power the policy paper describes but the Bill does not contain

The government’s policy paper accompanying the exposure draft describes the arrangement differently. It states that “the Minister for Communications... or, at the Minister’s direction, the eSafety Commissioner... will be given the power to make binding rules for designating additional categories and types of harm.”³⁶ This is a specific and significant claim: that the Minister will be able to hand this function to the Commissioner.

We have reviewed the full text of the exposure draft and can locate no provision giving effect to this. Sections 25C(2) and 25D(2) confer the relevant power on the Minister alone. We could not find a delegation clause, either specific to these sections or of general application, that would allow the Minister to direct the Commissioner to exercise this function.³⁷ If the government intends the Commissioner to hold this power, as its own policy paper states, the Bill as drafted does not achieve that outcome. If the government does not intend this, the policy paper should be corrected. Either way, the discrepancy should be resolved before the Bill proceeds.

Why the prospect of delegation concerns critics

The concern raised by critics of the Bill is not merely academic, since the practical effect of the power, however it is finally allocated, is to place a very broad discretion in the hands of either an individual minister or a statutory officeholder who does not sit in Parliament.

³⁴Online Safety Amendment (Digital Duty of Care) Bill 2026 (Cth), Exposure Draft (8 September 2026), sch 2, proposed s 25C(2). See also Part 1 of this submission.

³⁵Ibid, proposed s 25D(2).

³⁶Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts (Cth), A Digital Duty of Care for Australia — Developing a duty of care framework for online services used by Australians (May 2026) 3.

³⁷Based on a full-text review of the Exposure Draft of the Online Safety Amendment (Digital Duty of Care) Bill 2026 (8 September 2026), 75 pages. No provision was located conferring on the Minister a power to delegate the determinations in proposed ss 25C(2) or 25D(2) to the eSafety Commissioner, nor any general delegation provision to that effect elsewhere in Schedule 2. Cf n 3 above.

Senator Sarah Henderson, the Shadow Minister for Communications, has described the effect of the Bill in these terms: “Labor’s approach is to give unfettered powers to the Minister and ask Australians to simply trust that it won’t be abused.”³⁸

Dr Alexander Hatzikalimnios has raised the same concern specifically in relation to the possibility of delegation: “My concerns are exacerbated by the fact that the Minister can delegate this power to the eSafety Commissioner, an unelected bureaucrat.”³⁹ The Institute of Public Affairs has made a similar point, describing the framework as one that “will be enforced by the unaccountable Office of the eSafety Commissioner.”⁴⁰

The current officeholder

The eSafety Commissioner is a statutory office, not an elected position. The current Commissioner, Ms Julie Inman Grant PSM, has held the office since 2017.⁴¹ The office already exercises significant powers under the existing complaints and removal scheme in the Online Safety Act 2021, and the record of how those existing powers have been used is directly relevant to an assessment of how the broader powers proposed under this Bill are likely to be exercised.

Case study: Christopher Elston

In 2024, a delegate of the Commissioner issued a cyber-abuse removal notice concerning a post by Canadian activist Christopher Elston, known publicly as Billboard Chris, which shared and criticised a news article about a transgender activist’s appointment to a World Health Organization panel. Mr Elston and X Corp challenged the notice. On 1 July 2025, the Administrative Review Tribunal set aside the decision and refused to give a removal notice.⁴²

The Tribunal’s reasons record that it was “satisfied that an ordinary reasonable person would not conclude that it is likely that the post was intended to have an effect of causing serious harm,” and that the statutory intention element for adult cyber-abuse was

³⁸Senator Sarah Henderson, quoted in Liberal Party of Australia, “Coalition opposes Labor’s digital duty of care bill in its current form” (Media Release, 10 September 2026) <<https://www.liberal.org.au/2026/09/10/coalition-opposes-labors-digital-duty-of-care-bill-its-current-form>>.

³⁹Dr Alexander Hatzikalimnios, “Digital duty of care — We’re moving away from safety measures and towards control by stealth”, The Spectator Australia (8 September 2026) <<https://www.spectator.com.au/2026/09/digital-duty-of-care/>>.

⁴⁰Andrew Bushnell, “Five Reasons the Digital Duty of Care will enable government censorship of the internet”, Institute of Public Affairs (7 September 2026) <<https://ipa.org.au/research/australian-way-of-life/five-reasons-the-digital-duty-of-care-will-enable-government-censorship-of-the-internet>>.

⁴¹eSafety Commissioner, “About the Commissioner” (webpage, last updated 9 March 2026) <<https://www.esafety.gov.au/about-us/about-the-commissioner>>, confirming Ms Julie Inman Grant PSM as the current eSafety Commissioner, in office since 2017.

⁴²X Corp v eSafety Commissioner (ART, 2024/2582) and Christopher Elston v eSafety Commissioner (ART, 2024/2583), Deputy President O’Donovan, 1 July 2025 (reasons for decision, Melbourne). Full text: <<https://archive.org/details/billboard-chris-v-e-safety-commissioner>>. See also ADF International (1 July 2025) <<https://adfinternational.org/news/free-speech-victory-in-australia-for-billboard-chris-as-x-post-censorship-overturned/>>; Women’s Forum Australia (2 July 2025) <https://www.womensforumaustralia.org/billboard_chris_and_x_win_major_free_speech_case_against_australian_esafety_commissioner>.

accordingly not made out. The Tribunal did find that an ordinary reasonable person would regard the material as offensive, but offensiveness alone did not satisfy the statutory test.⁴³ The matter took approximately a year to resolve through external merits review. In the interim, the removal notice stood.

Case study: The Wakeley church stabbing footage

On 15 April 2024, a bishop was stabbed during a livestreamed service at Christ the Good Shepherd Church, Wakeley. The following day, a delegate of the Commissioner issued a Class 1 removal notice to X Corp covering 65 specified URLs showing footage of the attack.⁴⁴ X Corp geo-blocked the material within Australia but declined to remove it globally. The Commissioner sought a Federal Court injunction requiring wider removal.⁴⁵ On 13 May 2024, Justice Kennett declined to extend the interlocutory injunction, holding that geo-blocking was capable of constituting reasonable steps to prevent access to the material within Australia. The Commissioner discontinued the Federal Court proceeding on 5 June 2024.⁴⁶

The bishop's own position on the removal was reported during the proceedings. Counsel for X Corp told a case-management hearing on 24 April 2024 that an affidavit from the bishop stated he was "strongly of the view that the material should be available."⁴⁷ In a subsequent address to worshippers, the bishop stated: "I do acknowledge the Australian government's desire to have the videos removed because of their graphic nature. However, noting our God-given right to freedom of speech and freedom of religion, I'm not opposed to the videos remaining on social media... It would be of great concern if people use the attack on me to serve their own political interests to control free speech."⁴⁸ We do not doubt that the Commissioner's stated concern, preventing the viral spread of extremely graphic violent material, was genuine. We note, however, that the Commissioner pursued removal beyond Australia's borders against the publicly stated wishes of the person the material actually depicted.

⁴³Ibid.

⁴⁴eSafety Commissioner v X Corp [2024] FCA 499 (Kennett J, 13 May 2024)

<<https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2024/2024fca0499>>.

⁴⁵eSafety Commissioner, "Statement on removal of extreme violent content" (Media Release, 23 April 2024)

<<https://www.esafety.gov.au/newsroom/media-releases/statement-on-removal-of-extreme-violent-content>>.

⁴⁶eSafety Commissioner, "Statement from the eSafety Commissioner re Federal Court proceedings" (Media Release, 5 June 2024)

<<https://www.esafety.gov.au/newsroom/media-releases/statement-from-the-esafety-commissioner-re-federal-court-proceedings>>; see also eSafety Commissioner, "Legal proceedings involving eSafety" (webpage), listing NSD474/2024 as discontinued.

⁴⁷ABC News, "Bishop Emmanuel wants stabbing footage injunction extended" (24 April 2024)

<<https://www.abc.net.au/news/2024-04-24/bishop-emmanul-wants-stabbing-footage-injunction-extended/103764228>>, reporting submissions made on behalf of X Corp as to the content of an affidavit sworn by Bishop Mar Mari Emmanuel.

⁴⁸Bishop Mar Mari Emmanuel, address to worshippers, Christ the Good Shepherd Church, Wakeley (c 25 April 2024), reported in Sky News Australia (25 April 2024) <<https://www.skynews.com.au/australia-news/bishop-mar-mari-emmanuel-not-opposed-to-alleged-sydney-church-stabbing-video-staying-online-due-to-freedom-of-speech/news-story/db8a5933d174fff30f6f1693f08416e7>>.

How this power has grown over time

It is sometimes suggested that the adult cyber-abuse scheme now being exercised in the manner described above was inserted into the Online Safety Act after the fact, expanding a regime originally confined to protecting children. That specific claim is not accurate. The adult cyber-abuse scheme was part of the Online Safety Act 2021 as originally enacted, commencing on 23 January 2022.⁴⁹ The accurate history is a broader one: the predecessor Enhancing Online Safety Act 2015 was confined to cyberbullying material targeted at children; the 2021 Act substantially widened the office's jurisdiction to include adult cyber-abuse, image-based abuse, and a broader class of restricted material; and this Bill proposes to widen the office's jurisdiction again, this time attaching the widening to an open-ended ministerial discretion rather than a fixed statutory list.⁵⁰

We consider it relevant that the government has already been here before. The Liberal Party's submission opposing this Bill draws the connection explicitly: "Labor's failed misinformation legislation showed the danger of giving governments a role in deciding what Australians should be allowed to see and hear. Changing the language from 'misinformation' to 'harm' does not remove that danger."⁵¹ Commentary following the Elston decision makes a related point about the durability of these powers even after a loss in a particular case. The Human Rights Law Alliance observed that despite the Tribunal's ruling in Mr Elston's favour, "the law that enabled the notice is still very much in force," and the underlying subjective standard remains available to be applied again in the next case.⁵² The same will be true of the powers in this Bill regardless of how any individual dispute is eventually resolved.

Conclusion

The Bill leaves the definition of harm substantially to ministerial discretion, and the government's own policy paper contemplates that this discretion may be exercised instead by eSafety, although the Bill's text does not currently achieve that outcome. Whichever office ultimately exercises the power, the existing record is directly relevant. The eSafety Commissioner's office has, under existing and considerably narrower powers, issued a removal notice later found by an independent tribunal not to meet the statutory test, and pursued global removal of footage against the publicly stated wishes of the victim it was said to protect. We do not think this record supports the confidence the government is

⁴⁹Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2024 (Cth), withdrawn November 2024. See also Part 1 of this submission.

⁵⁰Liberal Party of Australia (n 37).

⁵¹Online Safety Act 2021 (Cth) pt 7 (ss 87–93), as enacted, commencing 23 January 2022: see eSafety Commissioner, "Safety net to protect Australian adults from serious online abuse from 2022" (Media Release, 16 December 2021) <<https://www.esafety.gov.au/newsroom/media-releases/safety-net-protect-australian-adults-serious-online-abuse-from-2022>>. The predecessor Enhancing Online Safety Act 2015 (Cth) was confined to cyberbullying material targeted at Australian children.

⁵²Human Rights Law Alliance, John Steenhof, "Billboard Chris wins, but Australian laws still stifle fundamental freedoms" (10 July 2025) <https://www.hrla.org.au/billboard_chris_wins_but_australian_laws_still_stifle_fundamental_freedoms>.

asking Australians to place in a considerably broader and more open-ended power. Recommendation 2 sets out the fix.

3. Penalties, Deadlines, and the Incentive to Over-Remove

Parts 1 and 2 of this submission addressed how the Bill defines harm and who exercises discretion over that definition. This section addresses a separate question: even where a platform correctly identifies that a piece of content is lawful, does the structure of the Bill's penalties and deadlines give the platform a reason to remove it anyway? It does, and this is not a novel concern but a well-documented feature of comparable regulatory designs.

The size of the penalty

Proposed section 26B provides that a person is liable to a civil penalty of 60,000 penalty units for failing to comply with the digital duty of care.⁵³ Legal commentators reviewing the exposure draft have calculated the resulting maximum corporate penalty at approximately \$109.2 million.⁵⁴ This figure differs from the one used in the government's own policy paper, which compared the intended maximum penalty to the \$100 million cap recently applied to ACCC enforcement under the Competition and Consumer Act.⁵⁵ Whichever figure is ultimately correct, a penalty of this magnitude is a significant factor in any platform's decision about how to respond to content that might fall within the Bill's undefined harm categories, as discussed in Part 1.

The compressed timeframe

The exposure draft reduces the time a platform has to respond once a complaint escalates to formal action. The existing 48-hour period applicable to the child cyberbullying and adult cyber-abuse removal schemes is reduced to 24 hours.⁵⁶ The eSafety Commissioner is also given a new power to waive the requirement that a complaint first be made to the platform at all, where eSafety is satisfied that the platform's complaints mechanism is not functional or accessible, or that requiring a complaint would create a reasonably foreseeable risk of further harm.⁵⁷

⁵³Online Safety Amendment (Digital Duty of Care) Bill 2026 (Cth), Exposure Draft (8 September 2026), sch 2, proposed s 26B.

⁵⁴Johnson Winter Slattery, "Australia's proposed Digital Duty of Care: what online services need to know" (11 September 2026) <<https://jws.com.au/what-we-think/australias-proposed-digital-duty-of-care-what-online-services-need-to-know/>>; Baker McKenzie, "Australia: Digital Duty of Care to redefine online safety" (September 2026) <<https://www.bakermckenzie.com/-/media/files/insight/publications/2026/09/australia-digital-duty-of-care-to-redefine-online-safety.pdf>>, both reporting a maximum corporate penalty of approximately A\$109.2 million, derived from 60,000 penalty units under s 26B with the corporate multiplier under the Crimes Act 1914 (Cth) s 4AA.

⁵⁵Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts (Cth), A Digital Duty of Care for Australia — Developing a duty of care framework for online services used by Australians (May 2026) 7, stating that the maximum civil penalty "will be commensurate to offences under other legislation such as the Competition and Consumer Act, where maximum penalties for ACCC enforcement were recently increased to \$100 million." We note that the figure now being reported by legal commentators on the actual exposure draft, approximately \$109.2 million, differs from this earlier policy comparator.

⁵⁶Online Safety Amendment (Digital Duty of Care) Bill 2026 (Cth), Exposure Draft (8 September 2026), sch 1 pt 1, items 12 and 14, amending the Online Safety Act 2021 (Cth) ss 65(1)(c)(i) and 88(1)(c)(i) respectively ("Omit ' 48 hours', substitute ' 24 hours'").

⁵⁷Ibid, inserting new ss 65(2A)–(2B) and the equivalent provisions applicable to s 88.

A further new provision allows eSafety to issue a fresh removal notice, without any fresh complaint, where material previously found to breach a notice reappears in an altered form. The Bill defines reposted material broadly: it "can be reposted even if it has been altered, including by... making the material longer or shorter... posting the material in a different form, such as screenshots... cropping or adding to the material... [or] changing or removing text, dialogue or commentary."^{58,59} This is a wide definition. It would appear to capture a screenshot of the original material accompanied by critical commentary, a shortened excerpt used for the purpose of reporting on the original dispute, or a parody that alters the original's wording while preserving its recognisable form. We are not aware of any published commentary that has yet examined this specific provision against ordinary uses such as news reporting, commentary, or satire, and we raise the concern as our own submission on the text rather than as a view we have found elsewhere.

Search engines and app stores brought within the same clock

The exposure draft extends comparably tight deadlines to intermediaries further removed from the original content. New link deletion notice powers would require an internet search engine service to cease linking to specified material within 24 hours of being given a notice.⁶⁰ A separate new power allows eSafety to require an app distribution service or search engine to remove, or cease linking to, an app or website found to be predominantly used to generate "fake nude material," again within 24 hours, backed by a civil penalty of 6,000 penalty units.⁶¹ A search engine or app store has no independent means of assessing the underlying material beyond what eSafety's notice tells it. Its most straightforward means of avoiding penalty is simply to comply with the notice as given.

Why a short deadline and a large penalty produce over-removal

The tendency of this kind of regulatory design to produce removal of lawful material, and not only unlawful material, is a well-established subject of legal scholarship, developed well before this Bill existed and in relation to intermediary liability regimes generally. Professor Jack Balkin describes the underlying mechanism as "collateral censorship": "the state targets entity A to control the speech of another entity, B. The state tells A: Locate and block or censor B, or else we will punish or fine you... Told by the state that it must censor or block speakers like B, A will err on the side of caution. It will tend to overblock or overfilter content, discarding the wheat with the chaff."⁶²

⁵⁸Ibid, inserting new s 65(2C) and the equivalent provision applicable to s 88.

⁵⁹Ibid, inserting new s 65(2E) and the equivalent provision applicable to s 88.

⁶⁰Ibid, inserting new ss 72A–72B (link deletion notices to internet search engine services), s 72A(1)(a)(i) prescribing a compliance period of "24 hours after the notice was given to the provider."

⁶¹Ibid, inserting new ss 86B–86C (removal notices to app distribution services and internet search engine services in relation to fake nude material), s 86C prescribing a compliance period of 24 hours and a civil penalty of 6,000 penalty units.

⁶²Jack M. Balkin, "Free Speech Is a Triangle" (2018) 118 Columbia Law Review 2011, 2035–2036
<<https://columbialawreview.org/content/free-speech-is-a-triangle/>>.

Daphne Keller, describing the same effect from the perspective of a platform's own incentives, writes that "the easiest, cheapest, and most risk-avoidant path for any technical intermediary is simply to process a removal request and not question its validity," and that "a company that takes an 'if in doubt, take it down' approach to requests may simply be a rational economic actor."⁶³ Professor Felix Wu explains why the intermediary's calculation differs from the original speaker's own: "the worry with collateral censorship is not just that intermediaries censor, but that they censor more than an original speaker would in the face of potential liability."⁶⁴

Under the Bill as drafted, a platform bears a very large, certain cost for retaining content later found to breach the Duty, and effectively no cost for removing lawful content by mistake. That asymmetry, not any intention on the part of a platform to suppress lawful speech, is what the scholarship predicts will drive the outcome.

The German precedent

Germany's Network Enforcement Act (NetzDG), in force since 2017, is the most closely comparable existing law: it requires platforms to remove manifestly unlawful content within 24 hours of a complaint, other unlawful content generally within seven days, and backs this with fines of up to €5 million on a responsible individual and up to €50 million on the company.⁶⁵ In the first half of 2018, the major platforms reported removing between 11 per cent and 27 per cent of reported content, with the substantial majority of removals completed within 24 hours.⁶⁶ A later academic evaluation of the law's practical operation found what its authors describe as indications of overblocking, concluding that the study's findings "leave little room... to continue dismissing overblocking as 'mere speculation'."⁶⁷

This evidence is genuinely contested. A separate evaluation commissioned by the German government concluded that, absent a comprehensive content study, the assumption of systematic overblocking remained speculative.⁶⁸ We do not think the empirical record allows

⁶³Daphne Keller, "Internet Platforms: Observations on Speech, Danger, and Money" (Hoover Institution, Aegis Series Paper No 1807, 2018) 4, 8 <<https://cyberlaw.stanford.edu/content/files/sites/default/files/publication/files/381732092-internet-platforms-observations-on-speech-danger-and-money.pdf>>.

⁶⁴Felix T. Wu, "Collateral Censorship and the Limits of Intermediary Immunity" (2011) 87 Notre Dame Law Review 293, 295, 299 <<https://scholarship.law.nd.edu/ndlr/vol87/iss1/6/>>.

⁶⁵German Federal Ministry of Justice, "Network Enforcement Act" (webpage) <https://www.bmj.de/DE/Themen/FokusThemen/NetzDG/NetzDG_EN_node.html>.

⁶⁶William Echikson and Olivia Knodt, Germany's NetzDG: A Key Test for Combatting Online Hate (CEPS/Counter Extremism Project, November 2018) table 1, reporting first-half-2018 removal rates under NetzDG of 27% (YouTube), 10.8% (Twitter) and 21.2% (Facebook), with between 76% and 94% of removals completed within 24 hours. We note this report was published by an organisation supportive of NetzDG-style enforcement and should be read with that in mind.

⁶⁷Marc Liesching et al, Das NetzDG in der praktischen Anwendung: Eine Teilevaluation des Netzwerkdurchsetzungsgesetzes (HTWK Leipzig / Carl Grossmann Verlag, 24 March 2021); reported in netzpolitik.org (24 March 2021) <<https://netzpolitik.org/2021/netzwerkdurchsetzungsgesetz-studie-zeigt-schwaechen-bei-gesetz-gegen-hassrede-auf/>>, quoting the authors: "The study findings leave little room, in our view, to continue dismissing overblocking as 'mere speculation'." The study describes its findings as indications (Anhaltspunkte) of overblocking rather than a quantified measurement of lawful content removed.

⁶⁸Evaluation by Professor Martin Eifert for the German Federal Ministry of Justice and Consumer Protection, cited in Deutscher Bundestag, Drucksache 19/28631 (29 June 2021) <<https://dserver.bundestag.de/btd/19/286/1928631.pdf>>, recording the

either side of this debate to claim a settled measurement of how much lawful content NetzDG has caused to be removed. What is not contested is the design itself: a short-fixed deadline paired with a very large fine is the same structure proposed in this Bill, and it is the structure the legal scholarship above identifies as producing an incentive toward removal regardless of whether removal is warranted.

A different design: the European Union's approach

It is worth noting that comparable overseas regulation has not uniformly adopted the fixed-deadline model. The European Union's Digital Services Act requires platforms to act on notices "in a timely, diligent, non-arbitrary and objective manner," without imposing a general fixed numerical deadline for ordinary content notices.⁶⁹ Its penalties are calculated as a percentage of global turnover, up to 6 per cent, rather than a fixed sum.⁷⁰ A percentage-of-turnover penalty can, for the largest platforms, exceed the maximum available under this Bill. The material difference is not the size of the penalty but its pairing with a fixed, short deadline, which is the specific combination the Bill proposes to adopt and the specific combination the scholarship above identifies as the source of the over-removal incentive.

The absence of an Australian industry response, and what the government's own consultation recorded

We were unable to locate any published statement from an Australian industry body responding specifically to the exposure draft's penalty and timeframe provisions as at the date of this submission. The government's own consultation process prior to the release of the exposure draft recorded that industry participants supported "a graduated approach and inclusion of educative/remedial measures in the first instance, especially during early implementation," while advocacy participants supported "stronger penalties and fines."⁷¹

One Australian law firm advising clients on the exposure draft has stated its own assessment that "the penalties under the Act are prohibitive, reaching to over AU\$100 million," and that "there is a real risk that, where the characterisation of content posted is

conclusion that, absent a comprehensive content evaluation, the assumption of systematic overblocking "remains... mere speculation." This evaluation was commissioned by the ministry responsible for the Act and should be weighed accordingly.

⁶⁹Regulation (EU) 2022/2065 (Digital Services Act) art 16(6), requiring hosting providers to act "in a timely, diligent, non-arbitrary and objective manner," without a general fixed numerical deadline applicable to ordinary user notices.

⁷⁰Ibid art 52, providing for maximum penalties of up to 6% of worldwide annual turnover for non-compliance with obligations under the Regulation.

⁷¹Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts (Cth), Digital Duty of Care Stakeholder Consultation May–June 2026: Key Outcomes (2026)

<<https://www.infrastructure.gov.au/sites/default/files/documents/digital-duty-of-care-summary-of-consultation-outcomes-2026.pdf>>, recording that industry participants "support[ed a] graduated approach and inclusion of educative/remedial measures in the first instance, especially during early implementation," while advocacy participants "support[ed] stronger penalties and fines."

complex or unclear... online services will err on the side of caution and act swiftly to contain."⁷²

The existing Australian scheme already pairs a comparable penalty with a short compliance window: current guidance issued by eSafety cites a maximum penalty of \$825,000 for a single contravention of an existing removal notice, with the possibility of continuing daily penalties for ongoing non-compliance.⁷³ The Bill does not introduce this structure into Australian regulation for the first time. It substantially increases the penalty, shortens the deadline that precedes it, and extends the same model to search engines and app stores.

Conclusion

The Bill combines a very large civil penalty with a short, fixed compliance deadline, extends new powers on the same terms to search engines and app stores, and permits a fresh removal notice for altered reposts without any fresh complaint. Each of these features increases the cost to a platform of retaining content that might later be found to breach the Duty, while the cost of removing lawful content in error remains negligible. This is the specific regulatory structure that legal scholarship on intermediary liability has long identified as producing removal of lawful material, and it closely resembles a foreign law under which independent evaluation has found at least some indication of the same effect. Recommendation 6 sets out the fix.

⁷²Squire Patton Boggs, "What Can You Expect from the Proposed Digital Duty of Care?" (September 2026) <<https://www.squirepattonboggs.com/insights/publications/what-can-you-expect-from-the-proposed-digital-duty-of-care/>>: "the penalties under the Act are prohibitive, reaching to over AU\$100 million. There is a real risk that, where the characterisation of content posted is complex or unclear... online services will err on the side of caution and act swiftly to contain." This is the assessment of a law firm advising clients on the Bill, not a documented empirical study, and we present it as such.

⁷³eSafety Commissioner, Adult Cyber Abuse Scheme Regulatory Guidance (January 2025) <<https://www.esafety.gov.au/sites/default/files/2025-01/Adult-Cyber-Abuse-Scheme-Regulatory-Guidance-January2025.pdf>>, citing a maximum penalty of \$825,000 for a single contravention of an existing removal notice by a body corporate under the current scheme, with continuing daily contraventions possible under s 93 of the Regulatory Powers (Standard Provisions) Act 2014 (Cth).

4. Political Context and the Question of Motive

The preceding sections address the Bill's text. This section addresses who the powers in that text are actually intended for.

The Prime Minister's own framing

In June 2026, the Prime Minister warned against "the rise of populism whether of the right or the left," attributing it to economic grievance.⁷⁴ By late August, the *Sydney Morning Herald* reported that his tech agenda was designed "to counter what he described as algorithm-driven anxiety and the rise of populism exemplified by One Nation."⁷⁵

When the exposure draft was released a fortnight later, the official line softened: "This is not about giving government control, it is about giving people control... It's not about censorship."⁷⁶ The public messaging changed once the Bill was released. The rationale reported beforehand did not.

What government and Greens parliamentarians have said

Senator Don Farrell, who holds ministerial and special ministerial positions, described the Bill's ambition without the caution of the official talking points: "I think what Anika Wells has been doing in this space has been fantastic. We're leading the way in terms of regulation of this sort of information... there has to be regulation and there has to be controls."⁷⁷

Greens Senator David Shoebridge, whose vote the government requires in the Senate, was more direct still: "It's about good system design. It's about having an algorithm that doesn't actually promote and generate hate. And every time you get Pauline Hanson come out and say, well, actually, she wants to promote hateful messages against First Nations peoples. Or you get... the Coalition coming out and saying that they want to promote genocide denial... I

⁷⁴The Hon Anthony Albanese MP, Prime Minister, remarks reported in "Albanese lashes One Nation surge as 'grievance politics'", *The Australian* (5 June 2026) <<https://www.theaustralian.com.au/nation/politics/albanese-lashes-one-nation-surge-as-grievance-politics/video/7626ae6260f404d2c69e1209968c3654>>: "I'll tell you what's not ideal. It's to see the rise of populism whether of the right or the left... If people think the economy isn't working for them... they will turn to more simplistic grievance-based politics."

⁷⁵Paul Sakkal, "Albanese eyes big-spending agenda for third term, places tech regulation at core of government", *Sydney Morning Herald* (29 August 2026) <<https://www.smh.com.au/politics/federal/albanese-eyes-big-spending-agenda-for-third-term-places-tech-regulation-at-core-of-government-20260828-p60sci.html>>: "Anthony Albanese has flagged an expansion of his big-spending social agenda to win a third term, as he prepares to beef up Australia's heavy regulation of big tech to counter what he described as algorithm-driven anxiety and the rise of populism exemplified by One Nation."

⁷⁶The Hon Anthony Albanese MP and the Hon Anika Wells MP, "My Feed, My Way" (Media Release, 8 September 2026) <<https://www.pm.gov.au/media/my-feed-my-way>>: "This is not about giving government control, it is about giving people control"; Press Conference, Parliament House, Canberra (8 September 2026): "Let's be very clear about what this is about. It's not about censorship."

⁷⁷Special Minister of State Don Farrell, quoted in "Greens Senator David Shoebridge claims Digital Duty of Care is needed to stop 'amplifying' One Nation, Coalition rhetoric", *News24* (17 September 2026): "I think what Anika Wells has been doing in this space has been fantastic. We're leading the way in terms of regulation of this sort of information. We're not seeking to deprive people of free speech, there'll be plenty of that. But there has to be regulation and there has to be controls."

think it points out we need Digital Duty of Care so that those messages aren't amplified."⁷⁸ Senator Shoebridge has used the same “genocide denial” charge before, over Coalition comments on Gaza.⁷⁹ Senator Shoebridge has openly declared Pauline Hanson and the Coalition, by name, as the reason this Bill is needed.

The electoral backdrop

This is not happening in a vacuum. One Nation took the Western Australian seat of Secret Harbour from Labor on 29 August 2026, its first seat in that Parliament.⁸⁰ It won the federal seat of Farrer in May 2026, after Sussan Ley resigned the Liberal leadership.⁸¹ Through the middle of 2026, One Nation polled second in South Australia, ahead of the Liberal Party.⁸² Even a former Labor campaign strategist has acknowledged “a strong correlation between One Nation’s algorithmic success and their support.”⁸³

The week after the by-election, Assistant Minister Andrew Leigh MP argued this Bill was needed because we’re “seeing that in politics... the algorithms are weaponising anger and outrage, and I think that’s been one of the factors in the rise of right-wing populists around the world.”⁸⁴ A government losing seats to a party it believes benefits from social media algorithms, and that then legislates to place a minister in charge of those algorithms, has little need to state its motive directly. Yet Assistant Minister Andrew Leigh and Senator Shoebridge have explicitly put this motive on the public record.

The pattern of silencing one side of a debate already exists

The same pattern of using regulatory power against one side of a live debate is already visible outside politics proper. In February 2026, the Medical Board of Australia used its immediate action powers to ban Queensland psychiatrist Dr Andrew Amos from posting on

⁷⁸Senator David Shoebridge, quoted *ibid*: “It’s about good system design. It’s about having an algorithm that doesn’t actually promote and generate hate. And every time you get Pauline Hanson come out and say, well, actually, she wants to promote hateful messages against First Nations peoples. Or you get... the Coalition coming out and saying that they want to promote genocide denial... I think it points out we need Digital Duty of Care so that those messages aren’t amplified and they don’t become the content that kids are digesting when they flip open their phone.”

⁷⁹Senator Shoebridge used the same phrase in a different context in September 2025, accusing the Coalition of denying a United Nations finding of genocide in Gaza: ABC Radio National Breakfast (17 September 2025), archived at <https://web.archive.org/web/20251102033715/https://www.abc.net.au/listen/programs/radionational-breakfast/green-reax-shoebridge/105786238>.

⁸⁰Australian Broadcasting Corporation, “One Nation secures victory in Secret Harbour by-election” (30 August 2026) <https://www.abc.net.au/news/2026-08-30/one-nation-secures-victory-in-secret-harbour-by-election/107094840>.

⁸¹Australian Broadcasting Corporation, Farrer by-election results (9 May 2026) <https://www.abc.net.au/news/elections/farrer-by-election-2026>. The by-election was triggered by the resignation of former Liberal leader Sussan Ley.

⁸²DemosAU, South Australian state voting intention polling (2026) <https://demosau.com/news/support-climbs-for-one-nation-in-south-australia/>, recording One Nation support in the mid-20s and second place behind Labor.

⁸³Ed Coper, former Labor Party campaign strategist, quoted in Nick Newling, “Algorithm shake-up will hurt right-wing parties, censorship fight heats up”, Sydney Morning Herald (9 September 2026) <https://www.smh.com.au/politics/federal/algorithm-shake-up-will-hurt-right-wing-parties-censorship-fight-heats-up-20260908-p60vd0.html>: “a strong correlation between One Nation’s algorithmic success and their support.”

⁸⁴Andrew Leigh, “Transcript - News24 Weekend First Edition - 5 September 2026”, https://www.andrewleigh.com/transcript_news24_weekend_first_edition_5_september_2026.

social media about gender medicine.⁸⁵ Months later, Queensland's children's hospital service settled its long-running dispute with psychiatrist Dr Jillian Spencer, discontinuing all disciplinary proceedings against her, after she had spent three years suspended for publicly criticising its gender service.⁸⁶ Two clinicians, on the same side of a debate this Bill's own "hostile attitudes" category touches directly, each faced regulatory action before this Bill even existed.

Conclusion

The government's own spokespersons have cited "right-wing populists" as a reason this Bill is needed, at the very time the government lost a seat to One Nation in Western Australia. A Greens senator holding the balance of power has named the parties and the leader he wants the Bill used against. And the professional consequences for holding one side of a related public debate are already documented, independent of anything this Bill would add. Parliament should not need Senator Shoebridge's assurance about how these powers will be used. Recommendation 7 would make sure they cannot be used that way at all.

⁸⁵Natasha Robinson, "Overreach: health regulator silences top psychiatrist for posts on gender medicine", *The Australian* (2 March 2026) <<https://www.theaustralian.com.au/nation/overreach-health-regulator-silences-top-psychiatrist-for-posts-on-gender-medicine/news-story/ff4d869580a4c88422d73b0301620b81>>. The Medical Board of Australia used its immediate action powers to prohibit Dr Andrew Amos from posting on social media about gender medicine and gender identity.

⁸⁶Children's Health Queensland Hospital and Health Service, "Statement from Children's Health Queensland Hospital and Health Service" (Media Release, 16 July 2026) <<https://www.childrens.health.qld.gov.au/about-us/news/media-releases/statement-from-childrens-health-queensland-hospital-and-health-service>>: "all disciplinary proceedings against Dr Spencer have been discontinued," following her 2023 suspension over public criticism of the Queensland Children's Gender Service.

5. Process, Trust, and the Campaign Behind the Bill

This section addresses how this Bill is being passed and sold: the numbers that will carry it through Parliament regardless of public objection, how the government has engaged with a citizen who raised a substantive concern directly, and the funding behind the campaign the government has credited with driving the Bill forward. Taken together, these three things describe a process that does not need to win the argument it is currently having with the public, and appears to be conducting itself accordingly.

The numbers required to pass this Bill

This Bill does not need the Coalition's support to become law, as it can pass the Bill through the Senate with the support of the Greens.

The Greens have not committed to a final vote, but their public statements point toward support. On the day the exposure draft was released, Senator Sarah Hanson-Young said the Greens would seek amendments, and added: "With the Coalition and One Nation running scare campaigns on this bill, the Greens are the most likely pathway for the Government to pass this legislation."⁸⁷ By 17 September, Senator David Shoebridge was reported as signalling the Greens would be open to backing the Bill once the Minister confirmed its scope extended beyond social media companies.⁸⁸

Considering the Greens' ability to successfully carry the Bill, David Shoebridge's statement, addressed in Part 4 of this submission, that the Bill should be used to stop a named party's messages being amplified, is all the more concerning.

How the government engages with dissent

This submission is not the only channel through which a citizen has raised the concerns set out in Part 1. Dr Paul Tyson, a constituent of Minister Wells, wrote to her directly and then delivered his letter to her electorate office in person. By his own account, staff at the office did not engage with the substance of his objection. He describes being "baited and matronized," and states that once he became agitated, "it was clear they were not going to tolerate any angry lip from me and were preparing to boot me out the door in shame." His conclusion was that the staff "were not there to hear my concerns, but to show me the error

⁸⁷Senator Sarah Hanson-Young, Australian Greens (Media Release, 8 September 2026) <<https://greens.org.au/news/media-release/digital-duty-care-must-make-platforms-safer-all-users>>: "The Greens welcome the release of an exposure draft... but warn there is still work to do to get it right... With the Coalition and One Nation running scare campaigns on this bill, the Greens are the most likely pathway for the Government to pass this legislation."

⁸⁸Senator David Shoebridge, quoted in "Greens Senator David Shoebridge claims Digital Duty of Care is needed to stop 'amplifying' One Nation, Coalition rhetoric", News24 (17 September 2026) <<https://www.news24.com.au/politics/australian-politics/greens-senator-david-shoebridge-claims-digital-duty-of-care-is-needed-to-stop-amplifying-one-nation-coalition-rhetoric/news-story/b7127733162a422542e97eadd712f8b2>>, reported as signalling the Greens would be open to backing the Bill after Minister Wells acknowledged the Duty would extend beyond social media companies.

of my ways and to assure me that I did not understand the legislation and had nothing to fear.”⁸⁹

The written reply he later received from the Minister’s office followed the same pattern. Rather than address his specific concern, that an undefined harm standard could be turned against lawful political and religious speech, the reply set out the Bill’s safety rationale at length, telling him, in his words, “which, again, I already knew.”⁹⁰ A citizen who took the trouble to write a detailed letter and then hand-deliver it received, in return, a restatement of the government’s talking points rather than an answer to the question he actually asked. We think this is a small but telling illustration of the same dynamic addressed throughout this submission: a process that asserts its own authority over how a concern should be understood, rather than engaging with the concern as the citizen who raised it actually meant it.

The campaign behind the Bill

A government confident that it has the numbers to pass the Bill has no procedural need to demonstrate public enthusiasm for it. That the government has nonetheless worked to project such enthusiasm suggests the appearance of popular demand still matters to it politically, even where it does not matter to the vote count. The government has repeatedly credited a public campaign, #FixOurFeeds, with building the case for this Bill. #FixOurFeeds is not an independent movement. It is a campaign run by Teach Us Consent, a registered charity, launched in December 2025.⁹¹ The Institute of Public Affairs has reported that Teach Us Consent received \$2,670,156 in government funding across the 2024 and 2025 financial years, and that government funding accounts for approximately 86 per cent of the organisation’s revenue.⁹² The Department of Social Services confirms a Commonwealth grant of \$3.8 million over two years to Teach Us Consent under the Promoting Consent Initiative.⁹³

⁸⁹Dr Paul Tyson, "They Didn't Want to Hear It: My Visit to Anika Wells' Office on Digital Duty of Care" (Substack, September 2026), source article supplied for this submission: "I was baited and matronized and when I became agitated, it was clear they were not going to tolerate any angry lip from me and were preparing to boot me out the door in shame... the fact of the matter is that Anika Wells' staffers were not there to hear my concerns, but to show me the error of my ways and to assure me that I did not understand the legislation and had nothing to fear."

⁹⁰Dr Paul Tyson, "Anika Wells and AI?" (Substack, September 2026), source article supplied for this submission, describing the ministerial office's written reply as repeating, at length, safeguards and safety rationale he states he already understood and had not disputed, without addressing his stated concern about the political use of an undefined harm standard: "which, again, I already knew."

⁹¹Teach Us Consent, "Fix Our Feeds" campaign page <<https://www.teachusconsent.com/fix-our-feeds>> and "About" page <<https://www.teachusconsent.com/about>>, recording the launch of the #FixOurFeeds campaign in December 2025.

#FixOurFeeds is a campaign run by Teach Us Consent, a registered charity, rather than a separate organisation.

⁹²Jordan Abou-Zeid, "Digital Duty of Care: An Astroturfed Fake Movement", Institute of Public Affairs (9 September 2026) <<https://ipa.org.au/research/australian-way-of-life/digital-duty-of-care-an-astroturfed-fake-movement>>: "Teach Us Consent, the parent organisation of the #FixOurFeeds campaign, received \$2,670,156 in government funding across the 2024 and 2025 financial years. Some 86% of its revenue comes from government."

⁹³Department of Social Services (Cth), First Action Plan Addendum, "Teach Us Consent" <<https://www.dss.gov.au/national-plan-end-violence-against-women-and-children/progress/first-action-plan-progress/first-action-plan-activities->

When the Prime Minister announced the exposure draft on 8 September 2026, he stood alongside representatives of Teach Us Consent and several similarly funded organisations and said: “I do want to give credit to the organisations who are represented here, because this is an example of change from the bottom-up, my Government listening and acting.”⁹⁴ The organisation credited with that bottom-up pressure is funded, in overwhelming majority, from the top down. A government that did this while also genuinely engaging with the citizens raising concerns on the other side of the debate might fairly claim the difference was simply which voices it found more persuasive. Set against Dr Tyson’s experience, it instead looks like a government that has decided in advance which kind of public input counts as “listening.”

Conclusion

None of the three things addressed in this section, the parliamentary arithmetic, the treatment of a citizen who raised a substantive objection, and the funding behind the campaign credited with the Bill's momentum, is disputed on the facts. Together they describe a government that does not need to win the public argument over this Bill, has not meaningfully engaged with at least one citizen who tried to have that argument with it directly, and has invested public money in a campaign it then points to as evidence the public agrees. This does not decide the merits of the Bill addressed elsewhere in this submission. It should inform how much weight the Department gives to the government's account of why the Bill is needed and who is asking for it, and it is why Recommendation 8 asks for more than a summary acknowledgment of the concerns this consultation receives.

addendum/teach-us-consent>, recording a Commonwealth grant of \$3.8 million over two years to Teach Us Consent under the Promoting Consent Initiative, with the grant agreement signed in February 2024.

⁹⁴The Hon Anthony Albanese MP, Prime Minister, Press Conference, Parliament House, Canberra (8 September 2026), ParlInfo transcript, speaking alongside representatives of several organisations including Teach Us Consent: “I do want to give credit to the organisations who are represented here, because this is an example of change from the bottom-up, my Government listening and acting.”

Recommendations

This submission sets out, in the sections above, why the Digital Duty of Care is a poor vehicle for protecting Australians online. Our primary recommendation follows directly from that case. The remaining recommendations apply only if the Department does not accept the first.

1. Reject the Bill outright. It should not proceed in any form.

If the Bill proceeds notwithstanding Recommendation 1, the Department should require the following amendments as a minimum.

2. Define “harm” exhaustively in the Bill itself, confined to conduct that is already unlawful. Remove the Minister's power to add further categories by legislative instrument; if any such power is retained, confine it to the Minister alone and require that any new category be based on conduct that is unlawful or has been tested by a court.

3. Remove proposed section 25D(1)(c), which treats material “encouraging or promoting hostile attitudes towards women or gender equality” as harmful to children, or redraft it to capture only unlawful conduct rather than the expression of a viewpoint.

4. Insert an explicit protection for lawful political and religious communication, equivalent to the protection already given to private adult communications under section 26(7).

5. Write the human rights and free expression safeguards described in the Government's policy paper directly into the Bill's operative provisions.

6. Reduce the maximum civil penalty, lengthen the compliance timeframes, and narrow the reposted material provisions so that satire, commentary and news reporting are not captured alongside genuinely unlawful reposts.

7. Include an explicit statutory prohibition on using the Duty, or any rule made under it, to restrict or deprioritise lawful political communication or lawful religious teaching.

8. Extend the consultation period for this Bill well beyond ten working days, given the scope of the powers involved, and commit to a substantive, individualised response to the concerns raised in submissions.

Conclusion

The Digital Duty of Care is presented to Australians as a child safety measure. It is not confined to one.

A Bill that leaves the definition of harm to a minister's own satisfaction, that deems ordinary features of online life harmful by definition, and that hands its enforcement to an office with an already documented record of getting it wrong, is not a modest safety reform. It is a broad grant of power over what Australians may say, see, and organise around online, dressed in language calibrated to make that grant sound uncontroversial.

A minister who can define new categories of harm without a court's involvement, and a Bill whose own supporters have said, on the record, which political opponents they expect it to silence, are not the ordinary features of a proportionate child safety law.

Christians have particular reason for concern. Section 25D of the Bill treats material that "encourages or promotes hostile attitudes towards women or gender equality" as harmful to children, a description broad enough to capture ordinary Christian teaching on marriage, the family, and the created distinction between male and female. A government empowered to declare further categories of harm by ministerial instrument, without any requirement that the conduct in question be unlawful, is a government empowered to declare biblical conviction itself a threat to public safety. This is not a speculative fear. Clinicians who have publicly held gender-critical views have already faced professional and regulatory consequences in Australia, entirely apart from this Bill. The machinery this Bill would create does not need to be invented. It only needs to be extended to speech, and handed to a minister rather than a court.

Australians have been here before. This Bill is the second attempt in two years to give a Commonwealth office broad, discretionary power over lawful speech under the banner of protecting the public. The first did not survive contact with the Senate. This one should meet the same end, for the same reason: a free country does not entrust the boundaries of permissible religious and political expression to the satisfaction of whichever minister happens to hold office.

The Bill should be rejected outright. If it proceeds regardless, the amendments set out above are the minimum necessary to prevent the harm it would otherwise cause.

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