**Canberra Declaration**
PO Box 378 Unanderra NSW 2526
(02) 4272 9100
www.canberradeclaration.org.au
info@canberradeclaration.org.au

**Committee Secretary**
**Senate Standing Committees on Environment and Communications**
PO Box 6100
Parliament House
Canberra ACT 2600
ec.sen@aph.gov.au

# Submission to the Senate Inquiry into the Online Safety Amendment (Digital Duty of Care) Bill 2026

30 October 2026

Dear Committee Secretary,

Enclosed is our submission to the Committee's inquiry into the Online Safety Amendment (Digital Duty of Care) Bill 2026. We oppose the Bill and urge the Senate to reject it.

The government introduced the Bill on 15 October 2026, and the House of Representatives passed it, as amended, on 28 October. Between the exposure draft and the Bill, the government removed the Minister's power to add new categories of seriously harmful material by legislative instrument. That concession vindicates an objection we made to the Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts on 22 September 2026. Yet, this removal does not fix the Bill. The provision that treats "hostile attitudes towards women or gender equality" as harmful to children remains. An open-ended residual category now does the work the Minister's power once did. Nothing in the Bill protects lawful political communication or religious teaching. This submission replaces the one we lodged with the Department.

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 ask the Committee to publish this submission and to invite us to give evidence at the public hearings on 9 and 10 November 2026.

Thank you for considering our submission.

Yours sincerely,

Warwick Marsh, Co-Founder and Co-Drafter, Canberra Declaration
Alison Marsh, Co-Founder, Canberra Declaration
Kurt Mahlburg, Programs Director, Canberra Declaration
Jean Seah, Managing Editor, The Daily Declaration
Samuel Hartwich, Deputy Editor, Canberra Declaration
Kym Farnik, Prayer Coordinator, Canberra Declaration

# Table of Contents


EXECUTIVE SUMMARY ..... 5

1. THE BILL'S DEFINITION OF "HARM" ..... 7

SERIOUSLY HARMFUL MATERIAL AND CONDUCT ..... 7
MATERIAL HARMFUL TO CHILDREN ..... 8
THE ABSENCE OF FREE-SPEECH SAFEGUARDS IN THE BILL'S OPERATIVE TEXT ..... 8
A SHIFT FROM CONTENT REGULATION TO RISK MANAGEMENT ..... 9
COMPARISON WITH THE MISINFORMATION AND DISINFORMATION BILL 2024 ..... 10
THE CASE FOR BROAD PROTECTION OF SPEECH ..... 10
THE EXCEPTION FOR PRIVATE COMMUNICATIONS ..... 11
CONCERNS RAISED BY MEMBERS OF PARLIAMENT ..... 11
THE IMPLIED FREEDOM OF POLITICAL COMMUNICATION ..... 12
CASE STUDY: CORRESPONDENCE WITH THE MINISTER ..... 13
CONCLUSION ..... 14

2. THE COMMISSIONER'S POWERS AND THE RECORD OF EXISTING POWERS ..... 15

WHAT THE BILL ADDS TO THE COMMISSIONER'S POWERS ..... 15
THE CURRENT OFFICEHOLDER ..... 16
CASE STUDY: CHRISTOPHER ELSTON ..... 16
CASE STUDY: THE WAKELEY CHURCH STABBING FOOTAGE ..... 17
HOW THIS POWER HAS GROWN OVER TIME ..... 18
CONCLUSION ..... 18

3. PENALTIES, DEADLINES, AND THE INCENTIVE TO OVER-REMOVE ..... 20

THE SIZE OF THE PENALTY ..... 20
THE COMPRESSED TIMEFRAME ..... 20
SEARCH ENGINES AND APP STORES BROUGHT WITHIN THE SAME CLOCK ..... 21
WHY A SHORT DEADLINE AND A LARGE PENALTY PRODUCE OVER-REMOVAL ..... 21
THE GERMAN PRECEDENT ..... 22
A DIFFERENT DESIGN: THE EUROPEAN UNION'S APPROACH ..... 23
THE ABSENCE OF AN AUSTRALIAN INDUSTRY RESPONSE, AND WHAT THE GOVERNMENT'S OWN CONSULTATION RECORDED ..... 23
CONCLUSION ..... 24

4. POLITICAL CONTEXT AND THE QUESTION OF MOTIVE ..... 25

THE PRIME MINISTER'S OWN FRAMING ..... 25
WHAT GOVERNMENT AND GREENS PARLIAMENTARIANS HAVE SAID ..... 25
THE ELECTORAL BACKDROP ..... 26
THE PATTERN OF SILENCING ONE SIDE OF A DEBATE ALREADY EXISTS ..... 26
CONCLUSION ..... 27

5. PROCESS, TRUST, AND THE CAMPAIGN BEHIND THE BILL ..... 28

THE NUMBERS REQUIRED TO PASS THIS BILL ..... 28
HOW THE GOVERNMENT ENGAGES WITH DISSENT ..... 28
THE CAMPAIGN BEHIND THE BILL ..... 29
CONCLUSION ..... 30

RECOMMENDATIONS ..... 31

CONCLUSION ..... 33

BIBLIOGRAPHY ..... 35

LEGISLATION AND BILLS ..... 35
CASE LAW ..... 35
GOVERNMENT AND REGULATORY PUBLICATIONS ..... 36
PARLIAMENTARY AND POLITICAL STATEMENTS ..... 37
ACADEMIC AND LEGAL LITERATURE ..... 38
NEWS MEDIA ..... 38
ADVOCACY, INDUSTRY, AND PROFESSIONAL COMMENTARY ..... 39
OTHER PRIMARY AND SELF-PUBLISHED SOURCES ..... 41

## Executive Summary

The Canberra Declaration strongly opposes the Online Safety Amendment (Digital Duty of Care) Bill 2026 and recommends that the Senate reject it. The Bill is presented as a child safety measure. Its 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 opposed 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.

We made a submission on the exposure draft on 22 September 2026. The government has since removed the Minister's power to add categories of seriously harmful material by legislative instrument. That change concedes that our objection, and the Coalition's, was well founded. Still, it does not make the Bill acceptable. What remains is enough to warrant rejection.

Part 1 addresses what the Bill treats as harm. Section 25E(1)(c) deems material that "encourages or promotes hostile attitudes towards women or gender equality" harmful to children. That describes a viewpoint, not a crime. Section 25E(1)(f) adds "any other material or conduct, or combination of material and conduct, that may cause serious harm to children", an open category that does what the Minister's power once did, without an instrument, a consultation step or a disallowance motion. The Bill protects lawful private communications between adults (s 26B). It protects lawful political communication and religious teaching nowhere. The Parliamentary Library has said so: "there are not express categories of excluded material for parliamentary proceedings, political communications or cultural and religious communications." The words "freedom of expression", "human rights" and "religion" appear nowhere in the Bill's operative provisions.

Part 2 examines the powers the Bill gives the eSafety Commissioner and the record of how existing powers have been used. That record includes a removal notice that an independent tribunal set aside, and an attempt to secure global removal of footage against the publicly stated wishes of the person it depicted. The Bill adds a power to require a service to disclose its "decision-making algorithms" and to give a nominated person access to the service (s 28A), and a power for the Commissioner and approved researchers to assume false identities, with immunity from civil suit and no offence for misuse (ss 205G–205M).

Part 3 addresses the Bill's penalties and deadlines. A civil penalty of 60,000 penalty units for breach of the duty (s 26C), a 24-hour removal clock, and a power to issue fresh notices for

altered reposts combine to give platforms a strong incentive to remove lawful content rather than risk a fine. That is the effect the scholarship on intermediary liability predicts, and the one that comparable laws overseas show signs of producing.

Part 4 addresses the political context in which this Bill has been developed. This includes a Greens senator naming Pauline Hanson and the Coalition as the reason the Bill is needed, and an Assistant Minister citing the rise of right-wing populists, in the weeks after One Nation won a seat from Labor. A documented pattern of professional consequences already faces Australians who hold one side of a debate the Bill's own harm categories touch on directly. This Bill will only make matters far worse.

Part 5 addresses the process by which the Bill is being advanced. The House of Representatives passed it on 28 October 2026. The Coalition has called it "a legislative dog's breakfast which the Coalition cannot support", and the government needs the Greens in the Senate. A citizen's detailed objection was met with safety talking points that did not address it. The public campaign the government credits with building the case for the Bill is, in overwhelming majority, funded by the government itself.

Our recommendations follow. The first and primary recommendation is that the Senate reject the Bill. The remainder apply only if the Committee does not accept that recommendation.

# 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 Bill as introduced defines harm, what that definition leaves open, and why we hold grave concerns about the impact of this legislation passing into law.

## Seriously harmful material and conduct

Section 25D(1) of the Bill lists fifteen categories of "seriously harmful material or conduct", in paragraphs (a) to (o). They include child sexual exploitation and abuse, grooming, sexual violence, fake nude and intimate-image abuse, extreme violence, explicit threats, material encouraging suicide or self-harm, terrorist and violent extremist material, and material that encourages a serious Commonwealth offence.[1] The Explanatory Memorandum describes the list as "closely aligned with material and conduct that would likely be considered Class 1A material (content that is or would be refused classification in Australia) under the online content scheme in Part 9 of the Act, or is illegal under the Commonwealth Criminal Code Act 1995." For most of these categories we have no objection in principle. They describe conduct that is already unlawful, and what the Bill adds is a proactive duty and a very large penalty, not a new protection. A few limbs reach further than existing offences, and we note them: paragraph (h), material that "encourages, promotes, incites or instructs gender-based violence"; paragraph (i), material "reasonably likely to cause serious harm by menacing or harassing an individual", which does not require intent; paragraph (k), material that "advocates for or supports a listed terrorist organisation"; and paragraph (m), material that encourages "a serious Commonwealth offence that is reasonably likely to cause serious harm".

The exposure draft allowed the Minister to add further categories of seriously harmful material by legislative instrument, on the Minister's own satisfaction.[2] The government has since removed that power, and section 25D(1) is now a closed list.[3] We welcome that change. It concedes an objection we made in September, and one the Coalition made before us. However, it does not cure the problem. The same open-endedness now sits in section 25E(1)(f), discussed below, and in the powers the Bill gives the Commissioner, discussed in Part 2.

[1] Online Safety Amendment (Digital Duty of Care) Bill 2026 (Cth), as introduced (15 October 2026), sch 2, proposed s 25D(1)(a)–(o). Explanatory Memorandum, commentary on proposed s 25D.
[2] Online Safety Amendment (Digital Duty of Care) Bill 2026 (Cth), Exposure Draft (8 September 2026), sch 2, proposed ss 25C(1)(m) and 25C(2).
[3] Bills Digest No 26, 2026–27, Parliamentary Library, Online Safety Amendment (Digital Duty of Care) Bill 2026 (key points): the Bill removes the Minister's power to add categories of seriously harmful material.

## Material harmful to children

Section 25E of the Bill defines material harmful to children. Most of the listed categories are uncontroversial: pornography, material promoting disordered eating, and material glorifying crime or dangerous stunts. The Explanatory Memorandum is candid that this list reaches further than the criminal law. It covers "harmful material and conduct that may not be considered illegal under the Criminal Code Act 1995."[4] Two categories, however, are different in kind from the rest. Paragraph 25E(1)(c) provides that "material or conduct that encourages or promotes hostile attitudes towards women or gender equality" is harmful to children. Paragraph 25E(1)(f) adds "any other material or conduct, or combination of material and conduct, that may cause serious harm 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 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 on how a platform facing a penalty of 60,000 penalty units chooses to interpret an undefined phrase. The Explanatory Memorandum justifies the limb by pointing to "misogynistic attitudes, attitudes that are strongly predictive of support for various forms of violent extremism." This confirms our concern that the limb targets attitudes, not conduct. 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

[4] Bill as introduced, sch 2, proposed s 25E(1)(a), (b), (d). Explanatory Memorandum, commentary on proposed s 25E.
[5] Ibid, proposed s 25E(1)(c) and (f).
[6] 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>.
[7] Andrew 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>.
[8] Andrew 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>.

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 Bill as introduced on 15 October 2026, which runs to 90 pages including its contents, and confirm that the words "freedom of expression," "human rights," "compatibility," "scrutiny," "religion" and "political" do not appear anywhere in its operative provisions. The only discussion of freedom of expression is in the Statement of Compatibility in the Explanatory Memorandum. On our reading of the Explanatory Memorandum and the Supplementary Explanatory Memorandum, freedom of expression (Article 19 of the International Covenant on Civil and Political Rights) is discussed, but not freedom of religion (Article 18).[10] Whatever safeguard the government intends, it is described only in documents outside the Bill. 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

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

---

[9] Department 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.

[10] Based on a full-text review of the Online Safety Amendment (Digital Duty of Care) Bill 2026 as introduced (15 October 2026), 90 pages including contents. The terms "freedom of expression", "human rights", "compatibility"/"compatible", "scrutiny", "religion" and "political" do not appear in the Bill's operative provisions. Freedom of expression (Article 19 ICCPR) is discussed only in the Statement of Compatibility in the Explanatory Memorandum; neither the Explanatory Memorandum nor the Supplementary Explanatory Memorandum assesses freedom of religion (Article 18). The commitments described in the accompanying policy paper appear only in that paper: see n 9 above.

[11] Alex Antic, "Misinfo and Disinfo 2.0" (YouTube video transcript, 11 August 2026), <https://www.youtube.com/watch?v=gys0fhStMp0>.

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

categories in sections 25D and 25E, 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 "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 an open-ended category such as "any other material or conduct… that may cause serious harm to children".

The exposure draft asked the Minister to define "serious harm". The government has removed that power. But the Bill still leaves platforms and the Commissioner to decide what "may cause serious harm to children" (s 25E(1)(f)), and, as Part 2 sets out, it gives the Commissioner new powers. 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

[13] This 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.
[14] Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 (Cth), withdrawn November 2024.
[15] Canberra Declaration, "Submission on the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024" (11 October 2024) 43.
[16] Alex Antic (n 11).
[17] Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 (Cth), s 7(1d).
[18] Alex Antic (n 11).

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 the Canberra Declaration 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. Section 25F contains no exclusion for religious teaching. "Public interest" is undefined, and "professional news material" depends on membership of a press code and editorial independence (s 25F(3)). Under a framework that treats "hostile attitudes towards women or gender equality" as harmful to children, and that leaves the rest to what "may cause serious harm to children", there is no guarantee that lawful religious teaching of this kind will remain outside the scope of the Duty.

## The exception for private communications

Section 26B of the Bill 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]

Lawful private communications between adults are protected by name. The government has evidently judged it necessary to place private adult communications beyond the reach of the duty, and has drafted a clause to achieve that outcome. Section 25F excludes news, research, education and "material that is in the public interest", an undefined phrase, but no equivalent provision protects lawful political communication or lawful religious teaching. The Parliamentary Library has confirmed the gap: "there are not express categories of excluded material for parliamentary proceedings, political communications or cultural and religious communications."[20] If the government intends that this framework should never be used to restrict legitimate political or religious speech, we submit that the 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. The objections that follow were directed at the exposure draft's ministerial power to define harm. The government has since removed that power, which confirms they were well founded. We repeat them because the Bill still contains no protection for lawful speech, and because they apply with equal force to what has replaced that power. On 10 September 2026, Opposition Leader Angus Taylor stated at a press conference: "This exposure draft, this bill,

[19] Online Safety Amendment (Digital Duty of Care) Bill 2026 (Cth), as introduced (15 October 2026), sch 2, proposed s 26B.
[20] Parliamentary Library, "Bills Digest No. 26, 2026–27: Online Safety Amendment (Digital Duty of Care) Bill 2026", 23 October 2026, <https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd2627/27bd026>.

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."[21] 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."[22]

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."[23] 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."[24]

On the Bill as introduced, the Parliamentary Library's Bills Digest records Senator Henderson's response: "a legislative dog's breakfast which the Coalition cannot support." She also highlighted "dangerously vague definitions of online harm" and the potential misuse of the Bill's powers for the Commissioner and researchers to use "sock puppet accounts".[25]

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."[26]

## The implied freedom of political communication

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

[21] The Hon Angus Taylor MP, Joint Press Conference, Parliament House, Canberra (10 September 2026).
[22] Ibid.
[23] Senator Matt Canavan, quoted in Liberal Party of Australia (n 6).
[24] Senator Sarah Henderson, quoted in Liberal Party of Australia (n 6).
[25] Parliamentary Library (n 20).
[26] Senator Pauline Hanson, X (formerly Twitter), 8 September 2026, 20:50 UTC <https://x.com/PaulineHansonOz/status/2097427308487569441>.
[27] *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, 559 (the Court).

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 constitutes 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]

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]

---

[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.
[31] Dr Paul Tyson, "A visit to the Hon Anika Wells' office", Gender Critical Philosophical Theology Substack (11 September 2026), <https://gcpt.substack.com/p/a-visit-to-the-hon-anika-wells-office>.
[32] Dr Joanna Howe, quoted in: Rod Lampard, "Labor's Digital Duty of Care: A Trojan Horse Against Faith and Free Speech", *The Daily Declaration* (1 September 2026), <https://dailydeclaration.org.au/2026/09/01/labors-digital-duty-of-care>.
[33] George Christensen, quoted in: ibid.

## Conclusion

The Bill's list of seriously harmful material mostly describes conduct that is already unlawful. The harm definition that matters is the one in section 25E, which treats "hostile attitudes towards women or gender equality" as harmful to children and leaves the rest to "any other material or conduct… that may cause serious harm to children". Section 25F protects news, research, entertainment and the "public interest", an undefined phrase, but names no political or religious communication. That gap, and the absence of any protection for lawful political and religious speech to match the one given to private communications, is the foundation for every other concern raised in this submission. Recommendations 2 to 6 set out the minimum fix.

# 2. The Commissioner's Powers and the Record of Existing Powers

Part 1 of this submission addressed what the Bill treats as harm. This section addresses who holds power under the Bill: the eSafety Commissioner, whose powers the Bill expands, and how comparable powers available to eSafety have already been exercised in practice.

## What the Bill adds to the Commissioner's powers

The exposure draft concentrated its discretion in the Minister. The Bill as introduced moves a good deal of it to eSafety, and adds powers that were not in the exposure draft. We set out four.

First, section 28A allows eSafety, by written notice, to require the person responsible for an online service to provide information about "the functions of a feature, system or process of the service", and to give a person the Commissioner nominates "the access to the service required" to report to the Commissioner. The notice may require information about "the decision-making algorithms of the feature, system or process used to select, order, recommend, promote, restrict or moderate material, accounts or search results" (s 28A(3)(a)). Failure to comply attracts a civil penalty of 6,000 penalty units (s 28A(4)). Those are the systems that decide what Australians see. A Commissioner able to inspect how they rank, restrict and moderate lawful speech acquires a lever over what Australians see and say.

Second, sections 205G to 205M allow eSafety, and approved researchers, to assume "a false or fictitious identity" in the course of using an online service (s 205G). They may do so "despite anything to the contrary in any agreement, contract or deed" (ss 205H(2) and 205J(2)), which overrides a platform's own terms of service. The permitted activities include creating accounts, observing and recording material, engaging with a service and testing its features and responses (s 205K(1)). No outside body authorises the use of an identity. A person who acts in good faith is immune from civil proceedings (s 205L). The Commissioner's annual statement need only summarise the year's activities "in general terms" (s 205M). The Bill creates no offence of misusing an identity. The Bills Digest records Senator Henderson's concern about "the potential misuse of the Bill's proposed powers for the Commissioner and researchers to use 'sock puppet accounts'".[34]

Third, eSafety may add to what platforms must do. A risk assessment must "meet any additional requirements determined by the Commissioner", including requirements about the manner, form and detail of the assessment and "standards, benchmarks or other metrics" (s 27(2)(f)), and the Commissioner may set those requirements by legislative instrument (s 27(4)). A remedial direction, for example under s 26E, is not a legislative

[34] Parliamentary Library (n 20).

instrument, so it does not go through the registration and disallowance process that applies to legislative instruments.

Fourth, review is narrower than the powers. An application may be made to the Administrative Review Tribunal for review of a decision to give a section 28A notice (s 220(1)), and the amendments to s 220(12) appear to extend review to remedial directions. We have found no provision for merits review of a finding that the duty has been breached, which goes instead to civil penalty proceedings. The Institute of Public Affairs has described the framework as one that "will be enforced by the unaccountable Office of the eSafety Commissioner."[35]

## 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.[36] 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.[37]

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 accordingly not made out. The Tribunal did find that an ordinary reasonable person would

---

[35] Andrew 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>.

[36] eSafety 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.

[37] *X 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, "Free Speech Victory in Australia for Billboard Chris as "X" post censorship overturned" (1 July 2025), <https://adfinternational.org/news/free-speech-victory-in-australia-for-billboard-chris-as-x-post-censorship-overturned/>; Rachael Wong, "Billboard Chris and X win major free speech case against Australian eSafety Commissioner", Women's Forum Australia (2 July 2025), <https://www.womensforumaustralia.org/billboard_chris_and_x_win_major_free_speech_case_against_australian_esafety_commissioner>.

regard the material as offensive, but offensiveness alone did not satisfy the statutory test.[38] 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.[39] X Corp geo-blocked the material within Australia but declined to remove it globally. The Commissioner sought a Federal Court injunction requiring wider removal.[40] 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.[41]

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."[42] 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."[43] 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.

---

[38] Ibid.

[39] *eSafety Commissioner v X Corp* [2024] FCA 499 (Kennett J, 13 May 2024) <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2024/2024fca0499>.

[40] eSafety 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>.

[41] eSafety 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.

[42] Tom Crowley, "Bishop Mar Mari Emmanuel wants footage of his stabbing in Wakeley church to stay online, court hears", ABC News (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.

[43] Bishop Mar Mari Emmanuel, address to worshippers, Christ the Good Shepherd Church, Wakeley (15 April 2024), reported in: David Wu, "Bishop Mar Mari Emmanuel not opposed to alleged Sydney church stabbing video staying online due to 'freedom of speech'", 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 2021* 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.[44] 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, through an open residual category of harm to children (s 25E(1)(f)), the Commissioner's power to set additional risk-assessment requirements by legislative instrument (ss 27(2)(f) and 27(4)), and the new powers in s 28A and ss 205G–205M.[45]

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."[46] 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.[47] The same will be true of the powers in this Bill regardless of how any individual dispute is eventually resolved.

## Conclusion

The Bill gives the eSafety Commissioner new powers over the systems that decide what Australians see, and new ways to test how platforms behave. The existing record is directly relevant to how they would be used. 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

---

[44] Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 (Cth), withdrawn November 2024. See also Part 1 of this submission.

[45] Liberal Party of Australia (n 6).

[46] *Online 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.

[47] Human Rights Law Alliance, "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>.

supports the confidence the government is asking Australians to place in broader and more open-ended powers. Recommendations 3, 7, 8 and 9 set 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 what powers the Commissioner holds under it. 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

Section 26C 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.[48] Legal commentators reviewing the exposure draft have calculated the resulting maximum corporate penalty at approximately $109.2 million.[49] 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.[50] 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 Bill 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.[51] 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.[52]

---

[48] Online Safety Amendment (Digital Duty of Care) Bill 2026 (Cth), as introduced (15 October 2026), sch 2, proposed s 26C.

[49] Johnson 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.

[50] Department 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.

[51] Online Safety Amendment (Digital Duty of Care) Bill 2026 (Cth), as introduced (15 October 2026), sch 1 pt 1, for example item 15, amending the *Online Safety Act 2021* (Cth) s 65(1)(c)(i) ("Omit '48 hours', substitute '24 hours'"), with equivalent items for the other removal schemes.

[52] Ibid, 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."[53,54] 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 Bill 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.[55] 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. Government amendments to the Bill widen that power: it now applies where an app or website either was designed for the predominant purpose of generating fake nude material or is predominantly used to do so, rather than only where both are true.[56] 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

[53] Ibid, inserting new s 65(2C) and the equivalent provision applicable to s 88.
[54] Ibid, inserting new s 65(2E) and the equivalent provision applicable to s 88.
[55] Ibid, 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."
[56] Ibid, 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.

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."[57]

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."[58] 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."[59]

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.[60] 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.[61] 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'."[62]

---

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

[58] Daphne 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>.

[59] Felix 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/>.

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

[61] William 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.

[62] Marc 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.

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.[63] We do not think the empirical record allows 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.[64] Its penalties are calculated as a percentage of global turnover, up to 6 per cent, rather than a fixed sum.[65] 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

The Bills Digest records that the Business Council of Australia's submission on the exposure draft had "significant concerns" about how the draft "would operate as drafted", focusing on implementation and compliance burden. It also records Senator Henderson's criticism of the Bill as introduced for "the compliance burden on small businesses".[66] We have not located a statement from an industry body addressed specifically to the penalty and timeframe provisions. 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."[67]

---

[63] Evaluation 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 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.

[64] Regulation (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.

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

[66] Parliamentary Library (n 20).

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

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 complex or unclear... online services will err on the side of caution and act swiftly to contain."[68]

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.[69] 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 10 sets out the fix.

<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."

[68] Squire 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.

[69] eSafety 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.[70] 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."[71]

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."[72] The public messaging changed once the Bill's draft was released. The rationale reported beforehand did not.

## What government and Greens parliamentarians have said

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 think it points out we need Digital Duty of Care so that those messages aren't amplified."[73] Senator Shoebridge has used the same "genocide denial" charge before, over Coalition

---

[70] The 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."

[71] Paul 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."

[72] The 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."

[73] Senator 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>: "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."

comments on Gaza.[74] 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.[75] It won the federal seat of Farrer in May 2026, after Sussan Ley, who had lost the Liberal leadership, resigned from Parliament.[76] Through the middle of 2026, One Nation polled second in South Australia, ahead of the Liberal Party.[77] Even a former Labor campaign strategist has acknowledged "a strong correlation between One Nation's algorithmic success and their support."[78]

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."[79] 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 social media about gender medicine.[80] Months later, Queensland's children's hospital service settled its long-running dispute with psychiatrist Dr Jillian Spencer, discontinuing all

---

[74] Senator 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>.

[75] Australian 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>.

[76] Australian 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 from Parliament of former Liberal leader Sussan Ley.

[77] DemosAU, 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.

[78] Ed 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."

[79] Andrew Leigh, "Transcript - News24 Weekend First Edition - 5 September 2026", <https://www.andrewleigh.com/transcript_news24_weekend_first_edition_5_september_2026>.

[80] Natasha 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.

disciplinary proceedings against her, after she had spent three years suspended for publicly criticising its gender service.[81] Two clinicians, on the same side of a debate this Bill's own "hostile attitudes" category touches directly, each faced professional or disciplinary 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 6 would make sure they cannot be used that way at all.

[81] Children'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."[82] 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. By October, the Greens had indicated they "were willing to work with" the government on the Bill, and wanted it to include a right of private action and fines linked to revenue. The Coalition has said it cannot support the Bill, and One Nation opposes it. The House of Representatives passed the Bill on 28 October 2026, and it is now before this Committee.[83]

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

---

[82] Senator 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."

[83] Senator David Shoebridge, quoted in: Laurence Karacsony and Oscar Godsell, "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.

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 of my ways and to assure me that I did not understand the legislation and had nothing to fear."[84]

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."[85] 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.[86] 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.[87] The Department of Social Services confirms a Commonwealth

[84] Dr Paul Tyson, "A visit to the Hon Anika Wells' office", Gender Critical Philosophical Theology Substack (11 September 2026), <https://gcpt.substack.com/p/a-visit-to-the-hon-anika-wells-office>: "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."

[85] Dr Paul Tyson, "Anika Wells and AI?", Gender Critical Philosophical Theology Substack, (17 September 2026), <https://gcpt.substack.com/p/anika-wells-and-ai>, 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."

[86] Teach 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.

[87] Jordan 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."

grant of $3.8 million over two years to Teach Us Consent under the Promoting Consent Initiative.[88]

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."[89] 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 Committee gives to the government's account of why the Bill is needed and who is asking for it, and it is why Recommendation 12 asks for more than a summary acknowledgment of the concerns this inquiry receives.

[88] Department 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-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.

[89] The 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

The Digital Duty of Care cannot be repaired by amendment. Our primary recommendation follows from that. The remaining recommendations apply only if the Committee does not accept the first.

**1. Reject the Bill.** The Senate should not pass it in this or any amended form.

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

**2. Delete s 25E(1)(c).** Material that "encourages or promotes hostile attitudes towards women or gender equality" describes a viewpoint. It should not be a statutory harm.

**3. Delete s 25E(1)(f).** Confine harm to conduct that is already unlawful. An open category of "any other material or conduct… that may cause serious harm to children" leaves the boundary of lawful speech to the judgement of platforms facing a 60,000-penalty-unit duty.

**4. Protect political and religious speech in s 25F.** Add lawful political communication and lawful religious teaching and practice to the list of excluded material. Define or delete the "public interest" limbs. Amend "professional news material" so that independent publishers are not excluded.

**5. Write the rights into the Bill.** Insert an object and an interpretive provision requiring every power in Part 2 to be exercised consistently with freedom of expression and freedom of religion. The Bill's operative text mentions neither. The Statement of Compatibility in the Explanatory Memorandum, which is not part of the Bill, discusses freedom of expression but not freedom of religion.

**6. Prohibit the suppression of lawful speech.** Include an express statutory prohibition on using the digital duty of care, any instrument or any Commissioner direction to require the removal, restriction or downranking of lawful political communication or lawful religious teaching.

**7. Repeal the sock puppet provisions (ss 205G–205M).** If any are retained, remove the researcher power and require external authorisation, a criminal offence for misuse, independent oversight and detailed annual reporting to Parliament.

**8. Remove s 28A, or place it under court supervision.** The Commissioner should not be able to require access to a service and its "decision-making algorithms" on the Commissioner's own notice.

**9. Put the Minister's remaining instrument powers before Parliament.** Subject instruments under ss 25C(2), 25G(2) and 27A to approval by resolution of each House. Exempt churches

and religious bodies from Part 2 in the Act itself, not by ministerial exemption under s 25B(3).

**10. Reduce the penalty, lengthen the deadlines and narrow the repost provisions.** Cut the maximum civil penalty. Restore the 48-hour period. Amend s 65(2E) and its equivalents so that satire, commentary and news reporting are not captured alongside genuinely unlawful reposts.

**11. Provide review and a complaints route.** Extend merits review to every decision of the Commissioner under Part 2, including any finding that the duty has been breached, and give Australians an independent and accessible way to complain about over-removal.

**12. Extend the consultation period and respond to what is raised.** The Committee has allowed fifteen days, from the Bill's referral on 15 October 2026 to the close of submissions on 30 October, for a 90-page Bill that creates new powers over what Australians may say and see online. That is too short. The Committee should extend the period for submissions and the time for its report, and give a substantive, individualised response to the concerns raised.

# Conclusion

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

The government has conceded part of the case against the Bill. It has withdrawn the Minister's power to add new categories of harm by instrument. It has not withdrawn the rest. The Bill still deems "hostile attitudes towards women or gender equality" harmful to children. It still sets an open standard of "any other material or conduct… that may cause serious harm to children". It still attaches a penalty of 60,000 penalty units to a duty to protect users from harms defined in those terms, and still gives platforms 24 hours to act. It still lets the eSafety Commissioner assume false identities with immunity from civil suit, and it adds a power to inspect the algorithms that decide what Australians see.

A Bill that treats "hostile attitudes towards women or gender equality" as harmful to children, that leaves "any other material or conduct… that may cause serious harm to children" to the judgement of platforms facing a 60,000-penalty-unit duty, 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 Bill whose own supporters have said, on the record, which political opponents they expect it to silence is not a proportionate child safety law.

Christians have particular reason for concern. The Bill's Statement of Compatibility discusses freedom of expression. It does not mention freedom of religion. The Bill's list of excluded material protects news, research, entertainment and the "public interest", an undefined phrase, and names no religious communication. A platform facing a 60,000-penalty-unit duty and an undefined "hostile attitudes" limb has one safe course with a sermon, an article or a post on marriage, sex or the created difference between men and women: remove it. No minister need decide that. The incentive does the work. This is not a speculative fear. Clinicians who have publicly held gender-critical views have already faced professional and disciplinary consequences in Australia, entirely apart from this Bill.

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 a regulator's view of what "may" cause "serious harm".

The Senate should reject the Bill. If it does not, the amendments set out above are the minimum necessary to prevent the harm the Bill would otherwise cause.

# Bibliography

This bibliography lists, by category, every source cited in the footnotes to this submission, with a direct link to each source where an official or otherwise stable URL is available. Full citation details, including pinpoint references, appear at first mention in the relevant Part.

## Legislation and Bills


Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 (Cth). https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7239

*Corporations Legislation (Evidence) Amendment Act 1992* (Cth).

*Crimes Act 1914* (Cth). https://www.legislation.gov.au/Series/C1914A00012

*Enhancing Online Safety Act 2015* (Cth). https://www.legislation.gov.au/Details/C2016C00781

*Online Safety Act 2021* (Cth). https://www.legislation.gov.au/C2021A00076/latest

Online Safety Amendment (Digital Duty of Care) Bill 2026 (Cth), Exposure Draft (8 September 2026). https://www.infrastructure.gov.au/department/media/publications/exposure-draft-online-safety-amendment-digital-duty-care-bill-2026

Online Safety Amendment (Digital Duty of Care) Bill 2026 (Cth), as introduced (15 October 2026), as amended by Government amendments (sheet JI116). https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7553

Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022R2065

*Regulatory Powers (Standard Provisions) Act 2014* (Cth). https://www.legislation.gov.au/Series/C2014A00119


## Case Law


*Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106. http://www.austlii.edu.au/au/cases/cth/HCA/1992/45.html

*Christopher Elston v eSafety Commissioner* (Administrative Review Tribunal, 2024/2583, 1 July 2025). https://archive.org/details/billboard-chris-v-e-safety-commissioner

*Coleman v Power* (2004) 220 CLR 1. http://www.austlii.edu.au/au/cases/cth/HCA/2004/39.html

*eSafety Commissioner v X Corp* [2024] FCA 499. https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2024/2024fca0499

*Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520. https://jade.io/article/67991

LibertyWorks Inc v Commonwealth (2021) 274 CLR 1. http://www.austlii.edu.au/au/cases/cth/HCA/2021/18.html

*Lucy Connolly v R* [2025] EWCA Crim 657. https://caselaw.nationalarchives.gov.uk/ewca/crim/2025/657

*McCloy v New South Wales* (2015) 257 CLR 178. http://www.austlii.edu.au/au/cases/cth/HCA/2015/34.html

*X Corp v eSafety Commissioner* (Administrative Review Tribunal, 2024/2582, 1 July 2025). https://archive.org/details/billboard-chris-v-e-safety-commissioner

## Government and Regulatory Publications

Department 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). https://www.infrastructure.gov.au/department/media/publications/exposure-draft-online-safety-amendment-digital-duty-care-bill-2026

Department 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

Department 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-addendum/teach-us-consent

Deutscher Bundestag, Drucksache 19/28631 (29 June 2021). https://dserver.bundestag.de/btd/19/286/1928631.pdf

eSafety Commissioner, "About the Commissioner" (webpage, last updated 9 March 2026). https://www.esafety.gov.au/about-us/about-the-commissioner

eSafety 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

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

eSafety 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

eSafety 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

Explanatory Memorandum, Online Safety Amendment (Digital Duty of Care) Bill 2026 (Cth) (15 October 2026). https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7553

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

Parliament of Australia, Senate Composition (as at 14 May 2026). https://www.aph.gov.au/Senate

Parliamentary Library, Bills Digest No. 26, 2026–27, Online Safety Amendment (Digital Duty of Care) Bill 2026 (Cth). https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd2627/27bd026

Supplementary Explanatory Memorandum, Online Safety Amendment (Digital Duty of Care) Bill 2026 (Cth) (28 October 2026). https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7553

## Parliamentary and Political Statements

The Hon Anthony Albanese MP, 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

The 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

The Hon Anthony Albanese MP and the Hon Anika Wells MP, Press Conference, Parliament House, Canberra (8 September 2026). https://www.pm.gov.au/media/press-conference-parliament-house-canberra-8-september-2026

Liberal Party of Australia, "Coalition Opposes Labor's Digital Duty of Care Bill in Its Current Form" (Media Release, 10 September 2026) [quoting Senator Matt Canavan, Senator Sarah Henderson, and the Hon Anika Wells MP]. https://www.liberal.org.au/2026/09/10/coalition-opposes-labors-digital-duty-of-care-bill-its-current-form

Senator 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

Senator Pauline Hanson, X (formerly Twitter), 8 September 2026. https://x.com/PaulineHansonOz/status/2097427308487569441

Senator David Shoebridge, ABC Radio National Breakfast (17 September 2025). https://web.archive.org/web/20251102033715/https://www.abc.net.au/listen/programs/radionational-breakfast/green-reax-shoebridge/105786238

Senator David Shoebridge, quoted in Laurence Karacsony and Oscar Godsell, "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

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

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

## Academic and Legal Literature

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

William Echikson and Olivia Knodt, Germany's NetzDG: A Key Test for Combatting Online Hate (CEPS/Counter Extremism Project, November 2018).

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

Marc Liesching et al, Das NetzDG in der praktischen Anwendung: Eine Teilevaluation des Netzwerkdurchsetzungsgesetzes (HTWK Leipzig / Carl Grossmann Verlag, 24 March 2021).

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

## News Media

Australian Broadcasting Corporation, Farrer By-Election Results (9 May 2026). https://www.abc.net.au/news/elections/farrer-by-election-2026

Australian 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

Tom Crowley, "Bishop Mar Mari Emmanuel wants footage of his stabbing in Wakeley church to stay online, court hears", ABC News (24 April 2024). https://www.abc.net.au/news/2024-04-24/bishop-emmanul-wants-stabbing-footage-injunction-extended/103764228

Rod Lampard, "Labor's Digital Duty of Care: A Trojan Horse Against Faith and Free Speech", *The Daily Declaration* (1 September 2026). https://dailydeclaration.org.au/2026/09/01/labors-digital-duty-of-care

Tom McIlroy and Luca Ittimani, "'Global reckoning for big tech': Australia to force social media platforms to allow users to opt out of algorithms", *The Guardian* (8 September 2026). https://www.theguardian.com/australia-news/2026/sep/08/australia-social-media-algorithm-switch-off-opt-out-digital-duty-of-care

netzpolitik.org, report on Liesching et al, Das NetzDG in der praktischen Anwendung (24 March 2021). https://netzpolitik.org/2021/netzwerkdurchsetzungsgesetz-studie-zeigt-schwaechen-bei-gesetz-gegen-hassrede-auf/

Nick Newling, "Algorithm Shake-Up Will Hurt Right-Wing Parties, Censorship Fight Heats Up", *Sydney Morning Herald* (9 September 2026) [quoting Ed Coper]. https://www.smh.com.au/politics/federal/algorithm-shake-up-will-hurt-right-wing-parties-censorship-fight-heats-up-20260908-p60vd0.html

Natasha 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

Paul 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

David Wu, "Bishop Mar Mari Emmanuel not opposed to alleged Sydney church stabbing video staying online due to 'freedom of speech'", 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

## Advocacy, Industry, and Professional Commentary

ADF International, "Free Speech Victory in Australia for Billboard Chris as "X" post censorship overturned" (1 July 2025). https://adfinternational.org/news/free-speech-victory-in-australia-for-billboard-chris-as-x-post-censorship-overturned/

Jordan 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

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

Andrew 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

Andrew 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

Dr 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/

Human Rights Law Alliance, "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

Johnson 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/

Meta, "Types of Content We Demote" (Transparency Center, updated 2 July 2025). https://transparency.meta.com/features/approach-to-ranking/types-of-content-we-demote

Squire 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/

Teach Us Consent, "Fix Our Feeds" campaign page and "About" page. https://www.teachusconsent.com/fix-our-feeds

Rachael Wong, "Billboard Chris and X win major free speech case against Australian eSafety Commissioner", Women's Forum Australia (2 July 2025). https://www.womensforumaustralia.org/billboard_chris_and_x_win_major_free_speech_case_against_australian_esafety_commissioner

## Other Primary and Self-Published Sources


Alex Antic, "Misinfo and Disinfo 2.0" (YouTube video transcript, 11 August 2026). https://www.youtube.com/watch?v=gys0fhStMp0

Bishop Mar Mari Emmanuel, address to worshippers, Christ the Good Shepherd Church, Wakeley (15 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

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

Children'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

DemosAU, South Australian state voting intention polling (2026). https://demosau.com/news/support-climbs-for-one-nation-in-south-australia/

Dr Paul Tyson, "A visit to the Hon Anika Wells' office", Gender Critical Philosophical Theology Substack (11 September 2026). https://gcpt.substack.com/p/a-visit-to-the-hon-anika-wells-office

Dr Paul Tyson, "Anika Wells and AI?", Gender Critical Philosophical Theology Substack, (17 September 2026). https://gcpt.substack.com/p/anika-wells-and-ai