

22 September 2026

By email to: digitaldutyofcare@communications.gov.au

SUBMISSION ON EXPOSURE DRAFT *ONLINE SAFETY AMENDMENT (DIGITAL DUTY OF CARE) BILL 2026*

Thank you for the opportunity to provide a submission on the proposed amendments to the *Online Safety Act 2021* (Cth). Our comments are limited largely to the digital duty of care (DDOC) provisions.

Who we are

Children and Media Australia (CMA) is the national peak not-for profit body representing the interests of children as media consumers. Its mission is to support families, industry and decision makers in building and maintaining an enjoyable media environment that fosters the health, safety and wellbeing of Australian children. Its membership includes major national education, welfare and parent organisations.

CMA's core business is to collect and review research and information related to children and the media; to provide information and advice on the impact on children of print, electronic and screen-based media; to provide reviews of movies and apps from a child development perspective; to advocate for the needs and interests of children in relation to the media; and to conduct and act as a catalyst for relevant research.

Further information about this submission can be obtained from CMA's President, Professor Elizabeth Handsley, at [president\[at\]childrenandmedia.org.au](mailto:president[at]childrenandmedia.org.au).

General support

CMA has been a strong supporter of the online safety reforms introduced up until now, and would like also to express our general support for the current proposals.

Children's rights

CMA believes that the proposals in the Exposure Draft have the potential to enhance support and protection for the rights of Australian children, referring particular to the following provisions of the United Nations Convention on the Rights of the Child (UNCRC):

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- Article 13, on the child's right to freedom of expression and information
- Article 16, on the child's right to privacy
- Article 17, on the child's right to access a variety of material via the mass media (subject to protection from injurious content)
- Article 18, on parents' right to assistance in raising their children and protecting their rights

Since the drafting of the UNCRC, a consensus has emerged on the proposition that modern children have a right to access the online world safely.¹ This right requires attention to both of the key elements: access and safety. It is not enough simply to expect children to keep away from the internet because it is unsafe for them. There are positive obligations to make it safe, to which these proposals make an important contribution.

Children in the Exposure Draft

CMA is pleased to see the addition of 'protecting Australian children online' as an object of the Act (cl 3(b)). The Australian public – and indeed the world – has come to a clear realisation of the range of significant risks children face when they go online, and it is only fitting that these be given express recognition.

It would be helpful if the amendments, or the accompanying documents, made it clearer how this legislation articulates with the Social Media Minimum Age (**SMMA**) legislation. Some might think that there is little need to protect children's interests here because all but older adolescents are, supposedly, not experiencing some of the most problematic platforms any more. To this there are two obvious responses: first, there are significant gaps in SMMA, in particular the exemptions for gaming, messaging and health or education services. Many of the harms that this Bill seeks to avoid can occur just as easily in the areas not covered by SMMA as in those that are. Second, this legislation (and its administration) needs to be realistic about the fact that there will always still be some under-16s present on age-restricted platforms. This is not to suggest that the SMMA legislation is not worth having, but a simple recognition that no legislation is 100% effective; and quite conceivably some of those who get through the net are also some of the most vulnerable, and most in need of the support and protection that this Bill will provide. CMA believes it is worth taking steps to make sure that this is widely understood – why children have their place under this regime, just as much as anybody does.

The Bill seeks to protect children from '**material and conduct that is harmful to**' them (cl 25B(1)(b)). CMA suggests that this would be better framed as a matter of what risks causing harm to children. The use of the term 'harmful' tends to imply that harm must be inevitable, which in turn is likely to raise expectations of proof of an impact on one or more identified individuals. The legislation should close off any opportunity for providers to resort

¹ See eg Committee on the Rights of the Child, *General Comment No. 25 (2021) on children's rights in relation to the digital environment* (CRC/C/GC/25).

to this kind of thinking, which is likely to limit the effectiveness of the amendments in protecting children's interests.

Another reason to frame the protection in terms of risk is that this is what **research evidence** on children's wellbeing as media users tends to identify: risk factors, rather than inevitable harm. The use of the same language in the statute will facilitate reliance on research to shape practices and decision-making under the Act. This is a matter that CMA sees as highly desirable, if not imperative. Assertions about material and conduct that harm, or risk harming, children should not be a matter of impression, or morality, but founded on rigorous, high-quality research. For these reasons we submit, for example, that there should be a reference to the need to rely on research evidence when the Commissioner is exercising the power under cl 25D(2) to determine that material or conduct may cause harm to children.

CMA has no objection to the list of matters in cl 25D of **material and conduct that is harmful to children**, provided it retains the catch-all in para (f)(i). However, for the reasons set out above, we suggest replacement of 'could inflict serious harm to a child' with 'risks inflicting serious harm on children'. The use of the word 'risks', as explained above, would underline the link back to research evidence, and facilitate the use of such evidence in the implementation of the Act. We are also suggesting the replacement of 'a child' with 'children', to maintain the population-level focus, and avoid any suggestion that there is any need to prove harm, or even risk, to a particular person or persons.

CMA believes further that **'harm to children' should be defined** in such a way as to refer to healthy physical, mental, spiritual, moral and social development, in keeping with the provisions of the UN Convention on the Rights of the Child (UNCRC; see especially articles 6 and 27). With respect, what appears to be a definition in cl 25E is not a definition, but rather a statement about what harm *can be caused by*. It does not tell us what harm *is*. Further, while it might be beyond the scope of this particular exercise, we would suggest that this kind of definition of 'harm' be introduced uniformly across all legislative efforts to protect children's interests as media users, for example the *National Classification Scheme* and the *Broadcasting Services Act 1992* (Cth).

In cl 25D(1)(c), we suggest repeating the word 'towards' before **'gender equality'** in order to make it clear that the item is identifying hostile attitudes towards gender equality as harmful, not suggesting that it is harmful to encourage or promote gender equality.

Ministerial and administrative powers

The powers that the Bill would grant to the Minister are, we understand, among its most heavily criticised aspects, and we can see why. We accept the need for flexibility, to keep up with new technological developments as they emerge, but we can see a grave risk of misuse of such a power – perhaps not this year or next year, but we cannot predict what turns Australian politics might take and what kinds of people might hold office in the future. In the wrong hands, these powers could be truly damaging to democracy.

This observation would counsel against enshrining in the legislation a power such as the one in **cl 25D(2)**. Moreover, we wonder whether the catch-all in cl 25D(1)(f)(i) (amended as suggested above) might not suffice to extend the DDOC to any new kinds of harmful material or conduct. It is worth remembering that part of the point of a DDOC is to place the responsibility on providers to identify risks and mitigate harms; therefore it should be acceptable to give a **broad, principles- and evidence-based definition** of 'harm', and leave it up to them to identify any new instances as they emerge. Again, speaking at least for children, there is much to be said for a reference back to their rights under the UNCRC and well-accepted evidence regarding what they need for healthy development. We note also that many of the matters listed in cl 25D(1) echo the provisions of article 29 of the UNCRC, the matters to which children's education should be directed. These could be incorporated by reference into the legislation, in order to guide providers' actions and decisions under the DDOC. This would obviate the need to put sweeping powers into the Minister's hands regarding the outer limits of what is considered harmful.

CMA also has reservations about the proposed power under **cl 25A(3)**, which could open the way to putting undue pressure on a Minister in the future. If a service poses little risk or is little used in Australia, then the DDOC will not be very onerous for it, and there is no justification for an exemption. Moreover, even if a service poses little risk to users in one year, that does not mean the risk will be equally small in future years. Yet it will be very difficult to revoke an exemption, once granted.

Similarly, the Commissioner's power in **s 26F** to determine requirements for complaints processes and classes of online services seems considerably broader than is needed. We worry that such broad powers could be struck down under the freedom of political communication, or perhaps simply not used, as there is so little to guide them. Again we would be in favour of a tightening-up of these powers to what is strictly necessary for the operation of the Act.

There may also be a case for introducing a more sophisticated **process** to inform some of what is currently proposed as a ministerial decision. We understand that legislative instruments can be disallowed by Parliament, and we note that some of the Minister's powers require consultation with the Commissioner. However, these would be a very weak protection in the event of an unscrupulous government. Perhaps some use could be made of the existing parliamentary committee system to provide scrutiny of any proposed exercise of these powers.

CMA would also see significant value in establishing a **panel of experts**, including developmental psychologists and professional educators, to advise on matters such as what should be considered harmful. We understand that such a body could not usurp the power of Parliament, but it could help to ensure that issues are sufficiently aired before the event when the Minister's power is being exercised.

User empowerment tools

CMA has no objection to the introduction of user empowerment tools, but we note that these are unlikely to be very much use for less sophisticated users, such as children. We would also suggest that it would be more consistent with the concept of a DDOC to require providers to come up with their own tools, rather than having these prescribed by the Minister under cl 26(4) (and see further above on broad ministerial powers).

More generally, CMA questions whether user empowerment fits well within the logic of a DDOC. The two approaches to online safety seem to proceed on different assumptions, and might even be in tension in some ways. That is, the DDOC aims to shift responsibility onto providers, but ‘empowerment tools’ flip it back onto users. If the content or algorithms are harmful (or risky), and this is a sufficiently serious matter to warrant legislation, it seems illogical to give users the ability to put themselves in harm’s way and call it ‘empowerment’.

Enforcement

The Bill provides for a good range of enforcement mechanisms, but CMA suggests it would be consistent with the design of this scheme, and greatly beneficial to its effectiveness, if it provided also a private right of action, and/or a power for the Commissioner to initiate litigation for harm caused, similar to that which the ACCC has under the Australian Consumer Law. This would empower users and increase the likelihood that resources will be allocated where harm is greatest; and perhaps most importantly it should increase the motivation of providers to take the DDOC seriously. Thinking of the parallel to civil liability for personal injury, insurance companies and actuaries there play a significant part in quantifying risk. They could beneficially play a similar role here.

Other matters

CMA suggests:

- Limiting the **response time under cl 26A(3)(c)** to 14 days, rather than 30, to remove any incentive for providers to take a ‘wait and see’ attitude as to whether they will be requested to provide an assessment
- The various **statements of penalty units** should specify what these extend to – for example is the penalty per day, per instance of harmful content disseminated?
- A definition of the important concept of ‘**reasonably practicable**’ that does not repeat the word ‘reasonable’. Or perhaps there is no need to use the word to modify ‘practicable’. Surely anything that is practicable is also reasonable.

*******END OF SUBMISSION*******