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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**ONLINE SAFETY AMENDMENT (DIGITAL DUTY OF CARE) BILL
2026**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and New Clauses to be Moved on Behalf of the Government

(Circulated by authority of the Minister for Communications the Hon Anika
Wells MP)

ONLINE SAFETY AMENDMENT (DIGITAL DUTY OF CARE) BILL 2026

OUTLINE

These parliamentary amendments make technical corrections and changes and provide additional clarity for provisions that exclude material from the scope of harms captured by the digital duty of care, to be inserted by the Online Safety Amendment (Digital Duty of Care) Bill 2026 (the Bill).

The Bill was introduced into the House of Representatives on 15 October 2026.

The amendments to the Bill will ensure the validity of industry codes and standards during the implementation period for the digital duty of care, provide additional clarity on excluded material from the scope of harms, and makes technical corrections and changes, including to ensure the effective and efficient operation of the Bill upon commencement.

FINANCIAL IMPACT STATEMENT

The amendments are not expected to have an impact on Commonwealth expenditure.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Online Safety Amendment (Digital Duty of Care) Bill 2026

The amendments to the Bill are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the amendments

The amendments to the Bill will ensure the validity of industry codes and standards during the implementation period for the digital duty of care, provide additional clarity on excluded material from the scope of harms, and makes technical corrections and changes, including to ensure the effective and efficient operation of the Bill upon commencement.

Human rights implications

A Human Rights Statement was prepared for the Bill. The statement is amended to reflect the additional rights engaged by the amendments to the Bill:

- the right to freedom of expression primarily contained in Article 19 of the International Covenant on Civil and Political Rights (the ICCPR) and referred to in Articles 12 and 13 of the Convention on the Rights of the Child (the CRC) and Article 21 of the Convention on the Rights of Persons with Disabilities (the CRPD)
- the best interests of the child, contained in Article 3(1) of the CRC and Article 24(1) of the CRC
- the right to protection from exploitation, violence and abuse primarily contained in Article 20(2) of the ICCPR, and also referred to in Article 19(1) of the CRC and Article 16(1) of the CRPD.

These rights, and how they are engaged by the Bill, are discussed below.

Freedom of expression

Rights relating to freedom of expression are recognised by Article 19 of the ICCPR and Articles 12 and 13 of the CRC. Article 19 of the ICCPR recognises the right to hold opinions without interference, the right to

freedom of expression, and that the exercise of this right may be subject to certain restrictions. Article 19 of the ICCPR and Article 13 of the CRC limits the types of restrictions that may be imposed, relevantly, to such restrictions as are provided by law and are necessary either for respect of the rights or reputations of others or the protection of national security, public order, health or morals.

The amendment protects the right to freedom of expression by narrowing the definition of seriously harmful material or conduct. The explicit exclusion of class 2 material and excluded material from the list of seriously harmful material or conduct reflects the threshold of serious harm and the severity of harms in scope.

The amendment further protects the right to freedom of expression by clarifying the list of excluded material under the Duty. The amendment redefines material produced for the sole purpose of entertainment to focus on ‘on-demand’ programming and classified film or computer games other than class 1 or class 2 material.

This refined focus ensures the excluded material is limited to material that is, or has already been, provided on a television service and has therefore been subject to relevant broadcasting rules, as well as material that has been classified under the National Classification Scheme. The intention of this provision remains to exempt lawful and legitimate communications related to matters such as news reporting, professionally produced entertainment, or the public interest.

The limitation on the right to freedom of expression is necessary and proportionate to the Bill’s objective in protecting Australians from serious online harm and in promoting the best interests of the child. In line with the overall objective of the Bill, the focus will remain on the obligation on a service provider’s risk management and systems and processes, rather than on the sharing of individual pieces of content or activity.

The amendment is consistent with the right to freedom of expression, as the restrictions are provided for by law, and are necessary for respect to the rights and reputation of others, or for the protection of national security, public order, health or morals. The measures in the amendment have been crafted to ensure that any risk to freedom of expression is mitigated, that they are

reasonable and proportionate to achieving the legitimate policy objective of providing Australians with recourse to legal action.

Best interests of the child

The best interests of the child is recognised by Article 3(1) of the CRC, which requires legislative, administrative and judicial bodies to take active measures to protect children's rights, promote their wellbeing and consider how children's rights and interests are or will be affected by their decisions and actions.

The amendment engages the best interests of the child by ensuring children are protected from age inappropriate and potentially harmful material online. By clarifying the list of excluded material under the Duty, particularly as it relates to class 2 material, providers will be required to protect children from X18+ and R18+ content.

This approach reflects that children generally require greater protections from harmful content than adults. This approach is in line with the existing Act, including obligations under the Online Safety Codes created under the Online Content Scheme to protect children from age-inappropriate material.

The right to protection from exploitation, violence and abuse

The right to protection from exploitation, violence and abuse is primarily contained in Article 20(2) of the ICCPR and other related conventions. These conventions require Australia to take measures to protect persons from exploitation, violence and abuse.

The amendment promotes the right to protection from exploitation, violence and abuse by ensuring existing protections are maintained during the transition period. The amendment further clarifies the scope and intention of the provision to protect the validity of industry codes and standards during the period of transition to the Duty, extending protections and limiting any gaps in protection during the transition period.

Conclusion

The amendments to the Bill are compatible with human rights because to the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate.

NOTES ON AMENDMENTS

ONLINE SAFETY AMENDMENT (DIGITAL DUTY OF CARE) BILL 2026

Amendments 1 and 2 – Removal of fake nude material

Amendments 1 and 2 replace “and” with “or” to clarify that, for the purposes of section 86B, an app or website available in Australia may be subject to a removal notice if the Commissioner is satisfied that it meets either of the below tests:

- was designed for the predominant purpose of generating fake nude material,
- is predominantly used by end-users to generate fake nude material.

Either of these conditions would be sufficient to trigger the issuance of a removal notice.

Amendments 3 and 4 – Industry codes and industry standards

The purpose of these amendments is to further clarify the scope and intention of the provision to protect the validity of industry codes and standards during the period of transition to the commencement of the digital duty of care. They provide that the validity of industry codes and standards made under Division 7 of Part 9 of the Act is not affected, and is taken never to have been affected, by a failure to comply with specified consultation requirements for industry codes and industry standards.

Amendment 5 – Seriously harmful material or conduct

Amendment 5 provides that for the purposes of section 25D, seriously harmful material or conduct does not include excluded material or class 2 material. This is required as a consequence of amendment 6 which provides that class 2 material is not excluded material.

Amendments 6 to 8 – Excluded material

Amendments 6, 7 and 8 amend provisions relating to excluded material to provide a more streamlined framework, narrow certain definitions and include a new exclusion for on-demand program service.

Amendment 6 omits paragraph 25F(1)(c) and substitutes it with:

- c. material as follows that is produced for the sole or dominant purpose of entertaining individuals:
 - i. audiovisual content made available by an on-demand program service;
 - ii. material contained in a film or computer game that has been classified under the *Classification (Publications, Films and Computer Games) Act 1995* other than class 1 material or class 2 material;

On-demand program service relies on an existing definition under section 18 of the *Online Safety Act 2021* and means a service that is provided to users using an internet carriage service and the service provides material identical to a program that has been, or is being, transmitted on commercial, subscription or broadcast television.

Including the definition of on-demand program service within the list of exclusions from harms captured under the digital duty of care provides an exception for legitimate and lawful communications and media content provided by on-demand services. Importantly, this definition is narrow in scope and only extends to content which is, or has been, transmitted by services or platforms which hold a broadcasting licence or are a national broadcaster.

Paragraph 25F(1)(c)(ii) extends the existing provision to include ‘material contained in a film or computer game that has been classified under the *Classification (Publications, Films and Computer Games) Act 1995* other than class 1 material or class 2 material’ as seriously harmful material or conduct. Class 1 material has been included here for the avoidance of doubt to ensure that this material is not treated as excluded material under the digital duty of care. Class 2 material has also been listed to ensure that it is not excluded material where it is also captured as ‘harmful to children’ (see amendment 5 for an explanation of how this applies to adults).

Amendment 7 adds a note at the end of subsection 25F(1) providing that certain films classified under other Acts are taken to be classified under the *Classification (Publications, Films and Computer Games) Act 1995*: see section 6HA of that Act. Section 6HA provides that content classified under the *Broadcasting Services Act 1992* is deemed to be classified under the *Classification (Publications, Films and Computer Games) Act 1995*.

This amendment explains the applicability of the exclusions extends to content classified under the *Broadcasting Services Act 1992*, which includes community television broadcasters.

Amendment 8 omits the following definitions in subsection 25F(3):

- broadcasting video on demand service
- commercial radio broadcasting service
- commercial television broadcasting service
- national radio broadcasting service, and
- national television broadcasting service.

These definitions are omitted as they are no longer required due to the change in amendment 7 which extends section 25F to content classified under the *Broadcasting Services Act 1992*.

Amendment 9 – Determining what is appropriate and effective

This is a minor amendment which clarifies that the reference to paragraph (e) in subsection 26A(2) is a reference to paragraph 26A(1)(e).

Amendments 10 and 11 – Risk assessments

These amendments clarify that the references made at paragraphs 27(2)(f) and 27(3)(a)(i) to matters determined by the Commissioner, are references to the Commissioner’s power to make an instrument under subsection 27(4).

Amendments 12 – User empowerment tools

These amendments provide clarification that the reference to ‘the tool’ at paragraph 27A(1)(b) is a reference to ‘user empowerment tools’ specified by an instrument made under section 27A.

Amendment 13 – Compliance with risk assessments

This amendment provides further clarification regarding the actions relating to risk assessments that are enforceable under section 27B, by making explicit references to an online service’s obligation to conduct risk assessments (27(3)(a)), retain them for 6 years (27(3)(b)) and make them available to the Commissioner upon request (27(3)(c)).

Amendment 14 – Complaint and dispute processes

These amendments clarify references in section 27G to the Commissioner’s power to make an instrument under subsection 27G(3).

Amendment 15 – Information to be published

This amendment further clarifies that an instrument made under section 192L applies to all persons responsible for online services that fall within the class of online services specified by the instrument.