

22 September 2026

Digital Duty of Care Consultation

Department of Infrastructure, Transport, Regional Development, Communications, Sports and the Arts

Via email: digitaldutyofcare@communications.gov.au

To the Secretariat,

Re: Submission on the Exposure Draft - Online Safety Amendment (Digital Duty of Care) Bill 2026

The Eros Association welcomes the opportunity to comment on the Exposure Draft of the Online Safety Amendment (Digital Duty of Care) Bill 2026.

About The Eros Association

Eros is Australia's adult industry association. For more than 30 years, Eros has represented businesses involved in the sale, distribution and provision of adults-only products, publications, media and entertainment services across Australia. These businesses are predominantly small businesses.

Our members support sensible and proportionate measures to address genuine online harms.

However, we recommend that the Draft Bill be amended to ensure that the Digital Duty of Care is genuinely risk-based and proportionate, while protecting lawful communication and legitimate online activity.

We are also concerned that this Draft Bill would impose substantial and disproportionate compliance obligations on small businesses and individual online service providers.

Thank you for considering our following response to the Exposure Draft.

Kind regards,

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Submission on the Exposure Draft - Online Safety Amendment (Digital Duty of Care) Bill 2026

Protection of Lawful Material

Lawful online content, including educational information about sexual health and wellness, consent, sexuality, drug user harm reduction and sex work has been routinely censored and removed, and resulted in accounts being shadow banned or terminated, and advertising material being rejected by platforms.

The Draft Bill does not contain any express protections for this lawful content.

We recommend there should be clear protection for lawful material published for legitimate purposes, including:

- health and medical information, in particular sexual health;
- educational and research material, in particular sex education;
- drug user harm reduction;
- material published for informational, artistic or documentary purposes;
- journalism and news reporting; and
- political communication and public debate.

The absence of such protections creates a risk of regulatory overreach and increases the risk of wrongful removal or excessive moderation of lawful material.

The Draft Bill contains only a narrow express exception; 26 (7) provides that the digital duty of care doesn't require action concerning lawful private communications occurring solely between consenting adults.

Annual Written Risk Assessments - Significant Compliance Burden

Section 26A requires a provider of an online service to conduct a written risk assessment.

These assessments must:

- identify foreseeable risks, not just those relevant to a digital duty of care;
- be updated annually (or at shorter intervals as directed by the eSafety Commissioner);
- be retained for a minimum of six years; and
- be provided to the eSafety Commissioner within 30 days of a request.

This compliance burden applies to all services, no matter their scale. This is a significant administrative obligation for a small business. For many of Eros's members, their online presence may simply be a conventional website or online platform with no recommender algorithm, personalised feed, artificial intelligence system, bot network or other sophisticated interactive technology.

The Government's 26 May 2026 Digital Duty of Care framework paper contemplated obligations being "...proportionate to a service's risk profile and their opportunity to address risks in the chain of service provision to users". The Draft Bill should reflect these principles.

A small business cannot reasonably be expected to maintain compliance infrastructure comparable with multinational technology companies such as Meta, Google or X.

A small business should not be required to undertake a complex annual assessment of algorithmic or design-related risks that are simply not present in or operated by the business.

We recommend that:

- small businesses be subject to a substantially simplified risk-assessment process;
- businesses with demonstrably low-risk services be permitted to complete a short-form assessment;
- businesses with no recommender systems, algorithmic feeds, AI systems or comparable design features should not be required to assess risks associated with features they do not operate; and
- the Commissioner's power to require additional assessment requirements or shorter assessment intervals be subject to clear and transparent risk-based criteria.

Ministerial Powers - Harmful Material and other matters

The Draft Bill gives the Minister broad discretionary powers to determine additional categories of seriously harmful material or conduct, as well as design features considered to have negative behavioural impacts.

Any additional categories should be supported by transparent evidence, clear statutory criteria and an assessment of regulatory impact.

Conclusion

Eros supports effective measures to detect and remove the most serious unlawful online material. However, these measures must be proportionate, transparent and carefully targeted to avoid restricting lawful content and imposing unnecessary regulatory burdens.

We recommend that the Draft Bill be amended to provide:

- simplified and proportionate obligations for small and low-risk businesses;
- differentiation according to business size, reach, functionality and risk;
- clear protections for legitimate health, education, research, journalism, political communication, other lawful material and fundamental rights;
- clearer and more precise definitions of harm;
- stronger statutory criteria and procedural safeguards governing ministerial and regulatory discretion.

Eros thanks you for the opportunity to provide this submission and welcomes ongoing consultation regarding online safety reform.

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