Digital Harm Prevention Policy 2026 — DHP-P 2026/01

Specific online-harm prevention within the general freedom-of-expression framework.

Revision 2 · 27 September 2026.

Coordinated drafting basis
One general rights test. One set of specific online categories. Child-only restrictions preserve lawful adult access. Government moderation demands require valid statutory notices, with reasons, records and review.

1 Determination

This paper proposes Australian Government policy on the prevention of specified digital harms. It converts the public demand to stop child-sexual exploitation, image-based abuse, suicide-instruction pipelines and industrial-scale pornography aimed at minors into an operational instrument that can be legislated without handing a Minister a catalogue of ideas.

Child protection is a legitimate end. An expandable ministerial catalogue of "harm," enforced by 60,000 penalty units (the figure advertised as up to $109.2 million for a body corporate), is a speech law wearing a safety vest. This policy keeps the first. It kills the second.

This paper is the policy parent of the Online Safety Amendment (Digital Harm Prevention) Bill 2026. That Bill amends the Online Safety Act 2021. It is not an amendment of the Albanese Government's Online Safety Amendment (Digital Duty of Care) Bill 2026. That exposure draft, released on 8 September 2026, is to be withdrawn. It is not to be improved into existence.

On adoption, departments administering the Online Safety Act 2021, the Classification (Publications, Films and Computer Games) Act 1995, the Criminal Code Act 1995 and the Australian Communications and Media Authority Act 2005 are to apply this paper until the companion Act commences and, after commencement, consistently with it.

Operative rule Every restricted category of material lives in the Act. No speech-restrictive category may be added by legislative instrument, industry code, standard, notice or ministerial satisfaction. A notice that cannot name a statutory category is void.

2 Status of the 8 September 2026 exposure draft

The Albanese Government released an exposure draft of the Online Safety Amendment (Digital Duty of Care) Bill 2026 on 8 September 2026. Consultation closes at 12 noon on 22 September 2026. Feedback is capped at five pages. The Department has said it will n ot publish submissions. No explanatory memorandum has been published. Simplified outlines in the draft remain "to be drafted."

The draft is not law. It has not been introduced. This policy treats it as a drafting choice that must be rejected, not as a text to be bargained into a slightly narrower duty.

Position: oppose the draft in its present form. Do not amend it into existence. Withdraw it. Legislate the Digital Harm Prevention amendments set out in the companion Bill.

3 Purpose

3.1 Prevent the distribution of material that is already illegal under Commonwealth law, with particular force against child-sexual exploitation material, pro-terror material and image-based abuse, including synthetic "nudify" output.

3.2 Protect children from a closed list of age-restricted harms defined in the statute in classification language, not in factional slogans.

3.3 Give every user aged 16 years or over a durable statutory right to switch off personalised engagement ranking on a large social media service.

3.4 Preserve the implied freedom of political communication and Australia's obligations under article 19 of the International Covenant on Civil and Political Rights by forbidding viewpoint categories and ministerial expansion of speech restrictions.

4 The problem this policy treats as established

4.1 What the exposure draft actually does

Do not debate the press conference. Debate the 8 September 2026 text.

Proposed section 25A puts internet carriage services, social media services, relevant electronic services, designated internet services, hosting services, internet search engine services, app distribution services, equipment manufacturers and installers, a nd AI-generation services inside the duty. A person "responsible" for the service is the provider or anyone in a position of day-to-day control. The Minister may exempt a service or class by instrument if satisfied it poses "little risk" or is "used minimally in Australia" (proposed s 25A(3)).

The same office that writes the duty decides who is out.

Proposed section 26(1) requires every person responsible for an online service to "ensure, so far as is reasonably practicable, a safe online environment." To comply, the person must manage design features, conduct written risk assessments under proposed section 26A, and take "effective measures." Failure is a civil penalty of 60,000 penalty units (proposed s 26B). The same figure attaches to ignoring a remedial direction (proposed s 26D).

"Safe online environment" (proposed s 25B) means adults protected from "seriously harmful material and conduct," children protected from "harmful to children" material and from design-feature harms, and - on social media - design features with "negative be havioural impacts" switched off for Australians under 16.

The Minister may declare that a service is or is not social media for that last limb (proposed s 25B(2)).

"Reasonably practicable" (proposed s 25H) weighs likelihood, degree of harm, knowledge, cost and privacy.

It does not weigh freedom of expression or political communication. The only speech-adjacent carve-out is proposed section 26(7): no action is require d on lawful private communications solely between consenting adults. Public posts, ranking, search, group spaces and AI outputs stay in.

4.2 The two lists

Proposed section 25C ("seriously harmful material and conduct") covers ground a narrow Bill should keep:

child-sexual exploitation and abuse, grooming, sexual violence, extreme violence, rape and death threats, menacing or harassment intended to cause seri ous harm, suicide and self-harm instruction, sadistic exploitation, animal cruelty, listed terrorist organisations, praising terrorist acts, illicit-drug instruction and abhorrent violent conduct.

Then the list breaks. Proposed section 25C(1)(j) takes in material that "encourages, promotes, incites or provides instruction for the commission of a criminal offence" - any offence, not only serious indictable crime. Proposed section 25C(1)(m) plus 25C(2) lets the Minister add "any other material or conduct" she is satisfied "may cause serious harm."

Proposed section 25D ("harmful to children") is the political list: pornography; material that encourages, promotes or provides instruction for disordered eating; material that encourages or promotes hostile attitudes towards women or gender equality; mate rial that glorifies crime or encourages dangerous stunts or harmful practices; abuse, harassment or bullying; any other material or conduct that could inflict serious harm to a child; and whatever the Minister adds under proposed section 25D(2).

Paragraph (c) is viewpoint language. It is not "incitement to violence against women." Paragraph (f)(i) is a residual so wide it makes the rest of the list decorative. Eating-disorder instruction is a real harm. "Hostile attitudes towards gender equality" is a factional phrase with a penalty behind it.

4.3 Six instrument powers - the real engine

The draft gives the Minister legislative-instrument powers to add new "seriously harmful" material or conduct (s 25C(2)); add new "harmful to children" material or conduct (s 25D(2)); deem extra design features to have "negative behavioural impacts" (s 25G(2)); exempt services or classes from the Part (s 25A(3)); declare that a service is or is not social media for the under-16 feature ban (s 25B(2)); and require specified services to provide specified "user empowerment tools," "without limitation" as to how they are specified (s 26(4)).

Proposed section 27B requires the Minister to seek the eSafety Commissioner's advice first. Advice is not a veto. The instruments are disallowable. That is the entire safeguard. The words "freedom of expression" do not appear in the draft. A Parliament that votes for this is not voting for a list of harms. It is voting for a machine that can grow new harms without a new Act.

4.4 The decoy

"My Feed, My Way" is a press release. In the draft, user controls are whatever tools the Minister specifies by instrument under proposed section 26(4). That power can create a real chronological opt-out. It can also create something else. Feed choice is a statutory right written in the Act, or it is not a right.

5 Findings - design defects treated as established

5.1 "Harm" is a political solvent

A duty of care works in workplace law because the harm (a crushed hand, a fall from a roof) can be described.

Online "harm" in the draft includes "hostile attitudes towards women or gender equality," anything that "could inflict serious harm to a child," and two ministerial residuals that turn on what the Minister is "satisfied may" cause harm. Proposed section 25E even says harm can be caused by material or conduct "whether or not engaged in or experienced by a user of an online service."

Vague harm fails the first discipline of a free society: a citizen and a company must be able to know the rule before the fine. It also fails article 19(3) of the International Covenant on Civil and Political Rights, which demands that restrictions be "provided by law" - meaning precise, accessible, and not a moving target.

5.2 The duty privatises censorship

The Commonwealth will never have to ban a viewpoint if Facebook, Google, TikTok, OpenAI and every forum host will suppress it to stay on the safe side of a $109 million risk. That is not a side-effect. That is the enforcement model. The state sets an elast ic standard. Private firms, terrified of systemic findings, apply a tighter standard. Parliament keeps its hands clean. The speech still disappears.

Comparisons with seatbelts and toys are dishonest. A seatbelt standard does not require Toyota to guess next year's definition of a crash. This duty requires platforms to guess next year's definition of a bad idea.

5.3 Section 25D(1)(c) is viewpoint discrimination

The draft's words are "encourages or promotes hostile attitudes towards women or gender equality." If that means incitement to violence against women, use the criminal law that already exists. As written it is a political filter. The same clause will be read, by a different government, against radical gender theory, against religious teaching on sex, or against whoever lost the last culture war. A serious legislature does not enact a weapon and trust its own side to hold it forever.

5.4 Instrument powers make the Act a husk

If harm categories and design-feature lists can be added by instrument, the Parliament is not settling the boundary of lawful speech. It is outsourcing it. Section 27B and Senate disallowance are weak checks.

Compatibility statements, when they eventually appear in an explanatory memorandum that does not yet exist for the exposure draft, will be written by the same department that wants the power.

5.5 Systems duties swallow political communication

Once ranking, discovery, amplification and model outputs sit under a general safety duty against undefined psychosocial harm, the public square of 2026 is the regulated object. Australia's implied freedom of political communication is not a personal First Amendment. It is a limit on laws that burden communication about government and political matters without being reasonably appropriate and adapted to a legitimate end. A systems duty that predictably suppresses contested political speech about sex, crime, immigration, medicine and the government itself is exactly the kind of burden the High Court is for.

5.6 The ICCPR argument

Australia signed the International Covenant on Civil and Political Rights on 18 December 1972 and ratified it on 13 August 1980. Article 19(1) of the Covenant - the right to hold opinions without interference - cannot be restricted. Article 19(2) covers se eking, receiving and imparting information and ideas of all kinds, regardless of frontiers, through any media, including ideas that offend. Article 19(3) allows limits only if they are provided by law, directed to a listed purpose (respect of the rights or reputations of others, or the protection of national security, public order, public health or morals), and necessary and proportionate.

Australia has not enacted a federal Human Rights Act. Article 19 is a binding international obligation and a scrutiny standard under the Human Rights (Parliamentary Scrutiny) Act 2011, not a free-standing federal cause of action. That does not make it deco rative. It is the test the Commonwealth itself recites in compatibility statements. On that test the exposure draft is weak where it is vague, weaker where a minister can enlarge it, and weakest where a nine-figure penalty produces collateral suppression of lawful political speech.

Children's rights pull the other way. They justify targeted rules. They do not justify a general power to treat adult political argument as a child-safety defect and then apply the same machinery across the open internet.

5.7 Mission creep from a bill that could not pass

The misinformation and disinformation project died because too many people noticed that "false and harmful" is a political weapon. The Digital Duty of Care is the successor technology: drop "false," keep "harm," move from content takedown to systems liabil ity, and dare opponents to look as if they want teenagers on pornography and suicide forums. That is competent politics. It is contemptuous legislating.

5.8 eSafety as a standing speech office

Give a regulator removal notices, document compulsion, faster clocks, a duty to assess "systems," and penalties that matter to global firms, and you have built an institution that will expand. Institutions do. The personal virtue of any particular Commissioner is irrelevant. The incentive is the policy. A replacement statute shrinks the office back to illegal and clearly defined child-harm material, with merits review that is real, and with an express political-communication lock a court can use.

5.9 Surveillance travels with the duty

A duty to prevent foreseeable harm at systems level pushes firms toward more identity, more age assurance, more logging, more scanning. Some of that is justified for Class 1 material. Applied to "hostile ideas" and self-esteem features it becomes a reason to end practical anonymity in ordinary political speech. Anonymity is not a licence to commit crimes. It is often the only reason a nurse, teacher, soldier or public servant will criticise a government program.

5.10 Fourteen days is not consultation on a speech architecture

The exposure draft landed on 8 September 2026. Feedback closes at noon on 22 September 2026, capped at five pages, with no guarantee of publication. That is not how a liberal parliament treats a law that can restructure the public sphere.

6 What is rejected and what is retained

General safety duty. Reject an open-ended duty to ensure a safe online environment. Retain reasonable steps against specified statutory material categories.

Viewpoint categories. Reject hostile ideas and political attitudes as standalone harm categories. Retain independently established criminal threats, exploitation, intimate-image abuse and defined child protections.

Ministerial expansion. Reject speech-restrictive additions by instrument. Retain primary legislation as the means of changing the categories.

Residual harms. Reject open-ended psychosocial or wellbeing categories. Retain the four specific child-list categories and their non-instructional exclusions.

Penalties. Reject large penalties for undefined risk paperwork. Retain court-imposed penalties for systemic material failures, with a reasonable-systems defence, and a separate ranking-choice duty.

Feed design. Reject government-prescribed opinion filtering or favoured sources. Retain a durable user choice between engagement ranking and chronological or follow-only feeds.

Fast removal. Retain urgent valid notices for specified Class 1 and intimate-image material, with reasons, statutory categories and review.

Coordination. Apply the Free Speech rights framework cumulatively with the specific Digital Harm Prevention duties; do not exempt either package from the other.

7 Replacement architecture

7.1 Illegal-material duty - defined and enforceable

Covered providers must take reasonable steps to prevent distribution of the six categories in proposed section 43E:

(a) Class 1 material;

(b) child-sexual exploitation material, including the child-grooming material specified by the Bill;

(c) pro-terror material whose production or distribution independently constitutes an offence under Part 5.3 of the Criminal Code; praise or opinion alone is not sufficient;

(d) non-consensual intimate images, including synthetic images;

(e) material whose creation or distribution constitutes the specified Commonwealth offences concerning threats to kill, stalking, cyberflashing or criminal non-consensual publication of personal information;

(f) instruction in a Commonwealth offence punishable by imprisonment for at least five years, excluding an offence consisting only of expression of an opinion.

The list is closed. Illegal material is a regulatory label and does not itself create a criminal offence of possession or expression. Class 1 classification and criminality are not automatically identical.

Reasonable steps include feasible disruption of known child-sexual exploitation material, rapid response to valid notices and no wilful blindness. They do not require pre-empting lawful opinion or scanning lawful private communications solely between consenting adults.

A court may impose the material-duty civil penalties only for systemic failure, with a reasonable-systems defence. A confined notice may address a single item under its own power and safeguards, but a single missed item does not itself establish systemic failure.

7.2 Closed child-protection list

For users the provider knows or reasonably ought to know are under 18, the provider must take reasonable steps to prevent recommendation or, where technically feasible, supply of the following four categories only:

(a) material classified X18+ or Refused Classification on the ground of sexual activity, or equivalent unclassified material;

(b) material that instructs in suicide or a method of serious self-harm;

(c) material that instructs in a method of an eating disorder;

(d) material that instructs in, or directly encourages, the commission by a child of an indictable offence under Commonwealth, State or Territory law.

Discussion, memoir, news reporting, research, recovery information and lived experience do not fall within (b) or (c) unless they instruct in a method. Depicting, reporting or commenting on crime alone does not fall within (d).

This list is closed. It cannot be enlarged by an instrument, code, standard, notice or ministerial satisfaction. It does not include an opinion, hostility towards a viewpoint, a residual possibility of harm, mental wellbeing, self-esteem or social cohesion as a freestanding category.

The child list is a rule about access by children, not a general prohibition on lawful adult access. Persons aged 16 or 17 retain these child protections while also receiving the ranking choice in section 7.3. Age assurance must be proportionate and privacy-preserving.

7.3 User feed control, without a state algorithm

Large social media services must offer every user aged 16 years or over a durable control: personalised engagement ranking, or a reverse-chronological or follow-only feed. The choice must persist. It must not reset after an “update.” The service may not dark-pattern the user back into the engagement feed. The Commonwealth must not prescribe a replacement ranking, a “public interest feed,” or a list of favoured sources.

That would be a state algorithm. This policy rejects it.

7.4 Speech safeguards and relationship with Free Speech Policy

The Free Speech framework supplies the general rights test. The Digital Harm Prevention framework supplies the specific online duties and closed statutory categories. Neither is a blanket exception to the other. A restriction must identify both its statutory power and its permitted category, satisfy necessity and proportionality, protect lawful opinion, and remain subject to court and merits review. Material on the child-protection list alone may be restricted for children; that listing does not authorise its removal from lawful adult access.

The companion Bill makes the Article 19(3) test directly applicable to online restrictions, whether or not the Free Speech Act has yet commenced. No political, religious, scientific or moral opinion is restricted solely because of its viewpoint. No delegated instrument may create a new restricted category. Existing section 233 protection for the implied freedom and section 15A of the Acts Interpretation Act 1901 are preserved.

Commonwealth Ministers, officers and regulators must not seek removal, restriction, demonetisation, down-ranking or refusal to generate particular material except by a valid statutory notice. A notice must identify the enabling power, the applicable statutory category, the material, the required action, reasons, the compliance period and review rights. A child-list notice must be confined to preventing recommendation or supply to children and must preserve lawful adult access. Prohibited informal requests must be recorded whether or not the provider complies. Recording never validates a request. A neutral report of suspected unlawful conduct to police, an application to a

court, or the provision of evidence without a request or pressure for moderation is not an informal takedown demand. An officer who knowingly presents a non-binding request as legally compulsory commits an offence punishable by 60 penalty units.

Providers must keep records of statutory notices and attempted informal government moderation requests. Providers relying on a Commonwealth statutory safe-harbour must publish quarterly aggregate reports, separating action under statutory notices, action following prohibited informal requests, and independent terms-of-service moderation. The Commissioner must publish an annual aggregate report covering all valid notices and recorded attempted requests. Reports must protect personal information, victims, confidential journalistic sources and lawful investigations. These obligations do not authorise retention or republication of unlawful imagery. Other providers supply the relevant aggregate records for the annual report.

7.5 Regulator and review

The Commissioner retains powers over the statutory illegal-material list and child-only access restrictions over the closed child-protection list. Existing schemes operate only to that extent and subject to their existing procedural safeguards. Child cyber-bullying is not an additional open-ended category under this coordinated package; a notice must identify material falling within a permitted statutory category.

Provider information-gathering is confined to suspected systemic failure on the two lists, verification of ranking-choice compliance, or transparency reporting. It may not be used to inspect opinions or to demand ordinary users' records about another person's speech. Any compulsory demand for those user records requires independent judicial authority under an existing law, tied to specified illegal material; this policy creates no new warrant power.

Notices and system directions are reviewable by the Administrative Review Tribunal. Invalid notices must be stayed. Civil penalties are imposed only by a court, with the systemic-failure threshold and reasonable-systems defence for the material duties. The Commissioner remains independent in individual cases. The Minister cannot enlarge the harm list.

7.6 What this policy will not do

It will not ban adults from seeing lawful pornography. It will not force identity display for ordinary political speech. It will not revive the misinformation bill under another name. It will not let a minister declare a newspaper column, a sermon, a feminist essay or a men’s-rights rant a “harm category.” It will not pretend that Silicon Valley is innocent. Reckless product design aimed at children can be attacked with the closed list and with consumer law. It does not require a speech solvent.

8 Human rights this policy applies

8.1 Treaties written out

International Covenant on Civil and Political Rights, opened for signature 16 December 1966, [1980] ATS 23 (entered into force for Australia 13 November 1980), article 19 (freedom of opinion and expression) and article 24 (protection of the child as required by status as a minor).

Convention on the Rights of the Child, opened for signature 20 November 1989, [1991] ATS 4 (entered into force for Australia 16 January 1991), article 19 (protection from all forms of physical or mental violence, injury, abuse, neglect, maltreatment or exploitation, including sexual abuse) and article 34 (protection from all forms of sexual exploitation and sexual abuse).

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, [2007] ATS 6.

Those instruments inform this policy. Domestic enforceability depends on applicable Australian law; the companion Bill expressly enacts the stated speech safeguards. Children’s rights justify the closed list and the illegal-material duty. They do not justify viewpoint categories aimed at adult political argument.

8.2 Implied freedom

A law that burdens political communication must be reasonably appropriate and adapted to serve a legitimate end in a manner compatible with the constitutionally prescribed system of representative and responsible government (Lange v Australian Broadcasting Corporation (1997) 189 CLR 520; McCloy v New South Wales

(2015) 257 CLR 178; LibertyWorks Inc v Commonwealth (2021) 274 CLR 1). Precision is part of that test. A residual "could inflict serious harm" category plus a ministerial add-on plus a nine-figure systems penalty is not precision.

9 Legislative instructions

9.1 Vote against introduction of the Online Safety Amendment (Digital Duty of Care) Bill 2026 in the form described in the 8 September 2026 exposure materials.

9.2 If the government proceeds with that draft, circulate amendments that strip ministerial harm-designation, delete "hostile ideas" and residual psychosocial categories, lock categories into the Act, insert the speech lock in section 7.4 of this paper, and detach feed-choice into a short standalone schedule.

9.3 Do not accept a "we will fix it in codes" deal. Codes written under a vague duty reproduce the duty.

9.4 Move for a proper inquiry with published submissions and more than ten business days. A speech architecture does not get a fortnight and a five-page cap.

9.5 If the government refuses to narrow the bill, vote it down. A bad duty with a free-speech recital is still a bad duty.

9.6 Introduce the companion Bill. Do not wait for the exposure draft to be withdrawn as a precondition of drafting the alternative.

10 Answers to the predictable smear

10.1 "You want children on pornography and suicide forums."

No. This policy is more specific, and therefore more enforceable, on those exact harms. A vague duty is weaker where it matters, because platforms will spend their compliance budget on political risk and call it safety.

10.2 "Other democracies do duty of care."

The United Kingdom and European Union models are not holy writ, and both are already producing over -removal. Copying a foreign error is not leadership. If those statutes contain viewpoint phrases and ministerial add-ons, do not import the infection.

10.3 "Freedom of expression is not absolute."

Correct. Article 19(3) of the International Covenant on Civil and Political Rights and the implied freedom both allow limits. They require precision, a legitimate end, and proportionality. "Hostile ideas" plus a minister plus $109 million is not that test. It is an evasion of it.

10.4 "eSafety is independent."

Independence from a party room is not independence from institutional incentives. Give any office a systems duty over "safety" and it will discover more unsafety. That is what offices do.

10.5 "This is just like workplace health and safety."

A factory does not have a constitutional function of political communication. A public square does. Analogies that erase that fact are propaganda.

11 Immediate actions

11.1 The original policy proposed a submission by 22 September 2026. That date has passed. Publish any submission already lodged and use this coordinated revision for subsequent parliamentary advocacy.

11.2 Publish the submission. The Department has said it may not publish yours.

11.3 Demand that the government table the exposure draft's human-rights compatibility analysis against article 19 of the International Covenant on Civil and Political Rights and the implied freedom of political communication, in detail, not as a paragraph.

11.4 Senators should prepare a disallowance posture now for any later instrument that adds a harm category.

Do not wait until the instrument is buried in a sitting week.

11.5 Attach feed-choice to the companion Bill so it cannot be held hostage to a general duty.

12 Administration

12.1 Portfolio responsibility sits with the Minister for Communications, with the Attorney-General on implied-freedom and Covenant compatibility, and with the Minister for Home Affairs on Class 1 and pro-terror material.

12.2 The eSafety Commissioner administers the illegal-material duty, the closed child list, image-based abuse and the notice powers confined by the speech lock.

12.3 The Australian Communications and Media Authority has no role in designating speech categories.

12.4 Review of this policy begins within three years of commencement of the companion Act.

13 Closing determination

Child-sexual exploitation, image-based abuse and defined child-access harms require effective enforcement. Restrictions remain subject to clear statutory authority, necessity, proportionality and review. Strong enforcement and speech safeguards operate together.

It does not have the right to smuggle a standing power over lawful political argument into that brutality. "Safe online environment," "hostile ideas," and a minister who can add harms later are not child protection. They are the misinformation project after a costume change.

A serious country writes the banned list in an Act, points the fine at crime, gives adults a switch for the ranking engine, and leaves the argument about sex, gender, God, crime and government where it belongs: in public, where it can be answered.

Withdraw the Digital Duty of Care Bill. Legislate the Digital Harm Prevention amendments. Anything else is an admission that the children were the pretext.

14 Document control

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Also: International Covenant on Civil and Political Rights article 19; Human Rights Committee General Comment No. 34; Online Safety Act 2021 section 233; Classification (Publications, Films and Computer Games) Act 1995; Criminal Code Act 1995.

Authority: Alecomm policy proposal, coordinated revision 2. Not an adopted Commonwealth policy or an official parliamentary publication. Read with Free Speech Policy FS-P 2026/01 revision 2, both companion Bills and both explanatory memorandums. Historical analysis and political positions are retained from the source paper; this revision aligns the operative proposals.