2025–2026

The Parliament of the Commonwealth of Australia

HOUSE OF REPRESENTATIVES

ONLINE SAFETY AMENDMENT (DIGITAL HARM PREVENTION) BILL 2026

EXPLANATORY MEMORANDUM

(Circulated by authority of Alecomm (Australian Legislative Ethics Commission))

EM-DHP 2026/01

Revision 2 · 27 September 2026

Explains the revised online duties, cumulative rights safeguards and coordinated commencement.

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.

General outline

1. The Bill amends the Online Safety Act 2021 to impose reasonable-steps duties concerning specified material, protect children against a closed statutory list, give users aged 16 and over a durable ranking choice on large social media services, and constrain government moderation demands. It is the operational companion to the Free Speech Bill 2026.

2. The coordinated arrangement has two cumulative components: the general freedom-of-expression standard in the Free Speech Bill, and the specific categories, duties and notice powers in this Bill. Neither supplies a blanket exception to the other. The online safeguards also operate independently before the Free Speech Act commences.

3. The Bill replaces the source package's mismatch between a three-category eSafety limit and the broader Digital Harm Prevention lists. It does not add a general power to control offensive opinions. The child list remains four categories and supports child-only access restrictions, not a general ban on lawful adult material.

4. The policy continues to oppose the general Digital Duty of Care approach described in the original September 2026 policy paper. This Bill amends the principal Online Safety Act, not the opposing exposure draft. A statement in this Bill cannot itself withdraw another Bill or exposure draft; the transitional provision simply denies incorporation or validation of that text.

5. The new Part is inserted after existing Part 3, using sections 43A to 43T, including 43JA and 43MA. This corrects the earlier draft's use of 25-series numbering after Part 3. Existing Part 2 concerns the Commissioner; Part 3 concerns complaints and investigations. The original references to an intimate-image Part 5A have been corrected to Part 6.

Financial and regulatory impact

6. No standing appropriation is created. Administration uses the existing Commissioner, courts and Administrative Review Tribunal. Notices, reporting, review and compliance verification will entail administrative and provider costs; these have not been independently costed. No quantified saving or net fiscal benefit is asserted.

7. Covered providers must maintain reasonable material-prevention systems. Duties scale with feasibility and the service's circumstances. The ranking choice applies only to services meeting the one-million-active-Australian-account threshold. Ordinary carriage of another person's traffic does not alone attract the new systems duty.

8. The material-duty penalties are reserved for systemic failure. The Bill does not turn a single missed item into systemic liability. A separate confined notice may address an individual item and be enforced by injunction. The reporting scheme uses compliance orders rather than automatic loss of a safe-harbour.

Statement of compatibility with human rights

9. This assessment is prepared in the form of a statement under the Human Rights (Parliamentary Scrutiny) Act 2011. It explains the intended justification; it is not a judicial determination of compatibility.

10. The Bill engages freedom of opinion and expression under ICCPR Article 19, privacy under Article 17, fair hearing under Article 14, child protection under Article 24, and protection from exploitation and violence under the Convention on the Rights of the Child, including Articles 19 and 34. The Optional Protocol concerning the sale of children, child prostitution and child pornography is also relevant.

11. The right to hold an opinion remains protected. A measure restricting expression must be precise, pursue a permitted purpose, and be necessary and proportionate. Section 43JA enacts that discipline for individual notices and general preventative duties. A ministerial assertion of child protection is not conclusive proof.

12. The illegal-material duty and child-access duty limit distribution or recommendation. Their intended purposes are protection of others' rights, public order and health, and protection of children. The statutory categories, reasonable-steps standard, child-only scope, exclusions for non-instructional material, reasons, review and court oversight limit overreach.

13. The label illegal material is a regulatory definition. Inclusion does not itself create a new criminal offence of possession or expression. For example, Class 1 status is a classification category; any criminal liability must be established under its own statute. The separate pro-terror definition is tied to an offence under Part 5.3 of the Criminal Code and does not create an opinion-only praise offence.

14. A closed list is an important safeguard but does not make every application proportionate. The person imposing a restriction must connect the material and proposed measure to a specific threat. Child-risk prevention can be assessed at the category and delivery-system level without waiting for an identified child to be injured. It cannot be justified solely by disagreement with an opinion.

15. Lawful adult access must be preserved where the only ground is the child list. If a technically effective child-only restriction is unavailable, that fact does not automatically justify general removal. The reasonable-steps standard and proportionality assessment govern the response.

16. Age assurance must be proportionate. Legal-name display is not a condition of political participation under this Bill. Existing privacy law and social-media minimum-age provisions continue. The Bill does not establish universal identity verification or compulsory scanning of lawful private adult communications.

17. Records and reports are aggregate and limited. They must protect victims, users, confidential journalistic sources and lawful investigations, and must not reproduce unlawful imagery. Any deferral is limited to affected details and reviewed periodically. Retention is two years, not indefinite.

18. The new offence concerns a knowing misrepresentation of legal compulsion by a Commonwealth Minister or officer. It does not punish a mistaken legal assessment without the required knowledge. The prosecution bears the criminal burden. Civil material penalties require a court; the reasonable-systems defence carries an evidential burden for the provider.

19. The package is designed to be compatible with the identified rights, subject to careful application and final legislative settlement. The broader Free Speech Bill's incitement test is not an additional element of these civil duties. Equally, these duties are not exempt from the general rights test.

Notes on clauses

Clause 1 - Short title

20. The proposed Act is the Online Safety Amendment (Digital Harm Prevention) Act 2026.

Clause 2 - Commencement

21. Sections 1 to 5 and Schedule 2 commence on Royal Assent. Schedule 1 commences on the 28th day after Assent. The coordination item applies whichever companion Act commences first. The period permits preparation but is not an exemption from existing law.

Clause 3 - Objects

22. The objects cover specified material, the closed child list, ranking choice for users aged 16 and over, speech safeguards and limits on systemic powers. Describing the ranking choice as a user right avoids treating 16- and 17-year-olds as adults for child protection.

Clauses 4 and 5 - Schedules

23. These provisions give the Schedules effect. Schedule 1 amends the principal Act; Schedule 2 addresses application and coordination.

Schedule 1 - Digital harm prevention

Item 1 - New Part 3A

24. The inserted Part follows existing section 43. The division headings within it are part of the inserted text. It supplies duties, rights, safeguards and a confined notice power in a single scheme.

Section 43A - Outline

25. The outline summarises the duties and closed categories. It does not enlarge any operative power or excuse material independently satisfying a restricted category merely because it includes an opinion.

Section 43B - Definitions

26. A child is a person under 18. Covered services include the specified online service types and AI services enabling generation and sharing. An internet carriage service is excluded merely in its capacity as a carrier.

27. Engagement ranking uses predicted engagement rather than chronology or express follow choices. A large social media service has at least one million active Australian accounts in a calendar month. The provider is responsible; ordinary staff and contractors are not automatically liable by their employment status.

28. Class 1 material uses the principal Act's meaning. Synthetic intimate imagery is defined by depiction and absence of relevant consent. Pro-terror material is tied to independently criminal production or distribution under Part 5.3; offensive opinion alone is insufficient.

Section 43C - Constitutional basis

29. The communications, corporations and external-affairs powers support the proposed operation to their respective extents. The implied freedom is a limitation and construction principle, not a separate head of legislative power. Final constitutional coverage remains a matter for parliamentary counsel and courts.

Sections 43D and 43E - Material duty and closed categories

30. Providers must take reasonable steps against distribution of the listed material. Feasible hash-matching or equivalent disruption of known child-sexual exploitation material, action on valid notices and avoidance of wilful blindness are relevant. The duty is not a guarantee that no unlawful item will ever appear.

31. The six limbs concern Class 1 material; child-sexual exploitation; the defined pro-terror category; non-consensual intimate imagery including synthetic imagery; specified Commonwealth offences involving threats to kill, stalking, cyberflashing or criminal publication of personal information; and instruction in Commonwealth offences punishable by at least five years, excluding opinion-only offences.

32. The list cannot be enlarged by subordinate instrument, code, standard, notice or ministerial satisfaction. Listing does not itself establish a criminal offence. Reasonable steps do not include pre-empting lawful opinion, scanning lawful communications solely between consenting adults, or identity-verifying adults for political communication.

Sections 43F and 43G - Closed child-protection list

33. The duty applies where a provider knows or reasonably ought to know that a user is under 18. It concerns recommendation and, where technically feasible, supply. The four categories are:

(a) X18+ or sexually explicit Refused Classification material and equivalent unclassified material;

(b) suicide or serious self-harm method instruction;

(c) eating-disorder method instruction;

(d) instruction or direct encouragement of an indictable offence by a child.

34. Discussion, memoir, news reporting, research, recovery and lived experience are excluded from the two method categories unless they instruct in a method. Depicting, reporting or commenting on crime alone is excluded from the fourth category. The exclusions apply to substance, not a publisher's label.

35. The list excludes freestanding viewpoint and residual harm categories. Section 43JA confines child-list-only notices to child access and preserves lawful adult access. Users aged 16 or 17 retain this protection even though eligible for ranking choice.

Section 43H - Durable ranking choice

36. Large services must offer users aged 16 and over a choice between engagement ranking and a reverse-chronological or follow-only feed, or both. The choice persists across sessions, linked devices and updates and must not be defeated by dark patterns.

37. No government replacement algorithm, favoured-source list or public-interest feed is authorised. The section is a specific user right, not a delegated power to prescribe additional tools or content preferences.

Sections 43J, 43JA and 43K - Speech safeguards

38. Viewpoint alone cannot justify removal, suppression, demonetisation, down-ranking or refusal to generate material. Independently established statutory elements remain enforceable subject to the rights test. The implied freedom remains protected.

39. Section 43JA makes necessity and proportionality operative, preserves adult access, and states cumulative operation with Free Speech Act sections 8 to 12. It applies even if the Free Speech Act has not yet commenced. It does not purport to entrench an ordinary Act against future parliamentary amendment.

Section 43L - Categories remain in the Act

40. A delegated measure cannot create a new restricted category. A Minister's satisfaction is not a substitute for legislative authority.

Section 43M - Formal notices, prohibited requests and transparency

41. A Commonwealth actor seeking action against particular material must use a valid statutory notice. The notice must specify the enabling power, precise statutory category, material, action, reasons, time and review rights. A category alone is not a power. Invalid requests have no legal effect.

42. The ban extends to informal pressure for moderation, not merely letters falsely styled as legal demands. Neutral evidence-sharing without moderation pressure, police reports, court applications and general policy statements are preserved within the defined exceptions.

43. Knowingly presenting a non-binding request as legally compulsory is an offence carrying 60 penalty units. The general prohibition does not automatically make every informal contact a criminal offence; the stated elements must be proved.

44. Every valid notice and attempted prohibited request must be recorded, including those refused. Compliance does not legalise an invalid request. Safe-harbour-reliant providers publish quarterly aggregate reports; other covered providers supply annual aggregate records; the Commissioner publishes one annual consolidated report.

45. A reporting failure may lead to an application for a court compliance order after notice and time to respond. It does not automatically destroy a safe-harbour. The Free Speech Bill references this scheme instead of duplicating it.

Section 43MA - Confined notice power

46. This is an express source of power, addressing the original draft's reliance on notices without a sufficiently explicit new notice mechanism. General notices may concern section 43E material. Section 43G-only notices may require reasonable child-access measures following failure of the child duty.

47. Reasons, evidence, reasonable timing and an opportunity to respond are required, with a post-issue opportunity for urgency. Existing notice powers retain their own safeguards. A notice can be enforced by Federal Court injunction but does not itself establish systemic failure.

Item 2 - Section 233

48. The replacement preserves the implied-freedom limitation and the existing relationship with section 15A of the Acts Interpretation Act 1901. Powers must also comply with the viewpoint and proportionality provisions. Courts consider precision, the statutory category and chilling effects without having their constitutional function displaced.

Sections 43N to 43Q - Enforcement and penalties

49. A penalty for breach of the material or child duty requires systemic failure. A single missed item is not enough. The provider may raise a reasonable-systems defence on an evidential burden. Undefined safety-culture or psychosocial paperwork is not a penalty ground.

50. The corporate maximum is 60,000 penalty units for section 43D and 10,000 for section 43F or 43H. The non-corporate maximum is one-fifth of the corresponding maximum. These are the expressly stated maxima, not amounts to be multiplied again by a general corporate multiplier. The dollar value depends on the applicable penalty-unit law; this memorandum does not equate them to the opposing proposal's advertised dollar figure.

51. All penalties require a court. The systemic-failure threshold and reasonable-systems defence apply to sections 43D and 43F, not as a blanket exemption from the distinct ranking-choice duty.

Section 43R - Review

52. Removal or system directions and large-service decisions are reviewable in the Administrative Review Tribunal. A valid notice continues unless stayed. A non-compliant notice or a general adult takedown based solely on the child list must be stayed. Judicial review and Free Speech Act remedies remain available.

Section 43S - Information-gathering

53. Provider compulsion is confined to suspected systemic failure, verification of ranking-choice compliance or reporting. The latter two purposes avoid leaving the ranking right and transparency scheme unenforceable. Opinion fishing is prohibited.

54. Ordinary users' records about others' expression are not subject to compulsion under the new Part. Any compulsory access requires independent judicial authority under existing law tied to specified illegal material, with applicable source protection. No new warrant power is created.

Section 43T - Ministerial limits

55. The Minister cannot add harm categories, deem additional design features for speech restrictions, or prescribe additional empowerment tools through the prohibited instrument powers.

Item 3 - Section 86A: urgent compliance

56. Specified Class 1, exploitation and intimate-image notices carry a 24-hour period, with a shorter justified period to prevent further distribution to a child. Search and app-store action concerning the specified synthetic-intimate-image services also has a 24-hour clock. Validity, reasons, proportionality and review remain necessary.

Item 4 - Existing schemes

57. Parts 5, 6, 7, 8 and 9 continue only within the permitted categories and safeguards. Child cyber-bullying is not an extra open-ended category under this coordinated draft; independently qualifying conduct remains addressable under the applicable list and power. Part 4A minimum-age rules are not amended.

Schedule 2 - Application and coordination

58. Item 1 defines commencement day. Item 2 makes the new duties prospective. Item 3 preserves existing notices only to the extent consistent with the closed categories, child-only limits and safeguards; a replacement compliant notice may be issued under a valid power.

59. Item 4 does not enact or validate the opposing exposure draft. Item 5 permits preparation during the commencement interval. Item 6 requires a review within three years and timely tabling.

60. Item 7 makes order of commencement neutral. Before the new scheme begins, coordination clauses create no new power and do not dismantle existing schemes. Once both Acts operate, general rights and specific online rules apply cumulatively. There is one reporting scheme and one misrepresentation offence, not duplicates.

Drafting and review record

61. The source policy's broader political analysis is retained in the policy paper. This memorandum describes the revised Bill rather than adopting every historical or legal assertion in the original commentary.

62. Before introduction, parliamentary counsel should settle constitutional coverage, all consequential amendments to existing notices and civil-penalty machinery, interaction with classification rules, statutory service definitions, and the interaction with the final Free Speech Bill. Proportionality of the listed categories remains reviewable; a closed list is not a conclusive human-rights finding.

Sources and companion documents

Online Safety Act 2021, latest compilation consulted: C2026C00396, 12 September 2026, Federal Register of Legislation: https://www.legislation.gov.au/C2021A00076/latest/text

ICCPR Article 19 and General Comment No. 34:
https://www.ohchr.org/sites/default/files/english/bodies/hrc/docs/gc34.pdf

Digital Harm Prevention Policy DHP-P 2026/01 revision 2; Online Safety Amendment (Digital Harm Prevention) Bill DHP-B 2026/01 revision 2; Free Speech Bill FS-B 2026/01 revision 2 and EM-FS 2026/01 revision 2.

End of EM-DHP 2026/01, coordinated revision 2.