



Digital Duty of Care Consultation
Department of Infrastructure, Transport, Regional Development, Communications,
Sport and the Arts
Via email: digitaldutyofcare@communications.gov.au

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

AIVL—Australian Injecting and Illicit Drug Users League welcome the opportunity to respond to the exposure draft of the *Online Safety Amendment (Digital Duty of Care) Bill 2026* (the Bill).

1. About AIVL

- 1.1 AIVL is the Peer-led peak organisation representing our network of peer-based harm reduction and Drug User Organisations in Australia and New Zealand. AIVL is funded by the Australian Centre for Disease Control to reduce the impact of blood borne viruses among people who use drugs, and to advocate for the health, wellbeing and human rights of the more than four million Australians who use drugs. Our work, and that of our members, is grounded in peer expertise and harm reduction.
- 1.2 This submission has been informed by consultation with AOD sector colleagues through the AOD Briefing on the Digital Duty of Care Exposure Draft (coordinated by the Alcohol and Drug Foundation and Curtin University), and by the AIVL Communications Network, whose members have direct, ongoing experience of platform content moderation affecting harm reduction communications.

2. Executive summary and recommendations

- 2.1 AIVL supports the underlying intent of a digital duty of care: protecting Australians, particularly children, from genuinely harmful online content and exploitative design. However, the Bill as currently drafted risks seriously undermining public health and harm reduction by treating evidence-based, government-aligned drug information as “*seriously harmful material and conduct*”. This would have a chilling effect on lifesaving communication, place onerous and disproportionate obligations on small peer-led organisations and expose harm reduction and AOD workers to legal and reputational risk.

2.2 Our recommendations are:

- R1. Amend section 25C(1)(j) and (k) to expressly exclude evidence-based drug-related public health and harm reduction information from the definition of “*seriously harmful material and conduct*”.
- R2. Amend section 25A to expressly exclude community- and peer-led AOD and harm reduction organisations providing public health, harm reduction, blood borne viruses and STIs, sexual and reproductive health, and domestic and family violence information from the definition of “*online service*”, rather than relying on discretionary ministerial exemption (s 25A(3)).
- R3. Require a clear, accessible appeal and redress mechanism for lawful public health content that is removed, restricted or shadow banned, and require guidelines under s 26E to be codesigned with peer-based organisations and people with lived-experience of drug use.
- R4. Ensure the Bill does not incentivise identity verification or increased collection of identifiable information as a condition of accessing harm reduction content, given the criminalised status of some drug use in Australia.
- R5. Scale risk assessment and compliance obligations (s 26A) to organisational size and resourcing, consistent with the European Union’s proportionate, tiered approach under the *Digital Services Act 2022* (EU).
- R6. Embed these protections in the Bill itself, not solely in discretionary ministerial instruments or non-binding Commissioner guidelines.

2.3 AIVL endorses submissions of our partners:

- Scarlet Alliance: Australian Sex Worker Association
- Alcohol and Drug Foundation
- Australian Alcohol and other Drugs Council
- Deakin Centre for Law as Protection
- National Drug Research Institute

3. Section 25C(1)(j) and (k) risks capturing harm reduction information as “seriously harmful”

3.1 Section 25C(1)(j) defines “*material or conduct that encourages, promotes, incites or provides instruction for the commission of a criminal offence*” as seriously harmful. There are a host of criminal offences that do not involve serious harm. This section should be expressly limited to criminal offences that are likely to cause serious harm. We are also concerned that harm reduction may be captured by this section.

- 3.2 Section 25C(1)(k) defines “*material or conduct that encourages, promotes, urges or instructs illicit drug use*” as seriously harmful. Read literally, this could capture safer-use guidance, drug alerts and peer-to-peer harm reduction communication – practices that are an established, evidence-based public health intervention, a Guiding Principle of the National BBV and STI Strategies and a pillar of the *National Drug Strategy 2017–2026*, precisely because they meet people where they are, rather than assuming abstinence.
- 3.3 This is not a hypothetical risk. Through a contact in Meta’s government relations team, AIVL learned that our members drug alert content, which provides information to help people avoid overdose from contaminated substances in their local area – had been classified internally as “*promotion of drug use*” and removed for this reason. While Meta agreed to remove false content flags once raised directly, it took no action on the request for an exemption for the AIVL member organisations who provide drug harm reduction education and information to promote safety and wellbeing from its drug-related community standards.
- 3.4 A September 2026 survey of 19 harm reduction and drug-checking organisations in the AIVL Network and NCCRED Prompt Response Network similarly found widespread post removal, account shadow banning and reduced visibility in Google search results, prompting workarounds such as coded language and avoidance of key terms that, in participants’ own words, risk “*obfuscating the key harm reduction messages*”. One participant noted that removals have “*significantly impacted our ability to spread the reach of essential public health warnings.*”
- 3.5 Significant civil penalties (up to \$21,840,000, indexed) create a strong commercial incentive for online services to over-remove drug-related content rather than risk liability. This overcorrection will be magnified, not reduced, by the Bill unless harm reduction information is explicitly protected. We recommend excluding this information from s 25C(1)(k), or adopting a narrower formulation such as the United Kingdom’s, which targets the sale of illegal drugs rather than information about them.

4. The “online service” definition risks capturing AOD organisations and their workers

- 4.1 Section 25A’s broad definition of “*online service*” – and of “*persons responsible*” for one, including staff with day-to-day control – could capture AOD organisations that publish harm reduction content, run peer forums, or use AI-supported tools to deliver individualised education and information. Many of these organisations are small and volunteer-reliant, and deliver services funded under, and aligned with, national strategies. Exposing individual peer workers to personal liability, and organisations to compliance costs and civil penalties, for providing government-endorsed public health information would be a perverse outcome.
- 4.2 The Minister’s discretionary power to exempt services s. 25A(3)) is not a sufficient safeguard: it provides no certainty and does not guarantee AOD organisations will be considered.

5. Risk assessment and compliance obligations are disproportionate for peer-led organisations

- 5.1 Section 26A requires online services to conduct their own risk assessments. For general platforms where drug-related content is incidental, this is likely to produce risk-averse, poorly informed judgements about complex harm reduction practices – for example, treating information on managing overdose risk as inherently unsafe.
- 5.2 For AOD organisations that might themselves be captured as online services, the same obligation is resource-intensive and creates new legal exposure: a documented risk assessment could later be used in litigation to argue an organisation knowingly provided “risky” advice.
- 5.3 We recommend the Bill scale obligations to organisational size and risk profile, as the EU Digital Services Act does, and support co-developed sector guidelines so that assessment of AOD-related risk does not rest solely with non-specialist platforms or under-resourced peer organisations.

6. No appeal mechanism, and a chilling effect on drug policy debate

- 6.1 The Bill does not allow a person or organisation to challenge a decision to remove, restrict or otherwise limit access to lawful public health content. This gap extends beyond health information: the breadth of terms like “*promotes*” risks chilling legitimate public debate on drug law reform among researchers, advocates, parliamentarians and people with lived-living experience, whose accounts of harm reduction or decriminalisation could be misread as “*promoting*” drug use.
- 6.2 We recommend the Bill provide for appeal and rectification where public health and harm reduction content is wrongly restricted and require Commissioner guidelines (s 26E) to be co-designed with affected communities rather than left optional.

7. Privacy and anonymity are integral to harm reduction, not incidental to it

- 7.1 Harm reduction services are frequently accessed anonymously because of the criminalised status of drug use and the elevated legal risk of identification. We are concerned that compliance measures – including risk assessments, complaint records, or any future identity verification requirements for “*user empowerment tools*” – could increase the collection of identifiable, and potentially health-related, information.
- 7.2 We recommend the Bill avoid creating incentives for identity verification as a condition of accessing harm reduction content, and that any data collected for compliance purposes be subject to genuine consultation with affected communities before implementation.

8. The Bill should align with, not frustrate, existing government commitments

- 8.1 The Federal Inquiry into the Health Impacts of Alcohol and Other Drugs in Australia recommended new digital models of harm prevention, a nationally coordinated early warning system for illicit drugs, improved access to harm reduction services and education, and drug checking to support health-based surveillance. Each of these depends on the continued ability of AOD organisations to publish and disseminate drug-related information online.
- 8.2 As currently drafted, the Bill risks frustrating these very recommendations, and the National Hepatitis C and National Drug Strategy objectives, that government has already committed to.

9. Conclusion

- 9.1 AIVL supports action to make the online environment safer and recognises the legitimate concerns this Bill seeks to address. However, without explicit, legislated protection for evidence-based drug-related public health and harm reduction information – and for the peer organisations and workers who provide it – the Bill risks doing serious harm to the communities it is meant to protect.
- 9.2 We would welcome the opportunity to discuss this submission further, and to contribute to the development of guidelines and implementation measures.

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