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

Harm Reduction Australia (HRA) welcomes the Australian Government's objective to improve and promote online safety for Australians. As Australia's national harm reduction organisation, HRA has a particular interest in ensuring that the Digital Duty of Care does not inadvertently restrict access to legitimate public-health and harm-reduction information. Pill Testing Australia (PTA) operates under the auspices of HRA. PTA provides drug checking services and relies on online services for the timely communication of evidence-based drug information and public health alerts when high-risk and unexpected substances are detected, to reduce drug-related harm.

In pursuing this objective, it is important to recognise and protect established approaches that already use online services to promote safety and reduce harm. Australia's National Drug Strategy is underpinned by harm minimisation, comprising the complementary pillars of demand reduction, supply reduction and harm reduction. Drug harm-reduction interventions, such as drug checking (also known as 'pill testing'), drug alerts and early warning systems, rely on online services to facilitate the public communication of non-judgmental, evidence-based information that is intended to prevent or reduce drug-related harm.

Pill Testing Australia has experienced repeated restrictions of its harm-reduction communications by major online services. Five PTA drug warning posts have been removed from Instagram, including a November 2025 post that had received more than 123,000 views prior to its removal. Two posts have been removed from Facebook, and recommendations of PTA's Facebook page were disabled for more than three months, preventing its content from being recommended to people who did not already follow the page. PTA has also had TikTok posts removed on at least three occasions for purportedly violating community standards by 'promoting or encouraging drug use'. These experiences illustrate the practical difficulty online services can have in distinguishing drug-related public-health information from material promoting drug use. The Digital Duty of Care should not create additional incentives for services to resolve that ambiguity by restricting legitimate health information.

We are concerned that the *Exposure Draft Online Safety Amendment (Digital Duty of Care) Bill 2026* (the Bill) in its current form:

- Does not adequately define and distinguish between material or conduct that 'encourages, promotes, urges or instructs illicit drug use' and public-health and harm-reduction information intended to prevent injury, illness and death. Without a clear distinction, the Bill risks encouraging precautionary or overly broad moderation of legitimate harm-reduction information by online services.

- Defines safe online environment in a reductionist way, that is 'protection from', rather than recognising online environments as spaces that, with appropriate guardrails, offer access to unique and innovative protections and benefits.

Access to information and rights in the digital environment

Online safety requires both protection from seriously harmful material and conduct, and access to content that shares reliable information on illicit or otherwise unregulated drugs in order to protect health and reduce harm. International human-rights frameworks recognise that digital environments can both expose people to harm and provide important access to information, services and other rights.

In its 2026 *Concluding observations on the sixth periodic report of Australia* (E/C.12/AUS/CO/6), the United Nations Committee on Economic, Social and Cultural Rights (CESCR) expressed concern that digital divides affecting remote and low-income communities and barriers to digital technologies for people with disabilities may limit equal access to the benefits of scientific progress (para. 56). It recommended that Australia address the digital divide by ensuring "universal and affordable access to high-speed Internet", assistive digital technologies and digital-literacy training (para. 57(b)).

Children's rights require additional consideration. The UN Committee on the Rights of the Child's General Comment No. 25 (2021) on children's rights in relation to the digital environment (CRC/C/GC/25) recognises both the need to protect children from online harms and their right to access information online.

- Paragraph 26 states that online child-protection measures should operate 'while also respecting children's other rights'.

- Paragraph 50 recognises children's right of access to information in the digital environment.

- Paragraph 51 calls on States to support age-appropriate digital content and children's access to diverse information, including information about health and children's rights.

This rights-based approach is also reflected in the Global Commission on Drug Policy's 2026 policy brief, *Making Children and Young People Visible in Drug Policy: A Child Rights-Based Agenda for Reform*. The Commission emphasises that children and young people should have access to evidence-based, age-appropriate services that prevent avoidable drug-related harms, and states that such services should be available through schools, community settings and digital platforms. It further emphasises that these services should be accessible, confidential, participatory and responsive to children's and young people's evolving capacities.

This distinction is also reflected in the House of Representatives Standing Committee on Health, Aged Care and Disability's *Report on the health impacts of alcohol and other drugs in Australia* (September 2026), in which Recommendations 9 and 10 call for evidence-based alcohol and other drug education for secondary school students and guidance to support educators to discuss alcohol and other drugs with students.

Australian drug policy and harm reduction

The UN Committee on Economic, Social and Cultural Rights (CESCR) considered Australian drug policy in its *Concluding observations on the sixth periodic report of Australia* (E/C.12/AUS/CO/6), adopted on 25 February 2026. At paragraph 44, CESCR 'welcomes the State Party's harm reduction approach to drug policy', while identifying concerns about access to harm-reduction and treatment services. At paragraph 45, CESCR recommends that Australia 'maintain and strengthen a human rights-based approach' to drug policy. It specifically calls for prevention and awareness-raising about serious drug-related health risks, particularly among adolescents and young people, alongside access to treatment, psychological support, rehabilitation and harm-reduction programmes for people who use substances. CESCR therefore treats prevention, youth awareness and harm reduction as complementary responses to drug-related health risks. Measures intended to protect people from harmful online drug content should likewise avoid unnecessarily restricting legitimate interventions intended to reduce those risks.

This approach is also reflected in the September 2026 *Report on the health impacts of alcohol and other drugs in Australia*. The House of Representatives Standing Committee on Health, Disability and Aging recommends:

- **Recommendation 7:** a nationally coordinated illicit-drug early warning system incorporating the communication of alerts and early access to harm-reduction measures;

- **Recommendations 9 and 10:** evidence-based alcohol and other drug education for secondary school students and guidance for educators;

- **Recommendation 16:** investment in digital models of care providing evidence-based alcohol and other drug prevention and early-intervention services, expanding their reach, accessibility and effectiveness;

- **Recommendation 26:** improved access to harm-reduction services, including culturally safe harm-reduction education; and

- **Recommendation 30:** use of drug checking and testing to support harm minimisation in all Australian jurisdictions, including opportunities for support and education and surveillance of rapid changes in the illicit drug supply.

These recommendations do not determine the interpretation of the Bill. They do, however, demonstrate the importance of ensuring consistency between online-safety regulation and contemporary Commonwealth Department of Health, Disability and Aging policy.

Human-rights scrutiny

CESCR's 2026 *Concluding observations on the sixth periodic report of Australia* also address Australia's scrutiny of Commonwealth legislation for human-rights compatibility. CESCR expressed concern about legislation being enacted despite serious compatibility concerns identified by the Parliamentary Joint Committee on Human Rights and recommended that Australia strengthen the Committee's role by providing adequate time and procedural safeguards for scrutiny and ensuring its findings are "systematically considered and responded to".

Given the Bill's potential implications for children's rights, access to health information and the right to health, we encourage the Australian Government to undertake and publish careful human-rights analysis of clause 25C and the broader Digital Duty of Care framework before legislation is introduced. This analysis should expressly consider the UN Committee on the Rights of the Child's General Comment No. 25.

Recommended amendments

Proposed cl 25B(1): Amend the definition of a 'safe online environment' to recognise that online safety includes both protection from harmful material and conduct and appropriate access to legitimate information and services that protect health and reduce harm.

Proposed cl 25C(1)(k): Amend the provision to more precisely target material or conduct intended to facilitate illicit drug acquisition, manufacture or supply, while expressly protecting material provided for legitimate public-health and public-interest purposes. For example: '*Seriously harmful material and conduct means the following: material or conduct that, having regard to its purpose and context, is intended to encourage, promote, urge or provide instruction facilitating the acquisition, manufacture or supply of illicit drugs, other than for a bona fide public-health, harm-reduction, healthcare, educational, scientific, journalistic or other public-interest purpose.*'

This would more clearly distinguish material from public-health and harm-reduction information that may necessarily provide practical instructions concerning drug use for the purpose of preventing or reducing harm. The distinction cannot, however, depend solely on whether information refers to drug use, acquisition, manufacture or supply. Legitimate harm-reduction, scientific, educational and other public-interest information may necessarily address each of these matters. The purpose and context of the communication are therefore critical to distinguishing material intended to facilitate harmful illicit-drug activity from information provided for a legitimate public-health or public-interest purpose.

Where a service faces significant consequences for failing to address material falling within s 25C, but comparatively little consequence for incorrectly restricting legitimate health information, ambiguous drug-related content is likely to be moderated conservatively. Legislative precision is therefore important not only to define the scope of the duty, but to avoid creating a structural incentive to over-remove legitimate public-health information.

Proposed cl 25C(2): Require the Minister, when making a legislative instrument determining additional seriously harmful material or conduct under cl 25C(2), to have regard to potential impacts on access to legitimate public-health, health, scientific and harm-reduction information.

Proposed cl 25C: We recommend creating an express statutory protection for bona fide public-health and public-interest information. In particular, cl 25C should make clear that material does not constitute seriously harmful material merely because it contains information concerning illicit drugs, including their use, acquisition, manufacture or supply, where, considered in context, the material is provided in good faith for public health, harm reduction, healthcare or clinical practice, education, scientific research, journalism, emergency information, or legitimate public-policy discussion and advocacy, and is not intended to encourage or promote harmful drug use.

Proposed cl 26A(3): Amend cl 26A to require risk assessments, where relevant, to consider reasonably foreseeable harms arising from restricting access to legitimate health, public-health and harm-reduction information, alongside harms arising from exposure to harmful material. This should include consideration of the foreseeable consequences of delaying or preventing access to time-sensitive drug alerts and other information intended to prevent injury, overdose or death.

Proposed cl 26E: Guidelines developed under cl 26E should include examples distinguishing harmful promotion from legitimate public-health and harm-reduction communication and should be developed in consultation with public-health experts, AOD organisations, people with lived and living experience, youth organisations and young people.

Appeal and rectification: The framework should ensure that providers of legitimate public-health and harm-reduction information have access to a timely and accessible mechanism to seek review and rectification where lawful content is incorrectly removed, restricted or otherwise limited as a consequence of measures adopted to comply with the Digital Duty of Care, including expedited review where the information is time-sensitive. This is particularly important for time-sensitive drug alerts, where delayed restoration may substantially reduce the public-health value of the information.

Refer the Bill to the Parliamentary Joint Committee on Human Rights (PJCHR) for scrutiny: Ensure that the PJCHR is provided adequate time and procedural safeguards to scrutinise the Bill before enactment, and that its findings are systematically considered and responded to, including any concerns relating to children's rights, access to health information and the right to health.

Conclusion

Harm Reduction Australia supports the objective of safer digital environments and protection from seriously harmful online material and conduct. Harm reduction, as an approach to drug policy, shares this objective: preventing and reducing injury, illness and death.

The Bill provides an opportunity to ensure that online safety encompasses both protection from harmful material and access to legitimate information and services that protect health and reduce harm. This is particularly important in relation to illicit drugs, where information intended to encourage harmful drug use and evidence-based information intended to prevent overdose, injury or death may address the same conduct but serve fundamentally different purposes.

We are not proposing that harmful promotion or facilitation of illicit drugs fall outside online-safety regulation. Rather, we recommend greater legislative precision to ensure that the Digital Duty of Care does not inadvertently capture, restrict or discourage public-health, harm-reduction, clinical, scientific, educational and other public-interest information.

The amendments proposed in this submission would provide greater certainty by clarifying the meaning of a safe online environment and seriously harmful material and conduct; protecting legitimate public-health and public-interest information; requiring relevant risks associated with restricting such information to be considered; and supporting appropriate regulatory guidance and human-rights scrutiny. Together, these measures would enable the Bill to address serious online harms while preserving access to evidence-based information capable of preventing drug-related injury, illness and death.

HRA and PTA welcome the opportunity to provide further information or input as the Digital Duty of Care framework is developed.

Harm Reduction Australia
Executive Director
Dr Annie Madden AO

Pill Testing Australia
Executive Officer
Ms Stephanie Tzanetis