

September 2026

Submission to Online Safety Amendment (Digital Duty of Care) Bill Consultation

Thank you for providing this opportunity to Free TV Australia (**Free TV**) to make a submission regarding the Online Safety Amendment (Digital Duty of Care) Bill 2026 (**Bill**). Free TV's comments are limited to Schedule 2 of the Bill, which sets out the proposed digital duty of care.

1. Introductory comments

The Bill as currently drafted may extend to Free TV's members' online services. The content on those services is inherently low risk. It is professionally produced, carefully selected by professional media staff, and is subject to classification laws, defamation laws and hundreds of other statutory restrictions on publication. News, current affairs, documentary and other public interest entertainment content is, where required, subject to pre-publication review by expert lawyers at considerable expense to ensure that those laws are complied with. It is generally long form content, which by its nature carries lower risks of the harms associated with short form, algorithmically curated social media content. Consumption by the public of such local Australian media content is important for our democracy, for social participation and cohesion, and to sustain Australian culture and values.

In those circumstances, the local Australian media industry segment and the content it produces poses little to no risk of the harms the Bill is designed to address and should be excluded from the Bill at the outset. The Bill should exempt online services operated by news businesses registered by the ACMA under the News Media and Digital Platforms Mandatory Bargaining Code (**Registered News Businesses**) including Free TV's members.

In the absence of an exemption, the Bill would add an unnecessary layer of regulatory expense and complication for Registered News Businesses, which are already subject to financial challenges that the Government has already sought to address through legislative intervention. An exemption is also necessary to ensure that the Bill is consistent with the implied constitutional freedom of communication in relation to government and political matters. This is a well-established approach. For example, the journalism exemption in the *Privacy Act 1988* (Cth) has been in place for more than 25 years.

2. Services: Exclusion of BVOD and other services from ‘online services’

Recommendation

The Bill should be amended to expressly provide that BVOD services and other online services provided by Free TV’s members and Registered News Businesses are excluded from the definition of ‘online services’ contained in the Bill.

The scope of the new definition of ‘online services’ in the proposed section 25A of the *Online Safety Act 2021* (Cth) (the **Act**) may capture BVOD services, as well as other online services provided by Free TV’s members and other Registered News Businesses, such as news sites.

The definition captures ‘designated internet service’ as defined in section 14 of the Act. As Free TV has explained in other recent submissions to Government consultations, including in relation to the Privacy (Children’s Online Privacy) Code 2026, this definition may unintentionally include online services provided by Free TV’s members.

The definition excludes ‘on-demand program services’ (**ODPS**) but that definition is limited to services that provide material identical to programs that have been, or are being, transmitted on a commercial television broadcasting service under a broadcasting licence. This carve out only partially covers Free TV members’ BVOD services (which may include additional material which is not broadcast) and is unlikely to include other content published on Free TV members’ websites.

Free TV submits that the exemption should be included in the Act itself. This approach is consistent with the policy underlying the Bill, which includes a proposed power for the Minister to exempt online services from the operation of the new Part 2 of the Act, as set out in the proposed section 25A(3). Under that section the Minister may by legislative instrument exempt an online service (or class of such services) from part or all of the provisions of the new Part if the Minister is satisfied that (of most relevance here) the new service or class of services *pose little risk to users of the service in Australia*.

In the absence of a broad exemption, it is likely that key provisions in the Bill would be invalid on the basis of the implied constitutional freedom of communication in relation to government and political matters. For example, the definition of material and conduct harmful to children includes matters which one can expect may be the subject of news, current affairs and documentary content dealing with regulation of those matters, such as sexism, dangerous stunts and eating disorders. This would be a direct burden on freedom of communication and would only be constitutionally valid if it is reasonably appropriate and adapted, in the sense of being proportionate, to protect the public.

Free TV submits that the Bill would not satisfy this test in the absence of a suitable exemption, for the following reasons: (i) classification and other laws already provide effective protection in respect of Free TV members’ and Registered News Businesses’ online content; (ii) the Bill’s open-ended concepts of material that could inflict ‘serious harm’ to a child lack sufficient precision; (iii) the Bill would in effect confer on the eSafety Commissioner a substantial degree of control over media content; and (iv) there is no evidence of any risk of the harms the Bill is designed to address arising from Registered News Businesses’ online content.

3. Content: Exclusion of news and journalism content, and other professionally produced content, from 'seriously harmful material and conduct' and material and conduct that is harmful to children

Recommendation

The Bill should be amended to expressly provide that news and journalism content, as well as professionally produced dramatic content, produced or published by Free TV's members or Registered News Businesses is not seriously harmful material and conduct and cannot be determined to be such under a legislative instrument made under the proposed section 25C(2). Equally, section 25D(2) should be amended so that such content is not able to be designated as material that is harmful to children.

It is in the public interest that content produced or published by media professionals employed by and engaged by Free TV's members and other Registered News Businesses be made available through other platforms to ensure that Australians have ready access to reliable news and high-quality entertainment. This is particularly important in view of evidence that younger people access news and entertainment through social media and other platforms. Access to reliable information is important for effective participation in the democratic process, and a healthy democracy. In the case of crises and emergencies, circulation of such material also enables members of the public to make informed decisions.

To achieve this end at minimal cost to platforms, it is appropriate to exclude such content from the operation of the Bill.

Thus, journalism and news content, as well as professionally produced dramatic content that is available on the online services of Free TV members, should be specifically exempted from the definition of 'seriously harmful material and conduct' as defined under the proposed section 25C of the Act.

It is also important to ensure that the Bill complements, and does not complicate, the existing classification laws.

To achieve these objectives, the Bill should make it clear that:

- (a) Classification is a conclusive determinant of whether content is or may be harmful to any group. That is, if content is classified as being suitable for a particular group (either with or without parental supervision), then it is deemed not to be harmful to that group for the purpose of the Bill; and
- (b) Journalism produced or published by Free TV members or Registered News Businesses is deemed not to be harmful for the purpose of the Bill.

In this context, 'journalism' should be defined to include:

- (a) any material which has the character of news, current affairs, a documentary or public interest entertainment, or commentary or opinion on news, current affairs or a documentary or public interest entertainment; and
- (b) acts and practices for the purpose of recommending or otherwise making available content to individuals.

For the purposes of the above, **public interest entertainment** means entertainment content in respect of which the public interest in publication outweighs the public interest in harm reduction.

These exemptions are important because the Bill goes beyond simply prohibiting or restricting RC, R18+ or X18+ content. The definition of seriously harmful material and conduct extends beyond Class 1 and unlawful material in at least two important respects:

- First, certain of the categories of the defined material and conduct in the proposed section 25C(1) extend to material *relating to* particular topics. While Free TV understands the need for flexibility in the specification of categories, nonetheless it is clear that news and journalistic reporting on those specified topics (which is a vital public service) will be content that ‘relates to’ those topics. Further, professionally produced dramatic content that addresses such topics will also be material *relating to* those topics. It should be clear in the Bill that such content is excluded from regulation.
- Secondly, under the proposed section 25C(2) of the Act, the Minister may by legislative instrument determine material or conduct, or a combination of material and conduct, that the Minister is satisfied may cause serious harm. There should be no option for news or journalism content, or professionally produced dramatic content, to be the subject of a determination under a legislative instrument made under section 25C(2). This is not currently provided for in the Bill.

Moreover, the definition of material and conduct that is ‘harmful to children’ extends to content well beyond the categories covered by the existing Online Safety Act. Imposition of a duty of care in relation to categories such as hostile attitudes towards women and disordered eating may impede important educational, political and government discussions. Informative content may include not only news and current affairs items, but also professionally produced, appropriately classified drama and documentary content.

The latter may play an important role not only in informing public discussion and debate, but also in supporting and educating others to support people who experience sexism or eating disorders. These matters are already managed appropriately by classification laws and existing editorial processes. With respect, it is not appropriate for a regulator such as the eSafety commissioner to be in a position to oversee editorial control in relation to such matters. Such oversight would give rise to further issues from a constitutional validity perspective (as it would not, in Free TV’s view, be appropriate and adapted).

4. Design features: Exclusion of Free TV’s members recommender systems

Free TV’s comments in this section 4 apply only in the event that the recommended exclusion as set out in section 2 of this submission is not accepted.

Recommendation

The defined ‘design features’ should not include the recommender tools that are used by Free TV’s members or Registered News Businesses for their online services, as the use of those tools does not give rise to the type of harm that the Bill is intended to regulate.

Under the proposed section 26(3)(a) of the Bill, as part of the digital duty of care, the design features of a regulated online service must be managed appropriately including by providing user empowerment tools. This extends to ‘recommender features’, which recommend content based on user account information. The Bill requires ‘empowerment tools’ enabling users to manage the way that design features operate for them. Minister Wells has stated that these elements will mean that ‘*users can opt*

out of personally recommended content in their default feed and see the friends and creators they choose to follow’.

Recommender features implemented by Free TV members and other Registered News Businesses play an important role in making content accessible to users from vast libraries of carefully curated, compliant content. This is largely done based on viewing data and aggregated information about viewer segment preferences. Without such features, it would be very difficult for people to find content likely to be of interest to them. Importantly, news editorial content is often provided in a way that is not personalised to ensure that it reflects editorial judgment and standards.

There is no evidence that these features on Free TV members’ online services cause any of the harms the Bill is designed to address. The harms the Bill seeks to address include algorithms that promote attention-grabbing but harmful content, amplify misinformation or disinformation and extremist views, and create echo chambers.

The professional media teams employed by and engaged by Free TV’s members and other Registered News Businesses should be free to exercise their professional judgment about how best to encourage people in each demographic to view their high-quality content. They should not be subject to further complicating regulatory oversight which may hamper their ability to do this.

This is particularly important in relation to younger generations, whose engagement with quality journalism is already a significant public policy concern. Those teams are already subject to Broadcasting Codes of Practice, Australian Press Council and other standards which impose appropriate restrictions in relation to the accuracy, fairness and balance of the content they produce.

This is also important for Free TV members’ and other Registered News Businesses’ continuing credibility. In those circumstances, professional journalists can be trusted not to adopt or promulgate hate speech, conspiracy theories and other extremist ideologies. On the contrary, their discussion of those things plays an important educative and democratic role.

The proposed section 26(4) provides that the Minister may by legislative instrument require specified online services to provide specified user empowerment tools. However, even if the Minister does not make a legislative instrument that applies to the online services of Free TV’s members, those members will remain obliged to comply with section 26(3)(a) in relation to those services.

Free TV therefore proposes that the Bill should explicitly exclude BVOD services and other online services of Free TV’s members and other Registered News Businesses from the proposed section 26(3)(a) of the Bill to avoid unnecessary compliance costs in circumstances where no benefit arises from such regulation.

5. Risk Assessments: Obligations of Free TV’s members should reflect the very low risk nature of their services

Again, Free TV’s comments in this section 5 apply only in the event that the recommended exclusion as set out in section 2 of this submission is not accepted.

Recommendation

If any of the online services of Free TV's members or other Registered News Businesses are regulated under the proposed Part 2, it is recommended that those services are effectively excluded from the risk assessment provisions in section 26(3)(b) and 26(3)(c) on the basis that those online services are very low risk services.

A core element of the digital duty of care is the requirement under the proposed sections 26(3)(b) and 26(3)(c) that providers of online services must conduct risk assessments and take measures to address those assessments. The proposed section 26A to be incorporated in the Act sets out in detail what a risk assessment must address.

Free TV again stresses the low risk nature of the online services of its members. Free TV therefore recommends that, to the extent the online services of its members are regulated under the proposed new Part 2 of the Act, section 26A is amended to allow an online service provider to determine if the services that it provides pose little risk to users of the service in Australia. If a determination is made that the online service does pose little risk, then the online service provider should be exempt from compliance with section 26(3)(b) and 26(3)(c) until such time as there is a substantial change in the nature of the online service, at which point the risk of the online service should be reassessed under the proposed Part 2. There should again be a presumption that material classified so as to be suitable for a particular group (such as children) is not harmful to that group and does not require any further assessment in relation to publication to that group.

6. Commencement date

Recommendation

If any of the online services of Free TV's members are regulated under the proposed Part 2, given the complexities of the systems changes that would need to be implemented to comply with the provisions of the Bill, a 24 month transition period is necessary.

The Bill proposes a 12 month transition period. If the Bill does have application to the online services of Free TV's members, a period of at least 24 months before commencement is required to implement the regime established under the Bill, given the complex information technology and other system changes that would be required. The same 24 month commencement period should apply to related reforms affecting the same online services, including the Children's Online Privacy Code and the Privacy Amendment (Personal Data Protection) Bill 2026, so that costs can be minimised by aligning implementation. The Government should also review this overlapping reform landscape to reduce duplication and fully address the matters above.