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Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Submission to the Senate Environment and Communications Legislation Committee – Online Safety Amendment (Digital Duty of Care) Bill 2026

Dear Committee Members

The Tech Policy Design Institute (TPDi) welcomes the opportunity to contribute to the Committee's inquiry into the Online Safety Amendment (Digital Duty of Care) Bill 2026.

TPDi is an independent, non-partisan think tank dedicated to shaping technology for the benefit of humanity. We bring together government, industry, civil society and research to develop practical, evidence-based approaches to tech policy. We support the introduction of a Digital Duty of Care and the shift towards a more systemic, proactive and future-proofed approach to online safety.

As Parliament considers the Bill, TPDi encourages the Committee to consider 3 recommendations that would strengthen the enforcement, governance and accountability of the framework:

1. **Establish a private right of action.**
2. **Move to a multi-Commissioner model for eSafety.**
3. **Preserve eSafety's ability to use sock puppet identities, while strengthening transparency and oversight of their use.**

The first two recommendations build on Recommendation 4 of TPDi's ***Digital Duty of Care: Make Tech Care***[1] policy spotlight report, which calls for mechanisms that equip regulators to enforce the regulation and enable users to seek redress.

The Policy Spotlight captures insights from the multi-stakeholder Design Dialogue convened by TPDi at Parliament House on 10 August 2026. The Dialogue brought together 61 participants from 51 organisations and institutions across government, Parliament, industry, civil society and research to consider the design of an effective Digital Duty of Care.

We commend that report to the Committee as part of the broader evidence base for this submission.

TPDi would welcome the opportunity to assist the Committee further in its deliberations on this nationally significant reform in the interests of all Australians.

Yours sincerely

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TPDi RECOMMENDATIONS

These recommendations build on TPDi's *Digital Duty of Care: Make Tech Care* Policy Spotlight, informed by TPDi's multi-stakeholder Design Dialogue on the digital duty of care, hosted on 10 August 2026 at Parliament House. They recognise the evolution of the legislation from Exposure Draft to the Bill now before Parliament and identify three targeted opportunities to further strengthen its enforcement, institutional governance and transparency arrangements.

1. Establish a private right of action

The Bill should establish a private right of action enabling Australians directly affected by a breach of the Digital Duty of Care to seek redress.

The introduction of a Digital Duty of Care is intended to hold online services responsible for preventing foreseeable harm to their users. The enforcement architecture should reflect that objective.

Under the proposed model, responsibility for enforcing the duty rests principally with the eSafety Commissioner. Regulatory enforcement will remain essential, particularly where a service's conduct creates systemic risks or affects large numbers of users. It should not, however, be the only avenue available when a failure to meet the duty causes harm.

A private right of action would allow Australians directly affected by a breach to pursue an appropriate remedy, complementing regulatory enforcement and ensuring that access to redress does not depend entirely on the regulator deciding to act.

2. Establish a multi-Commissioner model for eSafety

The legislation should evolve the Office of the eSafety Commissioner into a multi-Commissioner model commensurate with the regulator's expanding responsibilities.

The eSafety Commissioner already exercises significant regulatory functions. The proposed Digital Duty of Care will increase both the scope and significance of those responsibilities. The institutional design of the regulator should evolve with its responsibilities.

This expanded mandate will require the regulator to make complex decisions involving technology, safety, risk, evidence, proportionality, human rights and the public interest. These decisions may affect millions of Australians, shape the design and operation of global digital services, and attract significant domestic and international scrutiny.

Under a single-Commissioner model, much of that responsibility is carried by one individual. This can unnecessarily personalise regulatory decisions and increase the risk that scrutiny of particular actions becomes scrutiny of the officeholder.

The independent statutory review of the *Online Safety Act 2021* recognised this institutional challenge, recommending a move to a multi-member Commission.[2] A multi-Commissioner structure would better distinguish the regulator as an institution from any individual appointed to it. It would distribute responsibility for significant decisions and allow for complementary skill sets.

This would also bring eSafety in line with the multi-member structure already used by several significant Australian regulators, including the Australian Competition and Consumer Commission, the Australian Communications and Media Authority and the Office of the Australian Information Commissioner. The introduction of the Digital Duty of Care provides an appropriate opportunity to implement this institutional reform.

3. Preserve eSafety's ability to use sock puppet identities, and strengthen transparency reporting

The Bill should preserve the eSafety Commissioner's ability to use sock puppet identities for legitimate regulatory and enforcement purposes, while strengthening the existing annual transparency reporting requirements.

Effective regulation requires regulators to be able to see how regulated services operate in practice.

The experience of an online service can vary significantly according to an account's characteristics, behaviour and interactions. Recommendation systems and other platform features may also change dynamically in response to user behaviour. Sock puppet identities can provide an important means for the eSafety Commissioner to conduct 'secret shopper' investigations to understand how services operate in practice, investigate potential harms and test whether regulated services are meeting their obligations. TPDi supports the Bill's preservation of this important regulatory capability.

Proposed section 205M already requires the eSafety Commissioner to publish an annual statement summarising, in general terms, sock puppet activities undertaken during the previous financial year.[3] This provides an important foundation for transparency and oversight. To address public concern regarding and maintain trust in the exercise of these powers, TPDi recommends strengthening this existing mechanism by requiring the annual statement to be tabled in Parliament and to include specific information about their use.

The annual statement should include, at a minimum, the number of sock puppet identities used and the purposes for which they were deployed under the Act. These requirements should be designed so that reporting does not compromise active investigations or reveal sensitive investigative methods.

This approach would provide Parliament and the Australian public with meaningful visibility over the exercise of the power, while preserving the operational flexibility the eSafety Commissioner needs to regulate online services effectively.

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[1] Hawkins ZJ, Weaver J (2026). *Digital duty of care: make tech care*. Tech Policy Design Institute.
[2] Rickard D (2024). *Report of the Statutory Review of the Online Safety Act 2021*. Australian Government.
[3] *Online Safety Amendment (Digital Duty of Care) Bill 2026* (Cth), proposed s 205M.