
Submission to the Digital Duty of Care Exposure Draft Bill 2026

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Submission made via: digitaldutyofcare@communications.gov.au.

Consumer Policy Research Centre (CPRC), CHOICE and Consumer Action Law Centre welcome and support the introduction of a Digital Duty of Care. For too long, Australians have been navigating a digital economy that has not been designed with them in mind. It's time to enable fair, safe and meaningful outcomes within our online world.

Part 2.3 Design features

Include dark patterns as a form of design feature regulated under the Digital Duty Care

We support the various design features that have been included in Section 25F; however, there is no reference to dark patterns which are commonly used by digital platforms and contribute to the negative behavioural impacts that are outlined in Section 25G of the Exposure Draft. Dark patterns are online design features that are used by platforms purely to steer people's choices and experiences.¹

CPRC's suite of dark patterns research has confirmed that dark patterns can play a significant role in impeding a consumer's control and choice online.² CPRC's inaugural research into dark patterns revealed that 83% of Australians had experienced a negative impact. CPRC's research into gaming revealed that close to two-thirds of Australian players had encountered an impact on their wellbeing as a direct result of dark patterns (59%).³

The impact of dark patterns is now starting to be recognised in other Australian legislation such as the recently passed Unfair Trading Prohibition under the Australian Consumer Law and in the proposed Exposure Draft for the Privacy Act amendment. The Digital Duty of Care should also be in-step and ensure Australians are protected through this Bill.

Recommendation 1: Incorporate dark patterns into the legislation as specifically a design feature that can lead to negative impacts.

¹ Consumer Policy Research Centre, 2022, *Duped by Design – Manipulative online design: Dark patterns in Australia*, <https://cprc.org.au/report/duped-by-design>.

² Consumer Policy Research Centre, 2022, *Duped by Design – Manipulative online design: Dark patterns in Australia*, <https://cprc.org.au/report/duped-by-design>.

³ Consumer Policy Research Centre, 2025, *Playing the Player – Unfair digital gaming practices and their impact on Australians*, <https://cprc.org.au/report/playing-the-player/>.

Part 2.7 Enforcement and redress

Introduce more than just risk assessments as the proactive enforcement measure

While we are supportive of the increased new powers for the eSafety Commissioner, the current Bill does not go far enough. We support the introduction of a risk assessment but currently it is the only proactive measure that is being proposed.

The remainder of the proposed powers focus on a compliance and enforcement model that will likely only take place post-harm, where a pattern of harm has to be firstly identified, and then reported by individuals or community groups. This means that the onus will be predominantly on consumers to identify and report breaches *after* they have lost money, or faced other life-altering negative consequences.

In our current digital economy, this is an insufficient approach to consumer protection. Identifying the root cause of harm is often hidden or unclear for individuals. The Federal Government must ensure the regulator is adequately resourced with the capacity and capability to monitor and enforce the law in this complex environment. The regulator must be empowered and equipped to undertake proactive investigations, swiftly and independently.

We propose that the Federal Government mirror similar reforms that exist either in the Australian financial market, such as the product intervention power, or the provision of bans under the Australian product safety framework. Both reforms are designed to deeply reflect on emerging issues and ascertain how consumers may be protected from foreseeable harms. If implemented, it would give the regulator the power to ban or pause certain aspects of the online service that have the potential to cause consumer harm. This also helps to give the regulator the ability to take action in an ever-evolving environment.

Recommendation 2: Introduce powers for the regulator that are similar to either a product intervention power or the provision to enforce interim and permanent bans on products and services that have the potential to cause harm.

Go beyond fines for enforcement

The Federal Government should also consider enforcement action that goes beyond pecuniary penalties. One option is to introduce a digital disgorgement obligation. This is where a business breaking the law would be forced to delete or surrender data, algorithms and even products that it has designed based on what it gained through illegal practices.⁴ This would ensure that breaking Australian laws is not seen as just the 'cost of doing business'. In our current digital market where some very large businesses and platforms hold significant market power, pecuniary penalties will not be enough to dissuade non-compliant behaviour. For example, it was reported in 2022 that Meta had put aside EUR 3 billion in its forecasted budget to simply cover payment of GDPR fines.⁵ Penalties shouldn't be a budget line item but a meaningful deterrent.

Recommendation 3: The Federal Government should consider penalties beyond fines such as a digital disgorgement obligation so businesses cannot continue to profit from previous illegal practices.

⁴ Gupta, C., 2025, *Made to Manipulate: The impact of deceptive online design practices on wellbeing and strategies to mitigate harm*, <https://cprc.org.au/report/made-to-manipulate-report..>

⁵ *Ibid.*

Introduce babysitting fees for digital platforms

Given the Digital Duty of Care will be applicable to specific platforms, CPRC recommends those platforms should contribute to the cost of resourcing proactive and continuous monitoring and enforcement by the regulator.

Recognising that proactive monitoring by regulators requires uplift in resourcing, it is also imperative to note that in today's digital economy governments can rarely compete with many of the global businesses that hold significant market power. Regulators should be funded proportionately to the market they are overseeing. One way to achieve this is to introduce a fee for large businesses so they are contributing to the regulatory environment that their market power has enabled.⁶

This could be done through a supervisory fee provision, similar to the one that exists within the Digital Services Act (DSA) where businesses are required to contribute to an annual fee to be effectively monitored and assessed for compliance.⁷ This ensures that the regulator has oversight and businesses are contributing towards an effective marketplace.

Recommendation 4: Increase resourcing for the eSafety Commissioner by introducing a supervisory fee model for large digital platforms.

Provide access to meaningful redress

We support Digital Rights Watch's call for an introduction to a direct right of action, which is essential to ensuring consumers experiencing harms online are adequately compensated. Without a direct right of action for consumers, it is close to a lottery which breaches will be brought to the regulator's attention and then selected to be pursued. This significantly undermines the policy aims and any deterrent effect of the new laws. Many businesses that are used to operating on the fringes of regulation will likely take the gamble on avoiding being caught by the regulators.

In addition to a direct right of action, we recommend that the Australian Government urgently introduce external dispute resolution provisions for issues relating to digital services. We are supportive of strengthening obligations on platforms to uplift their internal dispute resolution processes but that will not be enough to ensure people are adequately supported when there is a breakdown in trust and communication between the platform and the individual.

Our 2026 research found that 80% of Australians have experienced at least one online challenge with a digital service in the past 12 months. Of these Australians, close to half have experienced four or more issues in a span of just one year (45%). Of the people who do pursue a complaint, 67% are left dissatisfied with the resolution.

The cognitive load of experiencing issues online is taking a toll on Australians. More than half reported a decline in trust of the online world (53%), one in seven reported a negative impact on their mental health and wellbeing (14%) and more than half had been impacted financially (54%). We estimate that Australians are losing around \$497 million a year due to problems they face with digital services and being unable to access genuine support and redress.⁸

Australians don't currently have a clear and accessible pathway to redress when it comes to many facets of the digital economy. There is no easy, independent way of resolving disputes in the online space.

With an ever-increasing number of businesses utilising AI-enabled customer service and likely reducing resourcing for effective customer service, it is imperative that consumers have the option

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Consumer Policy Research Centre, 2026, *Someone To Turn To*, <https://cprc.org.au/report/someone-to-turn-to>.

to seek external dispute resolution support. Our research found that 73% feel optimistic about the concept of having access to a free, independent dispute resolution body to help with issues experienced with digital services, and 83% are open to the idea of expanding the remit of the Telecommunications Industry Ombudsman (TIO).

Recommendation 5: Introduce a direct right of action so individuals can enforce their rights under the Digital Duty of Care and increase accountability for businesses that breach those rights.

Recommendation 6: Expand the TIO's remit to cover redress for digital disputes so Australians can access fair and timely redress when experiencing issues with digital services.

Note about this submission

This submission was prepared by Consumer Policy Research Centre and supported by CHOICE and Consumer Action Law Centre.

AI has not been used in the development of this submission. The content of this submission has been prepared entirely by humans at the Consumer Policy Research Centre.

Consumer Policy Research Centre

The Consumer Policy Research Centre is an independent, not-for-profit research organisation. We conduct research into the issues affecting Australians and translate our findings into practical policy recommendations that help create fairer markets and improve people's lives.

CHOICE

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. By mobilising Australia's largest and loudest consumer movement, CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most. To find out more about CHOICE's campaign work visit www.choice.com.au/campaigns

Consumer Action Law Centre

Consumer Action Law Centre is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.