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Submission to the Senate Inquiry into the Online Safety Amendment (Digital Duty of Care) Bill 2026

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The Australian Retail Council (ARC) welcomes the opportunity to provide feedback to the Senate inquiry regarding the *Online Safety Amendment (Digital Duty of Care) Bill 2026* (the Bill). This submission should be read alongside the ARC Submission on the Exposure Draft of the Bill dated September 2026 and we ask the Senate to have regard to both submissions.

Executive Summary

ARC members recognise the need for strong online protections, particularly for children and young people, and support the Bill's objective of improving online safety. However, the Bill and Digital Duty of Care framework is overly broad and captures ordinary e-commerce services that do not present the harms it seeks to address.

Online retail platforms, e-commerce marketplaces and commercial retail websites (retail platforms) are mainstream, general audience websites that facilitate the purchase of goods. They are fundamentally different from higher-risk digital services such as those that have the primary purpose of displaying user-generated content.

Retail platforms typically mirror physical stores, applying the same controls to age-restricted, unsafe and regulated products. Consumers may browse these platforms without registering, engaging socially or sharing personal information. E-commerce is now a mainstream retail channel. In 2025, 9.8 million Australian households purchased goods online, spending $82.6 billion, or around 24 per cent of total retail expenditure. Many consumers rely on retail platforms for convenience, value and choice.

As drafted, the Bill applies to all online services, with no distinction between platforms that might display harmful or seriously harmful material (sections 25D and 25E) and other platforms, including retail platforms. This is a significant departure from the risk-based approach of the current Designated Internet Services Standards and industry codes, which already carve out low-risk services. It is disproportionate, impractical for retailers and inconsistent with how Australians engage online.

If the Bill is not amended, retailers, particularly small retailers, will face significant compliance obligations despite not posing the harms the Bill contemplates. A small retailer with a basic online store could be required to prepare, review and retain detailed risk assessments, at substantial cost and with no online safety benefit.

ARC supports a proportionate, risk-based Digital Duty of Care framework that targets services presenting a genuine risk of harm. The current approach to low-risk platforms should be replicated in the Bill with general audience retail platforms excluded from the Bill so that regulatory effort is directed where it will have the greatest impact.

ARC does not support the deeming of common e-commerce features, including recommendation tools, personalised shopping functions and customer account capabilities, as having *negative behavioural impacts*, as characterised by section 25G of the Bill. On retail platforms, these features are designed to assist consumers in

locating, comparing and purchasing products, and are fundamentally different from features intended to maximise user engagement or time spent online.

Policy recommendations

ARC recommends the following:

1. **Exclude all general audience retail platforms in the Bill.** General audience sites used to view, select and buy goods or services should be outside the duty by statute, not by discretionary ministerial instrument. The classification applying in the current Designated Internet Services Standards and industry codes should be replicated in the Bill. Alternatively, following the model in the *Online Safety Act 2023* (UK) retail platforms with limited functionalities (limited user functionality exemption) should be excluded.

2. **Adopt a tiered, risk-based framework** that distinguishes general-audience services, including everyday retail services from higher risk digital services and expressly excludes general audience services from the most onerous obligations such as conducting annual risk assessments.

3. **Remove the deeming of design features as having negative behavioural impacts from section 25G,** or to add a note under section 25G (2) that states that the concept of design features as having **negative behavioural impacts is limited to those services** that have the primary purpose of sharing user-generated content, not general audience retail platforms.

4. **In recognition of the cumulative impact of red tape, particularly on small business and the productivity of the economy more broadly, any remaining burdens must be proportionate and matched to the level of risk.** Recognition of equivalent (including UK) assessments should be considered, minor documentation failures should attract nil or lower penalties, and exemptions and guidance must be published before commencement of the Bill to give business certainty.

5. **Carefully consider any impacts of the user empowerment tools referred to in section 27A for retailers,** including their ability to reach customers through legitimate commercial channels, including through social media platforms.

Detailed comments

Recommendation 1: Exclude mainstream online retail platforms, e-commerce marketplaces and commercial retail websites

ARC submits that all retail platforms should be excluded in the Bill rather than by a ministerial instrument that may or may not be made. A statutory exclusion gives retailers certainty about their obligations, including in relation to risk assessments, and ensures a fundamental scope question is set out in legislation, not elsewhere.

Under the current Designated Internet Services Standards and industry codes (which the Bill proposes to repeal), most retail platforms fall into the general-purpose class of designated internet services. This is a pre-assessed low-risk category that excludes them from active compliance and risk assessment obligations. This framework is an established precedent for online safety regulation in Australia and should be replicated in the Bill.

Without an equivalent carve-out in the Bill, retail platforms would be subject to the same obligations as services that may display harmful or seriously harmful material (sections 25D and 25E). This is a significant burden for retailers, whose platforms are essential to engagement with consumers. For example, a small retailer operating a basic online store would be required to undertake, review and retain detailed risk assessments.

A retail platform is provided to enable consumers to view, select and purchase goods or services supplied by the retailer. Where design features are included in a retail platform, these are purposefully geared towards enhancing consumer convenience and streamlining the end-to-end shopping journey. Features of retail platforms may include:

- **General audience and passive access.** Children and adults may browse without logging in or registering. Minimal personal information is collected, no social interaction occurs and the identity of the user is unknown. Retailers apply the same product controls and restrictions online as if products are in store.
- **Convenience-focused design.** Recommenders assist consumers by surfacing relevant, complementary products tailored to a consumer's stated preferences and browsing context. This saves a consumer time and reduces information overload. This is comparable to a supermarket displaying related products on the same shelf.
- **Optional accounts.** Consumers who choose to log-in generally enjoy a more seamless experience than a consumer who chooses not to do so. Logging in enables easier tracking, simplified returns and secure management of a consumer's payment and delivery settings. Far from having a *negative behavioural impact* this functional capability operates as a helpful digital assistant tool that optimises the consumer experience, improves choice architecture and fosters a frictionless user governed retail environment.

Alternatively, ARC recommends that the Bill be amended to exclude retail platforms with no consumer engagement features or minimal consumer features, such as an ability to leave a product review or share material with consumers. This would follow the model set out in the *Online Safety Act 2023 (UK)* (the OSA). The OSA regulates user-to-user services and search services, plus services publishing provider pornographic content. A retail platform with limited functionalities is outside scope. The OSA exempts a service whose only user functions are comments or reviews on the provider's own content, and likes, emojis, yes/no votes or ratings. The exemptions sit in the OSA, not in ministerial discretion.

If the exclusion of retail platforms is not placed in the Bill, the Bill should require the Minister to make it before commencement.

Recommendation 2: Adopt a tiered, risk-based framework

The Bill should distinguish general audience retail platforms, where access is passive and the risk to children is low, from higher risk services that may expose children to harm. The most demanding obligations, including written risk assessments, record keeping and design feature requirements, should be concentrated on the second group, with baseline protections applying proportionately to other businesses. A single set of obligations applied to every online service misallocates compliance effort away from where children are at risk.

Further, in terms of appropriate action to ensure a safe online environment, ARC recommends that the "reasonably practicable" standard, or at minimum, the inclusion of cost and proportionality as relevant factors, should be reinstated in sections 26 and 26A. The current framing creates an open-ended obligation untethered from proportionality.

Recommendation 3: Remove the deeming of design features

Section 25G treats recommender systems, endless feeds, feedback features, time-limited features and logged-in accounts as *negative behavioural impacts*, whatever the service. These definitions capture ordinary features of most retail platforms, including transactional displays, such as search results and product listings. The Bill treats these features as harmful without considering how they operate in a general audience retail platform.

In an online retail platform or shop, suggestions for related products, a signed-in account page, a saved basket and a clearance countdown are routine commerce. They are not engagement-maximising design aimed at children. ARC recommends that the deeming of these features be deleted in the retail context. The duty must be based on evidence of the actual risk of harm to children and adults from retail platforms, not extrapolated from another online service, such as social media platform, and applied to the retail context.

If the intention is to limit section 25G to user generated content on social media platforms, this must be made clear in the Bill. Features required for security, accessibility or personalisation requested by the user should be excluded.

Recommendation 4: Any remaining burdens must be proportionate and matched to the level of risk

The Bill places a significant burden on providers, which will have the greatest impact on small retail businesses who are currently operating in an increasingly challenging economic environment. The compliance obligations are extremely onerous adding to an already heavy load of red tape on Australian businesses, impacting small businesses the most. A retailer is required to complete a written risk assessment of a platform, identify reasonably foreseeable risks, their likelihood and severity and the mitigations; review it at least annually; retain it for six years; and produce it within 30 days of a request. There is no simplified pathway for small or low risk operators. This is not supported by ARC.

The penalty exposure is also serious. Penalties may exceed $100 million, including for failing to prepare or retain a risk assessment. Small retailers also rely on hosted e-commerce platforms they do not control, and the Bill does not clearly allocate responsibility between businesses that share delivery of a service.

Finally, in relation to section 28A, and the power of the Commissioner to compel the disclosure of information, including *decision-making algorithms,* is unreasonably broad for retailers operating general audience retail platforms. This power is not justified in the context of retail platforms and the low risk profile. ARC submits that retail platforms should be excluded from section 28A. Alternatively, tether s28A to online services that are demonstrably high risk or have the primary purpose of disseminating user generated content.

Recommendation 5: Carefully consider any impacts of the user empowerment tools referred to in section 27A for retailers.

ARC will lodge a separate submission regarding the proposed legislative instrument to give effect to the *My Feed, My Way* initiative. A copy of this submission will be shared with the Senate committee. However, the Committee should carefully consider this issue also. ARC supports consumer choice, which is already a feature of online platforms, however section 27A risks creating unintended consequences for retailers, particularly small businesses that depend on online exposure to reach customers.

A future legislative instrument may require a specified online service to provide user empowerment tools that let users control how design features operate, including the kinds of content that might be recommended to them. There is a real possibility that a retailers legitimate commercial content, such as organic posts, promotions and brand pages, could be filtered out or deprioritised in this process. This would reduce the visibility of retailers on social media platforms and weaken their ability to communicate with existing and prospective customers through channels they have invested in and rely on. Small businesses, which typically lack the marketing budgets to offset reduced organic reach through paid advertising, would be disproportionately affected.

There also remains uncertainty about which services may be required to introduce these tools. ARC therefore recommends that the application of and impacts of any requirements under section 27A be carefully considered by the Committee. ARC recommends that user empowerment tools clearly target services where they are

necessary and effective in addressing identified online safety risks, and that the Bill avoid unintended consequences for retailers' ability to reach audiences through legitimate commercial channels, including social media engagement.

Please contact policy@retail.org.au if you have any questions about this submission.

About ARC

ARC represents the Australian retail sector. Valued at $444 billion, retail is the nation's largest private sector employer, supporting more than 1.4 million jobs, including more young Australians aged 15 to 24 years than any other industry. ARC's membership is diverse. From family-owned small and independent businesses, comprising 95 per cent of our membership, to large national and international retailers supporting communities across metropolitan and regional Australia. With more than 155,000 retail outlets nationwide and a growing online presence, the retail sector is embedded throughout the economy, playing a critical role in the supply chain of Australian businesses. ARC advocates for policies and reform that drive growth, resilience, and long-term prosperity for Australian retail and the millions who rely on it. At a time of rapid change, from technological disruption and international competition to shifting consumer behaviour and sustainability expectations, effective policy settings are critical for retailers, workers, consumers, and communities.