NATIONAL CATHOLIC EDUCATION COMMISSION

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

Context

The National Catholic Education Commission (NCEC) is the national peak body for Catholic education, which is Australia's largest non-government school provider. Our 1,750 mostly low fee schools educate 830,000 students and employ around 115,000 staff. Catholic schools enrol one in five Australian school students and operate more than 750 early childhood education and care (ECEC) services (including preschool/kinder, long daycare, out of school hours care and family day care).

As a universal and inclusive system, Catholic education serves families across metropolitan, regional, rural, and remote areas, offering an alternative, faith-based model of schooling that has operated alongside government schools for more than 200 years.

NCEC advocates at the national level on behalf of the Catholic sector and the hundreds of thousands of Australian families who entrust the education of their children to our schools. Our role is to ensure the needs of Catholic schools are served through funding, legislation, and policy.

The Australian Catholic Bishops Conference Commission for Life, Family and Public Engagement has also made a submission on the bill that is supported by Catholic education. This submission focuses directly on the impact of the *Online Safety Amendment (Digital Duty of Care) Bill 2026* for schools and school systems.

Executive Summary

Catholic education welcomes the intent of the *Online Safety Amendment (Digital Duty of Care) Bill 2026* (the Bill) to strengthen digital safety and require online services to take greater responsibility for preventing and addressing illegal and harmful material.

Catholic education supports the objective of creating safer online environments for children and young people. The protection of children and young people is central to the mission of Catholic schools. Our commitment is grounded in Catholic belief and social teaching in the inherent dignity of each individual with particular attention to those marginalised and disadvantaged. Catholic education strongly supports the position that the best interests, safety, and wellbeing of Australian children should be at the heart of all obligations under the proposed digital duty of care.

In keeping with this position, Catholic education welcomes and supports a regulatory framework that places primary responsibility on those entities that design, operate and control online services, including the systems, features and algorithms that create or mitigate online risks.

However, the lack of clarity in the Bill's framework, specifically proposed definitions of core terms such as 'online service' and the persons 'responsible' for those services create significant uncertainty and unintended consequences for schools and education authorities , and indeed for

all non-government schools. Notably, while these significant unintended consequences would apply to non-government schools they would not apply to government schools, with the consequence of different levels of protection and regulation for children and young people depending on the institution they attend. We assume this differential impact of the bill is an unintended consequence of its current drafting.

Schools operate in a unique environment that fundamentally differs from commercial online services. Schools use digital platforms to deliver teaching and learning, communicate with families, support student wellbeing, meet legislative requirements to government, and to fulfil legal and child safeguarding obligations. Schools frequently select, configure and administer digital tools but only rarely design, own, host or control the underlying technology.

Catholic education submits that the Bill should make clear that the digital duty of care rests principally with entities that design, operate and control digital online services. Schools (and solely non government institutions as proposed) should not be required to determine through future enforcement action whether ordinary educational use, procurement, configuration or administration of a third-party platform makes them responsible for compliance with the digital duty of care.

Schools already operate within comprehensive and closely regulated safeguarding, wellbeing, behaviour management, privacy, child protection, and duty of care frameworks. As such, education services provided by registered not-for-profit schools provide little risk of the type the Bill is intended to address.

Any new obligations on schools should complement these responsibilities, rather than create duplication, uncertainty or disproportionate compliance burdens.

Recommendations

Catholic education submits;

1. The Bill should clarify that schools are not considered providers of, or persons responsible for, online services solely because they procure, administer or require the use of third party digital platforms for educational purposes.
2. The Bill should make clear that the digital duty of care rests principally with entities that design, operate and control digital online services.
3. Routine educational activities should not, of themselves, constitute day to day control of an online service where the school does not control its development, hosting environment, data architecture, recommender systems, algorithms or other core functionality.
4. Registered not-for-profit schools and education authorities should be provided a clear exemption in the Bill.
5. Further consideration should be given to clearly outlining the relationship and interaction between the Children's Online Privacy Code and the Bill in order to reduce any overlap in obligations and reporting and provide schools with greater clarity about any requirements they may need to meet.

Potential unintended consequences for Catholic schools

As drafted, the Bill creates the potential for significant unintended consequences for each of Australia's 1,750 Catholic school communities, as well as other non-government schools.

Section 25B defines what constitutes an online service, and who is responsible for an online service. The principal concern is the breadth of the proposed definitions of 'online service' in s25B and the uncertainty surrounding which entity or entities are 'responsible' for an online service, including any person able to exercise 'day to day control' of that service.

The proposed definition of 'online service' under s25B(1) is extremely broad. In a school context, the breadth of this proposed definition could potentially capture learning management systems, student information systems, parent engagement platforms, virtual classrooms, assessment and analytics tools, wellbeing and pastoral care platforms, school websites, and school managed social media accounts and communication channels.

The definition of a 'person responsible for an online service' in s25B(2), similarly has potential for significant unintended consequences. Schools routinely configure access and permissions, manage student and staff accounts, moderate school managed content, set acceptable user expectations or administer communication channels. These activities are part of ordinary educational governance and student safeguarding. These activities, however, may be captured by the current drafting of this section.

Catholic education submits that these activities should not, of themselves, constitute day to day control of an online service where the school does not control its development, hosting environment, data architecture, recommender systems, algorithms or other core functionality.

The Minister noted in her Second Reading speech:

> *The core of the digital duty of care is to provide a safe online environment, where all Australians are protected from seriously harmful and illegal content.*
>
> *It moves the safety net upstream to the people who design the product to stop the harm …*
>
> *…it is about getting illegal and seriously harmful material offline …*

As highlighted above, Catholic education strongly supports the position that the best interests, safety, and wellbeing of Australian children should be at the heart of all obligations under the proposed digital duty of care. However, the current drafting of these sections of the Bill appears to extend beyond the Australian Government's intent to protect Australians from seriously harmful and illegal material by ensuring *technology* companies are held accountable for the design of their products, to potentially include platforms and systems routinely used by schools for teaching, learning, and other specifically education and legislated government reporting related purposes.

The potential that routine education services are captured under s25B(2) in the Bill creates a further risk that technology developers and vendors may seek to transfer digital duty of care responsibilities contractually to schools where vendors are unwilling or unable to discharge certain

obligations themselves. This transfer of duty of care would undermine the government's intent of placing responsibility on those companies and service providers responsible for development and design features and therefore best positioned to identify, mitigate, and be responsible for online risks.

If schools were bound by the Bill, they could be subject to requirements relating to risk assessments, record retention, transparency and reporting, complaints handling, dispute resolution processes and regulatory investigations across a large and constantly changing digital environment. Such an outcome could result in substantial compliance burdens for schools without improving student safety outcomes. This would create significant operational, governance and financial burdens for schools and school authorities while diverting resources from teaching, learning, pastoral care, and direct support for students.

Unintended consequences only apply to non-government schools

It should be noted that section 25A(1) provides that the Digital Duty of Care, including all obligations under Part 2, does not apply in relation to an authority or agency of a state or territory, to the extent that the agency or authority is a person responsible for an online service as defined in section 25B(2).

This means that the provisions in the Bill would likely apply to non-government schools but will not apply to government schools. Such an outcome would significantly undermine the stated policy intent of the Bill. Significantly, this outcome would also create a substantial inequity by placing a further greater regulatory burden and responsibility on non-government schools in addition to embedding a notable difference for students depending not on vulnerability or need for safety and protection but on the school sector in which they are enrolled.

Recommended action to address unintended consequences

Section 25F of the Bill provides for a definition of excluded material for the purposes of the exception from seriously harmful material and conduct (as defined by s25D) and material and conduct that is harmful to children (as defined by s25E).

A range of materials are excluded under this provision, including at s25F(1)(c)(d), professional news material and entertainment media. The Minister's 15 October 2026 media release announcing the government's introduction of the Bill highlighted that clarification of this exemption was following consultation and feedback.

Catholic education submits that a similar exemption should be included in the Bill as a clear provision to registered not-for-profit schools and education authorities. Such a provision would reduce the stated potential for unintended consequences flowing from the legislation and provide clarity and certainty to non-government schools of their responsibilities and obligations.

Section 25B(3) also provides for the Minister to exempt an online service, or a class of online services, by use of legislative instrument, if the Minister is satisfied that they pose little risk to users of the service in Australia. Catholic education submits that education services provided by schools

would clearly fall within an ordinary meaning of 'little risk' under this section. However, simply relying on this provision to exempt schools would be a less than satisfactory option.

As the Minister highlighted in her Second Reading speech:

> *... not all online services share the same level of risk and type of risks ...*
>
> *Providers of low-risk services will have minimal obligations under the digital duty of care...*

'Schools already operate within a comprehensive and closely regulated safeguarding, wellbeing, behaviour management, privacy, child protection, and duty of care frameworks. As such, education services provided by registered not-for-profit schools provide little risk of the type the Bill is intended to address. Rather than create new obligations, this low-risk environment of schools should be recognised in the Bill.

While the use of legislative instrument may go some way to addressing concerns about unintended consequences, this approach would not provide the ongoing certainty schools require for their day-to-day operations. Additionally, this approach would impose a further regulatory burden on schools to meet standards, conditions, and requirements to determine their compliance with the result of increasing workload and diverting finite school resources.

Relationship of the Bill to the Children's Online Privacy Code

On 31 March 2026, the Office of the Australian Information Commissioner (OAIC) published an exposure draft of the Children's Online Privacy Code (the Code), including new rules which require agencies and organisations to ensure they consider the best interests of children before collecting, using or disclosing their personal information.

The Code contains new rules for the digital domain designed to create better online experiences for children and young people. Key provisions in the code include requirements to consider children's best interests, to obtain consent before using children's personal information for targeted advertising, and to enable children to request deletion of their personal information.

The Code is expected to commence in December 2026. However, the OAIC has not yet made a final version of the Code available to the public, creating significant uncertainty for non-government schools seeking to understand the Code and prepare for their potential future compliance obligations.

NCEC made a joint submission together with Independent Schools Australia (ISA), as part of the consultation process, in response to the exposure draft of the Code. In that submission, NCEC and ISA raised significant concerns regarding uncertainty about the inclusion and role of schools under the Code, the distinction between platform providers and schools using those platforms, and the risk of obligations being indirectly passed through to educational institutions despite their limited ability to control platform design and functionality.

As highlighted above, these concerns with respect to lack of clarity for schools and potential unintended consequences are equally relevant to the Bill.

While the Code includes an exemption for entities providing a health service, no such exemption is provided for education services. The submission recommends, recognising the unique and complex environment in which schools balance privacy protections with duty of care to students, mandatory reporting obligations and child safety requirements, as well as educational responsibilities, that a similar exemption be included in the Code for education services provided by registered not-for-profit schools.

The close relationship between the policy intent and purposes of the Code and the Bill creates potential for overlap in application and practice; the lack of clarity about the inclusion and obligations of schools under both creates potential for significant uncertainty.

Catholic education submits that further consideration should be given to clearly outlining the relationship and interaction between the Code and the Bill in order to reduce any overlap in obligations and reporting and provide schools with greater clarity about any requirements they may need to meet.

Conclusion

Catholic education supports the intent of the Online Safety Amendment (Digital Duty of Care) Bill 2026 and shares the Government's commitment to protecting children and young people from online harm. To ensure the Bill operates as intended, the legislation should clarify that schools are not considered providers of, or persons responsible for, online services solely because they procure, administer or require the use of third party digital platforms for educational purposes. Clear legislative safeguards will ensure accountability rests with those who design and control online services, while enabling schools to remain focused on teaching, learning, student wellbeing and child safeguarding.

October 29, 2026