ATODA
Alcohol Tobacco & Other Drug Association ACT

The Hon Anika Wells MP
Minister for Communications
Parliament House
CANBERRA ACT 2600
digitaldutyofcare@communications.gov.au

22 September 2026

Dear Minister Wells MP,

Re. ATODA's feedback on the exposure draft of the *Online Safety Amendment (Digital Duty of Care) Bill 2026*

The Alcohol, Tobacco and Other Drug Association ACT (ATODA) appreciates the opportunity to provide feedback on the exposure draft of the *Online Safety Amendment (Digital Duty of Care) Bill 2026* (the Digital Duty of Care Bill).

ATODA is the peak body for alcohol and other drug (AOD) services in the ACT. We are proud to represent a sector that provides a broad range of treatment and harm reduction interventions, and in a jurisdiction that has embraced evidence-based, practice-informed harm minimisation responses to alcohol and other drugs and leads the country in innovative health-focussed AOD policy. This submission outlines items within the Digital Duty of Care Bill that may impact the ACT or have the effect of undermining or conflicting with the ACT's harm reduction approach.

1. Impact on CanTEST communications, including life-saving drug alerts

The ACT has invested significantly in harm reduction measures, including drug checking and public drug alerts. These interventions rely on timely online communication to warn people about dangerous substances, unexpected drug contents and emerging drug trends.

For example, if CanTEST identifies a tablet being sold as MDMA that actually contains a highly potent nitazene analogue associated with fatal overdoses, publishing photographs of the tablet, descriptions of its appearance, expected effects and practical steps to reduce risk is currently considered good public health practice. Under the proposed definition, however, a platform or moderator could regard information describing how the substance is used, what effects users report or how to reduce harms as material that "encourages", "promotes" or "instructs" illicit drug use.

The likely result is overly cautious, risk-averse moderation. Faced with substantial penalties and uncertainty, platforms are likely to remove or suppress harm reduction content even where its purpose is explicitly to prevent injury or death. This would undermine the effectiveness of ACT drug checking services, reduce the reach of drug alerts and leave people reliant on rumours, unverified social media posts or commercial drug markets for information.

Restricting access to evidence-based drug information does not eliminate drug use. Rather, it increases the likelihood that people will use substances without knowledge of potency, adulterants or overdose risks. As such, the proposed provisions may directly undermine overdose prevention and public health objectives.

2. Impact on naloxone and overdose prevention information

Naloxone is an established overdose reversal medication that is promoted by governments, health services and emergency responders throughout Australia.

Online information about naloxone often includes descriptions of overdose symptoms, explanations of how opioids are commonly consumed, instructions on administering naloxone and guidance on responding to overdose. Some online resources – including training videos – use realistic scenarios involving illicit opioid consumption.

Without clear protection for health information, platforms may determine that such content presents legal or regulatory risk because it discusses illicit drug use in practical terms. Automated moderation tools may have difficulty reliably distinguishing public-health education from material that promotes drug use, particularly where both use similar words, images and descriptions of common practices.

Any reduction in access to overdose prevention information is likely to have disproportionate impacts on people who use drugs and their family members and friends. It will also fall more heavily on people who experience additional barriers to accessing reliable health information including people who are disengaged from health services, people living in rural and remote communities and young people.

Importantly, a legislative framework designed to improve safety should not create barriers to accessing information that saves lives.

3. Risk of personal liability

The Bill defines a "person responsible" for an online service as including a person "in a position to exercise day-to-day control of the service". The breadth of this definition creates uncertainty about whether individual officeholders, managers or employees with operational control over a website or digital service could be treated as personally responsible. Even if this is not the intended result, the legislation does not make the limits of personal responsibility sufficiently clear.

Even if enforcement ultimately focused on organisations rather than individuals, uncertainty regarding personal liability is likely to have a chilling effect. Staff may be reluctant to publish accurate health information, share drug alerts or facilitate online peer education if they are concerned about regulatory exposure.

This risk is particularly significant for small community organisations that lack dedicated legal and compliance teams and for whom the proposed penalties would be financially unfeasible.

4. Reduced access to trusted information

The Bill creates substantial penalties for non-compliance with the digital duty of care and encourages proactive risk management by platforms. Where legal obligations are broad and ambiguous, platforms commonly respond by removing more content than is strictly necessary.

Drug-related content is especially vulnerable to this form of over-enforcement. As a consequence, evidence-based information produced by organisations such as ATODA, CAHMA, Directions Health Services or other ACT providers could become more difficult to find than sensationalist media reports or misinformation.

This would create a paradox whereby the most reliable and health-focused information is the content most likely to disappear from online platforms.

5. Impacts on young people and health education

The provisions relating to material harmful to children may unintentionally restrict access to age-appropriate drug education and harm reduction messaging.

Many young people seek health information online before approaching health professionals. A platform seeking to minimise compliance risk is likely to conclude that restricting all drug-related content for young users is safer than attempting to distinguish between educational information and promotion of drug use.

The predictable outcome is reduced exposure to accurate, evidence-based information while people remain able to access misinformation through unregulated channels. This approach is inconsistent with contemporary public health practice, which recognises that accurate information is protective rather than harmful.

6. Impacts on debate and advocacy

The Bill may affect public debate about drug policy reform. Including evaluative and policy-related discussion in relation to drug decriminalisation in the ACT; harm reduction services (such as needle and syringe programs); establishment of a supervised injecting facility; and the peer and lived/living experience workforce.

For instance, a person sharing their experience of surviving an overdose and explaining how naloxone, drug checking or peer support reduced harm may find their content suppressed despite its educational value.

Similarly, advocacy organisations discussing evidence from the ACT's drug policy initiatives may experience reduced visibility if platforms take a precautionary approach to moderation.

This would have implications not only for public health information but also for democratic participation and policy debate.

ATODA's recommendations

Recommendation 1: Exclude drugs from the definition of seriously harmful material

> Removing "material or conduct that encourages, promotes, urges or instructs illicit drug use" from the list of "seriously harmful material and content" would reduce the risk that legitimate harm reduction, treatment and public health information is captured by provisions

intended to address genuinely dangerous content. Drug-related information can describe use, effects and risk-reduction practices without encouraging consumption, and these distinctions should be recognised in the legislation. Protecting access to age-appropriate, evidence-based drug education and harm reduction information for children and young people is important in reducing life-long harms. Existing criminal laws and platform policies can continue to address unlawful supply or promotion without restricting evidence-based information that helps prevent harms (including fatal overdose). The Bill should ensure that legitimate health information is not unnecessarily blocked, down-ranked, age-gated, excluded from search results, deprived of recommendation or sharing functions, labelled as promoting illegal activity, or subjected to warning screens that discourage access.

Recommendation 2: Require explicit consideration of the public health harms caused by restricting or removing content by excluding drug-related public health and harm reduction from the operation of the bill

The Bill currently focuses on harms associated with content remaining available online. It should also require platforms and regulators to consider the consequences of restricting access to drug alerts, overdose prevention resources, treatment information and peer education. An explicit balancing requirement would help ensure that safety decisions account for both content-related risks and the foreseeable public health harms caused by removal, suppression or delay.

Recommendation 3: Require clear reasons, human review, timely appeals and swift, uncomplicated reinstatement mechanisms when legitimate health content is removed or downranked or otherwise restricted.

Transparent decisions and accessible review processes will allow health services and community organisations to understand why content has been restricted and correct moderation errors quickly. Human review is important where automated systems cannot reliably distinguish health education from promotion or instruction. Prompt reinstatement is especially critical for time-sensitive drug alerts and overdose information, where a delay of even a few hours can reduce the effectiveness of the public health response.

Recommendation 4: Exclude AOD and harm reduction organisations from being considered online services and legislate proportionate obligations and penalties based on service size, function, resources and risk.

A proportionate framework would avoid imposing the same compliance burden on small community organisations as on huge technology platforms. Obligations and penalties should reflect an entity's size, resources, degree of control and the actual risk associated with its service. This would support compliance without diverting limited community-sector resources away from frontline treatment, harm reduction and education.

Recommendation 5: Ensure protections against personal liability for staff acting in good faith.

The Bill should make it clear that an employee or volunteer is not personally liable because they create, approve, upload, moderate or manage content in the course of their duties.

Personal liability should apply only where a person has genuine executive control over the relevant service and has knowingly, recklessly or repeatedly failed to discharge a statutory obligation.

Recommendation 6: Prevent unnecessary identity verification and collection of identifiable health information.

Measures intended to protect users should not require people to disclose more personal information than is absolutely necessary. Identity checks or collection of health-related data is likely to deter people from seeking sensitive information, particularly where anonymity supports early help-seeking and access to harm reduction advice. Any verification requirement should therefore be absolutely necessary, proportionate and designed to minimise privacy, security and discrimination risks.

Recommendation 7: Ensure protections are contained within the Act.

Embedding protections in the legislation, rather than relying only on guidance or discretionary regulatory practice, would provide greater certainty for platforms, health services and the community. Clear statutory safeguards would make public health considerations part of the enforceable scheme and reduce the likelihood of inconsistent interpretation. They would also ensure that protections cannot be weakened or applied unevenly through later administrative practice.

ATODA supports measures that make online environments safer. However, the framework intended to prevent serious harm must not inadvertently restrict access to information that prevents overdose, supports treatment, enables informed decision-making and saves lives. Clear statutory protections for public health, clinical, educational, research, advocacy and harm reduction material are therefore essential.

We urge the Minister to amend the Bill so that legitimate health information is protected, moderation decisions take account of the harms caused by restricting access, and health and community organisations are not exposed to disproportionate obligations or personal liability.

Thank you for your consideration of ATODA's feedback. We trust that our concerns around the potential risks to public health and the continuing provision of safe, timely, evidence-based harm reduction information will help to shape the *Online Safety Amendment (Digital Duty of Care) Bill 2026* and any subsequent Act.

If you have any queries about the content of this submission, please don't hesitate to get in contact, ceo@atoda.org.au.

Kind regards,

Anke van der Sterren

Acting CEO, ATODA