OPEN LETTER TO THE GOVERNMENT

THE DIGITAL DUTY OF CARE MUST ADDRESS GENDER-BASED VIOLENCE

We support the introduction of a Digital Duty of Care. The shift from individual responsibility to system responsibility is necessary and overdue. Too often, online safety frameworks place the burden on the person experiencing harm to identify it, report it and navigate complaints processes after it has occurred. This mirrors a wider problem in Australia's response to gender-based violence, where victim-survivors are expected to make harm visible and carry the response through systems that have not been designed around their safety. A Digital Duty of Care provides an important opportunity to change that approach by placing responsibility on online services to prevent and meaningfully respond to foreseeable harm.

However, **gender-based violence remains a glaring omission from the exposure draft.** The Bill does not expressly recognise gender-based violence, including technology-facilitated gender-based violence, as a systemic risk that providers must address. We, the undersigned, call for the following inclusions to Digital Duty of Care:

1. Gender-based violence must be explicit
2. Bring image-based abuse fully within the reforms
3. Acknowledgment that online harm and misogyny do not end at 18
4. Recognise protected characteristics and cumulative harm
5. Introduce a private right to action

We support the Digital Duty of Care and want it to succeed. Embedding these protections would ensure the reform delivers on the Government's public commitment to address gendered online harm and places responsibility on the services best positioned to prevent it.

Working with Women Alliance
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Full Stop Australia
Australian Women's Health Alliance
National Foundation for Australian Women Policy Towards Equality
NASASV National Association of Services Against Sexual Violence
GOGO Foundation
Working Women's Centre Australia
National Rural Women's Coalition
Australian Multicultural Women's Alliance
Women With Disabilities Australia (WWDA)
Women's Legal Services Australia
Violet Co Legal & Consulting
CWES Centre for Women's Economic Safety
WEL Women's Electoral Lobby
Older Women's Network New South Wales OWN
G+V GENVIC Gender Equity Victoria
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As the Government develops the Second Action Plan under the National Plan to End Violence against Women and Children 2022–2032, leaving gender-based violence out of the Digital Duty of Care would be a monumental, missed opportunity to translate its national commitments into the systems that are increasingly shaping victim-survivors' safety. Specialist services see how deeply technology is now embedded in domestic, family and sexual violence and how online services can enable perpetrators to extend violence.

We make the following recommendations for inclusion in the Digital Duty of Care.

1. Gender-based violence must be explicit

The Bill recognises some manifestations of gender-based violence, including material encouraging sexual violence, explicit threats of physical violence and conduct intended to cause serious harm through menacing or harassment. It also recognises hostility towards women or gender equality as harmful to children. These inclusions are welcome, but they do not amount to a comprehensive response. Gender-based violence is not named as the overarching harm, while technology-facilitated abuse and coercive control are left to be interpreted through general concepts such as harassment or menacing. This omission risks fragmenting a broader pattern of violence into individual incidents and obscuring the gendered context in which the harm occurs. Gender-based violence must therefore be named and defined within the Bill. Sexual violence should remain expressly recognised as one form of gender-based violence, alongside technology-facilitated abuse and other forms of gender-based violence and control.

But recognition within the definition of harmful material and conduct is only one part of the reform required. Adding gender-based violence to clause 25C would identify the harm, but would not necessarily require providers to examine how their services produce or amplify it. Clause 26A is the provision that shapes provider behaviour. It requires providers to assess reasonably foreseeable risks arising from content, design features and other systems or processes. Yet it does not expressly require them to assess gender-based violence or technology-facilitated abuse as systemic risks. A provider could therefore complete a risk assessment without examining gendered harm or considering how its systems disproportionately affect women. This is particularly important because technology-facilitated abuse is often perpetrated through ordinary functionality that is not inherently harmful. Perpetrators use location sharing, account access and communication features to monitor or control victim-survivors. Harm may arise through repeated conduct or the combined use of different features over time. Conduct that appears innocuous in isolation may form part of a wider pattern of coercive control.

The Bill must name gender-based violence as a harm. It must also require providers to treat gender-based violence as a question of platform governance by assessing how their systems can enable that harm.

Recommendation: Define gender-based violence and technology-facilitated abuse and recognise gender-based violence as an overarching category of harm. Amend the risk-assessment provisions to require providers to identify, assess and mitigate gender-based violence as a foreseeable systemic risk, including by assessing how ordinary service functionality may be used to harm another person.

2. Bring image-based abuse fully within the reforms

Image-based abuse is not expressly recognised within the Digital Duty of Care, and the new pathway for responding to reposted or altered material is not extended to the intimate image scheme. Non-consensual intimate images, including synthetic or technologically altered images, threats to distribute intimate material and sexual extortion are commonly used to control or punish victim-survivors and may form part of a wider pattern of domestic and family violence. Providers should be required to prevent and mitigate the systemic risks that enable this abuse. Victim-survivors should also not have to restart the reporting process each time an image is copied, altered or redistributed.

Recommendation: Amend the Bill to bring image-based abuse fully within the Digital Duty of Care and close the remaining gaps affecting reposted, altered and synthetic intimate images.

3. Online harm and misogyny do not end at 18

The exposure draft creates two standards of online safety. Adults are protected only from material and conduct meeting the threshold of being seriously harmful. Children receive broader protection from material promoting disordered eating, hostility towards women or gender equality, abuse, harassment and bullying. Children are also protected from harms associated with service design. These broader protections do not apply to adults.

Children require strong and age-appropriate protections, but misogynistic material does not become harmless when a person turns 18. Nor are its impacts confined to the person consuming it. Women experience the consequences through abuse and the normalisation of attitudes that support violence against women. This distinction is particularly difficult to justify given the Government's public emphasis on the manosphere in making the case for the reform. The Bill already accepts that material promoting hostility towards women or gender equality can cause harm but confines that recognition to children.

Recommendation: Establish a meaningful baseline of online safety for everyone in Australia by extending protection from misogynistic material and harmful service design to adults, while retaining additional and age-appropriate protections for children.

4. Recognise protected characteristics and cumulative harm

The Bill does not consistently recognise serious harm directed at people because of who they are. This leaves limited express protection for First Nations people, older people, multicultural and multifaith communities, LGBTIQA+ people and people with disability, despite their disproportionate exposure to online abuse. Women may also be targeted through the interaction of gender with race, religion, disability or sexuality, producing harms that cannot be understood by considering each characteristic separately. For example, older women may experience technology-facilitated abuse at the intersection of ageism and misogyny, including monitoring and control by partners, adult children or carers through access to their devices and accounts, sometimes under the guise of providing assistance.

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The Bill also risks assessing abuse on an incident-by-incident basis. Conduct that appears less serious in isolation can become threatening or dehumanising when it is persistent, coordinated or spread across multiple accounts and services. The Statutory Review identified both attacks based on protected characteristics and the cumulative harm arising from the volume and persistence of online abuse as gaps requiring reform.

Recommendation: Amend the Bill to expressly recognise material or conduct that promotes hostility towards people based on one or more protected characteristics. Require providers to assess persistent and cumulative harm across multiple items of material, accounts or services, rather than considering each incident or protected characteristic in isolation.

5. Introduce a private right to action

No regulator can investigate every breach or take action in every case. eSafety understandably directs its limited resources towards matters involving the highest levels of risk and harm. This means many victim-survivors may never obtain a remedy where an online service fails to uphold its duty, and they are harmed as a result. Victim-survivors should not be entirely dependent on the regulator's capacity or enforcement priorities to obtain accountability. A direct right of action would allow a person harmed by a provider's breach to seek compensation or an injunction, while preserving eSafety's role in addressing serious and systemic non-compliance.

Recommendation: Create a statutory right of action allowing a person/s harmed by a provider's breach of the Digital Duty of Care to seek damages.

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