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Submission on the Online Safety (User Empowerment Tools) Determination 2026

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Executive Summary

Giving people a real choice over their social-media feeds is a worthwhile and **achievable** reform. A person should be able to choose a feed based on sources they deliberately follow without being pushed back into personalised recommendations. The choice should be clear, persistent and no worse to use merely because the provider prefers personalised recommendations.

The Exposure Draft Online Safety (User Empowerment Tools) Determination 2026 contains useful foundations. Section 5 requires tools to be obvious, accessible, easy to use, prominent, functional and continuously available. It prohibits discouraging their use, requires a similar experience and prevents settings changing without an explicit user choice. Those requirements should remain.^[1]

The draft does not yet define the promised alternative precisely enough. A following-only feed controls which accounts may supply material but not how that material is selected, ordered, delayed or omitted. A provider could continue profiling the user, rank followed material for engagement, omit posts and return the user to a recommended feed through manipulative choice design while claiming formal compliance. Section 6(6) also permits advertising from accounts the user does not follow. That contradicts the ordinary meaning of following-only.^[1]

The determination should require at least one genuinely non-profiled ordering of eligible material from followed sources. A chronological option should be available. The rule should apply a neutral prompt to existing and new users, require an affirmative choice before personalised recommendations become the default and prohibit repeated prompts designed to wear down the user's decision. The setting should operate consistently across supported devices and interfaces.

This narrow right should not depend on passage of the broader Digital Duty of Care Bill. Feed choice can be legislated and assessed separately without enacting a general duty over lawful material, service design, identity and access. The Government should establish an independent legislative basis for the rule or separate the relevant enabling provision from the remainder of the Bill.^[2]

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1. Position and scope

This submission is made in a personal capacity. It addresses the Exposure Draft Online Safety (User Empowerment Tools) Determination 2026 rather than repeating the wider objections already raised concerning the Online Safety Amendment (Digital Duty of Care) Bill 2026.

The consultation describes the proposal as giving logged-in Australian users a choice between content recommended through profiling and material from accounts they follow. The Government has presented this as a choice over "the algorithm".^{[3][4]} That phrase is convenient but technically imprecise. Every feed needs rules for selection and ordering. Chronological sorting is an algorithm. Spam controls, duplicate removal, blocks, legal restrictions and accessibility transformations may also affect presentation.

The relevant distinction is whether the provider uses inferred interests, behavioural profiles or engagement predictions to decide what the user sees and in what order. The determination should define that distinction directly. A promise to switch off “the algorithm” invites formal compliance without explaining which processing actually stops.

The objective should be one enforceable right: a user can choose sources and an ordering through deliberate actions instead of having the provider construct both from a profile.

2. What the draft gets right

Section 5 recognises several ways a nominal choice can be defeated through interface design. The tool must be obvious, easy to use, prominent, functional and available on an ongoing basis. Its use must not be discouraged. The alternative feed must not make the service harder to use or navigate. The user’s setting must persist until the user explicitly changes it.^[1]

These are substantial protections. The persistence rule is particularly important. A service should not return to personalised recommendations after the application closes, after an update, on another supported device or after a period of inactivity. A choice which must be remade continually is pressure rather than control.

The draft also avoids requiring one prescribed visual interface. That flexibility is sensible because social-media services differ. The rule should govern the result and the evidence required to demonstrate it rather than impose one button layout on every service.

The draft is short enough for providers, users and the regulator to understand. Its weaknesses can be corrected without turning it into a general code for recommender systems.

3. What following-only must mean

Section 6(5) defines a following-only feed as a feed which contains no material other than material from accounts the user chooses to follow. That restriction concerns source accounts. It does not require the service to include all material which would otherwise be available from those accounts. It does not govern ranking, delay, repetition or suppression.^[1]

A provider could therefore select only the posts most likely to produce engagement, hide quiet or unfamiliar accounts, delay some material and repeatedly surface other material. Every displayed item might come from a followed account while the overall feed remains strongly profiled.

The focus on accounts also assumes that every service is organised around following individual people or publishers. Users may deliberately subscribe to a page, group, channel, community or another service-owned source. The final instrument should protect those choices without silently expanding the feed to topics inferred by the provider. It should define a followed source broadly enough to cover an account and another source the user expressly selected for continuing delivery.

The determination should require at least one non-profiled ordering. A chronological option is the clearest baseline because the user can understand why one item appears before another. A provider may offer other orderings but it should disclose the main ordering rule and must not use profiling unless the user has chosen a profiled option.

Completeness also needs a careful definition. No feed can promise every post without qualification. Material may be unavailable because the author deleted it, the viewer blocked or muted it, the account restricted its audience, the service removed it lawfully or a security control detected spam. The rule should define eligible material as material available after applying the user’s express settings, account permissions, lawful moderation, blocks, mutes, security controls and genuine technical availability. A provider should not otherwise omit or delay eligible material because the user selected the following-only feed.

The rule should also distinguish the feed from discovery. Search, topic exploration and an optional recommendation area can remain available without silently inserting recommended material into the selected feed. The user should decide when to enter those areas.

The European Union’s Digital Services Act requires recommender-system transparency. It also requires very large platforms and search engines to provide at least one option which is not based on profiling and to keep choices between recommender options directly and easily accessible.^[5] Australia can use that principle while setting its own scope and implementation.

4. Prompt, default and persistence

Section 7 requires a prompt when a user next accesses the service after commencement if that user has not chosen a preferred feed. The wording does not clearly cover someone who becomes a user after commencement. Every new user should receive the same choice before a personalised feed first operates.^[1]

The prompt should present the options with equal prominence and explain their material consequences in plain language. It should not preselect personalised recommendations, use a more attractive button for one option, hide the alternative behind another page or describe one choice through warnings designed to deter it.

Where a user does not make a choice, the service should use the following-only feed. Personalised recommendation should require an affirmative decision because it depends on the provider using information about the user to select or order material. Dismissing the prompt or continuing without answering should not be treated as consent to profiling.

An empty following-only feed must remain an honest empty state. A new user might not yet follow any source. The service can offer a separate discovery tool but it should not fill the selected feed with recommendations or switch the preference merely because little material is available.

The service should not repeat the prompt merely to reverse the user's decision. A later reminder may be appropriate when the service materially changes the options or the user asks to review settings. Repeated interruption without a material change would conflict with the draft's prohibition on discouraging use of the tool.

Once selected, the option should apply at account level across every supported application, website and device interface unless the user explicitly chooses an interface-specific setting. A change should take effect promptly and remain visible in the relevant control. Section 5(i) already establishes the correct persistence principle. The determination should make its cross-interface operation explicit.

Services which expose several feed surfaces should identify the scope of the choice. Selecting the following-only feed should control the feed shown when the service opens. A provider should not comply on one tab while continuing to open the service on a personalised feed elsewhere. Search, discovery, short-video and topic surfaces can remain distinct but their operation should not be misrepresented as part of the selected feed.

5. Profiling, advertising and privacy

Section 6(6) permits a following-only feed to contain advertising from an account the user does not follow. A feed containing such material is not following-only. The exception should be removed.^[1]

If the Government intends to preserve advertising within the feed, it should describe the product honestly as following-based rather than following-only. Advertising should be clearly identified, separated from ordinary followed material and governed by a distinct user choice. Paid recommendations must not be presented as though the user chose their source.

The expression user profiling is load-bearing but the draft does not define which inferences, histories or linked data it covers. The final instrument should define profiling by reference to automated processing used to evaluate or predict aspects of a person such as interests, behaviour, preferences or likely engagement.

The determination should then state that a following-only feed must not use profiling to select, order or amplify material or advertising. A provider may continue to perform processing required for account security, fraud prevention, lawful moderation and operation of other features. Those functions should not become a route for reintroducing engagement profiling into the selected feed.

Feed choice does not by itself settle whether the provider may collect information for other purposes. Privacy law owns the broader questions of collection, use, retention and disclosure. The Draft Children's Online Privacy Code separately addresses profiling, targeted advertising and children's personal information.^[6] The determination should avoid conflicting rules while ensuring that the feed choice has an exact operational meaning.

The choice should be available without collecting new age or identity information. It can apply to every logged-in user of a covered service. The broader social-media minimum-age regime already governs whether an under-16 user may hold an account on an age-restricted platform. This determination should not create another reason to identify users.

6. Accessibility, evidence and enforcement

The word accessible in section 5 is important but insufficient by itself. The tool should work through keyboard, touch, voice and relevant assistive technologies across the service's supported interfaces. It should retain visible focus, meaningful labels, sufficient contrast and a reading order which does not depend on visual position. WCAG 2.2 Level AA provides a useful web baseline but native applications and platform accessibility interfaces also require testing.^[7]

The requirement for a similar experience should concern performance, functionality, reliability, accessibility, support and access to ordinary account features. It should not require the following-only feed to imitate the content volume or engagement patterns of a recommendation feed. The two feeds are meant to differ in what selects their material.

Compliance needs evidence. A provider should retain the feed option selected, the time it changed, the interface through which it changed and the version of the selection rules then operating. This information should be available to the user and regulator without retaining a detailed history of viewed content.

Proposed subsection 27A(3) requires the Minister to be satisfied that a specified tool is necessary to protect users from harms associated with a design feature. The consultation page supplies the draft instrument but no draft explanatory statement identifying the relevant harms, evidence or reasoning.^{[3][2]} The Department should publish that reasoning before the instrument is made. Supporting the tool's objective does not remove the need to establish the statutory prerequisite.

Providers should publish aggregate information about availability, persistence failures, complaints, correction times and material changes to feed logic. Reporting should not expose individual choices or reading histories. The eSafety Commissioner should be able to test whether an option remains selected across sessions and devices, whether an ostensibly non-profiled feed uses profile signals and whether the provider degrades the alternative.

Users need a direct complaint and correction route when the setting changes, the feed contains impermissible recommendations or the service makes the selected option materially worse. The provider should explain the outcome and restore the user's choice where it failed.

The operation of the determination should receive a public review after sufficient deployment evidence exists. The review should examine actual choice rates, persistence, accessibility, complaint outcomes, platform workarounds and whether the rule changed profiling or only changed the feed label. A fixed review date should be set when the instrument is made.

7. Legislative independence

The determination would commence with Schedule 2 of the Online Safety Amendment (Digital Duty of Care) Act 2026 and relies on proposed subsection 27A(1). If the broader Bill does not pass, the feed choice does not proceed through this mechanism.^{[1][2]}

That dependency is unnecessary. A narrow right to a persistent feed option can be debated, enacted, enforced and reviewed on its own merits. It does not require a general duty to ensure a safe online environment or the Bill's wider powers concerning lawful material, age assurance, service design and regulatory investigation.

A broadly popular control should not operate as leverage for unrelated statutory machinery. The Government should introduce a separate amendment to the Online Safety Act or separate the user-empowerment enabling provision from the remainder of the Bill. The determination should then operate under that narrow authority.

If the present legislative route is retained, Parliament should receive the final determination before deciding the Bill. The Government should explain the scope of ministerial rule-making, the effect of disallowance and the consequences of a later amendment. Supporting this instrument should not be represented as support for the complete Digital Duty of Care Bill.

8. Recommendations

The determination and its enabling legislation should be amended as follows:

1. Establish feed choice through a narrow legislative basis independent from the general Digital Duty of Care.

2. Define profiling and a non-profiled feed by the information and objectives which may determine selection, ordering and amplification rather than describing every algorithm as switched off.
3. Replace account with followed source where necessary so the rule covers accounts, pages, groups, channels, communities and other sources deliberately selected by the user.
4. Require a chronological option, define eligible material and prohibit unexplained omission, delay, repetition or demotion intended to discourage its use.
5. Remove section 6(6). Material from sources the user does not follow should not appear in a feed called following-only.
6. Require a neutral prompt for existing and new users, use following-only until the user affirmatively chooses profiling and leave an empty feed empty rather than silently filling it with recommendations.
7. Apply the choice across supported interfaces and devices, identify every feed surface it controls and prevent repeated prompts from wearing down a recorded choice.
8. Require plain disclosure of each option's main parameters and keep the control directly available from the feed.
9. Define measurable accessibility, performance, reliability and functional-parity requirements.
10. Publish the evidence required by proposed subsection 27A(3), require bounded compliance records, regulator testing, aggregate reporting plus a usable complaint process and set a public review date.

9. Closing

The draft starts from a sound idea: people should be able to decide whether a service profiles them to choose what they see. Its strongest provisions recognise that a choice can be defeated through poor visibility, repeated resetting, degraded treatment or interface pressure.

The remaining gaps are significant but repairable. Following-only should mean what it says. Non-profiled should describe the feed's actual selection and ordering. The choice should apply to new and existing users, persist everywhere the account is used and remain independent from the broader Digital Duty of Care Bill.

Australia can establish a useful and understandable right here. The final instrument must guarantee the result. Requiring only the appearance of a choice would preserve the problem.

References

- [1] Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts, *Exposure Draft: Online Safety (User Empowerment Tools) Determination 2026*, especially ss 5 to 7.
- [2] Parliament of Australia, *Online Safety Amendment (Digital Duty of Care) Bill 2026*, especially proposed s 27A and Schedule 2 commencement.
- [3] Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts, *Choice of feeds on social media*, consultation open from 15 October to 5 November 2026.
- [4] Anthony Albanese MP and Anika Wells MP, *My Feed, My Way*, 8 September 2026.
- [5] European Union, *Regulation (EU) 2022/2065*, especially arts 27 and 38.
- [6] Office of the Australian Information Commissioner, *Exposure Draft: Privacy (Children's Online Privacy) Code 2026*, provisions concerning profiling, automated decisions and targeted advertising.
- [7] World Wide Web Consortium, *Web Content Accessibility Guidelines 2.2*, W3C Recommendation, 12 December 2024.