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Department of Infrastructure, Transport, Regional Development and Communications

8 September 2021

**SUBMISSION IN RELATION TO DRAFT ONLINE SAFETY (BASIC ONLINE SAFETY EXPECTATION) DETERMINATION 2021**

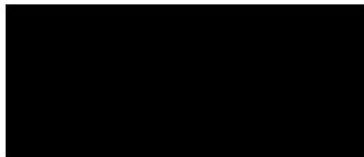
**Introduction**

1. I welcome the opportunity to provide this submission to the Department of Infrastructure, Transport, Regional Development and Communications consultation regarding the Draft Online Safety (Basic Online Safety Expectation) Determination 2021 ('the Determination').
2. While I am employed as a teaching fellow and casual academic at the University of New South Wales School of Law, Society and Criminology, I am providing this submission in my personal capacity.
3. My academic background is in human rights law, criminal law and criminology.

**Reference in the Determination to National Classification Code Class 1 and Class 2 material**

4. The Determination refers to the expectations set out in section 46 of the *Online Safety Act 2021* ('the Act') and refers to content that falls under Class 1 and 2 of the National Classification Code (NCC):
  - Division 3 – Expectations regarding certain material and activity:
    - Clause 11 – Core expectation – provider will take reasonable steps to minimise provision of certain material (refers to class 1 material)
    - Clause 12 - Core expectation – provider will take reasonable steps to prevent access by children to class 2
  - Division 4 – Expectations regarding reports and complaints

- Clause 13 - Core expectation – provider will ensure mechanisms to report and make complaints about certain material (refers to class 1 and class 2 material).
5. Section 46 of the Act creates a significant risk of excessive proactive monitoring and removal of content that falls under Class 1 and 2 of the NCC. The classification system appears to be overly broad and captures categories of content that should not be subject to such restrictive regulation. For example, Class 1 aligns with content that would be deemed “Refused Classification”. Class 2 material includes content that is likely to be classified as “X18+” or “R18+”. As a result, when taken together Class 1 and Class 2 material actually captures all sexual content, whether violent or not.
  6. It is submitted that the classification system in the NCC is outdated and in need of review. This Determination should not be reliant on such an outdated classification system. I submit that references to Class 1 and Class 2 material should not be included in this Determination until such a review into the NCC has been completed.
  7. Thank you for the opportunity to provide this submission.



**Dr Louis Schetzer, B.Ec., LL.B., MPPM, PhD**

**7 September 2021**