

November 11, 2021

Dear Director, Online Safety Reform and Research Section:

I am writing from Freedom United, an international anti-trafficking NGO, with regards to the Draft Online Safety (Basic Online Safety Expectations) Determination 2021 consultation. While we believe in the importance of preventing and addressing online harms, including human trafficking, we are concerned about the potential for misuse of reporting mechanisms and the consequences of service providers' actions, especially with regard to Class 1, Class 2, and Refused Classification (RC) material, which risk undermining efforts to prevent trafficking for sexual exploitation.

We note that BOSE includes a core expectation that providers will ensure mechanisms to report and make complaints about certain material, including Class 1 and Class 2 material. The Online Safety Act gives meaning to Class 1 material as that which has "been classified as RC by the Classification Board under the Classification (Publications, Films and Computer Games) Act 1995." This Refused Classification (RC) designation applies to materials that:

- (a) describe, depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified; or
- (b) describe or depict in a way that is likely to cause offence to a reasonable adult, a person who is, or appears to be, a child under 18 (whether the person is engaged in sexual activity or not); or
- (c) promote, incite or instruct in matters of crime or violence

In addition, Class 2 materials cover X18+ or R18+ content. According to the Online Safety (Basic Online Safety Expectations) Determination 2021, there is also a core expectation that provider will take reasonable steps to prevent access by children to Class 2 material.

Human trafficking is covered under "crime" as listed in Class 1 Part A, but there needs to be a clear distinction in how the government intends to define actual cases of trafficking and guard against false reporting by users. We note this given that adult, consensual sex workers face a high risk of being reported, removed, and deplatformed by service providers based on the vast and subjective interpretation of "standards of morality" in Class 1 Part A. This move would detract from trafficking prevention efforts by undermining harm reduction strategies used by sex workers online.

As Freedom Network USA, a network of anti-trafficking service providers explains:

Consensual commercial sex workers use harm reduction tools such as online forums to screen clients, avoid high risk activities, share resources, and protect each other. Further

criminalizing consensual commercial sex work, where there is no force, fraud or coercion, is no way to protect victims.<sup>1</sup>

This valid concern has been well-documented in Australia<sup>2</sup> and stems from the global effects of the United States passing the Stop Enabling Sex Traffickers Act (SESTA) and Fight Online Sex Trafficking Act (FOSTA) in 2018. Together, SESTA FOSTA, under the premise of stopping sex trafficking, have made online platforms liable for any content advertising sex work. This led to massive deplatforming of sex workers — under no fault of their own — and the law has led to only one federal prosecution according to the United States Government Accountability Office (GAO).<sup>3</sup> Furthermore, a legal analysis in the *Columbia Human Rights Law Review* by Kendra Albert, Elizabeth Brundige, and Lorelei Lee notes that “though the exact legal applicability of FOSTA is speculative, it has already had a wide-reaching practical impact; it is clear that even the threat of an expansive reading of these amendments has had a chilling effect on free speech, has created dangerous working conditions for sex-workers, and has made it more difficult for police to find trafficked individuals.”<sup>4</sup>

Australia’s Online Safety Act and its accompanying Basic Online Safety Expectations threaten to replicate these same harms on human trafficking victims and sex workers by restriction and removal of online content of Class 1, Class 2, and Refused Classification material. Specifically, BOSE must make clear that human trafficking is not the same as sex work and set out how these will be differentiated by the government. As defined by the United Nations Palermo Protocol, which Australia is party to, trafficking in persons shall mean:

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”<sup>5</sup>

To be clear, we believe that online content depicting abuses of human trafficking victims should be removed and that traffickers be held accountable. However, these cases are different from adult, consensual sex work and it remains unclear how the government will differentiate between actual cases of trafficking and false or misleading reports by end-users. This distinction is essential in order to help trafficking victims and ensure sex workers can communicate with each other in order to work safely online — a crucial harm reduction strategy.

We note that Victoria recently moved to decriminalize sex work earlier this year, explaining that decriminalization will ensure “every worker in the industry is entitled to the same treatment and protections under law, with rights to call out discrimination and unsafe workplaces or practices.”<sup>6</sup> Freedom United as an anti-trafficking organization supports this move and advocates

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<sup>1</sup> <https://www.documentcloud.org/documents/4389576-Freedom-Network-FNUSAOpposesFOSTA.html>

<sup>2</sup> <https://www.abc.net.au/news/science/2021-02-20/sex-workers-fear-twitter-insta-deplatforming-online-safety-bill/13160850>

<sup>3</sup> <https://www.gao.gov/assets/gao-21-385.pdf>

<sup>4</sup> <http://hrlr.law.columbia.edu/hrlr/fosta-in-legal-context/>

<sup>5</sup> <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>

<sup>6</sup> <https://www.vic.gov.au/review-make-recommendations-decriminalisation-sex-work>

for full decriminalization of sex work in order to build resilience to trafficking.<sup>7</sup>

Decriminalization should extend to online spaces as well, especially as many sex workers turned to online work during the Covid-19 pandemic in order to work safely.<sup>8</sup> As BOSE currently stands, the high risk of sex workers being wrongly deplatformed through content removal and reporting mechanisms means they would lose their livelihoods under no fault of their own.

BOSE regulations should learn from the harms presented by the Eliminating Abusive and Rampant Neglect of Interactive Technologies Act of 2020 (EARN IT Act) in the United States. In a letter to Congress, over seventy civil society organizations wrote:

Sex workers now have greater difficulty organizing and engaging online. The impact of this erasure led directly to loss of economic stability, increases in client violence, and moving to more vulnerable avenues for commercial sex, such as street-based work. The widespread destabilization led to predatory managers approaching now-desperate workers, who faced increased vulnerability to trafficking and exploitation.<sup>9</sup>

Fundamentally, we encourage the government to recognize that simply blocking or removing content does not address the root causes of why an individual is at risk of trafficking in the first place. Traffickers take advantage of marginalized people, many of whom are struggling to make ends meet, often by false promises of work. BOSE regulations must not make it more difficult for sex workers to survive economically — doing so leads to further marginalization, placing them at greater risk of exploitation.

Yours sincerely,

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<sup>7</sup> <https://www.freedomunited.org/trafficking-sexual-exploitation/>

<sup>8</sup> <https://theconversation.com/a-new-online-safety-bill-could-allow-censorship-of-anyone-who-engages-with-sexual-content-on-the-internet-154739>

<sup>9</sup> <https://freedomnetworkusa.org/app/uploads/2020/09/FNUSA-Joins-EARN-IT-Act-Coalition-letter-9.09.2020.pdf>