

# GENERAL REMARKS

The BOSE is a mechanism which has the stated intentions of keeping online experiences "safe" and protecting people from "harm". The intentions of keeping children safe from cyberbullying and exploitation online, as well as providing mechanisms to address the non-consensual sharing of intimate images are to be applauded.

However the broad and problematic definition of "Harm" and the exclusionary nature of the definition of "safety" within the Online Safety Act mean the BOSE & OSA are built on flawed premises. To be treated as an act in good faith, safety MUST extend to all, and not sacrifice entire groups on the altar of safety. The BOSE and OSA is a sledgehammer when a scalpel is required.

My concerns lie in the treatment of Class 1 (Specifically BDSM / Fetish content) and Class 2 materials, and the implementation of mechanisms to limit or restrict access to such materials. Many reasonable Australians including myself take great offence at the definition of any sexual act between consensual adults as being inherently harmful. Many vulnerable groups will be ACTIVELY harmed and made to feel unsafe by the bill. Indeed I will argue that we will be harming the youth by restricting access to many sexual materials.

The definitions of Class 1 materials are based on an outdated National Classification Code - which if adhered to to the letter would deplatform MANY personal and professional accounts and sites, and result in an unacceptable loss of sexual and erotic culture in Australia. Henceforth when Class 1 materials are referred to in this document they will be in the specific context of BDSM / Fetish acts depicted in media.

I believe that we CAN create a safer online space through harm minimisation and greater choice as opposed to proscriptive measures.

I have broken down my submission into sections dealing in greater detail with the aforementioned aspects of concern, followed by a recommendations section dealing with harm minimisation.

## OUTDATED AND OFFENSIVE DEFINITIONS OF HARMFUL

I disagree with the implication that Class 1 & 2 materials are inherently harmful. Context is ALWAYS important, and Class 1 & 2 materials in and of themselves are not harmful. What is harmful is the attitudes that one TAKES into viewing these materials, and the lack of education around sexual practices including harm minimisation and best practices for safety, the preparation, NEGOTIATION and consent that goes into content creation - as well as societal attitudes towards sex and eroticism, and gender roles.

Like all industries, there are best practices and ethical players, as well as those who are unethical - the entire industry should not be painted with the same brush. We don't shut down the fashion industry because certain players are unethical.

Regarding Class 1 Materials - specifically that depictions of Fetish / BDSM activities are Refused Classifications. The Classification system that the BOSE is based on is wildly outdated and out of touch with current social expectations and mores. Sexual acts between consenting adults should not be banned in Australia - as a vast amount of the population consumes these materials for sexual gratification, education and community building.

Granting the power to remove or delist sites which provide access to these materials in Australia is draconian, and will have grave effects on LGBTQ communities, BDSM communities, those with disabilities preventing them from enjoying or accessing heteronormative sex acts, sex workers, sexuality educators and researchers.

The lack of protections or recourse for Fetish / BDSM representations in digital media is deeply concerning to me as both a professional and lifestyle practitioner and educator.

Much of our research into pornography is fairly new, and vocal sex-negative groups such as NCOSE will push the narrative that pornography is inherently harmful. However there is absolutely research to the contrary, and we should not be so quick to use porn as a scapegoat for issues that exist within our society.

I would also argue that creating an air of shame, silence and censorship around entirely valid and consensual sexual acts is far more harmful than allowing access and permissiveness. I believe that creating shame around desire is what leads people to dehumanise the focus of their desire; it is that very patriarchal form of repression which leads to violent misogyny and objectification of women.

*"Some researchers see pornography as engendering a culture of violence against women.(9) More recently these views have been challenged, with Ferguson and Hartley disagreeing with the hypothesis that pornography contributes to increased sexual assault behavior and "may actually provide a catharsis to alleviate sexual aggression" (p 328).(10) They and others (11, 12) have noted that data from the United States demonstrate an inverse relationship between pornography consumption and rape rates, which has also been observed in other countries." -*  
**A profile of pornography users in Australia: findings from the Second Australian Study of Health and Relationships - <https://opus.lib.uts.edu.au/bitstream/10453/48993/3/2-s2.0-84978517067%20am.pdf>**

## EXCLUSIONARY SAFETY - Communities that WILL be harmed by the BOSE

*"The Online Safety Charter was launched by the Minister on 11 December 2019. The Charter was the Government's articulation of community expectations of technology firms and digital platforms to protect citizens, especially children **and vulnerable members of the community, from harmful online experiences.**" - BOSE Determination 2021 Consultation Paper*

Half of the bill deals with reactive practices - ie dealing with online abuses and non consensual image sharing - the other half is proscriptive, ie preventing access to Class 1 & 2 materials - and the fact that these two sides come together under the one legislation is DEEPLY problematic. On one side the harm is clear - an individual's rights and self are being harmed by abusive attacks and sharing of intimate images - it is a process initiated by those offended against. On the other side, the "harm" is nebulous, subjective, and obviously codified by certain morality perspectives - and initiated by those in power to remove choice for others who HAVE NOT CONSENTED TO HAVING THEIR ACCESS RESTRICTED. When we talk about the safety of communities - which communities are these? Who is being kept safe?

Absolutely not the BDSM / Kink community of majority consenting individuals. Absolutely not LGBTQ communities or people of colour, or sexuality educators, all of whom already struggle under current practices. Absolutely not sex workers.

### Sex Workers

Sex workers make up a broad cross section of the society that the BOSE and Act are claiming to keep safe; and are overwhelmingly composed of women and members of the LGBTQ community. However the implementation of BOSE and specifically the expectation of Class 1 & 2 materials to be minimised online will harm these groups.

The reality is that there are likely tens of thousands of Pornographic content creators in Australia - and a large section of those are creating BDSM/fetish content. There is a fear that strict adherence to the National Classification Code will result in loss of access to the sites that they sell content on, and that the powers of the eSafety Commission mean that they could lose the ability to make an income.

Escorts and in-person sex workers of all kinds are concerned that our advertising platforms and social media presence will be unfairly targeted because of the definitions of Class 1 & 2 materials as harmful. Being able to show examples of our work is an important aspect of allowing clientele to make an informed choice about the providers they engage with, and is an important aspect of safety.

This is a fear that MUST be addressed before the Act and BOSE becomes active. There must be protections for sex workers within the bill, and the Classification system MUST be reviewed before creating new systems based on an outdated system.

The very act of including sexual content and deplatforming sex workers is an act of violence which further encourages stigmatisation, hatespeech and discrimination against sex workers.

## LGBTQ/ BDSM Communities

*"We found increased pornography viewing among GLBTIQ+ young people; this is consistent with previous research. This finding may reflect a lack of information in mainstream culture around nonheteronormative sexual behaviour, resulting in a need to access this information via pornography."* - **Young Australians' use of pornography and associations with sexual risk behaviours** -

[https://www.burnet.edu.au/system/asset/file/2649/Pornography\\_ANZJPH\\_paper.pdf](https://www.burnet.edu.au/system/asset/file/2649/Pornography_ANZJPH_paper.pdf)

BDSM and LGBTQ communities are quite often linked, as BDSM covers a range of non-heteronormative sexual activities.

Sexuality and erotic spaces, for personal exploration, education and community are IMPORTANT and NEED to be kept safe as well in the act. Sexuality and erotic experiences are also community bonding experiences. LGBTQ and BDSM/kink communities have spaces online where they can feel safe expressing themselves, their desires and finding like minded individuals. Where they can discover and find ways of expressing themselves erotically which would be far harder to engage in if these online spaces are removed.

These include pornography sites as well as Social Media spaces. Spaces where groups can share pornography which caters to their specific sexual needs should be protected, as these are places where those users can share their own experiences and find validation about their diverse sexual orientations and desires.

## Youth

The age of consent for sex is 16 - yet we restrict those of the age of consent from seeing digital representations of the acts that they are LEGALLY ALLOWED TO ENGAGE IN. The subjectiveness of age is not addressed within this bill - 17 year olds have different and more nuanced understanding of the world than 3 year olds, and should NOT be treated the same. In fact it would be *harmful* to treat a 17 year old as if they had the same needs and comprehension ability as a 3 year old.

Pornography can play a key role in sexual discovery, especially for marginalised communities or those who live in communities which are sex-negative and with barriers to sexual education due to religious views of the parents.

As per in the section on LGBTQ communities, there is a greater prevalence of LGBTQ youth to access pornography due to a lack of information available online. However this *also applies* to the larger demographic of youth who seek answers, information and validation as to their sexual desires – and we should provide mechanisms for education and information; as outlined in the Harm Minimisation section of this submission.

## Art

The legislation around Classification and censorship in Australia already stifles a range of artistic expression, with many art-house films and creations being refused classification due to BDSM / fetishistic content. The internet has allowed equitable access to these films – and there *is* a demand for this kind of content; and ironically it is exploring the edges of human sexuality in this medium which provides the range of perspectives needed to create a healthy understanding of sexuality and eroticism in our society.

## Greater society

*"Looking at pornographic material appears to be reasonably common in Australia, with adverse effects reported by a small minority."* - **A profile of pornography users in Australia: findings from the Second Australian Study of Health and Relationships** - <https://opus.lib.uts.edu.au/bitstream/10453/48993/3/2-s2.0-84978517067%20am.pdf>

Pornography and erotic content consumers in Australia exist across a broad cross section of society.

Creating safe and accepting spaces for those exploring their sexualities is an important part of an advanced and psychologically healthy society. It also means a space where THEIR PARTICULAR ATTRIBUTES CAN BE SEEN AND NOT SHAMED - like BDSM / Fetishistic / LGBTQ sexual practices.

Creating safety should not equate to destroying choice, or restricting our potential. We should create CHOICE for people as opposed to restricting - ie better personal filters for sites so that people can *choose* what they wish to see or not see.

Adults should be allowed to access and see what they desire - when it is created and viewed consensually. We do NOT consent to having our access to Class 1 materials revoked online.

Banning or restricting in such a way that materials which contain *LEGAL ACTS BETWEEN CONSENTING ADULTS* become unreasonably hard for consenting adults to obtain is an attack on our freedom of expression, erotic self and sexuality, and disproportionately affects minority groups such as the LGBTQ community, as well as a wide spectrum of consenting adults from many sectors of society.

Historically we only have to look back over the past hundred years to see the changing views of harm over time – it was only very recently that masturbation, premarital sex and same sex relations were seen as harmful, and the deeply abusive and extreme measures used to prevent this so-called harmful behaviour were seen as the norm. Oral sex used to be seen as an extreme deviant act, now it is seen as a natural aspect of *heteronormative sex*. There has been so much harm caused in the name of keeping people "safe" – when that "safety" is often based in moral judgements and devoid of scientific proof of harm.

## Chilling Effect and Loss of Spaces for ALL

One of the supposedly unintentional consequences of the FOSTA/SESTA act has been the chilling effect of online spaces – due to internet sites and social media platforms exercising overzealous algorithms and aggressive erasure of anything which might be viewed as sex trafficking. This has resulted in the deplatforming of sex workers, LGBTQ persons, sex educators, researchers and also everyday citizens expressing their eroticism online.

The BOSE has the potential to magnify this effect, effectively erasing sexuality and erotic content from the public space.

The loss of safe spaces for community gathering and sexual exploration for the communities listed above, AS WELL AS for the general population and young people exploring their sexuality is deeply problematic, and will further contribute to isolation and negative social outcomes.

## ATTACKS ON PRIVACY

*"The provider of the service will take reasonable steps to proactively minimise the extent to which material or activity on the service is or may be unlawful or harmful." – Basic Online Safety Expectations Draft 2021*

There are grave concerns about how much private messaging such as email services, messaging services (Facebook Messenger, Signal, Whatsapp etc) and even SMS services will be held to the BOSE.

Policing private messaging services is a surveillance state act and an unwarranted invasion into our privacy. If two consenting adults decide to send each other pornographic materials (self created or otherwise) through a private messaging service this MUST be afforded protections from the BOSE.

This needs to be addressed and a clear understanding of what the BOSE means for private messaging services needs to be provided.

Our private messaging is meant to be a *safe and confidential space* between consenting individuals – non-consensual policing of these spaces is traumatic and should be a completely separate matter to the non-consensual sharing of intimate images, illegal AND harmful content (such as CSAM) and cyberabuse.

## HARM MINIMISATION

In relation to BDSM practices, we refer to SSC (Safe, Sane Consensual) and RACK (Risk Aware Consensual Kink) as two different sets of practices. I view SSC as problematic because of the aforementioned statements on Safety as being a mutable and idealistic construct. I view the Sane part of it as discriminatory against the neurodivergent, as well as restrictive and polarising of the human psychic experience.

I personally practice and advocate for RACK, because there is NO such thing as 100% safe, and I believe Risk Aware (or Harm Minimisation) is the more realistic goal, and also leads to more honesty in the experience. As humans we like to - we NEED to play on the edges, to challenge ourselves. If we were to keep children in a completely sheltered, unchallenged environment that was dictated only by OUR own morality and ethics, we paint ourselves as infallible - which is patently untrue.

The common thread here is the CONSENSUAL part of the equation, and I think that Consent; the responsibilities and the rights of an individual to attain and provide consent are the key parts of Safety; and the way we attain informed consent is through extensive negotiation without coercion. Therefore teaching negotiation is an critical part of harm minimisation.

### Negotiation and Shame

One of the key factors around ethical negotiation is effective communication - and one of the barriers to effective communication is shame around sex and desire.

By making sex and erotic practices less visible, we take away the language and the *ease* with which we can use that language. Before I became a sex worker and engaging in kink, I found it embarrassing and difficult to talk about my desires. However because the language of sex and eroticism has become so normalised for me, I can negotiate a complicated and intimate scene with a greater degree of ease than previously.

Getting the youth (and greater society!) *comfortable* with the terms and concepts of sex, sex acts and the art of negotiating them without embarrassment is KEY to achieving the outcomes of a positive consent culture.

Many of my negative attitudes / reluctance around talking explicitly about sex *come from popular culture romance not porn*. The stereotypical romantic ideal of "being able to implicitly understand the needs of another" or being "wordlessly swept away in the moment" are lovely fantasies, however the reality is that without clear communication and negotiation, those idealistic fantasies are actually deeply harmful to a consensual framework.

### In Relation to Pornography and Youth

*"Interventions such as age verification software, internet filtering software and parental monitoring may play a role in reducing casual or accidental exposure to pornography,*

*particularly among younger children. However, these methods are not likely to be effective in stopping a motivated young person from accessing pornography" - Young Australians' use of pornography and associations with sexual risk behaviours -*

[https://www.burnet.edu.au/system/asset/file/2649/Pornography\\_ANZJPH\\_paper.pdf](https://www.burnet.edu.au/system/asset/file/2649/Pornography_ANZJPH_paper.pdf)

As in the quote above, it will be near impossible to stop a determined young person from accessing pornography. The youth will always be at the forefront of using technology and circumventing barriers to their access. The ages shown of those accessing pornography are typically 13 for males and 16 for females.

Children of these age groups ARE capable of learning the critical thinking necessary for being able to view pornography responsibly - and to be taught the differences between a cultivated fantasy scenario and reality.

Among the concerns regarding the viewing of pornography by young people are:

- The prevalence of unprotected sex
- Feeling pressured into performing acts such as anal or other BDSM activities (and the potential accompanying dissatisfaction / trauma with a negative experience)

This can be addressed by providing insights into what goes on behind the scenes of a porn shoot.

**In regards to unprotected sex**, it is standard practice in the pornography industry to be subject to VERY regular sexual health checks, with requirements ranging from monthly checks to having a check which is valid within a week of shooting. Forms of hormonal birth control are also used to prevent unintentional impregnation. Understanding the harm minimisation that goes on in the industry is an important factor in outlining the real processes that occur when creating porn and bringing awareness to the work that goes on behind the scenes. Extensive education on the RISKS involved in unprotected sex in a non judgemental and objective manner should also be undertaken.

**Greater availability of education into preparation for acts such as anal and other BDSM activities is also essential**; and the difference between what is seen on screen and what has happened behind the scenes AND in real life needs to be available. For example, it is rare that lubricants are shown being used, or preparing for anal sex with anal training, warming up, and the knowledge that like all sexual activities sometimes it's just not going to happen in the moment for a multitude of reasons! Normalising and educating around expectations - like the essentialness of lubricant use and warming up, and having a compassionate understanding that bodies don't always respond the way we want them to is key to a healthier and more respectful approach to sex.

Extensive scene negotiations also occur as best practice in pornography, and there is a trend towards having pre and post scene interviews with actors in the porn to show the process of consent and negotiation - and this should be encouraged and rewarded in the industry to show best practices.



Context is extremely important in how we perceive and internalise the things that we experience. We may see scenes of hardcore bondage and consensual non-consent which appear to be extreme, violent and objectifying; however the amount of negotiation and discussion around how those scenes play out - *and the shared desire to participate in such extreme acts in controlled and safe containers* - are critical to the greater context.

Understanding that *it is a game of make believe* like playing cops and robbers as children; and that safe words and the ***right to withdraw consent at any moment*** are key to being able to safely and ethically engage in these peak experiences. Many of us *want* to slip into that space of possibility and potential; to experience what would be *in reality* a risky, problematic and undesirable situation within a controlled and safe space – which transforms the experience into one in which *all players are consenting and in control of the situation*. Understanding of the complexity of human desire and the various faces of that desire should be taught, as well as an open and supportive space to discuss concerns and curiosity around such activities!

Research into the effects of Pornography on youth is sparse, and inconclusive - with many hypotheses as to the correlations between viewing and harm.

Furthermore, it appears that many young people seek out pornography because of a *lack of information*. So it follows that increasing the availability of better educational and sex-positive resources could then both decrease the use of porn in young people, AS WELL as provide a realistic framework for sexuality *of which porn plays a part* instead of being the main source of knowledge.

Various societies have tried at many times to prevent youth from exploring sex - but it is a natural process, and the more repressive or negative we become around these concepts, the more inadvertent harm we cause. Harm minimisation is the best solution - and the key again is education and acceptance that young people WILL TRY TO HAVE SEX in a variety of ways.