



**Australian
Sex Workers
Association**

Phone – 02 9517 2577
Post – PO Box 854
Newtown NSW 2042
Head Office – 203/1 Erskineville Road
Newtown NSW 2042
Email – info@scarletalliance.org.au
Web – www.scarletalliance.org.au
ABN – 86 612 112 065 | ARBN – 149 618 137

Director – Strategy and Research

21 June 2024

Online Safety, Media and Platforms Division

Department of Infrastructure, Transport, Regional Development, Communications and the Arts

GPO Box 594

Canberra ACT 2601

By email: OSAReview@COMMUNICATIONS.gov.au

To the Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Re: Statutory Review of the *Online Safety Act 2021*

Thank you for the opportunity to submit to the Statutory Review of the *Online Safety Act 2021*.

Scarlet Alliance, Australian Sex Workers Association, is the national peak sex worker organisation. Formed in 1989, our membership includes state and territory-based and national sex worker organisations and individual sex workers across unceded Australia.

Scarlet Alliance uses a multifaceted approach to strive for equality, justice and the highest level of health for past and present workers in the sex industry. We achieve our goals and objectives by using best practices including peer education, community development, community engagement and advocacy.

Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of workers in Australia's sex industry. Through our work and that of our member organisations and projects, we have the highest level of contact with sex workers and access to sex industry workplaces throughout Australia. Scarlet Alliance represents sex workers on a number of government and non-government committees and advisory mechanisms.

While a review of *Online Safety Act 2021* and its associated frameworks is not required until 2025, the Australian Government has committed to conducting this review within the current term of government, in recognition of the rapidly evolving nature of internet technologies.¹

While Scarlet Alliance understands and agrees that regulatory frameworks must be responsive to technological developments, we believe that this Review is premature. Australia's *National Classification Scheme* is currently under review, with particular focus on the classification of sexual content, as well as which online content will be subject to the Scheme. Further, the industry codes and standards for Class 1C (which includes restricted 'fetish' sexual content) and Class 2 (R18+ or

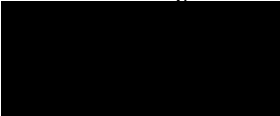
¹ Australian Government, [Response to the House of Representatives Select Committee on Social Media and Online Safety Report](#) (Report, March 2023) 4.

X18+ material, including ‘mainstream’ pornography and other sexual content/information) material are yet to be developed.

Further, in the recent federal budget, the Australian Government dedicated funding to a pilot scheme for mandatory age verification technology for online pornography as being necessary to ‘tackle extreme online misogyny,’² despite rejecting mandatory age verification as being technologically unfeasible nine months prior.³ The impacts of this pilot scheme will be significant for sex workers, and the timing of this Review leaves no opportunity to evaluate the impacts of the pilot on sex workers’ businesses, privacy, well-being and ability to share information.

Without commencement of codes/standards for Class 1C and Class 2 content or information on the mandatory age verification pilot, it is impossible to assess the overall functionality of the *Online Safety Act*, particularly in relation to its impacts on sex workers and sex worker organisations. It is essential that this Review undertakes meaningful stakeholder engagement and facilitates access and input from not-for-profits and civil society organisations, marginalised communities and small businesses with an interest in internet regulation, in order to gain an accurate understanding of the functioning and limitations of Australia’s eSafety framework.

Yours faithfully,



Mish Pony
Chief Executive Officer



² Georgia Roberts, [‘Nearly \\$1bn funding announced to support victim-survivors leaving violence, combat online misogyny and AI porn’](#) ABC News (online, 1 May 2024).

³ Department of Infrastructure, Transport, Regional Development, Communications and the Arts, [Government Response to the Roadmap for Age Verification](#) (Report, August 2023) 2.

Meaningful consultation for online safety

As noted in this Review's Issues Paper, 'digital exclusion is increasingly a driver of inequality' and 'choosing not to be online is no longer a practical option for most Australians'.⁴ During the past decade, sex workers in Australia and internationally have experienced increasing loss of access to digital services, including web-hosting, administrative and financial products and services, social media, and app-based platforms such as DoorDash and Airbnb.⁵

In order to promote digital access for sex workers, and provide information on the impacts of technological discrimination, Scarlet Alliance has undertaken extensive engagement and advocacy in relation to the *Online Safety Act 2021* and other inquiries into digital regulation in Australia, including:

- [Submission to the Department of Infrastructure, Transport, Regional Development and Communications on the *Online Safety Bill Exposure Draft*](#) (14 February 2021)
- [Submission No 36 to the Senate Standing Committees on Environment and Communications, *Online Safety Bill Inquiry*](#) (3 March 2021)
- *Online Safety Bill Inquiry - Evidence to the Senate Standing Committees on Environment and Communications*, Canberra, 5 March 2021, 19-22 (Jules Kim and Gala Vanting, Scarlet Alliance)
- *Online Safety Bill Inquiry - Evidence to the Senate Standing Committees on Environment and Communications (answers to questions taken on notice)*, Canberra, 9 March 2021 (Jules Kim and Gala Vanting, Scarlet Alliance)
- [Submission to the eSafety Commissioner on the *Call for Evidence on Age Verification*](#) (20 September 2021)
- [Submission to eSafety Commissioner on the *Restricted Access System Declaration Online Safety Act 2021 Inquiry*](#) (20 September 2021)
- [Submission to the Department of Infrastructure, Regional Development, and Communications on the *Draft Basic Online Safety Expectations 2021*](#) (15 November 2021)
- [Submission to the Attorney-General's Department on the *Social Media \(Anti-Trolling\) Bill 2021*](#) (21 January 2022)
- [Submission No 85 to the House Select Committee on Social Media and Online Safety, *Inquiry into Social Media and Online Safety*](#) (8 March 2022)
- [Submission to the eSafety Commissioner on the *Draft Consolidated Industry Codes of Practice for the Online Industry \(Class 1A and Class 1B Material\)*](#) (23 March 2023)

⁴ Department of Infrastructure, Transport, Regional Development, Communications and the Arts, [Statutory Review of the Online Safety Act 2021](#) (Issues Paper, 29 April 2024) 9-10.

⁵ See, eg, Amber Schultz, ['It's sex discrimination: banks strip brothels and escort agencies of their rights'](#), *Crikey* (online, 20 May 2020)

Julie Fenwick, ['Australian Sex Workers Have Been Removed From Linktree. What They Are Doing Is Not Illegal'](#), *Vice* (online, 21 January 2022)

Asia Grace, ['Dominatrix claims DoorDash banned her over sex work: "It's dehumanizing"'](#), *New York Post* (online, 6 April 2022)

Olivia Snow, ['Sex Workers Have Been Banned From Airbnb for Years. Will You Be Next?'](#), *The Nation* (online, 26 November 2022).

- [Submission to the Department of Industry, Science and Resources on *Safe and Responsible AI in Australia*](#) (26 July 2023)
- [Submission to the eSafety Commissioner on the *Draft Online Safety Industry Standards 2024 \(Relevant Electronic Services– Class 1A and 1B Material and Designated Internet Services– Class 1A and 1B Material\)*](#) (21 December 2023)
- [Submission to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts on the *Online Safety \(Basic Online Safety Expectations\) Amendment Determination 2023*](#) (16 February 2024).

Despite this consistent engagement and clear evidence that reactionary and inconsistent regulatory approaches generate significant and tangible risks to the health and safety of sex workers and other marginalised groups, the Office of the eSafety Commissioner has repeatedly dismissed and ignored the concerns of our communities.⁶

It is essential that this Review undertakes meaningful stakeholder engagement and facilitates access and input from not-for-profits and civil society organisations, marginalised communities and small businesses with an interest in internet regulation.

Review of an incomplete regulatory framework

Codes/standards for Class 1C and Class 2 material

The development and implementation of industry codes and standards for dealing with Class 1C and Class 2 material has significant impacts for sex workers. As these codes/standards have not yet been developed, it is impossible to comment on the impacts and functionality of Class 1C and Class 2 content regulation under Australia’s eSafety framework.

Scarlet Alliance has provided consistent advocacy in relation to the development of codes/standards for Class 1C and Class 2 material. In particular, we have submitted that:

- The regulation of sexual content online (which includes both material intended for entertainment/pleasure, such as pornography, and sexual education and information material) must be evidenced based, and not uncritically position all sexual material as ‘harmful’.⁷
- Codes/standards relating to Class 1C and Class 2 material must not expressly or inadvertently encourage mass surveillance, deplatforming, denial of service or algorithmic bias towards accounts or account-holders producing or otherwise participating in sexual content online.

⁶ Lisa Visentin, [‘Sex industry “not my concern”: eSafety Commissioner defends proposed new powers’](#) *The Sydney Morning Herald* (online, 4 March 2021).

⁷ The theory that porn, and in particular so-called ‘violent’ porn, leads to greater misogyny, male violence and/or sexual aggression is highly contested. There is reputable research showing no effect, and/or an inability to distinguish causation between pornography and non-consensual behaviour: See, eg, Christopher Ferguson and Richard Hartley, [‘Pornography and Sexual Aggression: Can Meta-Analysis Find a Link?’](#) (2020) 23(1) *Trauma, Violence, & Abuse* 278.

- Codes/standards relating to Class 1C and Class 2 material must not mandate or encourage the use of unsafe or untested technologies (including mandatory age verification, discussed further below), undermine privacy rights, perpetuate racial or gender bias,⁸ or encourage the development of systemic security flaws.
- Codes/standards relating to Class 1C and Class 2 material must promote consent culture and education and digital media literacy for people of all ages.
- Codes/standards relating to Class 1C and Class 2 material must be developed in consultation with industry and civil society stakeholders, including sex workers in Australia.

Pilot of age assurance technology

Scarlet Alliance is highly concerned that this Review is taking place in the context of a political climate where pornography (especially online pornography) is conflated with gendered violence, online misogyny and harm towards young people.⁹ These claims have been made without evidence, and have been largely repeated uncritically by media, advocates and policy-makers. This rhetoric positions sex workers as part of the *cause* of sexual and gendered violence in Australia, rather than recognising our unique experiences of discrimination and vilification, both in online and real-world spaces.

The Government's announcement of a pilot mandatory age verification scheme was made a mere nine months after describing mandatory age verification as a 'decision...not ready to be taken',¹⁰ due to concerns that currently available technologies cannot effectively deliver safety to young people, protect consenting adults' right to sexual expression, and maintain user privacy and safety. Scarlet Alliance is not aware of any significant technological developments within the previous nine months that would impact this outcome. It is fair to say that the decision to pilot mandatory age verification has been made on the basis of moral panic, and not on evidence.

Scarlet Alliance has created a resource on [porn and age verification in Australia](#), which includes our **10 reasons to oppose age-verification laws**:

1. All content platforms will have to pay to implement age verification technology, regardless of whether they are a single independent performer-producer, or a huge site like Pornhub. The costs will likely put smaller, independent producer-owned platforms out of business, and favour platforms that already have a virtual monopoly.
2. The laws may lead to overcapture – for example, applying to in-person sex worker advertising directories or websites, or to educational content around sex and sexuality.

⁸ As an example, age-verification systems based on algorithmic facial/biometric marker recognition 'cannot reliably classify complex and intersecting identities,' and are more likely to miscategorise images of women, gender minorities and people with darker skin tones: Zahra Stardust et al, '[Mandatory age verification for pornography access: Why it can't and won't "save the children"](#)' (April-June 2024) 11(2) *Big Data & Society*.

⁹ Darcy Deviant, '[The Government Is Making Porn a Scapegoat for Rising Violence Against Women](#)', *Vice* (online, 2 May 2024).

¹⁰ Government Response to the Roadmap for Age Verification (n 3) 2.

3. These laws will still have loopholes, and will not apply to some websites or apps where adult content is permitted alongside other content (e.g. social media platforms that permit adult content).
4. Free websites that host stolen content downloaded from other sites theoretically required to implement 'age verification' or 'age assurance' will most likely be nimble enough to avoid regulation in a game of whack-a-mole.
5. The laws may end up funnelling people from 'mainstream' websites that comply with the legislation (or those that don't and are blocked) to sites that steal the paid content of sex workers.
6. These laws will not impact porn distributed via torrents or other file sharing platforms. Age verification technology doesn't prevent young people from sharing clips among themselves.
7. Age verification laws only apply in the country where they were made, and are therefore easily bypassable using VPN technologies. Young audiences understand how that works, and are able to easily avoid verification.
8. Age verification mechanisms all present technological risks and flaws:
 - a. The mechanisms require consumers to share their personal data, and adult content platforms may not have the resources to guarantee security of that data. Data leaks and hacks are a common occurrence, and the more information platforms are required to collect and store (credit card information, photo ID, etc) the higher the risk of data breaches generating real-world consequences for consumers.
 - b. Age verification mechanisms based on credit card information restrict adults without credit cards from accessing the content, but don't stop young people from using an adult's credit card to bypass the mechanism.
 - c. Age verification mechanisms that purport to use AI to detect a person's face from an uploaded 'selfie' are simply inaccurate – AI technology cannot yet accurately detect the age of an individual person.
9. Rather than attempt to comply with complex laws and regulatory frameworks requiring 'age verification' or 'promoting online safety', platforms will attempt to avoid the problem altogether by mass removal of adult content and adult content accounts. This means that sex workers and sex worker organisations are at risk of being excluded from online spaces and technologies altogether. This will prevent us from earning a living, staying connected to our communities and limit our ability to share health and safety information with each other.
10. Young people will figure out ways to get around age verification mechanisms. Let's face it, the mechanisms are not really about stopping young people from accessing porn, they are about placating adult fears about youth sexuality. This is not a sound or reasonable approach to combating domestic and family violence against women.

These concerns have not been addressed by the current proposed pilot. Without further information on its scope, implementation or operation, sex workers and other stakeholders cannot comment on its impacts or effectiveness, nor on its interaction with the wider eSafety framework.

It is imperative that Scarlet Alliance is consulted further in the process of this review, to bring the voices, knowledge and expertise of sex workers to these important policies.