

Friday 12 February 2021

Online Safety Branch Content Division
Department of Infrastructure Transport, Regional Development and Communications
GPO Box 594
Canberra ACT 2601
By email: OnlineSafety@infrastructure.gov.au

Submission to NSW Parliament: Online Safety Bill 2020

Dear Online Safety Branch Content Division,

Thank you for the opportunity to make a brief submission and contribute to the consultation regarding the *Online Safety Bill 2020*.

About me

I write to you as a member of the trans and gender diverse community and as a friend of many sex workers. In my professional life I work in online communications; like many people my age, the internet is also a place where I socialise and meet new people; and, like many trans people, the internet has also been formative to my journey of developing a sense of identity and connecting with a community who loves and accepts me. I write to you as someone who will be directly affected by the proposed legislative changes, and in support of sex worker friends whose livelihoods will be endangered should the Bill in its current form pass.

For the purposes of protecting my privacy, and the personal nature this submission, I wish to remain anonymous. I consent to my submission being made public online.

General comments

No one – child or not – should be subject to online abuse, harassment, coercion, or non-consensual sex. We all need places where we feel safe, connected, cared for and protected. Today, technology companies and opaque algorithmic processes have an inordinate amount of power to determine who is seen online and under what conditions. The level of control that private technology platforms and companies are able to exercise over our lives, likeness, social interactions and livelihoods is an alarming problem that must be urgently addressed.

However, the *Online Safety Bill 2020* (the Bill) lacks clarity, transparency, avenues for accountability, and places too high a level of power in the hands of the E-Safety Commissioner. In its current form, the Bill would likely have a harmful impact on transgender and queer people, and the ability for sex workers to economically survive.

The impact of the Online Safety Bill 2020 on LGBTQI+ people

The Bill has the potential to harm the health, wellbeing and connectedness of LGBTQI+ people, particularly in regional, rural and remote areas where they are unable to connect with their community (except through online channels). As a queer person, the internet was – and is – vital to my process of connecting to a community. Part of that process is engaging in intimacy online and sharing sexual content with my peers. By prohibiting certain kinds of sexual content online, the Bill will marginalise people who are unable to physically engage in sex with their peers.

The Bill relies on ambiguous definitions of public decency and ‘harmful online content’, which could replicate a dangerous precedent of legislation that targets LGBTQI+ people and sex.

In determining whether online material is offensive, the Bill relies upon an unclear standard of offensiveness as ‘morality, decency and propriety generally accepted by reasonable adults’. Throughout legal history in Australia, queer sex practices have been routinely criminalised and deemed ‘revolting or abhorrent phenomena’ that ‘offends against the standards of morality, decency and propriety generally accepted by reasonable adults’. As [Paul Johnson’s](#) research shows, ‘the argument for the criminalisation of male homosexual activity in public in both the UK and Australia was that male homosexual behaviours offended public morality’. We live in a world that continues to be dominated by heteronormative conceptions of public decency, and the *Online Safety Bill* will only intensify this harmful practice of policing how LGBTQI+ people have sex to the digital sphere.

The *Online Safety Bill*, in giving the Commissioner power to issue removal notices or remedial notices, will prohibit the right for all people to freely engage in digital and sexual citizenship.

For LGBTQI+ people, particularly those in regional, rural and remote areas, this can be extremely detrimental to one’s mental health and sense of social connectedness. For some, the internet is the only place they can go for sex that is safe and affirming. The internet has been a critical space for engaging in peer-led harm-reduction practices and sexual education, as I was never taught about queer safe sex during my formal education. The Commissioner’s ability to issue removal notices could disrupt these sexual education practices, or inadvertently sow fear and suspicion with regard to our ability to engage in these vital practices.

The Bill invites a system of complaints that would open LGBTQI+ peoples’ bodies to harmful public scrutiny.

As a trans person, I am constantly subject to malicious, vexatious and invasive comments about my body. I have been verbally harassed, non-consensually touched, stalked, and I have even had strangers scream about what they suspect my genitals to be at the top of their lungs on a busy street – while I was fully clothed. Walking to work should be a simple act, but my commute is often interrupted by strangers who find my body to be an object that is up for discussion. As a trans person, my body is constantly made public without my consent. Sharing images online, whether sexual or not, has been one of the few ways that I am able to reclaim autonomy over my body. The complaints system in the proposed Bill would take that autonomy away from me and embolden the harmful practicing of people deeming transgender people to be ‘offensive’ simply for existing.

The impact of the Online Safety Bill 2020 on sex workers

The Bill is drafted on an arcane and outdated premise that sex, or sexual content, is equivalent to harm. Sexual material should not be treated as exceptional: sex workers should have a right to work, which includes advertising, promoting and sharing content without fear of retribution.

The Bill gives the Commissioner the power to serve a notice to remove sexually explicit content, which will economically disadvantage sex workers simply for doing their job.

By compromising sex workers' ability to advertise online, the Bill has the potential to dramatically, and suddenly, affect sex workers' ability to earn a living, to pay rent, to put food on the table, to go to university, and to care for their kids. All industries rely on advertising, and sex work is no exception. Restrictions on advertising is a form of criminalisation that will prevent sex workers from trading, advertising and marketing their work, and connecting with clients. In doing so, the Bill has the potential to perpetrate an unequal and tiered system of work, whereby all businesses are able to promote their work online through advertising and marketing, with the exception of sex workers. No one should live in fear of such economic instability.

The Basic Online Expectations would incentivise platforms and providers to introduce age verification measures in order to ensure that minors cannot access Class 2 content. These systems are not just practically unworkable, but also compromise our right to online privacy.

Maintaining anonymity online can be important and lifesaving for many people, including sex workers, and transgender people and queer people. By incentivising platforms to remove all sexual content, the Bill will sanitise online spaces and prevent marginalised groups from being able to connect with community in a way that is safe and private.

I welcome the Bill's provision in relation to the non-consensual sharing of intimate images.

Sex workers should have the ability to pursue complaints related to accessing redress if clients non-consensually take images of video and share these images online. Sex workers should have equitable access to this provision and not discriminated against for their field of work.

The Bill places an inordinate amount of power in the hands of a single, unelected official.

In any realm of policy, particularly one as complicated as online regulation, we must prioritise de-centralised and community-based decision-making processes. No one person has the knowledge or ability to determine what constitutes 'harmful online content', because such definitions constantly shift across range of diverse cultural, social and sexual practices.

Recommendations

Recommendation 1: The Bill should be redrafted so that there is less ambiguity around the definitional questions of 'decency' and 'morality' to ensure that all people's ability to access online space and participate in sexual and digital citizenship is protected.

Recommendation 2: The Bill should legislatively enshrine financial protections for sex workers to engage in, promote and share material related to their work.

Recommendation 3: The Bill should legislatively enshrine an independent appeal process whereby sex workers are able to claim lost income if advertising material and online work-related content is unfairly removed by the Commissioner. This appeals process should include an independent oversight committee made up of members of affected communities (sex workers, transgender people, etc).

Recommendation 4: The Bill should be redrafted in such a way that de-centralises the E-Safety Commissioners role. Decision making processes should be transparent and there should be community-led oversight bodies and clear avenues for appealing decisions.

Recommendation 5: The Bill must be explicit that it does not intend to target sex workers' livelihoods, income, physical and mental health. The E-Safety Commission should make a public commitment to the health, safety and inclusion of sex workers.

Recommendation 6: The Bill must be explicit that it does not intend to target LGBTQI+ people, sex and peer-led sexual education practices.

Recommendation 7: The Bill should acknowledge privacy as a central safety and privacy concern for sex workers. It should not introduce any scheme that incentivises digital platforms to require legal identification documents upon sign-up.

Recommendation 8: The Bill should not conflate X18+ material with 'harmful online content'.

Recommendation 9: The Online Safety Branch Content Division should re-engage in good-faith consultations with Scarlett Alliance and LGBTQI+ community groups, and adopt the recommendations of these groups.