I am pleased to provide you with my submission on the Online Safety Bill 2020.

I have many concerns over the bill.

ISSUE 1

The ability of sexually explicit content to be removed within 24 hours of serving a notice, will affect sex workers' ability to legitimately advertise or sell content online.

The Broadcasting Services Act 1992, limits 'potentially prohibited content' (X18+ or RC material) to being able to be removed if it is hosted on an Australian server. Under the Online Safety Bill , X18+ material can be removed if any Australian internet user can access it, even if it is hosted abroad.

The Commissioner will now have power to order providers in any jurisdiction to take down the content within 24hrs. This fundamentally is a denial of natural justice.

The old classification system with its categories of G, PG, M, MA15+, R18+, X18+ and R are already outdated and problematic, and out of line with community expectations, and have gone through multiple reviews but proper reform has not eventuated. So simply replicating an obsolete framework for the creating of the Online Safety Bill seems rather pointless.

There is no reason for X18+ material to be considered 'harmful online content'.

As it is currently defined, X18+ is the only classification category to include no violence. There is no reason why it should be considered harmful online content at all. At present, X18+ content, R18+ content and RC content are lumped in together with no other information about what makes such content 'harmful.'

Offensiveness is not the appropriate measure of 'harmful online content'.

The Bill sets out criteria for when the Commissioner should consider material to be 'offensive'. This includes consideration of the standards of morality, decency and propriety generally accepted by reasonable adults, and whether the content has literary artistic or educational merit or medical, legal or scientific character.

Offensiveness is such a subjective experience and should not be the criteria for determining whether online content is harmful.

The Bill opens up sex workers for ***vexatious, frivolous and malicious complaints.***

Sex workers and sexually explicit media are already subject to a high level of malicious complaints. The legislation emboldens users to complain by providing extremely broad grounds. A complaint can be made about any Class 2 content that is not subject to a restricted access system, even where there is nothing harmful about the content.

The Bill permits the Commissioner to create restricted access systems.

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The Commissioner has the power to specify a particular access-control system that must be used as a 'restricted access system'. This means that, for example, the Commissioner may determine that all Class 2 material ought to be subject to an age-verification system. Both the Australian and United Kingdom governments have considered age-verification processes to limit minors' access to adult material. This was dismissed by the UK government because of major issues relating to privacy and feasibility.

The Commissioner has extremely wide discretion to make decisions about all sexual content.

The Commissioner has enormous power under this Bill to make decisions about what kind of content Australian residents can access. They can decide whether or not to instigate investigations and issue removal notices as they see fit. The Commissioner is appointed rather than elected, they can delegate their authority to other bureaucrats, and they have no obligation to give reasons for their decisions.

There is no transparency or accountability for decisions made under the Bill.
Just as the Commissioner is not required to give reasons for their decision, there is no requirement for the E-Safety Commission to publish publicly available data on their enforcement and compliance patterns. This means that the public will not know how many complaints have been made against sex workers, how frequently sex workers' content has been removed, or why some content was subject to removal notices while others were not. Users will not be able to edit their content accordingly to comply with the framework if there is no criteria for what content is 'harmful' and warrants removal.

The Bill has the potential to shut down sex workers' businesses and undermine our right to choose how and where we work.

Pivots to online work allowed many sex workers to survive the onset of the COVID-19 pandemic that effectively shut down in-person sex work in Australia for many sex workers. While many of the platforms we use to sell content, do cam work, or other forms of digital sex work have a paywall or other method of restricting user access, without clear guidelines for what that system will be, made in consultation with affected communities, this provision is very likely to cause undue damage to sex worker livelihoods.

There is a risk under this Bill that advertising content could be removed with little to no notice, which could have a disastrous impact on sex workers' income. Restrictions on advertising and / or mode of work are a form of criminalisation of sex work.

Sex workers must be able to advertise their services online without unnecessary restrictions or vulnerability to malicious complaints. Losing access to advertising and revenue streams is an immediate threat to sex worker safety and autonomy.

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ISSUE 2: Non-consensual sharing of intimate images

The Bill creates a system whereby a person depicted in an intimate image can make an objection or a complaint about their intimate image being posted online.

Intimate images include images of private parts (such as genitals, anus or breasts) or private activity (such as a state of undress or engaging in sexual activity) in circumstances in which an ordinary reasonable person would reasonably expect to be afforded privacy.

The provider, host or internet user of a social media service, relevant electronic service or designated internet service may be given a notice requiring them to remove or stop hosting the image.

A person who posts, or threatens to post, an intimate image may be liable to a civil penalty of 500 penalty units (currently $111,000 under Commonwealth law). The civil penalty does not apply if the person consented to the image.

Our concerns about the provisions for non-consensual sharing of intimate images:
Sex workers need equitable access to this provision.

For sex workers, this part of the Bill could open up better access to redress if a client stealthily takes images or video in a session, intro or other interaction and posts it online. It is important for us to advocate for sex workers to have equitable access to reporting.

Because the E-Safety Commissioner holds power over investigations and issuing of notices, we are demanding oversight and accountability to ensure that all complainants are handled equitably, regardless of the Commissioner's personal beliefs or stigmas.

Existing section does not recognise withdrawal of consent or limits on consent
Non-consensual intimate images are images where the person depicted did not consent to the posting of the image. In some scenarios, sex workers may have consented to the posting of the image for certain purposes (e.g. advertising on a particular escorting website), but not consented to the posting of the image for other purposes or on other platforms (e.g. continued use of image after leaving the agency, or the pirating or distribution of the image across other platforms).

The Bill needs amendment to recognise that a person should be able to withdraw their consent to the posting of intimate images and place limits on their consent by specifying how, where, and for how long the image can be posted.

ISSUE 3: Basic online safety expectations

Under the Bill, the Minister for Communication, Urban Infrastructure, Cities and the Arts may determine basic 'online safety expectations' for social media services, relevant electronic services and designated internet services.

These services may be required to take reasonable steps to ensure that internet users are able to use the service in a safe manner. Some of these steps include:

(1) minimising the extent to which the following material is provided on the service: cyber-bullying and cyber-abuse material, non-consensual intimate imagery, material that promotes, incites or instructs in abhorrent violent conduct or material;

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(2) taking reasonable steps to ensure that technological or other measures are in effect to prevent access by children to Class 2 material provided on the service; and
(3) ensuring the service has clear and readily identifiable mechanisms that enable end users to report and make complaints about breaches.

Internet service providers (and potentially hosting companies) are required to prepare periodic reports about their compliance at regular intervals (no less than 6 months). Where the Commissioner gives notice to a person to prepare a compliance report and they fail to do so, they may face a penalty of 500 penalty units (currently $111,000 under Commonwealth law).

Our concerns about the Basic Online Safety Expectations (BOSE):

The Bill gives incentives for platforms to remove all sexual content.

The Basic Online Safety Expectations mean that services and providers will have to take active steps to ensure that minors cannot access Class 2 content. This provides an incentive for platforms, hosts, providers and services to either instigate age verification mechanisms, which have a wide range of privacy and feasibility issues, or, where this is too onerous, simply to create policies that remove sexual content altogether, resulting in the sanitisation of online space and a mass de-platforming of sex workers.

The effects of the US FOSTA-SESTA legislation is an example of this type of 'chilling effect', and virtually all sex workers who use the internet for work in Australia have been deeply impacted by this legislation. This is a great opportunity to discuss the damage of such legislation on your business and community.

Sex workers rely on online platforms in order to advertise, screen clients and employ other safety measures, and connect with peers to get essential health and safety information.

And finally, the following needs to be considered:

- Other businesses are able to use social media and online platforms to advertise. Sexual material should not be treated disproportionately to other kinds of media. Sex work is a ***largely lawful industry*** and should not be subject to discriminatory regulations.
- Consensual sexually explicit material should not be considered equivalent to violent, harmful or abhorrent content.
- Sex workers require access to public online spaces and online economies as a matter of health, safety and digital and sexual citizenship.
- Sex workers already work to prevent minors from accessing inappropriate content through the use of paywalls, 18+ warnings and user verification pop-ups, and other methods, and as such are already working to ensure that their content is only viewed by adults.

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