

**12/02/2021**

**To Whom it May Concern,**

**CC: Online Safety Bill**

I am writing to you today in response to the proposed new Online Safety Bill that aims to protect individuals from harmful content and online abuse.

I am a photographer of primarily women because I grew up only seeing media from the male gaze. Even as a photographer I struggle to keep my content on certain platforms. I am lucky that is not my career as I would be losing my income, my livelihood and my mental health would suffer greatly.

I see this happen every single day to sex workers on the internet and it is not okay.

I'm only on Centrelink and I have to redistribute money regularly because a lot of people I know are suffering.

I, and a lot of people in my life, use online platforms for a variety of reasons including advertising sex work services, staying connected intimately with partners and friends, for educational purposes and safety strategies.

As I am not the best with words I have included below a break down that my community worked on together.

### **Class 1 and 2 Content**

The distinction between class 1 and class 2 content is too vague and the language seems to carry broad moralistic and puritanical connotations.

The proposed classification of class 1 content will have the consequence of making abusive content and adult content indistinguishable. This means that class 1 or RC classified content will conflate consensual kink and fetish porn with things such as child porn, revenge porn or non-consensual sexual content. This way of classifying erases consent, it also erases the context of these different types of content and classes them together. This is a dangerous precedent and has already been enacted in the US with the SESTA/FOSTA bill. This bill was passed in 2017 and has a documented body count from the violence and problems that it has caused by not distinguishing between consensual and non-consensual sexual content.

A class 2 classification for all sexual content or even content relating to nudity and sex will be classified as 18+. This is a major issue. The design of this bill incentivizes platforms to remove all content that could be flagged to avoid fines. This means that once this bill is passed companies will delete or censor all sexual/nude content to not receive classification. This will have far reaching social and economic consequences. This could mean that many forms of art and photography are censored from the internet. It will mean sexual educators cannot freely share their content online and provide important harm reduction information, consent training and sexuality

discussions. The removal of these resources will lead to an increase in STIs, sexual violence and a disempowered generation of young people.

### **Restricted Access System**

Having an unelected official appointed as the e-commissioner is dangerous. This person will have an incredible amount of power to decide what is 'offensive.' The terms and language in this bill are so broad and vague that the e-commissioner will have a subjective interpretation of the guidelines. There is potential for reports to the commissioner to be weaponized against women or small businesses by trolls wanting to destroy them.

Sexually explicit material that is reported could be removed within 24 hours. This will impact sex workers the most. If a malicious client or even an 'offended' stranger were to report sex worker content for nudity and it were removed this could cost the worker income, job security and safety. This could lead to people in desperate financial situations having less options to screen and advertise and consequently accepting bookings with dangerous people. This could very well directly cause the death of a vulnerable sex worker. There are already parental control systems in place that can be activated on all devices that caregivers can use to control what kind of content a child has access to. This bill will not create any new avenues for protection that do not already exist but it will cause harm and violence to minority communities, to sex workers and to women.

### **Importation of old classification system**

The definitions of class 1 and 2 material are derived from the existing framework under the Commonwealth Classification Act 1995 and National Classification Code 2005. These classification are designed for old media and do not accurately reflect the diversity of digital media. They are also imbued with value judgements that are outdated and no longer reflect the values of the majority of Australians. I am a media and communications student and this bill wholly misunderstands how the internet, algorithms, platforms, and new media function. This creates a dangerous situation as this bill can create countless unintended consequences due to its outdated use of language and frameworks.

### **Conflation of 18+ and Harmful 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**

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 an individual and subjective experience and should not be the criteria for determining whether online content is harmful.

## **Abuse and Harassment**

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. 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. This bill gives the commissioner too much power without any real accountability for their decisions. This is autocratic and dangerous.

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.

## **Sharing of non-consensual images**

Sex workers need equitable access to non-bias reviews.

For sex workers, this part of the Bill could open better access to redress if a client stealthily takes images or video in a session, into 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

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.

Other businesses are able to use social media and online platforms to advertise. Sexual material should not be exceptionalised and 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.

**Regards,**

Chantelle Reader

