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**RE: Consultation on a new Online Safety Act**

I appreciate the opportunity for the community at large to provide input on the topic of Online Safety Reforms, and hope that this submission assists in formulating the best practices for any reforms going forward.

## Personal Context

I speak as a supporter of the rights of all people to seek a means for financial and personal security, through safe and ethical practices. The internet and onlines services have provided the greatest means for individuals from diverse and marginalised backgrounds to achieve economic security, build community and create safe spaces for those in need. Sex work has historically been a method of achieving personal autonomy and economic security, and is a prime example of the means by which the internet can assist in making an industry safer. Sex workers rely on major social media sites such as Facebook, Twitter and Instagram to interact with, and build collegial relationships within their industry, as well as to share important information relating to worker safety, personal management and other important components of their work.

However, these major sites, as well as many others, continue to jeopardise the abilities of this community to use this technology via arbitrary and often opaque applications of 'Terms of Service' to push people within this industry off of their platform. Rather than providing a safe space for the community to grow, for the development of industry practices from within to continue, these major sites continue to marginalise this community via the practice of shadowbanning, suspending accounts and deleting accounts. Frequently this is applied to personal accounts which are unrelated to the business individuals choose to work within, and the loss of these accounts causes an isolation of individuals who lack access to resources that can assist them to safely participate in this industry.

I am personally involved with the Sex Positive community in NSW. This community seeks to provide space for people to begin to understand, explore and question the means by which they choose to express themselves. This community exists as much as an educational resource for individuals seeking to better understand themselves, as it does to support and provide perspective on the nature of human connection. Through this community, people are able to engage with and find mentorship on the topics of human sexuality that are often under-served in our institutional education systems. The internet plays an important role in uniting this community, and allowing individuals seeking to learn more to find and engage with the online content produced by members of this community. In much the same way as major sites

discriminate and invisibilise sex workers on their platforms, the same is also true to a lesser extent for sex positive communities.

**Concerns with the Discussion Paper**

Reviewing the *Online Safety Legislative Reform: Discussion Paper*, I find a number of provisions within this Discussion Paper concerning:

- Amending the *Broadcasting Service Act 1992* to ensure a wider range of online service providers develop codes to address 'illegal or harmful' content. Relying on private businesses not directly involved in the industries I have mentioned to create and enforce equitable codes is not sustainable or reasonable without the input on the codes of practice by the affected communities.
- Empowering the role of eSafety Commissioner with discretionary decision-making powers. A lack of transparency and appealable classifications under this body do not create an equitable and reasonable means for classification to be applied to content.

Within the *Online Safety Bill - Reading Guide* The document calls for 'an appropriately equipped regulator, with clear statutory powers', unfortunately I believe that the expanded powers of the eSafety Commissioner do provide clear statutory powers, but do not constitute appropriate equipping of the role. Relying on the eSafety Commissioner, with any appointed contractors or APS staff serving under the, as the main source of decision-making, without a clear path for arbitration or input from affected community groups before a removal notice is issued, does a disservice to the role the eSafety Commissioner is attempting to undertake under this new Act.

While I applaud the 'Image Based Abuse Scheme' for allowing greater powers around 'revenge porn' I am concerned that both the 'Cyber-Bullying Scheme' and 'Adult Cyber-Abuse Scheme' are vague in the nature of what is considered 'harmful'. If the eSafety Commissioner, or indeed any moderation oversight service is to review what constitutes 'harm' the array of material which could be censored or removed may be prone to personal bias that does not so much protect, as re-form the internet into a homogenous moral sandbox, where the ability for marginalised identities and experiences to be reflected and to provide outreach and education to others is compromised for the sake of a 'risk-free' online experience.

I believe the same risk applies under the 'Online Content Scheme'. Within this Scheme there is reference to Class 1 and Class 2 materials, as defined by the *Classification (Publications, Films and Computer Games) Act 1995*. While these classifications can provide valuable means of segmenting the kind of produced content and where it may sit with an appropriate audience, I am concerned about the ability of this material to be deemed 'objectionable' by such a narrow scope of experience. The classification of X18+, RC and MA15+ content as Class 2 allows it to automatically attract a complaint, giving less security to the individuals who create content under these classifications.

In both cases, while I believe the eSafety Commissioner role is intended to assist in building a safer internet, I believe that this Act does more to encourage private industries to police their platforms in a form that encourages a homogeneity of content out of fear of Removal Notice and other forms of reprisal from the office of the Commissioner. In its current form, this Act is designed to push service providers towards more content moderation, a system that will be more opaque than governmental assessment of materials.

Within the same reading guide, a summary of the governance updates under the Act includes reference to 'the Commissioner's independence from the ACMA'. Once again, moving the eSafety Commissioner role away from accountability and providing more wide-reaching directive powers, with minimal apparatus for appeal or input from affected parties being clearly laid out under the legislation, provides too much discretionary power to a small unit and their decision-making process.

**Recommendations**

I have reviewed a number of other submissions in relation to this Act, based on their perspective, along with my own view of this Draft Discussion Paper, I recommend the following amendments:

- X18+ Content should be permitted on Australian Servers
- X18+, RC and MA15+ content should not be categorised as Class 2 content that can automatically attract a complaint
- A representative body should be established in conjunction with the Office of the eSafety Commissioner that makes decisions about appropriate online content, and assists with the creation of codes of practice for affected industries. This representative body should include individuals from the Sex Work and Sex education industries, as well as the LGBTIQA+, First Nations and Migrant communities in Australia.
- The Representative Body mentioned above should be consulted by the eSafety Commissioner to create a criteria of content, what constitutes harmful material. The decisions of this body should then be made public for discussion and review prior to implementation.
- A register for decisions by the eSafety Commissioner should be established, updated within 7 days of the decision being reached
- The eSafety Commissioner's role should be further refined, with more community input on the scope of their investigative abilities and greater transparency on their role as an arbitrator of what is 'harmful' content.
    - The Cyber-Bullying Scheme, Adult Cyber-Abuse Scheme and Online Content Scheme all need to be reviewed and have further work done on what constitutes harmful or objectionable in the context of each scheme.
    - Further information on how these schemes and the Act as a whole interact with private messaging services offered by service providers also needs to be included in an update of the Discussion Paper.