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[redacted]

I write in my capacity as an academic researcher in the field of media and communication. My work primarily focuses on practices of digital self-representation as it intersects with digital technologies. My research into young Australian's views regarding sexting and other forms of consensual and non-consensual digitally-mediated communication (including the use of dating apps) has been widely cited internationally. I have also published research on the production and consumption of pornography in Australian.

I have previously been an invited witness or panelist in the following inquiries:

- National Classification Scheme Review, Review of Community Attitudes to Higher Level Content, Australian Law Reform Commission, November 2011
- Senate Standing Committee on Environment, Communication and the Arts Inquiry into the Sexualisation of Children in the Contemporary Media Environment, Sydney hearing, 23 April 2008
- Senate Legal and Constitutional Legislation Committee Inquiry into the Classification (Publications, Film and Computer Games) Amendment Bill (No 2) 1999, Sydney hearing, 30 March 2000

I welcome the Bill's proposal to give the Office of the e-Safety Commissioner new powers to expedite takedown of non-consensual intimate images; and to investigate complaints of bullying targeting a child; complaints of non-consent and complaints of cyber-abuse. I also support the Commission's additional takedown powers in relation to abhorrent violent material (for example, live-streaming of terrorist activities).

I am concerned however by the draft Bill's adoption of existing Australian classification categories: R18+ and RC, in terms of defining Class 1 and Class 2 material.

In 2012, Professor Terry Flew, Commissioner in Charge of the Australian Law Reform Commission's (ALRC) review of the National Classification Scheme, which made 57 recommendations for reform, including the recommendation that a single regulator be appointed to regulate the convergent media ecosystem.

However, in a press statement accompanying the release of the *Classification—Content Regulation and Convergent Media (ALRC Report 118)* Professor Flew observed that "classification criteria should also be reviewed periodically, to ensure they reflect community standards". Noting that "one category that may no longer align with community standards is 'Refused Classification' or 'RC'", Professor Flew suggested

that “the scope of this category should be narrowed, and the ALRC suggests changes for government to consider.”

The RC category is currently a regulatory ‘grab bag’, which includes any unclassified media content, ranging from graphic depictions of criminal sexual violence to the depiction of legal sexual activities that many reasonable Australian adults would find unremarkable (for example depictions of consenting adults engaged in fetish activities such as spanking).

The Executive Summary for the 2012 ALRC Report further notes concerns:

- *that the scope of the RC category is too broad, and that too much content is prohibited online, including some content that may not be prohibited in other formats, such as magazines;*
- *inconsistent state and territory laws concerning restrictions and prohibitions on the sale of certain media content, such as sexually explicit films and magazines;*
- *low compliance with classification laws in some industries, particularly the adult industry, and correspondingly low enforcement; and*
- *the need to clarify the responsibilities of the Classification Board and the Australian Communications and Media Authority (the ACMA) and other Australian Government agencies and departments involved with classification and media content regulation* (https://www.alrc.gov.au/wp-content/uploads/2019/08/summary_report_for_web.pdf, p12).

As these concerns have not been fully resolved in nine years post this review, I believe the current definitions of Class 1 and Class 2 material included with the current draft of the Bill are not fit for purpose.

In my reading to the documentation supporting the Bill, it is not clear how the eSafety Commission will work with representatives of the current Classification system (particularly when assessing material that may be legal in one Australian state or territory, but not another). It is also unclear as to how the rights of marginalised and stigmatised communities whose images may be the subject of vexatious or malicious complaints (for example, Australian members of LGBTQ+ communities) will be protected in the process of engaging with complaints around Class 1 and Class 2 material.

Given the urgent need to address image-based abuse and online bullying, I suggest that the Bill should focus exclusively on these issues. I further suggest that aspects of the Bill relating to material currently defined Class 1 and Class 2 be removed pending a formal inquiry into the suitability of the current Australian Classification categories, and the special concerns that members of marginalised communities may have in relation to both their rights to protection form vexatious complaints, and their rights to digital inclusion and representation.

Professor Kath Albury
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