

Sex Work Law Reform Victoria Inc.  
(Equality. Safety. Justice)

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Director  
Online Safety Branch  
Content Division  
Department of Infrastructure, Transport, Regional Development and Communications  
GPO Box 594  
By email: [OnlineSafety@infrastructure.gov.au](mailto:OnlineSafety@infrastructure.gov.au)

14 February 2021

Dear Director,

Sex Work Law Reform Victoria Inc. (SWLRV) is an independent non-partisan not for profit group led by sex workers, lobbying for the legal rights of sex workers in Victoria.

SWLRV advocates for, amongst other things:

- the ability of sex workers to legally advertise their services online
- the ability of sex workers to create and display adult content online

We welcome the opportunity to contribute to the consultation on the Online Safety Bill 2020. Part 9 of the exposure draft has implications for freedom of expression and the ability of consenting adults to create and upload adult content to the internet. It is the position of Sex Work Law Reform Victoria to remove Part 9 of the Online Safety Bill 2020. The eSafety Commissioner's role should be confined to protecting Australians from abusive, harmful and non-consensual content, rather than images of sexual activity between consenting adults.

Sincerely,

Lisa Dallimore  
President, Sex Work Law Reform Victoria Inc.

## 1. Who We Are

Sex Work Law Reform Victoria Inc. (SWLRV) is a volunteer run not for profit advocacy group led by former and current sex workers. We formed in 2018 with the express purpose of advocating for the legal rights of sex workers in Victoria. This includes advocating for sex workers to be able to advertise, create and upload adult content online in order to support their businesses.

## 2. Executive Summary

Sex workers increasingly rely on utilising online ‘adult content’ to connect with their clients and support the business of providing an in-person service to clients. The existing classification scheme of online content fails to distinguish between harmful content and content of a sexual nature depicting consenting adults. Any expansion of the power of the eSafety Commissioner to take down content that is not harmful constitutes an erosion of freedom of expression. Remove Part 9 of the *Online Safety Bill 2020*.

## 3. Recommendation

*Annex (remove) Part 9 of the Online Safety Bill 2020.*

Part 9 expands the eSafety Commissioner’s powers to take down Class 1 and 2 content, which includes content that is not harmful. Class 1 and 2 content includes sexual imagery involving consenting adults, who also consent to their images being published online. The ongoing *Review of Australian Classification Regulation*<sup>1</sup> is the appropriate avenue to consider changes to classification of online content and changes to the Online Content Scheme.

## 4. Australia’s Sex Industry

In any given year, there are over 23,000 sex workers in Australia<sup>2</sup>. Sex work is generally considered to involve an adult who is paid to provide an in-person, physical service of a sexual nature in exchange for money<sup>3</sup>. Brothels are a good example of where sex work occurs. Porn performers on the other hand, are paid to perform in films or pose in photographs which depict the performer nude and/or engaged in sexual acts. The resulting films/images are often made available on the internet.

With increased reliance on internet use, smartphones and social media platforms, sex workers now use online sexual content more than ever to attract and engage clients and advertise their services. The distinction between in-person sex work and porn performance is becoming increasingly

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<sup>1</sup> The Department of Infrastructure, Regional Development and Communications, Review of Australian classification regulation (19 February, 2020) The Department of Infrastructure, Regional Development and Communications <<https://www.communications.gov.au/have-your-say/review-australian-classification-regulation>>

<sup>2</sup> Antonia Quandara, ‘Sex Workers and Sexual Assault in Australia: Prevalence, Risk and Safety’, (Research Paper No 8, Australian Centre for the Study of Sexual Assault, 1 April 2008) 3 <<https://apo.org.au/node/985>>.

NB: This paper estimated 20,000 sex workers in Australia in 2008, which equates to just over 23,000 sex workers in 2020 accounting for population increase.

<sup>3</sup> For a legal definition, see definition of ‘sexual services’ in s3 of the *Sex Work Act 1994* (Vic) <<https://www.legislation.vic.gov.au/in-force/acts/sex-work-act-1994>>

blurred. Both in-person sex workers and porn performers rely on having sexual content online to support their work.

## 5. The Impact of Coronavirus Restrictions on Online Porn

Across Australia, state governments responded to the coronavirus pandemic by imposing various restrictions on workplaces and occupations. The sex industry suffered severe negative impacts,<sup>4</sup> with blanket bans on all forms of sex work applying in some states, most notably Victoria, which experienced Stage 4 restrictions from early August 2020<sup>5</sup>. In Victoria, coronavirus restrictions were by far the most severe and longest lasting in Australia, resulting in industry being more greatly impacted than any other Australian jurisdiction<sup>6</sup>. The complete ban on all forms of in-person sex work lasted for many months, upending the lives of all sex workers in that state.

Without the ability to see clients in person, many sex workers turned to alternative forms of generating income, such as creating online porn content on rapidly growing adult content websites such as OnlyFans. This move to online porn creation appears to be ongoing, with many sex workers maintaining an online porn presence even after coronavirus restrictions were lifted.

Not only sex workers lost their jobs due to coronavirus restrictions – job losses disproportionately impacted younger workers and part time female workers, with the hospitality industry being one of the hardest hit<sup>7</sup>. This may have led to a number of adults creating online porn content for the first time as an alternative source of income.

In greater Melbourne, the sex lives of the general public overall were also upended for months, with a total ban on visitors to one's home,<sup>8</sup> effectively ruling out casual sexual encounters. It is likely that this ban resulted in increased online porn consumption on the part of the general public. In short, the coronavirus pandemic has likely had a long lasting long consequence of production and consumption of online porn across Australia, especially in Victoria.

## 6. Sex Work, Pornography and the Law

When sex workers see clients in person, state-based sex work laws apply. Five of Australia's eight jurisdictions have either legalised or decriminalised sex work. However, when sex workers advertise or promote their in-person services online via online sexual content, Australia's National Classification Scheme applies. Implemented in 1995, the Scheme is long overdue for reform.

The publication (still image) and film classification level 'RC – Refused Classification' incorporates objectively harmful content such as the promotion of paedophile activity, detailed instructions on how to commit violent crimes and realistic depictions of bestiality along with unusual sexual acts

<sup>4</sup> Scarlet Alliance, COVID-19 and Sex Work in Australia (September 2020) 4-9

< [https://scarletalliance.org.au/library/COVID\\_Report](https://scarletalliance.org.au/library/COVID_Report)>.

<sup>5</sup> Public Accounts and Estimates Committee, Parliament of Victoria, *Inquiry into the Victorian Government's response to the COVID-19 pandemic* (Parliamentary Paper No 203, February 2021) xxiii, finding 6

< <https://www.parliament.vic.gov.au/paec/inquiries/inquiry/1000>>

<sup>6</sup> Ibid xxx, finding 50.

<sup>7</sup> Ibid xxx findings 53, xxxii finding 64.

<sup>8</sup> For example, cls 11(1)-(2) of the *Stay at Home Directions (Restricted Areas) (No 16)*

<https://www.dhhs.vic.gov.au/sites/default/files/documents/202009/Stay%20at%20Home%20Directions%20%28Restricted%20Areas%29%20%28No%2016%29%20signed%2027%20Sept.pdf>.

performed by consenting adults (fetish porn). Thus, any attempt to amend the Online Content Scheme as it applies to publications ‘RC – Refused Classification’ will not only impact objectively harmful content; it will also impact fetish pornographic images depicting consenting adults who also consent to the images being made available on the internet.

## Part 9 Refers to Both Harmful Content and Consensual Adult Pornography

The definition of class 1 and 2 material in Part 9 of the Online Safety Bill 2020 (hereafter referred to as ‘The Bill’) captures content of a sexual nature which depicts consenting adults. This means such content would be subject to the enhanced take down powers provided for in the Bill<sup>9</sup>. A spokesperson for the eSafety Commissioner informed a journalist that although Part 9 of *The Bill* provides the eSafety Commissioner with enhanced powers to issue removal notices to take down BDSM and fetish porn with 24 hours, similar powers had not been used to target such content in the past and were not intended to be used to target such content in the future<sup>10</sup>.

It remains unclear why Part 9 has been drafted in a manner to give the eSafety Commissioner powers they don’t intend to use.

## 7. Unintended Harmful Consequences

There are international examples of the unintended consequences of censoring sexual content depicting consenting adults. In the United States of America, the *Allow States and Victims to Fight Online Sex Trafficking Act of 2017* (FOSTA) and *Stop Enabling Sex Traffickers Act of 2017* (SESTA) have applied to online publishers since 2018. Presented as laws to combat sex trafficking, the laws are so broad as to also apply to consensual adult sex work. One of the negative impacts of such poorly drafted laws was to drive indoor sex workers into the more dangerous street-based sex work sector<sup>11</sup>.

While Australia’s regulation of the sex industry is not ideal, internationally our regulation is recognised as one of the more pragmatic and evidence-based approaches, with five of our eight jurisdictions either legalising or decriminalising sex work<sup>12</sup>. It is concerning that ill-conceived clauses in Part 9 of The Bill could set back hard-fought gains in sex work regulation which have largely created a safer working environment for sex workers.

## 8. Conclusion

Sex Work Law Reform Victoria’s view is that freedom of expression online is a vital component of any democracy that values individual rights. The stated object of the bill is to improve and promote online safety for Australians<sup>13</sup>. This is best achieved by removing Part 9 so that the Online Safety Bill 2020 focuses on addressing online harms.

<sup>9</sup> Clauses 106(1) and 107(1) of the Exposure Draft *Online Safety Bill 2020* (Cth).

<sup>10</sup> Cameron Wilson, ‘Australia’s eSafety Commissioner will be able to force platforms to get rid of BDSM and fetish content — and Australia’s sex industry isn’t happy about it’, *Business Insider Australia* (online, 13 February 2021) < <https://www.businessinsider.com.au/australia-bdsm-fetish-delete-account-esafety-commissioner-2021-2>>

<sup>11</sup> Lura Chamberlain, ‘FOSTA: A Hostile Law with a Human Cost’ (2019) 87(5) *Fordham Law Review* 2171, 2171.

<sup>12</sup> QLD, ACT and VIC legalise sex work with the NT and NSW having mostly decriminalised sex work.

<sup>13</sup> Clause 3 of the Exposure Draft *Online Safety Bill 2020*