

Sex Workers Outreach Project of NSW (SWOP)

SWOP is Australia's largest and longest established community-based peer education sex worker organisation with a mission to provide New South Wales (NSW) sex workers with the same access to health, safety, human rights and workplace protections as other Australian workers.

SWOP was established in 1983 as the Australia Prostitutes' Collective and in 1990 as Sex Workers Outreach Project became the first sex worker organisation in the world to receive government funding.

SWOP is currently primarily funded by the NSW Ministry of Health to sustain the low rates of sexually transmitted infections (STIs) amongst sex workers; sustain the virtual elimination of HIV transmission within the sex industry; and reduce hepatitis infections in sex workers. We do this by bringing together sex workers, researchers and clinicians, government, and non-government organisations from a range of disciplines, and advocating for a collaborative, holistic approach to the health services provided to NSW sex workers.

SWOP provides direct services to sex workers across the state via peer-based outreach and a range of other direct support services. SWOP has the highest level of direct contact with sex workers of any agency, government, or non-government, in Australia. In a typical year SWOP interacts with over 5,500 NSW sex workers, makes over 550 visits to sex services premises throughout NSW including over 45 visits to regional and rural areas and distributes more than 275,000 pieces of safe sex equipment. We also in a typical year distribute up to 60,000 printed or downloaded information resources for sex workers and hold face to face and virtual training and information sessions both for sex workers and organisations who may have contact with sex workers.

The Sex Workers Outreach Project of New South Wales (SWOP) would like to thank the Australian Commonwealth Government for this opportunity to make submissions on the exposure draft of the Online Safety Bill 2020.

SWOP writes this submission in support of the submission made to this consultation by our peak national body Scarlet Alliance Australian Sex Workers Association and the previous submission made by Scarlet Alliance to the Online Safety Legislative Reform Discussion Paper in February 2020¹.

Executive Summary

SWOP acknowledge that the provisions in the Enhancing Online Safety Act 2015 (EOSA) are working well to protect Australians from online harms. SWOP also applauds the objects of the exposure draft of the Online Safety Bill 2020 to improve and to promote online safety for Australians especially as to attempts to improve protections against image-based abuse, cyberbullying and cyber abuse. We also see the bill as a commendable attempt to address complex real-world problems in the key proposals.

However, SWOP has deep concerns that the bill may have grave and negative unintended consequences and impacts on Australian sex workers in its current form.

The proposed bill extends Australia's existing and now arcane broadcasting regulation and classification system to include a wide range of online platforms and electronic services. This will result in sex worker advertising, online content, and other digital business assets subject to regulations that were only intended for print publications, broadcast media and video games.

The proposed bill will also increase sex workers already considerable vulnerability to malicious and vexatious complaints as to both our presence online and our digital business content. SWOP also believes that there are proposals in this bill that will cause a de facto censorship by internet platforms (also known as a "chilling effect"²) that will cause sex workers and sex work businesses to lose access to digital tools and services, including those used to advertise services or sell content, and most especially those where we exchange information on sex worker health and safety.

SWOP has deep and grave concerns that the proposed bill due to its complexity, breadth, and scope in attempting to address complex real-world problems itself adds a further layer of complexity in an already difficult area. SWOP is also concerned that placing and concentrating responsibility for policing, regulation and adjudication of this proposed legislative framework in one specific entity, the E-Safety Commissioner in a manner that appears to ignore community and industry input is in itself problematic.

SWOP also has some concerns that the proposed bill may have direct impacts on our operation as a peer community education organisation. SWOP is already often maliciously and vexatiously targeted online and especially on social media for posting on matters pertaining to sexuality and sexual health. This targeting and the use of algorithms by social media and other platforms has at times severely restricted SWOP's ability to outreach online; noting also that due to COVID-19 our only means of outreach for most of the last calendar year was by online means.

¹ [consultation on a new online safety act - submission - scarlet alliance.pdf \(communications.gov.au\)](#)

² [viewcontent.cgi \(northwestern.edu\)](#)

We therefore make the following recommendations.

Recommendations:

1. a set of clearly and simply enunciated core basic online safety expectations and principles for social media services, relevant electronic services and designated internet services, clearly stating community expectations, with mandatory reporting requirements.
2. a modernized online content scheme, to replace the schemes in Schedules 5 and 7 of the Broadcasting Services Act 1992 (BSA). We hope the Bill will create new classes of harmful online content and will reinvigorate out of date industry codes to address such content.
3. that the Complaints and objections system proposed for non-consensual sharing of intimate images:
 - a. ensures equitable access to these provisions for sex workers
 - b. recognizes withdrawal of consent or limits on consent
 - c. is expressed in clearer and unambiguous language
4. that the proposed basic online safety expectations are not expressed in such a way as to incentivize online platforms and providers to remove or censor consensual sexual material.
5. that the legislation be subject to regular (5 year) statutory reviews
6. that the scope and role of the E-Safety Commissioner be modified so that there is
 - a. a representative body established to make decisions about appropriate online content with membership that includes representation of sex workers, LGBTIQ+ communities, and Aboriginal and Torres Strait Islander people
 - b. a register established where decisions are published within 7 days with detailed reasons for the decisions
 - c. criteria for removal of content and what constitutes harmful material developed with meaningful consultation and must be made public and accessible. Criteria should be reviewed periodically (every 12 months) by public consultation Scarlet Alliance Australian Sex Workers Association³ and its members should form part of an industry working group to establish an industry Codes of Practice.
 - d. a requirement for the E-Safety Commission to publish publicly available data on their enforcement and compliance patterns.

³ Scarlet Alliance Australian Sex Workers Association is Australia's national peak sex worker organisation

Submission

Introductory Remarks

SWOP acknowledges that the provisions in the Enhancing Online Safety Act 2015 (EOSA) are working well to protect Australians from online harms, such as the image-based abuse scheme, but we ask for a set of clearly and simply enunciated core basic online safety expectations and principles for social media services, relevant electronic services, and designated internet services, clearly stating community expectations, with mandatory reporting requirements.

SWOP hopes that the bill will provide an enhanced cyberbullying scheme for Australian children to capture a range of online services, not just social media platforms, and a new cyber abuse scheme for Australian adults, to facilitate the removal of serious online abuse and harassment. SWOP wants the bill to outline a modernized online content scheme, to replace the schemes in Schedules 5 and 7 of the Broadcasting Services Act 1992 (BSA). We hope the bill will create new classes of harmful online content and will reinvigorate out of date industry codes to address such content.

The bill is beneficial for new abhorrent violent material blocking arrangements that allow the E-Safety Commissioner to respond rapidly to an online crisis event such as the Christchurch terrorist attacks, by requesting internet service providers block access to sites hosting seriously harmful content.

We also believe the proposed bill is beneficial in providing consistent take-down requirements for image-based abuse, cyber abuse, cyberbullying and harmful online content, requiring online service providers to remove such material within 24 hours of receiving a notice from the E-Safety Commissioner.

While acknowledging these benefits that may flow from the bill, we believe that there are serious deficiencies in the draft bill, especially a failure to understand the needs of a varied community of marginalized users on the internet, and most especially sex workers and sex work organisations.

SWOP will confine our submission mainly to the three key areas where we feel the proposed bill will adversely affect the health, safety and ability of sex workers to work, being:

1. The creation of a new online content scheme
2. The complaints and objections system proposed for the non-consensual sharing of intimate images;
3. The basic online safety expectations proposed for social media companies, electronic services and designated internet services.

1. The creation of a new online content scheme

The outdated classification system this new bill proposes to bring to the internet, there are a number of concerns. Firstly, the ambiguous language that dictates that 'harmful online content' will be regulated is too broad and delegates too much power to the individual in the role of E-Safety Commissioner.

By imposing an outdated classification system on an already heavily targeted subset of internet users, we fear this gives more incentive to those tech platforms to enforce their own policing and will rely on the secret algorithms already briefly mentioned.

In the aftermath of FOSTA/SESTA⁴, we saw many platforms crack down on online sexual content and the ramifications on sex worker safety are slowly being understood, with grim results⁵. While platforms enforce rules through these algorithmic processes, many sex educators (including SWOP), performers, and other progressive creators unintentionally face the consequences of this pre-emptive attempt of tech corporations to protect themselves.

The proposed classification system forces all online content to be regulated through the rigid and outdated existing classification structure and will restrict any content falling into the category of RC or X18+ from no longer being allowed on Australian sites. Any content that fails to comply with this archaic system faces serious consequences and may result in an investigation by the E-Safety Commissioner.

SWOP also questions the inclusion of consensual fetish practices as Class 1 Refused Content both as being unnecessary and due the negative consequences this will have to those of us who work in consensual fetish.

SWOP also flags that too much power resides with the E-Safety Commissioner in determinations of classification (refer [eSafety Commissioner ; Lack of Transparency and Accountability](#))

Singling out sex as most harmful content

The focus on sex as the main target of offensive and harmful behavior is quite troubling, especially when we consider how normalized violence compared to sex has become in our modern society. Not only is violence tolerated and uncensored but other industries allowed to freely advertise and promote themselves include gambling, alcohol and we question why so much censorship is focused on policing of consensual sexual activity.

Sex and sexuality are intrinsic parts of what makes us human, violence, gambling is not, however the language of this new bill points to the over policing of sex and sexuality over violence, hate and gambling. Leaving the decision making to one individual who may be offended by non-offensive content, with no clear process of appeal, puts content from sex workers working in the area of consensual sex at risk from decisions based on individual morality.

⁴ Tripp, Heidi (2019) "All Sex Workers Deserve Protection: How FOSTA/SESTA Overlooks Consensual Sex Workers in an Attempt to Protect Sex Trafficking Victims," Penn State Law Review: Vol. 124 : Iss. 1 , Article 6. Available at: <https://elibrary.law.psu.edu/pslr/vol124/iss1/6>

⁵ Institute for Shelter Care, 2018, 'Research Brief: After FOSTA-SESTA', The *Samaritan Woman*, pp1-7

1 (cont.) The creation of a new online content scheme

The Bill has the potential to shut down sex workers' businesses

The Bill has the potential to shut down sex workers' businesses and undermine our right to choose how and where we work. Sex workers have worked online and posted online content for many years and recently pivoting to online work has allowed many sex workers to survive the necessary restrictions of the COVID-19 pandemic that effectively shut down in-person sex work in Australia for many sex workers⁶. 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, sex workers will need to be fully consulted in the development of clear guidelines and workable systems for any mandated access restrictions to content. 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 also a clear risk under this bill that sex worker advertising content could be removed with little to no notice, which could have a devastating impact on sex workers' income. Restrictions on advertising and / or mode of work are a form of de facto criminalization of sex work. Sex workers must be able to advertise their services online without unnecessary restrictions or vulnerability to malicious or vexatious complaints. Losing access to advertising and revenue streams is an immediate threat to sex worker health, safety, and autonomy.

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

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

X18+ as it is currently defined, is the only classification category to include no violence. The bill presents no clear reason why non-violent content should be considered harmful. Currently, X18+ content, R18+ content and RC content are grouped as "harmful content" with no information or explanation as to why such content, when consensual, is considered '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.

⁶ - [COVID-19 Impact and Response for Sex Workers \(scarletalliance.org.au\)](https://scarletalliance.org.au)

1 (cont.) The creation of a new online content scheme

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.⁷

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.

2. Complaints and objections system proposed for non-consensual sharing of intimate images

Use of broad and ambiguous language:

The use of ambiguous language within this policy document is too broad and non-specific for internet users to be able to effectively arm themselves with the appropriate tools to avoid censorship/suspension.

What is considered 'offensive' is a subjective process and we struggle to understand the definition of offensive as equal to harmful. Many sex-positive internet users, as well as educators such as ourselves, may be deemed more 'offensive' than actual explicit violence or hate. This type of online censorship has little evidence to support the intention that sex is more harmful than violence and stems from a morality perspective more than an evidence-based perspective.

Sex workers need equitable access to this provision

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, intro or other interaction and posts it online. It is important for us to advocate for sex workers to have equitable access to reporting. The E-Safety Commissioner holds power over investigations and issuing of notices, and we are suggesting oversight and accountability to ensure that all complainants are handled equitably, regardless of the Commissioner's personal beliefs or stigmas.

⁷ [Minister questioned on the future of age verification for online pornography - UK Parliament](#)

2 (cont.) Complaints and objections system proposed for non-consensual sharing of intimate images

Existing section does not recognize 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 recognize 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.

3. Proposed basic online safety expectations

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. As seen with the FOSTA-SESTA legislation passed in the United States in 2018 this type of de facto regulation 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 a mass de-platforming of sex workers⁸. As sex workers often rely on online platforms to advertise, screen clients and employ other safety measures, and connect with peers to get essential health and safety information, the effects of such expectations can have unintended and severely damaging effects on the health and safety of sex workers.

The effects of the US FOSTA-SESTA legislation is an example of the 'chilling effect', and virtually all sex workers who use the internet for work in Australia have been deeply impacted by this legislation⁹. Looking at SESTA/FOSTA as a case study, we can now see three years later this piece of legislation has a literal body count in the sex working community, globally. This package has no evidence of achieving its goals, SESTA/FOSTA has however affected the 42 million sex workers who use the internet; within weeks of it's signing into law, sex workers were forced to turn to less safe methods of work, going missing and being found dead, lost their online support systems, screening systems, and some even committed suicide.¹⁰

⁸ [What can tech learn from sex workers? | by Zahra Stardust | Berkman Klein Center Collection | Dec, 2020 | Medium](#)

⁹ [Opinion: Australian sex workers respond to FOSTA SESTA \(sbs.com.au\)](#)

¹⁰ <https://www.antitraffickingreview.org/index.php/atrjournal/article/view/448/364/>

4. Other Issues

Lack of a Mandated Statutory Review

SWOP expresses grave concerns as to sections of this bill and we also comment that this bill moves the influence of legislative oversight into areas that have only recently come into existence and seeks to address problems and circumstances that are of relatively recent origin and on which there is little or no long-term research. Further, this bill seeks to deal with online spaces where the pace of change is rapid, and change is often unpredictable.

We therefore recommend that a 5-year statutory review period apply to the entire bill. This bill and our suggested changes aside, we feel it important for all legislation to be subject to timely review to ensure laws and regulations are achieving their goals and protecting whole communities.

E-Safety Commissioner; Lack of Transparency and Accountability

SWOP has grave concerns as to one individual person filling the role proposed for the E-Safety Commissioner.

We suggest a representative body be created to better help the E-Commissioner make appropriate decisions for adult content when undertaking reviews. This industry working group could be made up of sex workers, Government supported organisations such as SWOP, and members of communities who are subject to the most oppression and censorship online eg: LGBTIQ+ communities, Aboriginal and Torres Strait Islander people. The group can help the E-Commissioner form a better Classification Code or help with the workload of monitoring the Australian Internet.

Regarding the transparency or accountability for decisions made under the Bill, we find this unfair and leaves opportunity for misinformed and misguided decisions from the E-Commissioner without consequence.

The E-Safety Commissioner is not required to give reasons for their decision, nor is there a 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.

We see transparency as a good opportunity for future reviews. Since the Bill has such ambiguous wording and vague, morally geared sentiments, sex workers would rely on; evidence-based transparency of complaints, the number of notices, the number and frequency of removals, and the reasons why some content was removed and some not, to create guidelines for sex workers to edit their content accordingly to comply.

(cont.) E-Safety Commissioner; Lack of Transparency and Accountability

We ask for a level of transparency as detailed as an online register, where all decisions are published with reasons given for any removals. This should outline a criterion for removals and why this content was constituted as harmful, so it can be referred to when any appeals are made by users. Without publishing publicly available data on the enforcement of the Bill, sex workers and sex work organisations such as SWOP are left to only theorize about how to properly comply with the Bill.

Having this kind of transparency gives sex workers and the public an opportunity to call for any appeals, hold the E-Commissioner accountable for misuse or misjudgment regarding what is in fact 'harmful', and can be reflected on during periodic reviews.

5. SWOP's Outreach and Peer Education Work Online

COVID-19 has undoubtedly affected every single person in the last 12 months, and our reliance on the internet became strikingly obvious in 2020 (not just to our community, but everyone in modern day society). In a world where regulations and rules surrounding COVID-19 are constantly changing, the ability to be able to share reliable information has become dependent on having internet access. As an organisation SWOP were also forced to push their services into the online sphere but have had a number of issues with censorship in this online domain.

SWOP uses social media as a platform to maximize reach and keep sex workers around the country informed, and it is these social media platforms that have targeted not only SWOP, but other sex educators, content producers and adult performers of all genders, backgrounds and sizes who are silenced and de-platformed. For SWOP, it is a matter of safety, as we are the only State-funded organisation that focuses specifically on sex work health and education that the majority of workers in the industry turn to when looking for information.

Content around sex, from education and therapists, all the way through to adult performers and porn producers are already heavily targeted through social media platforms existing discriminatory biases. It makes operating legal and consensual business' difficult and unsafe and can often put workers' lives in direct danger. The dominance of international bills such as FOSTA/SESTA signed in the USA in 2018 has left a negative legacy for workers around the world who rely on the internet as a platform for their work¹¹. This bill was intended to stop sex trafficking, but much research has backed our beliefs when we claimed these sorts of bills would just make things more dangerous for the community. There is no evidence since the signing of such legislation that it has curbed sex trafficking or kept any victims safe¹². There have however, been serious ramifications for the sex workers who were censored in the process.

¹¹ Blunt, D & Wolf, A, 2020, 'Erased: The Impact of FOSTA-SESTA and the Removal of Backpage on Sex Workers', *Anti-Trafficking Review*, No. 14, 117-121. <https://doi.org/10.14197/atr.201220148>

¹² Van Ness, G, 2019, 'Hacking the Hustle: Sex Work, Networks, & Social Reproduction Under FOSTA-SESTA', *The Critical Makers Reader, (Un)Learning Technology*, No. 12

SWOP hosts regular events to connect sex workers and keep our community strong and offer several workshops a year. SWOP also has SWOPconnect services, which is a peer-based telephone sex work information & support service, we provide information on laws and legislation, referrals to free legal advice, health and workplace safety information, confidential counselling and support, employment information and support including information for new workers and workers wishing to leave sex work or former workers wishing to return, printed resources, outreach including that to homeless sex workers, and training to other services. During COVID, SWOP is essential for keeping sex workers informed on the restrictions that applied to them, their options during their unemployment, and general support for their health and wellbeing.

All of these services align with our core mission and are imperative to keeping the sex working community healthy and safe. Most of these services are promoted on our website and via social media, and since the recent pandemic a lot of our workshops and information sessions were hosted online via Zoom. The very operation of SWOP and our staff was coordinated remotely, via the internet.

The content SWOP posts runs the risk of being flagged as harmful due to its implied sexual activity. Our operations are often centered around sex, whether that be safe sex, what is going on in a brothel, legislations around sex work, and so on. With this broad language around what is considered 'harmful' and SWOP's history of censorship and removal already - we fear this bill will only continue to affect how we advertise our services and provide information to the sex working community.

Censorship of Online Educators

SWOP online presence provides a prime online resource for workers not just in NSW, but to workers across the globe. Full decriminalisation of sex work globally, as it is an essential step in achieving optimum health and safety all sex workers and supported by organisations such as the World Health Organisation¹³ and Amnesty International¹⁴. SWOP believes this bill in its present form will be a step backwards from that important and essential goal.

Restrictions that label consensual adult content as "harmful" creates and reinforces another level of stigma towards sex workers, and a step backwards from an important and life-saving objective of full decriminalization. By using the internet as a platform, SWOP's reach is much larger than to just those who reside or work in the state, information and resource sharing being a key component of the peer community education that drives the success of SWOP's work and is essential to keeping all sex workers in the state and especially sex workers who may be geographically or socially isolated sex workers informed and safe. When SWOP or members of the sex working community are suspended or restricted in online spaces this is a form of criminalizing our services, and the impact this has on individual business' is direct threat to sex worker health, safety, and autonomy, and for sex workers themselves to their livelihoods¹⁵ and right to work¹⁶.

¹³ <https://www.who.int/gender/documents/sexworkers.pdf>

¹⁴ <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>

¹⁵ <http://titsandsass.com/shadowbans-secret-policies-depriving-sex-workers-of-income-and-community/>

¹⁶ Article 23 [Universal Declaration of Human Rights | United Nations](#)