



DRAFT CODES OF PRACTICE FOR THE ONLINE INDUSTRY

(Class 1C and Class 2 Material)

Summary

- Regulations designed to prevent children from accessing certain types of online content will mandate age verification (e.g. credit card or ID checks) in order to access age-restricted material.
- Sexual health education (on STIs, HIV, contraception, consent, LGBTIQ+ issues, etc.) and drug-related harm reduction information could be captured by these regulations, blocking young people and adults from critical health information.¹
- Likewise, sex worker advertising platforms and sex worker community resources may also be captured, driving away clients, reducing income and undermining sex worker safety strategies.
- The *Online Safety Act 2021* (Cth) (the OSA) and associated regulations impose high penalties for failing to remove content, but provide little incentive against over-removal. This imbalance encourages censorship.

Background

The OSA requires the development of regulations (industry codes or standards) mandating that tech businesses (including websites, search engines, messaging apps, internet service providers and device distributors) implement preemptive measures to detect and remove or control specific content for all Australian end-users. These regulations include the Draft Consolidated Industry Codes of Practice for the Online Industry (Class 1C and Class 2 Material) (the **draft Codes**).

The draft Codes target class 1C and class 2 material, which includes online pornography. Notably, neither the OSA nor the draft Codes contain carve-outs for health or educational content: all content is subject to filtering unless explicitly exempted. Without clear guidance, platforms and regulators could overapply these rules.² The eSafety Commissioner is also conferred with powers to proactively investigate, issue warnings, delist or remove online content.

Recommendations

- Halt progress of regulations until a health promotion oversight mechanism can be established. This process should include meaningful participation from sex workers and other marginalised communities (LGBTIQ+, youth, First Nations, disability groups etc) to surface unintended barriers.
- Ensure that audits required by the eSafety framework (e.g. platform compliance reports) are made public, with avenues to correct any identified overreach.
- Ensure that the Human Rights Commission is resourced to support anti-discrimination protections against unfair penalising of lawful content and user accounts prior to the implementation of further regulations.
- Regulations must explicitly exclude sexual and reproductive health education, drug-related harm reduction, and sex worker advertising and support resources. In practice, this means platforms must not treat this content as class 2.
- Regulations must recalibrate incentives to preserve content. Service providers should be encouraged to err on the side of preservation for disputed cases involving health or safety information.

 **Table 1: definitions of class 1C and class 2 material**

CLASS	ONLINE MATERIAL
1C	Material that describes or depicts specific fetish practices or fantasies.
2A	Other sexually explicit material that depicts actual (not simulated) sex between consenting adults.
2B	- Material which includes realistically simulated sexual activity between adults. - Material which includes high-impact nudity. - Material which includes high-impact sex, nudity, violence, drug use, language and themes. 'Themes' includes social Issues such as crime, suicide, drug and alcohol dependency, death, serious illness, family breakdown and racism.

Risks to sexual health education and promotion

Sexual and reproductive health promotion often includes frank discussions and images (e.g. diagrams of anatomy, condom demonstrations, depictions of sexual acts). Empirical studies show that automated and human moderators routinely misclassify such content as pornography. For example, algorithms have flagged innocuous health illustrations or cartoons as "adult" content.³

Young people routinely "turn to the internet for sexual health resources" but are often met with "misinformation and roadblocks" from big tech's content filters.⁴ Meta's products have deplatformed sex education pages and censored LGBTIQ+ sexual health discussions by incorrectly moderating them as prohibited adult content.⁵ Content moderation systems have also been shown to perpetuate bias that leads to women's and queer people's bodies and health promotion being censored more heavily than men's.⁶⁻⁹

The eSafety Commissioner's own guidance acknowledges that *"it is unlikely that sexual health education content ... or health and safety information about drug use and sex"* would be deemed illegal or restricted.¹⁰ However, **"unlikely" is not guaranteed**: with no statutory exemption, any ambiguous image or term could be incorrectly flagged for an age gate or takedown. If vital sexual and reproductive health education and promotion resources become accessible only to adults via credit-card or ID checks, young people and adults unwilling to give up their personal details will lose access to accurate sexual health information.

Impact on sex worker advertising and safety

Advertising for in-person sex work services also risks being classified as class 2 content. Mandatory age verification on advertising sites will dramatically reduce client traffic. International evidence warns of the consequences: after the US passed FOSTA/SESTA in 2018 and forced the closure of Backpage.com, most sex workers' incomes fell and their working conditions worsened.¹¹ It also significantly reduced sex workers' ability to implement safety strategies, including pre-screening of clients and the sharing of health and safety information.¹²⁻¹⁴

Whilst the purpose and intent of FOSTA-SESTA differs from the draft Codes, both mandate increased compliance measures, creating a "chilling effect" on online services' willingness to host sex worker voices and content.¹²⁻¹⁴ Platforms' fear of noncompliance, or overenthusiastic enforcement, could see any discussion of sex work classed as "adult material," regardless of whether the content is sexually explicit or actually violates any terms of service.

Digital access and equity

Internet access is indispensable in modern life. The OSA's statutory review itself noted that "choosing not to be online is no longer a practical option for most Australians" and that "digital exclusion is increasingly a driver of inequality."¹⁴ This is equally true for sex workers, who use internet technologies for advertising, safety and community connection. Censoring or restricting broad categories of content thus risks entrenching disadvantage. Marginalised groups – including rural youth, Indigenous communities, people with disability, or those in abusive homes – often **rely on online channels for health support and information**. Digital health researchers find that technology-based interventions "*can help to address inequities in sexual health outcomes*" by reaching diverse and underserved adolescents.¹⁶

Neither the OSA nor the draft Codes penalise platforms for mis-identification of content and subjecting it to control mechanisms. While the draft Codes mandate that service providers must have clear and accessible complaints mechanisms for "harmful" content, they do not contain similar provisions ensuring appeals mechanisms for incorrectly removed content and accounts. Platforms thus have an incentive to err on the side of removing or controlling material. This is exacerbated by the fact that platforms face high penalties under the OSA if they fail to remove or age-gate content. This "incentivise[s] the excessive removal of online content, including for content that is truthful, legal and non-harmful."¹⁷

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