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21 January 2022

Attorney-General's Department
Robert Garran Offices
3-5 National Circuit
BARTON ACT 2600

Thank you for the opportunity to make a submission on the draft *Social Media (Anti-Trolling) Bill 2021*. As representatives of a community who commonly access social media services using pseudonymous and anonymous accounts for harm reduction, work health and safety, and peer information-sharing, we have a strong stake in measures that restrict or penalise the use of such accounts, particularly where the sharing of information may be construed and pursued as defamatory.

Scarlet Alliance, Australian Sex Workers Association is the national peak body representing a membership of individual sex workers, and sex worker networks, groups, projects, collectives and organisations from around Australia since 1989. Through our objectives, policies and programs, Scarlet Alliance aims to achieve equality, social, legal, political, cultural and economic justice for past and present workers in the sex industry, in order for sex workers to be self-determining agents, build their own alliances and choose where and how they work. Scarlet Alliance represents sex workers on a number of Commonwealth committees and Ministerial advisory mechanisms.

In 2021 we advocated strongly against aspects of the *Online Safety Act 2021*¹ that posed a threat to sex worker livelihoods and safety, provided input to the eSafety Commission's actions to implement the Act's new measures, including age verification for online pornography and the restricted access system declaration², and engaged in advocacy to ensure that sex workers are included and considered in as the government seeks to regulate the tech sector, 'protect' Australians online, and address the harms we experience³. We bring many of the same concerns, informed by our expertise

¹Scarlet Alliance, Submission to Online Safety Bill Inquiry, No. 36, 2021, retrieved from https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/OnlineSafety/Submissions.

² Scarlet Alliance, Submission to Restricted Access System Declaration, Online Safety Act 2021 Discussion Paper (August 2021), retrieved from https://www.esafety.gov.au/sites/default/files/2021-09/Scarlet%20Alliance%20RAS%20submission%20%28September%202021%29_0.pdf

³James Purtill, 'Sex workers fear a new wave of deplatforming — and the proposed Online Safety Bill' accessed 21 January <https://www.abc.net.au/news/science/2021-02-20/sex-workers-fear-twitter-insta-deplatforming-online-safety-bill/13160850>

on sex worker online safety and experiences of online harm, to the *Social Media (Anti-Trolling) Bill 2021*.

Please do not hesitate to contact [REDACTED] at [REDACTED] with any questions or further invitations for input on this or any other matter relating to the online safety of the sex worker community.

Regards,

UNDERSTANDING SEX WORKERS AS STAKEHOLDERS IN ONLINE PRIVACY REGULATION

Sex workers have a unique stake in laws that erode digital privacy

We view the introduction of the *Social Media (Anti-Trolling) Bill 2021* as part of a trend towards the erosion of the right to online privacy in Australian law. As a surveilled, criminalised and marginalised workforce, sex workers have a unique stake in matters of digital privacy and its impact on digital security.

Criminalisation and stigma surrounding sex work have forced sex workers into the margins of Australian culture and society. Many sex workers choose, or are forced by circumstance, to *not* identify ourselves as sex workers to others, or to exercise careful control over who has access to information about our sex work status. While most Australian jurisdictions have at least some forms of sex work that are not illegal, and despite a shift towards decriminalised models in a number of jurisdictions, sex workers still remain largely persecuted, villified, and discriminated against. The inability to live out and proudly as sex workers places us in a position where we place a very high value on privacy, online and offline. Much of our advocacy work concerns itself with protecting sex worker privacy, particularly when engaging with law enforcement, the criminal justice system, and government agencies and services.

For many sex workers, privacy is also necessary component of workplace health and safety measures. Many sex workers separate our personal and professional lives in order to work safely in a stigmatised environment, avoid having our legal details weaponised against, avoid being stalked, harassed or doxed⁴ (particularly as we lack the workplace protections against these actions available to workers in other industries), and protect other aspects of our professional and personal lives that could be negatively impacted by the creation of a link between our legal and sex work personae.

Online privacy is a cornerstone of sex worker safety as most sex workers in Australia use some form of digital communication, including social media, to conduct our work, to seek education, health and harm reduction resources, connect with peers, and access support. Recent interventions into sex worker online privacy from governments and social media companies have already significantly eroded the online safety of sex workers. This includes:

- the introduction of the harmful FOSTA-SESTA legislation in the United States, the mass deplatforming of sex workers that followed its passage which continues today⁵;
- the introduction of the *Online Safety Act 2021* in Australia; and

⁴eSafety Commission, 'Doxing trends and challenges — position statement', accessed on 21 January, <<https://www.esafety.gov.au/industry/tech-trends-and-challenges/doxing>>

⁵Ariel Bogle, 'What happened after Aussie sex workers were kicked off American websites?' accessed 21 January, <<https://www.abc.net.au/news/science/2019-06-22/fosta-sesta-laws-impact-australian-sex-workers-one-year-later/11229724>>

- poor tech policy and regulation in Australia and abroad resulting in the continued narrowing of sex workers' access to the digital tools we use to work safely and gainfully, and to which workers in other industries expect to have unfettered access.

Any legislative or policy intervention that degrades our access to privacy, anonymity and pseudonymity is one we vehemently challenge. The *Social Media (Anti-Trolling) Bill 2021* is another concerning development in a suite of privacy- and security-eroding legislation which aims to shift responsibility for technology-facilitated social harms to tech platforms and services, without any attention to the root causes of those harms, or the best way to leverage the tech sector's resources to solve them.

The *Social Media (Anti-Trolling) Bill* will further erode the privacy rights of sex workers

The *Bill* aims to prevent online 'trolling' - a term yet undefined in this or other Australian law, and which is distinct from defamation in community understanding - by providing a clearer pathway for people to pursue defamation proceedings against others for comments made on social media platforms. To achieve this, the *Bill* assigns liability to social media platforms by making them the 'publishers' of defamatory content, while simultaneously prohibiting platforms from accessing the defence of innocent dissemination typically available under defamation law. However, the *Bill* creates a new defence, allowing platforms to defend a claim of defamation if they implement a 'complaints mechanism' which allows a complainant to request the geolocation of a commenter and their personal contact details in order to instigate defamation proceedings.

The *Bill* also creates a new 'end user information disclosure order', which allows a complainant to seek a court order to force the social media platform to provide the commenter's personal details. Scarlet Alliance raises concern that the *Bill*, if passed in its current form, will have the following negative detrimental impacts to sex worker online privacy:

1. The *Bill* incentivises platforms to require identity verification in order to register for an account, which is impossible for most sex workers operating pseudonymously. Identity verification has already been a failure in the prevention of online harm⁶ in Australia and abroad.⁷
2. The *Bill* will incentivise privacy-compromising and un-transparent covert actions from social media services, including the declaration of blanket consent for the sharing of identity data in their terms of service and / or conditions of use. Social media platforms have shown time and time again that they will take the action which has the lowest cost of implementation for the greatest evasion of liability, with the lowest impact on profit. Terms of service are often the place to bury policy decisions that will be controversial to users, as these documents are rarely accessible enough for the average user to engage with. They are an active site of digital discrimination against and marginalisation of sex workers.

⁶Lux Alpatraum, 'Facebook's real name policy is still a huge problem', accessed 17 January, <https://www.theverge.com/2015/2/19/8069211/facebook-real-name-policy-problem-account-suspension>

⁷Pandora Blake, 'Age verification for online porn: more harm than good?' *Porn Studies* 2019, vol. 6, no. 2, 228–237.

3. Malicious actors may be able to weaponise these mechanisms to gain access to identity, contact and location data; protecting this data is essential for sex worker workplace safety.
4. Erosions to online privacy protections prevent sex workers from taking up the workplace health and safety, advertising and networking tools provided by social media services. This creates isolation; lack of access to time-sensitive safety information, peer education and peer support; and reduces sex workers' access to the essential role social media plays in modern Australian small business infrastructures.

SPECIFIC CONCERNS WITH THE BILL'S PROVISIONS

Scarlet Alliance also has concerns with specific aspects of the *Bill*.

1. The *Bill* is non-prescriptive as to how social media providers can obtain the 'consent' needed for release of personal information under s 16(1)(e) and s 16(1)(g). At the very least, the *Bill* should outline that consent must not be embedded quietly into the provider's terms and conditions and should be sought clearly every time it is requested by a complainant. There must also be limits against providers assuming consent if the commenter has not responded after a certain time, or no longer uses or has access to the account.
2. The *Bill* does not provide safeguards around the release of 'country location'. The Explanatory Notes provide that 'the Bill does not envisage that a provider of a social media service will provide any further or more specific detail about a person's whereabouts at the time a comment was made'.⁸ The *Bill* should outline clear directives as to what the social media provider can and cannot release in regards to a user's location. To safeguard the locational privacy of users, there should also be penalties for social media providers if they release inappropriate location details. Further, the user whose location data is requested should be provided with an opportunity to consent to the sharing of this information at each instance that it is requested for the purposes of pursuing defamation proceedings.
3. The *Bill's* creation of end-user information orders not only poses a serious risk to user privacy, it also creates a pathway for malicious or vexatious complaints to be made in order to gain access to a vulnerable person's data.⁹
4. The *Bill* does not contain safeguards to prevent abuse of process. Legal processes are already utilised by people to access, intimidate and bully others. This poses a serious risk to the safety of sex workers, as well as other Australian internet users. Sex workers are likely to be unfairly targeted in this way due to our status as a marginalised group with no effective anti-discrimination protections.

A MISGUIDED APPROACH

⁸ Detailed Explanatory Notes p. 3

⁹ For example, sex workers, victim / survivors of sexual assault, family violence or other abuse, and / or other members of marginalised communities or those who fear persecution or discrimination based on identity.

Although framed as an ‘anti-trolling’ initiative, the *Bill* can more adequately be framed as ‘social media identification laws by stealth’.¹⁰ This seems to be a part of the government’s larger push towards anti-anonymity and anti-pseudonymity policy, which will greatly effect the privacy rights of all Australian internet users and the safety of sex workers and other marginalised communities. We consider the *Bill* to be an unnecessary, misguided and even redundant approach that lacks an evidence base and fails to protect everyday Australians against online abuse or harassment. It is also a step taken out of turn, with the report from the recently-closed *Inquiry into Social Media and Online Safety* yet to be released, and the implementation of the *Online Safety Act 2021* to commence imminently. Notably, the *Act* contains significant new measures in the protection of those experiencing online harassment and abuse, which in many ways replicate the *Bill*’s provisions:

*What’s more, a version of the newly announced powers already exists anyway. The recent Online Safety Act 2021 allows the e-Safety Commissioner to order social media companies to remove bullying or harassing content within 24 hours, or face a A\$555,000 fine. Crucially, it also gives the commissioner powers to demand information about the owners of anonymous accounts who engage in online abuse.*¹¹

The ‘immunity’ granted by the *Bill* will also encourage social media companies to gather and even verify user contact information in order to access this defence in case of a complaint. When considering the data breaches that social media companies experience, such as Facebook’s data breach last year which exposed 530 million users¹², this incentivisation of stricter data collection is troubling for many, particularly those who already experience increased surveillance and / or abuse from the state or individuals.

The introduction of the *Bill* occurs contextually within other instances of government transferring responsibility of online harms onto private entities. This is always problematic; private companies are motivated by profit, are not obliged to protect democracy or expression, and are not representative of the people who use their services. It also occurs within the context of an increasing amount of defamation cases against civilians by politicians, including Peter Dutton¹³ and Andrew Laming¹⁴.

¹⁰Jennifer Beckett, ‘The government’s planned ‘anti-troll’ laws won’t help most victims of online trolling’ accessed 12 January

<<https://theconversation.com/the-governments-planned-anti-troll-laws-wont-help-most-victims-of-online-trolling-172743>>

¹¹Jennifer Beckett, ‘The government’s planned ‘anti-troll’ laws won’t help most victims of online trolling’ accessed 12 January

<<https://theconversation.com/the-governments-planned-anti-troll-laws-wont-help-most-victims-of-online-trolling-172743>>

¹²Emma Bowman, ‘After Data Breach Exposes 530 Million, Facebook Says It Will Not Notify Users’ accessed 12 January

<<https://www.npr.org/2021/04/09/986005820/after-data-breach-exposes-530-million-facebook-says-it-will-not-notify-users>>

¹³Paul Karp, ‘Peter Dutton won’t receive full legal costs as defamation case could have been fought in lower court’, accessed 12 January,

<<https://www.theguardian.com/australia-news/2021/dec/08/peter-dutton-wont-receive-full-legal-costs-as-defamation-case-could-have-been-fought-in-lower-court>>

¹⁴Lisa Visentin, ‘Federal Liberal MP Andrew Laming threatens 10 MPs and journalists with legal action’, accessed 12 January,

There is a significant barrier to entry to defamation proceedings for everyday Australians who do not have the access to capital enjoyed by MPs and other high-profile individuals, and the *Bill* does nothing to improve this inequality; in fact, it could easily be argued that it creates further inequality by allowing high profile individuals to suppress often valid criticism of themselves through intimidation.

Reducing online anonymity and pseudonymity does not stop harm on social media

The introduction of policies that reduce online anonymity and privacy do not address the underlying causes of online harms like trolling, bullying, harassment, and vilification. Granting social media companies permission to ‘unmask’ commenters for the purposes of defamation proceedings is not an effective or proportionate response to addressing online harm. Conversely, threatening user privacy will have the effect of silencing groups, including sex workers, who rely on anonymous online interactions for their workplace health and safety, income, and connection with others. This approach is anti-democratic and contravenes our human right to privacy, which has been acknowledged by the Office of the Australian Information Commissioner.¹⁵

The *Bill* and its accompanying Explanatory Notes do not sufficiently show that there is a strong evidence base to support the assumption that ‘unmasking trolls’ and expediting defamation proceedings either reduces online harm or addresses underlying causes of online harm. Rather, there is significant reporting and research to show that those who cause harm on social media often do so under their legal identities.¹⁶ Emily van der Nagel, a lecturer and researcher in social media at Monash University, states in her submission to the *Inquiry in Social Media and Online Safety* that

‘...from my research, I have found that people using pseudonyms are more likely to be avoiding harm than causing it...[i]nstead, pseudonymity is a way to compartmentalise audiences and connect to conversations that matter.’¹⁷

Sex workers are among them, which is why an approach that targets anonymity and / or pseudonymity is inappropriate and will create more harm for us than it prevents.

Reducing online anonymity and pseudonymity threatens the online and offline safety of women, LGBTIQ+ people and sex workers

<<https://www.smh.com.au/politics/federal/federal-liberal-mp-andrew-laming-threatens-10-mps-and-journalists-with-legal-action-20210628-p584tc.html>>

¹⁵Office of the Australian Information Commissioner, ‘Your privacy rights’ online resource, accessed 12 January, <<https://www.oaic.gov.au/privacy/your-privacy-rights>>

¹⁶Emily Van der Nagel and Jordan Firth, ‘Anonymity, pseudonymity, and the agency of online identity: Examining the social practices of r/Gonewild’, *First Monday*, Volume 20, Number 3 - 2 March 2015, <<https://journals.uic.edu/ojs/index.php/fm/article/view/5615/4346>>

¹⁷ Emily Van der Nagel, Submission 07 to the *Inquiry into Social Media and Online Safety*, accessed 12 January, <https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Media_and_Online_Safety/SocialMediaandSafety/Submissions>

Research suggests that strengthening privacy, anonymity and pseudonymity in fact serves as a safety feature of social media platforms.¹⁸ Robust privacy requirements enable sex workers and other marginalised people to connect and share information with decreased risk of facing abuse, doxxing or discrimination directed towards our legal identities. As digital rights expert Samantha Floreani states,

For all the talk of fighting cyberbullying, there appears to be very little consideration of how the ability to use pseudonyms online is, for many, vital to personal safety. Victim-survivors of family violence often rely on it to avoid abuse and harassment from perpetrators. Members of the LGBTQ+ community may choose to anonymously explore their identity online without fear of being 'outed' to possibly unsupportive communities or families, or even to avoid workplace discrimination. Sex workers often use pseudonyms to be able to work safely. Lawyers, activists, and many front-line staff working in particularly sensitive areas may opt to separate their real identity from their online life, in order to prevent clients from finding and interacting with them and their families online.¹⁹

Sex workers have always connected and shared safety information with our community through closed peer networks. Recently, these networks have moved online, due to the network effect of social media platforms. While our access to these spaces is rapidly eroding due to problematic laws and policies in relation to sex work, we continue to attempt to leverage the access that exists to ensure that sex workers can share information about local workplace health and safety issues, and access to appropriate referrals. The information we share has an immediate, tangible impact on our safety. Like all digital spaces, they are also subject to platform surveillance, leaks, and data breaches. The vulnerability to both defamation proceedings and the access to our legal and location details that would be enabled by the *Bill* are unacceptable risks for a community working against stigma, criminalisation and little to no protection from discrimination, vilification and violence. Sex workers need to be able to share safety information in closed peer circles without fear of our personal details being shared with a person claiming defamation.

The *Bill* will similarly impact groups where victim-survivors share safety information, warn others about unsafe online dating users and connect over shared experiences of harassment, date rape, and sexual assault. This is another area that could be gravely compromised by the *Bill*, particularly given the commonality of these experiences *and* of the ways in which fear of defamation proceedings and sexual assault gag laws already silences victim-survivors.

It is important that social media platforms are not compelled by legislation to degrade the accessibility and reliability of these interactions, as they provide integral community safety information that cannot be shared in the wider public domain. People who access any closed community group to share safety information are not 'trolling' or being defamatory; they are

¹⁸Emily Van der Nagel and Jordan Firth, 'Anonymity, pseudonymity, and the agency of online identity: Examining the social practices of r/Gonewild', *First Monday*, Volume 20, Number 3 - 2 March 2015, <<https://journals.uic.edu/ojs/index.php/fm/article/view/5615/4346>>

¹⁹Samantha Floreani, 'Online anonymity is really important, actually', accessed 12 January, <<https://overland.org.au/2021/10/online-anonymity-is-really-important-actually/>>

conducting a practice of community care and filling a gap left by societal and governmental failures to support marginalised people in addressing both online and offline harms. Restricting the usability of these spaces held on social media services, including those that provide messaging services, is counter-productive to the government's intent to enhance online safety.

- Social media services, like other technologies, are used both for harmful and empowering ends. Over the last two decades, both globally and domestically, we have observed far too many instances of well-intentioned but hasty regulation introduced that have serious unintended and negative consequences for the vulnerable groups that they seek to protect.²⁰

The *Bill* decreases online safety by disincentivising proportionate and transparent content moderation policies and practices

Sex workers regularly experience vilification, abuse, harassment and doxxing in online spaces, whether from media companies or other entities or from individual users. However, due to the lack of vilification and anti-discrimination protections for sex workers, we have few avenues to pursue redress against perpetrators. Sex workers are unlikely to pursue defamatory proceedings, as any legal process comes with risks to our privacy and anonymity, and they are, in most cases, prohibitively expensive to initiate. Therefore, content moderation can be the primary means that pages reduce the prevalence of this harassment.

Through individualising liability for defamation and overriding the *Voller* decision, the *Bill* disincentivises social media platforms and pages from taking an appropriate role in content moderation.²¹ In effect, this reduces the likelihood of page owners moderating harmful and abusive comments made on their pages and transfers the onus onto individuals to make a complaint to the social media platform - a process which is only worthwhile if the individual intends to pursue a defamation proceeding, which is not an accessible option for many internet users. This backlash against the *Voller* decision highlights the need for a proportionate and collaborative approach to content moderation that engages a combination of platform tools and decision-making with page owner capacity to moderate content.

The *Bill* does not increase the accessibility of defamation proceedings

Although the *Bill* expedites the process of filing a defamation claim, it does not increase the accessibility of defamation proceedings beyond the inclusion of clause 23 which grants discretionary power to intervene in a case and order the payment of the applicant's costs. While this aspect of the

²⁰QUT Digital Media Research Centre, Submission 45 to the *Inquiry into Social Media and Online Safety*, accessed 12 January, <https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Media_and_Online_Safety/SocialMediaandSafety/Submissions>

²¹Paul Karp and Josh Taylor, 'What are the Coalition's proposed anti-troll social media laws and who do they benefit?', accessed 12 January, <<https://www.theguardian.com/media/2021/dec/01/who-really-benefits-from-the-coalitions-proposed-anti-troll-social-media-laws>>

Bill could be beneficial to sex workers and other marginalised people, it does not address the accessibility concerns, such as financial status, that prevent the launch of these proceedings in the first place. In its current state, the *Bill* only makes a defamation proceeding more accessible to those who already have the *means* to pursue a claim.

RECOMMENDATION

The government should withdraw the *Social Media (Anti-Trolling) Bill* due to its lack of public benefit or evidence base and its misguided targeting of online anonymity and pseudonymity. The *Bill* directly impacts on marginalised communities, including sex workers, who do not have access to redress against violence or WHS violations, and compromises access to essential safety tools. Further legislation regarding online harm that continues to erode privacy, security and encryption protections, should not be proposed by the government.