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15 November 2021

Online Safety
Department of Infrastructure, Regional Development, and Communications
GPO Box 594
Canberra, ACT 2601

Thank you for the opportunity to provide input into the draft Basic Online Safety Expectations.

Scarlet Alliance, Australian Sex Workers Association, is the national peak sex worker organisation in Australia, formed in 1989. Our membership includes state and territory-based and national sex worker organisations and individual sex workers. Scarlet Alliance uses a multifaceted health promotion approach to strive for equality, justice and the highest level of health for past and present workers in the sex industry. We achieve our goals and objectives by using best practices including peer education, community development, community engagement and advocacy.

As the recognised national peak body for sex workers, whose online content is a target of the Online Safety Act 2021, we would like to draw attention to previous submissions on the draft Online Safety Bill¹ and our Senate Committee hearing² and questions on notice³. We have engaged with the updates to Australia's online safety legislation through all stages of its process, and continue to assert our status as key stakeholders. We continue to convey our concern for the negative impacts of several aspects of the legislation, including this proposed BOSE, to sex worker livelihoods, safety, online privacy, and digital citizenship. We welcome publication of this submission.

We also wish to endorse the joint submission of Global Partners Digital & Digital Rights Watch, which captures a number of human rights, privacy and security concerns with the BOSE as organisations with technological and techno-social expertise.

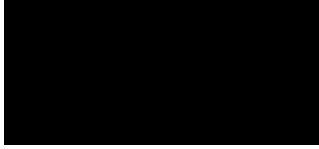
¹ Scarlet Alliance, Submission to Online Safety Bill Inquiry, No. 36, 2021, retrieved from <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/OnlineSafety/Submissions>.

² J. Kim and G. Vanting, 'Environment and Communications Legislation Committee Online Safety Bill 2021 Inquiry Public Hearing', Hansard, Commonwealth Government of Australia, Canberra, 05 March 2021, p.19, accessed 15 November 2021, <https://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/c1d55d8b-d39f-4ce4-a094-5c67fd73144d/toc_pdf/Environment%20and%20Communications%20Legislation%20Committee_2021_03_05_8549_Official.pdf;fileType=application%2Fpdf#search=%22committees/commsen/c1d55d8b-d39f-4ce4-a094-5c67fd73144d/0000%22>.

³ Scarlet Alliance, Answers to Questions Taken on Notice, 09 March 2021, no. 1-3, accessed 20 September 2021, <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/OnlineSafety/Additional_Documents?docType=Answer%20to%20Question%20on%20Notice>.

Please do not hesitate to contact National Programs Manager Gala Vanting at [REDACTED] with any questions or further invitations for input on this or any other aspect of the Act's implementation.

Regards,



Jules Kim
CEO
Scarlet Alliance, Australian Sex Workers Association

GENERAL REMARKS

The lack of definition of 'harm' in the *Online Safety Act 2021* allows for interpretation through discretionary frameworks informed by highly variable value systems. The framework for 'harm' adopted in the Act has been widely critiqued by stakeholders throughout its process. We take particular issue with the conflation of content addressing sexuality, whether explicit or suggested, as inherently 'harmful', and have provided substantive remarks on this issue in all of our feedback on online safety, including in a recent submission to the eSafety Commissions Restricted Access System Consultation Paper.⁴

While we support in principle the intention to improve online safety for Australians, we continue to draw attention to the framing of 'harm' and 'safety' within the implementation of the Act. In viewing all sexual content as potentially 'harmful', the legislation and its implementation has the potential to create real-world harm for sex workers who create such content, including deplatforming and loss of digital assets resulting in loss of income, peer networks and safety information. We continue to maintain that the *Online Safety Act 2021* does not contain adequate provisions to protect sex worker safety, online and offline. This is in no small part because it constructs content relating to our work as harmful, and thus sex workers as potential perpetrators of harm. Several aspects of the Basic Online Safety Expectations reinforce this.

We raised concern in the Online Safety Act's process that the core expectations of the BOSE were likely to incentivise deplatforming of sex workers and other people whose online content and communications must be read with more context than the tools used to moderate them are capable of. The use of the phrase 'harmful and unlawful' throughout the BOSE is the most concerning aspect of the draft declaration for sex workers. Due to convoluted and draconian laws in many jurisdictions that criminalise some or all aspects of our work, sex workers would be a likely target for deplatforming and erasure from digital spaces if the declaration is registered in its current form. Online services in Australia, and indeed their regulator, do not have a strong understanding of the way these laws work and to whom they apply, and should not be empowered to make decisions about whether or not content or communication is 'lawful'. There are additional challenges presented in applying federal law to activity that is legislated within the jurisdictions.

Criminalised populations are vulnerable populations who already experience barriers to accessing safety and support, online and offline. The addition of the language 'harmful' and 'unlawful' to the BOSE is incredibly problematic and has high stakes for sex workers and our communities, and we strongly recommend that all instances of both be removed from the declaration.

⁴ 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>

We now draw attention to several other aspects of the draft declaration that are of concern to the sex worker community:

SECTION 6: EXPECTATIONS - PROVIDER WILL TAKE REASONABLE STEPS TO ENSURE SAFE USE

The core 'expectation that the provider of the service will take reasonable steps to ensure that end-users are able to use the service in a safe manner' preserves the stated intention of the draft determination to 'avoid being overly prescriptive'. Its language encompasses a number of potential approaches to enabling safe use of a service, as is appropriate and proportionate for the service.

The addition of the expectation in 6(2) that 'the provider of the service will take reasonable steps to proactively minimise the extent to which material or activity on the service is or may be unlawful or harmful', however, begins to erode this intention, has the potential to create its own harms, and leaves services to interpret the meaning of 'harmful' and 'unlawful'. The language 'is or may be' also places services in the position of interpreting and proxy-enforcing law and leaves room for significant error and overcapture. Encouraging designated internet services, social media services and relevant electronic services to conduct armchair law enforcement is in no way conducive to user safety, and will result in a high volume of unnecessary content removal and resultant user complaints.

For sex workers, many of whom remain fully or partially criminalised in some Australian jurisdictions for simply engaging in legitimate work, the term 'unlawful' is incredibly threatening and poses risk to the use of any internet service for the purpose of our work. This is incredibly problematic, as online tools have markedly improved the safety and working conditions of many sex workers. To degrade our access to services is to take a clear statement that sex worker safety, online and offline, is not a priority for the government. This clause stands to have a significant and disproportionate impact on people who are criminalised against all credible evidence, and who are dependent upon digital tools to protect ourselves at work and connect with one another.

The addition of the corresponding 'reasonable step' in 6(3)(a), 'developing and implementing processes to detect, moderate, report and remove (as applicable) material or activity on the service that is or may be unlawful or harmful', raises even greater alarm, as it encourages the use of automated decision-making processes to 'detect, moderate, report and remove' this content or communication. This leaves room for significant error and overcapture, and works together with the reporting requirements in Division 4 to encourage that overcapture as a way to improve the optics and metrics of a service's actions. Algorithmic bias, crude tools in relation to contextualising speech and imagery, and the inconsistent quality and relevance of generic automated tools are likely to contribute to a drastic restriction of sex worker content and activity, effectively erasing us from digital space.

Sex workers report a high volume of negative experiences with automated decision-making processes, particularly those executed by social media services. This increases where we are also people of colour, people with disabilities or bodies that otherwise fall outside of mainstream beauty standards,^{5 6} or

⁵ Salty World, 'An Investigation into Algorithmic Bias in Content Policing on Instagram' (2019).

⁶ Smith, S. et al, Censorship of Marginalised Communities on Instagram, Salty World and University of Michigan, 2021.

activists and protestors.⁷ Even when we are actively working to comply with what are often opaque ‘community standards’ and terms of use, particularly on social media services, we are subject to content removal, account shutdowns, and shadowbans with no process of appeal and no information about what to change in order to be deemed compliant. As researcher, activist and sex worker Danielle Blunt describes, ‘[w]horephobia, like other biases, is by design within the algorithm.’⁸

The development of automated decision-making tools is conducted by private companies with profit imperatives. These services are not subject to the same types of scrutiny required in the realm of law and policy-making, particularly in regards to human rights, freedom of expression, or labour rights. To encourage the types of actions described in 6(3)(a) is to place undue power into the hands of services to conduct this work in as discriminatory a manner as they please, provided that they reasonably expect that content or communication ‘is or may be harmful or unlawful’.

SECTION 8: ADDITIONAL EXPECTATION—PROVIDER WILL TAKE REASONABLE STEPS REGARDING ENCRYPTED SERVICES

Sex workers have a stake in any erosions to encryption access. Encrypted technologies are the backbone of online privacy and security. Sex workers are increasingly taking up encrypted tools as a community with significant and unique privacy concerns that are a result of sex work stigma, discrimination and criminalisation. Privacy is imperative for both sex workers and our clients, and the use of end-to-end encrypted communications is a way of enabling the clear communication necessary for our safety at work, while preserving our privacy online. In places where outdated, harmful laws around sex work criminalise our safety strategies, including employing security or telling a friend where we are working, encrypted communications are essential to our workplace health and safety. Sex workers experiencing violence or harm may also require access to encrypted technologies to avoid or escape cyberstalking and other forms of technology-facilitated abuse. Encryption also prevents interception of intimate imagery exchanged between consenting adults and prevents access by people (of any age) for whom that content was not intended, a matter which the *Online Safety Act 2021* concerns itself with in depth.

In requiring that the provider of a service making use of encryption ‘will take reasonable steps to develop and implement processes to detect and address material or activity on the service that is or may be unlawful or harmful’, the draft declaration opens up windows to undermine the very technologies that are used to maintain online safety. As Global Partners Digital and Digital Rights Watch put it, ‘[t]he inclusion of this additional expectation risks undermining the first core expectation of the BOSE: that the digital platform will take reasonable steps to ensure that end-users are able to use the service in a safe manner.’⁹

⁷ D. Blunt et al., ‘Posting into the Void’, Hacking//Hustling, 2021, accessed 15 November 2021, <<https://hackinghustling.org/posting-into-the-void-content-moderation/>>.

⁸ D Blunt & Z Stardust, ‘Automating whorephobia: sex, technology and the violence of deplatforming’, *Porn Studies*, 2021

⁹ Global Partners Digital and Digital Rights Watch, Submission to Draft Online Safety (Basic Online Safety Expectations) Determination 2021, accessed on 12 November 2021 <<https://digitalrightswatch.org.au/wp-content/uploads/2021/11/Global-Partners-Digital-Digital-Rights-Watch-Joint-Submission.pdf>>

SECTION 9: ADDITIONAL EXPECTATION—PROVIDER WILL TAKE REASONABLE STEPS REGARDING ANONYMOUS ACCOUNTS

The ability to interact anonymously or pseudonymously online is also of high value to sex workers. Due to the stigma that surrounds our work and the everyday discrimination we experience, sex workers must be able to exercise a high degree of control over disclosure of our working status and any associated details. This can include anonymous or pseudonymous use of a service.

Most sex workers expend great effort on creating separation between our private / personal and business online presences, and may adopt multiple online personas for different purposes. We do this to protect ourselves and our communities, and because the right to privacy is a fundamental right of all digital citizens.

The ability to create and interact on anonymous and pseudonymous accounts has provided many sex workers with access to important health and safety information and enables interaction with services, including those conducted through work of our sex worker peer member organisations. Sex workers must be able to choose our level of anonymity in order to interact with outreach, health promotion and peer education services. Where some or all aspects of sex work are criminalised, sex worker holders of anonymous or pseudonymous online accounts have the potential to experience even greater barriers to accessing services, were this provision be adopted as part of the Act. As the work of our organisations continues to move into the digital space, we must be able to provide these services to all sex workers who approach us using anonymous email accounts, social media accounts, or other services.

This section of the declaration associates anonymity with harm, criminality, and a lack of trustworthiness by encouraging services to conduct identity verification, which is already highly controversial due to its data vulnerability and misuse implications. This would be an incredibly problematic move for sex workers. When Facebook was conducting heavy enforcement of its ‘real name’ policy in the mid-to-late 2010s, sex workers were asked to provide government-issued identification for pseudonymous accounts, resulting in mass deplatforming that cut many community members off from the crucial safety and peer support resources that were housed on the service.

This provision makes a leap towards digital identity requirements for internet service users, and should be introduced in a more rigorous manner than the BOSE determination, as it requires far greater public and political scrutiny than the declaration can offer.

SECTION 10: ADDITIONAL EXPECTATION—PROVIDER WILL CONSULT AND COOPERATE WITH OTHER SERVICE PROVIDERS TO PROMOTE SAFE USE

10(2)(b) provides that reasonable steps taken to adhere to this expectation could include ‘sharing information with other service providers on material or activity on the service that is or may be unlawful or harmful, for the purpose of preventing such material or activity’. Again, the use of the term ‘unlawful’ here is problematic for sex workers. This section also raises concern about the inter-platform sharing of things like sex worker account handles or aliases, IP addresses, device identifiers, and other data that might prevent individual sex workers from using multiple services for the purposes of our work.

In order to conduct viable businesses, many sex workers rely on being visible to clients across multiple platforms and services by the same name or handle. Where we are deplatformed from one or more services using those handles, and this information-sharing measure is taken, we potentially lose brands that have taken great effort and expense to build. This provision places more power in the hands of multiple services acting together, and again poses the risk of mass deplatforming of sex workers.

SECTION 13: CORE EXPECTATION—PROVIDER WILL ENSURE MECHANISMS TO REPORT AND MAKE COMPLAINTS ABOUT CERTAIN MATERIAL

In order to ensure that services are equally accountable for mistakes, overcapture, and discriminatory practices as they are for other prescribed actions to provide safe use, we recommend that reporting requirements be extended to include instances where content removal or account suspension or deletion decisions have been contested or appealed, and the outcomes of those processes. The current reporting requirements are an incentive to conduct blanket content and account removal to improve reporting metrics, and these must be balanced by requiring an honest disclosure of the shortcomings of these processes so that consumers are able to make informed decisions about the services they use. This will encourage services to continually improve the precision of their processes and the technologies used to implement them.

RECOMMENDATIONS

1. Remove all instances of the term ‘harmful’ and ‘unlawful’ from the draft Basic Online Safety Expectations.
2. Remove section 6(2).
3. Remove section 6(3)(a).
4. Remove section 8.
5. Remove section 9.
6. Remove section 10(2)(b). Should it remain, the terms ‘unlawful or harmful’ should be replaced by the types of content outlined in section 11.
7. Require services to report on incorrect content removal, account suspension or deletion, and appeals processes.