



**Australian
Sex Workers
Association**

Phone – 02 9517 2577

Post – PO Box 854

Newtown NSW 2042

Head Office – 203/1 Erskineville Road

Newtown NSW 2042

Email – info@scarletalliance.org.au

Web – www.scarletalliance.org.au

ABN – 86 612 112 065 | ARBN – 149 618 137

16 February 2024

Department of Infrastructure, Transport, Regional Development, Communications and the Arts
By email: BOSEreform@communications.gov.au

To the Department of Infrastructure, Transport, Regional Development, Communications and the Arts,

Re: Online Safety (Basic Online Safety Expectations) Amendment Determination 2023

Thank you for the opportunity to provide feedback on the Online Safety (Basic Online Safety Expectations) Amendment Determination 2023 (the BOSE Determination amendment).

Scarlet Alliance, Australian Sex Workers Association, is the national peak sex worker organisation. Formed in 1989, our membership includes state and territory-based and national sex worker organisations and individual sex workers across unceded Australia. Scarlet Alliance uses a multifaceted 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.

Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of workers in Australia's sex industry, and represents sex workers on a number of government and non-government committees and advisory mechanisms. Through our work and that of our member organisations and projects, we have the highest level of contact with sex workers and access to sex industry workplaces throughout Australia.

Scarlet Alliance has engaged with government throughout the drafting and implementation of the *Online Safety Act 2021*,¹ including the drafting of the initial Basic Online Safety Expectations in 2021.²

¹ See: Scarlet Alliance, Submission to the Department of Infrastructure, Transport, Regional Development and Communications, [Consultation on a Bill for a new Online Safety Act](#) (14 February 2021); Scarlet Alliance, [Submission No 36 to the Senate Standing Committees on Environment and Communications, Online Safety Bill Inquiry](#) (3 March 2021); [Evidence to Senate Standing Committees on Environment and Communications](#), Canberra, 5 March 2021, 19-22 (Jules Kim and Gala Vanting, Scarlet Alliance); [Evidence to Senate Standing Committees on Environment and Communications](#) (answers to questions taken on notice), Canberra, 9 March 2021 (Jules Kim and Gala Vanting, Scarlet Alliance); Scarlet Alliance, [Submission to the eSafety Commissioner](#) on the *Restricted Access System Declaration (Online Safety Act 2021)* (20 September 2021); Scarlet Alliance, [Submission to the eSafety Commissioner](#) on the *Call for Evidence on Age Verification for Online Pornography* (20 September 2021); Scarlet Alliance, [Submission to the eSafety Commissioner](#) on the *Draft Consolidated Industry Codes of Practice for the Online Industry (Class 1A and Class 1B Material)* (23 March 2023); and Scarlet Alliance, [Submission to the eSafety Commissioner](#) on the *Draft Online Safety Industry Standards 2024 - (Relevant Electronic Services – Class 1A and 1B Material) and (Designated Internet Services – Class 1A and 1B Material)* (21 December 2023).

² Scarlet Alliance, [Submission to the Department of Infrastructure, Regional Development and Communications](#) on the *Draft Basic Online Safety Expectations* (15 November 2021).

In 2023, we also provided a submission to the *Inquiry into Safe and Responsible AI Regulation in Australia*.³

Our consistent advocacy throughout this engagement has maintained that the overarching legislative and policy framing of sexual expression online as inherently 'harmful' positions sex workers and other marginalised communities as being perpetrators of harm, ignoring our legitimate privacy and safety concerns and undermining our avenues for digital participation and access, sharing vital health and safety information and conducting our businesses.

We hope that amendments to the BOSE Determination will reflect a nuanced understanding of online safety and consider and include the interests of sex workers across unceded Australia.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mish Pony', with a stylized, cursive script.

Mish Pony
Chief Executive Officer

³ Scarlet Alliance, [Submission to the Department of Industry, Science and Resources](#) on *Safe and Responsible AI in Australia* (26 July 2023).

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Executive summary: a call to action for sex worker safety

Throughout the development and implementation of the *Online Safety Act 2021* and the establishment of the eSafety Commission, sex workers and our allies across unceded Australia have provided clear and consistent evidence that these regulatory approaches generate significant and tangible risks to the health and safety of sex workers and other marginalised communities.

These concerns have been continuously ignored or dismissed by the Office of the eSafety Commissioner,⁴ which continues to promote and enforce a framework that defines all sexual content as inherently harmful. This framework positions those who produce sexual content online as perpetrators of harm, rather than internet users with our own privacy and safety needs.

The eSafety Commissioner is an unelected regulator with extensive enforcement powers, and there has been no accountability for the lack of response to issues raised by sex workers over three years of good faith engagement. Sex workers are lived-experience experts on the impacts of technology regulation, and our experiences form a vital contribution to understanding how regulatory frameworks impact health promotion, community and culture, political engagement, sexuality and business in online spaces.

Scarlet Alliance and the wider sex worker community challenge the assumption that all sexual content is inherently ‘harmful.’ We reject any reductionist framework that positions the existence of adult content online in a zero-sum battle against the best interests of children and young people. Many sex workers are also parents and carers, whose livelihood depends on the existence of age-appropriate online spaces for all internet users. We believe that sensible regulation and comprehensive education empowers all internet users in Australia to have safe and autonomous

⁴ Lisa Visentin, [‘Sex industry ‘not my concern’: eSafety Commissioner defends proposed new powers’](#) *The Sydney Morning Herald* (online, 4 March 2021).

experiences online. We expect our regulatory frameworks to be fit for purpose, and we expect that regulators will be responsive to our concerns.

This submission is focused towards the ways in which the proposed amendments to the Online Safety (Basic Online Safety Expectations) Determination 2022 (the BOSE Determination) harm the health and safety of sex workers in unceded Australia, and the ways in which the proposed amendments fail to provide user safety for sex workers in online spaces.

Generative AI and recommender systems

Generative AI

Sex workers are stakeholders in AI governance.

Proposal 1: proposed new section 8A on generative AI.

Sex workers are key stakeholders in the development of regulatory frameworks for AI technologies. Our community has lived experience of the impacts of algorithmic bias and discrimination, and understands the privacy and safety risks presented by the rapidly evolving development and deployment of emerging generative AI technologies.⁵

In the absence of a proposed national framework specific to AI governance, Scarlet Alliance accepts that it is appropriate for the BOSE Determination to outline general expectations for service providers using or providing access to generative AI capabilities. We urge the Office of the eSafety Commissioner to fully consider the privacy and safety risks presented by generative AI *beyond* the possibility of the generation of harmful or prohibited content, and to conduct further consultation with sex workers, privacy advocates, anti-discrimination groups and other civil society stakeholders in order to produce expectations that are fit for purpose, future-focused and responsive to community needs.

Recommendation 1: That the Office of the eSafety Commissioner conduct further consultation with sex workers, privacy advocates, anti-discrimination groups and other civil society stakeholders in order to produce expectations relating to generative AI that are fit for purpose, future-focused and responsive to community needs.

Recommender systems

It's not just about what content is recommended, it's about what content is suppressed.

Proposal 2: proposed new section 8B on recommender systems.

⁵ Submission on *Safe and Responsible AI in Australia* (n 3).

While Scarlet Alliance is supportive of the BOSE Determination requiring service providers to consider safety and transparency in the design and deployment of recommender systems, the proposed section 8B does not provide user safety for sex workers.

The requirement for 'service[s] to take reasonable steps to ensure that recommender systems are designed to minimise the amplification of material or activity on the service that is unlawful or harmful' risks **over-capturing** content produced by sex workers or accounts run by sex workers, regardless of whether the content is in fact 'harmful' or in breach of any terms of service. The proposed section also **does not address the effects of recommender systems in de-amplifying miscategorised content** through practices such as 'shadowbanning' or other forms of content de-prioritisation.

Research has demonstrated that algorithmic technologies deployed to detect 'harmful' content rate images of 'women [as] more racy than images containing men',⁶ and disproportionately miscategorise images of LGBTQI+ people and people of colour.⁷ A survey of more than 200 sex workers and adult entertainment performers in the United States (where sex work is mostly criminalised) identified shadowbanning and algorithmic bias as having negative impacts on mental health, as well as a chilling effect on the sharing of health and safety information and engagement in political speech.⁸

Scarlet Alliance believes that algorithmic bias and shadowbanning generates similar impacts for sex workers in Australia in terms of negative mental health. Content miscategorisation, algorithmic bias and shadowbanning forces self-censorship by sex workers and sex worker organisations in Australia when preparing and distributing health promotion messages and safety information to avoid losing connections, diminishing audience reach or losing access to the platform itself.

It is often impossible for users to prove or even investigate whether their content has been shadowbanned or otherwise de-prioritised, and whether this categorisation was made correctly. Most service providers consider the operation of recommender systems to be proprietary technology, and will not provide information on how content has been categorised by recommender systems, why this decision was made, and fail to provide clear and accessible avenues to challenge miscategorisations.

In order to promote user safety for sex workers and other marginalised communities in Australia, the proposed section 8B(3) must also outline that 'reasonable steps' to 'consider end-user safety' and 'incorporate safety measures within recommender systems' could also include enabling end-users to make complaints or enquiries about whether content, accounts or users have been flagged or deprioritised by recommender systems.

⁶ Gianluca Mauro and Hilke Schellmann, ["There is no standard": investigation finds AI algorithms objectify women's bodies](#), The Guardian (online, 8 February 2023).

⁷ Chanté Joseph, ["Instagram's murky "shadow bans" just serve to censor marginalised communities"](#), The Guardian (online, 9 November 2019).

⁸ Hacking/Hustling, [Posting into the Void](#) (Community Report, October 2020) 52-3.

Recommendation 2: That the proposed section 8B(3) include an additional paragraph outlining that ‘reasonable steps’ to ‘consider end-user safety’ and ‘incorporate safety measures within recommender systems’ could include enabling end-users to make complaints or enquiries about whether content, accounts or users have been flagged or deprioritised by recommender systems.

The best interests of the child and preventing access to age-inappropriate materials online

Online safety requires evidence-based regulation and proven technologies.

Proposal 1: proposed new section 6(2A) - reasonable steps to ensure that the best interests of the child are a primary consideration.

Proposal 2: proposed amendment to section 12(2)(a) - appropriate age assurance mechanisms.

Proposal 3: proposed new section 12(2)(c) - example of ‘reasonable steps’ to include development requirement to prevent access by children to class 2 material.

The Australian Government has already responded to the eSafety Commissioner’s proposal to mandate age verification for online pornography, noting that each type of age verification *and* age assurance technology explored comes with ‘privacy, security, effectiveness and implementation issues’, and that these technologies are currently too ‘immature’ to deploy.⁹

Scarlet Alliance believes that these proposed amendments to the BOSE Determination **effectively mandate (or at minimum encourage) the use of technologies rejected by the Government for generating unacceptable risks.** It is particularly concerning that the Consultation Paper frames the proposed section 12(2)(a) reasonable step of ‘implementing appropriate age assurance mechanisms’ as involving only consideration of ‘level of risk and harm of the material’ (with no information or context on how this would be assessed) without regard to the level of risk of harm presented by the age assurance mechanism itself. Furthermore, the development requirement in the proposed new section 12(2)(c) also encourages services to ‘implement improved technologies,’ without providing any minimum threshold for privacy, security or effectiveness.

The development of industry codes for Class 2 material in 2024 will inevitably ignite fresh discussion on the most effective ways to ensure that all internet users are able to securely access age-appropriate content online. This development must happen in consultation with sex workers - we are experts in the content we produce and stakeholders in our own rights to privacy, health and safety promotion, community-building and livelihoods.

The BOSE Determination amendments **cannot implement rejected technological proposals,** and must be congruent with the industry codes yet to be developed. As such, Scarlet Alliance recommends that the three proposals relating to age-appropriate material (proposed new sections 6(2A), 12(2)(a) and 12(2)(c)) are removed from the draft amendment, and that expectations for

⁹ Department of Infrastructure, Transport, Regional Development, Communications and the Arts (Cth), [Government Response to the Roadmap for Age Verification](#) (Report, August 2023) 2.

age-assurance mechanisms in the BOSE Determination are reconsidered after the development of the Class 2 industry codes.

Recommendation 3: That the proposed new sections 6(2A), 12(2)(a) and 12(2)(c) are not included in this amendment, and that expectations for age-assurance mechanisms in the BOSE Determination are reconsidered after the development of the Class 2 industry codes.

Recommendation 4: That sex workers are engaged in good faith as stakeholders during the development of the Class 2 industry codes.

Safety impacts of business and resourcing decisions

Effective complaints mechanisms include effective appeals processes.

Proposal 1: proposed new section 6(3)(f) - example of reasonable steps to ensure end-user safety in business decisions.

Proposal 2: proposed new section 6(3)(g) - example of reasonable steps to invest in complaints resolution.

Proposal 3: proposed new section 6(3)(h) - example of reasonable steps to include investment in user-safety.

Scarlet Alliance is supportive in principle of the proposed new sections 6(3)(f)-(h) providing examples of reasonable steps for ensuring user-safety in business decisions and resourcing priorities.

However, it is vital that section 6(3)(g) notes that a reasonable step for services responding to complaints includes resourcing the actioning of reports, complaints *and appeals processes* within a reasonable time, so that sex workers and sex worker organisations subject to inaccurate or vexatious complaints and/or automated miscategorisations of content do not lose content reach or platform access.

Further, there is widespread understanding that AI content detection/prevention tools are not currently able to accurately detect unverified unlawful and harmful material, and are just one of many safety strategies requiring investment from service providers in order to further develop user-safety.¹⁰ The proposed section 6(3)(h) must clarify that an example of reasonable steps including investment in 'systems, tools and processes' is not limited to investment in AI tools, and does not encourage service providers to deploy inaccurate or untested forms of content detection and/or removal.

Recommendation 5: That the proposed section 6(3)(g) includes that a 'reasonable step' for services responding to complaints includes resourcing the actioning of reports, complaints *and appeals processes* within a reasonable time.

¹⁰ Submission on the *Draft Online Safety Industry Standards 2024* (n 1) 6.

Recommendation 6: That the proposed section 6(3)(h) clarifies that investment in ‘systems, tools and processes’ to improve user safety is not limited to investment in AI content-detection/prevention tools, and does not encourage service providers to deploy inaccurate or untested forms of content detection and/or removal.

Hate speech and Enforcement of terms of use

Where is online safety for sex workers?

Hate speech

Proposal 1: proposed new sections 6(3)(i) and 6(4) - hate speech.

Sex workers experience vilification from members of the general public, the media, organisations, law enforcement and government actors and agencies...Entrenched stigma and discrimination, historic criminalisation and a lack of consistent and comprehensive anti-discrimination and anti-vilification protections for sex workers has meant that sex workers are treated as an ‘easy target’ for vilification as individuals and as a collective.¹¹

While we commend the Office of the eSafety Commissioner on its collaborative research into the impacts of online hate speech for people of all ages, it is disappointing that sex workers were not considered in this analysis.

Many sex workers have recounted experiences of vilification and hate speech online. This can include malicious and unwarranted reporting of accounts, content and other online activity. It is clear that the existing hate speech policies of many service providers do not provide adequate protection for sex workers against vilification, threats and doxing. The BOSE Standards must make clear that this conduct is not acceptable.

During the joint submission to the Queensland *Inquiry into Serious Vilification and Hate Crimes*, Respect Inc. and Scarlet Alliance conducted consultation with Queensland sex workers, collecting the following reports about experiences of online vilification:

- A sex worker who also worked as a teacher’s aide was threatened by an ex-partner that if she did not leave the town where they both lived, he would ‘make sure she got what she deserved’ by putting a post online telling parents at the school about her sex work career.¹²
- The new girlfriend of a sex worker's ex-husband circulated on an online blog with a link to the advertisement of a sex worker with her personal phone number and home address

¹¹ Respect Inc. and Scarlet Alliance, [Joint Submission to the Queensland Legal Affairs and Safety Committee, Inquiry into Serious Vilification and Hate Crimes](#) (25 August 2021) 3, 4.

¹² Ibid 7.

where she lived with her two small children. She felt unsafe and had to move into temporary accommodation, losing her home and going into debt.¹³

- A neighbourhood social media group post listed an address and accused the resident of being a sex worker.¹⁴
- A sex worker was accused of living with HIV and their photo and address were made public online.¹⁵
- Posts made in a suburban social media group about a local massage parlour, accompanied by the distribution of physical flyers, described the location as a 'threat to children.'¹⁶

Recent posts on an X thread referencing the decriminalisation of sex work in Victoria contain clear examples of vilification towards sex workers.¹⁷ Despite being reported, these posts were found not to violate X's policies and remain online at the time of writing.

It is clear that sex workers require specific anti-vilification protections within the hate speech protections in the BOSE Determination. Our experience demonstrates that specifically naming 'sex work' and 'sex worker' as protected attributes is the best model to ensure that sex workers can access anti-discrimination protections, and to acknowledge the historical and contemporary marginalisation, criminalisation, and stigma that sex workers experience. This approach was favoured by the Northern Territory in its review of anti-discrimination legislation, which became the first jurisdiction in the world to specifically protect sex workers from discrimination.¹⁸

The proposed definition of 'hate speech' in section 6(4) must include 'communication which expresses hate against a person or group of people on the basis of *being a sex worker or engaging in sex work.*'

We further recommend that information be included in the Determination's Explanatory Statement noting that 'sex worker means a person who performs sex work. Sex work means the provision by a person of services that involve participating in sexual activity, including erotic entertainment, in return for payment or reward.'

Recommendation 7: That the proposed section 6(4) defines 'hate speech' as including 'communication which expresses hate against a person or group of people on the basis of...being a sex worker or engaging in sex work.'

Recommendation 8: That the BOSE Determination's Explanatory Statement includes that 'sex worker means a person who performs sex work. Sex work means the provision by a person of

¹³ Ibid.

¹⁴ Respect Inc. and Scarlet Alliance, [Joint Submission to the Queensland Legal Affairs and Safety Committee on the Criminal Code \(Serious Vilification and Hate Crimes\) and Other Legislation Amendment Bill 2023](#) (12 May 2023) 3.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ [@footyfan2222](#) (X, 24 January 2024, 10:51pm AEDT); [@TBG9270584](#) (X, 25 January 2024, 10:32am AEDT) [@bannedvsoon](#) (X, 24 January 2024, 2:38pm AEDT); [@downunderdlee](#) (X, 24 January 2024, 9:18pm AEDT).

¹⁸ Sarah Spina-Matthews, ['With anti-discrimination changes, Northern Territory has some of the world's most progressive sex work laws. It wasn't always that way'](#), ABC News (online, 27 November 2022).

services that involve participating in sexual activity, including erotic entertainment, in return for payment or reward.’

Terms of use and complaints processes

Proposal 1: proposed new section 14(1A) - reasonable steps to detect breaches of terms of use.

Proposal 2: proposed amendment to sections 14(2) and 15(2) - ‘policies and procedures in relation to the safety of end-users, and standards of conduct for end-users.’

Proposal 3: proposed new section 14(3)-(5) - timely resolution of complaints.

Scarlet Alliance understands the need for the BOSE Determination to provide clear guidance on reasonable enforcement of terms of use, and to ensure the availability of clear and accessible complaints mechanisms.

However, without a mandate to ensure the availability of timely appeals processes outlined in **recommendation 5**, the requirement in section 14(2) that penalties are enforced against ‘all accounts held or created by the end-user who breached the terms of use’ generates a risk of permanently deplatforming sex workers and health promotion advocates whose content or accounts were incorrectly deemed to have breached a service’s terms of use, without an avenue for the incorrect determination to be reconsidered.

As noted in our submission on the Online Safety Industry Standards 2024 (Class 1A and 1B material), it is well-understood that auto content detection methods are **not sufficiently accurate** in categorising unverified material as either acceptable or prohibited.¹⁹

Inaccurate decisions regarding inappropriate content and breaches of terms of use are a common experience for sex workers, harm reduction advocates and other health promotion organisations. During our submission on *Safe and Responsible AI in Australia*, Scarlet Alliance received the following reports from our member organisations in relation to posts made across all major social media platforms (Facebook, Instagram and Twitter):

- A health promotion social media account run by a sex worker peer organisation being temporarily barred from posting after sharing a health promotion post about condom use;
- Paid advertisements for health promotion events and community events run by sex worker organisations being blocked prior to publication for ‘breaching community standards’;
- Posts advertising job vacancies for sex worker peer positions for service delivery and advocacy at state/territory and national sex worker organisations (funded by government and payable under the Social, Community, Home Care and Disability Services Industry Award) being deemed as breaching community guidelines;
- Posts sharing sex worker COVID-19 safety plans referenced on government websites being deemed as breaching community guidelines;
- Posts sharing legislation relating to sex work, such as the *Sex Industry Act 2019* (NT) and the *Anti-Discrimination Act 1992* (NT) being deemed as breaching community guidelines;

¹⁹ Submission on the *Draft Online Safety Industry Standards 2024* (n 1) 6.

- Sex worker organisations’ social media accounts being permanently ‘closed’ because the platform deems sexual health promotion as being inappropriate content and/or in breach of terms and conditions.²⁰

The removal of sex worker, harm reduction and other health promotion accounts as a result of inaccurate content moderation practices **causes direct harm** to sex workers by removing the channels we use to communicate vital health and safety information within our communities. Without clear avenues for challenging incorrect decisions, and with these decisions applying to new and/or back-up accounts, our community becomes **permanently deplatformed** and subject to isolation and lack of safety.

It is vital that alongside the requirements for service providers to proactively detect conduct and facilitate accessible complaints processes, the proposed amendment to section 15(2) must contain a requirement to ensure that ‘clear and readily identifiable mechanisms...enable any person ordinarily resident in Australia’ *to appeal any decisions* relating to ‘breaches of the service’s terms of use and, where applicable, breaches of the service’s policies and procedures and standards of conduct.’

The proposed sections 14(3)-(5) pertaining to timely complaints resolution must also include an expectation that *appeals against* reports, decisions or complaints must also be conducted within a ‘reasonable period of time.’

Recommendation 9: That the proposed amendment to section 15(2) contains a requirement to ensure that ‘clear and readily identifiable mechanisms...enable any person ordinarily resident in Australia’ *to appeal any decisions* relating to ‘breaches of the service’s terms of use and, where applicable, breaches of the service’s policies and procedures and standards of conduct.’

Recommendation 10: That the proposed sections 14(3)-(5) pertaining to timely complaints resolution include an expectation that *appeals against* reports, decisions or complaints must also be conducted within a ‘reasonable period of time.’

Anonymity

Proposal 4: proposed amendment to section 9(2)(a) - proactive processes to prevent anonymous accounts.

Scarlet Alliance has significant concerns relating to the proposed amendment to section 9(2)(a) requiring service providers to implement ‘proactive processes’ to prevent users creating additional anonymous or pseudonymous accounts who may have previously posted content or engaged in activity deemed to be ‘unlawful or harmful.’

The ability to remain anonymous or pseudonymous in online spaces **is an essential aspect of eSafety** - not only for sex workers but also for other members of the community, including whistleblowers, political dissidents, LGBTQI+ people and survivors of family violence.

²⁰ Submission on *Safe and Responsible AI in Australia* (n 3) 6.

Again highlighting the **known inaccuracy** of automated content-moderation and the lack of appeals processes for incorrect decisions, this requirement essentially mandates broad-scale surveillance of any end-user previously deemed to have posted content or engaged in activity deemed to be ‘unlawful or harmful,’ regardless of whether the content or activity *was in fact* unlawful, harmful or otherwise in breach of the service’s terms of use.

The Consultation Paper suggests that users could be tracked via email, phone number, and IP address. While the Consultation Paper notes that this section would be read in accordance with ‘Australian Privacy Principle 2 – Anonymity and pseudonymity’, it is difficult to see how a requirement that service providers take ‘reasonable steps’ to track user’s email addresses, phone numbers and IP addresses if they have posted content deemed to be unlawful or harmful can truly be compliant with the Australian Privacy Principles.

Recommendation 11: That section 9(2)(a) is **not** amended to outline that a ‘reasonable step to prevent anonymous accounts’ includes ‘proactive processes...that prevent the same person from repeatedly using anonymous accounts.’

Transparency

Transparency means accountability.

Proposal 1: proposed new section 18A - transparency reports.

Scarlet Alliance is supportive in principle of large service providers being required to report on safety mechanisms and processes. However, as the BOSE Determination applies to all social media services, relevant electronic services (i.e. messaging apps) and designated internet services (i.e. most websites and apps), this requirement should include a threshold number of active end-users in Australia in order to avoid creating a disproportionate and untenable burden on small websites and apps.

In line with our **recommendations 5, 9 and 10** above, the requirement in section 18A(1)(c) that services report on ‘metrics on the prevalence of harms, reports and complaints, and the service’s responsiveness’ must also include a requirement to report on metrics relating to *appeals processes* and the service’s responsiveness to these.

Recommendation 12: That the reporting requirements in the proposed new section 18A apply only to services above a threshold number of active end-users in Australia in order to avoid creating a disproportionate and untenable burden on small websites and apps.

Recommendation 13: That the proposed section 18A(1)(c) includes a requirement for services to report on ‘metrics on the prevalence of harms, reports and complaints, *appeals processes*, and the service’s responsiveness.’

Other clarifications and improvements

eSafety or surveillance and discrimination?

Proposal 2: proposed amendment to section 10(1) - requirement for cooperation to ensure end-user safety - application to services operated by the same provider.

While the proposed amendments to section 10(1) do not affect the substantive requirements of the section, Scarlet Alliance remains concerned that this section encourages extensive user-data collection and information sharing between services, under the broad guise of promoting ‘the ability of end-users to use all of those services in a safe manner’.

Sex workers in the United States, as well as their associates, have consistently reported being denied services from websites and apps such as Airbnb and DoorDash, despite never using these services in conjunction with their work.²¹ Most large tech-based services are developed and based in the United States, and researchers have noted that ‘the policies of U.S.-based companies to exclude sex workers have largely been replicated or applied’ in Australia,²² despite major differences in legal and policy approaches to various forms of sex work and the existence of anti-discrimination protections for sex workers in several Australian jurisdictions. Companies operating multiple services in Australia have also expressed a disinclination to address discrimination against sex workers, or comply with relevant anti-discrimination law.²³

In this context, it is vital that the scope of section 10 is limited. Clarification must be provided that ‘reasonable steps to consult and cooperate’ do not encourage the sharing of personal information between services, and ‘[promoting] the ability of end-users to use all of those services in a safe manner’ does not involve blanket denial of services to marginalised groups.

Sex workers in Australia expect that the BOSE Determination, as part of the broader eSafety framework, will promote equity and inclusion in online spaces, and will not encourage or empower information sharing between providers resulting in mass deplatforming or denial of essential services to sex workers in Australia.

Recommendation 14: That the scope of section 10 is limited by clarifying that ‘reasonable steps to consult and cooperate’ does not encourage the sharing of personal information between services, and ‘[promoting] the ability of end-users to use all of those services in a safe manner’ does not involve blanket denial of services to marginalised groups.

²¹ Olivia Snow '[Sex Workers Have Been Banned From Airbnb for Years. Will You Be Next?](#)', *The Nation* (online, 26 November 2022);

Olivia Snow '[Are You Ready to Be Surveilled Like a Sex Worker?](#)', *Wired* (online, 27 June 2022).

²² Zahra Stardust et al, 'High Risk Hustling: Payment Processors Sexual Proxies and Discrimination by Design' (2023) 26(1) *City University of New York Law Review* 57, 67.

²³ At the Australian Government Modern Slavery Conference on June 27-29 2023, Mish Pony, Scarlet Alliance CEO asked Malina Enlund, Safety Policy Manager of APAC META, why sex workers in decriminalised jurisdictions were subject to the same rates of shadow-banning and algorithmic discrimination as sex workers in criminalised settings, to which she responded (paraphrased) ‘We are a multinational and there are so many different laws, we can’t fit them all.’ See Submission on *Safe and Responsible AI in Australia* (n 3) 6.

Recommendations

Recommendation 1 (generative AI): That the Office of the eSafety Commissioner conduct further consultation with sex workers, privacy advocates, anti-discrimination groups and other civil society stakeholders in order to produce expectations relating to generative AI that are fit for purpose, future-focused and responsive to community needs.

Recommendation 2 (recommender systems): That the proposed section 8B(3) include an additional paragraph outlining that ‘reasonable steps’ to ‘consider end-user safety’ and ‘incorporate safety measures within recommender systems’ could include enabling end-users to make complaints or enquiries about whether content, accounts or users have been flagged or deprioritised by recommender systems.

Recommendation 3 (age verification): That the proposed new sections 6(2A), 12(2)(a) and 12(2)(c) are not included in this amendment, and that expectations for age-assurance mechanisms in the BOSE Determination are reconsidered after the development of the Class 2 industry codes.

Recommendation 4 (age verification): That sex workers are engaged in good faith as stakeholders during the development of the Class 2 industry codes.

Recommendation 5 (resourcing and investment - appeals processes): That the proposed section 6(3)(g) includes that a ‘reasonable step’ for services responding to complaints includes resourcing the actioning of reports, complaints *and appeals processes* within a reasonable time.

Recommendation 6 (resourcing and investment - user safety): That the proposed section 6(3)(h) clarifies that investment in ‘systems, tools and processes’ to improve user safety is not limited to investment in AI content-detection/prevention tools, and does not encourage service providers to deploy inaccurate or untested forms of content detection and/or removal.

Recommendation 7 (hate speech): That the proposed section 6(4) defines ‘hate speech’ as including ‘communication which expresses hate against a person or group of people on the basis of...being a sex worker or engaging in sex work.’

Recommendation 8 (hate speech): That the BOSE Determination’s Explanatory Statement includes that ‘sex worker means a person who performs sex work. Sex work means the provision by a person of services that involve participating in sexual activity, including erotic entertainment, in return for payment or reward.’

Recommendation 9 (terms of use enforcement, complaints and appeals): That the proposed amendment to section 15(2) contains a requirement to ensure that ‘clear and readily identifiable mechanisms...enable any person ordinarily resident in Australia’ *to appeal any decisions* relating to ‘breaches of the service’s terms of use and, where applicable, breaches of the service’s policies and procedures and standards of conduct.’

Recommendation 10 (terms of use enforcement, complaints and appeals): That the proposed sections 14(3)-(5) pertaining to timely complaints resolution include an expectation that *appeals against* reports, decisions or complaints must also be conducted within a ‘reasonable period of time.’

Recommendation 11 (anonymity): That section 9(2)(a) is **not** amended to outline that a ‘reasonable step to prevent anonymous accounts’ includes ‘proactive processes... that prevent the same person from repeatedly using anonymous accounts.’

Recommendation 12 (transparency reporting): That the reporting requirements in the proposed new section 18A apply only to services above a threshold number of active end-users in Australia in order to avoid creating a disproportionate and untenable burden on small websites and apps.

Recommendation 13 (transparency reporting): That the proposed section 18A(1)(c) includes a requirement for services to report on ‘metrics on the prevalence of harms, reports and complaints, *appeals processes*, and the service’s responsiveness.’

Recommendation 14 (cooperation requirement): That the scope of section 10 is limited by clarifying that ‘reasonable steps to consult and cooperate’ does not encourage the sharing of personal information between services, and ‘[promoting] the ability of end-users to use all of those services in a safe manner’ does not involve blanket denial of services to marginalised groups.