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18 October 2022

To the industry associations responsible for the Consolidated Industry Codes of Practice for the Online Industry,

Thank you for the opportunity to provide input on the Consolidated Industry Codes of Practice for the Online Industry (Class 1A and Class 1B Material).

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*<sup>1</sup> 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 declaration<sup>2</sup>, 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 experience.

Please do not hesitate to contact National Programs Manager Gala Vanting at [npm@scarletalliance.org.au](mailto:npm@scarletalliance.org.au) 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,

Gala Vanting  
National Programs Manager

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<sup>1</sup>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](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/OnlineSafety/Submissions).

<sup>2</sup> 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%28Sept%202021%29\\_0.pdf](https://www.esafety.gov.au/sites/default/files/2021-09/Scarlet%20Alliance%20RAS%20submission%20%28Sept%202021%29_0.pdf)

# General remarks

## Sex worker content and accounts that fall into Class 1A

### BDSM, fetish and kink content

While Class 1 content may seem to be largely unconcerned with depictions of adult sexual activity, it includes what the eSafety Commission describes as ‘sexual violence’. We note the longstanding problems the way the current Classification Code treats BDSM, fetish and kink content as ‘refused classification (RC)’ and have commented further on this in our previous submissions on online safety. This classification is not in line with community standards or practices, as sexual activities under the BDSM umbrella are common, lawful and consensual practices undertaken by many Australian adults. The long-standing refrain from supporters of the *Online Safety Act* that ‘what’s unlawful offline must be unlawful online’ is challenged here; activities that are legal to undertake privately are *illegal* to view privately. This inconsistency is reflective of a consistent concern of sex workers throughout the process of the *Act*; that online safety

The conflation of BDSM activities with ‘sexual violence’ is a likely impact of the current draft Codes, as it has been throughout the history of the Classification Review Board’s engagement with this content. This stands to significantly impact a range of stakeholders, including sex workers who produce BDSM, fetish or kink content for private or public sale.

As the Classification Code remains under review, we do not believe that it is appropriate for new legislation and resultant regulatory documents and actions to be aligned with it. We and many other stakeholders raised this consistently through the course of the *Online Safety Act*’s progress through Parliament, and this matter has yet to be adequately addressed. It continues to create potential fallout for sex workers through the implementation of the Codes, as we expect that these types of material will follow the same pattern of conflation of BDSM practices with violence and treated by those responsible for implementing and enforcing the codes as ‘sexual violence’.

While we agree that depictions of non-consensual sexualised violence can raise legitimate content moderation issues that the Codes are charged with addressing, we do not believe that depictions of BDSM, kink and fetish content created by and for adults should be subject to restriction via the Codes. We also raise concern regarding any use of automated detection of this type of content, given the inability of current tools to consider available context in determining whether material depicts BDSM activity or non-consensual sexual violence.

### Impacts of CSAM detection and targeting on sex worker content

We believe that the Codes handle detection of CSAM in a way that is proportionate to its prevalence and impact, and do not support addition of any first-generation CSAM detection as required or optional measures in the Codes. The existing National Classification Scheme deals with depictions of individuals who ‘appear to be under 18’ in problematic ways that mis-identify adults with physical features that are outside of mainstream beauty standards (for example, smaller breasts) as falling outside of the acceptable classifiable ‘adult’ body type, with the implication that they are depictions of

people under 18. Given the replication of the Scheme in the OSA, we have concern for the same type of content ‘flagging’ through any automated detection processes, and the scope for overcapture and inaccurate capture.

Due to the flaws in both the available technology and the current framework used by the Classification Scheme, proactive monitoring for first-generation CSAM may capture sex worker content produced by adults for adults. This type of content detection, when combined with other measures like account restriction or removal and preventing the creation of new accounts from the same device, phone number, email address or other identifier, has the potential to have a profound impact on younger adult sex workers. We strongly advise against any type of proactive monitoring for first-generation CSAM content through the Codes.

## Impact of removal of sex worker content and accounts

Throughout our many submissions to the development and implementation of the Online Safety Act and its various regulatory mechanisms, we have provided extensive information about the impact of deplatforming, content removal, de-listing, and other mechanisms used in the systemic digital marginalisation of sex workers. These submissions outline in depth the consequences of internet regulation that fails to consider the safety of sex workers, or that positions sex workers and the content we produce as anathema to the safety of other end-users. They are provided as additional information at the end of this submission. In summary, the loss of sex worker end-user accounts and content results in:

- Loss of income, increasing financial need and decreasing individual sex worker choice over where, how, and with whom we conduct sex work, online and offline
- Resultant reduced access to basic need including housing, food, medicines, care expenses, etc.
- Loss of vital connection to sex worker peer information-sharing networks, where vital health and safety information and peer support provide are provided in closed peer-only digital spaces
- Loss of access to personal digital accounts as impacted by account removal and automated prevention (some measures for which are described in the Codes)
- The erosion of sex worker digital privacy where automated surveillance is conducted on sex worker accounts or sex workers are forced to use personal accounts linked to our legal details in order to access peer information-sharing networks because we are unable to create accounts using names, devices, IP addresses, or other details linked to our sex work
- Inability to advertise legitimate and lawful services online as would be expected by workers in other industries

It is necessary to consider that the material impact on sex worker end-users resulting from the loss of digital assets is generally experienced quickly and can be difficult to recover from or adapt to. The harm done by online safety regulation that willingly sacrifices sex worker safety is real and is well-documented by the sex worker community<sup>3</sup>. Scarlet Alliance views any regulation that either continues to perpetuate this harm or fails to take measures to prevent it as a contributor to the systemic violence that is the overt or proxy criminalisation of sex work and sex workers.

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<sup>3</sup> Deplatforming references

# Remarks on the development and consultation processes

## Code development

We regard the development of the industry Codes for Class 1 material to be, as has been the case with all aspects of the Online Safety Act's passage and implementation and out of step with other reform processes in progress (including reviews of the *Privacy Act* and the National Classification Scheme). Government and regulators have repeatedly ignored calls from stakeholders to align online safety regulation with other aspects of content and internet regulation.

## Code consultation

We regard the window of time provided for public consultation on the Codes to be insufficient, particularly for stakeholders like Scarlet Alliance with low capacity to respond. We believe that targeted stakeholder consultation would also have been appropriate and note that sex workers have strongly established ourselves as key stakeholders of the *Online Safety Act* throughout its policy debate and implementation, given that our content is squarely targeted by the *Act* and will fall inside the scope of the Codes for Class 1 and 2.

We urge Industry to conduct targeted stakeholder consultation with sex workers and our representatives in the development of Class 2 codes, which will have even more extensive impact on our digital assets, access to peer information-sharing and ability to use digital tools to conduct legitimate and legal trade in our industry. We also recommend a 6-8 week consultation window for Class 2 draft Codes, and cooperation from the office of the eSafety Commissioner in allowing the necessary time for careful development that considers the needs of all stakeholders.

# Code-specific remarks

## Introduction

Due to the rushed nature of the Class 1 draft Codes consultation, we are unable to resource a thorough review of all seven draft Codes to remark on their potential impact on the sex worker community. We have therefore had to prioritise the two draft Codes which we deem to have the most impact on sex worker livelihoods and safety: Schedule 1 – Social Media Services Online Safety Code and Schedule 4 – Internet Search Engine Services Online Safety Code. This should not be understood as an indication that the other draft Codes are unlikely to impact sex workers, and it may be possible for industry to extrapolate our commentary to other Codes.

- limiting content overcapture through automatic detection and/or enabling of vengeful, provocative or vexatious complaints;
- providing opportunities for and prompt handling of end-user appeal mechanisms where content or accounts have been wrongfully restricted or removed; and/or
- providing transparency to the eSafety Commission and the general public regarding the prevalence of such appeals and metrics of overcapture (particularly where the use of

automated technology is partly or wholly responsible for content detection) and/or incorrect decision-making is present.

## Lack of appropriate safeguards in the Codes for end-users impacted by incorrect content or account restriction or removal (deplatforming)

### Understanding the requirement for appropriate end-user appeals mechanisms

The draft Codes 1 and 4 (and likely many of the other Codes) make no provision for an impacted end-user to appeal an action taken by a Tier 1 or Tier 2 service. This means that end-users whose content has been wrongfully classified and removed, whether through automatic detection or user reporting, are unable to address this. While we acknowledge that many of the largest players in Tier 1 already disallow some types of sex worker content, a much larger volume of sex worker content is detected and removed than is outlined in their community standards, terms of use, and other documentation. This seems to be largely due to inaccurate automatic capture. Sex workers may lose carefully-built social media followings in the tens or hundreds of thousands despite what they experience are over-compliance with the service's terms of use.

As a stigmatised and villainised group, sex workers are subject to having our content vexatiously or vengefully reporting, with the knowledge that there will be no consequences for this as social media services have already displayed their acceptance of (or active role in) the deplatforming of sex workers. We compare this to sex worker experiences of assault or other crimes committed against us IRL, in which knowing that our work is criminalised (which is still the case in several Australian jurisdictions) gives a perpetrator confidence that they will meet no retribution for their actions.

We believe it is the responsibility of lawmakers and regulators to prevent the mass deplatforming of sex workers and the resultant risks to our safety and wellbeing. Unfortunately, in the circumstances of this implementation of the *Online Safety Act*, the buck for this protection has been passed to industry. While sex workers do not believe that it is appropriate to assign this responsibility to private companies who hold very little actual public accountability for delivering justice or addressing harm, we appeal to the drafters of the Codes to consider the potential real-world harms of allowing Tier 1 and Tier 2 services to remove content without a proportionate appeals mechanism. There may be sub-classes of content within 1A and/or 1B for which this mechanism is not made available.

### Effectiveness of end-user appeal or review mechanisms

For an appeals process to be valuable to sex workers who have experienced wrongful content or account removal, the process should have the following features:

- **Timeliness:** the harm caused by account removals particularly is felt immediately, and may result in loss of income, loss of access to safety information. A protracted process will be ineffective in controlling such damage.
- **Human monitoring:** sex workers commonly report being stuck in endless loops with bots and/or circular reporting processes on social media platforms when we report a wrongfully-removed account or go through an account retrieval process. Because many social

media platforms already proactively monitor sex worker accounts and content and/or ban known sex worker users from making new accounts, there is already a wealth of experience in the sex worker community about this. We are happy to provide further detail on these experiences to support any change to the Codes.

- Context-informed: sex workers, like other social media users, should be able to live rich digital lives. Just because content was posted by someone who has been flagged as a sex worker doesn't mean that it's 'soliciting sex' or otherwise outside of the terms of use or community standards of a platform. Even when we are trying carefully to work within the bounds of platform policy, we continue to see inappropriate content and account removal. We believe that this is due in no small part to a lack of context for the diverse types of content we post, where the flagging of an account precludes a contextual review of the content.

## Aspects of the Codes in which sex workers have an interest in appeal or review mechanisms

In the case of Code 1, we believe that appeal mechanisms should be included alongside any existing compliance measures that call for content removal, IP or device-level detection and/or blocking, or any other action that may result in a sex worker user being unable to equitably use the service.