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20 September, 2021

To the eSafety Commission,

Thank you for the opportunity to respond to your Discussion Paper 'Restricted Access System Declaration Online Safety Act 2021'.

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 government and non-government committees and advisory mechanisms.

We appreciate the additional time afforded by your office to prepare the submission below, and welcome any further engagement with you on this or our submission to the call for evidence on age verification for online pornography.

Best regards,

Gala Vanting  
National Programs Manager  
Scarlet Alliance, Australian Sex Workers Association

## INTRODUCTION

As the Online Safety Bill progressed through Parliament from 2019 through to mid-2021, sex workers came forward in strong opposition to a number of the bill's potential impacts on sex workers. Our submissions on the draft Bill<sup>1</sup>, our Senate Committee hearing testimony<sup>2</sup> and our questions on notice from that hearing<sup>3</sup> provide a background on our concerns about what, at that time, was an undefined 'restricted access system', and our input about deplatforming of sex workers generally.

To inform our response to this opportunity to input on the process of defining that system/s, we conducted a snap consultation within the Australian sex worker community to understand what is already in place to restrict access on the platforms sex workers use, including those we administer ourselves. We also asked sex workers to anticipate the implications of a change to the current requirements and give input on what considerations the Commissioner should undertake. Survey respondents worked across a number of services and workplaces, and many had experience with more than one of these, with the top three categories of respondents being those most likely to be directly impacted by a new RAS: independent sex workers conducting business as sole traders (84%), online work, platform work and webcamming (56%), and porn performers (26%).

We combine their valuable input with decades of knowledge about sex worker experiences in digital spaces and interdisciplinary research about sexual content, sex education, young people, and marginalised sexual cultures to form our response to the Discussion Paper.

We endeavour to answer the questions from the Discussion Paper that are most relevant to our community through our responses, but don't use them as an organising principle for our submission. Understanding that this work will also inform the Commissioner's investigation of age verification for online pornography, we also comment on this matter throughout, and consider it to be one potential component of a Restricted Access System so include that possibility when we speak about the RAS generally.

Beyond what we have direct experience with under the current RAS and what we know to have been raised in the UK policy debate around age verification systems (AVS), we don't anticipate other features or technologies that could be features of a RAS as this is outside of our remit as a sex industry body and advocacy and health promotion organisation. The lack of information in the Discussion Paper about what features could theoretically be considered makes it difficult the

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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> 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 10 September 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](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)>.

<sup>3</sup> 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](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/OnlineSafety/Additional_Documents?docType=Answer%20to%20Question%20on%20Notice)>.

consultation to be meaningful to stakeholders outside of the tech industry, and we request that a draft RAS be accompanied by a document that describes any technologies named so that stakeholders outside of the tech sector are able to thoroughly review them before commenting.

## **SUMMARY OF RECOMMENDATIONS**

1. A new RAS should be a light-touch system with a menu of feature options, and must be able to be implemented by large and medium enterprise, small business and sole traders.
2. A new RAS should be tiered to acknowledge that people aged 0-18 do not all have the same needs regarding the types of content they view. This tiering system should be based on interdisciplinary research on the sexual development of young people and integrate with resources and curriculum on sex, relationships, consent and literacy in mediated sexuality, and should be made available for feedback by industry stakeholders and experts in the field of education, human rights, and mediated sexualities.
3. The eSafety Commission must offer culturally-appropriate and non-shaming resources for young people and parents addressing sexually explicit or suggestive content online, acknowledging that there are diverse approaches to engaging with this type of content within the Australian community informed by culture, religion, and community values and standards. These should be informed by available research on young people's media literacy and sexual development, and reviewed by Scarlet Alliance to prevent the proliferation of negative attitudes towards sex work or sex workers and break the cycle of stigma, hatred and vilification of sex workers.
4. To avoid mass deplatforming of sex worker content, the eSafety Commissioner must act as a bridge between big tech and the adult industry *ahead of the declaration of a new RAS*, facilitating conversations that improve all users' safety, including sex workers. There is currently a major disconnect between the tech sector and the sex worker community, which has caused devastating impacts for us. Scarlet Alliance must be brought to the table for to ensure that industry's actions to implement a RAS do not come at the cost of sex worker livelihoods and safety.
5. Decisions on the features of a RAS should not be left to the tech sector alone, and should instead be made by what one of our survey respondents calls a 'balanced coalition between tech industry bodies and sex worker bodies' as the key stakeholders responsible for implementation of a RAS.
6. The eSafety Commission must make grants available to industry attempting to implement the features of the RAS that are best suited to their business models.
7. A RAS must not be applied to sex worker advertising content, sex education and sexual health information content, or sexually explicit or suggestive health promotion content.

## **PART ONE: 'EFFECTIVE, REASONABLE AND PROPORTIONATE'**

Due to the extremely broad scope of the types of services to which the RAS will apply and its use as a preventative measure, a system that is fit-for-purpose should consider the nature of the content, its purpose and context, and an evidence-based approach to the content's potential for harm. The Online Safety Act takes a one-size-fits-all approach to legislating censorship of online content, when in fact there is a substantial body of interdisciplinary scholarship challenging the notion that people

from the ages of zero to eighteen all have the same needs regarding the types of content they are able to consume.

### ***Effective***

We understand a system that is 'effective' to be one that both achieves its purpose, and that doesn't create other problems, barriers or negative consequences for use cases *outside* its purpose. One of the major challenges to the creation of a restricted access system that achieves its purpose of preventing minors' access to Class 2 content is that the features of such systems currently available in Western democratic states are relatively easy for someone with moderate technological knowledge and skill to circumvent.<sup>4</sup>

While it may be effective in restricting access for younger children with less technological knowledge and / or inclination to seek out Class 2 content, no existing technologies that could be part of a RAS will prevent teens and young adults from accessing pornography *and* avoid negative impact on other use cases. Instead, a RAS is likely to encourage young people to seek other ways of finding and sharing such content that are squarely out of view of parents, caregivers, educators and authorities,<sup>5</sup> and therefore preclusive of conversations that might improve their literacy and interpretation of what they are viewing.<sup>6</sup>

In addition to some of the negative implications of a RAS and / or age verification barriers for access to online pornography for healthy sexual development and sex education, which we will discuss in further detail below, the framing of Class 2 content as something that is forbidden, amoral, or wrong cultivates shame, which is a direct barrier to important conversations between adults and young people about sexuality and representations of it.<sup>7</sup>

The benefit of a RAS to a healthy sexual development for young people and an environment that supports consent and sex education is questionable here, and in our view is a grave displacement of resources. It could take shape to be a rather crude tool for what is actually quite a complex regulatory sphere.

An effective RAS would also avoid impact on use cases outside of its purpose. This space is largely where the concerns and objections of our members and community lie, and the overwhelming sentiment of our survey respondents is that a poorly-designed RAS will create deterrents to the ability of sex workers to engage, communicate with and trade with our clients and one another. We

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<sup>4</sup> J. Waterson, 'UK's porn age-verification rules can be circumvented in minutes', *The Guardian*, 2019, Accessed 10 September 2021

<<https://www.theguardian.com/society/2019/apr/19/uks-porn-age-verification-rules-can-be-circumvented-in-minutes>>

<sup>5</sup> P. Blake, 'Age verification for online porn: more harm than good?', *Porn Studies*, vol.6, no.2, 2018, p.228-237, p. 229.

<sup>6</sup> K. Albury, 'Porn *and* sex education, porn *as* sex education', *Porn Studies*, vol.1, no.1-2, 2014, p. 172-181

<sup>7</sup> K. Albury and P. Byron, 'Taking off the risk goggles: Exploring the intersection of young people's sexual and digital citizenship in sexual health promotion' in *Youth, Sexuality and Sexual Citizenship*, 2018, Routledge, Oxfordshire, p.168-183.

also hold concerns for any data retention in any component of a RAS, regardless of where and by whom it is retained.

### ***Reasonable and proportionate***

Features of a RAS that is 'reasonable and proportionate' should be determined with the following questions in mind:

- What is the best available interdisciplinary evidence on risk and harm?
- Is the severity / restrictiveness of the feature proportionate to its risks?
- Is the feature suitable for its purpose and only its purpose?

We point firstly to the wealth of interdisciplinary research challenging the concept that all material encompassed by Class 2 in the *Online Safety Act 2021* causes harm to all young people. Much of this scholarship can be used to understand both the problems with the current *Classification Code* and its import into the *Online Safety Act 2021*. We strongly endorse the submissions of Dr Alan McKee and the QUT Digital Media Research Centre. We also make a number of recommendations for further reading in our response to the call for evidence on age verification for online pornography.

We emphasise the importance of *interdisciplinary* research because pornography does not exist in a vacuum. It exists in contexts that cannot be comprehensively understood using only the lens of 'family studies'. Pornography has implications across the disciplines of cultural studies, sexual health, sociology, gender and queer studies, child development, mental health, and others. The legislative premise upon which the RAS is being developed, i.e. that all young people aged 0-18 are materially harmed by all forms of Class 2 content, must be challenged by available interdisciplinary research in order for the RAS to be 'reasonable and proportionate'. In other words, it must consider pornography in its contexts and allow for its merits to be experienced appropriately and its 'harms' to be constructed and addressed based on evidence. We draw attention to the issues raised by the Joint Parliamentary Committee on Human Rights' report on the Online Safety Bill:

'No information is provided to demonstrate that having access to mainstream pornography online, depicting sex between consenting adults, causes harm to adult Australians. Consequently, further information is required as to whether providing for the removal of content depicting sex between consenting adults from the internet would be effective to protect adults from some kind of harm. *Further information is also required to demonstrate that where access to material is restricted, having this material available online could cause harm to Australian children.*'<sup>8</sup> (emphasis added)

Class 2 content, including what Dr Alan McKee calls 'sexually explicit material (SEM)',<sup>9</sup> is not a monolith. The types of content, bodies, acts, and stories that exist within the genre are incredibly

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<sup>8</sup> Webster A., 'Human Rights Scrutiny Report 5 of 2021', 2021, *Parliamentary Joint Committee on Human Rights*, Canberra, p.45-88, retrieved from <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/Scrutiny\\_reports](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports)>.

<sup>9</sup> A.Mckee, 'Methodological Issues in Defining Aggression for Content Analyses of Sexually Explicit Material', *Archives of Sexual Behaviour*, vol.44, 2015, p.81-87.

diverse, yet the dialogue currently surrounding the impact of pornography on young people focusses disproportionately the most hegemonic pornographic texts: those that depict misogyny, racism, and implied or actual non-consent. It is considered acceptable and even profitable for young people to consume other forms of media and games that deal with these themes. It is also acceptable to encourage media literacy around these and other themes, including by embedding it into school curriculum. The only genre that is approached with the restrictive framework adopted in the *Online Safety Bill 2021* is pornography.

There exist a wealth of alternatives to these types of content whose potentials as educational tools, documentations of sexual cultures, affirming and pleasure-based images, and forms of expression are swept away by this monolithic approach. This also gives a distinct market advantage to producers who are able to cope with the financial challenges posed by the requirement to restrict access, making it impossible for this work to flourish enough to drown out those more hegemonic texts.

‘Many sex bloggers receive micropayments from advertising, and niche porn websites have tiny profit margins and audiences. These websites play a valuable social role in promoting knowledge-sharing, empathy and acceptance, consent and safe practice, and building community...Websites providing niche content such as queer, fetish and feminist pornographies bring diversity to the adult industry, empower performers, subvert stereotypes and disrupt the homogeneity of mainstream porn....Age verification will put many such sites out of business, while the behemoths of commercial porn (which are far more likely to be stumbled across by under-18s) benefit from economies of scale that will permit them to survive. This will discriminate against people with marginalized sexualities, and will stifle diversity of representation.’<sup>10</sup>

With culturally-appropriate support based on frameworks for healthy sexual development<sup>11</sup>, young people have been shown to be capable of interpreting pornographic texts with a critical lens, often using the same skills and tools they use to build literacy around other forms of media.<sup>12</sup> Building these skills is essential for young people. Preventing them from developing or applying them has the potential to be even more harmful, and the framework that has been legislated via the *Online Safety Bill 2021* has the potential to create an environment in which young people who have been barred from access to an impactful set of cultural texts until the age of 18, and thus unable to apply those critical skills, will suddenly become able to be healthy, literate consumers of pornography on their 18th birthday.<sup>13</sup>

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<sup>10</sup> P. Blake, ‘Age verification for online porn: more harm than good?’, *Porn Studies*, vol.6, no.2, 2018, p.228-237, M. Yar, ‘Protecting children from internet pornography? A critical assessment of statutory age verification and its enforcement in the UK’, *Policing: An International Journal*, vol.43, no.1, 2020, p.183-197.

<sup>11</sup> P. Byron et al., ‘Reading for Realness: Porn Literacies, Digital Media, and Young People’, *Sexuality and Culture*, vol.25, 2021, p.786–805.

<sup>12</sup> K. Albury and P. Byron, ‘Taking off the risk goggles: Exploring the intersection of young people’s sexual and digital citizenship in sexual health promotion’ in *Youth, Sexuality and Sexual Citizenship*, 2018, Routledge, Oxfordshire, p.168-183.

<sup>13</sup> A.Mckee, ‘The Objectification of Women in Mainstream Pornographic Videos in Australia’, *Journal of Sex Research*, vol. 24, no. 4, 2005, p. 277-290.

Even with comprehensive sex, relationships and consent education, which is not currently present in the Australian curriculum, young people who cannot synthesize this education in visual and relational experiences is not given the best available opportunity to grow and mature around this aspect of their lives. The age of consent to *conduct* sexual activity with peers is 16 or 17 years, depending upon jurisdiction. The age to *view* sexual activity is 18 years. We strongly question any logic that would position these circumstances as reasonable, or a one-size-fits 0-18 to be proportionate.

With investment in ‘competence in mediated sexuality’, named as one of the 15 ‘15 Domains of Healthy Sexual Development’ identified through the research of Byron et al,<sup>14</sup> pornography can be helpfully instructive about pleasure and consent. It can be identity-affirming for LGBTIQ+ young people and people living with disabilities.

We therefore present a strong recommendation that, in order for a RAS to be ‘reasonable and proportionate’, it does the following:

- Provides a variety of options for features that allow for a flexible approach able to consider audience and content;
- Allows for the continued use of credit card verification and paywalls as an acceptable method of restricting access;
- Considers the nature of the social media service, designated internet service or relevant electronic service and the actual prevalence of Class 2 content on that service, rather than presuming that Class 2 content is prevalent on the service<sup>15</sup>;
- Provides users under 18 with a referral to a hub of information on consent, relationship and sex education, including porn literacy, developed in collaboration with experts across all related fields (see recommendation 3 above);
- Excludes age verification systems (AVS) and any form of individual identity data collection, at least until a thorough investigation of the implications of such technologies, including one that engages an independent human rights body, is completed.
- Reflects the eSafety Commissioner’s statements that the sex industry is ‘not her concern’<sup>16</sup> by ensuring that sex worker advertising, health promotion and sex education content is not subject to a RAS, and a RAS applied to other forms of sex worker content is feasible to implement without damage to sex worker livelihoods and safety.

### ***A note on age verification systems, the UK precedent, and human rights***

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<sup>14</sup> P. Byron et al., ‘Reading for Realness: Porn Literacies, Digital Media, and Young People’, *Sexuality and Culture*, vol.25, 2021, p.786–805.

<sup>15</sup> P. Blake, ‘Age verification for online porn: more harm than good?’, *Porn Studies*, vol.6, no.2, 2018, p.228-237, M. Yar, ‘Protecting children from internet pornography? A critical assessment of statutory age verification and its enforcement in the UK’, *Policing: An International Journal*, vol.43, no.1, 2020, p.183-197.

<sup>16</sup> L. Visenten, ‘Sex industry ‘not my concern’: eSafety Commissioner defends proposed new powers’, *The Sydney Morning Herald*, 2021, Accessed 09 September 2021

<https://www.smh.com.au/politics/federal/sex-industry-not-my-concern-esafety-commissioner-defends-proposed-new-powers-20210302-p57721.html>

There is significant critique of the UK decision to adopt age verification systems for sex worker content available in the growing body of literature on the process of the *Digital Economy Act (UK)* and its abandonment, with which we expect the office of the eSafety Commissioner will concern itself as an important precedent. We will not concern ourselves at length with them in this submission, as that work is better investigated in its entirety, but do share concerns of many UK legal professionals, digital rights and anti-censorship advocates, sex workers, and human rights agencies that these systems are not appropriate to be part of the RAS, nor are they an acceptable tool for blocking access to adult content in a modern democracy. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression raised concerns about the UK's approach that encompass our sentiments well:

'The protection of children, the protection of the right to freedom of opinion and expression, and the right to privacy are grounded in the fundamental values of human dignity and autonomy. Perceiving these rights as opposed interests limits the policy options available for dealing with threats to both child protection and freedom of expression online.'<sup>17</sup>

## **PART TWO: RESTRICTING ACCESS TO CLASS 2 SEX WORKER CONTENT**

The Discussion Paper raises questions about the current Restricted Access System (RAS) and its impact on industry. It also asks for feedback on what elements would be effective to include in a RAS.

### ***'We are already extremely efficient at doing this': age restriction as standard sex worker business practice***

Sex workers use a variety of social media, internet and electronic services to conduct our work. For the purposes of this section, we will focus primarily on advertising content provided on social media services, advertising websites including classified ads and free or paywalled directories, and business websites administrated by sex workers ourselves. According to one of our sex worker survey respondents,

*'Online adult sites, such as pornography and adult service-based sites go well out of their way to ensure that people can't stumble across their content by accident; typically, there'll be a age-based content warning on the site's landing page. Adult websites also use PICS metadata tags that you can put in the HTML of an adult website that makes the content identifiable by filter proxies straight away. Filters can block out adult websites in corporate environments and Net Nanny Services within the home.'*

We make the following notes about sex worker content shared on the services we use:

- Sex worker social media content can be construed in a variety of different ways, and may or may not be understood as advertising content. Sex workers use professional social media profiles in a variety of ways, and often use a single account for more than one thing. For

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<sup>17</sup> D. Kaye, *Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Office of the High Commissioner of Human Rights, United Nations, 09 January 2021.



example, sex workers may use the same account to run promotions or provide information for clients and to seek out and share health and safety information, so loss or restriction of that account for the former can prevent access to essential WHS tools for sex workers.

- Sex worker social media content is moderated disproportionately to similar types of content shared by non-sex workers.<sup>18</sup>
- Sex worker advertising is policed in different ways to other advertising conducted by businesses in other industries, including making it more difficult to access clients and increasing vulnerability to exploitation where sex workers are unable to get enough work to cover our costs and living expenses

Sex workers already implement measures to restrict access to users. We may do this because we know it to be a requirement for content hosted within or provided from Australia, because we consider it to be best practice, or because we see colleagues or peers doing so. Sex workers have no vested interest in making any of our content available to people under the age of 18, and many take active steps to ensure that they do not provide services to anyone under the age of 18. As one respondent to our survey states,

*'As sex workers we also value our privacy. Where possible, we prefer to use platforms where we have a degree of control over the use of our content and who has access.'*

*'Age verification for users is felt deeply by everyone I know in sex work. We work hard to block anyone underage who attempts to access our content. I do not advertise on any social media or platform that does not require an 18+ checkpoint. It takes a lot of work but this is very important to all sex workers.'*

When asked what measures they currently take to restrict access on the services they use, whether they implement the system themselves (as in the case of personal websites or private content sales) or it is implemented by the operator of the service (as in the case of social media services, content distribution platforms, camming platforms, etc), sex worker respondents to our survey named the following methods:

- A requirement for users to make an age declaration through a yes / no tickbox or by entering their date of birth;
- The placement of explicit content behind a paywall;
- The requirement for a client to provide proof of age for content sales, whether through sighting ID or through the use of third-party payment platforms that require a credit card to set up;
- Marking our content 'sensitive' or 'adult' with native-to-platform tools or stating '18+ in profile bios where this is not available' on platforms that have an unrestricted age demographic, particularly social media services;
- Blocking followers on social media where the user is or appears to be under 18;

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<sup>18</sup> D. Blunt and A. Wolf, 'Erased: The Impact of FOSTA-SESTA', *Hacking//Hustling*, 2020, accessed 20 August 2021, <<https://hackinghustling.org/wp-content/uploads/2020/01/HackingHustling-Erased.pdf>>, D. Blunt et al., 'Posting into the Void', *Hacking//Hustling*, 2021, accessed 20 August 2021, <<https://hackinghustling.org/posting-into-the-void-content-moderation/>>.

- Notification to users that content found past the access barrier is 18+, for adults only, or unsuitable for under-18s;
- Censoring images on platforms that have an unrestricted age demographic.

This list is not comprehensive of all efforts undertaken by sex workers who administrate our own web services. It is instead intended to illustrate that this is an area with which we are already familiar, actively engaged, and key stakeholders. Many sex workers and the platforms we use implement a combination of these methods to prevent access by under-18s. Of the 58 sex workers who responded to this question about their practices, 52 (90%) have one or more method in place. Of the 57 respondents to a question about the practices of the platforms they use, 38 said that all platforms use one or more measures, 13 said that only some of them do, and only 1 said that none of them do.

As another respondent to our survey states,

*'SWs [sex workers] consistently network with each other to inform peers of underage customers, we block them on social media, we refuse bookings with them, we request ID if unsure of age. Placing further restrictions on ad sites or social media and content sites will have such a harmful effect on SWs / content creators.'*

While 'industry', which seems to be framed in the Discussion Paper to refer to 'social media services, designated internet services and relevant electronic services' is responsible for implementing a new RAS, the largest burden of its actions falls upon individual sex workers working as sole traders or independent contractors who are already working to comply with the current RAS. Understanding 'costs being passed on to customers or suppliers' must look beyond the price paid for a service to understand the other costs for individual sex workers, whose livelihoods depend on being visible to our clientele, connected to one another, and possessing the same rights as other sole traders and business owners. These costs are illustrated in the next section, with the voices of sex workers bringing their own concerns to the table.

*'Keeping sensitive content behind a paywall ensures minors cannot access it. Even if an adult was to accidentally visit a sensitive site the landing page ensures they won't see anything they don't want to. We have lost so many in person freedoms with this global pandemic and lockdowns; further restricting online access of consenting adults will cause severe mental health issues and financial distress.'*

The current RAS indicates the use of a credit card to be a valid method of confirming age. We strongly recommend that credit card processing, whether for payment purposes or simply as a mode of verification, continue to be a component of the new RAS declaration. This is a feasible and desirable method of confirmation for small businesses and sole traders in the adult industry. It does not force the provider to bear the burden of privacy protection as this work is done by the credit card company themselves, and can often be worked into business overheads rather than being a separate expense.

We note that, due to financial discrimination, many sex workers are denied credit card payment processing from Australian financial institutions. Payment processing for the adult industry is

currently a site of global concern for people working in the sex industry as the impacts of FOSTA-SESTA continue to unfold, and do not wish to see credit card verification become a *requirement* within the RAS, nor the only option for sex workers and adult businesses, as there are still a number of access barriers for people in the adult industry. We advocate for it to be one method of a menu that content producers and the platforms we use may select from.

Sex worker concerns about the development of a new RAS as expressed through our survey and our research fall into the following categories. We expect that some of these will be shared with other stakeholders, though perhaps not for the same reasons. While we can't necessarily offer technological solutions to these concerns, we urge that they be taken into consideration in development of the RAS.

### ***Privacy and data vulnerabilities***

Privacy concerns are one of the core challenges of any system that collects or estimates any identity data to verify the age of a user, and there is a wealth of research on this matter, particularly that raised in relation to the *Digital Economy Act 2017 (UK)*, the *Online Harms White Paper (UK)*, and other policy debates around restricting access to sexually explicit or suggestive material. Some of these are provided in our response to the call for evidence on age verification for online pornography. There are also offerings for an Australian context in the submissions of Digital Rights<sup>19</sup> Watch and Electronic Frontiers<sup>20</sup> Australia to the *Online Safety Bill 2021*.

Due to the stigma associated with sex work, pornography, alternative sexualities, and LGBTIQ+ identities, privacy in the realm of adult content is paramount. User data collected for the purposes of viewing Class 2 content has privacy implications that no tech company, government agency or other third party has proven itself equipped for. Data breaches, inter-agency data sharing, and the like are common occurrences among identity databases across sectors, and where that data relates to viewing adult content, sex worker advertising, or even sex education material - all of which fall into the remit of Class 2 - it is incredibly sensitive. As Pandora Blake describes in their work on age verification in the UK,

“When extramarital affair dating site Ashley Madison failed to keep user data secure (Baraniuk 2015), the resulting breach led to nightmare scenarios: scandal for politicians and CEOs, blackmail, identity fraud and suicides. One can only imagine the media appetite for the verified porn-watching history of a prominent MP, disgraced teacher or outed celebrity.”<sup>21</sup>

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<sup>19</sup> Digital Rights Watch, Submission to Online Safety Bill Inquiry, No. 27, 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>20</sup> Electronic Frontiers, Submission to Online Safety Bill Inquiry, No. 30, 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>21</sup> P. Blake, 'Age verification for online porn: more harm than good?', *Porn Studies*, vol.6, no.2, 2018, p.228-237, p. 233.

While of course data breaches incriminating a person in the public eye may be incredibly damaging, the invisible and far more pervasive consequence of a high-profile breach would be borne by sex workers ourselves. Respondents to our survey expressed concern over data breaches:

*'One breach from a company [and] the industry will collapse drastically which will lead to losing all the clients. No company is foolproof.'*

*'I have privacy concerns regarding this, how will this be implemented. Would I need to keep copies of people's ID? If it's a third party how would it be ensured that this wouldn't be hacked? If said database was hacked it would be a honeypot for scammers and the government has shown time and again that they are easily hacked. This could become a privacy disaster.'*

Such a breach would be a strong and direct deterrent to clients' compliance with a RAS, causing them either to circumnavigate it or to cease engagement of our services, purchase of our content, or interaction with us online.

### **Age Verification Systems**

A number of services providing third-party age verification emerged as a result of the UK's *Digital Economy Act 2017*, including those developed by the single most destructive force in the adult content market, Mindgeek. Regardless of the sophistication or regulation of these services, the risks they present are disproportionate to the perceived gain they would provide.

*'...[I]mplementation of the measures also poses significant risks to the privacy and interests of legitimate consumers of pornography. At the first level, the sheer proliferation of different age-verification services has created a situation in which different content providers are opting for different services, meaning that users will not be able to use a single (or even a couple of) verification accounts to access content across multiple sites. This issue, combined with an understandable reluctance on the part of many users to their supply personal details for age verification, may well simply encourage greater numbers of consumers to access instead pirated pornographic content via other, unregulated, channels; in other words, a classic case of "displacement" that is a familiar problem in criminology and crime prevention.<sup>22</sup>*

Clients of sex workers access our content on pay-per-view sites, camming platforms, advertising directories, our personal websites, social media accounts, and more. We asked sex workers what types of age verification methods they thought their clients could be willing to provide as part of a RAS. They predicted a strong resistance to the most invasive data collection methods - government-issued ID and biometrics, and uncertainty as to how third-party apps or tokens / PINs issued by brick-and-mortar businesses would function in terms of client trust and compliance. We also question how they function logistically, particularly in rural and regional areas where users may not have proximity to such businesses, or have no way of discretely purchasing such a token.

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<sup>22</sup> M. Yar, 'Protecting children from internet pornography? A critical assessment of statutory age verification and its enforcement in the UK', *Policing: An International Journal*, vol.43, no.1, 2020, p.192.

## **Loss of income**

Concern for a partial or full loss of income was commonly shared among respondents to our survey, and as a community, our experiences of platforms reacting to new forms of regulation *always* has a direct impact on our earning capacity. A more restrictive RAS would undermine sex worker business infrastructures, whether our work is conducted online or offline.

*'All of my business is conducted online. The impact of a RAS design without significant co-design may mean that my web traffic is significantly lowered, which in turn means I cannot make a living. This is an economic, emotional and detrimental impact for me, given that I have built my following and my business for a significant amount of time.'*

In an online environment that is growing ever more hostile towards sex workers and our content, many sex workers feel as though we are losing the control over our work that the proliferation of digital tools and services provided. Online advertising has allowed many sex workers to choose to move away from working for managers, agencies and other third parties who have control over the conditions of our work. The censorship and deplatforming of sex worker content is a regression, a loss of autonomy, and begins to feel a lot like a third party has control over our work, even as independent contractors:

*'Power in the hands of a third party: The impact it could potentially have on online sex workers who host their content via their own website (instead of third-parties, such as OnlyFans or ManyVids). This could further make it financially unsustainable to do so if having verification costs substantial money (be it from maintaining database access, certain programs, site fees, etc.) This then continues to leave sex workers dependant on third-party companies whose methods of business are in no way done in our best interest but at our expense.'*

For those sex workers who rely on content sales for some or all of our income, additional friction created in the purchase process, particularly that requires personal identity data, will also have a negative impact on our ability to maintain income. The RAS should not be designed in a way that encourages users to dodge regulated platforms services and undercut creators. As one sex worker puts it,

*'Clients will likely turn to alternative systems such as torrent sites where they can download porn. They're also probably more likely to download and steal our content to avoid having to go through the verification process.'*

## **Workplace safety and rights**

Loss of income results in a cascade of harm that can impact our ability to afford housing, food, bills and medical expenses. While this impact is not the stated purpose of the RAS, failing to satisfactorily prevent the negative impacts created by updating it will harm the sex worker community, particularly

those most marginalised and unable to invest capital in new ways of doing business, or new features of a RAS.

'Age verification will therefore deter many clients from accessing sex worker websites. Sex workers who lose business after installing age verification may instead be obliged to work for managers, or on the street, to maintain their income. This will put them at greater risk of violence, exploitation and abuse.'<sup>23</sup>

### **Advertising**

Sex worker safety is directly related to control over working environments and conditions. For many sex workers, the ability to advertise is a crucial part of that agency. Sex worker survey respondents had a number of concerns regarding threats to advertising, as much sex worker advertising content, hosted on our own websites or on classified ad or specialised directory sites, could fall into the scope of Class 2. Our work is largely legal in Australia, but where sex work is criminalised or licensed, advertising restrictions are a mode of control incompatible with our workplace rights and safety strategies. Unreasonable and burdensome restrictions on advertising via its control via a RAS will have a direct impact on us, and this touches on one of our key recommendations: that **sex worker advertising must not be subject to the RAS**.

To understand how the accessibility of sex worker advertising and its visibility to potential clients is a real-world safety issue for sex workers, take the following statements from respondents to our survey, who imagined the impact of clients being unable to freely access their advertising:

*'When a client references a service I don't provide, this person clearly did not care about my comfort and consent and I won't see them. If clients have to ask for services directly, I can't judge if they are going to try and push for services I don't provide. I am scared for my safety, if I can't establish it clearly online.'*

*'I also fear to be able to establish my boundaries from the beginning with clients. If they can't access my information and services, I am scared to experience more violence.'*

Advertising begins to set the expectations between clients and service providers, and is the start of establishing consent for the service to take place. In jurisdictions where advertising restrictions are in practice, sex workers report misunderstanding and miscommunication contributing to clients pushing for services that providers don't offer or expecting tradeoffs when they discover that the provider doesn't offer the service they want. This is avoided by above-board, accessible and transparent advertising practices that allow sex workers and clients to connect easily.

Sex worker advertising is generally on the more suggestive side of Class 2 content, but can still be understood as falling within this category. It is found primarily on classified ad websites and advertising directories that are industry-specific, which may be free to view or tucked behind a login

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<sup>23</sup> P. Blake, 'Age verification for online porn: more harm than good?', *Porn Studies*, vol.6, no.2, 2018, p.228-237, p. 232.

wall or paywall. All of these options must be in place to protect sex workers' fundamental workplace right to advertise.

For sex workers, the internet can be our workplace. As was the case with the passage of US legislation FOSTA-SESTA, which shuttered so many parts of our online workplaces, restriction on earning capacity led and continues to lead sex workers to work in ways that are less autonomous, more vulnerable to exploitative work environments, and

### ***Access to health information***

Sex workers are among many people whose primary or even only source of information on sexual health, sexual pleasure, consent and practical sexual skills is online. Content that delivers this information, including through sexually explicit or suggestive imagery or video, may also fall into the scope of Class 2 content. Barriers to being able to access such information privately, on-demand, and without technological friction are a public health risk. Imagery or video content that offer instruction on sexual health skills like use of prophylactics

The use of a 'pornographic vernacular' in sexual health promotion content<sup>24</sup> is growing increasingly common, particularly in LGBTIQ+ health promotion. This messaging is successful *because* it grabs the user's attention through its use of suggestive or explicit imagery. This type of content must not be subject to a RAS, and the likelihood of it being captured by crude algorithms is high. The eSafety Commission must work with stakeholders in the health sector and tech enterprise - particularly social media services - to ensure that this content remains freely available to users with a maximum of a 'yes / no' application barrier to restricting access by age.

### ***Deplatforming***

Deplatforming remains the most pervasive concern<sup>25 26</sup> for sex workers about the *Online Safety Act 2021* and the ongoing work of the eSafety Commission to implement it. There is substantial discussion of the deplatforming of sex workers in our inputs to the *Online Safety Bill 2021* as cited in our introduction.. Preventing the deplatforming of sex workers must be considered to be the work of the eSafety Commission, if indeed it is to 'empower all Australians to have safer, more positive experiences online'.

In a growing body of research documenting the impacts of FOSTA-SESTA on sex workers in the United States, Hacking/Hustling report that

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<sup>24</sup> K. Albury, 'Iloveclaude.com: pornographic vernacular in sexual health promotion for women', *Porn Studies*, vol. 2, no. 2-3, 2015, p. 222–236.

<sup>25</sup> J. Purtill, 'Sex workers fear a new wave of deplatforming — and the proposed Online Safety Bill', *ABC News*, 20 February 2021, accessed on 20 September 2021, <<https://www.abc.net.au/news/science/2021-02-20/sex-workers-fear-twitter-insta-deplatforming-online-safety-bill/13160850>>.

<sup>26</sup> J. Taylor, 'Fears online safety law could censor all adult content and force sex workers off internet', *The Guardian*, 02 March 2021, accessed 20 September 2021, <<https://www.theguardian.com/australia-news/2021/mar/02/fears-online-safety-law-could-censor-all-adult-content-and-force-sex-workers-off-internet>>.

'[c]ontent moderation, censorship, and shadowbanning facilitate sex worker erasure and normalize the digital and physical oppression of sex working and AOP [activist and protestor] communities. Sex workers are disproportionately losing access to social media platforms, having bank accounts seized, being banned from major payment processors, and being used as test subjects for facial recognition databases.'<sup>27</sup>

A more restrictive RAS, combined with the final Basic Online Safety Expectations, will likely present social media services, designated internet services and relevant electronic services with a complex content moderation problem. The simplest and most cost-effective solution to that problem is unlikely to be to develop nuanced policy implemented by a combination of algorithmic and human labour, and platforms have shown time and time again in response to content restriction impositions from governments that the simplest and least resource-intensive path is the most desirable for them.

The eSafety Commissioner is in a unique position to bring social media services, designated internet services and relevant electronic services with operations in Australia to the table on the importance of balancing sex worker safety, digital citizenship and workplace rights with the new responsibilities they hold under the *Online Safety Act 2021*. Sex workers pour a disproportionate amount of resources when compared with other communities of users to advocate directly with social media platforms to preserve our accounts, visibility and access to their tools - and thereby to each other - with little success. We require the support of allies within the sector to advocate for our rights to digital citizenship, bring us into discussions and decision-making that impacts us, and reject the idea that our deplatforming is necessary and / or an unfortunate negative externality of a necessary policy change.

### ***Decision-making about the RAS***

We asked sex workers who should be involved in determining a RAS, and their responses are illustrative of the need for coalition-building, consultation with those impacted and responsible for implementation, and respect for the wide diversity of opinions and needs in the Australian community.

*'An advisory group made up of people who are elected, and who represent the interests of the general community AND the stakeholders, which means including a SW.'*

*'Tech sector, businesses and civil liberties organisations. An org like EFF or similar which is concerned with privacy on the internet.'*

*'Multi stakeholder board inclusive of sex worker orgs and digital rights orgs. Decisions must be based in evidence and uphold all human rights.'*

*'Balanced coalition between tech industry bodies and sex worker bodies.'*

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<sup>27</sup> D. Blunt et al., 'Posting into the Void', *Hacking//Hustling*, 2021, p. 2, accessed 20 August 2021, <<https://hackinghustling.org/posting-into-the-void-content-moderation/>>.



*'A group of the affected stakeholders in the affected industries and social groups holding equal say to the eSafety commission, working closely with the tech sector and human rights groups to ensure that the ideas and current technological limitations can be discussed in conjunction with modern human rights models. Any group must be sensitive to the multitude of cultural groups and their diverse needs, and the potential impact on all of them.'*

## **CONCLUSION**

Sex workers are a major stakeholder in the work of determining and implementing a RAS. We are invested in taking reasonable measures to ensure the safety of children online. In order to support us to do so, consideration for our livelihoods and safety must be demonstrated by the eSafety Commissioner and the social media services, designated internet services and relevant electronic services on which our content is hosted.

We look forward to further opportunities to comment on the development of the RAS, and to the working with the eSafety Commissioner to support sex workers navigating any changes to the current RAS.