

In brief, I believe the online content scheme under Part 9 Draft *Online Safety Bill 2020* should be removed as it is:

- Not related to issues of online safety (i.e. focussed on ‘offense’, not ‘consent’);
- Likely to harm the livelihoods of sex workers, adult entertainers and adults-only businesses;
- Likely to cause harm through preventing access to education on safety and consent in regard to sexual health, sexual activities and kink/fetish activities; and
- Vulnerable to abuse by targeting removal of content supporting the LGBTQIA+ community (let’s not forget that same sex relationships were ‘offensive’ in the not-so-distant past).

Furthermore, the role of the eSafety Commissioner should be to focus on non-consensual content (i.e. content involving children, bullying, non-consensual sharing of images, non-consensual activity etc.).

**Part 9 currently reads as a massive overreach in terms of online safety.** Part 9 concerns the removal of Class 1 and 2 materials (see Table 1 for description:

- Under S. 106, Class 1 material is (or would likely be) classified as RC
- Under S. 107, Class 2 material is (or would likely be) classified as R 18+, X 18+; Category 1 restricted Category 2 restricted.

These classes relate to classifications by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*. Under **S. 1 of the National Classification Code** (May 2005) (made under section 6 of the *Classification (Publications, Films and Computer Games) Act 1995*), classification decisions are to give effect, as far as possible, to the following principles:

- (a) **adults should be able to read, hear, see and play what they want;**
- (b) minors should be protected from material likely to harm or disturb them;
- (c) everyone should be protected from exposure to unsolicited material that they find offensive;
- (d) the need to take account of community concerns about:
  - i. depictions that condone or incite violence, particularly sexual violence; and
  - ii. the portrayal of persons in a demeaning manner.

I would argue that Part 9 of the Draft *Online Safety Bill 2020* is unequivocally failing to meet S. 1(a).

Adult websites (i.e. displaying sexual content) and kink/fetish websites already adhere to the following principles:

- they are explicitly 18+ websites (satisfying S. 1 (b))
- they are explicitly searched for (i.e. not unsolicited (satisfying S. 1 (c))
- Regarding S. 1 (d), a core concept, especially for kink/fetish content, is **consent**. The portion of the community accessing kink/fetish content are well-versed in consent. Indeed, the BDSM community may provide education and discussion around consent that far surpasses that available on ‘vanilla’ websites. Furthermore, the phrase “your kink is not my kink and that’s okay” is applied – if the content offends you, change the channel. These communities exist to provide a safe and educational space for those who are outside the Overton Window of ‘normal’ or ‘reasonable’, and have often provided a

safe place for the LGBTQIA+ community. Content that is “likely to cause offence to a reasonable adult” does not hold up in such spaces because **the foundation is consent, not offense**. Again, *let’s not forget that we needed a national referendum so that two consenting adults who love each other could get married. We also had different ages of consent for young people engaging in sexual activities within consensual same-sex relationships.*

**Table 1: Class 1 and 2 materials subject to removal by the Commissioner under the Draft *Online Safety Bill 2020*, per the *National Classification Code*.**

Class under Draft <i>Online Safety Bill 2020</i>	<i>National Classification Code</i> (May 2005)	
	Classification	Description
<b>Publications</b>		
<b>Class 1</b> <b>(S. 106)</b>	RC	Publications that: a) describe, depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified; or b) describe or depict in a way that is likely to cause offence to a reasonable adult, a person who is, or appears to be, a child under 18 (whether the person is engaged in sexual activity or not); or c) promote, incite or instruct in matters of crime or violence
<b>Class 2</b> <b>(S. 107)</b>	<b>Category 2 restricted</b>	Publications (except RC publications) that: (a) explicitly depict sexual or sexually related activity between consenting adults in a way that is likely to cause offence to a reasonable adult; or (b) depict, describe or express revolting or abhorrent phenomena in a way that is likely to cause offence to a reasonable adult and are unsuitable for a minor to see or read
<b>Class 2</b> <b>(S. 107)</b>	<b>Category 1 restricted</b>	Publications (except RC publications and Category 2 restricted publications) that: (a) explicitly depict nudity, or describe or impliedly depict sexual or sexually related activity between consenting adults, in a way that is likely to cause offence to a reasonable adult; or (b) describe or express in detail violence or sexual activity between consenting adults in a way that is likely to cause offence to a reasonable adult; or (c) are unsuitable for a minor to see or read
	Unrestricted	All other publications
<b>Films and computer games</b>		
<b>Class 1</b> <b>(S. 106)</b>	RC	As for publications
<b>Class 2</b> <b>(S. 107)</b>	X 18+ (films only)	Films (except RC films) that: (a) contain real depictions of actual sexual activity between consenting adults in which there is no violence, sexual violence, sexualised violence, coercion, sexually assaultive language, or fetishes or depictions which purposefully demean anyone involved in that activity for the enjoyment of viewers, in a way that is likely to cause offence to a reasonable adult; and (b) are unsuitable for a minor to see
<b>Class 2</b> <b>(S. 107)</b>	R 18+	Films (except RC films and X 18+ films) that are unsuitable for a minor to see
<b>*** see note below</b>	MA 15+	<i>(Mature Accompanied)</i> Films (except RC films, X 18+ films and R 18+ films) that depict, express or otherwise deal with sex, violence or coarse language in such a manner as to be unsuitable for viewing by persons under 15.
	M	<i>(Mature)</i> Films (except RC films, X 18+ films, R 18+ films and MA 15+ films) that cannot be recommended for viewing by persons who are under 15
	PG	<i>(Parental Guidance)</i> Films (except RC films, X 18+ films, R 18+ films, MA 15+ films and M

Class under Draft Online Safety Bill 2020	National Classification Code (May 2005)	
	Classification	Description
		films) that cannot be recommended for viewing by persons who are under 15 without the guidance of their parents or guardians
	G	(General) All other films

\*\*\*The guidance *Fact sheet—Online safety reform proposals—Harmful online content* notes that:

*“Class 2 content will be defined as content that would otherwise be classified as RC, X18+, R18+ and MA15+ under the National Classification Code. This includes high impact material like sexually explicit, high impact, realistically stimulated violent content, through to content that is unlikely to disturb most adults but is still not suitable for children, like coarse language, or less explicit violence. The most appropriate response to this kind of content will depend on its nature.”*

and the *Online Safety Legislation Reform — Discussion Paper* also references MA15+. However, **MA15+ is not in the Draft Online Safety Bill 2020**, under which only RC, Category 2, Category 1, X18+, and R18+ content are mentioned.