

Online Safety Bill 2021

I am Sienna Charles, a full service sex worker who has worked in every state in Australia. I am involved with sex worker outreach and law reform (most recently with the decriminalisation of sex work in the Northern Territory), and a regular internet dweller; that is why this Bill is relevant and worrying to me. I have noted that during the early stages of consultation for this Bill, the government put together some focus groups that our peak body, Scarlet Alliance, was a part of. It seems that absolutely none of the feedback has been taken on board, and I'm worried that this shows the federal government is moving towards restricting a legitimate form of work for many Australians – especially given the influx of new industry members since the pandemic caused so many to lose their jobs in the last year.

Concerns with the E-Safety Commissioner:

Firstly, this is already a position with a lot of power. This Bill will expand the reach of the Commissioner, and their powers, significantly – this is quite inappropriate for an unelected position. The current Commissioner, Julie Inman Grant, has a dubious history as a lobbyist for the concerns of the private interests of Silicone Valley. I am deeply concerned at the appointment of an American with conservative interests, who once called Australia a “penal colony” in 2019ⁱ, deciding on the future of online interactions regarding legal sex workers. The likelihood is quite strong that she supports the FOSTA/SESTA legislation that was a disaster for sex workers around the worldⁱⁱ, and she views OnlyFans, an online subscription-based website used by independent pornography producers, as “sextortion”ⁱⁱⁱ. Sex work is legal in the majority of Australia, and online based sex work is legal across the whole country.

She has a lot of interaction with people whose agenda for fighting child exploitation online (a noble cause, to be sure) unfortunately means they shut down more legitimate sex industry enterprise than they do actual child exploitation rings; this is likely due to their conservative outlooks, as many conservatives use child exploitation as a cover for targeting an industry they think of as dirty. As FOSTA/SESTA and the removal of the classifieds website Backpage has shown us, when you shut down avenues for legal sex workers to advertise, you force them underground and they become difficult to distinguish from those who are exploited. Law enforcement simply don't know where to continue looking for legitimate victims^{iv}. I am worried that her interaction with these individuals (Jim Cole, ICE/DHS employee; members of the board of WEPROTECT, of which she is a member) means she is going to be unfairly biased against legitimate sex workers in any conflict that arises due to this bill with websites we run or access for business purposes.

Concerns with the Bill

This Bill will make my advertising (as well as the sexual content uploaded by independent porn producers and studios) subject to the classification and broadcasting regulations; an outdated and barely relevant system that claims to be against censorship, but levies penalties and restrictions against those showing material which has been denied classification. The new classification created by the Bill, “Class 1”, will open sex workers up to complaints regarding and therefore removal of content that depicts fetishes, per the definition of the classification. Are we really going to be that draconian, repressed country that won't allow adults to view depictions of golden showers or caning someone for sexual gratification because a child might stumble across it?

Due to the range of services that the Bill applies to, social media platforms that we use to promote our content and advertise our services will have an incentive to prevent us from doing so, so that they do not receive complaints and therefore fines and penalties from the Australian government.

Even though the Bill does not compel platforms to restrict us, that is the effect it will have nonetheless; many platforms have already begun to restrict sex workers even if we are not advertising or posting explicit content, simply because they see us as a liability. The Bill extends to private chat platforms too due to its extreme vagueness, and encrypted messaging services; these are platforms that the federal government should have no ability to restrict or keep an eye on, in the name of the people having the freedom to organise without government intervention or interference. In fact, the concern is that the government could use this Bill to remove encrypted messaging services from app stores in Australia, thereby restricting people's freedom to use them. All this Bill will do is accelerate the process of marginalising and isolating sex workers, and deplatform people who work in perfectly legal and legitimate ways, all in the name of child safety online.

The Bill is deliberately vague in a lot of areas. There seems to be a lot of "as the Commissioner sees fit", and a lot of potential for the scope to creep very easily into content that is generally considered non-offensive. The investigators are not law enforcement or affiliated, and there is no transparency around who will be filling these roles or their suitability, nor what will happen in the almost inevitable cases of wrongdoing by these individuals. They are vague on appeals and redress of grievance as well, meaning that any removals or fines will be difficult to contest.

Sexually explicit content is listed under reportable prohibited, harmful and illegal content on the e-safety website^v, despite it not actually being illegal. I can see the intention of this is to remove sexually explicit content from where it maybe should not be, but this is not how it will be interpreted, and this gives the Commissioner a lot of leeway in deciding what to remove. Too much leeway. Why is "sexually explicit content" listed alongside "paedophilia" and "terrorism"? How are those at all comparable?

As someone who has been active as a sex worker on Twitter for five years, I have noticed the techniques that they already use to prevent children from accessing adult content – those who post adult content must mark it as such, or Twitter's algorithm will shadowban them; adult content is not permitted in your header or profile picture and doing this will get your account banned; children under the age of 13 are not permitted to have an account. Sex workers already take action to ensure children are less able to access their websites by using paywalls, password protection, and age restriction warnings on their splash pages. None of this will prevent malicious complaints being made against our online content by people who are not accepting of the adult industry, and none of this will prevent a conservative, unelected Commissioner from deciding that it's best our content was removed without notice.

I urge the government to reconsider this extremely troublesome Bill. It will show that the government is willing to take another step uncomfortably close to authoritarianism, and steps away from freedom of expression and freedom for minorities and marginalised communities.

ⁱ Podcast with Child Dignity; transcript: <https://www.childdignity.com/podcasts/2019/12/16/safeguarding-podcast-safety-by-design-with-julie-inman-grant>

ⁱⁱ *Australian Sex Workers Respond to FOSTA/SESTA*: <https://www.sbs.com.au/news/the-feed/opinion-australian-sex-workers-respond-to-fosta-sesta>

ⁱⁱⁱ Tweet, May 27th, 2020: <https://twitter.com/tweetinjules/status/1265585261695496192>

^{iv} *More Police Admitting That FOSTA/SESTA Has Made It Much More Difficult To Catch Pimps And Traffickers*: <https://www.techdirt.com/articles/20180705/01033440176/more-police-admitting-that-fosta-sesta-has-made-it-much-more-difficult-to-catch-pimps-traffickers.shtml>

^v Illegal Harmful Content, eSafety government website: <https://www.esafety.gov.au/report/illegal-harmful-content>