

# SAI JAIDEN LILLITH SUBMISSION TO DRAFT ONLINE SAFETY ACT

My name is Sai Jaiden Lillith, and I am a consensual sex worker as well as a non-binary queer adult in Australia who engages in consensual BDSM / kink, and who has an interest in BDSM / kink related materials online. I am a sexuality / BDSM educator who has presented at OzKinkFest, Sexpo and numerous smaller workshops as well as private lessons. I am active in sex worker spaces as well as BDSM / Fetish communities mainly in Sydney & Melbourne. I have run a BDSM / Sex on Premises venue in Sydney for a number of years, where I created a safe, consensual space for all genders and sexualities to explore themselves. I am also an online content producer. I have previously worked at the Guardianship Tribunal / Protective Commissioner as a Hearing Support Officer, at BOC gases as the Inventory Controller for AU / NZ and managed several Dymocks stores among other things. I am a musician, artist and writer.

The concept of protecting children and adults from Cyber Bullying, non consensual posting of images, cyber abuse materials, abhorrent violent materials and online material which promotes non consensual violence is a worthy one, and one that I support.

Providing a system where individuals can regain agency over intimate images of their bodies or acts which have been taken, created, or published non consensually is incredibly important and a step in the right direction to make the online world a safer place.

However, I have strong concerns about sections of the bill - mainly **Part 9**. It is my position that:

- **The online content scheme of Part 9 should be removed** as it impacts sex workers, sex industry professionals, and practitioners of the erotic arts as well as sex adjacent therapies
- **The online content scheme of Part 9** also fails the test of meeting “community standards” of the diversity of peoples (LGBTI, sex positive, kink positive) which makes up “ordinary, everyday Australians.”
- **The online content scheme of Part 9** is an attack on freedom of expression in Australia.
- The role of the E-Safety Commissioner should be to act on non-consensual and criminal activities online and not on consensual acts between adults of age

**My submission is focused on Part 9 and the effects that it will have, and all statements within this submission should be taken in context of how it relates to that particular section.**

# BACKGROUND

As a sex worker who has been in the industry for the past 5 years, I have seen and felt the effects of FOSTA SESTA on my community, both locally and abroad. It has resulted in far more harm than good - it has resulted in loss of life, loss of income, loss of agency - and had negligible results on the trafficking activities it claimed to oppose. Numbers of deaths and injuries of sex workers have risen dramatically since its enactment, and this bill would have comparable consequences for Australian tax paying workers. Below is an article on the effects of FOSTA SESTA on the community.

<https://hackinghustling.org/wp-content/uploads/2020/01/HackingHustling-Erased.pdf>

In Australia, sex work is decriminalised / legalised to various extents - this law will effect all of us and further curtail our abilities to make an income and be tax paying contributors to society.

In my personal story, many years ago I had a massive mental breakdown which left me jobless. I had turned to sex work as a way to make a living during this time, and eventually found my vocation and calling within this. It was through the time and space afforded to me by this line of work that I was able to engage in meaningful therapy and finally begin to heal the traumas and wounds from my past. It was through this that I have also helped clients on their journeys of discovery in a safe and consensual environment, with the highest code of professional ethics in my work.

One of the KEY ways in which I could make an income was through advertising and promoting myself on various websites and social media platforms.

This proposed new law puts all of this at risk. This is just my story, and there are many other workers I know who cannot hold down normal jobs due to chronic physical illness or neuroatypical status. Sex work affords the income as well as the time and space to be able to seek proper medical and psychiatric care. Sex work affords single parents the income and time to look after their children and provide them with the essentials of life. Sex work provides agency for consensual adults.

I call on the government to work directly with Sex worker organisations such as the Vixen Collective, Scarlet Alliance, SWOP and many others to draft legislation which serves the purpose of protecting and serving ALL sectors of the community.

Below is a more detailed breakdown of the issues which I see inherent in the proposed Online Safety Bill.

# Oversight, Transparency and Accountability

There are little provisions for oversight and accountability on the part of the E-Safety Commissioner. To have an unelected individual with little to no transparency responsible for the entirety of acceptable online content in Australia is unacceptable. My community and I are extremely concerned that the Commissioner is someone who is on the board of WeProtect, an organisation which takes a strong anti-porn stance, and which platforms Nicholas Kristoff's incredibly harmful NYT article, and by association anti LGBTI, anti sex and anti abortion groups. These values are at odds with the modern Australian's views on the world, and as such I do not accept that one individual associated with these platforms represents our best interests.

## Section 7-1-c / Section 8-1-a

*"an ordinary reasonable person in the position of the Australian adult would regard the material as being, in all the circumstances, menacing, harassing or offensive"*

*"the standards of morality, decency and propriety generally accepted by reasonable adults;"*

The Attorney General themselves in a submission regarding the scope of Restricted Content ([https://www.alrc.gov.au/wp-content/uploads/2019/08/11\\_the\\_scope\\_of\\_prohibited\\_content.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/11_the_scope_of_prohibited_content.pdf)) has stated this -

11.13 In *NSW Council for Civil Liberties Inc v Classification Review Board*, the **Attorney-General** for Australia submitted that

- *in imposing an 'effect' requirement in [item 1] (a) ... the legislature has recognised that while the content specified in [that] paragraph ... may be offensive to some segments of the community, it may not be to others. In that situation, assessing the content in accordance with the standards and sensibilities of reasonable adults will strike an appropriate balance between the general principle that adults should be able to read, hear and see what they want, and the competing community concerns about such matters as drug misuse or addiction, crime, cruelty or violence.*

The onus of deciding what an ordinary reasonable person would find offensive resting on one individual with no transparency or oversight is deeply concerning to me, and the potential for abuse for personal agendas, or well intentioned misguided actions is strong.

Any decisions made on what is considered "offensive" which affects the accessibility of content to the population must be made in consultation and with total transparency with representatives of the affected communities.

## Part 9 of the Act should be removed or strongly amended

- Part 9 impacts on Sex Workers livelihoods and the sexual needs of consenting adults; any proposed act needs to take our needs and values into account
- Part 9 impacts on the ability of Sex Workers to be able to create safe spaces for community, safety checking and client screening.
- Part 9 of the act conflates sexual / fetishistic acts between consenting adults and consumed by consenting adults with cyber bullying, crime, image based abuse and online material that promotes non consensual violence.
- the more appropriate place to amend legislation on these matters is the seperate, ongoing Review of Australian Classification Regulation.
- There are many unintended consequences of Part 9, which will be covered in the next section.

I do not accept that this section of the Bill stands for the views and perspectives of the majority of “ordinary, reasonable Australians”, nor does it meet the criteria of the notion of “community standards” of a broad and diverse community (which includes LGBTI communities, a group already traditionally discriminated against on social media and online platforms) which has underpinned the Australia Classification system for years.

My own experiences in running BDSM / kink venues, as well as presenting at events such as Sexpo and OzKinkFest show that there are large sections of the community engaged in and interested in BDSM / fetish – and responsible and accessible information on safe and ethical engagement is paramount.

X18+ material is sexual content with no depictions of violence, and I do not see any reason for this material to be considered harmful online content.

The Class 1 and 2 systems of Restricted materials are in themselves archaic remnants of a bygone era and reasonable consenting adults are both consuming and enjoying content which falls within Class 1, as WELL as participating in acts which fall under Class 1. Hence the classification systems do not line up with modern community expectations and values, and enforcing them does not serve the needs of a diverse community.

A submission on the **Scope of Prohibited Content** in 2012 already discusses many of the issues around classifying materials as Refused Content, and many of those views are still entirely relevant to the views, lives and habits of modern Australians – this is reflected especially in page 271 of the document linked below from the Australian Law Reform Centre below.

[https://www.alrc.gov.au/wp-content/uploads/2019/08/11\\_the\\_scope\\_of\\_prohibited\\_content.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/11_the_scope_of_prohibited_content.pdf)

I argue that:

- restricting content like this only drives it further underground, and removes the motivation for individuals to create content which would fall under Class 1 BUT which provides healthier understanding and outcomes. Creating a healthy container for the primal and dark urges within us, and having conversations around them as opposed to repressing and censoring them create a healthier individual and society - as it is when we do not know ourselves that we can do the most harm.
- within the definitions there MUST be provisions that protect consensual BDSM practices from discrimination in this manner - BDSM / kink and fetishes are now becoming more mainstream, and if these activities are not afforded protections, then this is at odds with the wellbeing and happiness of a wide section of the population. Consensual sexual practices should not be conflated with terrorism, non-consensual violent acts or criminal activities.
- with the proliferation of BDSM / kink and fetishes, there is no way to put the cat back in the bag so to speak, and so safe, consensual and ethical education on how to perform these acts safely and responsibly, on a physical, psychological and emotional level is important. Accessibility to such materials Restrictions and prohibitions which do not take real world and proven techniques of harm minimisation into account as opposed to punitive measures of erasure are likely to fail in their stated objectives.

**Part 9 has more in common with Classification Systems – of which there is already on ongoing review**

With the ongoing Review of Australian Classification Regulation it is entirely likely that this Act will have to be amended soon after being passed, creating confusion and inconsistency in the enforcement of Classification systems and restrictions as well as unnecessary hardship on the Australian population.

To attempt to push through a change in Classifications through an online safety bill is misguided at best, and disingenuous at worst. This section of the bill has had the least airtime or publicity, and while the vast majority of Australians support the bill in terms of preventing cyber bullying, violent crime and non consensual image sharing, this part of the bill has been skimmed over and hidden from them.

## Unintended Consequences of Part 9

- **Harm to Sex Worker Livelihoods – including part time sex workers**
- **Affecting Tax income for Australia**
- **Increased burden on Social Services**
- **Net Negative impact on Mental Health**
- **Negative impact on already struggling carers and families**
- **Mass deplatforming of Sex Workers and any citizen who chooses to express their sexuality / sensuality online**
- **Loss of safe online spaces for Sex Workers, LGBTI and Kink communities**

The creation of systems which allow for swift and opaque removals of Class 1 and 2 Restricted materials will impact the livelihoods of sex workers by severely curtailing advertising and promotion on existing platforms, as well as directly impacting those who create and profit from Class 1 & 2 materials. We are your everyday Australians, and make up a substantial voice and tax income for Australia. This is an unacceptable impact on the livelihoods of those working in various states of legalisation and decriminalisation - and would be seen as an unacceptable impact in any other industry, especially without proper consultation or work alongside those industry representatives.

Pivoting to online work has allowed many workers who cannot continue in person work during the pandemic to continue to make an income. Being able to promote online and through various social media outlets also enhances sex workers ability to promote online and earn, especially after FOSTA / SESTA and the Backpage shutdown. This money is taxed, and makes its way into the Australian coffers. This money is spent on Ubers, restaurants, clothing, and a variety of goods and services which keep the economy running.

However this has a much wider scope - industries such as hospitality, tourism and the arts have been utterly gutted by Coronavirus - and in these times many of the workers from within these industries have turned to online sex services to make ends meet. Even before COVID-19 online sex work has always been a way for ordinary members of Australian society to make extra money, sometimes purely to maintain a minimum standard of living.

<https://www.gq.com.au/entertainment/tech/how-websites-like-onlyfans-have-changed-the-internet-forever/>

### **Increased Burden on Social Services / Net Negative Impact on Mental Health**

The vast majority of these services are already behind paywalls and age restrictions, however this new bill open up the potential for advertising to be removed with little to no warning, which will cause a decline in income, and potentially take both career sex workers as well as part time sex workers below a minimum wage or to destitution, which then increases the burden on social services. This could affect families, carers of disabled, elderly family members, parents and the children they care for. The current job market is also not a positive one for seeking employment, especially when you consider that many full time sex workers have

physical or mental health issues that prevent them from taking on a lot of the jobs which are currently on offer.

The flow on effect of these workers having their income streams interrupted is an increased reliance on already struggling Social Services, with its equivalent cost in tax dollars (if eligible) or negative social impacts such as homelessness, inability to provide for family and dependents. (if ineligible). Both of these situations would negatively impact the mental health of those affected.

### **Mass Deplatforming of Sex Workers and citizens who choose to express their sexuality / sensuality online**

BOSE requires services and providers to take active steps to make sure that minors cannot access Class 1 or 2 materials. This means that platforms will be pushed to

- 1) **instigate age verification systems** - of which there are numerous privacy and feasibility issues - Any systems which are proposed MUST be considered in accordance with Sex Workers, the members of the community which it affects, Technology providers. It must be a fair, sustainable system which doesn't create undue burden on consensual workers or hosts. This article points to why this was abandoned in the UK - <https://bit-tech.net/news/tech/software/uk-government-to-delay-age-verification-scheme-launch-indefinitely/1/>
- 2) **Sweeping removal of ALL content which *may be* considered offensive** - A blanket requirement for platforms to minimise access to Class 1 materials (**Section 46 - c – 1**) creates an administrative nightmare for most Social Media and online platforms. As seen with the advent of FOSTA SESTA and the recent actions of Visa and Mastercard against PornHub, platforms will self censor, and perform a sweeping removal of all content which *may be* considered offensive or regarded as sexual content. This will create a chilling effect and a regressive change in online spaces - causing many to lose their voices and ability to express ourselves. Again, this is at odds with the “community standards” representing a broad and diverse section of the community. Again, it will affect LGBTI communities strongly, for whom fetishistic / BDSM acts can make up a large proportion of sexual interaction and discourse.

### **Loss of safe online spaces for Sex Workers, LGBTI and Kink communities**

As the definition of Restricted Materials includes “depictions” – this includes any description using words of fetishistic acts and sexual practices which would fall under Class 1 or 2 materials as *“the material is a publication or part of a publication”* (**Section 106, c, i-ii of the Online Safety Act**). This will have strong consequences on the ability for Sex Workers, Queer communities, LGBTI to be able to create safe online spaces for discussion and harm minimization in personal and professional life, as the language in the Act leaves open to interpretation what would constitute as offensive or permissible.

There are not enough protections for these spaces under existing legislations, and if the bill is passed in its current form it would open up the door for more removal of these spaces for already disadvantaged and marginalized communities.

## Sex Education for Children (as well as adults) is important, not curbing access

New Zealand's government put out this ad for their campaign for online safety for children. It strikes the right chord for both the expectations of sexually active adults and the education of growing minds and bodies on what they can expect to encounter online and in life.

<https://www.youtube.com/watch?v=ZNqshRMw7uc>

I question if advertising campaigns such as this would be classed as offensive or targeting children in the definitions of the cyberbullying act if a guardian or parent decided that it was offensive. Repression and censorship only strengthens desires without providing outlets for healthy discussion and critical thinking about sexual urges, consent and positive well rounded human development.

## Conclusion

In short, executing this Bill in its current form during a global pandemic is nothing short of an act of extreme cruelty; regardless in any other circumstances the Bill will have strong and lasting negative effects on the Sex Industry, the safety and wellbeing of sex workers, LGBTI and marginalized queer communities, kink / BDSM communities, our social fabric, and the economy. It does not represent the diversity of views, ethics or morals of the modern, everyday Australian. **Please remove or strongly amend Part 9 from the Bill in consultation with LGBTI and Sex Worker Communities.**