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We thank the Committee for inviting us to speak about our concerns regarding the *Online Safety Bill 2021*. This letter contains further information requested at the hearing, and the other evidence we indicated we would table.

**PRECEDENTS AND UNINTENDED CONSEQUENCES**

We note that every instance of our engagement with the process of the Online Safety Bill since 2019, including last week's hearing, have discussed the clear precedent set by FOSTA-SESTA in the United States and the global chilling effect caused by the Bill's incentive to platforms to remove all sexual and / or sex worker content as they attempt to avoid liability for hefty civil penalties. Sex worker and sex worker organisations have also submitted on their experiences of the impacts of the legislation, which is valuable practice wisdom to understand the unintended consequences of holding platforms responsible for adult content posted by users. There appears to have been no engagement with this precedent and its impacts on individual sex workers and sex worker communities, nor any mention of further investigation of FOSTA-SESTA.

The potential impacts of the *Online Safety Bill 2021* on sex workers is largely in the realm of unintended consequences, and is a result of a confluence of elements of the Bill, particularly the BOSE and the Online Content Scheme. Unless the Online Content Scheme is re-structured entirely, there is simply no amendment to that aspect of the legislation that will prevent those unintended consequences. We implore the Committee to give substantive consideration to a revision of the Online Content Scheme to take an evidence-based approach in order to capture only what is actually harmful, and none of what is not. Its greatest weakness is in its deep subjectivity.

While accountability mechanisms are needed and certainly desirable, we do not feel that any of the dialogue surrounding the Bill between Government and stakeholders has considered efforts to prevent a chilling effect. Because that effect is a reaction of platforms to the legislation, rather than a legislated requirement of platforms, it seems as though the Bill's proponents are satisfied to simply shirk responsibility for those unintended consequences and write sex worker concerns off as irrationality or a lack of comprehension of the proposed legislation. We note that sex worker opposition in the development of FOSTA-SESTA was treated much the same, and that sex workers are still suffering the consequences of that legislation whilst also anticipating further erosion of their access to digital space via the draft *EARN IT Act*[1], which has a number of similarities to the *Online Safety Bill 2021*.

[1] https://www.hrw.org/news/2020/06/01/us-senate-should-reject-earn-it-act

**CLARIFICATION ON RC CONTENT AND EXTRATERRITORIAL POWERS**

Senator Fawcett posed a question regarding our position on access to child sexual exploitation material (CSAM) hosted on both domestic and international servers. The question characterises the Classifications Code as having its strongest restrictions on CSAM. We wish to draw the Committee's attention, however, to the fact that CSAM is only one of three classes of content that are classified as RC (Refused Classification).

While we agree that CSAM should be illegal to store or share on a domestic or international server, the remaining items in that category are fundamentally subjective in their construction of 'standards of morality, decency and propriety generally accepted by reasonable adults'. We do not agree that the Commissioner should be given the power of discretion to interpret those standards, particularly as they are not required to test them by going through the same Classifications application process required for offline content.

**FRAMEWORKS FOR CONSENT AND ACCESS TO NCII COMPLAINTS SYSTEM FOR SEX WORKERS**

Senator Fawcett posed a series of questions regarding the non-consensual sharing of intimate images as they pertain to sex workers, both to Scarlet Alliance and to the office of the Commissioner. We'd like to provide some additional information about how this can occur in our workplace settings to inform the Committee's understanding of this issue.

1. **Advertising**

Sex workers use digital advertising platforms to share imagery and copy, in much the same way that other businesses advertise products or services. In some cases, the sharing of those assets on a particular platform are subject to a contract stating how the platform may use that imagery. In others, no such contractual arrangement is entered into. In both cases, those images and / or copy are duplicated and shared on other sites and services without consent in what is known as 'ad-scraping'. Often, that activity is conducted by sites that provide dead-end WhoIs data, are hosted outside of Australia, and provide no point of contact for complaints or removal requests.

Many sex workers come and go from the industry, or may also wish to leave entirely. Having their advertising content re-posted ad infinitum by websites or agencies puts us at risk of being identified as sex workers in situations where we may be seeking employment outside of the sex industry, engaged in any way with the legal system, or working a criminalised environment. As such, we must be considered to have a 'reasonable expectation of privacy' regarding non-consensual use of our advertising content. This is a good example of what we mean when we say that 'consent at one time is not consent at another time'.

2. **NCII during digital or in-person service provision**

Sex workers work in a variety of settings, including established brick-and-mortar businessess like brothels, clubs and parlours; digital workplaces like camming platforms, chat rooms, and phone sex services; work in agencies or independent work as escorts, BDSM service providers, or companions; work by arrangement; street based sex work; and opportunitstic work or sex for favours. In all of these

workplaces, sex workers who experience the non-consensual capture and sharing of their images at work must be understood to have a reasonable expectation of privacy.

Non-consensual intimate imagery can be captured and shared throughout the process of negotiation of services, service provision, and post-provision. Due to the nature of some sex work workplaces, it is feasible for a client or potential client to stealthily capture images of sex workers at work, whether or not they actually engage our services, which is why it's important to ensure that the language that qualifies NCII is inclusive of these circumstances.

Sex workers' expectation of privacy should apply to the entirety of the transaction in which the client and the service provider are in contact. Images taken during negotiation of services, whether or not an 'intimate act' is being performed at that time, and images taken after service provision, should both be considered to be times at which sex workers can reasonably expect not to have their image shared non-consensually. Sex workers commonly report being filmed in brothel introductions rooms or lobbies or in strip clubs and having no legal recourse to remove the content.

As stated on Friday by the current Commissioner, the scheme 'was designed to help people who are experiencing serious distress as a result of their intimate images and videos being shared without consent'. The existence of a sex work contract, formal or informal, does not include consent to the sharing of intimate images unless explicitly stated, and sex workers should be considered to be people who can experience serious distress, reputational damage, doxing, and other economic and social consequences when this occurs.

### 3. Access to complaints

Senator Fawcett also characterised Scarlet Alliance as requesting that we not be required to 'reveal the nature of their commercial arrangement' when making complaints about NCII. This is a mischaracterisation, and we'd like to clarify our position that, in order for sex workers to have equitable access to the complaints mechanisms afforded by the Bill, we must be able to make complaints without connecting our legal details (legal names, contact details, etc) to our sex work status, or to do so through a representative complaints model.

The scheme must validate and respond to sex worker complaints made using pseudonyms or working names. It must not require legal details including name, identify documentation numbers, postal or residential addresses, or any other details that would identify the complainant. It must allow complaints submitted from anonymized IP addresses or use of VPNs. It must also allow sex workers who wish to complain completely anonymously to do so through an advocate, including a sex worker peer organisation like Scarlet Alliance or our member organisations.

There is already precedent for this in the complaints procedures of the OAIC[2], the NSW Anti-Discrimination Board[3], The Australian Human Rights Commission[4], and under the Queensland Anti-Discrimination Act[5]. Due to the lack of anti-discrimination protections for sex workers in most jurisdictions, we experience barriers to accessing justice through government agencies or the courts

[2]https://www.oaic.gov.au/assets/about-us/our-regulatory-approach/guide-to-privacy-regulatory-action/chapter-1-privacy-complaint-handling-process.pdf
[3] https://www.antidiscrimination.justice.nsw.gov.au/Pages/adb1_makingacomplaint/adb1_process_moreinfo.aspx
[4] https://humanrights.gov.au/sites/default/files/AHRC%20complaint%20form%20%28v2017-06%29.pdf
[5] https://www.legislation.qld.gov.au/view/pdf/inforce/1999-07-01/act-1991-085

where they require us to disclose our sex work while using our legal names. Where sex work is criminalised or where a sex worker works outside a narrow legal framework for safety reasons, this disclosure can be incriminating and make them vulnerable to legal consequences for reporting crimes committed against them, including NCII.

**SUBMISSION TO CLASSIFICATIONS INQUIRY**

We did not submit to the February 2020 inquiry into the Classifications Code. We were not invited to submit to that inquiry, and were unaware that it was being conducted until we began to research our submission to the *Online Safety Bill 2021*. Members of our team have been involved in previous inquiries on Classifications law, however, and a summary of our concerns about the Code appeared in both our submission to the Online Safety Act discussion paper and our submission to the exposure draft Bill. We recommend further investigation by the Committee into the Classifications Code, including a request to view submissions to its most recent review, which have not been made public.

**SUPPLEMENTARY EVIDENCE**

We table the following research regarding a) the impact of the FOSTA-SESTA legislation on sex workers' experiences of work, safety, and health following the deplatforming of advertising sites, sex worker user accounts, and other resources.

1. **Erased: The Impact of FOSTA-SESTA; Hacking//Hustling, 2019.**
   In this sex worker-led study, Hacking//Hustling used a participatory action research model to gather quantitative and qualitative data regarding the impact of the removal of Backpage and the passage of FOSTA-SESTA on two groups of sex workers: those who work online, and primarily street-based sex workers who have limited access to technology. The results of our online survey (98 participants) and street-based survey (38 participants) indicate that the removal of Backpage and FOSTA-SESTA have had detrimental effects on online workers' financial stability, safety, access to community, and health outcomes.

2. **Posting Into The Void: Studying the Impact of Shadowbanning on Sex Workers and Activitsts; Hacking//Hustling, 2020.**
   This research aims to gain a better understanding of the ways that platforms' responses to Section 230 carve-outs impact content moderation and threaten free speech and human rights for those who trade sex and/or work in movement spaces.