

Online Safety Research and Reform Section  
Department of Communications and the Arts  
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3 February 2020

## **EROS ASSOCIATION SUBMISSION TO CONSULTATION ON ONLINE SAFETY ACT**

The Eros Association is Australia's leading adult industry body, with over 25 years of experience in dealing with industry specific issues. Eros supports a responsible and non-discriminatory legal framework for adults-only businesses.

Eros welcomes the opportunity to provide a submission to the Consultation on a new Online Safety Act.

It is the position of Eros that:

- Effective enforcement of image-based abuse can only occur in an online environment which accepts the consumption of adult media as a valid expression of adult sexuality.
- That the role of the eSafety Commissioner should be to focus on non-consensual, abusive and harmful content and not imagery of consensual sexual activity between adults.

### **BACKGROUND**

Despite The National Classification Code starting with principle that '*adults should be able to read, hear, see and play what they want*' - this ethos that has yet to be fully upheld by current content regulation.

Current broadcasting laws render sexually explicit media subject to take down notices by the eSafety Commissioner if hosted on Australian servers. This severely limits the ability for the eSafety Commissioner to enforce laws against image-based abuse.

The majority of Australians consume adult media (or ‘pornography’) on a regular basis, with most surveys finding that around three quarters of men (76%) and over one-third of women (41%) have looked at pornographic material in the past year.<sup>1</sup>

A survey of Australian adult media producers undertaken by the Eros Association in 2018 found that most Australian producers were female and operate as producer/performers. Moreover, half of all producers identified as belonging to the LGBTIQ+ community.<sup>2</sup>

Adult media production is a valid small business enterprise, and should not be unfairly penalised by online content regulation.

## **RESPONSE TO KEY DISCUSSION QUESTIONS**

### **Image-based Abuse**

*17. Does the image-based abuse scheme require any other modifications or updates to remain fit for purpose?*

*18. What additional tools or processes, in addition to removal notices, could be made available to the eSafety Commissioner to address image-based abuse being perpetrated across the range of services used by Australians?*

The image-based abuse scheme remains toothless in regard to content hosted overseas.

‘Amateur pornography’ as a subgenre of commercial adult media has provided an avenue for producer-performers to distribute content but has also led to these distribution pathways to be exploited for image-based abuse.

As all adult media, including amateur pornography, is required to be hosted overseas under current Australian laws this content is beyond the more stringent powers of the eSafety Commissioner.

Eros supports modifying content regulation to allow the hosting of X18+ material to allow for more effective enforcement of image-based abuse.

### **Prohibited Content**

*19. Is the proposed application of the take-down powers in the revised online content scheme appropriate?*

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<sup>1</sup> Rissel C, Richters J, de Visser RO, McKee A, Yeung A, Caruana T ‘A Profile of Pornography Users in Australia: Findings From the Second Australian Study of Health and Relationships’ (2017) 54(2) J Sex Res 227-240

<sup>2</sup> Eros Adult Media Production Standards 2018, accessible online: <https://www.eros.org.au/wp-content/uploads/2019/09/Eros-Adult-Standards-combined-1.pdf>

*20. Are there other methods to manage access to harmful online content that should be considered in the new Online Safety Act?*

Eros strongly objects to X18+ material depicting consensual sex between adults being placed within the same category as child exploitation material and terrorist recruitment media.

Eros supports requirements to label websites so that they can be more readily picked up by opt-in parental features. However, cooperation between the eSafety Commissioner and industry has been strained by current prohibitions on X18+ content online.

### **Role of eSafety Commissioner**

*36. Are the eSafety Commissioner's functions still fit for purpose? Is anything missing?*

*37. To what extent should the existing functions of the eSafety Commissioner be streamlined? Are there particular functions that need to be maintained, or new functions that should be specified?*

*38. To what extent should the functions of the eSafety Commissioner be prioritised?*

The role of the eSafety Commissioner should be to regulate and take-down content which is non-consensual, abusive or harmful. This role should not include regulating content depicting sexual activity between consenting adults.

Kind regards,



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