

# SUBMISSION FOR RESTRICTED ACCESS SYSTEM DECLARATION – Online Safety Act 2021

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## Question 1

Under the Online Safety Act 2021, the RAS will only apply to Restricted Material that is provided from Australia on a social media service, relevant electronic service or designated internet service, or that is hosted in Australia. What elements should be part of an effective system to limit access to that kind of material?

Restricted Access Systems should be maintained at the user's end. Parents should install internet filters on their children's devices, and children's devices should be hard locked to only provide age appropriate content.

The Communications Alliance Submission in October 2019 states:

*"Given the difficulty of policing access to legal content generated offshore, we suggest the Australian Government should focus its effort on educational programs to better equip Australian parents to use existing available tools to limit their children's access to pornographic content on online gambling sites.*

*Communications Alliance operates the Family-Friendly Filter program, which links internet users to a range of commercially available internet filters – each of which has been rigorously tested and certified as to its effectiveness by independent testing house, Enex TestLab. Further information about the program is available at:*

*<https://www.commsalliance.com.au/Activities/ispi/fff>.*

Public computers in schools (primary and secondary) should have these filters installed by default.

Having these filters at the user end is the most effective method of providing a secure age appropriate level of interaction online, and is the least disruptive method to industry and other users of the internet of limiting access to age inappropriate materials.

The use of third party databases to store identification, requirements to provide personally identifying information above and beyond date of birth, face scanning or recognition apps should NOT be considered as they create dangers to privacy through cyberattacks, will contribute to a chilling effect on the adult industry, and in the case of face scanning, discrimination against individuals who may appear younger due to genetics.

## Question 2

**Has industry experienced any difficulty complying with the Restricted Access System Declaration 2014?**

As far as I am personally aware, the industry has experienced mild back end administrative work created by the Restricted Access System Declaration 2014, as the system of declaring age before entry to a website is unobtrusive and quick to implement. It did not require linking to third party databases or provisions of ID as mandatory. I have only worked in the industry from 2015 onwards, thus I cannot comment on any changes which had to be implemented due to this declaration.

## Question 3

**Has the Restricted Access System Declaration 2014 allowed industry the flexibility to develop access-control systems appropriate to their business models?**

As above

## Question 4

**What is the nature of the impact that has been experienced by:**

**(a) industry; and**

**(b) the Australian public as a result of the Restricted Access System Declaration 2014?**

**Have financial and administrative burdens been placed on service providers by the 2014 RAS Declaration? Have there been any indirect effects (for example, costs being passed on to customers or suppliers)? Please provide examples.**

a) The system currently in place has not caused major impacts to the Industry from my own limited perspective, however the new proposed RAS indicates that mandatory ID provision may be considered, which would necessitate the use of third party databases and private information being disclosed and held online. This would cause a massive burden financially and administratively to adult content providers.

b) The system currently in place has not caused major impacts to the Australian Public in my recollection, as the current method is unobtrusive and only requires a declaration of age to enter the site. However any proposed systems which require ID verification increase the risk of data breaches and private information of Australian citizens being leaked or sold.

## Question 5

What factors should be considered when assessing the effectiveness and impacts of systems, methods and approaches to limiting access or exposure to age-inappropriate material?

### PRIVACY AND SECURITY OF ONLINE DATABASES

Privacy and data breaches are a huge factor in assessing the effectiveness of systems used to limit access to age-inappropriate material. Any third party database which contains the private details of a population in such a manner is open to hacking, disruption and abuse. No database is 100% safe from online attacks, and the very real danger posed by identity theft and online cyber attacks should be considered strongly.

If these databases are linked to access requests from 18+ sites, this information could be used to out members of the LGBT community, or those who are subject to scrutiny from religious groups or restrictive family dynamics in situations where it could cause physical or mental harm to them.

This freedom to access content for consenting adults must just as importantly be free from personally identifying requirements or inclusion on third party databases, which are vulnerable to cyber attacks. Privacy is an important consideration and must be considered as a human right. Any proposed system should be as free of personally identifying information as possible, which is why existing personal internet filters and personal adult content filters should be applied and further developed instead.

### IMPACT ON ADULT INDUSTRY

The adult industry stands to be strongly affected by any new RAS that is proposed. The flow on effects of RAS which are too onerous and financially / administratively burdensome to implement for Social Media platforms can result in the mass deplatforming of sex workers. Since the demise of Backpage and the introduction of FOSTA SESTA, Twitter has become one of the last places that sex workers can gather, promote and socialise openly. If RAS means that Twitter deplatforms sex workers, it would be a deadly blow to our industry. Much of my traffic now comes through Twitter and to a lesser extent, Instagram. Having these sites outright ban any content which could be deemed age inappropriate would have a huge effect on my ability to earn an income.

Online Adult content providers rights to a safe workplace must also be considered, and any RAS proposed must take into account the ability for content providers to be able to adhere to it as well as run a sustainable business model.

*"Requiring clients to provide any form of identification online just to access our services or to view our websites is a strong disincentive for clients to engage with us. This compromises our ability to exercise full control over how, where and with whom we work." - Gala Vanting*

<https://www.theguardian.com/commentisfree/2021/may/11/the-protections-of-australias-online-safety-bill-exclude-us-sex-workers>

An example that can be used to highlight potential dangers and impacts on the adult industry is the shutdown of Backpage - the RAS has the potential to cause adult industry promotional / online sex work sites to shut down or be restricted from being accessed by Australian sex workers. The demise of Backpage destroyed a cheap and accessible form of advertising for sex workers affecting EVERY in person sex workers in the world and causing a massive loss of income. The effects of the shutdown hit low income sex workers the hardest, and pushed them into more dangerous situations to be able to make a living. This effect must not be replicated by the implementation of any RAS, through direct or unintended consequences. Adequate preparation and development must take place to ensure this does not occur.

*"The most marginalized of us are going to die. Trans people, people of color, poorer people are going to die"*

<https://www.newsweek.com/people-are-going-die-sex-workers-devastated-after-backpage-shutdown-876486>

*"...for online workers, the removal of Backpage and FOSTA-SESTA has had detrimental effects on their financial stability, safety, access to community, and health outcomes."*

<https://www.antitraffickingreview.org/index.php/atrjournal/article/view/448/364>

eSafety must acknowledge that members of the Adult Sex Industry also are parents and tax paying members of Australian society, and that systems put in place must not threaten their livelihood and thus their ability to provide for themselves, their families and/or children.

The adult sex industry already suffers from stigma and discrimination, and any RAS must take into consideration our human rights as well as those it directly seeks to protect.

Being able to have spaces on mainstream social media where we can gather and share our work and having groups formed where we can support each other is paramount to our mental health and wellbeing. If these spaces are removed due to over-compliance then we will all suffer.

### **IMPACT ON CONSENTING ADULTS**

eSafety must acknowledge that whilst the safety of children is of high concern to all, that all efforts MUST be made to develop systems which also consider and protect the rights and freedoms of adults in Australia.

There are many examples of the chilling effect of bills such as FOSTA SESTA have had on social media, and restrictions have already been tightened to levels where we are self censoring words for fear of being deplatformed. There needs to be a place for adults to be able to discuss and share adult content, not just as creators but as points of discussion. The RAS can and should play a role in protecting these places of free speech and erotic expression for adults by effectively and un-intrusively preventing access by minors while preserving the spaces for consenting adults.

## OVER SANITISATION OF INTERNET, THE IMPORTANCE OF EROTIC / SEXUAL CONTENT, HARMFUL HOMOGENISATION OF SEXUALITY, RIGHTS OF LGBT / ALTERNATIVE SEXUAL COMMUNITIES

The eSafety commissioner also should acknowledge the importance of the erotic and sexual side of life. Having a range of accessible content which covers a range of human sexual and erotic expression is important for our development as young adults especially for the LGBT community. RAS if implemented badly will further exacerbate the homogenisation of sexuality online, as only the biggest mainstream creators and providers of content will be able to comply with the legislation.

If social media platforms and independent erotic content creators can no longer provide alternative sexuality content, or even host discussions, or allow users to share their own experiences, sexuality and identities, this will have a dangerous effect on the expectations of our youth and adults on what is seen as "normative sex". It will stifle the range of sexual and erotic expression, and contribute to the alienation of those who do not fit within the heteronormative frameworks of sexual desire.

A greater range of erotic and sexual expression which covers sensuality, a variety of possible sexual and erotic acts and those between LGBT / queer identifying individuals is a far healthier solution than restricting access for those individuals to be able to express themselves and connect with others.

A greater range of erotic and sexual expression would combat the very harms the eSafety office seeks to address, as I would argue the greatest harms come from the wholesale reproduction of patriarchal and misogynistic sexual practices - most of which are prevalent in the mainstream - without representation of other forms of sexuality and interactions which are more generally found in independent content producers as well as everyday individuals sharing their authentic erotic experiences, and alternative and LGBT sexualities.

## SEX EDUCATION

eSafety must consider sex education materials to be exempt, and not just those provided by the government, as the ability for young adults to access a range of materials and information online is important to their holistic development. Essential materials on topics such as contraception, consent, sexual harm minimisation and safety may not be provided directly to children due to religion or abuse from caregivers, and this must be considered as access to these materials is just as important to the development and safety of children.

## SUPPORT / DISCUSSION GROUPS

Support groups which deal with issues of sexual abuse, domestic violence, as well as discussion groups for sex workers, LGBT, mainstream and alternate sexualities must also be protected - as in the wake of FOSTA SESTA many of these groups were caught up in the new restrictions and unfairly deplatformed

## Question 6

What systems, methods and approaches do you consider effective, reasonable and proportionate for verifying the age of users prior to limiting access age-inappropriate material?

The best system that would be effective, reasonable and proportionate for verifying the age of users is a device based system such as an internet filter setup, or accredited filter as provided in the Communications Alliance Website - <https://www.commsalliance.com.au/Activities/ispi/fff>

This would require the least disruption to industry and the internet for adult users - and is already a system which is available to all Australians.

Integration with Social Media services such as Facebook, Instagram, Twitter could include the form of a checkbox for posts or users who share or create 18+ content which the programs then scan to ascertain the appropriate age of the materials. There is already a "sensitive materials" check box in Twitter for creators as well as users which hides sensitive materials from users who have not opted in to having these materials shown to them. It is unobtrusive and effective, and directing research and compliance towards tech companies who have the resources to make small changes with far reaching effectiveness would be the least disruptive and effective methods of restricting access to age inappropriate materials.

Private or independent websites could get an "adult content" token which would mark their website as providing adult content, and this setting could be used to mark MA15+ materials as well at a different level if required.

The problem with having an ID based or account based RAS is that a child could still acquire an 18+ person's ID or account and use that to access 18+ materials under false pretenses. The device / browser based system would be by far the most fool proof way of managing this.

Further to this, there should be funding available to lower income families to be able to afford the filters for their children, as economic cost is another factor in the ability to access these filtering systems. The cost to the government would be small (membership to filters are around \$50/year mark) but could mean a great deal to lower income families to be able to access these services equitably.

There should be targeted and widely available and disseminated information to schools and parents on how to setup and access these services, and translation into multiple languages and accessibility for all cultural representations Australia wide.

Schools and public access terminals could have these filters set up by default, to further limit the ability of minors to access age inappropriate content.

I believe that this system would also require the least administration on part of the E-Safety office, as well as an easier way to guarantee compliance. It would also allow families to use their own judgement in what they choose to allow their children to access, which I believe is

an essential part of our freedoms in Australia. It also has the least intrusion into the privacy of the population, which I believe is an important factor that needs to be considered.

### Question 7

**Should the new RAS be prescriptive about the measures used to limit children's exposure to age inappropriate material, or should it allow for industry to determine the most effective methods?**

The adult industry must be directly and heavily involved in the creation of the most effective and appropriate methods to limit children's exposure to age inappropriate materials. Our industry stands to lose the most in the development of RAS, and our views and rights must be represented in any RAS, as well as a majority agreement in negotiations. Human and digital rights groups must also be part of the consultation, as new measures should not be put into place for the protections of children at the expense of the human rights of adults when this can be avoided.

Social media and other providers of content, as well as tech companies must be included in the discussion as that will provide the realistic landscape of what is possible, and how much financial and administrative burdens this would create.

Whilst the eSafety office's focus is to protect children and adults from harmful content and age inappropriate content online (as well it should be), the Adult industry's perspective as well as the perspectives of sex-positive adults and human rights groups must be given an evenly weighted voice to develop an RAS which is effective, fair and equitable to society as a whole. Just as the rights of children need to be protected, so do those of consenting adults, and the erotic / sexual parts of our society.

It is IMPORTANT for Social media and providers of content to be involved in determining the most effective method; as if prescriptive measures are used without considering the impact on the industries they may decide it is too hard to adhere to RAS requirements. This could lead to a wholesale and overzealous removal of any content which could be classed as age inappropriate from platforms. This is an unacceptable outcome as it infringes heavily on the rights of adults, LGBT community, artists, creators, alternative sexuality, conscious community and BDSM communities.

We all deserve safe spaces to exist, as adults and children, and to enable the destruction of social spaces especially in a socially isolating pandemic would be irresponsible and have catastrophic mental health consequences.

## Question 8

Is there any additional information eSafety should consider in drafting a new Restricted Access System declaration?

The Adult Sex Industry is just as dedicated to restricting access of age inappropriate materials, however the costs of doing so must be weighed up against the real world benefits.

### **X18+ MATERIALS PROTECTIONS AND ACCESSIBILITY FOR CONSENTING ADULTS**

*"It should be noted that the new RAS declaration will not address material showing actual sexual activity between adults (which falls under the X18+ classification). Where such X18+ material is provided from Australia or is hosted in Australia it may be subject to a removal notice."*

The RAS MUST cover X18+ material and thus protect the existence of X18+ materials. Denying Australians access to locally produced or ANY X18+ materials is an act of totalitarian censorship, and is unacceptable for consenting adults to be denied access to these materials. The majority of "reasonable, everyday Australians" would expect that X18+ materials remain accessible to consenting adults, and should be covered by the RAS as opposed to being removed from our internet entirely.

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.*

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

The removal and prevention of access to X18+ materials is part of an outdated and archaic Broadcasting Act, which is itself being subject to review, and this provision should be rectified. I object to the infantilization of consenting adults by suggesting that we cannot be allowed to view erotic materials of this classification.

The removal and prevention of access to X18+ will cripple the Online Sex Work community in Australia, to which many current sex workers as well as those members of society needing a much needed boost in finances have turned during a pandemic situation.

More than that, it provides a safe space for many to sexually express themselves, both for personal and professional usage. X18+ materials cover many LGBT / queer sexual practices, and the removal of this content can affect sexual education and further contribute to the homogenisation and over sanitisation of our internet.