

**Executive Manager, Investigations
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Assembly Four welcomes any opportunity to engage and evaluate policy on technology and human rights.

Assembly Four is a collective of sex workers and technologists based out of Melbourne, Australia who build solutions and engage in research that not only help sex workers survive, but thrive.

As technologists and sex workers, we are incredibly passionate about these matters; as it not only impacts our livelihoods but our safety, online and offline.

Assembly Four strongly believes that having the ability to make decisions about our bodies and sexual lives is a fundamental human right.

Every individual, *including young people*, should be able to make these choices without fear, violence or discrimination.

As we've highlighted in our previous submissions; The proposed measures will not prevent online harm, but will increase the harm to some of the most marginalised voices, on and offline.

We ask that the Assembly Four submission to the eSafety *Call for Evidence into Age Verification* and *RAS discussion paper* be taken into account as supplementary documents; the research provided in both are from authoritative sources, and the concerns expressed in both documents have not been adequately resolved or mitigated in the draft declaration.

If you have any questions or require clarification, please do not hesitate to reach out to hello@assemblyfour.com.

Regards.

Assembly Four

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1. Restricted Access Systems for Relevant Class 2 Material

- a. As highlighted in previous submissions, the Classifications Act 1995 where the definitions of Class 2 material is derived from was created during a period of time where it was still a criminal offence to be homosexual in one jurisdiction of Australia.

The Classification Act still enables the unfair and disproportionate censorship¹ of LGBTQIA+ content² and reinforces the narrative that LGBTQIA+ expression is inherently harmful and sexual.

- b. Part 2, Section 7 The Provision of Warnings requires that for each application made under Section 6 (Applying for access to Relevant Class 2 Material) must;

a. Provide a warning about the nature of the relevant class 2 material;
and

b. Safety information about how a parent or guardian may control access to relevant class 2 material by persons under 18 years of age

It's important to reiterate that Class 2 material is not inherently harmful and that parents, guardians and educators play a vital role in supporting young people's education; specifically with topics like online safety and literacy, consent, sexual and reproductive health.

We believe that the same sex positive education initiatives should also target parents, guardians and educators. The New Zealand Government 'Keep it Real Online'³ initiative is a sex positive way to approach these topics without focusing on shame or abstinence.

2. The existing offline rights of young people have failed to be recognised;

Throughout this entire process we, and multiple organisations and individuals have raised very real concerns about the legal rights of young people being ignored and placing them at risk of further harm and even criminalization, which eSafety⁴ itself having raised it as an issue.

In Australia, the legal age of consent and its definitions differ based on jurisdiction⁵. The Online Safety Act and its determinations have failed to recognise or replicate the human rights that young people have to express and explore their sexuality.

In most jurisdictions in Australia, there is a 'Romeo and Juliet' clause which allows consensual sexual relations between a minor and an individual up to five years older. The clause is an attempt to protect young people from exploitation and other harms, while also preserving their rights to privacy and healthy sexual development.

¹<https://www.flicks.com.au/features/donkey-sex-ok-but-gay-sex-is-not-why-australias-film-classification-board-is-homophobic/>

² <https://studentedge.org/article/why-did-netflix-raise-the-classification-rating-for-moonlight-in-australia>

³ <https://www.keepitreasonline.govt.nz/>

⁴<https://www.esafety.gov.au/parents/big-issues/sending-nudes-sexting#the-consequences-can-be-serious>

⁵ <https://aifs.gov.au/cfca/publications/age-consent-laws>

In Victoria, there have been some attempts made to recognise⁶ the risks that young people face when exploring their sexuality;

- a. *If you take a photo of yourself alone and you are under 18 – making or keeping this photo is not against the law.*
- b. *If the image shows someone under the age of 18 doing a consensual sexual act with another person who is not more than 2 years younger than them and they do not share the image with other people.*
- c. *If a 16 or 17-year-old consensually sends an explicit photo or video of themselves to someone else who is not a carer, supervisor, or authority, and not more than 2 years older than them*
Each jurisdiction has their own legislation and their own consent, sexual health and reproductive health educational material; which does not cover the legal expectations or obligations.

In *R v Sharpe 2001 SCC 27*; the Supreme Court of Canada made a clear distinction on the differences between CSEM and “self-created expressive material”, recognizing the importance of *“adolescent self-fulfillment, self-actualization and sexual exploration and identity.”*

The SCC stated that *“To ban the possession of our own private musings thus falls perilously close to criminalizing the mere articulation of thought.”* and carved out two protections for young people to prevent absurdity and confusion with their existing human rights;

- a. *Self-created expressive material: i.e., any written material or visual representation created by the accused alone, and held by the accused alone, exclusively for his or her own personal use; and*
- b. *Private recordings of lawful sexual activity: i.e., any visual recording, created by or depicting the accused, provided it does not depict unlawful sexual activity and is held by the accused exclusively for private use*

⁶<https://yla.org.au/vic/topics/internet-phones-and-technology/sexting-laws/>

⁷<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1837/index.do>