

TO: Standing Committee on Social Issues via: committee.socialissues@parliament.nsw.gov.au

29 October 2024

Inquiry into the impacts of harmful pornography on mental, emotional, and physical health

The Eros Association is Australia's industry association for adults-only retail, wholesale, media, and entertainment.

We welcome the opportunity to make a submission in response to the inquiry into the impacts of harmful pornography on mental, emotional, and physical health.

Whilst the term "harmful pornography" is not defined in the inquiry's terms of reference, the Attorney-General's media release states that this includes "pornography that is violent and misogynistic" or pornography that "contains depictions of sexual violence and degrading sexual scripts about women" or "harmful depictions of the treatment of women". The *Macquarie Dictionary* defines misogyny as hatred of or entrenched prejudice against women.

We are concerned that there may be a false implication that most pornography is inherently harmful or misogynistic, as suggested by the statements in the media release that this form of pornography is "common" and "mainstream" and the statement from the Women's Safety Commissioner that "pornography often contains harmful messages and representations that normalise violence against women."

We support positive sexual expression. Consuming pornography is a healthy and normal part of human sexuality and does not deserve the moral condemnation it has received from some uninformed critics. In Australia, half of adult media producers are LGBTIQ+ and the vast majority are women.¹ There is thus a real risk that regulation will disproportionately affect women and LGBTIQ+ people.

¹ Eros Association, 'Production Standards for Adult Media' <<https://www.eros.org.au/wp-content/uploads/2019/09/Eros-Adult-Standards-combined-1.pdf>>.

For the purposes of this submission, we will focus on one particular element of the inquiry's terms of reference, being current restrictions on access to pornography (item (i)), but in doing so, our submission also discusses media by which pornography is accessed and circulated (item (b)) and the production and dissemination of pornography (item (e)) as well as matters relating to consent and respect education (item (d)), education about pornography (item (h)), and resources and support for parents and carers (item (j)).

Production, dissemination, and circulation of pornography in Australia

As discussed above, women dominate production and directorial roles in Australian adult media. In a survey of the Australian adult media industry conducted by Eros, of the 14 participants who identified as playing a production or directorial role, 11 (or 78%) identified as female. In addition, of the 26 participants who answered a question on LGBTIQ+ status, half identified as being members of the LGBTIQ+ community.

As has been documented elsewhere, many performers in the adult media industry are directors or producers as well and also take on other roles including social media management and production assistance. A majority of participants in our survey had over six years experience in the industry.

Based on feedback from this survey, Eros developed Production Standards for Adult Media in Australia that set our expectations prior to a shoot, performer obligations, the right to decline sexual acts and partners, professional standards and amenities on set, and rights to payment.

However, the dissemination and circulation of pornography is extremely restricted in Australia due to our outdated classification system.

Restrictions on access to pornography in Australia

Most pornography is classified X 18+ under the Guidelines for the Classification of Films 2012 (the Classification Guidelines) and is therefore only available for sale or hire in the Australian Capital Territory or Northern Territory. However, the Guidelines are explicit that:

No depiction of violence, sexual violence, sexualised violence or coercion is allowed in the category. It does not allow sexually assaultive language. Nor does it allow consensual depictions which purposefully demean anyone involved in that activity for the enjoyment of viewers.

As such, pornography that contains depictions of sexual violence will be Refused Classification. As will pornography that purposefully *demeans* anyone involved, which is defined to mean “a depiction or description, directly or indirectly sexual in nature, which debases or appears to debase the person or the character depicted.” As such,

pornography that degrades women involved or depicted will probably be Refused Classification, and cannot be sold, hired, advertised, or legally imported in Australia.

However, this also includes “fetishes such as body piercing, application of substances such as candle wax, ‘golden showers’, bondage, spanking or fisting.” The Review of Australian Classification Regulation (the Stevens Review) recommended that “the absolute prohibitions on legal fetishes... within the X 18+ category should be removed.” The Stevens Review found that:

Consideration of what is allowable within the X 18+ category should be focussed on harms. Departmental research into attitudes towards Refused Classification content shows that the community is unconcerned about depictions of most fetishes, as long as there is consent, and no serious harm is inflicted.

The finding of the Stevens Review is consistent with the focus of this inquiry; namely, that restrictions in access to pornography should be focussed on harm.

The Classification Guidelines are determined by the Commonwealth Minister for Communications with the agreement of the Minister responsible for censorship matters in each State or Territory. In New South Wales, this is the Attorney-General.

Recommendation 1: Consistent with the terms of reference for this inquiry and the findings of the Stevens Review, the Attorney-General should make representations through the Council of Attorneys-General that the absolute prohibition on fetishes, which are not illegal, should be removed from the Classification Guidelines, in line with the principle that access to pornography should be focussed on harm.

Under the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995 (NSW)*, the sale or exhibition of X 18+ films is prohibited. What this effectively means is that pornography cannot be sold or exhibited in New South Wales.

Recommendation 2: Consistent with the principle under the Classification Guidelines that “adults should be able to read, hear, see and play what they want”, the Parliament should amend the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* to remove the prohibition on the sale or exhibition of X 18+ films, whilst retaining the prohibition on the sale or exhibition of X 18+ films to minors.

Most online pornography is class 2 material under the *Online Safety Act 2021 (Cth)*, which encompasses X 18+ films, except for fetish pornography which is Refused Classification (as discussed above) and is therefore class 1 material.

Under the Online Safety (Basic Online Safety Expectations) Determination 2022 (the Determination), websites, including pornographic websites, must:

- take reasonable steps to minimise the extent to which class 1 material, including fetish pornography, is on the website;
- take reasonable steps to ensure that technological or other measures are in effect to prevent access by children to class 2 material on the website; and
- have clear and readily identifiable mechanisms that enable people to report, and make complaints about, any class 1 or 2 material on the website.

Furthermore, access to class 2 material on a website must be subject to a restricted access system that complies with the requirements under the Online Safety (Restricted Access Systems) Declaration 2022 which requires that:

- a person who seeks access to class 2 material must apply for access and submit a declaration that they are at least 18 years of age;
- a warning must be given about the nature of class 2 material and safety information about how a parent or guardian may control access to class 2 material by persons under 18 years of age; and
- reasonable steps must be taken to confirm that the person is at least 18 years of age.

Only once all of those requirements are met can a person be granted access to class 2 material. Whilst these provisions are flexible and allow a variety of methods to restrict access to class 2 material by children, we are concerned that this could cause social media, electronic, and internet service providers to either (a) collect biometric and other age-related data that could in turn create a ‘honeypot’ for potential hacks and the leaking of personal data, including information on sexual preferences, or (b) adopt a blanket prohibition of class 2 material.

We do not support provisions that could lead to a de facto ban on online pornography. Adults should be able to access online pornography coupled with appropriate protections for children. As the eSafety Commissioner herself has stated:

My role as regulator is to protect all Australians from online harm - it's not to restrict the sex industry. What happens between consenting adults is not my concern, as long as it's not harming others, especially children.²

Again, the comments of the eSafety Commissioner are consistent with the focus of this inquiry; namely, that restrictions in access to pornography should be focussed on harm, especially to children.

Industry is currently developing codes to prevent children from accessing class 2 material online, including online pornography, with final draft codes to be provided to the eSafety Commissioner for review by December 2024. We are continuing to advocate for measures to restrict children’s access to class 2 material that are privacy-preserving and do not amount to a de facto ban on adults accessing online pornography.

² Lisa Visentin, ‘Sex industry “not my concern”’: eSafety Commissioner defends new powers’, *Sydney Morning Herald* (4 March 2021) <<https://www.smh.com.au/politics/federal/sex-industry-not-my-concern-esafety-commissioner-defends-proposed-new-powers-20210302-p5772l.html>>.

Sex education in Australia - the missing element

Technological solutions alone will not stop children from accessing online pornography. A focus on regulating access to sexual content diminishes the role of sex education, which incorporates respect and consent education.

In our view, there is a need to invest in improved sex education in schools and other educational settings to encourage safer and affirming sex practices, boost sexual literacy, and set realistic expectations about sex. Sex education is important to challenge sexual violence and violence against women and gender diverse people.

The lack of effective sex education means that young people are seeking out online pornography and riskier sexual encounters. Without clear curriculum guidance, schools are offering widely disparate approaches to sex education, some of which are far from effective.

The Women's Safety Commissioner can also play a role in developing resources for children, parents, and carers to support online safety and navigating adult content online, building on the excellent work of the eSafety Commissioner.

Conclusion

The Eros Association thanks you for your consideration and welcomes the opportunity to speak to our submission at a committee hearing.



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