

Process Summary: Online Safety Bill 2021

This document summarizes the Senate proceedings of the Online Safety Bill in June 2021. The House of Representatives second reading is also mentioned and linked to. The Senate debate was the last opportunity for MPs to elevate the concerns of sex workers and make attempts at amendment to the bill. Below we outline where to find the expanded proceedings, and highlight the parts of the Senate debate most relevant to the sex worker community.

See also:

- Scarlet Alliance [media release](#) on passage of the Online Safety Bill
- Scarlet Alliance [Community Update](#) on the Online Safety Bill

Online Safety Bill Senate Debate and Speeches

- [General overview of parliamentary process of the Bill](#)

Senate

- 16 Jun 2021: Second reading debate ([access online here](#) from page 19-32 and page 106-107)
- 17 Jun 2021: Second reading debate ([access online here](#) from page 51-53)
- 22 Jun 2021: Second reading agreed to ([access online here](#) from page 97-114)
- 22 Jun 2021: Third reading agreed to ([access online here](#) page 114)
- Parliament videos can be found [here](#) or by following the links below:
 - 16/06
 - [Senate Part 1](#) [11:14]
 - [Senate Part 3](#) [19:15]
 - 17/06
 - [Senate Part 1](#) [From 13:45]
 - [Senate Part 2](#) [From 0:00]
 - 22/06
 - [Senate Part 2](#) [From 21:23]
- Full list of speeches can be found [here](#)

House of Representatives

- 23 Jun 2021: House agreed to Senate amendments ([access online here](#) from page 77-84)
 - Video: [House of Reps Part 2](#) [16:53]
- 23 Jun 2021: Finally passed both Houses

Excerpts From Senator Speeches

Senator Jordon Steele-John

- Spoke on the 16/06, you can see the [full speech here](#) at pg 31 or pg 107.

From page 31:

- “The non-consensual sharing of intimate images is a disgusting and disgraceful phenomenon in our society today. Its roots are deeply set in the disrespectful and dehumanising ways in which women, people of colour and people who are queer are treated, and what standards of behaviour are accepted and expected. To deal with those issues, we need policy responses that deal with both the outcome and the root cause.”
- “Online facilitated abuse, is denoted and often marked out by the absence of a relationship between the perpetrator and the victim—the perpetrator is not known to the victim and vice versa. The victim is selected at random and is often part of a broader cohort which the perpetrator is targeting, and they're often above the age of 18.”
- “Again, they utilise multiple platforms, multiple identities and therefore require—you guessed it!—bespoke, nuanced and well-thought-through legislative responses that address this and hold people to account for their actions while also dealing with the deep-rooted causes for why people behave in this way, particularly to groups such as women, queer folk or people of colour. These are the groups which overwhelmingly experience this online facilitated abuse.”

From page 107:

- “The result of this extraordinarily unjustified speed with which this legislation has been rammed through is that it has the potential to pose profound unintended consequences among segments of our community.”

- “Let me just say this very clearly: sex workers in this country are some of the most underrepresented workers in our community. They are not subject to many of the protections that are available to others that work in other industries. This absence of protection is because of the inability of legislatures like this one—and the unwillingness of legislatures such as this one—to grapple with the complexities of the work and the protections that they require. Regardless of the fact that this chamber seems to be preparing itself to pass a piece of legislation, which may have catastrophic impacts on the ability of sex workers to work, let me say this very, very clearly: sex work is work.”
- “Sex workers are workers and they deserve proper protections to do their work and they should not be impinged in doing that work.”
- “This bill, because it has been rushed through, because it has not been subject to the appropriate scrutiny, contains many provisions which may well negatively impact the ability of a sex worker to work, not least of which is the importation of definitions of classified material straight from the classification codes which we know are outdated and the empowering of the relevant administrative body, in this case, the eSafety Commissioner, to be able to make moralistic judgements which may negatively affect the ability of a sex worker to do their job.”
- “This is a very serious piece of legislation in relation to sex workers and many organisations, from the Scarlet Alliance to Men at Work and many other organisations, attempted to submit in the brief period that they were given in relation to these concerns, and yet none of them have been properly addressed in the course of the legislation.”
- “There are also elements of this bill which will have the potential to negatively impact the trans community; my colleague Senator Rice will speak to that in great detail, I am sure.”

Senator Nick McKim

- Spoke on the 16/06, you can see the [full speech here](#) at page 22-23

From page 22:

- “Therefore, in the view of the Greens, it is not fit for the purposes of this legislation. Classifications based on the code may capture non- violent sexual activity, including nudity and implied or simulated sexual activity, as well as materials considered unsuitable for a minor to see. The concern that the Greens have in this

area is that the bills fail to differentiate between actual harm and subjective, moralistic constructions of harm. This would allow the commissioner to act as a moral censor and the commissioner's powers to be weaponised by people and organisations with moral or political agendas. Again I acknowledge comments made by the commissioner with regard to these issues, and again I point out that the person who is currently the eSafety Commissioner will not be the eSafety Commissioner forever.”

- “We know that that is a risk because that is exactly what has happened in the US under similar controversial laws, such as the Fight Online Sex Trafficking Act, the FOSTA, and the Stop Enabling Sex Traffickers Act, the SESTA.”

From page 23:

- “The definition of an intimate image provided by these bills does not clearly state whether it applies at the moment an image is taken, which could have serious implications for the utility of the scheme for transgender folk in Australia.”
- “Of particular concern to the Greens and many submitters to the Senate inquiry is the potentially devastating effect the bills will have on sex workers and adult content creators operating lawful businesses that provide lawful products and services, many of whom have migrated online as a result of the COVID-19 pandemic. We are worried about the potential for this framework to be used to drive people from the internet back into the streets or ultimately into insolvency. We are concerned about the unintended consequences that could be harmful to sex workers and adult businesses and to the broader community. Under the bills, as argued by Scarlet Alliance, sex workers will become more vulnerable as they potentially lose access to income, safety tools and strategies and vital peer connections. We are also concerned that the bills fail to promote the maximum safety and privacy protections that they could.
- “That is why the Greens will be moving a second reading amendment, calling for the bills to be withdrawn and redrafted to take account of the many and significant concerns raised by submitters. I now move the second reading amendment standing in my name:
 - ... (b) calls on the Government to redraft the bills to take account of concerns raised by submitters to the Environment and Communications Legislation Committee inquiry into the bill, including:

- ... (vi) potential significant and detrimental effects on sex workers".
- **Senator Larissa Waters:** Later references this amendment saying (page 27):
"The amendments that my colleague Senator McKim will move aim to correct that balance, preserving the parts of the bill that provide additional protections for vulnerable internet users, strengthening the protection for digital rights, and removing the provisions likely to be weaponised against women and undermine the overall objectives of the bill."

Senator Janet Rice

- Spoke on the 17/06, you can read the [full speech here](#) at page 51-21

Senator Rice cites a Junkee article that addressed the key problems for queer and sex worker communities in the Online Safety Bill (page 51):

- "The trouble is whether content is "likely to cause offence to a reasonable adult". That's pretty subjective and you can see how it favours majority groups. When asked, Communications Minister Paul Fletcher singled out fetishes like bondage, fisting and watersports as offensive. Not everyone's cup of tea, sure, but two guesses which community he has in mind."
- "The commissioner's broad powers and the Bill's regressive definition of "adult content" put LGBTQ rights and visibility at enormous risk of coordinated attacks. In a country prone to moral panics about anti-bullying programs and trans kids, this is hardly speculative."
- "The current eSafety commissioner has said that she won't use these powers to persecute sex workers (and, one would hope, queer people). However, it doesn't really matter what she plans to do; the point is that they don't need these powers in the first place."
- "It's dangerous to make laws as if they'll only ever be used by people currently in office. A future administration could appoint an anti-sex work crusader or career homophobe who would use these powers with malicious intent at any time."
- "From competent lawmakers, we'd expect to see safeguards, sunset clauses and built-in appeals processes. Instead, we've seen a sweeping set of powers rushed into Parliament a week after consultation closed, ignoring many of the 370 public submissions."

From page 52:

- Senator Rice called out One Nation Senators transphobic and homophobic comments, which were then supported by many in government.
- Senator Rice mentioned and quoted the Victorian Pride Lobby's submission section on sex work
- Senator Rice mentioned and quotes Scarlet Alliance's submission
- "These are really serious issues. It is because of these serious issues, particularly as I've outlined here, and the really significant impacts on the LGBTIQ community and the sex worker community that my colleague Senator McKim has moved a second reading amendment calling for the bills to be withdrawn, reconsidered and redrafted."
- "We will also be moving other amendments to address concerns, including inserting a review process and changes that would reduce the risk of consensual sexually explicit content being removed. These include major amendments to part 9 of the bill, which is where the online content scheme and classification code are set out. These include measures that would prevent unintended consequences that would adversely affect advertising of legitimate and lawful sex services and products and sexual health programs and providers. The other significant area of concern that we have, as has been referenced in the excerpts from the submissions that I've read out that our Greens amendments are going to address, is the far-reaching powers of the eSafety Commissioner, which effectively gives them the power to act as Australia's chief censor."
- "But this bill, in the way it is currently drafted, has incredibly serious flaws that are going to have major unintended consequences on rafts of people, but particularly, as I've outlined today, on LGBTIQ people and on sex workers."

Proposed Amendments

- Amendments were voted on by the Senate on the 22/06. You can read the amendments and voting outcomes [here](#) from page 100-112. Or you can view each amendment separately by following the links below.
- You can also read the entire list of passed amendments [here](#).

Government Amendments

- [SW125](#) or [page 101](#)
 - Passed

Opposition (Senator Louise Pratt)

- [Sheet 1315](#) or [page 100](#)
 - Passed
 - Amending Government amendment SW125, particularly regarding reporting requirements
- [Sheet 1304](#) or [page 104](#)
 - Passed
 - Regards advisory committee
- [Sheet 1316](#) or [page 107](#)
 - Passed
 - 141A Publication of notice where no body or association represents a section of the online industry
- [Sheet 1319](#) or [page 109](#)
 - Passed
 - Definition of 'serious harm to a person's mental health'
- [Sheet 1303](#) or [page 102](#)
 - Passed
 - Regards review by the ACMA
- [Sheet 1317](#) or [page 108](#)
 - Not passed
 - Consultation with Human rights, Info and Privacy Commissioners
- [Sheet 1312](#) or [page 106](#)
 - Not passed
 - Review mechanism
- [Sheet 1305](#) or [page 105](#)
 - Not passed

Greens (Senator Nick Mckim)

- [Sheet 1299](#) or [page 112](#)
 - Not passed
- [Sheet 1235](#) or [page 110](#)
 - 239A Review of the operation of this Act
 - Not passed

- [Sheet 1276](#) or [page 111](#)
 - (EXCERPT) stating that: (1A) For the purposes of this Act, class 1 material does not include any of the following:
 - (a) advertising;
 - (b) online dating material;
 - (c) health promotion material;
 - (d) sex education and harm reduction materials for young people;
 - (e) sexual minority material;
 - (f) works of art.
 - Not passed

Ayes10
 Noes42
 Majority.....32

AYES

Faruqi, M
 Lambie, J
 Rice, J
 Steele-John, J
 Waters, LJ

Hanson-Young, SC
 McKim, NJ
 Siewert, R (teller)
 Thorpe, LA
 Whish-Wilson, PS

NOES

Abetz, E
 Ayres, T
 Canavan, MJ
 Ciccone, R
 Davey, P
 Farrell, D
 Fierravanti-Wells, C
 Green, N
 Hume, J
 Kitching, K
 McAllister, J
 McGrath, J
 McLachlan, A
 O'Sullivan, MA
 Patrick, RL
 Reynolds, L
 Ruston, A
 Scarr, P
 Smith, DA
 Urquhart, AE (teller)
 Watt, M

Antic, A
 Bragg, AJ
 Cash, MC
 Colbeck, R
 Duniam, J
 Fawcett, DJ
 Gallagher, KR
 Hughes, H
 Keneally, KK
 Lines, S
 McCarthy, M
 McKenzie, B
 McMahan, S
 Paterson, J
 Rennick, G
 Roberts, M
 Ryan, SM
 Small, B
 Stoker, AJ
 Van, D
 Wong, P

- [Sheet 1275](#) or [page 112](#)
 - (EXCERPT) (fa) the expectation that, when meeting the expectations set out in paragraphs (a) to (f), the provider of the service will take reasonable steps to:
 - (i) ensure that material is not removed unnecessarily; and
 - (ii) ensure that access to material is not restricted unnecessarily; and

