



**Joint Standing Committee on the
Commissioner for Children and Young People**

Sexualisation of Children

**The Commissioner for Children and Young People's
2013 report on the Sexualisation of Children**

**Report No. 3
June 2014**

Parliament of Western Australia

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Report 3)

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**Joint Standing Committee on the
Commissioner for Children and Young
People**

Sexualisation of Children

The Commissioner for Children and Young People's 2013 report
on the Sexualisation of Children

Report No. 3

Presented by

Ms L.L. Baker, MLA and Hon R.M. McSweeney, MLC

Laid on the Table of the Legislative Assembly and the Legislative Council on
26 June 2014

Chair's Foreword

The issue of the sexualisation of children is something that concerns many parents and other members of society, both in Australia and in a range of overseas countries. Inquiries into the problem have been held in Australia, the UK, the United States of America, and France, to name a few, and the issue appears in the media regularly.

For many parents, it is an ongoing concern as their children are exposed to sexualised music videos, magazines, films, advertising and online media, clothing lines, toys and a range of other consumer items. Parents are concerned about the harms resulting from sexualisation becoming the 'wallpaper'¹ of children's lives.

The previous JSCCCYP responded to these concerns within the Western Australian community by referring the issue to the Commissioner for Children and Young People for inquiry and research. The report produced by the Commissioner is an important summary of the problem and it proposes a range of initiatives for further research and action.

The current JSCCCYP is not able to pursue this research, so we have decided to refer the Commissioner's report to the Attorney General for his consideration. We have asked the Attorney General to report to Parliament on what can be done to protect Western Australian children.

I would like to thank the former Commissioner, Michelle Scott, and her staff for the hard work that went into the production of the report, at what was a busy time of year with a tight deadline. I would also like to thank the members of the JSCCCYP for their continued dedication to the Committee's work: Hon Robyn McSweeney MLC (Deputy Chair), Hon Dr Sally Talbot MLC (member) and Ms Eleni Evangel MLA (member), and our acting Principal Research Officer, Lucy Roberts.



Ms L.L. Baker, MLA
Chair

1 R Bailey, *Letting Children be Children: Report of an independent review of the commercialisation and sexualisation of childhood*, United Kingdom, Department for Education, 2011, p 20.

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Executive Summary

This report presents to the Parliament of Western Australia the report prepared by the Commissioner for Children and Young People on the Sexualisation of Children.

The Joint Standing Committee on the Commissioner for Children and Young People (JSCCCYP) of the 38th Parliament referred this issue to the former Commissioner, Michelle Scott, at the end of 2012. The Commissioner produced a report on the matter in early 2013, but the previous JSCCCYP was not able to consider or table the report due to the prorogation of the Western Australian Parliament for the 2013 state election.

The JSCCCYP of the 39th Parliament was formed in May 2013, and obtained access to the Commissioner's report mid year. The current Committee has considered the Commissioner's report and the best way to progress work on this matter.

The Committee recognises the level of concern amongst parents and society more broadly on the issue of the sexualisation of children. It also acknowledges that the issue encompasses a number of complex social, legal and practical matters. The Committee consulted the Attorney General on the current level of policy work being carried out, and would like to see further consideration and research on the matter of the sexualisation of children in Western Australia.

The Committee finds that the Commissioner's report provides an excellent overview of the issue and canvasses a range of areas where further research and policy work could be undertaken.

Having considered which area of government could best progress work in this area, the Committee has decided to refer the Commissioner's report to the Attorney General for his further consideration. The Committee acknowledges the interest in the matter from various areas of the community, and feels that the Attorney General is best placed to conduct further research and progress any necessary legislative changes required to address the sexualisation of children.

The Commissioner's report is therefore tabled in the Parliament as an appendix to this report, and is referred to the Attorney General for consideration.

Ministerial Response

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Committee directs that the Minister representing the Attorney General report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.

Findings and Recommendations

Finding 1

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The Committee finds that there is much concern amongst parents and the broader society regarding the ‘sexualisation of children’, and that the Commissioner’s report encompasses a range of complex social, legal and practical issues. The Committee would like to see further research and policy work conducted in Western Australia on this issue.

Finding 2

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The Commissioner’s report provides an excellent overview of the issue of the sexualisation of children, and makes a clear case for further research and inquiry in Western Australia. The report points the way for further policy action on the issue.

Recommendation 1

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The Committee recommends that the Attorney General examine the Commissioner’s report into the Sexualisation of Children, and report to the Parliament on which proposals can be implemented to better protect Western Australian children.

Chapter 1

The report into the sexualisation of children

This chapter provides background information into the development of the Commissioner's report into the sexualisation of children, and on the Committee's response to it.

Background to the current report

Referral to the Commissioner for Children and Young People

The Joint Standing Committee on the Commissioner for Children and Young People (JSCCCYP) of the 38th Parliament referred the issue of the sexualisation of children and young people to the Commissioner for Children and Young People (CCYP) under section 19(l) of the *Commissioner for Children and Young People Act 2006* (the Act).

Section 19 of the Act sets out the functions of the Commissioner, with Section 19(l) stating that the Commissioner has the function: 'to consider, and make recommendations in relation to, any written laws, draft laws, reports, policies, practices, procedures or other matters relating to the wellbeing of children and young people that are referred to the Commissioner by the Minister or the Standing Committee.'²

The Committee referred the issue to the Commissioner in October 2012, and the Speaker of the Legislative Assembly made a statement to the House regarding the referral on 25 October 2012.

The Committee also referred a range of documents to the Commissioner 'insofar as they may be relevant to the sexualisation of children, for consideration, and request[ed] that [the Commissioner] make recommendations as to any specific actions required to be taken by the Government of Western Australia in relation to these matters in order to better secure the wellbeing of children and young people in Western Australia.'³

The documents referred to the Commissioner were:

Written laws

- *Classification (Publications, Films and Computer Games) Enforcement Act 1996*

2 *Commissioner for Children and Young People Act 2006* (WA), Part 3, Section 19.

3 The Speaker (Mr G. A. Woodhams), Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 25 October 2012, p7735.

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- Criminal Code, Chapter 25

Reports

- American Psychological Association (APA), *Report of the APA Task Force on the Sexualisation of Girls* (2007, republished 2010),
- Commonwealth Parliament, Senate Standing Committee on Environment, Communication and the Arts, *Inquiry into Sexualisation of Children in the Contemporary Media* (2008),
- Commonwealth Parliament, Senate Legal and Constitutional Affairs References Committee, *Review of the National Classification Scheme: Achieving the Right Balance* (June 2011),
- United Kingdom Department of Education, *Letting Children be Children: Report of an Independent Review of the Commercialisation and Sexualisation of Childhood* (2011) ('the Bailey Review'),
- French Parliament, *Against Hyper-Sexualisation: A New Fight for Equality* (March 2012).

Practices, procedures and other matters

- Outdoor advertising, particularly billboards
- Use of children in advertising
- Marketing of sexualised products to children
- Education of children.⁴

The JSCCCYP of the 38th Parliament asked the Commissioner 'to provide her considerations and recommendations by the close of business on Friday 11 January 2013.'⁵ According to the statement to Parliament, 'the committee will table its report on this referral in January 2013.'⁶

The Commissioner provided her report on 11 January 2013, as requested. However, the Parliament of Western Australia was prorogued for the 2013 state election on 14 December 2012, before the JSCCCYP of the 38th Parliament could receive, consider and

4 Mr G. A. Woodhams, (The Speaker), Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 25 October 2013, p7735.

5 Ibid.

6 Ibid.

respond to the Commissioner's report. The JSCCCYP of the 39th Parliament was established on 22 May 2013.

The approach taken by the JSCCCYP of the 39th Parliament

The JSCCCYP of the 39th Parliament contacted the Commissioner in mid-2013 and sought her agreement to access the report provided to the previous committee. The Commissioner provided her agreement and a copy of the report to the new committee at the end of May 2013.

As the JSCCCYP of the 39th Parliament was a new committee with members new to Parliament and to the joint standing committee, the Committee took some time to consider the referral of this issue to the Commissioner, and the Commissioner's report. As part of this process, the Committee undertook a range of briefings with experts in a variety of relevant areas in order to better inform its considerations. The Committee also met with the inaugural Commissioner for Children and Young People, Ms Michelle Scott, and her replacement in an acting capacity, Ms Jenni Perkins.

As part of its consideration, the Committee wrote to the Attorney General in December 2013, seeking his advice as to what action or policy was being implemented to address the issue of the sexualisation of children in Western Australia. The Committee received a reply from the Attorney General in January 2014, which stated:

...The Department of the Attorney General is not currently undertaking any specific initiatives to deal with this issue. However, the Department is responsible for the development of policy contained in the Classification (Publications, Films and Computer Games) Enforcement Act 1996 (the WA Enforcement Act). The WA Enforcement ACT endeavours to protect children and unsuspecting adults by providing restrictions on the publication and possession of publications, films and computer games. However, it should be noted that the WA Enforcement Act does not apply to broadcasting services such as radio, television and the Internet. Broadcasting remains the sole responsibility of the Commonwealth Government.⁷

The Attorney General went on to highlight his Department's responsibilities and roles in relations to the *Criminal Code*, which 'contains various offences and penalties for persons who sexually abuse children or who possess or distribute child exploitation material.'⁸

7 Hon Michael Mischin MLC, Attorney General; Minister for Commerce, Letter, 23 January 2014.

8 Ibid.

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Additionally, the Attorney General advised he had introduced to Parliament in November 2013 the 'Criminal Code Amendment (Child Sexual Offences) Bill 2013'.⁹ According to the Attorney General, '(t)his Bill demonstrates the State Government's ongoing commitment to protect children from sexual predators, both within and outside of the State's borders.'¹⁰

After further consideration, and as discussed below in the 'Next Steps' section, the Committee has resolved to table the report in Parliament, and refers it to the Attorney General for his careful consideration.

What is the 'sexualisation of children'?

The sexualisation of children is an issue that has gained greater public attention in Australia since approximately 2006. Two papers were published by the Australia Institute in that year that drew attention to the issue and sparked off considerable debate.¹¹ In the following years, several Commonwealth Parliament committee inquiries have been conducted that have touched on the issues surrounding the sexualisation of children. These included the Senate Standing Committee on Environment, Communication and the Arts, 'Inquiry into Sexualisation of Children in the Contemporary Media' in 2008, and the Senate Legal and Constitutional Affairs References Committee, 'Review of the National Classification Scheme: Achieving the Right Balance' in 2011. The issue received attention internationally as well, with inquiries held in the United States (2008), the United Kingdom (2011), and France (2012).¹²

The American review by the American Psychological Association (APA) developed a definition of the sexualisation of children which has been referenced in much of the literature on the issue. The APA found that sexualisation occurs where one of four conditions is present, when:

- A person's value comes only from his or her sexual appeal or behaviour, to the exclusion of other characteristics;
- A person is held to a standard that equates physical attractiveness (narrowly defined) with being sexy;

9 Hon Michael Mischin MLC, Attorney General; Minister for Commerce, Letter, 23 January 2014.

10 Ibid.

11 La Nauze A and Rush E, *Corporate Paedophilia: Sexualisation of children in the media*, (The Australia Institute, 2006), and La Nauze A and Rush E, *Letting Children be Children: Stopping the sexualisation of children in Australia*, (The Australia Institute, 2006).

12 Commissioner for Children and Young People, *Literature review: The sexualisation of children*, March 2012.

- A person is sexually objectified – that is, made into a thing for others' sexual use, rather than seen as a person with the capacity for independent action and decision making; and/or
- Sexuality is inappropriately imposed upon a person.¹³

The APA report goes on to state:

All four conditions need not be present; any one is an indication of sexualisation...the fourth condition (the inappropriate imposition of sexuality) is especially relevant to children. Anyone (girls, boys, men, women) can be sexualized. But when children are imbued with adult sexuality, it is often imposed upon them rather than chosen by them. Self-motivated sexual exploration, on the other hand, is not sexualization by our definition, nor is age-appropriate exposure to information about sexuality.¹⁴

The Commissioner's literature review into the issue of child sexualisation defines 'sexualisation of children' as 'typically understood to mean that children are depicted or treated as sexual objects or that sexuality is being inappropriately imposed on children through media, marketing or products directed at them that encourage them to act in adult sexual ways...it has been said that sexualisation has become the 'background noise' or 'wallpaper' of children's lives and this may be potentially harmful to them.'¹⁵

The work of the Commissioner for Children and Young People on this issue

The sexualisation of children is a priority issue for the Commissioner for Children and Young People in Western Australia. The Commissioner has produced several publications on the issue, and made numerous submissions to relevant government reviews both in Western Australia and nationally. These activities include:

- Hosting two seminars titled 'Children's Wellbeing in a Sexualised Society,' which produced a presentation now available on the internet;
- Commissioning a literature review 'to examine the evidence for the sexualisation of children and its impact on their wellbeing.'¹⁶

13 American Psychological Association, Task Force on the Sexualization of Girls, *Report of the APA Task Force on the Sexualization of Girls*, APA, Washington DC, 2008, p. 1.

14 Ibid.

15 Commissioner for Children and Young People, *Sexualisation of children, Issues Paper 9*, March 2012, p1.

16 Commissioner for Children and Young People, *Sexualisation of children*. Available at: <http://www.ccp.wa.gov.au/content/Sexualisation-of-children-.aspx>. Accessed on 04 February 2014.

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- Production of an issues paper and a guide for parents and the broader community on what can be done ‘to reduce the potential harm caused by sexualisation of children.’¹⁷
- Making submissions to the following inquiries:
 - The National Classification Scheme Review Discussion Paper (2011)
 - The National Classification Scheme Review Issues Paper (2011)
 - The Australian Government Attorney-General’s Department and the Standing Committee of Attorneys-General – Commonwealth Guidelines for the Classification of Computer Games (2011)
 - The Senate Legal and Constitutional Committee Inquiry into the Australian film and literature classification scheme (2011)
 - The Australian Government Attorney-General’s Department – R18+ classification of computer games (2010)
 - The Senate Standing Committee on Environment, Communications and the Arts – Inquiry into the sexualisation of children in the contemporary media (2008)
 - The Department of Broadband, Communications and the Digital Economy ABC and SBS: Towards a Digital Future (2008)
 - The Australian Communications and Media Authority (ACMA) Draft Children’s Television Standards (2008).¹⁸

A complex issue

As the Commissioner’s *Issues Paper 9* makes clear, there has been significant attention and discussion of the issue in recent years and many different types of harm have been suggested as likely to result. These claims include that the sexualisation of children may:

- *impede children’s development of a healthy body image*
- *affect children’s self esteem*
- *affect aspects of children’s cognitive and emotional development*

17 Commissioner for Children and Young People, *Sexualisation of children*. Available at: <http://www.ccp.wa.gov.au/content/Sexualisation-of-children-.aspx>. Accessed on 04 February 2014.

18 Ibid.

- *impact upon children's mental and physical health and wellbeing...*
- *affect how children conceptualise femininity and sexuality, and gender and sexual roles*
- *contribute to or provoke sexual harassment (or 'sexualised violence') in schools and workplaces*
- *affect educational achievements for girls and lower their aspirations.*¹⁹

The Commissioner's literature review made the point that 'while these may be the possible impacts of sexualised imagery of children and related marketing practices addressed to children, to date there is little substantive or empirical evidence to support these claims.'²⁰ The Committee acknowledges this point, but agrees with the Commissioner when she concludes that 'although there is not yet any direct evidence that sexualised media and advertising is harmful to the wellbeing of children and young people, the potential risks to healthy childhood development should not be ignored.'²¹

The Committee is of the view that while the impact of sexualisation on children is difficult to quantitatively measure, and to distinguish from other influences in their lives, this does not mean that the issue should not be addressed. There is no doubt that there is work to be done in the areas of what constitutes 'sexualisation'; its impact on children individually and on society as a whole; and what can be done about it.

The Committee is equally aware that what is seen as a priority issue that needs substantive action by some members of society may be seen by others as normal experimentation or 'fun'. Research conducted for the Scottish Parliament in 2009 involved a survey of parents that found:

*Most parents talked about childhood in terms of 'innocence'; but interpretations of this varied. Some saw experimenting with make-up, even imitating 'sexy' dance styles (and similar behaviour) as innocuous, natural, fun, and devoid of adult sexual connotations.*²²

The subjective nature of judgements in this area is well demonstrated by a recent 'media storm' in Queensland.

19 Commissioner for Children and Young People, *Sexualisation of children, Issues Paper 9*, March 2012, p1-2.

20 Ibid., p2.

21 Ibid.

22 Research conducted for the Scottish Parliament's Equal Opportunities Committee, '*External Research on Sexualised Goods Aimed at Children*,' SP Paper 374 (2010), available at <http://archive.scottish.parliament.uk/s3/committees/equal/reports-10/eor10-02.htm> . Accessed 3 June 2014. (Section on parents' views)

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A recent magazine cover in Queensland demonstrated the extent of the differences in opinion of what equates to sexualisation. The publication, 'Haven for Families', published a photo of a 'young model with tousled blonde hair wearing a two-piece costume leaning up against a wall and staring into the distance.'²³ As media coverage of the issue stated, 'the artsy vintage-wash image has divided the community with some praising the unique cover and others likening it to child exploitation.'²⁴ Readers who posted online about the magazine cover made comments such as "Disgusting! I was appalled the moment I saw it. A young girl in a suggestive pose and not enough clothes," and "I'm really concerned about the way the media hypersexualises children."²⁵ But others who posted supported the image, 'likening it to a high fashion shoot,' or stating "This is a CHILD leaning on a wall in a costume, very tastefully done. There is no body image issues here (sic)."²⁶

23 Fineran, L., "Provocative' Haven magazine front cover prompts claims of child exploitation', *The Courier-Mail*, 06 February 2014, <http://www.couriermail.com.au/news/queensland/provocative-haven-magazine-front-cover-prompts-claims-of-child-exploitation/story-fnihsrf2-1226819442347>

24 Ibid.

25 Ibid.

26 Ibid.

Figure 1 - "Provocative' Haven magazine front cover prompts claims of child exploitation', *The Courier-Mail*, 06 February 2014²⁷



(Haven Magazine's controversial front cover featuring child model Tenae. Pic: Julie Willis Photography *Source*: Supplied)

The differences in opinion in relation to this image demonstrate some of the difficulties for policy makers in responding to the issue of sexualisation of children. What some people view as blatant sexualisation is not necessarily viewed as such by others, while some cases may be obviously inappropriate to almost everyone.

In this context, it is interesting to note another result from the research conducted for the Scottish Parliament into sexualised products aimed at children.²⁸ The study involved, in part, a discussion with parents about a range of products that had been identified by the researchers as 'sexualised' in some way. As the researchers stated:

27 Fineran, L., "Provocative' Haven magazine front cover prompts claims of child exploitation', *The Courier-Mail*, 06 February 2014, <http://www.couriermail.com.au/news/queensland/provocative-haven-magazine-front-cover-prompts-claims-of-child-exploitation/story-fnihsrf2-1226819442347>

28 Research conducted for the Scottish Parliament's Equal Opportunities Committee, 'External Research on Sexualised Goods Aimed at Children,' SP Paper 374 (2010), available at <http://archive.scottish.parliament.uk/s3/committees/equal/reports-10/eor10-02.htm>. Accessed 3 June 2014.

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even discussion of the 'sexualised' products we presented to parents revealed the difficulty of agreeing lines that might be drawn in relation to any single item, as there was no unanimous response to any of them. Indeed, in one group, after some intensely voiced concerns about sexualisation, our product display led two mothers to admit that they had already bought many or most of the 'pink' goods (Barbie, Bratz, make-up, etc.) for their daughters. Such evidence points to the lack of consensus in defining what is sexualised ... It also indicates the sometimes free-floating quality of parents' anxieties, which may derive from perceptions of social trends and tendencies, yet not be exactly mirrored in everyday consumption practices.²⁹

While it may be the case that there is uncertainty and confusion about whether particular items or images constitute 'sexualisation of children', it is clear there is considerable anxiety amongst parents and society more broadly. The numerous inquiries and considerable public comment on the issue, detailed further in the Commissioner's report, demonstrate the importance of addressing the issue. The Committee would therefore like to see further action taken in Western Australia on this issue.

Finding 1

The Committee finds that there is much concern amongst parents and the broader society regarding the 'sexualisation of children', and that the Commissioner's report encompasses a range of complex social, legal and practical issues. The Committee would like to see further research and policy work conducted in Western Australia on this issue.

The Commissioner's proposals

The Commissioner's report makes fourteen proposals of areas where further research and inquiry could be considered. While the full text of the report is available at appendix 1, the proposals have been reproduced here for ease of access.

Proposal 1: Longitudinal research of the views of children and young people

Longitudinal research is required:

- To examine the views of Western Australian children and young people about media, advertising, classification, online activities and cyber safety in order to properly inform future and ongoing policy and legislative changes to address

29 Research conducted for the Scottish Parliament's Equal Opportunities Committee, 'External Research on Sexualised Goods Aimed at Children,' SP Paper 374 (2010), available at <http://archive.scottish.parliament.uk/s3/committees/equal/reports-10/eor10-02.htm>. Accessed 3 June 2014. P28.

the impact of sexualised media and advertising content on the wellbeing of children and young people; and

- To examine whether exposure to sexualised media and advertising content is influencing the behaviours and attitudes of children and young people (such as earlier onset of sexual activity; changes in sexual behaviour and attitudes towards sex; changes in attitudes towards relationships with peers and members of the opposite sex; and body dissatisfaction, eating disorders and mental health issues).

Proposal 2: Parent education

A comprehensive approach to the provision of practical and universally accessible information and support for parents is required.

Proposal 3: Cyber safety education strategies

An audit be conducted to assess the uptake of effective cyber safety education strategies in all Western Australian schools.

Proposal 4: Australian curriculum - health and physical education

The draft Australian curriculum on health and physical education be monitored to ensure that the curriculum include broad sexual and health education including education about body image, eating disorders and healthy relationships and education about how to critically analyse media and advertising and advertising content and that appropriate training is provided to teachers regarding the curriculum.

Proposal 5: Amendments to the Classification (Publications, Films and Computer Games) Enforcement Act 1996 (WA)

Further consideration be given to possible amendments to the *Classification (Publications, Films and Computer Games) Enforcement Act 1996 (WA)*

- To prohibit the sale, supply, demonstration, possession or advertisement of a R18+ computer game in Western Australia; or
- To provide that it is an offence for any person to supply a R18+ computer game to a minor; and/or
- To provide that it is an offence for any person to supply a R18+ film to a minor; and/or
- To provide that it is an offence for any person to supply a Category 1 Restricted publication to a minor.

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Proposal 6: Development of a national classification system for publications

Western Australia consider contributing to the development of a national classification system for publications to provide appropriate advice to consumers and parents about the suitability of publications (that are currently unrestricted) for children and young people of differing ages.

Proposal 7: Referral of a review of the Classification (Publications, Films and Computer Games) Enforcement Act 1996 (WA) to the Law Reform Commission of Western Australia

Further consideration be given to referring a review of the *Classification (Publications, Films and Computer Games) Enforcement Act 1996 (WA)* to the Law Reform Commission of Western Australia to examine whether the current regime adequately protects children and young people from harm caused by exposure to adult or inappropriate content and, further, to consider Western Australia's position in relation to the current National Classification Scheme as well as the proposed new national scheme as recommended by the ALRC

Proposal 8: Review of classification scheme for music videos

The Commonwealth Government's response to the recommendations of the ALRC be examined to determine whether any proposed classification process for music videos adequately reflects community concerns about the impact of music videos on children and young people.

Proposal 9: Monitor the Commonwealth government's response to the recommendations of the review of the self-regulatory system of advertising in Australia

The Commonwealth Government's response to Recommendation 2 of the House of Representatives Standing Committee on Social Policy and Legal Affairs report *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising* (2011) be examined with a view to ensuring that the system of regulation of advertising in Australia adequately considers the best interests of Western Australia's children and young people and, in addition, any review that is conducted by the Commonwealth Attorney General's Department into the self-regulatory system for advertising in Australia be monitored.

Proposal 10: Consideration of a referral of a review of Western Australian laws and regulations that impact on billboard and outdoor advertising.

Consideration be given to referring to the Law Reform Commission of Western Australia a review of Western Australia's laws and regulations that may impact on the regulation of the content and display of billboard and outdoor advertising to determine if there is any scope for Western Australia to regulate the nature and positioning of outdoor advertisements to ensure that children and young people are protected from exposure to sexualised images

Proposal 11: Consideration of amendments to the Children and Community Services Act 2004 (WA) to create an offence to use children in sexually provocative advertising

Consideration be given to whether s 192 of the *Children and Community Services Act 2004 (WA)*, could be amended or a new provision enacted to create an offence for using children and young people in sexually provocative advertising.

Proposal 12: Consideration of amendments to the Children and Community Services Act 2004 (WA) to regulate child beauty pageants in Western Australia

Consideration be given to whether there is any need and scope to regulate child beauty pageants in Western Australia.

Proposal 13: The development of a voluntary code of conduct for retailers

Further consultation take place with relevant industry bodies, parents and children and young people regarding the necessity for voluntary guidelines or codes of practice for children's products.

Proposal 14: Monitor the recommendations of the Victorian Parliamentary Law Reform Committee inquiry into sexting

The findings of the Victorian Parliamentary Law Reform Committee inquiry into sexting be examined to determine if there are any strategies or options to reduce the negative impact of sexting on children and young people in Western Australia both generally and in relation to the sexualisation of children and young people.

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Next steps

The Committee feels that the Commissioner's report is an excellent summary that makes a clear case for the need for further research and inquiry on this important issue. It is not the role of the Committee to undertake further research in this area, as its Terms of Reference require it to focus on monitoring, reviewing and reporting to Parliament on the exercise of the functions of the Commissioner (see appendix 2 for the full terms of reference of the JSCCCYP).

Finding 2

The Commissioner's report provides an excellent overview of the issue of the sexualisation of children, and makes a clear case for further research and inquiry in Western Australia. The report points the way for further policy action on the issue.

The Committee considered how best to handle the proposals made in the Commissioner's report. The Committee is aware of the ongoing statutory review of the office of the Commissioner, and of the uncertainty the outstanding review has created around the role. While the sexualisation of children is already a priority issue for the Commissioner, it is clear from the nature of some of the proposals that they would best be pursued by the government agencies responsible for policy in this area, and not by the Commissioner's office.

Another option the Committee examined was to refer each proposal to the relevant government agency or department for individual consideration, either prior to the public release of the Commissioner's report, or after. However, the Committee concluded that this would be a time-consuming process, and would result in a piecemeal approach. It is also, clearly, not the Committee's role to coordinate such an exercise.

The Committee is also aware of impatience in some quarters for access to the report. After due consideration, the Committee has decided that the public release of the report is the preferable approach, and so refers the report to the Attorney General for consideration. On balance, the Department of the Attorney General appears to be the best placed department to accept policy responsibility for this issue, and to coordinate a response.

The Committee calls on the Attorney General to examine the Commissioner's report and the proposals within it, and to report to parliament on which proposals can be implemented in Western Australia to better protect Western Australian children.

Recommendation 1

The Committee recommends that the Attorney General examine the Commissioner's report into the Sexualisation of Children, and report to the Parliament on which proposals can be implemented to better protect Western Australian children.

A handwritten signature in blue ink, appearing to read 'L.L. Baker', is positioned above the printed name.

Ms L.L. Baker, MLA
Chair

Appendix One

The Commissioner for Children and Young People – Report into the Sexualisation of Children

Commissioner for Children and Young People WA

Response to the referred matter of 25 October 2012 by the Joint Standing Committee on the Commissioner for Children and Young People

11 January 2013

1. Background

The Role of the Commissioner for Children and Young People

Western Australia's inaugural Commissioner for Children and Young People (the Commissioner) was appointed in December 2007 pursuant to the *Commissioner for Children and Young People Act 2006* (the Act). The role of the Commissioner is one of broad advocacy. Under the Act, the Commissioner has responsibility for advocating for over half a million Western Australian citizens under the age of 18 and for promoting and monitoring their wellbeing. The guiding principles which must be observed under the Act are that:

- (a) children and young people are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation;
- (b) the contributions made by children and young people to the community should be recognised for their value and merit;
- (c) the views of children and young people on all matters affecting them should be given serious consideration and taken into account; and
- (d) parents, families and communities have the primary role in safeguarding and promoting the wellbeing of their children and young people and should be supported in carrying out their role.¹

In addition, in performing all functions under the Act, the Commissioner is required to have regard to the United Nations Convention on the Rights of the Child, and the best interests of children and young people must be the paramount consideration.

¹ *Commissioner for Children and Young People Act 2006* (WA) s 4.

Furthermore, priority and special regard must be given to the interests and needs of Aboriginal and Torres Strait Islander children and young people, and to children and young people who are vulnerable or disadvantaged for any reason.²

Under the Act, the term 'children and young people' is defined as people under the age of 18 years and the terms 'child' or 'young person' have the corresponding meaning. Throughout this document, the terms children and young people or child or young person also have the same meaning.

Pursuant to s 19(1) of the Act, the Commissioner's functions include the task of considering and making recommendations 'in relation to, any written laws, draft laws, reports, policies, practices, procedures or other matters relating to the wellbeing of children and young people that are referred' to the Commissioner by the Standing Committee. Pursuant to s20(1)(g) of the Act when performing the legislative functions the Commissioner is also required, to '*take reasonable steps to avoid the duplication of functions performed by other government agencies*'.

The Referral from the Joint Standing Committee on the Commissioner for Children and Young People

On 25 October 2012 the Standing Committee wrote, pursuant to s 19(1) of the Act, to refer to the Commissioner particular matters concerning the sexualisation of children and young people. The Standing Committee's resolution is in the following terms:

Pursuant to section 19(1) of the *Commissioner for Children and Young People Act 2006*, the Joint Standing Committee for the Commissioner for Children and Young People refers to the Commissioner for Children and Young People the following matters, insofar as they may be relevant to the sexualisation of children, for consideration, and requests the Commissioner to make recommendations as to any specific actions required to be taken by the government of Western Australia in relation to these matters in order to better secure the wellbeing of children and young people in Western Australia:

Written laws

Classification (Publications, Films and Computer Games) Enforcement Act 1996

Criminal Code, Chapter 25

Reports

American Psychological Association (APA), *Report of the APA Task Force on the Sexualisation of Girls* (2007, republished 2010)

² *Commissioner for Children and Young People Act 2006* (WA) s 20.

Commonwealth Parliament, Senate Standing Committee on Environment, Communication and the Arts, *Inquiry into Sexualisation of Children in the Contemporary Media* (2008)

Commonwealth Parliament, Senate Legal and Constitutional Affairs References Committee, *Review of the National Classification Scheme: Achieving the Right Balance* (June 2011)

United Kingdom Department for Education, *Letting Children be Children: Report of an Independent Review of the Commercialisation and Sexualisation of Childhood* (2011) ('the Bailey Review')

French Parliament, *Against Hyper-Sexualisation: A New Fight for Equality* (March 2012)

Practices, procedures and other matters

Outdoor advertising, particularly billboards

Use of children in advertising

Marketing of sexualised products to children

Education of children

The referral stipulates that the Commissioner's considerations and recommendations are to be provided to the Standing Committee by close of business on Friday 11 January 2013.

The above referred matters include legislation, reports, practices, procedures and other matters. In order to address each of the referred matters in the overall context of the sexualisation of children and young people, it is convenient to separate the discussion of the relevant issues into the following key areas:

- Education
- Classification and access to media
- Advertising
- Products
- Child exploitation laws

In addressing these key areas, the Commissioner has considered all of the specific matters referred by the Standing Committee except for one report. A full and accurate English translation of the report of the French Parliament, *Against Hyper-Sexualisation:*

A New Fight for Equality (March 2012) is not available and accordingly, that report has not been examined.

The Commissioner's approach

At the outset it is necessary to highlight that the abovementioned referral from the Standing Committee encompasses a number of complex social, legal and practical issues and the allocated time provided to consider these issues and formulate recommendations is short (less than 10 weeks including the Christmas period).³ As a consequence, it has not been possible to undertake consultations with individuals and organisations (including children and young people and in particular Aboriginal children and young people and children and young people who may be vulnerable or disadvantaged for any reason) nor has there been sufficient time to seek submissions from interested stakeholders or establish an expert reference or advisory group. In addition, the time allocated has not allowed for a thorough testing of recommendations with relevant agencies and experts. Given these caveats the Commissioner has therefore identified proposals for further consideration rather than specific recommendations.

In responding to this referral, the Commissioner has considered a number of inquiries and reports that have already examined the issue of the sexualisation of children and young people (both in Australia and overseas). Some of these reports are expressly

³ In this regard it is noted that some of the major inquiries dealing with the issue of sexualisation of children and young people in Australia and overseas have lasted for between three and 24 months. The American Psychological Association Taskforce on the Sexualisation of Girls was established in February 2005 and its report was first published in 2007: American Psychological Association, *Report of the APA Taskforce on the Sexualisation of Girls* (2007, republished 2010); Reg Bailey was appointed in December 2010 to lead a review in the United Kingdom and this review was informed by earlier reports completed on the commercialisation of children, the sexualisation of children and child internet safety in 2009-2010. For the *Bailey Review* 1,000 parents completed an online call for evidence, 1,025 parents and 520 children and young people completed a survey, 120 organisations provided written submissions and over 40 organisations and individuals consulted directly with Reg Bailey. The report was published after 18 months in June 2011: R Bailey, *Letting Children be Children: Report of an independent review of the commercialisation and sexualisation of childhood* (United Kingdom, Department for Education, 2011); research into sexualised goods in Scotland was commissioned in February 2009 and a report was finalised by the end of that year. For this report, a total of five researchers were appointed, 32 retail outlets were surveyed and focus groups with children and young people and parents were undertaken: Scottish Parliament, Equal Opportunities Committee, *External Research on Sexualised Goods Aimed at Children* SP Paper 374 (2010). The recent Australian Law Reform Commission (ALRC) inquiry into classification commenced in March 2011 and was completed by February 2012. An issues paper was released in May 2011 and the ALRC received over 2,300 submissions. A discussion paper was then finalised in September 2011 with 77 submissions received in response. Sixty three consultations were also undertaken with organisations and individuals. The ALRC report deals with only one of the key areas considered in this report.

included in the above referral. In addition, general desk top research has been undertaken. The issue of sexualisation of children and young people has been one of the priority areas of work for the Commissioner for some time. In particular the Commissioner has sought to stimulate public discussion amongst professionals and the broader community.

Prior to this referral a literature review to examine the issue of sexualisation of children and young people and its impact on their wellbeing had been undertaken by the Commissioner. Following this literature review, an Issues Paper was produced along with a guide for parents and the wider community about how they can help to reduce the potential harm caused by the sexualisation of children and young people. These documents are available on the Commissioner's website (see <http://www.cyp.wa.gov.au/content/Sexualisation-ofchildren-.aspx>). All of this material has informed the consideration of the options in this paper.

In addition, on 21 November 2012 in partnership with the Department for Communities the Commissioner hosted two events dealing with the sexualisation of children. The first was a three-hour seminar aimed at professionals working with children and young people and included presentations from two renowned researchers and social commentators: Professor Elizabeth Handsley (President of the Australian Council on Children and the Media, and Professor of Law at Flinders University in Adelaide) and Ms Jane Caro (columnist, broadcaster and regular presenter on ABC TV's *The Gruen Transfer*). This event generated considerable discussion amongst professionals about what is precisely meant by the term 'sexualisation of children'. Further there were a wide range of views about strategies to address this issue.

The second event was a Parenting Matters seminar which promoted discussion on the impact of sexualised media, advertising and products on children and young people and what parents can do to safeguard the wellbeing of their children. Many parents expressed the need for practical advice as to how to approach this issue with their children. This discussion was led by Professor Elizabeth Handsley. Additional consultation for the purposes of this response has taken place between the Commissioner's office and Professor Elizabeth Handsley and with Professor Donna Cross (foundation Professor of Child and Adolescent Health at the Edith Cowan University Child Health Promotion Research Centre (CHPRC) and Western Australian of the Year 2012).

As discussed later, the views of children and young people about the impact of sexualised media content is limited. Because of the time and resourcing constraints of this referral, a full consultative process with children and young people has not been possible. However, the topic for the 2012 *Commissioner for a Day Challenge* was the impact of media and advertising on children and young people. The Commissioner received 34 entries from 70 Western Australian children and young people aged ten to

15 years. The content of those entries has been considered in order to include, as far as possible, some perspectives from Western Australian children and young people.

The sexualisation of children and young people is clearly a concern to many parents and the wider community.

It is necessary to recognise that if sexualised media and advertising content is available to adults it is inevitable that some of this content will be accessed (either deliberately or inadvertently) or viewed by children and young people. With the convergence of media and the multitude of platforms by which children and young people can access material from the internet (for example laptops, smart phones, smart TVs, iPad, iPods and other gaming devices) laws and regulations cannot alone protect children and young people from the potential harmful effects of being exposed to premature or inappropriate sexualised content.

The views of all members of the community are important in this debate; however, from the Commissioner's perspective, the wellbeing of children and young people and their best interests are paramount.

There are possible areas of action and options worthy of further consideration. While some of these options include further consideration by government and/or industry regulation of inappropriate sexualised content, it is important to note that these actions cannot alone ensure that children and young people will not be exposed to such material. Nor can it help children and parents discuss issues concerning premature or inappropriate exposure to sexualised content and imagery. As is often the case when responding to complex social issues a holistic or multi-pronged strategy is required.

Therefore, consistent with the guiding principle under s 4(d) of the Act that '*parents, families and communities have the primary role in safeguarding and promoting the wellbeing of their children and young people and should be supported in carrying out their role*' what is required is a joint effort between parents, community and government to ensure that parents and children and young people are supported to navigate contemporary media and advertising content.

2. Preliminary issues

Defining 'sexualisation of children'

Before addressing each of the key areas - education, classification, advertising, products, and child exploitation laws - it is necessary to discuss what is meant by the phrase 'sexualisation of children'. The phrase has not been defined by the Standing Committee in its referral to the Commissioner yet a number of different issues have been referred for consideration including advertising, classification of media, education, products, and child exploitation (child pornography) laws.

The 2010 American Psychological Association report dealing with the sexualisation of girls distinguished sexualisation from 'healthy sexuality' (which it stated is '*an important component of both physical and mental health, fosters intimacy, bonding, and shared pleasure, and involves mutual respect between consenting partners*'). It argued that sexualisation occurs when:

- a person's value comes only from his or her sexual appeal or behaviour, to the exclusion of other characteristics;
- a person is held to physical standard that equates physical attractiveness (narrowly defined) with being sexy;
- a person is sexually objectified-that is, made into a thing for others' sexual use, rather than a person with the capacity for independent action and decision making; and/or
- sexuality is inappropriately imposed on a person.⁴

This definition has been criticised for being too broad and it has been argued that it could potentially apply to almost any physical depiction of a person and apply to '*anything people might do/or buy in order to enhance their physical attractiveness*'.⁵

There is a risk that if a broad definition is adopted, the extent of sexualisation of children may be overestimated or that the more serious examples of inappropriate sexualisation will be overlooked. Incidentally, it has been observed that one commentator (Catharine Lumby) is concerned that '*by having this conversation [about sexualisation] all the time we'll end up looking for sexual images of children where there aren't [any]*'.⁶

4 American Psychological Association, *Report of the APA Taskforce on the Sexualisation of Girls* (2007, republished 2010) 1.

5 Scottish Parliament, Equal Opportunities Committee, *External Research on Sexualised Goods Aimed at Children* SP Paper 374(2010) [1.6].

6 Taylor A, 'Reframing the Debate Over the Media Sexualisation of Children' (2010) *Australasian Journal of Early Childhood Development*, Vol 5 no. 1.

In 2008 the Commonwealth Senate Committee Standing Committee on Environment, Communications and the Arts (the 2008 Senate Committee) conducted an inquiry into the sexualisation of children in contemporary media. It stated that:

[T]he committee has viewed sexualisation as a continuum from the explicit targeting of children with images, attitudes and content that inappropriately and prematurely seek to impose a sexual identity on a child, through the presentation of one-dimensional and stereotypical images of children and young people, predominantly girls, in content, products and advertising directed at them, to what might be described as the 'background noise' of society at large where products, advertising and other materials made for and directed at adults are readily accessed by children and reinforce the sexualising messages they are receiving?⁷

A review in the United Kingdom in 2010 defined sexualisation as the '*imposition of adult sexuality on to children and young people before they are capable of dealing with it, mentally, emotionally or physically*' and clarified that it does not apply to '*self-motivated sexual play, nor to the dissemination of age-appropriate material about sex*'.⁸

It is apparent from the research that the formulation of a clear and consistent definition of the phrase has not been achieved. It is not easy to devise a standard definition of the phrase 'sexualisation of children' because researchers and commentators focus on different aspects of the subject. What falls under the umbrella of the phrase 'the sexualisation of children' is dependent, to some extent, on each of the following issues:

- Whether one is considering the *direct* sexualisation of children (ie, where children are depicted as sexual objects or where children are directly targeted by inappropriate products and media) or whether one is also considering the *indirect* sexualisation of children where children are exposed to products and media content designed for adults.⁹
- The age of the children being considered. The focus, in one of the first major publications in Australia dealing with this topic (*Corporate Paedophilia: Sexualisation of children in the media*¹⁰) was on children under the age of 12 years. Therefore, issues that could impact on the inappropriate sexualisation of teenagers were not considered (for example access to online pornography). The 2008 Senate Committee observed that the '*the whole question of inappropriate or premature*

7 Parliament of Australia, Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of Children in the Contemporary Media* (June 2008) [1.28].

8 Papadopoulos L, *Sexualisation of Young People Review* (2010) 23.

9 Rush E & La Nauze A, *Corporate Paedophilia: Sexualisation of children in the media* (The Australian Institute, 2006) [1.2].

10 Ibid.

*sexualisation has quite different meanings for young people in their mid-teens exploring their own emerging sexuality and younger children of primary school age being introduced to sex-related roles or attitudes wholly irrelevant to their stage of physical or emotional development.*¹¹ While the impact of the sexualisation of children and young people will vary depending on the age of the child, the exclusion of teenagers from the debate removes a host of issues and changes the scope of the phrase 'the sexualisation of children'.

- The perceived source of the sexualisation. In most of the research, the sexualisation of children and young people is assigned to wholly external influences (for example television, magazines, movies, computer games, advertising and manufacturers). However, it is important to bear in mind that the sexualisation of children is not necessarily solely attributable to external sources. The impact of peers, parents and family cannot be ignored. In addition, children and young people today are not passive media consumers. Many children and young people 'generate' media themselves (for example posting movies and photos on social media websites). The impact of the distribution between children and young people of user-generated sexual content is relevant to the present discussion.¹²
- Whether the impact of inappropriate or premature sexualisation is being considered in relation to both girls and boys (for example the impact of exposure to online pornography may be different for girls and boys).

In an earlier literature review published by the Commissioner, it was concluded that the phrase 'sexualisation of children' is generally *'understood to mean that the child is depicted or treated as a sexual object or that sexuality is being inappropriately imposed on the child through media and marketing directed at them that encourages them to act in adult sexual ways'*.¹³ However, this can exclude consideration of indirect sexualisation through exposure to sexualised images intended for adults. The inclusion of classification laws in the terms of the current referral from the Standing Committee means that this aspect of the topic needs to be considered. Therefore, in order to respond to this referral it is considered useful to separate the concept of sexualisation of children and young people into two distinct parts:

11 Parliament of Australia, Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of Children in the Contemporary Media* (June 2008) [1.47] It has been observed that the question of sexualisation of children and young people is very different for a teenager who is 16 years or older and legally permitted to consent to sexual activity: Lumby C & Albury K, 'Too Much? Too Young? The Sexualisation of Children Debate in Australia' (2010) 135 *Media International Australia* 141, 148.

12 Parliament of Australia, Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of Children in the Contemporary Media* (June 2008) [3.44].

13 Commissioner for Children and Young People, *Literature Review: The sexualisation of children* (March 2012) 10.

- **Exposure:** where children and young people are being exposed to *inappropriate* sexualised content (whether deliberately or otherwise). This aspect of sexualisation of children and young people covers issues such as exposure to online pornography, music videos and editorial material in magazines dealing with sexual issues; access to R18+ computer games and films; and access to user-generated sexual media by other children and young people. For this part, whether or not the exposure to the particular content constitutes 'sexualisation' will depend on the age and developmental stage of the child or young person. For example, it may well be considered sexualisation for an eight-year-old child to be exposed to sexually suggestive music videos but not necessarily so for a sixteen-year-old. Likewise, editorial advice in a teenage magazine about 'safe sex' may be appropriate for an older teenager but not so for a younger child. The potential risks of premature and inappropriate exposure to sexualised content include early onset of sexual activity, unwanted sexual activity, changes in sexual behaviour, participation in risky online activities (such as posting explicit images on social networking sites) and risk of online sexual exploitation. Potential areas for action might include restricting access to inappropriate material and appropriate education strategies for children and young people and their parents about online safety.
- **Objectification:** where children and young people are being depicted or treated as sexual objects. This aspect is linked to advertising and marketing and the direct targeting of children and young people to adopt aspects of adult sexuality. It applies to both boys and girls and involves the promotion of stereotypical ideals of sexual attractiveness (ie, slender women and muscular men). This form of sexualisation might occur from marketing products to young children such as padded bras, the use of unrealistic images in advertising (for example models who are airbrushed or too skinny) or children who appear in advertisements adopting sexually provocative poses. Potential impacts on the wellbeing of children and young people are body image dissatisfaction, eating disorders and mental health issues. Potential areas for action might include the regulation of advertising and products, and education strategies for dealing with media awareness, sex education, healthy bodies and healthy relationships.

In considering how the phrase 'sexualisation of children' should be interpreted for the purposes of this referral, the Commissioner has been somewhat constrained by the use of that term in the referral by the Standing Committee and its common use in the research and media. The use of the term 'the sexualisation of children' presumes that there is such a phenomenon; however, there is no definitive evidence to prove its existence. While the term is used in this response for ease of reference it is suggested that in discussions about this issue it would be preferable to refer to the impact of

sexualised media and advertising content on the wellbeing of children and young people.

The evidence

There is concern in the community about the impact of sexualised media and advertising content on the wellbeing of children and young people. Kids Free 2B Kids is a not-for-profit organisation established in 2007 by a mother with support from other parents which highlights concern about the increasing sexualisation of children and young people in the media, advertising and clothing industries.¹⁴ It works in conjunction with the Australian Council on Children and the Media (ACCM). ACCM is also a not-for-profit community organisation with a commitment to advancing the healthy development of children and young people with a focus on the role that media plays in childhood development and it actively *'supports families, industry and decision makers in building and maintaining a media environment that fosters the health, safety and wellbeing of Australian children'*.¹⁵ One of the key links on its website is titled 'Too Sexy Too Soon: The sexualisation of children in the media' which has various links to resources.

In April 2012, the Australian Medical Association called for a new inquiry to address the *'premature sexualisation of children in marketing and advertising'* and argued that the current self-regulatory system for advertising is failing.¹⁶ Many of the media references in this report also show that community members are concerned about the impact of sexualised imagery on children and young people and the number of inquiries that have taken place worldwide reflects a level of community concern.

It is also evident that there has been an increase in sexualised images in the media and advertising in recent times. The 2008 Senate Committee observed that:

*Sexualisation ... has become more visible in our society in recent decades. Sexualised images and actions are more openly discussed and portrayed in the media and used explicitly as a marketing device.*¹⁷

Similarly, the United Kingdom Bailey Report acknowledged that society has become more openly sexualised and stated that:

*Sexualised imagery is now a mainstream part of children's lives, forming the 'wallpaper' or backdrop to their everyday activities whether in public places through billboards and shop windows, or in the home through television and other media.*¹⁸

14 See <http://www.kf2bk.com/about.htm>

15 See <http://childrenandmedia.org.au/>

16 <https://ama.com.au/media/ama-calls-new-inquirv-sexualisation-children-advertising>.

17 Parliament of Australia, Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of Children in the Contemporary Media* (June 2008) [1.8].

It has also been observed that the '*world is saturated by more images today than any other time in modern history*'.¹⁹

However, despite evidence that sexual imagery is widely available and that there is a high level of community angst about this issue, there is no conclusive evidence about the effects of sexualised imagery and whether it contributes to the sexualisation of children and young people.²⁰ One of the difficulties in establishing a causal link between sexualised media and advertising content and harms to children and young people is the reality that, even if children and young people are significantly influenced by media and advertising, they are also influenced by family, school, peers and others.²¹ Another complicating factor is the polarised views in the community. For example, it has been observed that some parents consider that children copying sexy dance moves or wearing makeup is just innocent fun while others consider it to be distasteful.²²

Nonetheless, there is some concern about the potential harms to children and young people associated with or caused by (at least in part) sexualised content and imagery. Before discussing these potential harms, it is noted that the 2008 Senate Committee concluded that there is no evidence that '*presentation of children in styles of clothing or poses that are inappropriate to their age, that association with particular products or that an interest in so called celebrity culture makes either the children who appear in such material or the children who have access to that material more vulnerable to sexual abuse by paedophiles*'.²³

Potential harms

Body dissatisfaction and eating disorders

One of the most frequently referenced consequences of children and young people's exposure to sexualised imagery and content is body dissatisfaction and eating disorders. It has been stated that body image '*relates to how people think and feel about their own body*'. Body image is most commonly associated with a person's size

18 R Bailey, *Letting Children be Children: Report of an independent review of the commercialisation and sexualisation of childhood* (United Kingdom, Department for Education, 2011) 2, 9 & 23.

19 Papadopoulos L, *Sexualisation of Young People Review* (2010) 22.

20 See Parliament of Australia, Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of Children in the Contemporary Media* (June 2008) [3 .6]; Scottish Parliament, Equal Opportunities Committee, *External Research on Sexualised Goods Aimed at Children* SP Paper 374 (2010).

21 Parliament of Australia, Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of Children in the Contemporary Media* (June 2008) [1.41].

22 See Scottish Parliament, Equal Opportunities Committee, *External Research on Sexualised Goods Aimed at Children* SP Paper 374 (2010).

23 Parliament of Australia, Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of Children in the Contemporary Media* (June 2008) [1.51].

and shape; however, body image might be affected also ethnic diversity and skin colour, religious diversity, physical disabilities, and natural skin colour.²⁴ Females tend to seek to lose weight to attain the ideal thin body while males strive to be lean and muscular.²⁵ It has been contended that the '*current culture's ideal of beauty is largely unrealistic, unattainable and increasing achievable only through digital enhancement*'.²⁶

*Negative body image occurs when individuals develop negative feelings about their body and these feelings impact on their general wellbeing to the extent that they can become a contributing factor in the development of serious psychological and physical concerns, including eating disorders, depression and anxiety disorders, self-harm and social isolation.*²⁷

While it is reasonable to assume that media and advertising play a part in causing body image dissatisfaction it is important to emphasise that body image dissatisfaction is also linked to 'social messages' received by people in an 'individual's immediate social environment' and the individual's personal characteristics²⁸ (which may or may not make them more susceptible to body image dissatisfaction). The Australian Office for Youth has argued that:

*[T]here is sufficient and consistent research to confidently say that cultural ideals portrayed and promoted by the mass media, advertising and fashion industries play an important role in the development of body dissatisfaction, particularly among females. However, the research findings are not universally consistent in demonstrating causal links. Rather than playing a direct role, it may be that the messages and picture of beauty created by the media, fashion and advertising industries act as a background to more influential messages that are given to people by their friends and family.*²⁹

24 Australian Government, Office for Youth, *Body Image*, Information Paper (2009) 5.

25 Ibid 8.

26 Ibid 8.

27 Ibid (2009) 5.

28 Ibid 10. It has recently been observed that the causes of eating disorders are a 'complex combination of genetic, cultural, social, physical and personality factors'. It was further stated that common personality traits found among those with an eating disorder include perfectionism, obsessive-compulsiveness and neuroticism': Butterfly Foundation for Eating Disorders, *Paying the Price: The economic and social impact of eating disorders in Australia* (2012) [1.2].

29 Office for Youth, *ibid* 13. The 2008 Senate Committee report noted that while there is evidence from practitioners that young people are having difficulties with body image and some have eating disorders there is insufficient evidence about the causes. 'A child may internalise parental anxieties or dietary habits long before any 'sexualising' influence from the media has an impact': Parliament of Australia, Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of Children in the Contemporary Media* (June 2008) [1.14]

Nevertheless, the prevalence of eating disorders and body dissatisfaction among children and young people is a cause for concern. Statistics sourced from Eating Disorders Foundation of Victoria and available on the website of the Victorian Centre of Excellence in Eating Disorders³⁰ shows, among other things, that:

- children as young as seven can have an eating disorder;
- anorexia nervosa is the third most common chronic illness for adolescent girls in Australia (after obesity and asthma);
- fifty per cent of primary school children in Sydney wanted to weigh less and 25 per cent of seven to 10 year olds have dieted to lose weight;
- it has been estimated that '*young women now see more images of outstandingly beautiful women in one day than our mothers saw throughout their entire adolescence*'; and
- it appears that men are '*becoming increasingly concerned about the size, shape and overall appearance of their bodies. In 1972, 15 per cent of men reported [being] dissatisfied with their overall appearance. By 1985, this had risen to 34 per cent and by 1997, to 43 per cent. One in three young males want their body to be heavier and one in three want their body to be lighter. Twenty six to 30 per cent of boys want to be thinner. However prevailing cultural values encourage many boys to desire increased size and muscle mass*'.

A report by the Australian Office for Youth observed that:

- Seventy to 76 per cent of Australian high school girls 'consistently choose an ideal figure that they wish to have that is thinner than their own';
- more than half of Australian high school girls have tried to lose weight; and
- in one study of adolescent boys, 33 per cent wanted to be thinner and 33 per cent wanted to be larger.³¹

A United Kingdom review referred to a study of over 1,000 women (carried out by cosmetics company *Dove*) which found that more than 66 per cent of the study participants said they '*lacked confidence about their bodies as a result of viewing digitally altered images of models*' and 96 per cent said '*they would like advertisers to be honest about the extent to which they were airbrushing or digitally manipulating images*'.³²

30 See <http://www.ceed.org.au/www/452/1001127/displayarticle/1001246.html> .

31 Australian Government, Office for Youth, *Body Image*, Information Paper (2009) 15.

32 Papadopoulos L, *Sexualisation of Young People Review* (2010) 36.

The 2012 iGen survey of 500 Western Australians aged 18 to 30 years conducted by *The West Australian* and HBF found that nearly '90 per cent of female iGens say they feel a lot of pressure about how they look, and more than a third have concerns with their body image. One in 6 male iGens also report body image concerns. Since 2009, a consistent 1 in 10 iGens say they have had an eating disorder.'³³

Mission Australia's *Youth Survey 2012* released in December 2012 found that the 'top three issues of personal concern were coping with stress, school and study problems and body '. Thirty-three per cent of respondents to the survey³⁴ were either 'extremely concerned' or 'very concerned' about body image.³⁵ Body image concerns were much higher for females: 43 per cent of females were either extremely concerned or very concerned compared to 18.6 per cent of males.³⁶ Similar (although slightly higher) results were apparent for Western Australian respondents (781 young people): 35 per cent were extremely concerned or very concerned with body image (almost 48 per cent of females and 22 per cent of males).³⁷

A study involving Aboriginal young people and homeless young people reported that in addition to body size (thinness for females and muscularity for males) clothing, hair, and personal grooming were also relevant to the concept of body image for disadvantaged young people.³⁸ It was also found that social networking sites were commonly used by the study participants and constituted 'a source of body image pressure'.³⁹

Body image was also a common theme in the comments made by children and young people for the 2012 Commissioner for a Day Challenge. An eleven year old boy stated that:

If a little girl sees a fully grown woman wearing ridiculous outfits, and they're really skinny and wearing too much makeup, the little girls think 'oh, when I grow up I have to be like that.

Participants referred to the dominance of thin women (particularly models) in advertising and the media and that typical male stereotypes were either very muscular or younger, fashionable and partly androgynous. Some children explained that the

33 See <http://www.hbfhealthinsurance.com.au/2012/03/09/iqgeneration-survey/>.

34 A total of 15,351 young people aged 15 to 19 years participated in the survey: Mission Australia, *Youth Survey 2012*(December 2012) 2.

35 Ibid 14.

36 Ibid 15.

37 Ibid 101-102.

38 Flaxman S et al, *Body Image and Disadvantaged/Vulnerable Youth*, Final Report (Social Policy Research Centre, University of New South Wales prepared for National Youth Affairs Research Scheme, June 2012) 1. The study involved interviews or groups sessions with 36 young people.

39 Ibid 3.

media made people superficial and materialistic with far more concern on looks and appearance than is warranted.

In the Commissioner's research report *Children and Young People's Views on Wellbeing* it was observed that:

Young people said that friends had talked to them about self-harming, body image issues, not eating, serious emotional abuse and suicidal thoughts. One girl said she knew girls who were depressed about their body image. She related this to the way in which girls were depicted in the media and felt there was too much pressure on people to look glamorous.⁴⁰

The Australian government has begun to address the high incidence of body dissatisfaction. In 2009, the *National Advisory Group on Body Image* released its report outlining a proposed national strategy on body image.⁴¹ In preparing this national strategy online submissions were received from 150 individuals and organisations including young people, teachers, youth workers, social workers and psychologists.⁴² It was recommended that the Australian government implement a voluntary industry code of conduct on body image and, once established, it should continue to monitor its effectiveness.⁴³

In response, the Australian Government released its *Voluntary Industry Code of Conduct on Body Image*⁴⁴ which provides principles to guide industry 'to adopt more body image friendly practices'. These principles include:

- Using a diverse range of people with different body shapes, sizes and ethnicities.
- Promoting a positive and healthy body image.
- Not using technology to alter images but if images have been manipulated saying so explicitly.
- Using models who have a healthy weight.
- Only using models aged 16 years or above to model adult clothes.
- Stocking a wide variety of clothing sizes.

40 Commissioner for Children and Young People Western Australia, *Research Report- Children and Young People's Views on Wellbeing* (2010) 68.

41 National Advisory Group on Body Image, *A Proposed National Strategy on Body Image*, Report (2009).

42 Ibid 11.

43 Ibid, Recommendation 4.

44 National Advisory Group on Body Image, *Voluntary industry Code of Conduct* (2012).

To encourage compliance with the voluntary code, the Australian government established the *Positive Body Image Awards*.⁴⁵ These awards are a positive step towards encouraging industry to comply with the voluntary code of conduct and to reduce the incidence of unrealistic body images in the media and in advertising.

Changes in sexual activity, attitudes and behaviour

It has been suggested that exposure to sexualised content may lead to earlier onset of sexual activity among young people.⁴⁶ However, the external research report commissioned by the Scottish Parliament Equal Opportunities Committee in 2010 found that although there is evidence of an increase in sexual activity at an earlier age than in the past, there is little evidence to show that media is the cause. The 2008 Senate Committee report noted that in 1950 the average age of first sexual intercourse in Australia was 18 years but by 2005 the average had fallen to 16 years.⁴⁷ The National Survey of Secondary Students and Sexual Health in 2008 found that 78 per cent of the students surveyed (Year 10 and Year 12 students) had engaged in some form of sexual activity (65 per cent said they had engaged in sexual touching and 44 per cent in oral sex). Twenty five per cent of Year 10 students and just over 50 per cent of Year 12 students reported engaging in sexual intercourse. The proportion of students who said that they had had three or more sexual partners increased from 20 per cent in 2002 to 30 per cent in 2008 and there was also an increase in the proportion of students who reported unwanted sex.⁴⁸

Irrespective of whether there is a direct correlation between sexualised media and advertising content and earlier onset of sexual activity among young people (and/or increased sexual activity with multiple partners), common sense suggests that exposure to sexual content may impact on the attitudes and behaviours of children and young people. For example, there is concern that exposure to explicit online pornography is causing children and young people to view particular sexual practices as 'normal'.⁴⁹ In addition, children and young people are now able to easily access and create media online via smart phone technology. This creates additional risks (such as engaging in sexting behaviour). As Professor Donna Cross recently commented in *The West Australian*:

Increased access to advanced mobile and digital technologies is raising new issues for children and young people, their families and the broader community ... These risks

45 See <http://www.youth.gov.au/sites/Youth/bodyimage/Awards>

46 See for example, <http://www.rand.org/pubs/researchbriefs/RB9068/index1.html>; <http://www.prweb.com/releases/2009/05/prweb2386804.htm>

47 Parliament of Australia, Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of Children in the Contemporary Media* (June 2008) [6.35].

48 Muir et al, *State of Australia's Young People* (2009) 112.

49 See Hiatt B, 'School's Online Porn Warning', *The West Australian*, 8 November 2012, 3 and see also below, 'Online Pornography'.

*include cyber-bullying, access to inappropriate or sexualised content, online sexual predators and overuse of the internet ...and ... sexting behaviour.*⁵⁰

Further research is needed in this area to obtain the views of children and young people and examine changes in behaviour over time.

50 Cross D, 'Parents Need to Switch on to Social Media Risks', *The West Australian*, 4 December 2012, 20.

The views of children and young people

In the earlier literature review published by the Commissioner, it was observed that little attempt has been made *'to obtain the views of children and young people about how they perceive and make sense of apparently sexualised media representations or products'*.⁵¹ An exception to this was the Scottish report in 2010.⁵² It considered the views of 57 children and young people aged 12 to 14 years (39 girls and 18 boys). The consultations revealed, among other things, that children and young people were eager to show themselves as 'wise consumers'; that trends and peer pressure are a significant influences in decisionmaking; that children and young people recognised marketing techniques; that children and young people rejected the idea that they dressed to impress the opposite sex; and that children and young people thought practices such as girls playing with makeup at home or boys wearing hair gel in primary school were a form of 'rehearsal' for secondary school rather than a form of objectification or sexualising.⁵³

In the literature review it was noted that a study in the United Kingdom involving 800 children and young people aged nine to 17 years found that *'children are not the incompetent or naive consumers they are frequently assumed to be ... children's response to sexual imagery in advertising or music videos displayed a well-developed understanding of how such images are constructed and manipulated'*.⁵⁴ This study further observed that:

*Younger children's partial knowledge means that they often ignore or misinterpret many references to sexual matters, particularly where they are in the form of comic innuendo or 'suggestion (as in the case of music videos) ... To this extent, the media have only a limited power to impose sexual meanings: in order to be meaningful in the first place, they must fit into a framework of existing knowledge.'*⁵⁵

51 Commissioner for Children and Young People, *Literature Review: The sexualisation of children* (2012) 12.

52 In the literature review it was observed that consultations had been undertaken with children and young people as part of the *Bailey Review* but these consultations concerned commercialisation and marketing generally rather than potential sexualisation: Commissioner for Children and Young People, *Literature Review: The sexualisation of children* (2012) 6-7.

53 See Scottish Parliament, Equal Opportunities Committee, *External Research on Sexualised Goods Aimed at Children* SP Paper 374 (2010).

54 Buckingham D & Bragg S, *Young People, Sex and the Media* (Hampshire: Palgrave MacMillan, 2004) 238 as cited in Grieshaber S, 'Sexualisation of Children in Contemporary Australian Media' (Queensland: School of Early Childhood, Queensland University of Technology, 2010) 17.

55 Buckingham D & Bragg S, *Young People, Sex and the Media* (Hampshire: Palgrave MacMillan, 2004) 240 as cited in Lumby C & Albury K, 'Too Much? Too Young? The Sexualisation of children debate in Australia (2010) 135 *Media International Australia* 141, 148.

Despite the lack of conclusive proof that sexualised images and content is causing harm to children and young people, the 2008 Senate Committee argued that out of precaution some action is required, in particular, '*young people and their parents must be given the knowledge, skills and support necessary to 'read' the media critically*'.⁵⁶ Some options for support for parents are discussed later in this paper. Similarly, the United Kingdom Bailey Report stated that '*we should not wait before acting: insufficient evidence to prove conclusively there is harm to children does not mean that no harm exists*'.⁵⁷ Nonetheless, it was recognised that longitudinal research is also necessary. Other commentators have also argued for more research:

*We recommend that methodologically and empirically sound Australian research be conducted with children under the age of 12 into their experience of media targeted to them. This research should be grounded in relevant interdisciplinary academic fields and differentiate age groups in this cohort. It should take particular account of children's real life experiences of the media they encounter, the meanings they take from it and how they make sense of this media in relation to other values they gain from their families, schools and communities. We note that children's voices are a notable absence in the current debate.*⁵⁸

While proposals for specific actions have been made in this report in an endeavour to reduce the potential harms to children and young people from sexualised media and content, they have been made in the absence of substantial reference to evidence of harm in Western Australia. It is proposed that a study into the views of children and young people about media, advertising, classification and cyber-safety could be funded to inform future policy decisions and reform agendas. In addition, this study could also consider, whether exposure to sexualised content is having any impact on the behaviours of children and young people.

56 Parliament of Australia, Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of Children in the Contemporary Media* (June 2008) [1.16].

57 R Bailey, *Letting Children be Children: Report of an independent review of the commercialisation and sexualisation of childhood* (United Kingdom, Department for Education, 2011) 7.

58 Lumby C & Albury K, 'Too Much? Too Young? The Sexualisation of Children Debate in Australia' (2010) 135 *Media International Australia* 141, 150.

Proposal 1: Longitudinal research of the views of children and young people

Longitudinal research is required:

- To examine the views of Western Australian children and young people about media, advertising, classification, online activities and cyber safety in order to properly inform future and ongoing policy and legislative changes to address the impact of sexualised media and advertising content on the wellbeing of children and young people; and
- To examine whether exposure to sexualised media and advertising content is influencing behaviours and attitudes of children and young people (such as earlier onset of sexual activity; changes in sexual behaviour and attitudes towards sex, changes in attitudes towards relationships with peers and members of the opposite sex, and body dissatisfaction, eating disorders and mental health issues.)

3. Children and young people's access to media and advertising content

The media landscape has changed significantly; it is no longer a choice between attending the cinema, watching television, reading magazines or playing a computer game. Children and young people now have a vast array of platforms by which they can view media and advertising content including smart TVs, iPods, iPads, laptops, gaming consuls and smart phones and, significantly, mobile devices easily enable access to the internet. It has been observed that:

*Children in the 21st century are considered by many to be the digital generation: IT savvy children who have never known life without a computer or the internet. They use IT frequently and in a variety of ways; as a source of information/ entertainment and social communication.*⁵⁹

Media use

An Australian Bureau of Statistics (ASS) study of cultural and leisure activities of Australian children and young people found that in the 12 months to April 2012 children aged five to 14 years spent, on average, 15 hours watching television, DVDs or videos (in the previous fortnight) in comparison to 10 hours on other screen-based activities.⁶⁰ This is consistent with data from the Australian Communications and Media Authority (ACMA) which found that '*online activity is the second most time-consuming media activity for Australian youth*'.⁶¹

Online use

While traditional forms of media such as television and films are still the most frequently used media, it is clear that the prevalence of online activity by children and young people is continually on the rise. The ASS study shows that 65 per cent of children aged five to 14 years had accessed the internet in the preceding 12 months in 2006; this figure increased to 79 per cent in 2009. In the 12 month period prior to April 2012, 90 per cent of children aged five to 14 years had accessed the internet.⁶²

In 2009 the most popular online activities for children and young people aged nine to 14 years were educational activities, online games, listening to and downloading music

59 Australian Bureau of Statistics, *Australian Social Trends: Children of the digital revolution* (June 2011) 1.

60 Australian Bureau of Statistics, *Children's Participation in Cultural and Leisure Activities, Australia*, Catalogue No. 4901.0 (April 2012). The ACMA 2010 study found that in 2007, children and young people aged 8 to 17 years 'reported spending an average of one hour and 17 minutes per day accessing and using the internet': The Senate Legal and Constitutional Affairs References Committee, *Review of the National Classification Scheme: Achieving the right balance* (June 2011) [8.6].

61 The Senate Legal and Constitutional Affairs References Committee, *ibid* [8.6].

62 Australian Bureau of Statistics, *Children's Participation in Cultural and Leisure Activities, Australia*, Catalogue No. 4901.0 (April 2012).

and surfing the net.⁶³ Internet activity varies according to age. For example, for five to eight year olds the five most popular activities (in order) were playing online games; educational activities; general browsing; listening to or downloading music; and watching or downloading TV programs, videos or movies. However, for 12 to 14 year olds the most popular activities were educational activities; listening to or downloading music; general browsing; emailing; and using chat rooms, forums or instant messaging.⁶⁴ Internet use also increases with age; in 2009 the proportion of five to eight year olds using the internet was 60 per cent; however, this figure reached 96 per cent for 12 to 14 year olds.⁶⁵

Mobile phone use

In 2009 there were 91,400 children and young people (aged five to 14 years) in Western Australia who owned a mobile phone (32.7 per cent).⁶⁶ Unsurprisingly, the proportion of children who have a mobile phone increases with age. The 2012 ABS study of cultural and leisure activities reveals that two per cent of children aged five to eight years, 22 per cent of children aged nine to 11 years and 73 per cent of children aged 12 to 14 years had a mobile phone. It has also been reported in the media that 90 per cent of 15 to 17 year olds own a mobile phone.⁶⁷

Younger children generally used their mobile phone to contact family whereas older children tend to use their mobile phone to contact friends and access the internet.⁶⁸ Mobile phones are increasingly being used by children and young people for a variety of media activities. Smart phones enable users to make phone calls, send text messages, take photos, make videos and access the internet (including social networking sites such as Facebook and YouTube). In one study it was found that over three days, 22 per cent of eight to 17 year olds reported using their mobile phone to take photographs, 16 per cent played games, 10 per cent listened to music, seven per cent recorded videos and three per cent watched television shows or other videos.⁶⁹ Bearing in mind that this study was undertaken in 2007, it was observed that *'the consumption of media through mobile devices is likely to continue to increase'*.⁷⁰ Mobile

63 Western Australia Department of Communities, *Parents and Cyber Safety in the Middle Years*, Issues Paper (2012) Attachment 1.

64 Ibid.

65 Australian Bureau of Statistics, *Australian Social Trends: Children of the digital revolution* (June 2011) 2.

66 Australian Bureau of Statistics, *Children's Participation in Cultural and Leisure Activities, Australia* 49010D0019_200904 (April 2009).

67 Cross D, 'Parents Need to Switch on to Social Media Risks', *The West Australian*, 4 December 2012, 20.

68 Western Australia Department of Communities, *Parents and Cyber Safety in the Middle Years*, Issues Paper (2012) Attachment 1

69 The Senate Legal and Constitutional Affairs References Committee, *Review of the National Classification Scheme: Achieving the right balance* (June 2011) [8.12].

70 Ibid [8.13]-[8.14].

phone ownership for children and young people is becoming more achievable due to lower costs.⁷¹ If trends in the United States are replicated in Australia, it is clear that mobile phone ownership among children and young people will rise. In 2004 in the United States 39 per cent of eight to 18 year olds owned a mobile phone and this increased to 66 per cent in 2009. There was also a considerable increase in the ownership of iPods and MP3 players- 18 per cent in 2004 rising to 76 per cent in 2009.⁷²

Where media is accessed

Most commonly, children and young people access the internet at home (92 per cent) followed by school (86 per cent). However, a significant proportion of children and young people also access the internet from other places such as public libraries and internet cafes (45 per cent). Some children and young people access the internet from multiple locations.⁷³

*Information technology is constantly changing. Recent developments in smart phone technology (such as iPhones and Android devices) and gaming consoles (such as the Xbox, PlayStation and Wii) allow internet access to expand beyond the boundaries of computers and the home. With portable devices, users can access the internet whenever or wherever they like. Access and use of information technology by children is likely to continue to become easier and more convenient.*⁷⁴

The sheer volume of online material makes it impossible to control all media and advertising content on the internet. There are over one trillion web sites, hundreds of thousands of 'apps' available to download to mobile devices and

*[i]t is estimated that 60 hours of video are uploaded every minute onto YouTube, and four billion videos are viewed every day worldwide from that site alone. In Australia, there are an estimated six million YouTube users, watching over 200 million videos per month. The Apple iTunes store now sells almost 10 million songs per day, making it by far the major music retailer worldwide.*⁷⁵

Because of these new technologies, the current regulatory systems for media and advertising content are now out-of-date. Later in this report, the Australian Law

71 See Western Australia Department of Communities, *Parents and Cyber Safety in the Middle Years*, Issues Paper (2012) Attachment 1.

72 Australian Communications and Media Authority, *Trends in Media Use by Children and Young People* (2010) 2.

73 Australian Bureau of Statistics, *Australian Social Trends: Children of the digital revolution* (June 2011) 2.

74 Ibid 5.

75 ALRC, *Classification-content Regulation and Convergent Media*, Final Report (February 2012) [3.16].

Reform Commission's proposal for a new national classification system is discussed and considered. As recognised by the Australian Law Reform Commission it is clearly not feasible to classify and regulate all online content. Therefore, children and young people and their parents (and others members of the community such as teachers) need to be informed to understand and manage the potential risks to children and young people from exposure to sexualised media and advertising content and to enable open and constructive discussions to occur within families and communities.

4. Education

As noted above, laws and regulations dealing with classification, advertising, products and child exploitation cannot alone respond to the potential harms caused to children and young people as a result of sexualised media and advertising content.

Technological change has meant that the images accessible by children and young people through media and advertising is endless and a regulatory approach alone will not enable children and young people to understand and navigate their way through these images nor will it assist parents, families and their children to deal with issues as they emerge. The provision of appropriate education strategies for parents and for children and young people is a strategy which Western Australia can adopt to reduce the potential harms caused by children and young people's exposure to sexualised media and advertising content.

While a full review of all education programs covering media, advertising and online safety is not possible in the present context, some initiatives are discussed below. Two main areas are considered (for both children and young people and their parents): online safety and sex/health education (including media awareness).

It is important to note at the outset, that education initiatives (including strategies to equip parents to provide appropriate and relevant information to their children) should be age specific. During consultation with Professor Donna Cross it was discussed that information about sex or cyber safety might be provided by parents and schools at the time when children and young people are considered to be at risk of engaging in particular behaviour; however, arguably this is too late. In the Commissioner's *Issues Paper Number 7 Middle Years* published in 2011 it was explained that '*early adolescence or the middle years (from nine to 14 years) is a critical stage in children's development; a period in which major changes occur at multiple levels of a child's life*'⁷⁶ According to the Australian Research Alliance for Children and Youth the middle years involve:

- major physiological, neurological, cognitive and psychosocial changes (the transition from primary to secondary school is of particular significance);
- changing relationships with parents and families as they seek greater autonomy and independence from parental oversight and control of their lives; and
- an increase in the importance and influence of peer relationships (as children seek to establish their own personal and social identity).⁷⁷

76 Commissioner for Children and Young People, *Middle Years*, Issues Paper (2011) 1.

77 Australian Research Alliance for Children and Youth 2011, '*betwixt and between*': A Report on ARACY's Middle Years Project

Accordingly, early intervention to ensure that children and young people and their parents are properly informed of the relevant issues and provided with strategies to minimise harm is necessary and, for this reason, it is suggested below that appropriate education strategies concerning cyber safety and sex/health education could be made available for both primary school and secondary school students.

Online safety

Australian Communications and Media Authority (ACMA), via *Cybersmart*, runs a one-hour outreach internet awareness program for students, teachers and parents through schools (so long as the school has registered for the service). In 2011-12, this program was delivered to 198,000 parents, teachers and students throughout Australia.⁷⁸

ACMA also offers a one-day professional development workshop for teachers to provide a '*comprehensive understanding of a modern student's exposure and use of technology*'⁷⁹ The *Cybersmart* website reports that more than 11,000 teachers have attended this workshop since they commenced and in 2011-12, over 2,300 teachers attended one of these workshops.⁸⁰ However, this represents a relatively small proportion of all teachers - ABS data shows that in 2010 there were 286,135 teachers in Australia (30,440 in Western Australia).⁸¹

In addition, ACMA's *Cybersmart* program offers students studying teaching (in the final year of study) a 50 minute lecture and a 90 minute tutorial. Again universities have to be registered for this program. In 2011-12, 4,500 trainee teachers participated in this program.⁸² The *Cybersmart* program also includes an online learning course (Connected) for teachers that involves

*issue based simulations that replicate a student's experience in social networking sites; video interviews with experts in the field including Professor Donna Cross and attitudinal surveys and interactive case studies than prompt teacher self-reflection.*⁸³

The *Cybersmart* website also offers various online resources for children and young people, teachers and parents. It was reported in the ACMA 2011-12 annual report that the *Cybersmart* website had 561,436 'unique visitors'.⁸⁴

While these programs and resources are being regularly accessed it is clear that they are not being used by all by children and young people, parents and teachers. There

78 ACMA, *Annual Report 2011-2012*, 132.

79 <http://www.cybersmart.gov.au/Outreach/Internet%20safetv%20awareness%20presentations.aspx>

80 ACMA, *Annual Report 2011-2012*, 132.

81 ABS, *Schools Australia 2010*, No. 4221.0 (2011).

82 ACMA, *Annual Report 2011-2012*, 25.

83 <http://www.cybersmart.gov.au/Outreach/Connected.aspx>.

84 ACMA, *Annual Report 2011-2012*, 131. This was an increase from 434,793 in 2010-2011.

have been many calls for improved education initiatives to respond to the sexualisation of children and young people.⁸⁵ The ALRC explained in its report that:

The importance of parental supervision in protecting children from adult content online was stressed in many submissions to this Inquiry. In response to the question, 'What are the most effective methods of controlling access to online content?' many people essentially replied: education and parental supervision.⁸⁶

The ALRC also stated that content providers have an important role to play in assisting children and young people and parents/guardians to understand and use the various tools available to restrict media content⁸⁷ and that parents need to be specifically educated because of the 'generational digital divide' between parents and their children.⁸⁸

The importance of cyber safety education for younger children was emphasised in the interim report of the Joint Select Committee on Cyber-safety. It recommended that the Minister for School Education, Early Childhood and Youth '*consider the feasibility of assisting preschools and kindergartens to provide cyber-safety education programs for children*'.⁸⁹ It also recommended that the Minister develop '*core standards for cyber-safety education in schools*' and encourage all Australian schools to '*familiarise students, teachers, and parents with the ThinkUknow program, and the Cyber Safety Help Button and other resources of the Australian Communications and Media Authority to promote the cyber-safety message*'.⁹⁰ Additionally, recommendations were made to ensure that ACMA has sufficient funding to provide professional development training for teachers and that all universities should include cyber-safety material in their teacher training courses.⁹¹

In its response, the Australian Government noted a number of initiatives already been undertaken in relation to cyber safety including:

- a youth advisory group which provides advice on cyber safety issues;
- the Cybersafety Help Button which enable online users to easily access cyber safety information;

85 See for example, United Kingdom Department for Education, *Letting Children be Children: Report of an Independent Review of the Commercialisation and Sexualisation of Childhood* (2011) 34.

86 ALRC, *Classification-content Regulation and Convergent Media*, Final Report (February 2012) [10.81].

87 Ibid [10.86].

88 Ibid [10.87]-[10.88].

89 Parliament of Australia, Joint Select Committee on Cyber-safety, High-Wire Act: Cyber-Safety and the Young (June 2011) Recommendation 1.

90 Ibid 14.

91 Ibid Recommendations 16 & 17.

- the Cybersafety website;
- the Cybersafety Outreach program; and
- the funding for the Alannah and Madeline Foundation to conduct a national pilot of an approach to cyber safety for Australian schools (eSmart).⁹²

Some of the abovementioned recommendations were accepted in principle pending the finalisation of the government's Cyber White Paper in 2012. It appears that the publication of the white paper has been delayed.

The Alannah and Madeline Foundation developed *eSmart* in 2010 and it was piloted in 159 Australian schools. Edith Cowan University's Child Health Promotion Research evaluated the pilot program. The Victorian and Queensland Governments fund the *eSmart* program for state government schools and, in Victoria, for some disadvantaged independent and Catholic schools. The program is available to other schools for \$3,500 per school over four years.⁹³

An analysis of the most effective cyber safety education programs and the level of current uptake of cyber safety programs in Western Australia are beyond the scope of this response. It may be useful for an 'audit' of cyber safety education and awareness programs in Western Australian schools including consideration of the level of cyber safety education being delivered to primary school-aged students to be undertaken. In consultations with Professor Donna Cross, the need for flexibility was emphasised so that schools could assess their cyber safety education needs depending on the characteristics of their student population and issues facing students at particular times. The rollout of an education program in Western Australia has merit so that all schools can assess their current level of cyber safety strategies and fill the gaps where necessary.

In addition, appropriate programs for parents must be available on a regular basis and simple strategies should be developed to ensure that parents are aware of their need to be responsive to cyber safety issues at a young age. Importantly, cyber safety education for parents must be practical and easy to understand so that parents engage with the process. For example there will be little impact in advising parents to install filter software if they don't know what filter software is or they don't know how to install it.

Professor Donna Cross explained in recent opinion piece in *The West Australian*:

92 Australian Government, Statement of Response to the Joint Select Committee on Cyber-Safety, Interim Report, High-Wire Act: Cyber-safety and the Young (December 2011) 4.

93 See <http://www.amf.org.au/eSmartschools/>.

As parents or adult carers we need to talk with our children often, starting at a young age, about their use of technology ... We also need to try to stay up-to-date by regularly sitting with our children while they are on the computer and asking them to explain their activities ... Even if your children know more than you about technology there are still conversations you can have with them about their rights, their responsibilities and way to show respect online. For example, children must understand the importance of obtaining permission from friends and family members before taking pictures or videos of them- especially with their phones- and sending these images to others or posting them online. Similarly, encourage your children to talk to you if they receive messages with inappropriate content or images, or stumble across something inappropriate. To demonstrate the permanency of the online world, sit with each of your children every six months and use a search engine like Google to search their name and look at the information that forms their digital reputation ... ensuring the security settings on your children's social network sites are set to private and insisting your children only use webcams in shared family locations ... Most of all, we must take positive action early and often - not wait until our children experience problems.⁹⁴

These simple messages must be consistently delivered. While strategies such as ensuring privacy settings are in place on Facebook may not be relevant for five year olds, other strategies such as setting Google to 'safe search: strict' or setting the YouTube safety button to 'on' may go some way towards protecting younger children from unwanted exposure to inappropriate sexual images online. Many parents may not be aware of these simple options or where to find them on the webpage.

Enrolment at primary school is a useful first point of contact between government, education authorities and parents. An easy to understand brochure could be provided to every parent when a child is first enrolled in school explaining the importance of cyber safety awareness for both parents and children (with reference to practical information about the risks and examples of simple solutions). This brochure could direct parents to other more detailed resources. Finally, it is equally important that teachers are properly trained (both while studying to be a teacher and on an ongoing basis).

A 2012 inquiry in the United Kingdom reported that parents lack the knowledge and skills to effectively educate their children about internet safety and they find it hard to install and maintain device filters.⁹⁵

94 Cross D, 'Parents Need to Switch on to Social Media Risks', *The West Australian*, 4 December 2012, 20.

95 Claire Perry, *Independent Parliamentary Inquiry into Online Child Protection: Findings and recommendations* (April 2012) 5-6.

A striking theme throughout the Inquiry was the sense of powerlessness reported by parents who feel that they are being left behind by the evolution of technology and that they lack the knowledge and skills to have conversations with their children around this topic.⁹⁶

Proposal 2: Parent education

A comprehensive approach to the provision of practical and universally accessible information and support for parents is required.

Proposal 3: Cyber safety education strategies

An audit be conducted to assess the uptake of effective cyber safety education strategies in all Western Australian schools.

Sex and health education

Sex and health-related education is necessary to ensure that children and young people are properly informed about physical issues such as puberty; however, in terms of reducing the negative harms associated with sexualised media content it is also important that education programs address issues such as healthy body image and healthy relationships. The 2008 Senate Committee mentioned that a number of respondents had commented that schoolbased sex education programs should include the representation of sex and sexuality in the media and popular culture and that one respondent noted that sex education in schools is 'physiologically and anatomically' based but '*one of the most important things we need to teach young people is risk management, body image, understanding exploitation*'.⁹⁷

The National Advisory Group on Body Image stated that all governments should make '*funds available to support the delivery of reputable, existing body image programs in schools*'⁹⁸ and that body image should be included in normal lesson plans:

Teachers often use relevant social issues to support key learning outcomes, such as critical analysis, research and writing skills. The issue of body image would suit such a purpose. For example, critical thinking essays could focus on

96 Ibid 13.

97 Parliament of Australia, Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of children in the contemporary media* (2008) [6.9].

98 National Advisory Group on Body Image, *A proposed National Strategy on Body Image*, Report (2009) 27.

*how the media shapes societal norms around body image, and media studies could include analysis of digital enhancement to alter images.*⁹⁹

The National Advisory Group recommended that the Australian government provide information to parents and carers to assist them to '*promote positive body image messages in the home*'¹⁰⁰ and the importance of introducing appropriate body image programs at an early age was explained:

*When body image programs are introduced to children in their teens, it is often the case that body dissatisfaction and dieting for weight loss will already be normative and these practices are very difficult to reverse once established.*¹⁰¹

Education programs to address body image issues also need to be culturally specific and such programs should, among other things, be specifically developed for Indigenous children and young people.¹⁰²

Phase 3 of the Australian Curriculum - Health and Physical Education - is currently under review and the curriculum content is currently being developed. Once released, there will be a national consultation in relation to the draft curriculum. The Australian Curriculum, Assessment and Reporting Authority, (ACARA) *Draft Shape of the Australian Curriculum: Health and Physical Education, Consultation Report* (July 2012) noted that focus areas from Foundation to Year 10 will include sexuality and reproductive health, safety and body image.¹⁰³

Media awareness

Bearing in mind that children and young people cannot realistically avoid exposure to sexualised content in the media and advertising, it is important that children and young people are equipped to critically analyse the information presented to reduce the potential harms that may be caused. The Australian Office for Youth observed that studies have shown that media analysis may be an important tool in addressing body image dissatisfaction.

Media literacy programs can show people that media images are often manipulated and unrealistic. Media literacy fosters a healthy scepticism about mass media messages and encourages young people to think critically about the images that they are confronted with in their everyday lives. In this way,

99 Ibid.

100 National Advisory Group on Body Image, *A proposed National Strategy on Body Image*, Report (2009) 31.

101 Ibid 20.

102 See Flaxman S et al, *Body Image and Disadvantaged/Vulnerable Youth*, Final Report (Social Policy Research Centre, University of New South Wales prepared for National Youth Affairs Research Scheme, June 2012, 5.

103 There is no specific reference in this paper to cyber safety.

*media literacy can help young people become active consumers rather than passive victims of media influence and this can lead to a decrease in the internalisation of cultural ideals and goals associated with body dissatisfaction.*¹⁰⁴

Similarly, one commentator argued that media literacy skills may be able to lessen the negative influence of sexualised content by enabling children and young people to critically analyse society in general and that

*The incorporation of critical, philosophical perspectives into the curriculum of primary and secondary schooling could undermine the often consumerist and capitalist trends that promote sexualised images of childhood. That is, critical thinking skills may contribute to the development of a generation less likely to be influenced by sexualised imagery because they are more critical of its consumption and production.*¹⁰⁵

It is also important that teachers and parents are equipped to discuss these issues with children and young people. Professor Donna Cross indicated in consultations for this referral, that sex education is often delivered by school nurses or external agencies. One reason for this is that teachers (especially primary school teachers) are not trained in this area and naturally feel reluctant to discuss these issues with their students during normal classroom activities. Arguably, if teachers were better equipped to discuss issues concerning sexualised media and advertising content and associated matters such as body image and relationships between peers, children and young people are likely to be better and more regularly informed.

Proposal 4: Australian curriculum – health and physical education

The draft Australian curriculum on health and physical education be monitored to ensure that the curriculum include broad sexual and health education including education about body image, eating disorders and health relationships and education about how to critically analyse media and advertising and advertising content and that appropriate training is provided to teachers regarding the curriculum.

104 Australian Government, Office for Youth, *Body Image*, Information Paper (2009) 23.

105 Thompson K, 'Because Looks Can Be Deceiving: Media alarm and the sexualisation of childhood - do we know what we mean?' (2010) 19(4) *Journal of Gender Studies* 395, 398. See also Papadopolous L, *Sexualisation of Young People Review* (2010) 77

5. Classification and restriction of access to media

Unlike censorship (which is the total banning of particular media content), classification involves the provision of information about the nature of media content and its suitability for particular audiences. Classification also includes obligations about restricting access to potential audiences for which it has been deemed unsuitable.¹⁰⁶ A decision by the Australian Classification Board to 'refuse classification' is an illustration of censorship while a decision to classify a film MA15+ with the accompanying obligation to ensure that the film is not viewed by a child under the age of 15 years is an example of classification.

The term 'media content' has been defined by the Australian Law Reform Commission (ALRC) as '*content that is delivered through media delivery technologies, including print, broadcast, cinema, digital and online platforms, and is intended for an audience rather than being interpersonal communication*'.¹⁰⁷ Media content in Australia is currently regulated by a number of different bodies and applicable codes of conduct are platform-specific¹⁰⁸, for example films, computer games and publications, are subject to the National Classification Scheme whereas radio and television are regulated by the Australian Communications and Media Authority (ACMA) and audio music recordings are classified by the Australian Recording Industry Association (ARIA) and the Australian Music Retailers Association. However, as the Australian Government's recent *Convergence Review* observed:

*Australia's media landscape is changing rapidly. Today Australians have access to a greater range of communications and media services than ever before. Developments in technology and increasing broadband speeds have led to the emergence of innovative services not previously imagined. It is now possible to access traditional communications and broadcasting services in new ways, such as radio and television delivered over the internet ... Users are increasingly at the centre of content service delivery. They are creating their own content and uploading it to social media platforms. They are controlling what content they want to view and when they want to view it, for example, through podcasts of popular radio programs and catch-up television services provided by free-to-air networks.*¹⁰⁹

As a consequence of the convergence of media there are enormous challenges in ensuring that children and young people are protected from harm from exposure to inappropriate media content. It is not as simple as ensuring that R18+ DVDs are

106 ALRC, *Classification-content Regulation and Convergent Media*, Final Report (February 2012) [2.3].

107 Ibid 398.

108 Australian Government, *Convergence Review*, Final Report (2012) 39.

109 Ibid vii.

displayed separately from children's DVDs in shops or that restricted adult magazines are covered from view. As discussed earlier, children and young people will at times be exposed to adult media content or media content that is inappropriate for their age and development (either inadvertently or deliberately). The challenge is to reduce this risk and enable children, parents and families to respond effectively to unwanted or inappropriate exposure - the provision of appropriate education strategies for children and young people and parents (as discussed above) is a key strategy in response to the potential harms caused by exposure to sexualised media and advertising content. However, there are other regulatory responses that warrant consideration and these are discussed in the following section.

The current classification process

Films, computer games and publications

The classification of films (including DVDs and videos), publications and computer games is covered by the National Classification Scheme. This is a cooperative scheme between the Commonwealth, states and territories and it operates under the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) and complementary state and territory enforcement legislation along with other legislative instruments such as the *National Classification Code, Guidelines for the Classification of Publications 2005* (Cth) and the *Guidelines for the Classification of Films 2012* (Cth) and *Guidelines for the Classification of Computer Games 2012* (Cth)). Under the National Classification Scheme responsibility for classifying films, computer games and publications rests with the Commonwealth; however, the enforcement of laws controlling the sale, supply, distribution and display of classified material is a state and territory issue. The relevant legislation in Western Australia is the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* (WA). Classification issues (such as the content of classification codes and guidelines) are dealt with by the states, territories and Commonwealth through the Standing Council on Law and Justice (previously SCAG).

The *Intergovernmental Agreement on Censorship* which underpins the National Classification Scheme was entered into between the Commonwealth of Australia and the states and territories in 1995. Initially, Western Australia did not fully participate in the scheme because it retained responsibility for classifying publications and included a power to set aside classification decisions made by the Australian Classification Board. However, in 2002 Western Australia became a full participant in the national scheme when it amended the *Censorship Act 1996* (WA) to refer its power to classify publications to the Commonwealth and to abolish its own classification committee.¹¹⁰

¹¹⁰ Western Australia Parliament, Standing Committee on Uniform Legislation and Statutes Review, *Classification (Publication, Films and Computer Games) Enforcement Amendment Bill 2012*,

The Australian Classification Board has responsibility for classifying films, publications and computer games; it is constituted by members who are broadly representative of the Australian community. The Classification Review Board is also representative of the community and it reviews Classification Board decisions on application.¹¹¹

There are different classification categories for films, computer games and publications. Films are classified as G, PG, M, MA15+, R18+, X18+ and RC (refused classification). G is suitable for everyone, PG calls for parental guidance, M means 'mature' and is not recommended for children under 15 years, MA15+ is legally restricted to persons over the age of 15 years (unless the person is in the company of a parent or guardian), R18+ and X18+ are legally restricted to adults.

Computer games follow the same classification categories as films; however, up until recently the highest classification for computer games was MA15+. From January 2013 it will be possible for computer games to be classified R18+ by the Classification Board. This change is accompanied by new guidelines for the classification of computer games.¹¹² Legislation recently passed in Western Australia will prohibit the sale or supply of R18+ computer games to children and young people (unless the person supplying the computer game is a parent or guardian).¹¹³ The Western Australian Standing Committee on Uniform Legislation and Statutes Review recently found that some computer games that are currently refused classification will be classified as R18+ from 1 January 2013.¹¹⁴

Publications have a different system. The available classifications are RC, Category 2 Restricted and Category 1 Restricted. Category 1 Restricted publications are the lowest classification; this category covers publications (except RC publications and Category 2 restricted publications) that:

- (a) explicitly depict nudity, or describe or impliedly depict sexual or sexually related activity between consenting adults, in a way that is likely to cause offence to a reasonable adult; or

Report (6 November 2012) [2.4] & [2.9]. Although the Standing Committee observed that the *Intergovernmental Agreement on Censorship* has not been amended to reflect Western Australia's full participation [2.4].

111 ALRC, *Classification-content Regulation and Convergent Media*, Final Report (February 2012) [2.13].

112 These guidelines are operable from 1 January 2013 see <http://www.comlaw.gov.au/Details/F2012L01934>

113 Assented to 29 November 2012. See Parliament of Western Australia 2012, Legislative Council, 29 November 2012, *Parliamentary Debates: Hansard*, p. 9093

114 Western Australia Parliament, Standing Committee on Uniform Legislation and Statutes Review, *Classification (Publication, Films and Computer Games) Enforcement Amendment Bill 2012*, Report (6 November 2012) [4.12].

(b) describe or express in detail violence or sexual activity between consenting adults in a way that is likely to cause offence to a reasonable adult; or

(c) are unsuitable for a minor to see or read.

Although the National Classification Scheme is based on an agreement between the states, territories and Commonwealth, there is scope for differing approaches. For example, the sale and distribution of X18+ material is permitted in the Australian Capital Territory and the Northern Territory but not elsewhere. In addition, states have different regulations in relation to restricted publications and the sale and display of R18+ films.¹¹⁵

Broadcasting: Television, radio and online material

The classification and regulation of television, radio and online content is subject to the *Broadcasting Services Act 1992* (Cth). This Act creates a co-regulatory framework (ie, government and industry regulation) for broadcasting classification where industry codes of practice are registered with and approved by ACMA. Breaches of codes are dealt with by a complaints system. Boards that are broadly representative of the community determine complaints at the broadcaster level and appeals against such determinations lie to ACMA (which may impose a penalty for failure to comply with industry standards or impose enforceable undertakings or licence conditions for failure to comply with industry codes). The *Commercial Television Code of Practice 2010* is registered with ACMA and is administered by Free TV Australia. Free TV Australia is an industry body representing all commercial free-to-air television licensees. Pursuant to s 123(2) of the *Broadcasting Services Act* the codes of practice may relate to, among other things, '*methods of ensuring that the protection of children from exposure to program material which may be harmful to them is a high priority*' and '*methods of classifying programs that reflect community standards*'.¹¹⁶ The subscription television codes of practice are administered by the Australian Subscription Television and Radio Association (ASTRA). The ABC and SBS have their own codes of practice.

The *Broadcasting Services Act* requires broadcasters to adopt the classification codes for films applicable under the National Classification Scheme (ie, G, PG, M, and MA15+). In addition, the legislation imposes time restrictions for certain films (ie, M rated films can only be broadcast between 8.30pm and 5.00am or between noon and 3.00pm on school days. MA 15+ films can only be shown between 9.00pm and 5.00am. R18+ films cannot be shown at all unless they have been modified as suitable for television). The industry codes of practice impose the same time restrictions for

115 ALRC, *Classification-content Regulation and Convergent Media*, Final Report (February 2012) [2.48].

116 *Broadcasting Services Act 1992* (Cth) s 123(2).

television programs with the same classifications. These statutory requirements in relation to time restrictions do not apply to subscription broadcasting services.¹¹⁷

Televised program content for children under 14 years is strictly controlled by ACMA and subject to a specific classification regime set out in the *Children's Television Standards 2009* (CTS). Section 122 of the *Broadcasting Services Act* requires ACMA to determine standards for children's programs shown by commercial television broadcasters. The CTS requires television networks to broadcast 390 hours of children's programming per year (ie, with P (preschool) and C (children) classifications) and this programming is required to be shown at specific times of the day.¹¹⁸ The CTS also regulates advertising shown immediately before, during and immediately after P and C programs and expressly prohibits alcohol advertising during these times. Further, the CTS prohibits material during a P or C period that may

- (a) demean any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, religion, or mental or physical disability; or
- (b) present images or events in a way which is unduly frightening or unduly distressing to children; or
- (c) present images or events which depict unsafe uses of a product or unsafe situations which may encourage children to engage in activities dangerous to them; or
- (d) advertise products or services which have been officially declared unsafe or dangerous by a Commonwealth authority or by an authority having jurisdiction within the licensee's licence area.¹¹⁹

ACMA has developed commercial radio standards dealing with advertising and disclosure of commercial agreements in relation to current affairs.¹²⁰ In addition, industry (ie, Commercial Radio Australia) has developed codes of practice in conjunction with ACMA. These codes are registered with ACMA. In contrast, codes developed by the ABC and SBS are notified to but not registered with ACMA. Commercial Radio Australia's *Codes of Practice and Guidelines 2011* provide that program content 'must not offend generally accepted standards of decency (for example, through the use of unjustified language), having regard to the demographic

117 ALRC, *Classification-content Regulation and Convergent Media*, Final Report (February 2012) [2.17]-[2.18].

118 The Senate Legal and Constitutional Affairs References Committee, *Review of the National Classification Scheme: Achieving the right balance* (June 2011) [9.18].

119 *Children's Television Standards 2009*, CTS 25.

120 *Broadcasting Services (Commercial Radio Advertising) Standard 2012 and Broadcasting Services (Commercial Radio Current Affairs Disclosure) Standard 2012*.

characteristics of the audience of the relevant program'.¹²¹ In addition, programs with explicit sexual themes cannot be broadcast between 5.00am and 9.30pm and, if so, an appropriate warning must be given before the program starts and at hourly intervals throughout the program. However, a broadcaster may broadcast a program containing explicit sexual themes if the program is in the public interest (including discussion or debate about current events).¹²² In recognition of community concern about the special vulnerability of children involved in live hosted entertainment programs, the code also provides that a broadcaster must not broadcast a program that treats participants 'in a highly demeaning or highly exploitative manner' or treats child participants under 16 years in a 'demeaning'¹²³ or 'exploitative manner'.

The regulation of online content is also co-regulated by the Australian Government through ACMA and industry bodies. Schedules 5 and 7 of the *Broadcasting Services Act* establish a 'co-regulatory framework based on industry codes developed by sections of the internet industry'.¹²⁴ Schedule 5 deals with online content hosted outside Australia and schedule 7 applies to content available on the internet and mobile services hosted in or provided from Australia.

Under schedule 7 'prohibited content' (other than eligible electronic publications) is defined as:

- content that has been classified RC or X18+ by the Classification Board;
 - content that has been classified R18+ by the Classification Board and access to the content is not subject to a restricted access system;
 - content that has been classified MA15+ by the Classification Board, and access to the content is not subject to a restricted access system; the content does not consist of text and/or one or more still visual images; the content is provided by a commercial service (other than a news service or a current affairs service); the content service is provided on payment of a fee (whether periodical or otherwise); and the content service is not an ancillary subscription television content service;
- or

121 Commercial Radio Australia, *Codes of Practice and Guidelines 2011*, 1.3.

122 Ibid 1.5 & 1.6.

123 Demeaning is defined as a 'depiction or description, sexual in nature, which is a serious debasement of the participant' and exploitative is defined as 'clearly appearing to purposefully debase or abuse the participant for the enjoyment of others, and lacking moral, artistic or other values': Ibid 9.1.

124 ALRC, *Classification-content Regulation and Convergent Media*, Final Report (February 2012) [2.17]-[2.26].

- content that has been classified MA15+ by the Classification Board, and access to the content is not subject a restricted access system¹²⁵ and the content is provided by a mobile premium service.¹²⁶

For eligible electronic publications, content is prohibited content if it has been classified RC, Category 2 Restricted or Category 1 Restricted by the Classification Board. 'Potentially prohibited content' is content that has not yet been classified but is likely to be 'prohibited content'.¹²⁷

ACMA investigates complaints about online content. If prohibited content is hosted in Australia, ACMA will issue a final notice to the content service provider requiring the content to be removed or requiring the provider to establish a restricted access system. If there is potential prohibited content ACMA issues an interim notice and applies to the Classification Board for the content to be classified. Financial penalties apply for failure to comply with the notice. Where content is very serious, law enforcement agencies will be contacted.¹²⁸ For content hosted overseas ACMA informs filter software markers accredited by the internet industry under the code of practice established under schedule 5 of the Act and the '*filters are made available by ISPs to their customers for free or on a cost recovery basis*'. Where content is sufficiently serious ACMA informs the member hotline in the relevant county or, if no member hotline exists, the Australian Federal Police will be notified so they can contact Interpol.¹²⁹

Internet Industry Association (IIA) has developed two codes: the *Codes for Industry Coregulation in areas of Internet and Mobile Content* and the *Content Services Code*.¹³⁰ The *Content Services Code* (which addresses the requirements under schedule 7 of the *Broadcasting Services Act* and is registered with ACMA) states that the IIA '*endorses, and this Code supports, the provision of information about content issues to end users, including the provision of information about development of effective strategies for managing children's and minors' use of the Internet*'.¹³¹ Under clause 18 of the *Content Services Code*, if a restricted access system declaration applies, a restricted access system must provide a warning about the nature of the MA15+ or R18+ content (for example a warning that the content is legally restricted to persons of a particular age)

125 From 2008 the *Restricted Access Systems Declaration 2007* (which was issued by ACMA) became operational and provided new rules for restricting access to age restricted content (ie, commercial MA15+ and R18+ content) that is either hosted in Australia or provided from Australia.¹²⁵ This declaration provides the minimum requirements to ensure that the access system is deemed a restricted access system.

126 *Broadcasting Services Act 1992 (Cth)*, Schedule 7.

127 ALRC, *Classification-content Regulation and Convergent Media*, Final Report (February 2012) [2.17]-[2.21].

128 Ibid [2.17]-[2.24].

129 Ibid [2.17]-[2.25].

130 Ibid [2.17]-[2.29].

131 *Content Services Code*, Parts. 1.3.

and safety information about how a parent or guardian may control access to the content (for example information about content filters, advice to always lock mobile phone handsets and ensure that handsets used by children do not have access to R18+ content). There are various provisions under the *Codes for Industry Co-regulation in areas of Internet and Mobile Content* that deal with online safety issues including age verification systems and restricting access to inappropriate material.

With the influx of online computer games, a degree of uncertainty exists about the regulatory requirements for the classification of online games. Strictly speaking online computer games are required to be classified under the *Classification (Publications, Films and Computer Games) Act 1995* (Cth). In addition, online computer games are subject to the co-regulatory scheme discussed above that applies to online content. In response to this confusion the Classification (Publications, Films and Computer Games) Amendment (Online Games) Bill 2011 (Cth) was introduced into Federal Parliament in 2011. This Bill seeks to introduce a category of 'exempt online games' so that online computer games that fit within this category do not have to be classified by the Classification Board. Exempt online games do not include online games that would be likely to be refused classification. In reality, the majority of online computer games are not classified before being made available and to insist on strict compliance would be a huge administrative and cost burden on the Classification Board. The provision of a new category of 'exempt online games' is a temporary measure (it is proposed to operate for two years) until the government has determined its response to the ALRC's recommendation for a new national classification scheme (see below).¹³² In February 2012 the Senate Legal and Constitutional Affairs Legislation Committee recommended that the Senate pass the Bill.¹³³ The Bill was last before the Senate on 3 November 2011 and has not been considered since 9 February 2012 when the Senate Committee tabled its report.

Current proposals for reform of the classification system

On 24 March 2011, the Commonwealth Attorney General referred the National Classification Scheme to the ALRC to consider existing classification laws in the context of the enormous technological advancements that have occurred since the National Classification Scheme was first developed. The ALRC published its final report in February 2012. Notably, the principle that '*children should be protected from material likely to harm or disturb them*'¹³⁴ is included in the eight guiding principles for reform. Additionally, it was recognised, among other things, that '*Australians should be able to*

132 *Commonwealth*, Parliamentary Debates, House of Representatives, 12 October 2011, 11552-11553 (Mr Brendan O'Connor).

133 Senate Legal and Constitutional Affairs Legislation Committee, Classification (Publications, Films and Computer Games) Amendment (Online Games) Bill 2011 (February 2012) 9.

134 ALRC, *Classification-content Regulation and Convergent Media*, Summary Report (February 2012) 13.

read, hear, see and participate in media of their choice' and 'communications and media services available to Australians should broadly reflect community standards, while recognising a diversity of views, cultures and ideas in the community'.¹³⁵

The key features of the recommended new classification scheme are:

- **Platform-neutral regulation:** The ALRC recommended that there should be a new *'Classification of Media Content Act* dealing with all classification obligations including publications, films and computer games currently dealt with under the *Classification Act*; state and territory classification enforcement legislation; online and mobile content currently subject to schedules 5 and 7 of the *Broadcasting Services Act*; and broadcast and subscription television content currently regulated under the *Broadcasting Services Act*.¹³⁶ In other words, the classification rules would apply to 'media content, whether the content is screened in cinemas, broadcast on television, sold in retail outlets, provided online, or otherwise distributed to the Australian public'.¹³⁷ In this regard, it was recommended that the classification categories G, PG, M, MA15+, R18+, X18+ and Prohibited be applied uniformly for all media content and, therefore, the different classification categories that currently apply to publications and some television broadcasters would be abolished.¹³⁸
- **Clear scope of what must be classified:** Because of the enormous volume of media content available to Australians, it was concluded that feature films, television programs and certain computer games *'should only be required to be classified if they are both made and distributed on a commercial basis and likely to have a significant Australian audience'*.¹³⁹
- **A shift in regulatory focus to restricting access to adult content:** Because it is not feasible nor necessary to classify all media content, steps should be undertaken to restrict access to adult material (ie, R18+ or X18+ or material that would be classified as R18+ or X18+). In some instances, restricting access to adult material might be relatively simple (for example requiring proof of age for purchase and displaying items in sealed containers); however, restricting access to online content is more difficult. Nonetheless, it was recommended that online content providers be required to take reasonable steps to restrict access to adult content (for

135 ALRC, *Classification-Content Regulation and Convergent Media*, Summary Report (February 2012) 13.

136 ALRC, *Classification-content Regulation and Convergent Media*, Summary Report (February 2012) 14.

137 ALRC Summary Report 14.

138 ALRC, *Classification-content Regulation and Convergent Media*, Summary Report (February 2012) 20.

139 Ibid 15.

example issue warnings, use age-verification systems, self-regulatory schemes).¹⁴⁰ This process is to compliment other measures such as education strategies about online safety and the use of parental locks).

- **Co-regulation and industry classification:** It was recommended that there should be more industry classification of content and industry development of classification codes, subject to regulatory oversight by the Classification Board. This would enable the Classification Board to focus on the most important issues, in particular, the protection of children.¹⁴¹ Therefore, it was recommended that the Classification Board should continue to classify films for cinema release and computer games that are likely to be classified MA15+ or above.¹⁴²
- **Classification Board benchmarking and community standards:** The Classification Board should be kept as an independent statutory body with responsibility for reviewing industry classification decisions and making key classification decisions.¹⁴³
- **An Australian Government scheme:** In order to ensure consistently and appropriate responses to all forms of media, it was recommended that the new scheme should be established under Commonwealth laws and that it should not be part of a cooperative scheme between the states and territories and the Commonwealth.¹⁴⁴
- **A single regulator:** A single regulator would have responsibility for the functions that are currently undertaken by the Classification Branch of the Attorney-General's Department, the Director of the Classification Board, the Department of Broadband, Communications and the Digital Economy and ACMA. It is envisaged that the functions of the new regulator could include handling complaints, undertaking classification training, authorising industry classifiers, developing industry classification codes, maintaining a register of classification codes, providing education and promoting media literacy, providing administrative support to Classification Board, maintaining a database of classification decisions, and conducting research and policy.¹⁴⁵

The issue of restricting access to adult content has particular relevance for the potential sexualisation of children and young people. As explained above, for the purposes of this response, the concept of sexualisation of children and young people has been split into two parts: exposure to inappropriate sexualised content and the

140 Ibid 16.

141 Ibid 17.

142 Ibid.

143 Ibid.

144 Ibid.

145 Ibid 18.

depiction or treatment of children and young people as sexual objects. The need to ensure that access to adult content is appropriately restricted is clearly relevant for the first aspect. The ALRC's recommendations recognise that classification alone will not adequately protect children and young people from harm because irrespective of the classification category assigned to a particular form of media content, children and young people may still be able to access the material. It was stated that:

*Adult content is media content that has been classified R18+ or X18+ and media content that would be likely to be classified R18+ or X18+. These classifications are high thresholds, but when the thresholds are met, the content should be restricted to adults-whether the content is a feature film, a film clip, a computer game, a magazine, a website, or any other type of media content distributed to the public. Although restricting access to this content presents difficulties online, those who provide this content should have some obligation to try to warn potential viewers and help prevent minors from accessing it, irrespective of the platform used to deliver the content.*¹⁴⁶

The ALRC explained that there are various ways to restrict access to adult content including '*prohibitions on sale and hire to minors, parental locks on televisions and media devices, internet filters, warning messages and online age verification systems*'.¹⁴⁷ Importantly, the recommended statutory requirement to take reasonable steps to restrict access to adult content is intended to apply to both commercial and non-commercial content¹⁴⁸ including media content offline and online (for example films, television programs, computer games, websites, magazines, music, artworks, advertising, and user-generated content).¹⁴⁹ It was also noted that the recommended statutory obligation to take reasonable steps to restrict access to adult content will not necessarily mean that content providers are required to preassess all material before it is published. For some content providers (for example magazine publishers and retail outlets) it will be reasonable to expect adult content to be identified before it is published or sold; however, for online content providers (in particular those which host user-generated content) it may only be feasible to ensure that they have processes to identify adult content after it has been published (such as a process whereby users can 'flag' content as 'adult' or 'inappropriate').¹⁵⁰ The ALRC also recommended that it should be an offence to fail to comply with a 'restrict access notice' (ie, where the regulator has sent a notice requiring the content provider to restrict access to specified content).¹⁵¹

146 ALRC, *Classification-content Regulation and Convergent Media*, Final Report (February 2012) 229.

147 Ibid 229

148 Ibid 234

149 Ibid 230

150 Ibid 236

151 Ibid 237

Finally, it was recommended that access restrictions for MA15+ content should be voluntarily regulated via industry codes of practice.¹⁵²

Commonwealth Government's response to the ALRC report

The Commonwealth has sought the views of all states and territories about the recommendations of the ALRC. It has been stated that once those comments are received, the Commonwealth will be able to further develop its position on the ALRC recommendations (including consideration of relevant recommendations made by other bodies).¹⁵³ Such other relevant recommendations include the recommendations of the Senate Legal and Constitutional Affairs References Committee, *Review of the National Classification Scheme* which are broadly consistent with the ALRC recommendations. In particular, the Senate Committee recommended that the Commonwealth government should establish a 'truly national classification scheme' and, as recommended by the ALRC, the Senate Committee proposed a platform-neutral classification system.¹⁵⁴ The Senate Committee also found that the current scheme is not adequately protecting children from harmful material¹⁵⁵ - it recommended that the National Classification Code should include key principles and that these principles should, among other things, take into account community concerns about the sexualisation of society, and the objectification of women.¹⁵⁶ With specific reference to the 2008 Senate Committee inquiry on the sexualisation of children in the media, the Senate Legal and Constitutional Affairs References Committee recommended that the Senate should '*as a matter of urgency, establish an inquiry to consider the progress made by industry bodies and others in addressing the issue of sexualisation of children in the contemporary media*' including progress made towards the implementation of the recommendations of the 2008 Senate Committee report.¹⁵⁷

On 5 October 2012 the Standing Council on Law and Justice (SCU) considered the recommendations of the ALRC and it was agreed that '*officials would report back following further work on a number of recommendations to enable decisions to be*

152 Ibid 256

153 Government Response to the House of Representatives Standing Committee on Social Policy and Legal Affairs - Inquiry into billboard and outdoor advertising (August 2012) 3.

154 The Senate Legal and Constitutional Affairs References Committee, *Review of the National Classification Scheme: Achieving the right balance* (June 2011) Recommendations 10, 11 & 22. This approach was also supported by the Convergence Review. It recommended that there should be a 'flexible and technology-neutral approach to content regulation that reflects community standards' and stated that it broadly accepted the ALRC recommendations. In addition, it was emphasised that a new approach to content standards should have 'a strong focus on providing Australians with the information and tools they need to manage content in the digital economy': Commonwealth Convergence Review Final Report (2012) x & 37.

155 The Senate Legal and Constitutional Affairs References Committee, *Review of the National Classification Scheme: Achieving the right balance* (June 2011) [12.2].

156 Ibid, recommendation 2 [12.80].

157 Ibid, recommendation 3 [12.81].

made by Ministers about priority areas for reform at the next SCU meeting in April 2013'.¹⁵⁸

Key areas identified in the research

As noted earlier, the available time to consider all of the matters referred by the Standing Committee has not enabled consultations with children and young people and other stakeholders. Therefore, the following key areas have been identified from other reports and research.

Material classified as suitable for adults only (for example R18+ films and computer games and Category 1 Restricted publications)

Recently, the Western Australian Parliament has had cause to consider the introduction of the new R18+ classification for computer games (which will come into effect from 1 January 2013). The *Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2012* implements the decision made in July 2011 under the National Classification Scheme to introduce a R18+ computer game classification and the Bill deals with enforcement issues surrounding the demonstration, possession, sale and supply and advertising of R18+ computer games in Western Australia.¹⁵⁹ Clause 9 of the Bill creates an offence relating to the new R18+ computer game classification. Under this provision a person must not sell or supply to a minor a computer game classified R18+ unless the person is a parent or guardian of the minor. There are various other amendments under the Bill to ensure that the display and advertisement of R18+ computer games are restricted.

The Western Australia Standing Committee on Uniform Legislation and Statutes Review tabled its report on the *Classification (Publication, Films and Computer Games) Enforcement Amendment Bill 2012* on 6 November 2012. This report recommended that the Bill be passed because, in the absence of Western Australian legislation to regulate the supply and distribution of R18+ computer games, it would be lawful for a child or young person to purchase a R18+ computer game from January 2013. The Bill was passed on 29 November 2012.¹⁶⁰

The Commissioner (along with her interstate counterparts) has previously expressed opposition to the introduction of the R18+ computer game classification. The main reasons for opposing the new classification category were that it will increase the availability of, and risk of exposure to, high impact content; children and young people (particularly those who are vulnerable or at risk) may experience negative impacts from

158 Standing Council on Law and Justice, *Communique* (5 October 2012).

159 The relevant Commonwealth legislation commenced on 1 January 2013 and the new *Guidelines for the Classification of Computer Games* are now operable. Previously, the highest classification applicable to computer games is MA15+.

160 See Western Australia, *Parliamentary Debates*, Legislative Council, 29 November 2012, 55.

such exposure; and it will be difficult for parents and regulators to control children and young people's access to R18+ computer games. It is acknowledged that the main focus of previous submissions opposing the introduction of R18+ computer games has been the likely increase in the availability of violent content (including sexual violence).¹⁶¹ In the present context, it is noted that the new *Guidelines for the Classification of Computer Games* stipulate that in addition to allowable content concerning violence, the R18+ category may include depictions of simulated sexual activity and nudity. It is noted also that, although actual sexual violence is not permitted, implied sexual violence may be permitted so long as it is not visually depicted, interactive or related to incentives or rewards unless it is justified by context.

From January 2013, it will be lawful for adults to access R18+ computer games. Presently, s88(1) of the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* (WA) provides that a person must not sell or supply a computer game classified MA15+ to a minor who is under 15 years of age, unless the person is a parent or guardian of the minor. In contrast, s 88(3) prohibits the sale or supply of a RC computer game to a minor (irrespective of whether the person selling or supplying the game is a parent or guardian of the minor). The Bill treats R18+ computer games in the same manner as R18+ films; it will be illegal to sell or supply a R18+ computer game to a minor unless the person supplying the game is a parent or guardian of the child or young person.

It is possible to amend the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* (WA) and either ban outright the possession, distribution, sale or supply of R18+ computer games in Western Australia. Alternatively, the Act could be amended to make it an offence to sell or supply a R18+ computer game to a minor even if the person selling or supplying the computer game is a parent or guardian of the minor. This would result in R18+ computer games being treated in the same manner as RC films and RC computer games. Given the interactive nature of computer games there is an argument that a higher threshold should apply than currently applies to R18+ films. If parents and guardians were legislatively prohibited from supplying their children with R18+ computer games there would need to be an accompanying education campaign to ensure that parents and guardians understood their obligations and took steps to ensure that R18+ computer games were not accessible by children and young people. Having said that, it would also be possible to restrict children and young people's access to adult only sexualised material by amending the Act to also

161 See for example, Australian Children's Commissioners and Guardians Submission to the Australian Government Attorney General's Department Discussion Paper: Should the Australian National Classification Scheme include an R18+ classification category for computer games?

make it an offence for any person - including a parent or guardian- to supply a R18+ film or a Category 1 Restricted publication to a minor.¹⁶²

Proposal 5: Amendments to the Classification (Publications, Films and Computer Games) Enforcement Act 1996 (WA)

Further consideration be given to possible amendments to the *Classification (Publications, Films and Computer Games) Enforcement Act 1996 (WA)*

- To prohibit the sale, supply, demonstration, possession or advertisement of a R18+ computer game in Western Australia; or
- To provide that it is an offence for any person to supply a R18+ computer game to a minor; and/or
- To provide that it is an offence for any person to supply a R18+ film to a minor; and/or
- To provide that it is an offence for any person to supply a Category 1 Restricted publication to a minor.

Unrestricted magazines

Unrestricted publications can be sold to any person in Western Australia, including children and young people. However, the Classification Board may make a 'consumer advice determination' in relation to a publication that has been classified 'unrestricted'.¹⁶³ For example, on 6 November 2012 the Australian Classification Board gave an edition of *Hooters* magazine an unrestricted classification with the accompanying advice that it may not be suitable for persons under the age of 15 years (M). Other magazines that have received the same classification in recent times include *100% Home Girls*, *Picture Premium*, *Babes*, and *Playboy*. Many years ago, magazines such as *Girlfriend*, *Cosmopolitan* and *Cleo* also received similar consumer advice requirements. Only submittable publications are required to be classified and these include publications that are likely to receive a restricted classification because, among other things, they are 'unsuitable for a minor'. Therefore, the Classification Board does not routinely classify all publications; it is only likely to classify publications that will end up being restricted or unrestricted with consumer advice that the publication may not be suitable for persons under the age of 15 years.

This system does not respond to concerns about the suitability of certain magazines for younger children. In 2006 an Australian Institute Report observed that:

162 Currently, under s 650 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1996 (WA)* it is an offence to supply a Category 2 restricted publication to a minor and it is an offence to supply a Category 1 restricted publication to a minor unless the person supplying the publication is a parent or guardian of the minor.

163 *Classification (Publications, Films and Computer Games) Act 1995 (Cth)* s 20.

*Each month twenty per cent of six-year-old girls and almost half of ten- and eleven year- old girls read at least one of the most popular girls' magazines - Barbie Magazine, Total Girl and Disney Girl. These magazines teach their young readers to dance in sexually provocative ways, to idolise highly sexualised young women such as Paris Hilton, Jessica Simpson and Lindsay Lohan, and to have crushes on adult male celebrities - all while they are still in primary school.*¹⁶⁴

In its 2008 report on the sexualisation of children, the Senate Committee highlighted that a number of respondents were concerned about magazines intended for children aged 12 to 16 years ('tween' magazines). The Senate Committee noted that it had not received any complaints about adult publications. In particular, it was stated that some 'tween' magazines contained sealed sections with advice on sex and there was no age warning or advice on the front cover of the magazine.¹⁶⁵ *Girlfriend* magazine was specifically examined and, although it was commented that the editorial content was appropriate and offered positive messages to young people, the advertising and content used a narrow range of body types and appearances.¹⁶⁶ In addition, it was noted that the Classification Board does not examine 'tween' magazines unless a complaint is lodged (because they are not submittable publications). At one time, a complaint was made in relation to a sealed section in *Dolly*, however, the Classification Board did not find that the magazine was submittable because the content in the sealed section was justified by context and contained information about safe sexual practices and medical matters. Further, it found that although some children and parents may be embarrassed about the information, it was not gratuitous or unsuitable for minors.¹⁶⁷ The Senate Committee was concerned about the depiction of generalised sexual imagery in 'tween' magazines, for example, limited range of subjects (clothes, cosmetics, celebrities) and females presented as 'slender and glamorous'.¹⁶⁸

A recurring theme throughout this report has been that informed and assisted parental choice is the best way to reconcile the principles of freedom of choice on the part of adults and the need to protect children from inappropriate or offensive material. The chief concern raised with the committee was whether the current classification scheme, under which children's magazines are classed as unrestricted publications, is sufficient to enable parents to make informed

164 Rush E & La Nauze, *Letting Children be Children: Stopping the sexualisation of children in Australia* (The Australian Institute, 2006) v.

165 Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of children in the contemporary media* (2008) [2.23].

166 *Ibid* [2.29].

167 *Ibid* [4.91].

168 *Ibid* [4.94].

*choices about what type or amount of sexual content their children are exposed to.*¹⁶⁹

The Senate Committee noted that young people in their early to mid-teens are developing their sexual identity and these magazines can provide reliable information about important issues. However, it was also considered that advice on the front of magazines would be useful to guide parents. It recommended that the publishers consider providing consumer advice on magazines covers indicating the presence of material that may be inappropriate for children and that this advice should be based on the classification codes for films and computer games (for example PG, M, etc).¹⁷⁰

On 26 May 2010, the Classification (Publications, Films and Computer Games) (Parental Guidance) Amendment Bill 2010 was introduced into the South Australian Parliament as a private members bill by the Hon JMA Lensink. The Bill attempted to introduce a classification regime for magazines targeted at teenagers so that these magazines would carry either a PG or an M classification. It was explained that South Australia was able to introduce its own scheme because it had reserved its right to make its own classifications and that role was undertaken by the South Australian Classification Council.¹⁷¹ The government did not support the Bill seemingly because the proposed laws would require the South Australian Classification Council and the Minister to examine various publications that appeared to contain PG material and that these bodies were not set up administratively to deal with such a process.¹⁷² It appears that the Bill simply lapsed; it was last before the Legislative Assembly on 30 September 2010.

Initially, under the National Classification Scheme, Western Australia had a power of veto over classification determinations by the Australian Classification Board for films and computer games. In addition, Western Australia retained the power to classify publications. The relevant body was the Censorship Advisory Committee. However, in 2002 Western Australia became a full member of the National Classification Scheme and referred its power to classify publications to the Commonwealth and abolished the power of the Censorship Advisory Committee.¹⁷³

Bearing in mind that Western Australia is now a full participant of the National Classification Scheme and this state no longer has its own classification body,

169 Ibid [4.95].

170 Ibid [4 .108].

171 South Australia, Parliamentary Debates, Legislative Council, 26 May 2010, 227-231 (Han JMA Lensink).

172 South Australia, Parliamentary Debates, Legislative Council, 30 September 2010, 1500 (Han Ms Thompson).

173 The Western Australian Standing Committee on Uniform Legislation and Statutes Review, *Classification (Publication, Films and Computer Games) Enforcement Amendment Bill 2012*, Report (6 November 2012) [2.9].

consideration could be given to the development of a national classification system for publications to ensure that there is appropriate advice to consumers and parents about the suitability of unrestricted publications for children and young people of different ages.

Proposal 6: Development of a national classification system for publications

Western Australia consider contributing to the development of a national classification system for publications to provide appropriate advice to consumers and parents about the suitability of publications (that are currently unrestricted) for children and young people of differing ages.

Consideration of the options discussed above in relation to possible amendments of the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* (WA) coupled with the above option in relation to the development of a classification scheme for unrestricted publications could arguably be part of a broader inquiry into the adequateness of the current classification enforcement legislation in Western Australia and this state's future role in the National Classification Scheme. This is particularly relevant to the development of Western Australia's position in regard to the recommendations of the ALRC for a truly national classification scheme and the potential for Western Australia to refer its enforcement powers to the Commonwealth to effect such as scheme. Given the complexity of these issues and the lack of available evidence of current problems with the application of the National Classification Scheme in Western Australia (for example, the extent to which children and young people in this state have access to R18+ films and Category 1 Restricted publications and the extent to which children and young people are accessing inappropriate material in unrestricted publications) it is suggested that consideration be given to referring a review of the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* (WA) to the Law Reform Commission of Western Australia (LRCWA). Such a referral would enable full legal analysis of state and federal powers in relation to classification laws as well as the opportunity to consult with children and young people, parents and other stakeholders and seek submissions from interested parties.

In any event, the Australian Government's response to the recommendations of the ALRC should be monitored to ensure that if a new national classification scheme is to be enacted the best interests of Western Australia's children and young people are taken into account.

Proposal 7: Referral of a review of the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* (WA) to the Law Reform Commission of Western Australia

Further consideration be given to referring a review of the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* (WA) to the Law Reform Commission of Western Australia to examine whether the current regime adequately protects children and young people from harm caused by exposure to adult or inappropriate content and, further, to consider Western Australia's position in relation to the current National Classification Scheme as well as the proposed new national scheme as recommended by the ALRC.

Music videos

Another area of concern raised in the research is music videos (as distinct to audio-only music recordings). The classification regime for audio-only music recordings is regulated by the Australian Recorded Industry Association (ARIA) and the Australian Music Retailers Association (AMRA) via the *ARIA/AMRA Recorded Music Labelling Code of Practice*. This code has three classifications:

- Level 1: 'Warning: Moderate impact-coarse language and/or themes': for material that contains infrequent aggressive or strong coarse language; or moderate-impact references to drug use, violence, sexual activity or themes;
- Level 2: 'Warning: Strong impact-coarse language and/or themes': for material that contains frequent aggressive or strong coarse language or strong impact references to, or detailed description of, drug use, violence, sexual activity or themes; and
- Level 3: 'Restricted: High impact themes-not to be sold to persons under 18 years': for material that contains graphic description of drug use, violence, sexual activity or very strong themes, which have a very high degree of intensity and which are high in impact.¹⁷⁴

However, music videos are not subject to this industry code. The classification of music videos depends on the platform by which they are distributed for example if a music video is released on a DVD it will be subject to the National Classification Scheme requirements for films and music videos broadcast on television must comply with the industry codes of practice under the *Broadcasting Services Act 1992* (regulated by ACMA).¹⁷⁵ Music available from online stores (either as audio-only or video content) is not subject to the *ARIA/AMRA Recorded Music Labelling Code of Practice*. The Senate Legal and Constitutional Affairs Reference Committee review of the National Classification Scheme in 2011 was informed that the two main suppliers of online music are BigPond and iTunes. In relation to BigPond, Telstra informed the committee that all

174 The Senate Legal and Constitutional Affairs References Committee, *Review of the National Classification Scheme: Achieving the right balance* (June 2011) [9.60].

175 The Senate Legal and Constitutional Affairs References Committee, *Review of the National Classification Scheme: Achieving the right balance* (June 2011) [9.36].

media content is streamed from servers in Australia and it is therefore regulated by schedule 7 of the *Broadcasting Services Act 1992*.¹⁷⁶

In contrast, iTunes is a United States company and servers are not stored in Australia. It was noted that iTunes has its own classification scheme which includes a warning about explicit content next to the song title. An examination of the iTunes online store shows that certain songs (or albums) are marked with a label 'Parental Advisory Explicit Content' which indicates that the song may contain strong language or depictions of violence, sex or substance abuse. Some songs are labelled 'Clean' to indicate that the version of the song has been edited so that it doesn't require a parental advisory label. By clicking on the label itself, the user is directed to a page that advises that the rating system for songs is sourced from the Recording Industry of America parental advisory website.¹⁷⁷ It is explained on this website that if an audio-only recording contains a parental advisory label the audio-visual recording must also contain the parental advisory label; however, if the audio-only recording does not contain a parental advisory label this does not preclude a determination that the audio-visual recording should contain a parental warning.

Concerns about music videos have been raised in two main contexts: music videos on television and music videos available online. The 2008 Senate Committee found that there was no significant community concern about television content in general; however, there was concern about music videos that are shown in adult times but are nonetheless easily accessible to children (for example *Rage* which is a music video program broadcast from 11.00pm on Friday evening to 11.00am on Saturday mornings and the program is classified differently depending on the broadcast time. From 6.00am to 10.00am on Saturday mornings the program is broadcast with a G classification).¹⁷⁸ The Senate Committee that reviewed the National Classification Scheme in 2011 also found that there was evidence of community concern about music videos on television (especially in the weekend morning timeslot).¹⁷⁹ Media Standards Australia informed the Senate Committee that:

Increasing numbers of parents have expressed their grave concerns to MSA, with regard to the sexual content, explicit lyrics, (particularly with regard to the dancing- including sexually-provocative gyrations), and sometimes even the

176 Ibid [9.80]-[9.82].

177 See www.riaa.com. There is also information on the iTunes online store about the rating systems applicable to movies and TV shows available from iTunes. If the country selected is Australia the ratings are the same as applies under the National Classification Scheme and the industry codes of practice for broadcasters. However, if a different country is selected (eg, US) a different rating system is explained.

178 Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of children in the contemporary media* (2008) [4.47] & [4.50].

179 The Senate Legal and Constitutional Affairs References Committee, *Review of the National Classification Scheme: Achieving the right balance* (June 2011) [9.40].

*violence contained in many music videos. This is particularly worrying in regard to Saturday and Sunday morning video clips programmes on television (Rage on ABC and Video Hits on Ten), since these are largely unsupervised timeslots in most households.*¹⁸⁰

Children and young people who participated in the Commissioner for a Day Challenge also made reference to music videos. One 11 year old girl referred to a particular artist and said her videos *'are offensive and she wears clothes that don't cover her body enough'*. A 10 year old boy said that *'most music videos have inappropriate content for children and young people'* and he suggested a rating system should be developed. It was also noted by another participant that male artists are *'surrounded'* by women in music videos.

The 2008 Senate Committee concluded that *'some music video clips contain sexually suggestive material which may be inappropriate for children'* and recommended that broadcasters review their classification of music videos specifically in relation to sexualised imagery.¹⁸¹ The Commonwealth government responded to this recommendation by stating that *'complaint statistics indicate a low level of community concern about music videos'* and Free TV Australia statistics show that over the past five years only 0.8 per cent of complaints have been about music videos.¹⁸²

It is highlighted that the classification of music videos (whether broadcast on television, sold as a DVD or accessible online) would fall under the ALRC's recommended new national classification scheme. Under the recommended scheme, the Classification Board would only be responsible for classifying films, television programs and computer games likely to receive a MA15+ rating or higher and industry bodies would be responsible for classifying content that it likely to receive a rating below this level. Nonetheless, the new regulator would have responsibility to assist in the development of industry codes of practice. Because most music videos are unlikely to be classified MA15+ or above, the responsibility for ensuring that music videos are appropriately classified will fall on industry bodies. Given the specific concern about the negative impact on children and young people from viewing sexualised music videos, this is one area that may not receive sufficient attention under the proposed new scheme. In terms of education, it is important that parents are provided with the appropriate level of knowledge to address, as far as possible, their children's access to inappropriate material in music videos. For example, most digital televisions have parental locks that enable parents to block access to particular television programs so with appropriate advice about how to engage these parental locks, children and young people could be

180 Ibid [9.42].

181 Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of children in the contemporary media* (2008) [4.55]-[4.56].

182 Australian Government Response, *Inquiry into the Sexualisation of Children in the Contemporary Media Environment* (July 2009).

prevented from watching programs such as *Rage* if their parents so wished. Again, this emphasises the importance of education strategies in this area.

Nonetheless, there is merit in reflecting whether the Australian government's response to the recommendations of the ALRC in relation to a new national classification scheme adequately deals with concerns about the current classification process for music videos. For instance, consideration could be given to developing a specific code of conduct to respond to concerns about the impact of music videos on children and young people.

Proposal 8: Review of classification scheme for music videos

The Commonwealth Government's response to the recommendations of the ALRC be examined to determine whether any proposed classification process for music videos adequately reflects community concerns about the impact of music videos on children and young people.

The regulation of music videos available for purchase online is more difficult. Under the ALRC's recommended new national classification scheme, online music videos will not be required to be classified unless they are treated as films and are likely to receive a classification of MA15+ or above. The other main aspect of the ALRC's recommendations is the statutory requirement for content providers to restrict access to 'adult content' (ie, content that has been classified R18+ or X18+ or is likely to be classified R18+ or X18+). However, it is unlikely that most music videos would fall under the category of 'adult content'. For these reasons, any potential negative impact on children and young people from viewing music videos with sexualised content is best reduced by appropriate education strategies to ensure that parents are equipped in practical terms to decide whether they wish their children to view specific music videos and, if not, how they can restrict access to particular types of music videos. For example, it is possible to set preferences on an iTunes account to restrict access to music content marked 'explicit' (it is also possible to set preferences on iTunes to restrict films, television programs and 'apps' to a particular rating such as PG or 12+). These are some of the matters that could be addressed through appropriate education strategies as outlined earlier.

Online pornography

As recently as November 2012 concerns about children and young people's access to online pornography has been raised in the Western Australia media. It was reported in *The West Australian* that a senior staff member of a Perth private boy's school believes that children as young as 13 years consider that *'explicit sexual practices seen in online pornography are normal behaviour because their parents allow them unlimited access*

to the internet.¹⁸³ It was also stated that he was disappointed that only 30 to 40 parents attended a free cyber safety seminar at the school which was conducted by ACMA. However, another commentator reportedly argued that the majority of sexual images viewed by children and young people would be seen in magazines, DVDs and movies, rather than online.¹⁸⁴ The concerns of the staff member were backed up by cyber safety expert Susan Mclean.¹⁸⁵ Similar concerns appear to have been raised recently in the United Kingdom where it has been reported that children as young as 11 years are 'being given 'unrealistic expectations' of sex after being exposed to internet pornography' and that it is common for children 'to become desensitised to sexual images after accessing hard core images at any early age'.¹⁸⁶

In 2011 the Commonwealth Joint Select Committee on Cyber-Safety released its interim report, *High-Wire Act: Cyber-Safety and the Young*. One of the issues considered was children and young people's access to inappropriate material online. It was highlighted that children and young people may be exposed to inappropriate sexual content (and possibly illegal sexual content) along with inappropriate violent, racist or hate material.¹⁸⁷ The Alannah and Madeline Foundation submitted that 'very graphic adult pornography is easily accessed and often free. While young adults have viewed pornography in 'magazine format' for decades, at no other time have we experienced such heightened access to pornographic material'.¹⁸⁸ Similarly, an Australian Institute of Criminology report commented that the 'proliferation of pornographic materials and their ease of access are such that it is not a matter of whether a young person will be exposed to pornography but when'.¹⁸⁹ This report noted a survey of 200 young people aged 16 to 17 years which found that 84 per cent of males and 60 per cent of females experienced inadvertent exposure to online pornography and 38 per cent of males and two per cent of females deliberately accessed online pornography. The report went on to observe that:

Not surprisingly, given the high rates of adolescent exposure, concern exists that young people are being inundated with unwanted and wanted, and possibly violent sexual information before they are developmentally capable of

183 Hiatt B, 'School's online porn warning', *The West Australian*, 8 November 2012, 3.

184 Ibid.

185 Hiatt B, 'Porn Exposure a growing problem', *The West Australian*, 9 November 2012, 32.

186 See Paton G, 'Children Becoming Addicted to Internet Porn', *WA Today*, 29 October 2012: <http://www.watoday.com.au/technology/technology-news/children-becoming-addicted-to-internet-porn-20121025-287ni.html>.

187 Commonwealth Joint Select Committee on Cyber-Safety, *High-Wire Act: Cyber-Safety and the Young* (2011) [4.78].

188 Ibid [4.79].

189 Bryant C, 'Adolescence, Pornography and Harm' (2009) Australian Institute of Criminology, *Trends and Issues in Crime and Criminal Justice* No. 368, accessible at <http://www.aic.gov.au/publications/current%20series/tandi/361-380/tandi368.html>.

*constructively dealing with it. This may detrimentally transform sexual attitudes and behaviours and ultimately sexuality and intimate relationships.*¹⁹⁰

A survey of 500 teenagers and 500 parents in Australia by security software company McAfee reportedly found that 80 per cent of parents trust their children not to access inappropriate online content. Less than 50 per cent of parents adopt online monitoring measures (for example parental controls, access to passwords) and only 10 per cent use parental controls on mobile devices such as smart phones. It was also reported that 66 per cent of teenagers surveyed said that their parents are ignorant of their online activities (for example accessing pornography, breaking the law through piracy and deleting browsing history). Twenty per cent stated that they intentionally access nude or pornographic images online and just over 12 per cent access online pornography more than once a week.¹⁹¹

A 2012 inquiry in the United Kingdom concluded that *'many children are easily accessing online pornography and that this exposure is having a negative impact on children's attitudes to sex, relationships and body image'*.¹⁹² Reference was made to a survey in 2008 which found that 27 per cent of boys were accessing pornography on a weekly basis and five per cent were doing so on a daily basis.¹⁹³ The United Kingdom report concluded that, in order to protect children and young people but also ensure consumer choice, a network level 'opt-in' system at the level of the internet service provider (ISP) should be developed by industry and that this service should provide a 'clean' standard internet service for users with the additional choice of selecting to receive adult content.¹⁹⁴ In reaching this view it was observed that device-level filters (which are filters installed on individual computers) are not being sufficiently used by parents because children and young people have multiple devices and are more 'tech savvy' than their parents and are able to 'circumvent' the filters.¹⁹⁵ Most significantly, it was also reported that parents lack the knowledge and skills to effectively educate their children about internet safety and they find it hard to install and maintain device filters.¹⁹⁶

190 Ibid.

191 See <http://www.thekidsareallright.com.au/2012/technology/secret-life-of-teens/>.

192 Independent Parliamentary Inquiry into Online Child Protection: Findings and recommendations (April 2012) 5.

193 Ibid 12.

194 Ibid 4.

195 Ibid 3. It was observed that the proportion of parents who report using device-level filters in households where there are children aged 5 years to 15 years has fallen by 10% in the last three years to 39% in 2011 (15).

196 Ibid 5-6.

Furthermore, it was acknowledged that a filtering system on its own is insufficient to fully protect children and young people and therefore parents will still need to continue to monitor and assist children and young people with their online safety.¹⁹⁷

It is noted that the Commonwealth Government has recently abandoned its plan to introduce a mandatory ISP level filter to protect children. It had been proposed that ISPs would be required to provide clean feeds to houses and schools that blocked online pornography and inappropriate material and those who wished for uncensored online access would be required to 'opt-out' of the service. Additionally, it would be mandatory for all ISPs to block 'high-level' sites on the ACMA blacklist.¹⁹⁸ In November 2012 it was reported that major ISPs had voluntarily agreed to block Interpol's 'worst list' (ie, child abuse material) and that the plan for a mandatory ISP filter was flawed because it would be costly, ineffective and slow down internet services.¹⁹⁹

The merits or otherwise of an ISP level filter is outside the scope of this response and the jurisdiction of Western Australia. The ALRC has highlighted the importance of restricting children and young people's access to inappropriate material and the recommendations, if implemented, will require online content providers to take reasonable steps to ensure that children and young people cannot access adult content. As discussed above, the Commonwealth Government's response to the ALRC recommendations could be monitored. Most importantly, parents and teachers could be equipped to provide adequate and effective information to children and young people about internet safety and to ensure that they are able to discuss issues with children and young people concerning exposure to online pornography as and when they arise.²⁰⁰

197 Ibid 6.

198 See <http://www.netspace.net.au/filtering/>. The blacklist mainly includes child abuse material and other material that would be refused classification under the National Classification Scheme.

199 Grattan M, 'Backdown on Internet Filter Plan', *The Age*, 9 November 2012 at <http://www.theage.com.au/technology/technology-news/backdown-on-internet-filter-plan>.

200 See recommendations under 'Education' above.

6. Advertising

The current regulation of advertising in Australia

Advertising in Australia is wholly self-regulated by industry.²⁰¹ The Australian Association of National Advertisers (AANA) is the peak industry body and it established the Advertising Standards Bureau (ASB) in 1998 to regulate advertising standards and deal with complaints from the community. The ASB is the secretariat for the Advertising Standards Board and the Advertising Claims Board. Both the ASB and the Advertising Standards Board deal with complaints. The ASB receives an initial complaint and determines whether it will be referred to the Advertising Standards Board. If so, the advertiser is notified and a response to the complaint is sought. The Advertising Standards Board considers the complaint and advises both the complainant and the advertiser of the determination and a report is published.²⁰²

The *AANA Code for Advertising and Marketing Communications to Children* sets out the standards for advertising to children (defined as 14 years or younger) and makes specific reference to the sexualisation of children.

*The AANA Code for Marketing and Advertising Communications to Children (Children's Code) has been in operation since 2003. The Children's Code was reviewed in 2007 and revised in 2008 in response to the Senate Committee for the Environment, Communications and the Arts' report on the sexualisation of children in the media. This revision of the Children's Code incorporated 'a direct prohibition against the sexualisation of children and a ban on the use of sexual imagery in advertising targeted at children'.*²⁰³

While the Advertising Standards Board cannot enforce its determinations because it is a self regulatory system it was reported to a Commonwealth Standing Committee (that considered billboard and outdoor advertising) that there is an almost 100 per cent compliance rate with its determinations. In the event of non-compliance, and if there has been a breach of legislation or regulations, the Board can refer the case to the relevant government agency. Otherwise, the Board can issue a media release on its website.²⁰⁴

201 It is noted that advertising on television is also subject to the requirements of the *Broadcasting Services Act 1992* (Cth). For example, under the *Children's Television Standard 2009* no advertisements can be broadcast during 'P' broadcast periods and only G classified advertisements can be broadcast during 'C' broadcast times.

202 <http://www.adstandards.com.au/process/theprocesssteps>.

203 Commonwealth House of Representatives Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising* (July 2011) [4.90].

204 *Ibid* [2 .56].

In order to inform the self-regulation of advertising standards and to ensure that the ASB is connected with community standards, research was commissioned to investigate the community's perceptions of acceptability of sex, sexuality and nudity in advertising.²⁰⁵ It was observed that, on the whole, the results showed that the Advertising Standards Board decisions in relation to sex, sexuality and nudity were 'broadly aligned with the views of the community'. Nonetheless, it was stated that respondents were '*sensitive to ads containing sexualised representations of teenagers and children, modelled on 'sexy' adults*'. Concerns were raised that '*age inappropriate depictions of females in advertising encourage children to adopt sexualised appearances and behaviour at too early an age*' and unrealistic body images. It was suggested that these images '*put pressure on children to strive for the perfect body and cause negative body image and self-esteem issues*'.²⁰⁶

Key areas identified in the research

While there have been general concerns about the impact of advertising on children and young people, there are two main areas where the issues appear to be more significant.

Billboard and outdoor advertising

Outdoor advertising includes advertisements placed on billboards, bus shelters, taxis, buses, shopping malls and sportsgrounds. In the 2008 Senate Committee report on the sexualisation of children in the media, it was noted that outdoor advertising is particularly problematic because it is impossible to restrict children and young people's access to the images and, for this reason, there is an argument for treating billboard and outdoor advertising differently from other types of advertisements. One example referred to was a billboard with the words 'Want longer lasting sex'. It was recommended that the Advertising Standards Board '*rigorously apply standards for billboards and outdoor advertising to more closely reflect community concern*'.²⁰⁷

A more recent parliamentary inquiry specifically examined billboard and outdoor advertising and it also highlighted that the key issue is that outdoor advertising cannot be turned off, put down or thrown away like other forms of advertising.²⁰⁸ It was observed that complaints to the ASB about outdoor advertising had risen (14 per cent

205 Colmar Brunton Social Research, *Community perceptions of sex, sexuality and nudity in advertising*, research report produced for the Advertising Standards Bureau (June 2010) iv.

206 Ibid 21.

207 Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of children in the contemporary media* (2008) [5.80]1 [5.93] & [5.95]-[5.96].

208 Commonwealth House of Representatives Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising* (July 2011) [2.5]

in 2007 compared to 20 per cent in 2010) and that there is '*escalating community concern about outdoor advertising*'.²⁰⁹

The inquiry made a series of recommendations directed to advertising industry bodies;²¹⁰ however, it was also recommended that if industry does not demonstrate in the next few years that self-regulation is working in accordance with community standards and expectations, government regulation will inevitably become necessary. Specifically, it was recommended that various industry bodies (including AANA and ASB) report to the Commonwealth Attorney General's Department by 30 December 2011 setting out their responses to the recommendations in the report and advice about how the relevant recommendations will be implemented. This is to be followed by a further report to be provided by 30 December 2012 detailing how the recommendations have in fact been implemented.²¹¹ The Commonwealth Government has since revised the first reporting date from 30 December 2011 to 28 September 2012 because it was waiting for the ALRC final report to be published and because the government did not provide a response to the inquiry's report until 16 August 2012. In the Government's response it was noted that the recommendations have been referred to the AANA, ASS, the Australian Food and Grocery Council, the Federal Chamber of Automotive Industries and the Alcohol Beverages Advertising Code Scheme.²¹² It is not known whether industry bodies have yet provided their initial response to the Attorney General's Department.

There was also an important recommendation directed to the Commonwealth Government: that by June 2013 the Attorney General's Department review the self-regulatory system for advertising and if that system is found lacking the Department '*impose a self-funded coregulatory system on advertising with government input into advertising codes of practice*' and such a system be reviewed every five years.²¹³ If the Commonwealth Attorney General's Department is intending to undertake a review of the self-regulatory system for advertising in Australia in the near future, it would be

209 Ibid [1.13] & [3.52].

210 For example it was recommended that the AANA introduce a code of practice for out-of-home advertising (recommendation 3); that the ASS provide independent advice on the suitability of proposed outdoor advertisements (recommendation 5); that the AANA Advertising Code of Ethics proscribe the sexual objectification of *men1* women and children (recommendation 8); that the ASS establish regular awareness campaigns about the advertising complaints system (recommendation 16); and that the ASS list non-compliant advertisers on its website and refer their names to the Attorney General's department for consideration of whether there should be legislation requiring the naming of non-compliant advertisers (recommendation 18).

211 Commonwealth House of Representatives Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising* (July 2011) Recommendation 1.

212 Commonwealth Government Response to the House of Representatives Standing Committee on Social Policy and Legal Affairs- Inquiry into billboard and outdoor advertising (16 August 2012) 4.

213 Commonwealth House of Representatives Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising* (July 2011) Recommendation 2.

premature for Western Australia to attempt to regulate advertising content in Western Australia until such a review has been completed and it is determined whether or not some form of government regulation will be imposed. The Commonwealth Government is considering its response to this recommendation as part of its response to the ALRC final recommendations.²¹⁴

Proposal 9: Monitor the Commonwealth government's response to the recommendations of the review of the self-regulatory system of advertising in Australia.

The Commonwealth Government's response to Recommendation 2 of the House of Representatives Standing Committee on Social Policy and Legal Affairs report *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising* (2011) be examined with a view to ensuring that the system of regulation of advertising in Australia adequately considers the best interests of Western Australia's children and young people and, in addition, any review that is conducted by the Commonwealth Attorney General's Department into the self-regulatory system for advertising in Australia be monitored.

In addition, the Standing Committee that considered billboard and outdoor advertising commented in its report that:

Governments at the state, territory and local level regulate advertising signage and position in terms of public safety (including road safety), planning laws, and the visual impact. Private and third-party outdoor advertising must comply with council regulations regarding placement.²¹⁵

Bearing in mind the limited timeframe available for this referral, a full review of Western Australia's legislative powers in regard to the power of the state and local governments to prohibit particular advertisements in specific areas is beyond the scope of this response. Such a review would require, among other things, consideration of local government laws, planning laws and other regulatory requirements. It may be appropriate for the LRCWA to examine whether Western Australia has the jurisdiction to regulate billboard and outdoor advertising and, if so, to what extent. Following such a review, the Western Australian Parliament would be in a position to consider the Commonwealth Government's response to the Recommendation 2 of the House of Representatives Standing Committee on Social Policy and Legal Affairs report *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising* (2011) and whether Western Australia needs to act in this regard.

214 Commonwealth Government Response to the House of Representatives Standing Committee on Social Policy and Legal Affairs- Inquiry into billboard and outdoor advertising (16 August 2012) 5.

215 Commonwealth House of Representatives Standing Committee on Social Policy and Legal Affairs, *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising* (July 2011) [2.37].

Proposal 10: Consideration of a referral of a review of Western Australian laws and regulations that impact on billboard and outdoor advertising.

Consideration be given to referring to the Law Reform Commission of Western Australia a review of Western Australia's laws and regulations that may impact on the regulation of the content and display of billboard and outdoor advertising to determine if there is any scope for Western Australia to regulate the nature and positioning of outdoor advertisements to ensure that children and young people are protected from exposure to sexualised images.

The use of children in advertising

The use of children in advertising is subject to the self-regulatory scheme described above. The AANA *Practice Guide: Managing images of children and young people* stipulates that advertisers and marketers are to 'ensure that images of children and young people are not sexually exploitative in nature, nor open to obvious misinterpretation and misuse'.²¹⁶

Complaints about the way children and young people are portrayed in advertising have occurred in Australia and elsewhere. In February 2012 an opinion piece in the *Sydney Morning Herald* criticised the advertising campaign for the launch of a tween fashion range of a well-known retail outlet.²¹⁷ A grievance about the same retailer two years earlier highlighted that the problem was not the style of clothing but the way in which the children were photographed.²¹⁸ A photo spread involving a 10 year old model in French Vogue in 2011 sparked considerable controversy worldwide; the spread was described as featuring the young girl 'firing off seductive looks at the camera in a number of sexually charged poses one of which she models a skin tight dress, laying on her stomach atop a tiger skin rug, with stiletto-clad feet kicked up her behind'.²¹⁹

Part 7 of the *Children and Community Services Act 2004 (WA) 2004 (WA)* regulates the employment of children in Western Australia. Section 190 generally prohibits the employment of children under the age of 15 years. This general rule does not apply to children aged 10 to 13 years who are employed in delivery work so long as the child is accompanied by a parent (or an adult authorised by the parent); children employed in a family business; children aged 13 years and over who are employed (between the

216 See http://www.aana.com.au/data/Documents/Codes/AANAPracticeGuide-ManagingimagesofChildrenandYoungPeople_FinalOct2009.pdf

217 Rush E & Norma C, 'Sexed up Tween Advertising Shows Fashion Needs to Grow Up', *Sydney Morning Herald*, 16 February 2012 available at <http://www.smh.com.au/opinion/society-and-culture/sexed-up-tween-advertising-shows-fashion-needs-to-grow-up-20120215-lt788.html>.

218 Kruger P, 'Retailer criticised for portraying kids as adults', *ABC News*, 6 October 2010 available at <http://www.abc.net.au/news/2010-10-06/retailer-criticised-for-portraying-kids-as-adults/2288008>.

219 See <http://www.inquisitr.com/132475/10-year-old-vogue-model-thylane-lena-rose-blondeau/>; <http://1/abcnews.go.com/Health/w-Mind-BodyResource/10-year-models-grown-high-fashion-high-risk/storv?id=14221160>.

hours of 6.00am and 10.00pm) in delivery work, in a shop or retail outlet or in a restaurant with the written permission of their parent; and children employed in a dramatic or musical performance or other form of entertainment or in the making of an advertisement. Therefore, children of any age can lawfully be employed in advertising. While it would be theoretically possible to amend this legislation and ban the use of children under a certain age in any advertising, this is unrealistic. It is understandable why children are used in marketing products designed for children. The central issue is whether the child is being used inappropriately.

Currently, s 192 of the *Children and Community Services Act 2004 (WA)* provides that children are not to be employed to perform in an indecent or obscene manner. The section states:

(1) A person who employs a child to perform in an indecent, obscene or pornographic manner in the course of participating in an entertainment or exhibition or in the making of an advertisement is guilty of a crime, and is liable to imprisonment for 10 years.

(2) A parent of a child who permits the child to be employed to perform in an indecent, obscene or pornographic manner in the course of participating in an entertainment or exhibition or in the making of an advertisement is guilty of a crime, and is liable to imprisonment for 10 years.

(3) For the purposes of this section but without limiting its application -

(a) a child is employed to perform in an indecent, obscene or pornographic manner if, in the course of the child's employment, the child-

(i) is engaged in an activity of a sexual nature; or

(ii) is in the presence of another person who is engaged in an activity of a sexual nature; or

(iii) is required to pose or move in a manner calculated to give prominence to sexual organs, the anus or, in the case of a female, her breasts;

and

(b) a child's performance is in the course of participating in an entertainment or exhibition if the performance -

(i) consists in whole or in part of modelling or posing of any kind; or

(ii) is only for the person employing the child or for some other particular person or a class of people;

or

(iii) is communicated in any way to an audience of one or more people; or

(iv) is recorded in any way for later visual or audible presentation to an audience of one or more people; or

(v) can be viewed on the Internet or in any other way.

(4) Without limiting the definition of *employ* in section 188,²²⁰ if a child participates in an entertainment or exhibition carried on for profit or in the making of an advertisement for commercial purposes, then for the purposes of this section the person who carries on the entertainment or exhibition or makes the advertisement employs the child.²²¹

Although this section applies to advertisements using children the threshold is high – to constitute an offence it must be proven that the child was engaged in '*an activity of a sexual nature*' was in the presence of another person who was engaged in an activity of a sexual nature or was '*required to pose or move in a manner calculated to give prominence to sexual organs*.'²²²

It is possible that this section could be amended or a new provision enacted to make it an offence to use or involve a child under a specified age in an advertisement if the advertisement portrays the child in a sexually provocative manner. Given the lack of clarity associated with a term such as 'sexually provocative' (or any other term that might be used) such a provision could be expressed in objective terms (for example, the advertisement portrays the child in a sexually provocative way that is likely to offend a reasonable person).

The *Children and Community Services Act 2004 (WA)* has recently been subject to a statutory review. A report of the review was tabled in Parliament on 29 November 2012 and it is expected that the government will examine its findings and recommendations in due course.²²³ Consideration could be given to whether the

220 Section 188 defines 'employ', in relation to a child, to mean to 'engage the child to carry out work (a) whether or not the child receives payment or other reward for the work; and (b) whether or not the child is engaged under a contract of service, a contract for services or any other arrangement'.

221 *Children and Community Services Act 2004 (WA)*, s 192

222 *Children and Community Services Act 2004 (WA)*, s 192.

223 See Report on the Legislative Review of the *Children and Community Services Act 2004 (WA)* (October 2012).

Children and Community Services Act 2004 (WA) could be amended to create a specific offence in relation to using children in sexually provocative advertising.

Proposal 11: Consideration of amendments to the *Children and Community Services Act 2004 (WA)* to create an offence to use children in sexually provocative advertising.

Consideration be given to whether s 192 of the *Children and Community Services Act 2004 (WA)*, could be amended or a new provision enacted to create an offence for using children and young people in sexually provocative advertising.

Beauty pageants

Although not related to advertising it is useful to consider, at this point, the participation of children in beauty pageants because the potential regulation of beauty pageants would also come within the ambit of child protection and the *Children and Community Services Act 2004 (WA)*. American-style child beauty pageants have made their way to Australia in recent years. Some concern exists in the community that children and young people who enter these competitions are being exploited.

In 2011 the Victorian Government asked the Child Safety Commissioner to monitor a pageant that was being organised by an American-based company as a result of significant public controversy and opposition to the event. Different views were reported in the media; one commentator argued that government intervention is justified because young girls are at serious risk of low self-esteem and eating disorders as a consequence of their participation in such events. New South Wales Minister for Community Services, Hon Pru Goward, reportedly argued that government intervention is only warranted if there '*is a risk of significant harm through neglect or abuse*'.²²⁴ National protests were organised in response to the arrival of these American-style pageants including in Perth.²²⁵

The Victorian Minister for Children and Early Childhood Development met with the organisers of the proposed event and they promised that they were complying with all relevant working with children and child employment regulations. The Victorian Child Safety Commissioner, Mr Bernie Geary, attended the event and reported back that '*his overall impression of the event was one of people just having fun*' and that '*he did not*

224 Overington C, 'Ugly Truth About Beauty Pageants', *The Australian*, 2 August 2011 see <http://www.theaustralian.com.au/news/features/ugly-truth-about-beauty-pageants/story-e6frg6z6-1226106209926>

225 See <http://www.abc.net.au/local/stories/2011/05/24/3225857.htm>.

get a feeling of 'over-sexualisation' or anything 'sinister, unsafe or degrading'.²²⁶ The Child Safety Commissioner did warn, however, that:

*[W]e should be vigilant around children's pageants, simply because they are based on a perception of competitive beauty and personal appearance.*²²⁷

The Minister advised the government would continue to monitor any future events to ensure '*children's safety and wellbeing are protected.*'²²⁸

On 13 February 2012 a motion was brought in the Commonwealth Parliament to express concern about the impact of beauty pageants on children and young people.²²⁹ During debate on this motion, research was referred to that reportedly showed that child beauty pageant participants had higher levels of body dissatisfaction than other people.²³⁰ One Member of Parliament argued that:

*It is an issue about the exploitation or potential exploitation of very young children who really do not have the capacity to express their own views about what happens to them on a day-to-day basis or about whether or not they will compete in these events. I know that we encourage competition amongst children in a range of areas, but this is a matter which is not about any usual competition. It is a matter which bases competition only on one's appearance and cosmetic issues.*²³¹

On 19 June 2012 it was stated in the Commonwealth Parliament that the Universal Royalty Beauty Pageant had '*snuck into Sydney and held a children's beauty pageant. There was no advertising and it was held in the utmost secrecy. If this is such a wonderful thing, why would they sneak into town and why would they not tell anyone about it?*'²³² Again, it was contended that these beauty pageants '*teach children to value their appearance above all else from a very young age*' and they

sexualise and objectify children as they conform to adult perceptions of beauty and behaviour. Fake tanning, waxing, fake eyelashes, hairpieces and make-up are beauty treatments and devices used by grown women and are inappropriate for little girls to use to achieve a narrow, adult, beauty standard. I think it verges on child abuse. It is totally unnatural for a young child. It is

226 Victoria, *Parliamentary Debates*, Legislative Council, 16 August 2011,15 (Hon WA Lovell, Minister for Children and Early Childhood Development).

227 Ibid 16.

228 Ibid.

229 Commonwealth of Australia, *Parliamentary Debates*, House of Representatives, 13 February 2012, p.1062

230 Ibid, 1064 (Ms Hall).

231 Ibid, 1065 (Ms Smyth).

232 Commonwealth of Australia, *Parliamentary Debates*, House of Representatives, 19 June 2012, p.7083 (Ms Hall).

*natural for young children to dress up in their mother's clothing, put make-up on-with lipstick all over their face-but it is not natural for a young child to be trained to perform in one of these beauty pageants.*²³³

It has been reported in the media that a Universal Royalty Beauty Pageant was planned for Perth in 2012.²³⁴ However, there is no available information to confirm whether this pageant in fact took place.

Given the concerns about American-style child beauty pageants in Australia, it is suggested that the Western Australian government could also consider whether the *Children and Community Services Act 2004 (WA)* could be amended to regulate beauty pageants involving children. Potential regulation could include banning the participation in beauty pageants for children of a particular age irrespective of parental consent or regulating the manner in which such competitions are held.²³⁵

Proposal 12: Consideration of amendments to the *Children and Community Services Act 2004 (WA)* to regulate child beauty pageants in Western Australia.

Consideration be given to whether there is any need and scope to regulate child beauty pageants in Western Australia.

233 Ibid.

234 Pownall A, 'Child Beauty Contest for Perth Despite Outrage', *The West Australian*, 9 July 2011 available at <http://au.news.yahoo.com/thewest/a/-/breaking/9811752/child-beauty-contest-for-perth-despite-outrage/>

235 In this regard, it is noted that the Report on the Legislative Review of the *Children and Community Services Act 2004 (WA)* recommended that 'consultation should occur to examine further regulation in respect of tattooing, branding or body modification practices, including consideration of introducing a minimum age for tattooing and branding': Report on the Legislative Review of the *Children and Community Services Act 2004 (WA)* (October 2012) recommendation 16, 36-37.

7. Products

In addition to concerns about advertising of children's products and the use of children in advertising there has also been unease about the nature of certain products targeted at children and young people. In 2010 the Scottish Parliament Equal Opportunities Committee commissioned a report specifically in relation to 'sexualised goods aimed at children'. In the course of that review, three categories of goods were considered: goods referring to sexual practices or contexts; goods that emphasised body parts and shapes culturally associated with adult sexuality; and goods that copied styles considered fashionable for adults.²³⁶

Some examples of products considered were a padded bikini top for nine to 15 year olds; a Hannah Montana Bikini with a bra and pants bikini set with a badge that pulled the bikini top into a cleavage for three to 13 year olds; a sequined strapless dress for nine to 13 year olds; and leopard skin print boxers for nine to 13 year olds.

In one Australian media report in 2008 it was reported that a major department store was selling underpants in small sizes for teenagers with slogans such as 'Bite this', 'Your boyfriend thinks I'm hot' and 'Naughty butt nice'.²³⁷ In June 2010 it was reported that child psychologist Dr Michael Carr-Gregg had called for mildly padded bras available in size eight to be recalled from the market.²³⁸ Concern was raised in 2009 about a popular clothing retailer's baby rompers branded with words such as 'I'm a tits man' and 'I'm bringing sexy back'.²³⁹

In responding to the 2012 Commissioner for a Day Challenge some participants referred to 'skimpy' clothes for children as well as dolls such as Bratz and Barbie, noting that these dolls reinforced sexualised stereotypes. An 11 year old girl stated that:

Well, Bratz dolls, Barbie dolls, are very inappropriate. They have bad clothes and bad makeup ... and they're wearing nail polish ... They're just babies ... and the underwear is, just so bad, you just go 'Ohh!'

Other 11 year old girls criticised the range of clothes designed for older women but sold to children and young people.

The Scottish Parliament Equal Opportunities Committee external report found that despite public concern about certain products there was no evidence that sexualised goods was a major problem for parents in comparison to other issues (for example, it

236 See <http://archive.scottish.parliament.uk/s3/committees/equal/reports-10/eor10-02.htm>.

237 <http://www.abc.net.au/unleashed/37158.html>.

238 <http://www.adelaidenow.com.au/psychologist-dr-michael-carr-gregg-wants-to-ban-bonds-bra-for-eight-year-olds/storye6frea8c-1225881799882>

239 <http://www.heraldsun.com.au/news/victoria/boycott-call-on-tot-shop/story-e6frf7kx-1225799481123>

appears that parents were more concerned about commercialisation²⁴⁰). The report also found that young people '*rejected the idea that they were passive victims of the marketing of sexualised goods*'²⁴¹ and young people were conscious of the risks of looking older from sexualised products (for example, paedophilia and reputation misjudgements). In addition, children and young people felt that they had a right to make their own decisions in this regard (and make their own mistakes).²⁴²

In contrast, the United Kingdom Bailey report (*Letting Children be Children*) observed that sexualised and gender-stereotyped clothing and products appeared to be the main area of concern for parents and, in response, it recommended that the British Retailers Consortium continue with its work to develop a voluntary code of conduct.²⁴³ The British Retailers Consortium has developed guidelines for children's wear. The *Responsible Retailing: BRC Children's wear guidelines* cover clothing, footwear and accessories '*designed and marketed for the under 12s*'²⁴⁴ The guidelines do not cover dressing up clothes or toys, teenage fashion or babywear (up to 18 months). Approximately 12 retailers have signed the guidelines. The guidelines are comprehensive; some examples from the guidelines are:

- sheer fabrics without lining are not acceptable for children's wear bodices or skirts
- Slogans and imagery (including licensed images and landmarks) must be age appropriate and without undesirable associations or connotations (for example, sexually suggestive, demeaning, derogative or political material or phrasing that could be interpreted as such).
- black should not be used for first bras or underwear but may be highly practical for trousers for nearly all ages, and required for school uniforms. In developing a children's wear range, consideration should be given to providing a choice of colours, including gender neutral choices.
- Underwear ranges require the utmost care in design. Simple decoration and a wide choice of colours and patterns are welcomed by customers but care should be exercised to differentiate these from adult lingerie. Knickers and pants must

240 It was observed that during focus groups with parents it was 'often argued that the key issues were around commercialisation and corporate/consumer culture rather than sexualisation. The targeting of ever-younger consumers was seen as having consequences for the moral values of young people themselves, making them obsessed with brands, with accumulating things through 'buying more, getting more': see Scottish Parliament, Equal Opportunities Committee, *External Research on Sexualised Goods Aimed at Children* SP Paper 374 (2010). [3.2].

241 Ibid, 'Executive Summary'.

242 Ibid, 'Executive Summary'.

243 Bailey R, *Letting Children be Children: Report of an independent review of the commercialisation and sexualisation of children* (2011) 15-16.

244 British Retail Consortium 2011, *Responsible Retailing BRC Childrenswear Guidelines*, British Retail Consortium, London, p. 3

provide modesty: thongs are not appropriate for children. Vests and crop tops should also be designed for modesty with no need for structural support in these garments.

- Photography should feature children in natural poses in a childlike environment, appropriate to the age range concerned. Where make up is used it should be as natural as possible, ensuring the child's natural charm comes through in the finished photograph. This does not preclude the use of face paints in a play setting, for example. The staging of photographs, like the design of clothing, should encourage children to develop confidence in their bodies without preconceptions of 'more desirable' body shapes, while supporting the public health agenda regarding child obesity.
- Underwear should never be modelled on children in marketing material, including on packaging and point of sale material. It is vitally important that website images of children's underwear do not involve child models.
- However, any 'adult only' merchandise should be kept remote from the children's wear department.²⁴⁵

There are currently no guidelines for children's clothing or products for Western Australian retail outlets.²⁴⁶ It is 2008 report, the Senate Committee noted that it is unfortunate that there is 'no body responsible for imposing 'community standards' on the manufacturers of products such as padded bras for pre-pubescent girls'.²⁴⁷ It is important that the development of guidelines is evidence-based and takes into account the nature of products currently available for sale in Western Australia as well as the views of children and young people, parents and other community members. It is also important to recognise that the responsibility for inappropriate children's products does not rest solely with manufacturers and retailers - for many children the decision to purchase such products is made by parents and guardians.

Consultation could take place with relevant industry bodies (for example Retail Association of Western Australia, Australian Retailers Association and National Retail Association) with a view to developing a voluntary code of conduct for children's clothing and products.

245 British Retail Consortium 2011, *Responsible Retailing BRC Childrenswear Guidelines*, British Retail Consortium, London, pp.4-5

246 The Chamber of Commerce confirmed that there are no retailer's codes of practice in Western Australia.

247 Senate Standing Committee on Environment, Communications and the Arts, *Sexualisation of children in the contemporary media* (2008) [1.45].

Proposal 13: The development of a voluntary code of conduct for retailers

Further consultation take place with relevant industry bodies, parents and children and young people regarding the necessity for voluntary guidelines or codes of practice for children's products.

8. Child exploitation laws

The Standing Committee specifically requested consideration of Chapter XXV of the *Criminal Code* (WA) as part of this referral. Chapter XXV is headed 'child exploitation material'. In summary, the chapter deals with the possession, production and distribution of child exploitation material (which is defined to include child pornography). Involving a child in the production of child exploitation material and possessing, distributing or producing child exploitation material is a serious criminal offence with significant penalties.

In order to consider how these provisions may be relevant to the sexualisation of children and young people it is important to refer to the definition of 'child exploitation material'. Section 217A of the *Criminal Code* defines 'child exploitation material' as:

- (a) child pornography; or
- (b) material that, in a way likely to offend a reasonable person, describes, depicts or represents a person, or part of a person, who is, or appears to be a child-
 - (i) in an offensive or demeaning context; or
 - (ii) being subjected to abuse, cruelty or torture (whether or not in a sexual context);²⁴⁸

A child is defined as a person under the age of 16 years.²⁴⁹ Child pornography is, in turn, defined as:

- material that, in a way likely to offend a reasonable person, describes, depicts or represents a person, or part of a person, who is, or appears to be a child-
 - (a) engaging in sexual activity; or
 - (b) in a sexual context.²⁵⁰

It is clear from these definitions that child exploitation material extends beyond the concept of child pornography (ie, material that depicts a child engaging in sexual activity or in a sexual context). Any material that represents a child in an offensive or demeaning context in a way that is likely to offend a reasonable person would constitute 'child exploitation material' and the producer, distributor or possessor of such material would potentially be liable to criminal prosecution. As far as the Commissioner is aware, these offence provisions have not been used to prosecute

248 Criminal Code (WA s.217A)

249 Ibid

250 Ibid

entities such as advertisers for depicting children in sexually suggestive or provocative poses in Western Australia.

Another important issue in relation to child exploitation laws is the potential for children and young people to be caught up in criminal prosecutions for their involvement in user-generated sexual content. Practices such as 'sexting' whereby young people create, share, send or post sexually suggestive or explicit messages or images via the internet (for example YouTube, Facebook) or mobile phones²⁵¹ potentially gives rise to criminal prosecution for the possession, production or distribution of child exploitation material. Other potential consequences include sex offender registration.²⁵²

In the present context, it is possible that 'sexting' may contribute to the sexualisation of children and young people. While there is some concern in the community about children and young people's exposure to sexualised content in the media from advertisers, broadcasters and internet content providers, the impact of exposure to images created by other children and young people should not be overlooked. There is the potential for such behaviours to become normalised and for children and young people to become desensitised to such images.

The true extent of 'sexting' among children and young people is unknown. Often such behaviour does not come to light unless material is distributed widely or distributed without consent. One recent Australian study involving 400 children aged nine to 16 years found that 60 per cent of the children interviewed accessed the internet via a mobile device (iPod, iPhone) and 15 per cent of the 11 to 16 year olds who had accessed the internet admitted receiving 'sexts'.²⁵³ A survey of 4770 students from independent schools in Victoria in 2009 found that approximately seven per cent of girls had been asked to send a nude picture (and for students in Year 11 this figure increased to 16 per cent).²⁵⁴ A survey undertaken by the Youth Advisory Group to the Office of the Victorian Privacy Commissioner found that 18 per cent of the respondents aged 10 to 15 years replied 'Yes' when asked whether they had ever taken and/or sent a nude or semi-clothed photo of themselves or someone else on their mobile phone.²⁵⁵ In her evidence to the Victorian Parliamentary Law Reform Committee inquiry on

251 See Federal Parliament Joint Select Committee on Cyber-safety, *High-Wire Act Cyber-safety and the Young* (June 2011)

252 See Law Reform Commission of Western Australia, *Community Protection (Offender Reporting) Act 2004*, Final Report (2012).

253 Green L et al, *Risks and Safety for Australian Children on the Internet Full findings from the AU Kids Online survey of 9-16 year olds and their parents* (2012)

254 Australian Council of Educational Research, *Response to the Inquiry into Sexting by the Law Reform Committee of the Parliament of Victoria* (14 June 2012).

255 Office of the Victorian Privacy Commissioner, *Submission to the Victorian Parliament: Inquiry into sexting* (June 2012).

sexting, cyber safety expert Susan Mclean advised that sexting behaviour is occurring among younger children.

While the available research does not indicate that the majority of children and young people are engaging in sexting behaviour, it appears that a number are. Earlier in this response, it has been suggested that further research into the views and behaviours of children and young people should be undertaken and sexting is clearly one issue that needs to be examined. It is important to gain an understanding of both the prevalence of and motivations for this behaviour and how it impacts on the wellbeing of children and young people (including children and young people who may view images posted on social networking sites but not otherwise be involved in the production or distribution of sexualised images).

There are many potential negative consequences associated with sexting including possible criminal convictions and sex offender registration; impact on future job prospects; and serious mental health issues including depression and suicide. It is proposed that the outcomes of the current inquiry into sexting being undertaken by the Victorian Parliamentary Law Reform Committee should be monitored. This committee has received 60 written submissions and, so far, heard evidence from 33 stakeholders and experts with a further eight witnesses expected to give evidence in December 2012. The findings of this inquiry may provide further evidence to assist in determining if there are any appropriate options to reduce the negative impact of sexting on children and young people in Western Australia generally and, specifically, in relation to the sexualisation of children and young people.

Proposal 14: Monitor the recommendations of the Victorian Parliamentary Law Reform Committee inquiry into sexting

The findings of the Victorian Parliamentary Law Reform Committee inquiry into sexting be examined to determine if there are any strategies or options to reduce the negative impact of sexting on children and young people in Western Australia both generally and in relation to the sexualisation of children and young people.

9. Summary of proposals

Proposal 1: Longitudinal research of the views of children and young people

Longitudinal research is required:

- To examine the views of Western Australian children and young people about media, advertising, classification, online activities and cyber safety in order to properly inform future and ongoing policy and legislative changes to address the impact of sexualised media and advertising content on the wellbeing of children and young people; and
- To examine whether exposure to sexualised media and advertising content is influencing the behaviours and attitudes of children and young people (such as earlier onset of sexual activity; changes in sexual behaviour and attitudes towards sex; changes in attitudes towards relationships with peers and members of the opposite sex; and body dissatisfaction, eating disorders and mental health issues).

Proposal 2: Parent education

A comprehensive approach to the provision of practical and universally accessible information and support for parents is required.

Proposal 3: Cyber safety education strategies

An audit be conducted to assess the uptake of effective cyber safety education strategies in all Western Australian schools.

Proposal 4: Australian curriculum - health and physical education

The draft Australian curriculum on health and physical education be monitored to ensure that the curriculum include broad sexual and health education including education about body image, eating disorders and healthy relationships and education about how to critically analyse media and advertising and advertising content and that appropriate training is provided to teachers regarding the curriculum.

Proposal 5: Amendments to the Classification (Publications, Films and Computer Games) Enforcement Act 1996 (WA)

Further consideration be given to possible amendments to the *Classification (Publications, Films and Computer Games) Enforcement Act 1996 (WA)*

- To prohibit the sale, supply, demonstration, possession or advertisement of a R18+ computer game in Western Australia; or

- To provide that it is an offence for any person to supply a R18+ computer game to a minor; and/or
- To provide that it is an offence for any person to supply a R18+ film to a minor; and/or
- To provide that it is an offence for any person to supply a Category 1 Restricted publication to a minor.

Proposal 6: Development of a national classification system for publications

Western Australia consider contributing to the development of a national classification system for publications to provide appropriate advice to consumers and parents about the suitability of publications (that are currently unrestricted) for children and young people of differing ages.

Proposal 7: Referral of a review of the *Classification (Publications, Films and Computer Games) Enforcement Act 1996 (WA)* to the Law Reform Commission of Western Australia

Further consideration be given to referring a review of the *Classification (Publications, Films and Computer Games) Enforcement Act 1996 (WA)* to the Law Reform Commission of Western Australia to examine whether the current regime adequately protects children and young people from harm caused by exposure to adult or inappropriate content and, further, to consider Western Australia's position in relation to the current National Classification Scheme as well as the proposed new national scheme as recommended by the ALRC

Proposal 8: Review of classification scheme for music videos

The Commonwealth Government's response to the recommendations of the ALRC be examined to determine whether any proposed classification process for music videos adequately reflects community concerns about the impact of music videos on children and young people.

Proposal 9: Monitor the Commonwealth government's response to the recommendations of the review of the self-regulatory system of advertising in Australia

The Commonwealth Government's response to Recommendation 2 of the House of Representatives Standing Committee on Social Policy and Legal Affairs report *Reclaiming Public Space: Inquiry into the regulation of billboard and outdoor advertising* (2011) be examined with a view to ensuring that the system of regulation of advertising in Australia adequately considers the best interests of Western Australia's children and young people and, in addition, any review that is conducted by the Commonwealth

Attorney General's Department into the self-regulatory system for advertising in Australia be monitored.

Proposal 10: Consideration of a referral of a review of Western Australian laws and regulations that impact on billboard and outdoor advertising.

Consideration be given to referring to the Law Reform Commission of Western Australia a review of Western Australia's laws and regulations that may impact on the regulation of the content and display of billboard and outdoor advertising to determine if there is any scope for Western Australia to regulate the nature and positioning of outdoor advertisements to ensure that children and young people are protected from exposure to sexualised images

Proposal 11: Consideration of amendments to the *Children and Community Services Act 2004 (WA)* to create an offence to use children in sexually provocative advertising

Consideration be given to whether s 192 of the *Children and Community Services Act 2004 (WA)*, could be amended or a new provision enacted to create an offence for using children and young people in sexually provocative advertising.

Proposal 12: Consideration of amendments to the *Children and Community Services Act 2004 (WA)* to regulate child beauty pageants in Western Australia

Consideration be given to whether there is any need and scope to regulate child beauty pageants in Western Australia.

Proposal 13: The development of a voluntary code of conduct for retailers

Further consultation take place with relevant industry bodies, parents and children and young people regarding the necessity for voluntary guidelines or codes of practice for children's products.

Proposal 14: Monitor the recommendations of the Victorian Parliamentary LawReform Committee inquiry into sexting

The findings of the Victorian Parliamentary Law Reform Committee inquiry into sexting be examined to determine if there are any strategies or options to reduce the negative impact of sexting on children and young people in Western Australia both generally and in relation to the sexualisation of children and young people.

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Appendix Two

Committee's functions and powers

That for the present Parliament –

(a) pursuant to section 51 of the Commissioner for Children and Young People Act 2006, a Joint Standing Committee on the Commissioner for Children and Young People be appointed by the Legislative Assembly and the Legislative Council.

(b) The Joint Standing Committee shall comprise 2 members appointed by the Legislative Assembly and 2 members appointed by the Legislative Council.

(c) It is the function of the Joint Standing Committee to –

(i) monitor, review and report to Parliament on the exercise of the functions of the Commissioner for Children and Young People;

(ii) to examine Annual and other Reports of the Commissioner; and

(iii) to consult regularly with the Commissioner.

(d) A report of the Joint Standing Committee will be presented to the Legislative Assembly and the Legislative Council by members of the Joint Standing Committee nominated by it for that purpose.

(e) The Standing Orders of the Legislative Assembly relating to Standing and Select Committees will be followed as far as they can be applied.