

**Submission  
No 17**

## **SEXUALISATION OF CHILDREN AND YOUNG PEOPLE**

**Organisation:** Australian Christian Lobby  
**Name:** Mr Kieren Jackson  
**Date Received:** 5/02/2016



NATIONAL OFFICE  
4 Campion St  
DEAKIN ACT 2600

T +61 (02) 6259 0431

E [natoffice@acl.org.au](mailto:natoffice@acl.org.au)

W [acl.org.au](http://acl.org.au)

ABN 40 075 120 517

05 February, 2016

Committee on Children and Young People Parliament House  
Macquarie St  
Sydney NSW 2000

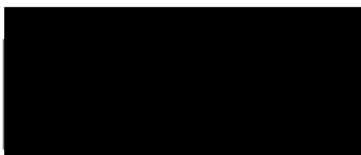
Dear Committee Secretary,

On behalf of the Australian Christian Lobby, please accept our submission to Committee on Children and Young People's inquiry into the sexualisation of children and young people.

Attached is three documents, first our submission to this inquiry, second a legal opinion, and third an appendix to the legal opinion.

ACL is available for hearings or to provide further evidence.

Yours sincerely,



**Mark Makowiecki**  
**NSW Director**  
**Australian Christian Lobby**



**Submission to  
Committee on Children and Young People**

***Inquiry into the sexualisation of children and young people***

**February 2016**

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Enquiries: (02) ) 6259 0431.

Website: [www.acl.org.au](http://www.acl.org.au)

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## Executive Summary

The Australian Christian Lobby is grateful for the opportunity to provide this submission, on the sexualisation of children in NSW, to the Committee on Children and Young People.

The exposure of children to sexualised content and its sexualising affect, is of strong concern to ACL. The harms to children of growing up in today's environment are a serious challenge for policy makers in many Western countries, not only Australia. Given the breadth of the terms of reference, it has been necessary for ACL to focus on specific areas of policy concern. In particular, ACL has chosen to focus on advertising standards (with an emphasis on outdoor advertising), teen magazines, pornography, television standards, and the Safe Schools Coalition now present in many NSW schools.

ACL has made 8 recommendations for policy or legislative change.

## Recommendations

- 1. Recommendation:** *That the Australian Association of National Advertisers amend their Code of Ethics, and Code of Advertising and Marketing Communications to Children so as to include a principle that the best interests of the Child should be paramount.*
- 2. Recommendation:** *That the Advertising industry cooperate towards giving the ASB the ability to issue non-binding fines for breach of the code and non-binding fines for failure to comply with a determination.*
- 3. Recommendation:** *That the Australian Association of National Advertisers amend their Code of Ethics, and Code of Advertising and Marketing Communications to Children so as to include a principle that all outdoor advertising must not include sex, sexuality or nudity that would be inappropriate for children's viewing. This principle should not be dependent on the audience the advertiser directs the messaging towards, but should apply to ALL outdoor advertising.*
- 4. Recommendation:** *That the NSW Government establish a statutory regulator for outdoor advertising under the authority of the appropriate Minister. The new outdoor advertising regulator would have the power to compel advertisers to comply with determinations and would be able to fine advertisers that breach the code.*
- 5. Recommendation:** *That NSW parliament amend classification legislation to ensure stronger limitations are imposed on the level of sexual themes and content allowed in magazines marketed to children.*
- 6. Recommendation:** *That the NSW Government lend support to a universal, by-default, ISP-level internet filtering regime at the Commonwealth level, filtering out adult content and thereby providing a 'clean-feed' internet service, for both fixed line and mobile service. Customers would be able to opt out of the 'clean-feed' on request to their ISP.*
- 7. Recommendation:** *That Free TV Australia strengthen classification guidelines by placing stronger limits on the depiction of sexual themes, depictions of sexual behaviour, and nudity.*
- 8. Recommendation:** *That the NSW education department end any relationship with Safe Schools Coalition Australia and any partnered providers who facilitate the teaching of its content.*

## Introduction

The exposure of children to sexualised images and content and its sexualising affect is a very serious and damaging issue of widespread concern to the Australian community. Mums and dads are trying to raise well-adjusted children in an increasingly toxic environment and it's hard. Children are being fed harmful messages as they pass billboards with sexual content with their families on the way to school, are fed images of the 'perfect body' and sexual themes in magazines, almost all young boys are statistically shown to have been exposed to pornography, standards of television classification have dropped, and children are being exposed to new controversial sexual and gender ideas at school that are potentially harmful to their childhood development.

It is clear that these messages are having a range of negative impacts on childhood sexual development, particularly in outcomes of earlier ages of sexual development and initiation, a rise in eating disorders, lost opportunities for healthy childhood experiences, a range of issues as a result of the exposure to hard-core pornography on the internet, and a rise in gender dysphoria.

A range of policy areas currently fall short of protecting children adequately and need to be addressed. In particular, ACL has chosen to focus on the inadequacies of advertising self-regulation, recommending the best interests of the child be put first, and that the depiction of sex, sexuality, and nudity in advertising needs to better reflect community standards. ACL also believes the ASB should be able to fine those advertisers who breach the code or fail to comply with a determination. Lastly, ACL submits that outdoor advertising should be 'G' rated with a child audience in mind and regulated through a government body.

Magazines aimed at early teen audience, called 'tween' magazines have a high readership amongst Australian children. The sexualising content contained within some of these magazines is alarming. ACL believes more needs to be done to address the level of sexual themes and content allowed under current classification rules.

There is compelling evidence that pornography is having a profound impact on the lives of children by shaping young people's sexual understandings, expectations and practices. Children's exposure to pornographic material puts one at increased risk of developing sexually deviant tendencies, committing sexual offences, experiencing difficulties in one's intimate relationships, and accepting the rape myth. Given the sharp rise in addiction rates, the rise of freely available hard-core pornography on the internet, and the very high rate of consumption of pornography by children, it is obvious that immediate action to curb children's exposure to internet pornography is needed. A universal, by-default, ISP-level internet filtering regime at the Commonwealth level is needed to provide a child friendly 'clean-feed' internet service. The increase in the use of smartphones to access the internet means it is essential that this extend to mobile services. Adult customers would be able to opt out of the 'clean-feed' on request to their ISP.

Sex education and the discussion of sexuality needs to be age and content appropriate so as to avoid potential harm to childhood development. ACL has genuine concerns about the Safe Schools Coalition Australia which now operates in a large number of New South Wales Schools. The content of the program introduces children to controversial and complex, gender and sexual issues. The heavy focus on sexual and gender identity, at such a young age, runs the risk of causing children to view and label each other through a sexual lens. An end to the teaching of this content would be a move in the right direction.



## Background

It is helpful to recognise that this inquiry into the sexualisation of children takes place within the context of a public discussion that has been ongoing over several years, at both Federal and state levels.

In 2006, the Australia Institute released the paper *Corporate Paedophilia*, on the sexualisation of children in Australia. Community concern following this paper led to the Senate inquiry into the Sexualisation of Children in the Contemporary Media (2008).

Other notable discussions that relate to this issue, and have taken place in the past few years, including the 2011 Senate review of the National Classification Scheme and the Australian Law Reform Commission's Review into Classification, Content Regulation and Convergent Media, whose report was handed down in 2012. The Joint Standing Committee on the Commissioner for Children and Young People in Western Australia also produced a report in 2014.

It must also be noted that none of these inquiries, or reports have taken place in isolation from international concern about this issue. Of particular note are: the American Psychological Association report of the APA Task Force on the Sexualisation of Girls (2007); The UK home office report; The Baily Report; and the French Parliamentary report in 2012.

The repeated calls for action on this issue, by parents and children's advocates, have for the most part been met with inaction. The Commonwealth Government's response to the recommendations made by the Senate Inquiry into the Sexualisation of Children in the Contemporary Media (2008) was disappointing. The New South Wales inquiry into the Sexualisation of Children and Young People can, therefore, be viewed as a new opportunity to bring this issue to light, and for NSW to lead the way, by taking real action to address this issue.

## Defining 'sexualisation'

There are a number of alternative definitions of the term 'sexualisation' that have been put forward and it may be helpful to explore each in turn. The link between the direct and indirect sexualisation of children is important to remember. It means that any comprehensive approach to tackling this problem must address not only media directed primarily at children, but also the messages that children imbibe from the wider teen and adult culture.

### American Psychological Association

The American Psychological Association's (APA) definition is the most widely quoted. The APA identifies several aspects of sexualisation, which contradict the development of a healthy sexuality. They argue that sexualisation occurs when any one of the following four conditions is met:

- *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';*
- *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;*

- *Sexuality is inappropriately imposed on a person.*<sup>1</sup>

These additional words by the APA are helpful to consider:

*...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 sexualisation by our definition, nor is age-appropriate exposure to information about sexuality.*<sup>2</sup>

## Australia Institute

Policy think tank The Australia Institute released two discussion papers in 2006, discussing the sexualisation of children in Australia. Sexualisation was defined in their first paper, “Corporate Paedophilia”, in the following terms:

*Broadly defined, sexualisation is the act of giving someone or something a sexual character. Childhood development includes a distinct sexual dimension prior to puberty, so the acknowledgement that children have a sexual dimension is not in itself of concern. However, the sexualisation of children documented in this paper captures the slowly developing sexuality of children and moulds it into stereotypical forms of adult sexuality. When we use the term ‘sexualisation’, it is this capturing and moulding process to which we refer.*<sup>3</sup>

An important element in this definition is the notion that children are being an image of sexuality, modelled on adult sexual behaviour, before they are developmentally ready for it.

## Western Australian Commissioner for Children and Young People

A discussion paper by the Commissioner for Children and Young People defined the 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.*<sup>4</sup>

## Australian Psychological Society

In evidence to the Senate Committee on the Environment, Communications and the Arts’ inquiry into the Sexualisation of children in the contemporary media, Ms Amanda Gordon, President of the Australian Psychological Society noted two important elements of sexualisation:

- *Sexuality [that] is inappropriately and prematurely imposed on a person such as a child; and*

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<sup>1</sup> 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.

<sup>2</sup> Ibid.

<sup>3</sup> Emma Rush and Andrea La Nauze, *Corporate Paedophilia: Sexualisation of Children in Australia*, The Australia Institute 2006, p 1.

<sup>4</sup> Commissioner for Children and Young People, *Sexualisation of children*, Issues Paper 9, March 2012, p 1.

- Sexualisation where ‘a person’s only ascribed value would be their sexuality, their physical sex appeal’<sup>5</sup>

## The Royal Australian and New Zealand College of Psychiatrists

Position Statement #58 on Sexualisation of Children in Contemporary Media:

*Sexualisation of children refers to the imposition of adult models of sexual behaviour and sexuality on to children and adolescents at developmentally inappropriate stages and in opposition to the healthy development of sexuality. It encompasses sexual objectification and representation of children in adult sexual ways and in ways that imply the child’s value is dependent on conforming to a particular appearance, sexual display or behaviours. Children may also experience secondary sexualisation through exposure to sexualised advertising material and products aimed at adult consumers.*<sup>6</sup>

## Senate Committee on Environment, Communications and the Arts Report: Sexualisation of children in the contemporary media

The 2008 report into the Sexualisation of children in the contemporary media, in addition to citing both the American and Australian Psychological Societies definitions, also had this to add:

*the 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.*<sup>7</sup>

## The Sexualisation of Young People Review by the UK Home Office in 2010

The 2010 UK Home Office Review defined sexualisation variously as ‘the imposition of adult sexuality on to children and young people before they are capable of dealing with it, mentally, emotionally or physically’<sup>8</sup> and ‘the use of sexual attributes as a measure of a person’s value and worth’.<sup>9</sup>

## Sources of exposure to sexualised images and content

### Advertising

Advertising is an area that needs serious reform in order to reduce its impact as a source of the sexualisation of children and young people. Carmel Niland, Director General of the NSW Department of Community Services, said as far back as 1999 that: “The sexualisation of children in public

<sup>5</sup> Senate Committee Report, Senate Committee on the Environment, Communications and the Arts’ inquiry into the Sexualisation of children in the contemporary media p 6, para 1.26, citing Committee Hansard, 30 April 2008, p 15

<sup>6</sup> Position Statement #58 on Sexualisation of Children in Contemporary Media [http://www.wpanet.org/uploads/News-Zonal-Representatives/wpa-policy-papers-from-zone-18/ZONE%2018-RANZCP.58\\_ps-2008-pdf.pdf](http://www.wpanet.org/uploads/News-Zonal-Representatives/wpa-policy-papers-from-zone-18/ZONE%2018-RANZCP.58_ps-2008-pdf.pdf)

<sup>7</sup> Senate Committee Report, Senate Committee on the Environment, Communications and the Arts’ inquiry into the Sexualisation of children in the contemporary media p 6 para 1.28

<sup>8</sup> Papadopoulos L, The Sexualisation of Young People Review (UK: Home Office, 2010) p 5.

<sup>9</sup> Ibid. p 6.

advertising and the availability of child pornography on the internet, pose very real threats to children.”<sup>10</sup>

In 2012, the Australian Medical Association president Dr Hambleton, in response to public outcry over advertising, featuring children in images that were “disturbing and sexually exploitive”, said: “there is strong evidence that premature sexualisation is likely to be detrimental to child health and development, particularly in the areas of body image and sexual health.” Dr Hambleton was also critical of the Advertising Standards Board and self-regulation stating that it is “failing to protect children from sexualised advertising.” Since the 2008 inquiry recommendation, that another inquiry be held 18 months later, was never acted upon, in 2012 the AMA called for a new inquiry to report into the Sexualisation of children in the contemporary media, stating: “Stronger action is needed to stop this practice of pushing adult themes to young children, especially pre-teen girls.”<sup>11</sup>

The 2008 inquiry acknowledged that complaints directed to the Advertising Standards Board (ASB), that fall within the category of premature sexualisation, are more likely to relate to advertising targeting adults (that is also easily accessible to children),<sup>12</sup> rather than advertising directly targeted at children.

The Committee also made the observation that complaints directed to the ASB about women’s underwear and other clothing often include an argument to the effect that:

*such images make it hard for girls to develop healthy attitudes to their body shapes or see themselves as individuals free from a sexual stereotype. Some complaints also mention the advertisement’s impact in terms of shaping boys’ attitudes towards women.*<sup>13</sup>

The American Psychological Association’s (APA) report on the sexualisation of girls supports the Australian public’s sentiment by stating:

*young women and adult women are frequently, consistently, and increasingly presented in sexualized ways in advertising, creating an environment in which being female becomes nearly synonymous with being a sexual object.*<sup>14</sup>

The report also highlighted the fact that sexualisation is not always direct and obvious, stating:

*although advertisers are typically careful not to sexualize young girls directly, several advertising techniques do so indirectly.*<sup>15</sup>

Indirect techniques include depicting children, especially girls, as counterparts to sexualised adult women. This has the potential effect of blurring the distinction between women and girls. In this process young girls are “adultified” and women are “youthified”. Another technique is to depict youthful celebrities in highly sexualised ways.<sup>16</sup>

Any comprehensive approach to tackling this problem must address not only media that is directed primarily at children, but also the messages that children are exposed to through the wider culture-- in this case, advertising targeted toward adults.

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<sup>10</sup> Paper presented at the Children and Crime: Victims and Offenders Conference convened by the Australian Institute of Criminology and held in Brisbane, 17-18 June 1999 Carmel Niland Director General NSW Department of Community Services [http://www.aic.gov.au/media\\_library/conferences/children/niland.pdf](http://www.aic.gov.au/media_library/conferences/children/niland.pdf)

<sup>11</sup> <https://ama.com.au/ausmed/inquiry-child-sexualisation-needed>

<sup>12</sup> Senate Committee on the Environment Communications and the Arts Report on the Sexualisation of children in the contemporary media. Para 5.38 P62

<sup>13</sup> Senate Committee on the Environment Communications and the Arts Report on the Sexualisation of children in the contemporary media. Para 5.39 page 62

<sup>14</sup> APA (2010), *Report of the APA Task Force*, pp 11-12

<sup>15</sup> APA (2010), *Report of the APA Task Force*, p 12

<sup>16</sup> APA (2010), *Report of the APA Task Force*, p 12

The Australia Institute's discussion paper, *Corporate Paedophilia*,<sup>17</sup> proffered two purposes behind the sexualisation of children in advertising. First, they argued that children are sexualised in advertising material in order to sell products to children; second, they argued that children are sexualised in advertising material in order to sell products to adults.<sup>18</sup>

### Outdoor advertising

Some outdoor advertising inappropriately imposes sexualised content upon anyone who happens to drive or walk past, and there is nothing they can do to avoid it.

Outdoor advertising is public and unavoidable. It is consumed by the general population, including children. Parents have no power to remove it from their children's view. Unlike other forms of advertising, billboards and buses cannot be switched off, the channel changed, or the page turned. Young children driving with their parents, waiting at bus stops, or on school buses are confronted with graphic sexual images which would not be permitted during the television programmes they watch.

In 2011, the Standing Committee on Social Policy and Legal Affairs tabled the report of its inquiry into the regulation of billboard and outdoor advertising entitled *Reclaiming Public Space*. The Standing Committee said "in addition to being unavoidable, there is no control over the prevalence of outdoor advertising", and noted the issue of "not just inappropriate, but also cumulative exposure to advertising".<sup>19</sup> Thus, because outdoor advertising is static and stays in place for extended periods in public, not only can people not avoid it, they are exposed to it frequently. This unavoidable, frequent, cumulative exposure saturates children in an environment of overtly sexualised imagery which they are not mature enough to understand and which they cannot avoid.

The Committee concluded regarding children:

*a consistent concern through the inquiry was that children are exposed to inappropriate outdoor advertising that is not aimed at them but nonetheless visible to them and capable of having a negative impact on their physical or psychological well-being.*<sup>20</sup>

The Committee went on to call outdoor advertising "a special case... by virtue of [its] public nature". It also noted the "contribution of outdoor advertising to the sexualisation of children and objectification of women."<sup>21</sup>

The sexual objectification of people, especially women, and the equation of attraction and value with sexual appeal or "being sexy" is prevalent in outdoor advertising. A number of examples is provided later in this submission under the section titled 'Advertising self-regulation'.

## Magazines

### Tween Magazines

The word tween is a marketing term used to help define an audience. It is not a scientific or developmental term.

Kristen Harmeling, partner at Yankelovich Youth Monitor/Yankelovich Monitor, a New York marketing consultancy specializing in lifestyle trends and customer-targeting solutions, has argued that one marketer's definition of a tween can differ slightly from another's:

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<sup>17</sup> Rush, La Nauze, 'Corporate Paedophilia', Australia Institute, 2006.

<sup>18</sup> Ibid. para 2.3, p 11.

<sup>19</sup> Standing Committee, *Reclaiming Public Space*, p 19.

<sup>20</sup> Standing Committee, *Reclaiming Public Space*, p 87-88.

<sup>21</sup> Legal and Constitutional Affairs References Committee (June 2011), *Review of the National Classification Scheme: achieving the right balance*, [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/classification\\_board/report/report.pdf](http://www.aph.gov.au/Senate/committee/legcon_ctte/classification_board/report/report.pdf), Executive Summary.

[A]n electronics marketer might characterize tweens as children between the ages of 12 and 15, while a snack food company might classify 8-year-olds to 12-year-olds as tweens.

On the whole, most marketers agree that tweens fall somewhere between 8 and 12 years of age.<sup>22</sup>

It is therefore important to define to which age range a magazine's target audience belongs.

The advent of the 'tween' magazine, is a relatively recent phenomenon in Australia, dating back only to 1996 when *Barbie Magazine* first appeared, to be followed by *Total Girl* in 2002 and *Disney Girl* in 2004. Whilst magazines for teenagers have been sold in Australia since the 1970s (*Dolly*), the advent of Barbie magazine was the first publication to appear in Australia that could be argued to be a children's version of adult women's magazines.

These magazines are widely read by children and 'tweens' and contain a very significant amount of sexualising content such as beauty, fashion, celebrities (usually those famous primarily for their looks and often those who star in TV shows rated unsuitable for children), gossip, romances and crushes, particularly of very young girls (the target audience) on much older men (celebrities).

#### *Differences between competing publications*

In a content analysis carried out in early 2006, the Australia Institute found that, 'Over half the content of *Barbie Magazine* and *Total Girl* and close to half of *Disney Girl* was sexualising material.'<sup>23</sup>

Another content analysis of four magazines performed in 2012 found a wide range between the different levels of sexualising content in such magazines. In a working paper, Kate Doyle looked at *K-Zone*, *DMag*, *Little Angel* and *Total Girl*, finding that anywhere between 0% - 21.8% of the articles were sexualised. *Total Girl* was found to have the highest percentage of sexualising content (21.8%) whilst *K-Zone* contained no sexualised material. *DMag* and *Little Angel* contained 2% and 13.5% respectively.<sup>24</sup>

#### *Total Girl*

**Frequency:** Monthly

**Australian Circulation:** 34,721 (ABC Sep 2014)

**Core Target:** Girls 6 - 13 years<sup>25</sup>

#### *Little Angel*

**Frequency:** Monthly

**Australian Circulation:** 40,000<sup>26</sup>

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<sup>22</sup> Hallie Mummert, 'Market Focus: Tweens' Target Marketing, accessed 05/02/2016, <http://www.targetmarketingmag.com/article/market-focus-tweens-28635/>

<sup>23</sup> Rush and La Nauze, Op cit, p16.

<sup>24</sup> Kate Doyle 'Perpetuating gendered identities: the "tween" magazine' *Griffith Working Papers in Pragmatics and Intercultural Communication* 5, 1 (2012), 54-62.

<sup>25</sup> Total Girl, Pacific Magazines, accessed 05/02/2016, <http://www.pacificmags.com.au/Pages/Magazines/Magazine.aspx?mid=cfe62b00-0c1d-49d7-b63e-b1dccc6581ba>

<sup>26</sup> Magazines – Youth, Media Directory, accessed 05/02/2016 <http://www.mediadirectory.com.au/viewContentDir.asp?ContentHeaderID=18&ContentID=8&menuTypeID=1>



**Core Target:** Girls 5 – 10 years<sup>27</sup>

## Teen Magazines

*Girlfriend magazine*

**Frequency:** Monthly

**Australian Circulation:** 37,541 (ABC Dec 2015)

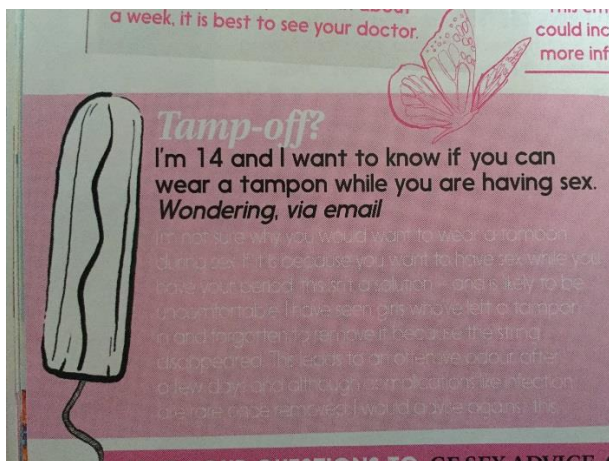
**Readership:** 186,000 (emmaTM Dec 2015)

**Core target:** Girls 14-17 years<sup>28</sup>

The cover of the magazine claims it is 'Australia's No. 1 Teen Mag Brand'. Examples of the content (provided below) reveal that the topics discussed in the magazine include sexual issues and sexual advice, which is significant, because the target audience includes minors under the age of legal consent for sexual activity.

*Current issue: January 2016*

- *You can get chlamydia via sex without a condom and sometimes via oral sex without a condom, if you're sexual.*<sup>29</sup>
- *Herpes has no cure. You may pass it on to other sexual partners.*<sup>30</sup>
- *Pap smears – It's recommended to get tested once a year if you have multiple sexual partners in a year or unprotected sex.*<sup>31</sup>
- *Q: I'm 14 and I want to know if you can wear a tampon while you are having sex.  
A: I'm not sure why you would want to wear a tampon during sex. If it's because you want to have sex when you have your period this isn't a solution – and is likely to be uncomfortable. I've seen girls who've left a tampon in and forgotten to remove it, because the string disappeared. This leads to an infection that can last a few days and although tampons are safe, they can be removed if you'd like to. They are safe to use if you're careful.*<sup>32</sup>



'Tamp-off', *Girlfriend Magazine*, January 2016 edition, page 86

<sup>27</sup> Little Angel Media Kit 2015, NextMedia, accessed 05/02/2016 <http://www.nextmedia.com.au/media-kits/little-angel-media-kit.pdf>

<sup>28</sup> *Girlfriend*, Pacific Magazines, accessed 05/02/2016, <http://www.pacificmags.com.au/Pages/Magazines/Magazine.aspx?mid=fe16ab41-1358-4925-b418-96d5d593388a>

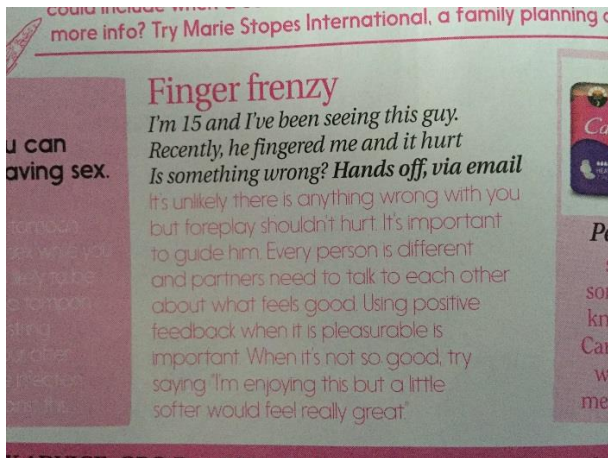
<sup>29</sup> *Girlfriend Magazine*, January 2016 edition, p 84

<sup>30</sup> *Girlfriend Magazine*, January 2016 edition, p 84

<sup>31</sup> *Girlfriend Magazine*, January 2016 edition, p 85

<sup>32</sup> *Girlfriend Magazine*, January 2016 edition, "Tamp-off", p 86

- *Q: I'm 15 and I've been seeing this guy. Recently he fingered me and it hurt. Is something wrong?*  
*A: It is unlikely there is anything wrong with you but foreplay shouldn't hurt. It's important to guide him. Try saying "I'm enjoying this but a little softer would feel really great".<sup>33</sup>*



'Finger frenzy', Girlfriend Magazine, January 2016 edition, page 86

- *I had sex with a guy from my school and he didn't use a condom and pulled out instead. I'm afraid I could get pregnant. I got the morning after pill.<sup>34</sup>*
- *The Morning After Pill*  
*This emergency contraception is just right for – yep, you guessed it – emergencies. This could include when a condom breaks or if you forget to take the contraception pill.<sup>35</sup>*



'The Morning After Pill', Girlfriend Magazine, January 2016 edition, page 86

#### *Back issue: June 2014*

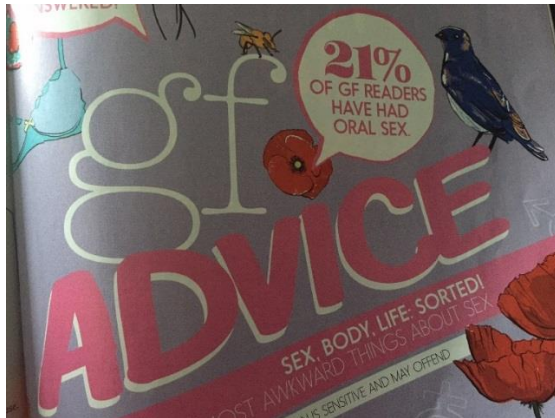
- *The most awkward things about sex*
- *21% of GF readers have had oral sex*

<sup>33</sup> 'Finger frenzy', Girlfriend Magazine, January 2016 edition, p 86

<sup>34</sup> Girlfriend Magazine, January 2016 edition

<sup>35</sup> Girlfriend Magazine, January 2016 edition





21% of GF readers have had oral sex, Girlfriend Magazine, June 2014, page 89

- *When your vagina farts in sex*<sup>36</sup>
- *When you think you look or sound weird*<sup>37</sup>
- *When 'it' won't go in*<sup>38</sup>
- *When it's over really quickly*<sup>39</sup>
- *It doesn't feel good sometimes*<sup>40</sup>

The June 2014 also discusses the depiction of sex in the following movies:

- *The Notebook*
- *Titanic*
- *Pretty Little Liars*
- *The Vampire Diaries*<sup>41</sup>

*Back issue: August 2014*

- *66% of sexually active GF readers have had an orgasm*<sup>42</sup>

**Dolly magazine**

**Frequency:** Monthly

**Australian Circulation:** 40,546 (ABC June 15)

**Readership:** 177,000 (ABC June 15)

**Core target:** Girls 14-17 years<sup>43</sup>

*Current issue: January 2016*

- *The first week or two after my period, I always bleed after sex. Why is this happening and how can I stop this?*<sup>44</sup>

<sup>36</sup> Girlfriend Magazine, June 2014 edition, p 90.

<sup>37</sup> Girlfriend Magazine, June 2014 edition, p 91.

<sup>38</sup> Girlfriend Magazine, June 2014 edition, p 91.

<sup>39</sup> Girlfriend Magazine, June 2014 edition, p 91.

<sup>40</sup> Girlfriend Magazine, June 2014 edition, p 91.

<sup>41</sup> Girlfriend Magazine, June 2014 edition, p 91.

<sup>42</sup> Girlfriend Magazine, August 2014 edition, p 77.

<sup>43</sup> Dolly, Bauer Media Group, accessed 05.02.2016 <http://www.bauer-media.com.au/brands/dolly/>

<sup>44</sup> Dolly Magazine, January 2016.

## Pornography

There is mounting evidence that pornography is having a profound and alarming impact on the lives of our children. Pornography is shaping young people's sexual understandings, expectations and practices.

Police have publicly recognised the link between pornography and domestic violence, with NSW police assistant commissioner Mark Murdoch, in 2014, stating:

*Common sense would tell you there has to be a linkage between pornography and lack of respect in relationships between young people... The fastest growing part of the problem of domestic violence is young people. We are seeing more young people put before courts than we have ever seen... The high use of pornography by young men is astounding...the highest users are [aged] between 14 and 25.<sup>45</sup>*

In the same news story, Men's Referral Service manager Nathan DeGuara was quoted supporting the link between pornography and domestic violence:

*Pornography sets up the expectations of what a man should expect from a woman. Pornography is typically about men doing whatever is it is they want to do to women.<sup>46</sup>*

The recognition is not isolated to NSW Police. Victoria Police Detective Superintendent Rod Jouning in 2014 suggested increased sex offending rates in the state might be:

*driven by the accessibility of more 'deviant' pornography, such as rape, bestiality, incest and child exploitation material...this material could blur the lines of consent...Unless there's screaming and they're yelling 'no', they're not enjoying it. [sic] You get that kind of warped thinking ... It becomes normalised.<sup>47</sup>*

Victorian County Court Judge, Felicity Hampel SC, whilst a panellist on ABC's Q&A, made the honest admission that:

*there probably is a causal link between pornography and sexual abuse. There certainly is so far as the abuse of the children who are the subject of the pornographic product that comes into this country.<sup>48</sup>*

The United Nations Special Rapporteur on violence against women, its causes and consequences, Radhika Coomaraswamy, has stated:

*Pornography in itself glamorizes the degradation and maltreatment of women, and asserts their subordinate function as mere receptacles for male lust. Furthermore it would also appear that exposure to certain types of pornography actually causes more violence against women.... Experimental research on pornography shows that certain materials cause measurable harm to women through increasing men's propensity to be violent. They significantly increase attitudinal measures known to correlate with*

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<sup>45</sup> Emma Partridge, 'Porn and domestic violence: NSW Police says respect for women from young men crucial' *Sydney Morning Herald*, December 7, 2014, <http://www.smh.com.au/nsw/porn-and-domestic-violence-nsw-police-says-respect-for-women-from-young-men-crucial-20141204-1205hy.html>

<sup>46</sup> Ibid.

<sup>47</sup> Nino Bucci, 'Child sex abuse within families rampant', *The Age*, 13 September 2014, <http://www.theage.com.au/victoria/child-sex-abuse-within-families-rampant-20140912-10fxao.html#ixzz3tPwtwwGq>

<sup>48</sup> Judge Felicity Hampel SC, Q & A, ABC 12 July 2010.

*rape and self-reports of aggressive acts – measures such as hostility towards women, propensity to rape, condoning rape, and predicting that one would rape or force sex on a woman if one knew one would not get caught.*<sup>49</sup>

It is imperative that we act to stop the intergenerational damage this is causing, particularly through domestic violence and sexual abuse. It is important that this inquiry recognises the role internet pornography is playing in the sexualisation of children. Parents are looking for clear and trustworthy commitments from the government and genuine action to protect children on-line.

### Mainstreaming of pornography

Once confined to seedy video stores, and magazines hidden in boxes under beds, pornography has now gone mainstream. Dr Caroline Norma, from RMIT University, states:

*it is now widely acknowledged that the unprecedented mainstreaming of the global pornography industry is transforming the sexual politics of intimate and public life, popularising new forms of hard-core misogyny, and strongly contributing to the sexualisation of children.*<sup>50</sup>

This is evident in the graphic and violent kind of hard-core pornography which is now the most common form of pornography on the web - Gonzo porn. Anti-porn activist and academic, Gail Dines, has described Gonzo porn as:

*that genre which is all over the Internet and is today one of the biggest moneymakers for the industry – which depicts hard-core, body-punishing sexing in which women are demeaned and debased.*<sup>51</sup>

Gonzo porn contains short “amateur” looking clips with little or no storyline, hard-core action, and lots of close-ups. Since this is now the most common form of pornography available, it logically follows that it is also the kind of pornography most likely to be viewed by children.

### Viewing rates of pornography by children in Australia

Research indicates that the rate of consumption of pornography by children and young people is at alarming levels. Some of the more concerning statistics from recent and older studies are provided below:

- Among 13- to 16-year-olds in Australian schools, 93 per cent of males, and 62 percent of females had seen pornography.<sup>52</sup>
- In 2003, the Australia Institute<sup>53</sup> found that one in twenty boys aged 16 or 17 watched X-rated videos on a weekly basis and more than a fifth watched an X-rated video at least once a month.

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<sup>49</sup> Ms. Radhika Coomaraswamy, 'Preliminary report submitted by the Special Rapporteur on violence against women, its causes and consequences', United Nations Economic and Social Council, Commission on Human Rights, 50<sup>th</sup> Session, Agenda Item 11, 22 November 1994 <http://www1.umn.edu/humanrts/commission/thematic51/42.htm>

<sup>50</sup> Caroline Norma, Big Porn Inc: Exposing the Harms of the Global Porn Industry, Abigail Bray, Melinda Tankard Reist (eds.) 2011, Spinifex Press.

<sup>51</sup> Gail Dines, Pornland: How porn has hijacked our sexuality, Spinifex Press 2010, Preface xi

<sup>52</sup> The extent of exposure to pornography among children and young people; Flood, M; Child Abuse Review; Volume 18, Issue 6, pages 384–400, 2009; DOI: 10.1002/car.1092

<sup>53</sup> 'Youth and pornography in Australia: Evidence on the extent of exposure and likely effects,' Michael Flood and Clive Hamilton, *The Australia Institute Discussion Paper Number 52*, February 2003.

- Among 16- and 17-year-olds, three-quarters of boys and one-tenth of girls have watched an X-rated movie.<sup>54</sup>
- Three-quarters of 16 and 17 year olds have been exposed accidentally to pornographic websites, while 38 percent of boys and 2 percent of girls have deliberately accessed them.<sup>55</sup>
- 84 per cent of boys and 60 per cent of girls have been exposed to internet sex sites accidentally.<sup>56</sup>
- A 2013 Sydney University study found that 80% of 15 to 17 year olds have had multiple exposures to hard core porn.<sup>57</sup>
- Popular porn website Pornhub recently released the 2015 statistics for pornography consumption on its website. Australia ranked 8th in the world per capita for porn consumption, an increase over 9th place in 2014. Around 60% of Pornhub viewers are millennial-aged, with 32% aged 18-24. Pornhub does not keep statistics of underage views, therefore it can be supposed that many of those viewers in the 18-24 range may in fact be underage.<sup>58</sup>
- In the Australian Broadcasting Authority's (ABA 2001b) study of children's exposure to offensive material on the Internet, it was reported that 47 per cent of young persons aged 11-17 years had unintentionally accessed material on the Internet that they found to be "offensive or disgusting". This material was mainly pornographic in nature, but also included nudity, "rude stuff", tasteless jokes, talk in chat rooms and violent imagery (ABA 2001b).

For further statistics on young people's exposure to pornography, please see the collated academic statistics in the April 2015 edition of *InPsych* magazine<sup>59</sup>.

Evidence of wider trends in the West is a cause for alarm. US research found that rates of unwanted exposure to pornography are increasing. Five years after their 2000 survey, Mitchell et al. (2007: 120) report that rates of unwanted exposure to pornography had gone from 9 to 19 per cent for those aged 10-12, from 28 to 35 per cent for those aged 13 to 15, and from 33 to 44 per cent for those aged 16 to 17.<sup>60</sup>

### Access to pornography: mobile devices

It is important to be aware that there are now indications that the majority of Australian children who are viewing pornography are unlikely to be doing so through a desktop computer. Statistics from popular pornography site Pornhub reveal that smartphones are the dominant device used to access pornography. The site recently revealed that 56% of Australian traffic to the site is from smartphones,

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<sup>54</sup> Michael Flood 'Exposure to Pornography Among Youth in Australia' *Journal of Sociology* (Impact Factor: 0.88). 03/2007; 43(1).

<sup>55</sup> Michael Flood 'Exposure to Pornography Among Youth in Australia' *Journal of Sociology* (Impact Factor: 0.88). 03/2007; 43(1).

<sup>56</sup> Flood, and Hamilton. Youth and Pornography in Australia Evidence on the extent of exposure and likely effects, The Australia Institute, <http://www.tai.org.au/documents/downloads/DP52.pdf> (Flood 2007).

<sup>57</sup> Emma Elsworth, Bare truths about porn: Pornification of modern society is taking a toll on our sexual morality, *Newcastle Herald*, September 12, 2014 <http://www.theherald.com.au/story/2553854/bare-truths-about-porn/?cs=303>

<sup>58</sup> Pornhub's 2015 Year in Review, Pornhub insights, accessed 05/02/2016, <http://www.pornhub.com/insights/pornhub-2015-year-in-review>

<sup>59</sup> Australian Psychological Society, Russ Pratt, The 'porn genie' is out of the bottle: Understanding and responding to the impact of pornography on young people, *InPsych*, April 2015, <http://www.psychology.org.au/inpsych/2015/april/pratt>

<sup>60</sup> The extent of exposure to pornography among children and young people, Michael Flood, University of Wollongong, 2009/2013

and 15% is from tablets; meaning just 29% of Australians are using a desktop computer to access their website.<sup>61</sup>

Statistics from Australian Media Communications Authority point to an increase in the use of smartphones to access the internet more generally:

- At June 2014, there were 31.77 million mobile services in operation in Australia, an increase of 2.5 per cent.
- At May 2015, 13.41 million people used a smartphone, up from 12.07 million at May 2014.
- 79 per cent of online adults used the internet over their mobile phones at May 2015.
- The volume of data downloaded via mobile handset increased by 85 per cent from the quarter to June 2014 to the quarter to June 2015.<sup>62</sup>

### Safe Schools Coalition Australia

Safe Schools Coalition Australia (SSCA) is a program that operates at both a primary and secondary school level. ACL submits that the material and approach of the SSCA is a cause of sexualisation of children, not only in NSW, but across Australia. It is important that this point is made clear: ACL is not confusing learning about sex in an appropriate educational context with the sexualisation of children, instead, ACL submits that the approach taken by the SSCA program is potentially harmful to childhood development.

SSCA is an opt-in coalition of schools and supporter organisations purporting to create “safe and inclusive school environments for same sex attracted, intersex and gender diverse students, staff and families.”<sup>63</sup>

SSCA is a federally-funded program, which, following the approval of the relevant state education department, has rolled out in each state and in the ACT. Marketed as an “anti-bullying” program, it purports to provide schools, teachers and students with information, training and materials to promote LGBTI inclusive curriculum and policy.<sup>64</sup>

Parents are likely to be largely ignorant of the content and approach of the program, and it is likely that very few parents would find it acceptable that their child is being exposed to such content if they were apprised of the details.

SSCA encourages schools to “work out ways to integrate gender diversity and sexual diversity across your curriculum”,<sup>65</sup> regardless of subject area.

488 Australian schools are reported to be members of the SSCA as at 15/12/2015 with 109 schools from NSW reported as members on the website. Scores of the Australian schools are, in fact, primary schools.

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<sup>61</sup> Pornhub’s 2015 Year in Review, Pornhub insights, accessed 05/02/2016, <http://www.pornhub.com/insights/pornhub-2015-year-in-review>.

<sup>62</sup> ACMA, Australians are going over the top, accessed 05/02/2016, <http://www.acma.gov.au/theACMA/Library/researchacma/Research-reports/australians-are-going-over-the-top>.

<sup>63</sup> Safe Schools Coalition, ‘Who We Are’, accessed 18/01/2015, <http://www.safeschoolscoalition.org.au/who-we-are>.

<sup>64</sup> Ibid.

<sup>65</sup> Safe Schools Coalition, Guide to Kick Starting Your Safe School, <http://www.safeschoolscoalition.org.au/uploads/bcc26a996bc80c181a71097f592ce984.pdf> p 2.

## Potential damage to a child's sexual development

Education involving sexual topics, should always be age appropriate, and sensitive to the dangers of damaging a child's healthy development, which can result from introducing topics too early.

The *Writing themselves in* series of studies from La Trobe are cited frequently by those advocating the teaching of gender theory in schools, including the NSW Department of Education and Communities. It can be deduced from the research data in the study that sexual attractions settle down over time resulting in an attraction to only one sex. The research paper states: 'participants in the 14-18 age group were significantly more likely to claim attractions to both sexes than those in the 19-21 group'.<sup>66</sup>

SSCA are introducing young children to complex sexual issues at a young age. The potential for an increase in confusion over a child's sexual identity, as a result introducing such topics too early in their development, e.g. portrayal of sexuality likely to encourage gender dysphoria, has not been addressed by SSCA.

The guides, materials, activities and posters encourage children, from as young as primary school age, to think about sexuality generally, and to think about LGBTI expressions of sexuality in particular. The focus on sexual and gender identity, at such a young age, runs the risk of causing children to view and label each other through a sexual lens.

## Concerns raised by psychologists

One Queensland psychologist, Dr Gemma Roux, has objected to the "All of Us" program (later explored) being used in schools, saying that it is important not to overwhelm children with a lot of information. "From a developmental perspective, it becomes confusing for kids"; "protecting their innocence is so important." "They don't have the cognitive and emotional capacity to process this yet."<sup>67</sup>

Even those supportive of critical theory and feminist perspectives have criticised the program. Laura McNally, a psychologist, has said:

*[Gender] is now erroneously applied to children who are expected to understand and embody a theory usually only the purview of researchers. Suddenly we must scrutinise, analyse and even pathologise natural child behaviour as "gendered."*<sup>68</sup>

## Gender Dysphoria

Central to the SSCA approach is the claim that there is a crisis of homophobic bullying in schools, and that affirmation of children's sexual identity is the best way to address the issue. It may be, however, that such an approach has the potential to cause serious damage to students' mental health and sexual development.

SSCA promotes a book about gender dysphoria for kindergarteners called 'The Gender Fairy'. The book also contains notes for teachers and parents, which were written by Roz Ward, the Manager of Safe

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<sup>66</sup> Hillier et al, *Writing themselves in*, 1998, accessed 18/01/2016, <http://www.glhv.org.au/files/writing-themselves-in.pdf> p 24.

<sup>67</sup> Psychologist: Too much sex ed too soon bad for kids' brains, *Sunshine Coast Daily*, 31/07/2015 <http://www.sunshinecoastdaily.com.au/news/too-much-sex-ed-too-soon-is-bad-for-brain/2724464/>.

<sup>68</sup> Laura McNally, Gender Neutrality or Enforcement? 'Safe Schools' isn't as Progressive as it Seems, *ABC Religion and Ethics*, 24 Mar 2015, <http://www.abc.net.au/religion/articles/2015/03/24/4204018.htm>.

Schools Coalition Victoria. The book is “for young children aged four years+ to read with their parents or teachers”.<sup>69</sup>

The Gender Fairy begins with a story of two babies who are bought pink or blue coloured presents. This ‘gender stereotyping’ is contested by the gender fairy (who is non-binary) answers questions for two young transgender children. For example, the biologically female child asks if she can use a male toilet, to which she is told that she can, because she is a boy.

The author says the story is ‘about two transgender children who are not fluid and make the choice to socially transition. It’s up to children to decide where they are on the gender spectrum. As the Gender Fairy says, “No one can tell you”’.<sup>70</sup>

It is now emerging that one possible consequence of the promotion in schools of all things LGBTI has been an increase in gender dysphoria among Australian children. Columnist Kate Legge, in an article for the *Weekend Australian Magazine* entitled, “Transgender children: what’s behind the spike in numbers?” (18th July 2015), writes:

*Requests to help transgender students have skyrocketed since mid-last year when the federal Education Department funded a national initiative called the Safe Schools Coalition aimed at creating “inclusive” learning environments. In the past three months calls have exceeded those received during the preceding six, with one state tripling its appeals for assistance.*<sup>71</sup>

According to Legge’s article, Melbourne’s Royal Childrens Hospital is expecting to treat 200 children and adolescents this year for gender dysphoria (i.e. transgenderism), up from only one case in 2003.

According to Paul McHugh, Professor of Psychiatry at Johns Hopkins Medical School, the affirmation approach is the incorrect response to children experiencing these issues. He writes:

*Gender dysphoria – the official psychiatric term for feeling oneself to be of the opposite sex – in fact belongs in the family of similarly disordered assumptions about the body, such as anorexia nervosa and body dysmorphic disorder. Its treatment should not be directed at the body as with surgery and hormones any more than one treats obesity-fearing anorexic patients with liposuction. The treatment should strive to correct the false, problematic nature of the assumption and to resolve the psychosocial conflicts provoking it. With youngsters, this is best done in family therapy.*<sup>72</sup>

In clear contradistinction to the approach set out by Paul McHugh, SSCA insists that schools ought to be “supportive if a student wants to change their name ... and should be just as supportive about changing a pronoun” - whether that means calling someone “he, she, or they”. Material within the program contains the following directives to students and teachers in the SSCA:

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<sup>69</sup> SSCA ‘Is ‘The Gender Fairy’ in your school library?’ <http://www.safeschoolscoalition.org.au/is-the-gender-fairy-in-your-school-library-5>

<sup>70</sup> Frequently Asked Questions, The Gender Fairy, accessed 05/02/2016, <http://www.thegenderfairy.com/faq.html>

<sup>71</sup> Kate Legge, ‘Transgender children: what’s behind the spike in numbers?’ *The Australian*, 18 July 2015, <http://www.theaustralian.com.au/tablet-t3/tablet-t3/transgender-children-whats-behind-the-spike-in-numbers/news-story/ee83d0294dfd7c898173002de7f9ffe7>

<sup>72</sup> Paul McHugh, ‘Transgenderism: A Pathogenic Meme’, The Witherspoon Institute, Public Discourse, 10 June 2015, <http://www.thepublicdiscourse.com/2015/06/15145/>



- *Some people have surgery to alter how they express their gender, some people have hormone treatment. Some people legally change what's written on their birth certificate.*<sup>73</sup>
- *The basics are that sex is your physical aspects (i.e. your wibbly wobbly bits) and gender is how you feel in your mind.*<sup>74</sup>
- *Discrimination is not allowed, even if your school discriminates without meaning to. An example of this might be not allowing a student to stay in a particular room at school camp.*<sup>75</sup>

### SSCA school uniform policy

- *Provide students the option of wearing any part of your school uniform regardless of gender.*<sup>76</sup>

### SSCA policy on access to toilet facilities

- *Allow students to access a unisex toilet or the toilet of their choice.*<sup>77</sup>

### Community concerns

There has been community backlash against the program. One mother from Queensland has argued that the program is not appropriate for primary school children. She said the program exposed children to information that “they are too young to handle”. “It’s not based on whether they are gay or heterosexual, it’s sexual, they’re minors, they’re not of the age of consent and it’s not ok.” Further negative reaction to the program has come from parents,<sup>78</sup> students (statements included below), pro-family lobby groups<sup>79</sup>, as well as a retired Senator<sup>80</sup>, the Catholic Education Office,<sup>81</sup> MPs, and journalists<sup>82</sup>.

### *Wear It Purple Day*

A special day called “Wear it Purple Day” on 28 August has been endorsed and supported by the SSCA as an awareness day to promote “diversity and inclusivity” in schools. It is essentially a solidarity day where all students are encouraged to wear purple in order to show solidarity with gay, lesbian and transgender students.

In 2015, Burwood High school decided to screen the film *Gayby Baby* during school hours as part of Wear it Purple Day. The film is an Australian feature length documentary about the children of gay

<sup>73</sup> OMG My Friend’s Queer, Ed. Micah Scott, Safe Schools Coalition, accessed 18/01/2016, <http://www.safeschoolscoalition.org.au/uploads/2dd9051c41af2766cacf2b3b0fccd00b.pdf> p 9.

<sup>74</sup> Ibid. p 9.

<sup>75</sup> Stand Out, Roz Ward, Micah Scott, Safe Schools Coalition, accessed 18/01/2016, <http://www.safeschoolscoalition.org.au/uploads/67bcaee23b6cd8036e402aa33e4e4490.pdf> p 34.

<sup>76</sup> Gender is not uniform inclusive school uniform guidelines guide sheet, *Safe Schools Coalition*, accessed 18/01/2016, <http://www.safeschoolscoalition.org.au/uploads/5800d52c9ac32c5049ebd234478df846.pdf> p 1.

<sup>77</sup> GINU Poster, accessed 18/01/2016, <https://minus18.org.au/ginu/resource-booklet.pdf> p 7. (Directed to resource from SSCA site: <http://www.safeschoolscoalition.org.au/gender-is-not-uniform>).

<sup>78</sup> Kathy Sundstrom, Primary school sex talk too much too soon for kids: Mum, *Sunshine Coast Daily* 29th Jul 2015 <http://www.sunshinecoastdaily.com.au/news/sex-talk-too-much-too-soon-for-our-kids-mum/2721801/>

<sup>79</sup> Australian Christian Lobby; Family Voice Australia; National Civic Council; Australian Family Association.

<sup>80</sup> Bill Chee, <http://www.brisbanetimes.com.au/comment/the-hermit/children-at-risk-from-predators-on-government-website-20150721-gihjgz.html>

<sup>81</sup> Catholic Communications, Government-funded Safe School Coalition Program Deeply Disturbing, *Sydney Archdiocese*, 4 September 2015, [https://www.sydneycatholic.org/news/latest\\_news/2015/201594\\_11.shtml](https://www.sydneycatholic.org/news/latest_news/2015/201594_11.shtml)

<sup>82</sup> Miranda Devine, The thought police telling kids heterosexuality’s not the norm, *The Daily Telegraph*, 16 October 2012, [http://blogs.news.com.au/dailytelegraph/mirandadevine/index.php/dailytelegraph/comments/the\\_thought\\_police\\_telling\\_kids\\_heterosexuality\\_not\\_the\\_norm/](http://blogs.news.com.au/dailytelegraph/mirandadevine/index.php/dailytelegraph/comments/the_thought_police_telling_kids_heterosexuality_not_the_norm/)



parents. The reaction from parents and community leaders resulted in direct intervention by the NSW Government to prevent the film from being shown during school hours as a substitute to regular classes.

### “All of Us” eight week curriculum

The “All of Us” educational resource is produced jointly by the SSCA and LGBTI youth organisation *Minus18*. The program is designed to span over eight weeks, and to be used by teachers in years seven and eight. Students in those years are typically aged anywhere from eleven to fourteen (varying from state to state). Whilst the content contained within the program is similar in approach to the rest of the SSCA resources, it is worth examining more closely, since this program can be used by any school in Australia, regardless of whether they are a member of SSCA.

ACL submits that this new resource is a source of sexualisation of children in NSW and throughout Australia.

The material is designed to be used across the curriculum, with schools encouraged to:

*...adapt and use the videos and teaching activities in other areas of the curriculum such as English, History, Humanities, Legal Studies, Civics and Citizenship, and applied learning curriculums<sup>83</sup>*

Prior to the introduction of the “All of Us” program, the SSCA material already contained a similar encouragement. Teachers were told:

*Whatever the subject, try to work out ways to integrate gender diversity and sexual diversity across your curriculum.<sup>84</sup>*

The unit guide for the resource states:

*All Of Us is a collection of short videos and teaching activities designed by Minus18 and Safe Schools Coalition Australia in order to assist students in understanding gender diversity, sexual diversity and intersex topics.*

*The All Of Us resource supports the Health and Physical Education learning area of the Australian Curriculum.<sup>85</sup>*

The Australian curriculum achievement standards, which this program purports to address, are included in the unit guide as the following:

#### *Relevant Year 7 and 8 Achievement Standards*

*By the end of Year 8, students investigate strategies and resources to manage changes and transitions and their impact on identities. Students evaluate the impact on wellbeing of relationships and respecting diversity. They analyse factors that influence emotional responses. They investigate strategies and practices that enhance their own and others’ health and wellbeing...Students apply personal and social skills to establish and maintain respectful relationships and promote fair play and inclusivity.*

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<sup>83</sup> All of Us Unit Guide, Safe Schools Coalition, accessed 18/01/2016, <http://www.safeschoolscoalition.org.au/app/theme/default/design/assets/all-of-us/documents/unit-guide.pdf> p 9

<sup>84</sup> Guide to Kick Starting your Safe School, Safe Schools Coalition, accessed 18/01/2016 <http://www.safeschoolscoalition.org.au/uploads/bcc26a996bc80c181a71097f592ce984.pdf> p 1.

<sup>85</sup> All of Us Unit Guide, Safe Schools Coalition, accessed 18/01/2016, <http://www.safeschoolscoalition.org.au/app/theme/default/design/assets/all-of-us/documents/unit-guide.pdf> p 3.

*They demonstrate skills to make informed decisions, and propose and implement actions that promote their own and others' health, safety and wellbeing.*<sup>86</sup>

ACL submits that this program does more than explore gender diversity, sexual diversity and intersex topics; it also encourages, through its treatment of these issues, a silencing of diversity of thought and opinion. The program fails the curriculum requirement for inclusivity, because those students with, hitherto, mainstream views about sexuality are intimidated into towing the line.

There is nothing within the “All of Us” program that seeks to teach respect, tolerance and inclusivity for those who may, for cultural or religious reasons, consider non-heterosexual expressions of sexuality unacceptable, or even for those who, for scientific reasons, consider transsexuality as a manifestation of the medical condition, *gender dysphoria*.

Instead, the resource aims to have year 7 and 8 children celebrate the “diversity of each person’s unique sexuality, gender identity or intersex status.” In the final lesson, children are urged to sign a pledge to be an ally of non-heterosexual students. There is no discussion in the lesson plan on how a student who chooses not to participate in such a pledge might be handled and their view respected.

The notion of the “safe space”, established in week one of the lessons, does not leave room for respecting views that are what the material describes as “heteronormative in nature”. The final lesson plan states:

*Heteronormativity describes a belief-system that reinforces that same sex attracted, intersex, and gender diverse people are somehow less ‘normal’ than everyone else....*

*Reducing heteronormativity in schools can have good outcomes for everyone, not just the LGBTI students*<sup>87</sup>

This leaves no room for students with traditional views to discuss with their classmates why they might be uncomfortable with non-heterosexual expressions of sexuality. Those children that disagree with non-heterosexual expressions of sexuality are likely to be intimidated into compliance with the sexualisation of their peers.

### Direct Sexualisation in “All of Us”

Lesson 2 of the “All of Us” program directly sexualises children by asking year 7 and 8 children (11 - 14 years old) to imagine themselves older (16 years old) and in a relationship. The lesson plan states:

*Invite students to imagine themselves in the role of a young person who is aged 16 years or older and is going out with someone they are really into... Tell students on the left-hand side of the room that their character is going out with someone of the same sex, while the character of those on the right-hand side of the room is going out with someone of the opposite sex.*<sup>88</sup>

Students are then required to consider ten questions, with yes or no answers, relating to the student’s comfort with making public manifestations of their relationship and affection, as well as the acceptance of their relationship by family, school and community. Children are then required to discuss the questions and share their opinions.

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<sup>86</sup> Ibid. p 9.

<sup>87</sup> Ibid. p 42.

<sup>88</sup> Psychologist: Too much sex ed too soon bad for kids' brains, *Sunshine Coast Daily*, 31/07/2015  
<http://www.sunshinecoastdaily.com.au/news/too-much-sex-ed-too-soon-is-bad-for-brain/2724464/>

The program's instruction that a child must imagine themselves -- potentially two to five years-- older is likely out of a desire to avoid asking eleven to fourteen year olds to imagine themselves in a romantic or sexual relationship at their current age. Year seven and eight children are too young to legally be allowed to engage in sexual activity. The age of consent in most states is sixteen (including NSW), in some states, however, it is seventeen, and in some states it is even older for anal sex. It should be noted that this program is designed for all Australian states and territories.

A NSW Department of Education and Training website now contains a lesson titled "Stepping Out" which follows the same formula as the SSCA lesson plan.<sup>89</sup>

### Resource Development – The link between SSCA and Minus18

Minus18 describe themselves as "Australia's largest youth led organisation for gay, lesbian, bisexual and trans youth"<sup>90</sup>. SSCA develops, provides and promotes its resources in collaboration with Minus18. Most of the materials available to students are co-branded and some are co-written, for example the SSCA resource 'Stand Out' states:

*Stand Out was originally conceived and created in 2011 by Safe Schools Coalition Victoria and Minus18, with funding from the Victorian Government.*

### Content on the endorsed Minus18 website

The content on the website of Minus18 is even more concerning and alarming.

Whilst not all of the content found on the Minus18 website is explicitly 'official' SSCA material, it is in fact a website endorsed by the SSCA program and students are encouraged to make ongoing use of the Minus18 website. For example, SSCA resource material tells students:

*Try accessing the website [minus18.org.au](http://minus18.org.au), [safeschoolscoalition.org.au](http://safeschoolscoalition.org.au) or some of the groups listed at the back of this guide. Are any of them blocked? If so, for what reason? Speak to a teacher about the importance of allowing students to access them at school, and let them know why this matters.*

In November 2015 the SMH reported on SSCA's reaction to the public attention that ACL generated towards the content of the program. The article states:

*Safe Schools Coalition national program director Sally Richardson says while the program encourages children to wear uniforms and use bathrooms which matches their gender identity, there is no content which teaches sexual techniques or girls how to bind their chest.*

*She said the ACL had wrongly accused Safe Schools of including content which was not part of the program but on websites that the program had links to, including a site called Minus18...*

*"Safe Schools Coalition links to a number of organisations across the country and Minus18 is one of those, but Minus18 is a separate organisation that Safe Schools does not fund and we don't run it."*

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<sup>89</sup> NSW Education and Training, 'Stepping out' accessed 05/02/2016

[http://www.curriculumsupport.education.nsw.gov.au/sexual\\_health/assets/pdfs/step\\_out.pdf](http://www.curriculumsupport.education.nsw.gov.au/sexual_health/assets/pdfs/step_out.pdf).

<sup>90</sup> 'What we do', Minus18, accessed 05/02/2016, <https://minus18.org.au/index.php/about-us>.

Again, it needs to be stated that the Minus18 website is endorsed by the SSCA program, and students are encouraged to make ongoing use of it. The 'chest binding' content referred to by Sally Richardson is contained on the Minus18 website and contains the following advice:

*7 Ways to Bind Your Chest – Because you are compressing tissue, it can cause damage and potentially even breakages to your ribs if done improperly, if things go wrong with your ribs, it has the potential to be lethal...*

Further content from the Minus18 website has been included here for reference:

*Tucking is used to create a flat front in the pants, and reduce the visibility of a penis. It's often done when wearing tight skirts and/or dresses, or just for personal comfort. Just like binding it's important to take care, tucking can cause injury if done improperly. Don't tuck for more than 4-6 hours at a time, and taking a break is a must. Tucking sometimes involves a technique of placing the testicles back inside the pockets inside your abdomen that lie on either side of the penis. If it feels too weird, a tuck can still work without it. The next step is to pull the penis backwards, in-between your legs*

*So I done fucked up. Literally. One Grindr hook-up gone wrong, and that's how I got myself some gonorrhoea. But let's backtrack here so I can fill out some holes (pun intended) in my little life drama... So it's not as terrible as you may have expected, in fact it's not terrible at all. Most STIs can be detected from non-invasive urine and saliva samples, and if found early are easily cured.*

*I've had friends who count their first time giving oral as their virginity.*

*Penis-in-vagina sex is not the only sex, and certainly not the "ultimate" sex.*

Cover your Tracks article: step-by-step instructions on how to delete your online site history for private browsing. *"we have some handy tips for you on keeping stealthy while browsing online"* (sic)

Games promoted such as *"name three people in the order that you would like to F\*\*\*, marry and kill"*

Encourages contacting Minus 18's own resident "Sexpert" - for any *"burning sexual health question"* and answer *"YOUR sexy questions"*

*...it's a total lie that all guys have dicks, that all girls have vaginas, and that's what makes a relationship 'straight' or 'gay'.*

### **Minus18 and Social Networking**

Community concern over the potential for predatory use of the social media aspect of the Minus18 website was discussed by former Senator Bill OChée, who has written:

*The link to Minus18 comes from what is supposedly a safe website, referred from a federal government site...*

*Whatever else Minus18 is, it functions as an online dating site. Users register by answering questions such as age, sexual identity, outness, gender, location and preferences, and can search profiles of other members. Users can then connect online...*

*In spite of Minus18 supposedly having a rule that users over the age of 25 are not permitted to utilise the forums “without direct permission from Minus18” there are literally scores of users older than this on the website...*

*Minus18 management was unable to answer how many users were refused registration in the past 12 months. That is particularly disturbing given some of the profiles from men aged 30 and over who seem to have an interest in underage users.*

<sup>91</sup>

Minus18 has admitted in a Youth Affairs Council of Victoria case study that it does not have a social media policy. The study states:

*While Minus 18 does not have a formal social media policy, the organisation has guidelines about what is acceptable, such as the importance of respecting other people and ensuring that content has positive messages that are in line with the mission and aims of the organisation. It also strives to be flexible and to experiment with social media to discover how best to engage its audience. When negative comments or items are posted, they are not immediately deleted; rather they are discussed honestly and openly, but in ways that encourage positive posting.<sup>92</sup>*

It is unknown to ACL whether Minus18 has adopted a formal social media policy since the above source was published in March 2013.

### Legal Ramifications

ACL has received a legal opinion in relation to the potential liability of school authorities which promote certain material endorsed by the SSCA.

The opinion advised:

1. *I am asked to advise as to the potential liability of school authorities which promote certain material endorsed by the SSCA.*
2. *The material is found on a website operated by a group known as Minus 18, which identifies itself as “Australia’s largest youth led organisation for gay, lesbian, bi-sexual and trans youth.”<sup>1</sup> It is material which provides information in relation to:*
  - a. *Chest binding for girls;*
  - b. *Penis tucking for boys;*
  - c. *Sexual transmitted infections (STIs);*
  - d. *Gender alteration.*
3. *For the reasons set out in this opinion, it is my view that in certain circumstances, should a school child suffer damage from following, or as a result of, the information available on Minus 18’s website in relation to the above matters, the relevant school authority may be liable in negligence for any damage suffered.*

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<sup>91</sup> Bill O’Chee, Children at risk from predators on government website, *Brisbane Times*, 22/07/2015  
<http://www.brisbanetimes.com.au/comment/the-hermit/children-at-risk-from-predators-on-government-website-20150721-gihjgz.html>

<sup>92</sup> Jen Rose and Lisa Morstyn, ‘What makes you tweet?’ Young people’s perspectives on the use of social media as an engagement tool, *Youth Affairs Council of Victoria*, March 2013,  
[http://www.yacvic.org.au/component/docman/doc\\_download/336-report-what-makes-you-tweet-young-people-s-perspectives-on-the-use-of-social-media-as-an-engagement-tool](http://www.yacvic.org.au/component/docman/doc_download/336-report-what-makes-you-tweet-young-people-s-perspectives-on-the-use-of-social-media-as-an-engagement-tool)

4. *The liability for a school authority for damage suffered by a student as a result of following information obtained from a website use of which was expressly or impliedly encouraged by the authority is a novel area, and like the related area of a school authority's liability for cyber bullying, may well see litigation occur in the future. There are no decided cases in Australia in relation to this issue, so as with the issue of cyber bullying, it has to be approached on first principles.*
5. *Whether the law imposes a duty of care in a novel situation is "fact-rich" question. That is, much depends on the specific facts of a particular case. Therefore, an opinion which considers a hypothetical situation can only be tentative.*

...

The full legal opinion has been included in Annexure 1 for the committee's reference.

## **The impact on children and young people of growing up in a sexualised culture**

Children are now growing up in a culture that repeats the message that a person's value mainly lies in their sexual attractiveness. This message is fed to them from many sources, including electronic games, magazines, TV programs and the internet. It is a message reinforced by similar and perhaps stronger messages in the mainstream culture, particularly regarding the persistent depiction of women as sexual objects for men's pleasure. The result is that children are forced to deal with sex and sexuality before they are developmentally ready.

### **American Psychological Association**

The American Psychological Association, the largest body of psychologists in the world, formed a task force on the Sexualisation of Girls. The evidence examined by the task force includes the psychological theory, research and clinical experience, addressing the sexualisation of girls, via media and other cultural messages. The task force found that there was ample evidence to show that sexualisation has negative effects in a variety of domains, including: cognitive functioning, physical and mental health, sexuality and beliefs.<sup>93</sup>

The APA task force found the following:

- Self-objectification has been repeatedly shown to detract from the ability to concentrate and focus one's attention, thus leading to impaired performance on mental activities.<sup>94</sup>
- Sexualisation and objectification undermine confidence in and comfort with one's own body, leading to a host of negative emotional consequences, such as shame, anxiety and even self-disgust.<sup>95</sup>
- Sexualisation is linked with three of the most common mental health problems of girls and women: eating disorders, low self-esteem, and depression or depressed mood.<sup>96</sup>
- Frequent exposure to narrow ideals of attractiveness is associated with unrealistic and/or negative expectations concerning sexuality.<sup>97</sup>

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<sup>93</sup> APA Task Force p 2

<sup>94</sup> APA P 3

<sup>95</sup> APA p 3

<sup>96</sup> APA p 3

<sup>97</sup> APA p 3

- Frequent exposure to media images that sexualize girls and women affects how girls conceptualise femininity and sexuality. Girls and young women who more frequently consume or engage with mainstream media content offer stronger endorsement of sexual stereotypes that depict women as sexual objects.<sup>98</sup>
- The sexualisation of girls can negatively impact other groups in society, for example, exposure to narrow ideals of sexual attractiveness may make it difficult for some men to find an “acceptable” partner or to fully enjoy intimacy with a female partner.<sup>99</sup>
- It may lead to increased rates of sexual harassment and sexual violence, and an increase in demand for child pornography.<sup>100</sup>

## Sexual development & initiation

The premature sexualisation of children has a range of negative impacts on their sexual development, relationships, and achievements in other fields, and on their physical health. The American Psychological Association (APA) notes that sexualisation also negatively impacts girls’ sexual development as they are exposed to models of passivity, and also impacts their relationships with other girls as female friendships become policing grounds for conformity to a narrow sexual ideal, or competition arenas for boys’ attention. The APA concludes:

*Girls’ relationships with boys and men are affected in that exposure to sexualising and objectifying media has been shown to relate to girls’ and boys’ views on dating, boys’ sexual harassment of girls, and attitudes towards sexual violence.*<sup>101</sup>

The age of first sexual intercourse is steadily falling and it is possible that one reason for this is the elevated importance of sexual attractiveness and experience as a sign of one’s value. Sexualised images present a distorted view of sex and sexuality, which does not prepare children and adolescents for the realities of sexual relationships.

Studies on the effects of sexual content in the media indicate significant correlations between the viewing of sexual media content and sexual activity, including testing positive for sexually transmitted diseases. A longitudinal study demonstrated a causal link, finding that among 1,800 American teens aged 12-17, increased exposure to sexual media doubled the chance of their having initiated sexual intercourse or increased non-penetrative sexual activity in the following year.<sup>102</sup>

One study has also shown that teenagers with frequent exposure to sexual content on TV have a substantially greater likelihood of teenage pregnancy. The likelihood of teen pregnancy was found to be twice as high when the quantity of sexual content exposure within the viewing episodes was high.<sup>103</sup>

Early sexual activity carries the risk of unwanted sex and of contracting sexually transmitted diseases. Some studies suggest that the younger a girl is at first sexual intercourse the more likely it is that she

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<sup>98</sup> APA p 3.

<sup>99</sup> Ibid.

<sup>100</sup> APA p 4.

<sup>101</sup> Ibid.

<sup>102</sup> Strasburger, VC, ‘Adolescents, sex and the media: Oooo, baby, baby-a, Q&A,’ *Adolescent Medicine Clinics*, 2005, Vol 16, no 2, pp269-288.

<sup>103</sup> Anita Chandra, Steven C. Martino, Rebecca L. Collins, Marc N. Elliott, Sandra H. Berry, David E. Kanouse, and Angela Miu, “Does Watching Sex on Television Predict Teen Pregnancy? Findings from a Longitudinal Survey of Youth,” *Pediatrics* 122 (2008): 1047-1054 (1052).



has had involuntary or forced sex.<sup>104</sup> Given the APA's findings (quoted above) that sexualisation influences attitudes regarding sexual harassment and sexual violence, this is very concerning.

Noting the alarming rise in sexually transmitted infections such as chlamydia and the decline in young people's knowledge of HIV transmission, the Australia Institute laments that the 'fantasy of sex as it appears in popular culture is not balanced by widespread understanding of the physical risks of real sex.'<sup>105</sup> Certainly it does not assist young people to understand the place of sex within a loving and committed relationship.

## Eating disorders

Children in developed nations are now reaching puberty much earlier than they did in previous generations. One sixth of eight-year-old girls show some signs of puberty, compared to one in 100 a generation ago. One in 14 eight year old boys has pubic hair, compared to one in 250 a generation ago<sup>106</sup>. However, this earlier onset of puberty does not mean that children are maturing equally fast in other areas. The Australia Institute's paper aptly highlighted this fact, when it stated:

*...experts in childhood development often note that children's emotional and cognitive development has not advanced at the same pace [as their physical development]. As a result, children's bodies are maturing before they are psychologically mature. Children are thus ill-equipped to deal with sexualising pressure, which implies that only a limited range of mature body types are attractive and desirable.<sup>107</sup>*

Of course, few people match this ideal body type, which is largely a fiction created by magazine editors making creative use of image manipulation software. However, the constant promotion of the ideal shape in television, advertising and magazines has detrimental effects, particularly on the development of young girls.

Strasburger reports a study of nearly 3,000 Spanish 12 to 21 year olds, which found that those who read girls' magazines doubled their risk of developing an eating disorder.<sup>108</sup> Field reports a US study of approximately 7,000 girls aged 9 to 14, which showed that purging behaviour such as vomiting, or using laxatives, was more likely in those girls who placed a higher importance on looking like women on TV, in movies or in magazines.<sup>109</sup>

Net-savvy youngsters are now using online methods to assist one another in the potentially fatal pursuit of the ideal body. In April 2008, France announced new measures to stamp out pro-anorexia blogs and websites where anorexics share experiences and tips on subjects like appetite suppressants, giving one another advice about how to lie to their doctors, what kinds of food are easiest to vomit, and how to 'purge' whenever they take any kind of food.<sup>110</sup>

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<sup>104</sup> Bar-on M, Broughton D, Buttrose S and Corrigan S, 'Sexuality, contraception and the media,' *Pediatrics*, 2001, Vol 107, No 1, pp191-194

<sup>105</sup> Rush and La Nauze, op cit, p43

<sup>106</sup> Odone C, 'Sexy kids,' *New Statesman*, July 15, 2002

<sup>107</sup> Rush and La Nauze, op cit, p35

<sup>108</sup> Strasburger, 2005, op cit

<sup>109</sup> Field AE, Camargo CAJ, Taylor CB, Berkley CS, and Colditz GA, 'Relation of peer and media influences on the development of purging behaviours among pre-adolescent and adolescent girls,' *Archives of Pediatrics and Adolescent Medicine*, 1999, Vol 153, No 11, pp1184-1189

<sup>110</sup> 'Jail terms for pro-anorexia websites,' [www.news.com.au](http://www.news.com.au), 16<sup>th</sup> April 2008



Medical professionals have noted the dangers of eating disorders and linked the rising pressure to achieve an impossible, ideal body type with irresponsible media portrayals.

The Australian Medical Association has also expressed serious concerns about the impact idealised media images of physical perfection may have on individuals who are vulnerable to developing serious conditions such as eating disorders. In 2002, the Australian Medical Association issued a position statement on body image and health stating:

*Body image attitudes develop during childhood and dissatisfaction tends to increase during adolescence and young adulthood especially in females... marketing and advertising portrayals of physical perfection create particular social pressures that impact on a person's body image. There is a growing body of research evidence suggesting that the impact of idealised images in the media can be hazardous especially for individuals who have certain vulnerability's such as low self-esteem. Young people are especially susceptible to social pressures to conform to ideal stereotypes.<sup>111</sup>*

### **Opportunity cost of sexualisation**

Sexualisation carries an opportunity cost. There are only 24 hours available in each day, so children and adolescents who focus on developing their sex appeal with extensive concerns for their clothing, make-up, hairstyles and accessories, have less time to spend developing their abilities in sports, music or academic study. As the American Psychological Association puts it, 'chronic attention to physical appearance leaves fewer resources available for other mental and physical activities.'<sup>112</sup>

A 1998 study proved this point.<sup>113</sup> College students, alone in a dressing room, were asked to try on either a swimsuit or a sweater. During the ten minutes that they waited in either garment, they were asked to perform a maths test. The women in swimsuits performed significantly worse in this maths test than the women wearing sweaters. No differences were found for men. It would seem that wearing the swimsuit made women more likely to focus on their appearance and compare their body to sexualised ideals, with the result that their capacity to apply themselves mentally was diminished.

Even on an intuitive level, it is obvious that it robs children of the full term of their childhood. In a culture that has fought hard for the equality of women, it is extremely distressing to reach the point where girls are taught to dream such small dreams: the dominant message is not that they have an innate value, or can achieve ambitious career goals, or deserve lasting love in enduring relationships, but simply that their worth lies in their sexual appeal, which diminishes as they age.

### **Evidence of the harm done to children through exposure to pornography**

Pornography changes children's attitudes toward women and sex. A meta-analysis of the published research on the effects of pornography states that there is:

*clear evidence confirming the link between increased risk for negative development when exposed to pornography. These results suggest that the research in this area can*

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<sup>111</sup> Position Statement on Body Image and Health, Australian Medical Association, 2002

<sup>112</sup> APA, op cit, p21

<sup>113</sup> Frederickson BL, Roberts T, Noll SM, Quinn DM, & Twenge JM, 'That swimsuit becomes you: sex differences in self-objectification, restrained eating, and math performance,' *Journal of Personality and Social Psychology*, 1998, vol 75, pp269-284

*move beyond the question of whether pornography has an influence on violence and family functioning.*<sup>114</sup>

The paper goes on to state:

*While likely not a solitary influence, it appears that exposure to pornography is one important factor which contributes directly to the development of sexually dysfunctional attitudes and behaviours. The results are clear and consistent; exposure to pornographic material puts one at increased risk of developing sexually deviant tendencies, committing sexual offences, experiencing difficulties in one's intimate relationships, and accepting the rape myth. In order to promote a healthy and stable society, it is time that we attend to the culmination of sound empirical research.*

Other studies reveal that pornography viewing by teens disorients them during the developmental phase when they have to learn how to handle their sexuality and when they are most vulnerable to uncertainty about their sexual beliefs and moral values.<sup>115</sup> There has also been found to be a significant relationship between frequent pornography use and feelings of loneliness, including major depression among teens.<sup>116</sup> Adolescents exposed to high levels of pornography have also been found to have lower levels of sexual self-esteem.<sup>117</sup>

### Pornography a factor in children abusing other children

A paper presented at the Ninth Australasian Conference on Child Abuse and Neglect in November 2003, by staff from the Child at Risk Assessment Unit, Canberra Hospital, has reported that exposure to X-rated pornography is one significant factor in children younger than 10 years old sexually abusing other children.<sup>118</sup>

The Little Children Are Sacred report released by the NT Government in June 2007 identified pornography as one of the main drivers of an epidemic of sexual abuse which included the rape of babies and a case of a 17-year-old forcing younger children to watch pornography and then act it out.

### Violence in pornography

Sex educator, Maree Crabbe, has stated that there are high levels of gendered aggression in pornography, with 88 per cent depicting physical aggression such as gagging and choking, and 48 per cent including verbal aggression.<sup>119</sup> "It also conveys a range of problematic messages around pleasure, consent, body image and sexual health. Pornography is shaping young people's sexual

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<sup>114</sup> (Elizabeth Oddone-Paolucci, Mark Genius, Claudio Violato), *Medicine, Mind & Adolescence*, Vol XII (1997)

<sup>115</sup> Jochen Peter and Patti M. Valkenburg, "Adolescents' Exposure to Sexually Explicit Internet Material, Sexual Uncertainty, and Attitudes Toward Uncommitted Sexual Exploration: Is There a Link?" *Communication Research* 35 (2008): 579-601 (581)

<sup>116</sup> Michele L. Ybarra and Kimberly J. Mitchell, "Exposure to Internet Pornography among Children and Adolescents: A National Survey," *CyberPsychology & Behavior* 8 (2005): 473-86 (479). 10 Vincent Cyrus Yoder, Thomas B. Virden III, and Kiran Amin "Internet pornography and Loneliness: An Association?" *Sexual Addiction & Compulsivity* 12 (2005): 19-44 (30). This was a study of 400 individual Internet pornography users.

<sup>117</sup> \*Todd G. Morrison, Shannon R. Ellis, Melanie A. Morrison, Anomi Bearden, and Rebecca L. Harriman, "Exposure to Sexually Explicit Material and Variations in Body Esteem, Genital Attitudes, and Sexual Esteem Among a Sample of Canadian Men," *The Journal of Men's Studies* 14 (2006): 209-22 (216-7).

<sup>118</sup> 'Child Protection and the Internet' presented by Dr Janet Stanley, Ms Cassandra Tinning, and Ms Katie Kovacs at the *Ninth Australasian Conference on Child Abuse and Neglect 2003*

<sup>119</sup> Wendy Tuohy, 'Alarm sounds on porn's violent side-effects', *Herald Sun*, 26 July 2015, [http://blogs.news.com.au/heraldsun/theperch/index.php/heraldsun/comments/alarm\\_sounds\\_on\\_porns\\_rough\\_side\\_effects/](http://blogs.news.com.au/heraldsun/theperch/index.php/heraldsun/comments/alarm_sounds_on_porns_rough_side_effects/)

understandings, expectations and practices," she said. "A study last year from the UK showed a normalisation of coercive heterosexual anal sex among 16 to 18-year-olds."<sup>120</sup>

### Addiction to pornography

Pornography-related addictions rose by 300 per cent in the three years leading up to 2011 according to Robert Mittiga, the program director of GATS Counselling Services in Adelaide. Mittiga has publicly stated that around 7-10 per cent of regular internet users become hooked on online sex.<sup>121</sup> Addiction to pornography is also high in the UK, where more than a quarter of young patients at a leading private clinic in London are being treated for addiction to online pornography.<sup>122</sup>

## The effectiveness of current regulatory frameworks and suggestions for improvement

ACL submits that more can be done to prevent the proliferation of material in print, electronic, and social media that sexualises children. In particular, ACL proposes that action could be taken through reforms to advertising self-regulation, measures to restrict children's access to pornography, and a more child-focused approach to classification zones on free-to-air television.

### Adequacy of advertising self-regulation

The advertising industry in Australia has adopted a number of voluntary codes of ethics written by the Australian Association of National Advertisers (AANA). The advertising industry is self-regulated by an industry secretariat known as the Advertising Standards Bureau (the Bureau). Self-regulation is achieved, in part, by the secretariat overseeing a determinations board, known as the Advertising Standards Board (ASB). When complaints are received by the ASB, it makes determinations by applying the relevant Code to the advertisement in question. The ASB does not pre-authorise advertisements, but instead responds to complaints after they have been displayed or aired. The work of the Bureau is not underpinned by any Government legislation and determinations by the ASB are not binding on the advertiser, although they generally comply with ASB determinations out of self-interest. The self-regulatory system is funded voluntarily by the industry through a levy administered by the Australian Advertising Standards Council Ltd.

The two key codes adopted by the AANA that are relevant to this inquiry are: the 'AANA Code of Ethics' (the Code) and the 'AANA Code for Advertising and Marketing Communications to Children' (the Children's Code). The Children's code will only apply when the advertisement in question is directed primarily to Children for Product, which means goods, services and/or facilities which are targeted toward and have principle appeal to Children. A child is defined by the Children's Code as a person 14 years or younger.

### Advertising Standards Board out of sync with Prevailing Community Standards

ACL submits that self-regulation by the advertising industry has failed to protect children from sexualised imagery and messaging. This position is supported by research, revealing that the

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<sup>120</sup> Jill Stark, 'Melbourne University porn ban angers Ormond College students', 13 September 2015,

<http://www.stuff.co.nz/world/australia/71999916/melbourne-university-porn-ban-angers-ormond-college-students>

<sup>121</sup> Greg Callaghan, 'Lust, caution as addiction to online pornography grows', The Australian, 03 September 2011,

<http://www.theaustralian.com.au/life/weekend-australian-magazine/lust-caution-as-addiction-to-online-pornography-grows/story-e6frg8h6-1226126673876>

<sup>122</sup> The UK cross-party Independent Parliamentary Inquiry Into Online Child Protection, April 2012, <http://www.safermedia.org.uk/Images/final-report.pdf>

determinations of the ASB are frequently out of sync with community standards on sex, sexuality, and nudity.

The concept of 'Prevailing Community Standards' is contained within the Code and means 'the community standards determined by the Advertising Standards Board as those prevailing at the relevant time in relation to Advertising or Marketing Communications'.<sup>123</sup> Just what the prevailing community standards are, is, therefore, a subjective judgement made by the ASB, with no formal requirement for community consultation.

A study published in 2011, by Sandra Carol Jones and Katherine Eagleton, at the Centre for Health Initiatives, University of Wollongong, found a consistently high level of public concern about the use of specific appeals in advertising, including appeals relevant to this inquiry. A high level of respondents, in the study, disagreed with the use of nudity (77.1%), portrayal of women as sex objects (80.3%), and portrayal of men as sex objects (78.8%), in advertising messages, indicating that to uphold community standards, advertising should not include such depictions in their messaging. The research concluded that "there is a consistency of views across the community on key issues of advertising standards" and that "a substantial proportion of consumers are offended by current advertising appeals and executions".<sup>124</sup>

A previous 2007 study, by Sandra Carol Jones and Katherine van Putten, noted that "of all the complaints received about advertising, discrimination, sex, sexuality and nudity, and violence are the issues that consistently receive the most complaints".<sup>125</sup> The complaints in question spanned the period from 2002-2005. The research concluded that there was a discrepancy between what the ASB believes are community standards and actual public opinion about what is (un)acceptable with regard to advertising in Australia.<sup>126</sup>

Research by the Advertising Standards Bureau (the Bureau) from 2012 shows that the public is more conservative than the ASB with regards to sex, sexuality and nudity.<sup>127</sup> This confirmed earlier Bureau research in 2007 and 2010 indicating the ASB was out of touch with the community. In 2010, the Bureau found that seven of the year's ten most complained about advertisements related to sex, sexuality and nudity, and four of these seven were billboards,<sup>128</sup> while in 2009, this issue accounted for a quarter of all complaints about advertisements.<sup>129</sup> Despite this, complaints are often ignored. Of the four billboard ads in 2010 mentioned, only two complaints were upheld (one TV ad complaint was also upheld).

More recent research, commissioned by the Bureau, was completed in December 2015. This research explored community perceptions about advertising to children, including the extent to which the ASB's decisions were in line with community views. The research specifically considered the Children's Code, among other things. Disappointingly, the research included only two advertisements relating to

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<sup>123</sup> The AANA Code of Ethics, (Code Administration Effective Date: January 2012, Last update: January 2016), [http://aana.com.au/content/uploads/2015/12/Code\\_of\\_Ethics\\_081215.pdf](http://aana.com.au/content/uploads/2015/12/Code_of_Ethics_081215.pdf)

<sup>124</sup> Sandra Carol Jones and Katherine Eagleton, at the Centre for Health Initiatives, University of Wollongong, *Journal of Public Affairs* p 324

<sup>125</sup> Katherine van Putten, Sandra C. Jones, Putting the 'Community' back into community standards for advertising, *University of Wollongong Research Online*, 2007, p 1510.

<sup>126</sup> *Ibid.* p 1514.

<sup>127</sup> Advertising Standards Bureau (2012), Fact Sheet: Community perceptions research 2012 – Overview, <http://www.adstandards.com.au/storage/2899879fe516062936d15b2eacdc700a.Research%202012%20-%20overview.pdf>.

<sup>128</sup> Advertising Standards Bureau (14 December, 2010), Media Release: Most complained about ads for 2010.

<sup>129</sup> Advertising Standards Bureau (November, 2009), *AdStandards News*, Edition Eleven, p 4, [http://www.adstandards.com.au/storage/5d0e372a3a8f55cecaae349e53be699e.AdStandardsNewsletter\\_1109\\_final.pdf](http://www.adstandards.com.au/storage/5d0e372a3a8f55cecaae349e53be699e.AdStandardsNewsletter_1109_final.pdf).

sexualisation in its study. The 2015 research findings are, therefore, of limited value to revealing broader trends of ASB's conformance with community standards in relation to sexualisation.

The two ads explored in the research were Witchery and Bonds advertisements. The Board determined they were not directed primarily to children and so both were considered under section Section 2.4 of the Code of Ethics, which looks at whether or not they treated sex, sexuality and nudity with sensitivity to the relevant audience. The Bonds advertisement was also considered under Section 2.2 which looks at the use of sexual appeal in an exploitative and degrading manner. The Witchery advertisement was upheld by the ASB on the basis of depicting a child in a sexualised manner. This decision by the ASB was in line with the perceptions of those in the study. The Bonds advertisement was dismissed by the ASB on the basis that it did not contain a sexualised image of a child and was not sexualised. In **contrast** to the ASB decision, 57% of the participants of the study believed that the advertisement employed sexual appeal.<sup>130</sup> The fact that only two such advertisements were included in the study makes the 2015 research unhelpful in providing any meaningful data about broader trends.

### Outdoor advertising

ACL submits that the failure of self-regulation by the advertising industry to protect children from sexualised imagery and messaging, also extends to outdoor advertising. Overtly sexualised imagery should not be tolerated in public spaces. ACL believes that all outdoor advertising, no matter the location, should be appropriate for viewing by children and should be free from sexualised images and messages.

The Outdoor Media Association (OMA) is the peak national industry body that represents most of Australia's traditional and digital outdoor media display companies, producers, and owners. The OMA has developed a Code of Ethics which it requires its members to adhere to. Included in the code is the requirement that all outdoor advertising must adhere to the AANA Code of Ethics, and the AANA Code for Advertising and Marketing Communications for Children, and that the OMA supports all decisions made by the ASB in regards to complaints about outdoor advertising.<sup>131</sup>

Some advertisers fail to adhere to the AANA codes of ethics. Rouge advertisers are able to 'push the envelope' with impunity. There are no disincentives or penalties to discourage the display of offensive outdoor advertisements, on the contrary, media coverage of the controversy and its impact on brand awareness may encourage advertisers to use offensive messaging.

There now exists a situation in NSW where outdoor advertisements, that would be deemed sexual harassment in a workplace context, are somehow considered acceptable for public display.

### *Sante Fe Gold Townsville*

A sexually exploitative billboard advertisement in Townsville has been on display for a number of years. The billboard advertisement for Sante Fe Gold features a woman in a low cut top which exposes a substantial part of her bosom. The text reads, "I'm waiting". The Advertising Standards Board upheld a complaint on 14th August 2013. The ASB found that the advertisement presented the woman in a

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<sup>130</sup> Advertising Standards Bureau, Research Report: Community perceptions of advertising directed primarily to children, December 2016, [https://adstandards.com.au/sites/default/files/2015\\_community\\_perceptions\\_on\\_advertising\\_directed\\_primarily\\_to\\_children\\_web\\_final.pdf](https://adstandards.com.au/sites/default/files/2015_community_perceptions_on_advertising_directed_primarily_to_children_web_final.pdf)

<sup>131</sup> Outdoor Media Association, *Outdoor Media Association's Code of Ethics*, [http://oma.org.au/data/assets/pdf\\_file/0019/2458/OMA\\_Code\\_of\\_Ethics\\_May\\_2012.pdf](http://oma.org.au/data/assets/pdf_file/0019/2458/OMA_Code_of_Ethics_May_2012.pdf), p 2.

manner that was subservient and degrading, and that the depiction of her waiting to serve or provide sexual gratification to others was degrading to her and to women in general. Despite this being upheld, the advertiser failed to respond and the advertisement is still in place over two years later.

An ACL staff member then complained to the ASB again on 2 November 2015. The ASB acknowledged, in a letter dated 14 December 2015, that the advertiser had failed to adhere to the ASB decision of 2013, stating:

*The advertiser had advised the ASB that the upheld advertisement was modified in line with the Board's determination. Upon review however the Board considered that the advertisement has not been modified. The ASB will continue to work with the advertiser and the relevant authorities to seek compliance with the Board's determination. Any updates will be forwarded to you.*

It is astonishing that no current mechanism exists to punish such a flagrant and long-standing breach of the law. This example illustrates both the speed in which the ASB respond to complaints and the problem that the ASB has no power to enforce its own decisions. It takes 6 weeks to even get a decision, by which time, most ad campaigns are finished. As long as there is no penalty for advertisers, then advertising which discriminates against, objectifies and exploits women will continue. There are clearly serious issues with the self-regulation scheme.

#### *Honey B Strip Club Brisbane*

An advertisement for the Honey B Strip Club in Brisbane was placed on a billboard close to Brisbane Grammar a boys' high school. Complaints were lodged with the ASB and were dismissed. Following a petition gathered by two teachers at Brisbane Grammar, the Outdoor Media Association (OMA) 'mediated' the situation and the billboard was removed. Soon after, it reappeared eight kilometres away from its original site. This time, it was no longer next to a boy's high school, instead it was in a family neighbourhood near the Enoggera Army Barracks.

The failure of the system is shown by the responses from the OMA and the ASB. The ASB dismissed complaints and the billboard remained where it was until the OMA stepped in and the billboard was removed. After it was placed at the new site in Enoggera, more complaints were made and the ASB failed to respond. OMA has responded and claimed that they support all decisions made by the ASB Board and that it is not in OMA's power to do anything. The approach by the OMA in this instance was obviously inconsistent, and the decision by the ASB in both instances was out of step with prevailing community standards. The fact that the advertiser felt confident to readvertise the sign after community outcry reveals not only a contempt for genuine community standards by the advertiser, but also the lack of consequences for advertisers who place sexualising material in public places.

#### *Honey Birdette*

The lingerie retailer Honey Birdette's stores are located in busy shopping centres with a high volume of families and children passing by every day. Honey Birdette is a repeat offender whom the ASB have been ineffective in regulating. There have been complaints to the ASB over a number of different advertising campaigns displayed in Honey Birdette stores. Between August 2014 and January 2016 there were 7 different determinations by the ASB in relation to Honey Birdette shopfront advertising. 5 of the determinations were dismissed and 2 were upheld. All advertisements in question featured large posters of models in scantily clad lingerie.



A determination of particular note was the sexualised Christmas-themed poster, featuring a lingerie-clad woman, standing over a gagged and bound Santa, which was placed in shop fronts in the lead up to Christmas. The fact that Honey Birdette felt confident to use Santa Claus in a sexualised way reflects the disdain that some advertisers have for ASB and the AANA code of Ethics and the AANA Code for Advertising & Marketing to Children. The Santa Claus complaint was upheld, but this occurred weeks after the Christmas campaign had ended. One flaw in the current system is that it typically takes weeks to reach a decision, yet even once a decision has been made, the advertiser can appeal, delaying the process even more – all while the advertisement is allowed to remain on display. The current practices of the Advertising Standards Board do not reflect the short-run time frame of most advertising campaigns.

Another complaint shows that the ASB has no power to enforce undertakings made by advertisers. In a letter dated 13 October 2015, to an ACL staff member, the ASB notes that Honey Birdette was voluntarily removing the display that was the subject of the complaint and Honey Birdette had committed to not display the advertisement again in the future. The letter stated that as a result of these undertakings, the ASB did not feel the need to make a determination. Despite those undertakings, Honey Birdette shopfronts continued to display sexual imagery for some time.



Some examples of Honey Birdette posters.

### Low public awareness of where to direct complaints

Research indicates a low level of public awareness with regards to where one should direct complaints about advertising. A study published in 2011, by Sandra Carol Jones and Katherine Eagleton, at the Centre for Health Initiatives, University of Wollongong, found that of a total of 882 responses to the question 'Who can you complain to about an advertisement you object to?' only 49 (5.6%) participants in the study correctly identified the 'Advertising Standards Board' with an additional 75 (8.5%) providing an answer that indicated they could potentially locate the correct organisation if they wished to, such as 'Advertising Standards Australia' or 'Advertising Complaints Board'. The combined total of 14.1% indicates that the Australian public are largely unaware of where to direct their complaints about advertising.

This research is supported by the findings of the December 2015 Bureau research which revealed that when asked to identify organisations that they could direct their complaint to, unprompted, 8% said they would contact the TV/radio station where they saw/heard the advertisement, just 2% stated they would contact 'Ad Standards', 2% the 'Ad Standards Board' and 1% the 'Advertising Standards Bureau'.<sup>132</sup>

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132 [Ibid.](#)

## Measures to address issues in advertising

ACL submits that the recommendations below need to be implemented as a matter of urgency.

### The best interests of the Child should be paramount

ACL submits that a child-focused approach to regulation of the advertising industry is badly needed. The fundamental principle in international and Australian law concerning children is that all decisions made and actions taken should be in their 'best interests'. In addition, the United Nations Convention on the Rights of the Child acknowledges the “important function performed by the mass media” and requires States to:

*Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being.*<sup>133</sup>

The AANA Code of Advertising and Marketing Communications to Children applies only to Advertising or Marketing Communications which, having regard to the theme, visuals and language used, are directed primarily to Children and are for Product. The definition of ‘Children’ in the code means persons 14 years old or younger. Both the Code, and Children’s Code, contain sections prohibiting the use of sexual appeal, or sexual imagery. The threshold for each of these, however, is different. It is, therefore, fair to say that the threshold for an advertisement breaching the code will depend in part on whether the ASB decides the audience primarily targeted is children 14 years and younger or not.

One obvious problem with this arrangement is that the factual potential for a child to be exposed to sexualised advertising is irrelevant to whether or not they are the primary audience. Advertising that employs overt sexual themes or nudity and targets adults may in fact pass the Code, but still have a detrimental sexual impact on any child who views the advertisement. This is particularly significant to outdoor advertising where parents have no control over their child viewing such images.

***Recommendation: That the Australian Association of National Advertisers amend their Code of Ethics, and Code of Advertising and Marketing Communications to Children so as to include a principle that the best interests of the Child should be paramount.***

### Fines for breaches of the code and failure to adhere to ASB determinations

The Advertising Standards Board is currently toothless. There are no penalties for advertisers who breach the code. In addition, there are no penalties for advertisers who disregard a determination by the ASB and fail to remove the offending advertisement.

One solution, that would ensure that advertisers make a greater effort to conform to the code, would be the introduction of penalties for advertisers who fail to comply with the code and with the determinations of the ASB. These penalties should be significant enough to act as a deterrent against breaching the guidelines, and there should be increasing penalties for repeat offenders. These disincentives would need to outweigh the gains from brand awareness raised by the controversy and media attention that offensive advertisements often create. For example, when Sexpo billboard advertisements created community outrage in Ipswich in 2010, newspaper articles were written showing the ads as well as giving information as to when and where Sexpo was taking place, resulting in the sort of publicity money can’t buy.

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<sup>133</sup> Article 17(e), *Convention on the Rights of the Child*.



Fines for breaches of the AANA codes and for failure to comply with a determination could be administered by the ASB through industry cooperation under the current system of self-regulation.

***Recommendation: That the Advertising industry cooperate towards giving the ASB the ability to issue non-binding fines for breach of the code and non-binding fines for failure to comply with a determination.***

### [All Outdoor Advertising Should Be Appropriate for Viewing by Children – Should be G rated](#)

ACL submits that all outdoor advertising content should be appropriate for viewing by children. Outdoor advertising is, by its nature, an advertising medium of general consumption. Outdoor advertising should be 'G' rated because it is a public form of media. Outdoor advertising is on display all day and cannot be turned off, or tuned out, by the parent of a child. Public outdoor areas should be safe for children and families. Public places are after all, meant for the community. As a society we should encourage the idea that the outdoors is a place for everyone. We should strive for a society where parents do not have to avoid certain areas to keep their children safe. This is the only system of advertising regulation that will provide a safe environment for all children.

The Australian Association of National Advertisers should amend their various codes to make ALL outdoor advertising safe for Children. The OMA Code of Ethics, the AANA Code of Ethics, and the AANA Code of Advertising and Marketing Communications to Children should all be amended to ensure all outdoor advertising is appropriate for children's viewing, regardless of the audience the advertiser directs the messaging towards.

***Recommendation: That the Australian Association of National Advertisers amend their Code of Ethics, and Code of Advertising and Marketing Communications to Children so as to include a principle that all outdoor advertising must not include sex, sexuality or nudity that would be inappropriate for children's viewing. This principle should not be dependent on the audience the advertiser directs the messaging towards, but should apply to ALL outdoor advertising.***

### [Introduce a new regulator for outdoor advertising](#)

The advertising industry has had the opportunity to reform its codes to better reflect community standards for many years and has failed to do so. Long-standing community dissatisfaction with the slow and toothless ASB has been ongoing, with advertisers continuing to enjoy a system which places the onus on a wearied public to complain.

Outdoor advertising, in particular, has been a source of much frustration for the public. The ASB has been given plenty of opportunities to properly enforce the AANA codes in accordance with community standards and has failed to do so. It is time for the NSW Government to establish a statutory regulator for outdoor advertising. The new outdoor advertising regulator would have the power to compel advertisers to comply with determinations and would be able to fine advertisers that breach the code. Doing so would finally ensure that outdoor advertising no longer offends community standards on sex, sexuality, and nudity. The safety of children must come first.

***Recommendation: That the NSW Government establish a statutory regulator for outdoor advertising under the authority of the appropriate Minister. The new outdoor advertising regulator would have the power to compel advertisers to comply with determinations and would be able to fine advertisers that breach the code.***

## Adequacy of regulation of magazines

At present the contemporary media environment is toxic for children and especially for girls. Parents must have confidence in the system to be able to meet community expectations and standards. The current regulation of magazine content does not go far enough to young girl's access to sexualised content.

## Measures to address regulation of sexual content in magazines

***Recommendation: That stronger limitations be imposed on the level of sexual themes and content allowed in magazines marketed to children.***

## Adequacy of regulation of pornography

The existing regulation of pornography is governed by the *Broadcasting Act 1992* (Cth). A range of material is deemed prohibited content under the Act, including content that is:

- i. classified as MA15+ if commercially available (i.e. for a fee) but not behind an age restriction scheme
- ii. classified as R18+ content if it is not behind an age restriction scheme
- iii. classified as X18+ and
- iv. classified as RC.

For a website to become prohibited content a number of other conditions must also be met. First the website must be hosted in Australia, second a complaint must be lodged to the Australian Communications and Media Authority (ACMA), and third, ACMA must then refer the website to the Classification Board for formal classification. Once it is deemed prohibited content by the classification board, ACMA is then able to issue the website owner with a take-down notice, direct the content provider to remove or restrict access to the content.

Complaints about content hosted overseas are assessed for classification by ACMA itself, or referred to the Classification Board when there is any doubt. Overseas-hosted prohibited content is added to the list which is provided to third party filter companies for use in content filtering systems. Overseas-hosted prohibited content is therefore accessible unless a third party filter is installed.

Additionally, the Australian Federal Police now compel ISPs, in accordance with their obligations under the *Telecommunications Act 1997*, to block websites featuring child pornography and abuse, using a blacklist maintained by Interpol. Those attempting to access a blocked URL see a page giving information on why it was blocked. It should be noted, however, that the list only includes websites featuring content considered by Interpol to be 'severe', and the Interpol list only targets pornography involving children under the age of 13.<sup>134</sup>

A large part of overseas-hosted pornography does not require age verification, which leaves Australian children potentially exposed to overseas hosted hard-core pornography, except where a filtering application is installed on a device or network. Yet only 13% of Australian households have internet filtering installed, according to the Australian Bureau of Statistics 2010-11 Multipurpose Household Survey. The current regulatory framework, therefore, leaves the majority of children in Australia exposed to material that will cause significant damage to their healthy development.

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<sup>134</sup> Interpol, Access Blocking, accessed 05/02/2016, <http://www.interpol.int/Crime-areas/Crimes-against-children/Access-blocking/Criteria-for-inclusion-in-the-Worst-of-list>.

## Measures to address Children's access to pornography

Legislative policy solutions are needed to address the issue of pornography and prevent childhood exposure to this harmful material. A commitment to do everything possible in the best interests of children is essential. Society has a fundamental duty to protect children from harm. Public policy should seek to ensure that children are only exposed to a positive vision of sexuality, one that is based on the recognition that men and women are equal in dignity. Pornography distorts this view and treats women as objects to be debased for sexual pleasure.

### More sex education?

Sex education at an earlier age is touted by some as the solution to this crisis. Surprisingly, advocates of earlier sex education often dismiss the need for simultaneous restrictions on access to pornography. ACL submits that the greater focus should be towards preventing children's access to pornography in the first place. Whilst talking to children about what they see online is important, it is often too little, too late. ACL submits that as a community we must not only teach children *healthy* attitudes towards women and sex, we also need to protect children from *unhealthy* attitudes towards women and sex.

### United Kingdom Model: Child focused 'Clean-Feed' Internet Service by Default

A UK Government commissioned report, titled, 'the Bailey Report (2011)', examined the sexualisation and commercialisation of childhood. Flowing from that report, a voluntary ISP-level 'clean-feed' system was adopted and is now in place.

90% of the UK Internet Service market share is controlled by the four largest ISPs. All four ISPs have voluntarily implemented network-level 'clean feed'. New customers and existing customers now have either a 'default on' or an 'unavoidable choice' as to whether their account with the ISP will have a 'clean feed'.

ISPs have found that when a 'default-on' filter is implemented, as many as 70% of customers leave it on. There is filter feature on new mobile phones and public Wi-fi is beginning to be filtered. None of these policies impinge on the freedom of adults to access adult contents, since adults can easily choose to disable filter.

### Policy Solution: Child focused 'Clean-Feed' by default for Australia

ACL submits that Australia needs a universal, by-default, ISP-level internet filtering regime, filtering out adult content and thereby providing a 'clean-feed' internet service, for both fixed line and mobile service. Customers would be able to opt out of the 'clean-feed' on request to their ISP.

Telstra now offers an ISP-level filter, but this is an extra-cost, optional product. ACL submits that to be effective in protecting children, an ISP-level internet filtering regime needs to be universal, by-default, with the ability of adults to opt out on request.

***Recommendation: That the NSW Government lend support to a universal, by-default, ISP-level internet filtering regime at the Commonwealth level, filtering out adult content and thereby providing a 'clean-feed' internet service, for both fixed line and mobile service. Customers would be able to opt out of the 'clean-feed' on request to their ISP.***

### Adequacy of regulation of Free-to-air Television

A strong system regulating the classification of media and appropriate time zones is vital to protect children from harmful themes and images before they are developmentally ready. There is a

responsibility on all stakeholders in the free-to-air television space to ensure that measures are taken to prevent the sexualisation of children. The industry body 'FreeTV' is in a unique position to set the standards for the industry through the development of the industry Codes of Practice. The codes play a significant role in deciding what level of violent and sexualised messages young children are exposed to.

### Recent Changes to Classification Zones

The Australian Communications and Media Authority (ACMA) recently undertook a review of the Commercial Television Industry Code of Practice (Code). The new Code was registered by ACMA on 10 November and took effect on 1 December 2015. The new Code, among other changes, adopts changes to classification zones (the ratings schedule). The changes include abolishing G timeslots, abolishing the AV rating and bringing forward M and MA timeslots.

Sexualisation in the media is a prevalent and serious problem. **ACL believes that the changes to the code reflect a disregard for the wishes of parents and are not in the best interest of the child.** An increase in adult-suited content on television, at a time where there is widespread concern about the impacts of sexualisation, seems imprudent. Weaker standards can only serve to increase the potential that children will be sexualised.

Classification zones were raised in the Australian Law Reform Commission's inquiry into Classification – Content Regulation and Convergent Media. The ALRC noted:

*a community expectation that television channels are 'safe', particularly for children, at certain times of the day.*<sup>135</sup>

Families in Australia expect that certain types of content will not be aired at certain times of day when children are more likely to be viewing. Free TV has stated it's up to parents to actively manage viewing; research suggests, however, that many parents struggle to uphold family viewing rules. One study found that 90 percent of parents made rules to limit television use, but only 54 percent were able to uphold the rules over time.<sup>136</sup> ACL's primary concern is the protection of children from content which may harm them in their development into healthy adults.

ACMA Enduring Concepts identified in 2014 Community Safeguards Inquiry

1. Community Values
2. Protection of Children

ACL submits that government, through sound regulation, has a very important role in ensuring the best interests of the child are paramount. This is reflected by ACMA's second 'enduring concept': the protection of children. Since commercial television is freely-accessible to all, and children are frequent consumers of it, the industry and government both have an important social responsibility to ensure that this product is safe.

The Senate Standing Committee, that produced the 2008 report into the Sexualisation of Children in the contemporary media, agreed that government has a role in supporting parents, stating:

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<sup>135</sup> Australian Law Reform Commission's inquiry into Classification – Content Regulation and Convergent Media, para 8.71 page 195

<sup>136</sup> The Kaiser Family Foundation, The Media Family: Electronic Media in the Lives of Infants, Toddlers, Pre-schoolers and their Parents, May 2006, <http://kaiserfamilyfoundation.files.wordpress.com/2013/01/7500.pdf>

*It is both unreasonable and unjust to put all the responsibility on parents or other adults to control children's access to the media. There is a role for government in supporting and assisting parents and other adults in managing young peoples' access to the media.*<sup>137</sup>

### New classification zones<sup>138</sup>

- 2.2.1 **PG Classification zone.** Material that has been classified C, P, G or PG may be broadcast at any time.
- 2.2.2 **M Classification zone.** Subject to subclause 2.3.2(a), material that has been classified M may only be broadcast at the following times:
- |                                 |                                          |
|---------------------------------|------------------------------------------|
| a) School Days                  | 7.30 pm to 6.00 am<br>12 noon to 3.00 pm |
| b) Weekends and School Holidays | 7.30 pm to 6.00 am                       |
| c) Public Holidays              | 7.30 pm to 6.00 am                       |
- 2.2.3 **MA15+ Classification zone.** Subject to subclause 2.3.2(b), material that has been classified MA15+ may only be broadcast between 8.30 pm and 5.00 am on any day.

### Old classification zones<sup>139</sup>

- 2.8 **General (G) classification zones.**
- |          |                                    |
|----------|------------------------------------|
| Weekdays | 6.00am – 8.30am<br>4.00pm – 7.00pm |
| Weekends | 6.00am – 10.00am                   |
- 2.9 **PG classification zones:**
- |                            |                                                                              |
|----------------------------|------------------------------------------------------------------------------|
| Weekdays ( schooldays)     | 5.00am – 6.00am<br>8.30am – 12.00 noon<br>3.00pm – 4.00pm<br>7.00pm – 8.30pm |
| Weekdays (school holidays) | 5.00am – 6.00am<br>8.30am – 4.00pm<br>7.00pm – 8.30pm                        |
| Weekends                   | 5.00am – 6.00am<br>10.00am – 8.30pm                                          |
- 2.10 **M classification zones:**
- |                                       |                                                            |
|---------------------------------------|------------------------------------------------------------|
| Weekdays ( schooldays)                | 8.30pm – 5.00am<br>12.00 noon – 3.00pm (see clause 2.10.3) |
| Weekdays & Weekends (school holidays) | 8.30pm – 5.00am                                            |
- 2.11 **MA classification zone** 9.00pm and 5.00am (all days)  
In MA zones, any material which qualifies for a television classification may be broadcast, except that material classified AV may only be broadcast after 9.30pm.
- 2.12 **Adult Violence (AV) classification zone** 9.30pm and 5.00am (all days).

<sup>137</sup> Senate Standing Committee report into the Sexualisation of Children in the contemporary media, p 7.

<sup>138</sup> Commercial Television Industry Code of Practice, 2015

[http://www.freetv.com.au/media/Code\\_of\\_Practice/Free\\_TV\\_Commercial\\_Television\\_Industry\\_Code\\_of\\_Practice\\_2015.pdf](http://www.freetv.com.au/media/Code_of_Practice/Free_TV_Commercial_Television_Industry_Code_of_Practice_2015.pdf)

<sup>139</sup> Commercial Television Industry Code of Practice - January 2010 (incorporating amendments to July 2013)

<http://www.acma.gov.au/~media/Broadcasting%20Investigations/Regulation/pdf/Commercial%20Television%20Industry%20Code%20of%20Practice%202010.pdf>

In AV zones, any material that satisfies a television classification may be broadcast.

### Measures to address classification zone standards on free-to-air television

The relaxation of classification zone standards that has occurred means it is now more likely that harmful content will be brought into the view of children. Appropriate standards are also important, because often parents do not have a full understanding of their child's viewing habits. Increasing the coverage of higher rated content means it is now harder for parents to control their child's access. The recent weakening of the code is a serious misreading of community sentiment. Australians want better TV standards, not weaker ones. There is no doubt the community has reached a tipping point on this issue. Weakening the Code makes it more difficult for members of the public to dialogue with television stations about the quality and content of television programs avoids that responsibility.

***Recommendation: That Free TV Australia strengthen classification guidelines by placing stronger limits on the depiction of sexual themes, depictions of sexual behaviour, and nudity.***

### Adequacy of NSW education policy to ensure appropriate content

Safe Schools Coalition may already be in breach of New South Wales Department of Education policy for raising political issues. The policy states:

*1.1.1 Schools are neutral grounds for rational discourse and objective study. They are not arenas for opposing political views or ideologies.*

*1.1.2 Discussion of controversial issues is acceptable only when it clearly serves the educative purpose and is consistent with curriculum objectives. Such discussion is not intended to advance the interest of any group, political or otherwise.<sup>140</sup>*

The SSCA was ordered to refrain from 'commenting on the politically sensitive issue of gay marriage'<sup>141</sup> by the Commonwealth Government, despite this, the SSCA's materials continue to explicitly promote gay marriage activism in schools. The Stand Out Strategy Guide encourages students to get whole school participation in events like IDAHOT, Pride,<sup>142</sup> Mardi Gras, 'or even an equal marriage rally'.<sup>143</sup>

*Talk to teachers about inviting guests from community organisations that support gender diversity, sexual diversity or being intersex to speak at your assemblies or to come into your class.<sup>144</sup>*

*Hold a 'Speakout!' by inviting 'some guest speakers, or line up some students and teachers to come along and 'speakout' on a relevant topic. It could be 'why we support equal marriage' or 'why our school supports gender diversity'.<sup>145</sup>*

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<sup>140</sup> NSW Department of Education, Controversial Issues in Schools, accessed 05/02/2016, [https://www.det.nsw.edu.au/policies/curriculum/schools/cont\\_issue/PD20020045.shtml](https://www.det.nsw.edu.au/policies/curriculum/schools/cont_issue/PD20020045.shtml).

<sup>141</sup> Henrietta Cook, Safe Schools program ordered to stay silent on gay marriage, *The Age*, July 28, 2015, <http://www.theage.com.au/victoria/safe-schools-program-ordered-to-stay-silent-on-gay-marriage-20150728-gimdr.html#ixzz3hRvznPPI>

<sup>142</sup> SSCA, 200+ students march at Victoria's 20th Pride event, accessed 05/02/2016, <http://www.safeschoolscoalition.org.au/200-students-march-at-victoria-s-20th-pride-event-2>.

<sup>143</sup> Stand Out resource, SSCA, accessed 05/02/2016, <http://www.safeschoolscoalition.org.au/uploads/72d8a166cad4fd27ca3ed94ea7fe6b53.pdf> p 22

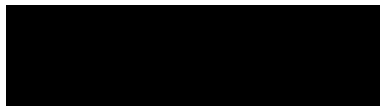
<sup>144</sup> Ibid. p 11.

<sup>145</sup> Ibid. p 20.

## **Measures to address concerns with Safe Schools Coalition Australia**

The NSW Government should end the access of the Safe Schools Coalition Australia to Schools in this state. The content of SSCA is not appropriate to be taught in classrooms.

***Recommendation: That the NSW education department end any relationship with Safe Schools Coalition Australia and any partnered providers who facilitate the teaching of its content.***



***Mark Makowiecki  
NSW State Director  
05 February 2016***



**IN THE MATTER**

**OF THE POTENTIAL LIABILITY OF SCHOOL AUTHORITIES WHICH  
PROMOTE CERTAIN MATERIAL ENDORSED BY THE SAFE SCHOOLS  
COALITION AUSTRALIA (SSCA)**

**OPINION IN RELATION TO THE POTENTIAL LIABILITY OF SCHOOL  
AUTHORITIES**

**To: Mr Dan Flynn**  
**Australian Legal Practitioner**  
**Victorian Director**  
**Australian Christian Lobby**  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**From: F C Brohier**  
**Elizabeth Mews Chambers**  
[REDACTED]  
[REDACTED]  
[REDACTED]

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### ***Introduction***

1. I am asked to advise as to the potential liability of school authorities which promote certain material endorsed by the SSSCA.
2. The material is found on a website operated by a group known as Minus 18, which identifies itself as “Australia’s largest youth led organisation for gay, lesbian, bi-sexual and trans youth.”<sup>1</sup> It is material which provides information in relation to:
  - a. Chest binding for girls;
  - b. Penis tucking for boys;
  - c. Sexual transmitted infections (**STIs**);
  - d. Gender alteration.
3. For the reasons set out in this opinion, it is my view that in certain circumstances, should a school child suffer damage from following, or as a result of, the information available on Minus 18’s website in relation to the above matters, the relevant school authority may be liable in negligence for any damage suffered.
4. The liability for a school authority for damage suffered by a student as a result of following information obtained from a website use of which was expressly or impliedly encouraged by the authority is a novel area, and like the related area of a school authority’s liability for cyber bullying, may well see litigation occur in the future. There are no decided cases in Australia in relation to this issue, so as with the issue of cyber bullying, it has to be approached on first principles.
5. Whether the law imposes a duty of care in a novel situation is “fact-rich” question. That is, much depends on the specific facts of a particular case. Therefore, an opinion which considers a hypothetical situation can only be tentative.

### **SSSCA Information**

6. The specific issues I am asked to consider are:

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<sup>1</sup> <https://minus18.org.au/index.php/about-us> accessed 10 November 2105.

- a. “The liability of schools that have voluntarily opted in to the “Safe Schools Coalition Australia” program for harms suffered by students as a result of: Following through on advice about chest binding: ‘Because you are compressing tissue, it can cause damage and potentially even breakages to your ribs if done improperly, if things go wrong with your ribs, it has the potential to be lethal.’ <https://minus18.org.au/index.php/resources/sexuality-info/item/441-how-to-bind-your-chest>;
  - b. Introduction to the Grindr app and acting on belief that STI’s are ‘not terrible at all.’ ‘So I done fucked up. Literally. One Grindr hook-up gone wrong, and that’s how I got myself some gonorrhoea. But let’s backtrack here so I can fill out some holes (pun intended) in my little life drama... So it’s not as terrible as you may have expected, in fact it’s not terrible at all. Most STIs can be detected from non-invasive urine and saliva samples, and if found early are easily cured.’ <https://minus18.org.au/index.php/sex-love/item/513-so-you-got-an-sti-now-what>;
  - c. Gender dysphoria brought on as a result of the program, leading to errors of judgement about ‘using hormones’ etc to alter their gender ‘Some people have surgery to alter how they express their gender, some people have hormone treatment. Some people legally change what’s written on their birth certificate.’ ‘The basics are that sex is your physical aspects (ie your wibbly wobbly bits) and gender is how you feel in your mind’ <http://www.safeschoolscoalition.org.au/uploads/2dd9051c41af2766cacf2b3b0fccd00b.pdf> (page 9);<sup>2</sup>
  - d. Following through on advice in relation to “penis tucking”:
 

“Tucking is used to create a flat front in the pants, and reduce the visibility of a penis. It’s often done when wearing tight skirts and/or dresses, or just for personal comfort. Just like binding it’s important to take care, tucking can cause injury if done improperly. Don’t tuck for more than 4-6 hours at a time, and taking a break is a must. Tucking sometimes involves a technique of placing the testicles back inside the pockets inside your abdomen that lie on either side of the penis. If it feels too weird, a tuck can still work without it. The next step is to pull the penis backwards, inbetween your legs. Secure everything and make sure it stays in place. Wearing a pair of slightly too-tight underwear and a pair of tights can be a way of securing your tuck.”<sup>3</sup>
7. I am instructed that SSCA operates a federally-funded program, “rolled out” in each state and territory following the approval of the relevant education departments. The program is used in schools.
  8. I am instructed that the issues of chest binding, penis tucking and gender dysphoria (and any action that may be taken in that regard) carry serious risks, and that careful counselling is needed so that informed choices may be made. I am also instructed that STIs can cause serious health issues.

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<sup>2</sup> Letter from Daniel Flynn dated 10 November 2015.

<sup>3</sup> Email from Martyn Iles dated 11 November 2015.

## The Duty of Care

9. A school authority owes a duty of care to its students.<sup>4</sup> The duty is a non-delegable duty.<sup>5</sup> That is, it is not sufficient for a school authority to say that it employed competent teachers. The authority has the legal duty to ensure that reasonable care is taken of the students.
10. In *Kondis v State Transport Authority*<sup>6</sup> Mason J said:
- “Likewise with the school authority. It is under a duty to ensure that reasonable care is taken of pupils attending the school. It is the immaturity and inexperience of the children and their propensity for mischief that lie at the basis of the special responsibility which the law imposes on a school authority to take care for their safety: *Introvigne*. The child's need for care and supervision is so essential that it is a necessary inference of fact from the acceptance of the child by the school authority, ‘that the school authority undertakes not only to employ proper staff but to give the child reasonable care’, to use the words of Kitto J. in *Ramsay v. Larsen* (footnotes omitted).”
11. The duty of care will or will not exist if the relationship of schoolmaster and pupil was or was not in existence at the particular time of times.<sup>7</sup> However, the relationship of schoolmaster and pupil (or school authority and pupil) is not merely dependent on whether the relevant incident occurred in school hours. In *Trustees of the Roman Catholic Church for the Diocese of Bathurst v Koffman*<sup>8</sup> a 12 year old boy was injured by the conduct of students from a nearby school about 20 minutes after school and about 400 metres from the school grounds. The New South Wales Court of Appeal held that the relevant relationship of schoolmaster and pupil was subsisting at the relevant time. Sheller JA said:
- “In my opinion the extent and nature of the duty of the teacher to the pupil is dictated by the particular circumstances. I do not think its extent is necessarily measured or limited by the circumstance that the final bell for the day has rung and the pupil has walked out the school gate.”<sup>9</sup>
12. Sheller JA further made it clear that depending on the knowledge of the school authority, the duty could persist to cover incidents well away from the school.<sup>10</sup>
13. In the recent High Court decision of *Hunter and New England Local Health District v McKenna*<sup>11</sup> the Court held that a hospital which had released a mentally ill man into the care

<sup>4</sup> *Commonwealth v Introvigne* (1982) 150 CLR 258.

<sup>5</sup> *Ibid* per Mason J at 270-272, per Murphy J at 274 and at 279 per Brennan J; *New South Wales v Lepore* (2003) 212 CLR 511 per Gaudron J at [105][McHugh J at [136], Gummow and Hayne JJ at [248].

<sup>6</sup> (1984) 154 CLR 672.

<sup>7</sup> *Geyer v Downs* (1977) 138 CLR 91.

<sup>8</sup> [1996] NSWSC 348; (1996) Aust Torts Reports 81-399.

<sup>9</sup> *Ibid* at p.15.

<sup>10</sup> *Ibid* pp.15-16.

<sup>11</sup> (2014) 253 CLR 270.

of his friend, who he shortly afterward killed, did not owe a duty of care to the friend, because the statutory regime under which the hospital acted required it to detain mentally ill people for the minimum period of time and this was inconsistent with owing the friend a duty of care.<sup>12</sup>

14. In its reasons the Court (following *Sullivan v Moody*<sup>13</sup>) set out four classes of cases in which difficulty will arise in relation to the duty of care. They are:
- a. Where the injury was caused by the criminal conduct of another-nature of the harm;
  - b. Where the defendant is exercising a statutory power or discretion –statutory power;
  - c. Where there is a difficulty of confining the class of persons who may be owed the duty-indeterminacy of class; and
  - d. Where there is a need to preserve harmony with other legal principles or a statutory scheme-coherence.<sup>14</sup>
15. It is only the second and possibly the fourth which is relevant here. Each state and territory education system operates under distinct statutory regimes. It is beyond the scope of this opinion to examine each piece of legislation. However, I have considered the *Education Act 1972* (SA), the *Education Act 1990* (NSW) and the *Education and Training Reform Act 2006* (Vic). There is nothing in those Acts which prohibits the imposition of a duty of care in relation to information delivered as part of the curriculum which is known (or which should be known) to be dangerous to a pupil's health if not carefully presented.
16. It may however be argued that as the SSCA program is aimed to helping a particular subset of pupils, it would be inconsistent with the need to help those students to impose a duty of care. The answer to that proposition is that when dealing with tender and immature minds, great care is needed, so that the help that is intended does not turn out to be harmful. This will be a matter which will have to be considered and decided in any particular case which presents itself. Assuming that injury occurs away from the school it will be argued that there can be no duty of care imposed on the school authority. However, as I have indicated

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<sup>12</sup> Ibid [30]-[33].

<sup>13</sup> (2001) 207 CLR 562 at [50].

<sup>14</sup> Ibid at [17]-[19].

at [11] above, the duty of care is not dependent on the harm occurring in school hours or on school premises.

17. Some matters which will guide a court's decision are:
  - a. The actual content presented to students. The information on the Minus 18 website in relation to chest binding, penis ticking and STIs are set out at Appendix A to this opinion. In a particular situation it will be important to understand if the website was recommended and no other guidance was given, or whether there were distinct warnings given;
  - b. The age of the pupils to whom the information was presented. A court may give a different answer where such information was presented to a 10 year old than if it was presented to a 17 year old;
  - c. What provision was made, if any, for counselling etc in relation to the issues discussed or in relation to which information was provided.
  
18. Guidance may be gained from the attitude a court may take to a school's liability for cyber-bullying. While there are no reported decisions on this issue in Australia, academic writings suggest a school authority may be liable for cyber-bullying via a school blog, website or social networking site, where it is aware of a particular student's vulnerability or where students are involved in an on line activity in which the authority has encouraged them to take part.<sup>15</sup>
  
19. In the employment context, an employer's liability for injuries caused to an employee may extend to injuries sustained during a break within a period of work, if the activity in which the employee was engaged in that break could be said to have been induced or encouraged by the employer and the "circumstances of the injury" corresponded "with what the employer induced or encouraged the employee to do."<sup>16</sup> While the *Comcare* case was decided in a particular statutory context, the meaning of the "course of employment" which was decided in that case, may be applied in common law situations. For example, the concept of the "course of employment" is important in vicarious liability situations.<sup>17</sup>

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<sup>15</sup> Pelletier R et al Cyberbullying-When does a School Authority's Liability in Tort End? (2015) 6 WA Jurist 93 at 121-122;

<sup>16</sup> *Comcare v PVYW* (2013) 250 CLR 246 at [18], [32]-[35].

<sup>17</sup> *New South Wales v Lepore* (2003) 212 CLR 511 at [225].

20. It is the inducement or encouragement to access the Minus 18 website, which I am instructed is expressly or impliedly provided by the SSCA program (and hence by the school authority in schools where the program is run), that is most likely to found the basis of the finding of a duty of care in a situation where a student suffers harm by acting on information provided by the website.
21. For the reasons discussed in this section of the opinion, I am of the view that there are features in the circumstances being considered here which may give rise to a duty of care. However, each fact situation will have to be considered individually. There is enough to indicate that school authorities which run the SSCA program should be aware of, and take steps to protect themselves from, the risk of claims being made against them. Perhaps more importantly, they should consider whether their pupils are protected from possible harm.

### **The Breach of the Duty of Care and the Appropriate Standard of Care**

22. If there is found to have been a duty of care, the next issue is whether that duty has been breached by a failure to observe the appropriate standard of care. This is also a “fact-rich” issue.
23. Whether the duty has been breached is to be determined having regard to the terms of the various Civil Liability/Wrongs Acts in the states and territories (**Liability Acts**). The Liability Acts have several common features but the relevant Act will have to be considered in a particular case. It is again beyond the scope of this opinion to address the relevant provisions of each Act.
24. I set out important common provisions using the Victorian *Wrongs Act 1958* as exemplars:<sup>18</sup>
- a. Section 48-General principles
    - (1) A person is not negligent in failing to take precautions against a risk of harm unless—
      - (a) the risk was foreseeable (that is, it is a risk of which the person knew or ought to have known); and
      - (b) the risk was not insignificant; and
      - (c) in the circumstances, a reasonable person in the person's position would have taken those precautions.

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<sup>18</sup> See *Civil liability Act 2002* (NSW) ss. 5B and 5D; *Civil Liability Act 1936* (SA) ss. 32 and 34.



(2) In determining whether a reasonable person would have taken precautions against a risk of harm, the court is to consider the following (amongst other relevant things)—

- (a) the probability that the harm would occur if care were not taken;
- (b) the likely seriousness of the harm;
- (c) the burden of taking precautions to avoid the risk of harm;
- (d) the social utility of the activity that creates the risk of harm.

(3) For the purposes of subsection (1)(b)—

- (a) insignificant risks include, but are not limited to, risks that are far-fetched or fanciful; and
- (b) risks that are not insignificant are all risks other than insignificant risks and include, but are not limited to, significant risks

b. Section 51 -General principles

(1) A determination that negligence caused particular harm comprises the following elements—

- (a) that the negligence was a necessary condition of the occurrence of the harm (factual causation); and
- (b) that it is appropriate for the scope of the negligent person's liability to extend to the harm so caused (scope of liability).

(2) In determining in an appropriate case, in accordance with established principles, whether negligence that cannot be established as a necessary condition of the occurrence of harm should be taken to establish factual causation, the court is to consider (amongst other relevant things) whether or not and why responsibility for the harm should be imposed on the negligent party.

(3) If it is relevant to the determination of factual causation to determine what the person who suffered harm (the injured person) would have done if the negligent person had not been negligent, the matter is to be determined subjectively in the light of all relevant circumstances.

(4) For the purpose of determining the scope of liability, the court is to consider (amongst other relevant things) whether or not and why responsibility for the harm should be imposed on the negligent party.

25. The Liability Acts enact the common law test for breach of duty. Whether there has been a breach is to be assessed prospectively.<sup>19</sup> What must be determined is whether the risk was foreseeable. In *Wyong Shire Council v Shirt*,<sup>20</sup> Mason J said:

"A risk of injury which is quite unlikely to occur ... may nevertheless be plainly foreseeable. Consequently, when we speak of a risk of injury as being 'foreseeable' we are not making any statement as to the probability or improbability of its occurrence, save that we are implicitly asserting that the risk is not one that is far-fetched or fanciful. Although it is true to

<sup>19</sup> *State of NSW v Mikhael* [2012] NSWCA 338 at [75]; *Adeels Palace Pty Ltd v Moubarak* (2009) 239 CLR 420.

<sup>20</sup> (1980) 148 CLR 40.

say that in many cases the greater the degree of probability of the occurrence of the risk the more readily it will be perceived to be a risk, it certainly does not follow that a risk which is unlikely to occur is not foreseeable.”<sup>21</sup>

26. In the fact situations being contemplated here, given the vulnerability of the students as children (and particularly those with uncertainties as to their inner feelings) and the accepted “immaturity and inexperience of the children and their propensity for mischief”<sup>22</sup> there is a real chance that risk of injury will be held to be foreseeable.

### **Causation**

27. If there has been a breach of the duty of care by failure to meet the appropriate standard of care, the next issue is that of causation. The relevant matters to be considered are set out in the NSW section 51 set out at [24] above. This is a subjective determination.<sup>23</sup> A court will have to consider whether the outcome would have been different if proper precautions such as warnings had been given and counselling provided. In *Mikhael*, a case concerning the responsibility of the school authority for damage suffered by a student who was assaulted by another student, the failure to prove what would have occurred had proper precautions been taken, led to the claim being dismissed.<sup>24</sup> It is difficult to say anything concrete as to causation in this opinion, as I am asked to advise on a general hypothetical situation. Suffice it to say that one can foresee evidence being led that simple counselling may have led to a different outcome.

### **Time Considerations**

28. As the claimants will all have been children at the time any damage occurs, time will not run for the purposes of the limitation statutes until they reach adulthood. Therefore, as with child sexual abuse claims, the school authority may only be notified of claims many years after the relevant events.

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<sup>21</sup> Ibid at 47.

<sup>22</sup> See Mason J in *Kondis* referred to at [10] above.

<sup>23</sup> See s.51(3).

<sup>24</sup> *Mikhael* at [113]-[114].

**Conclusion**

29. I so advise.

Dated 11 November 2015



F.C.BROHIER

Liability limited by a scheme approved under the Professional Standards Legislation.

## APPENDIX A

<https://minus18.org.au/index.php/resources/sexuality-info/item/441-how-to-bind-your-chest>

### Healthier and Safer Ways to Bind Your Chest

— By Michael McLeish 19 August 2014

86288 VIEWS

Some people bind their chest as a way of dealing with chest dysphoria, presenting as masculine in public spaces or even just cosplaying as a character with a flat chest.

Unfortunately there's a lot of misinformation out there about binding that can be unsafe, and it's important that if you do decide to bind, that you do it safely. Check out this super useful guide on how to bind safely, including some more cost accessible methods.

#### Different Binding Methods

##### 1. Bandages

Don't bind with bandages. Nope. Not even just for a day. Don't do it. Yes, I know Lady Gaga did it that one time. Don't do it. Bandages are the least safe way of binding out there. They can cause permanent damage to your chest tissue, lungs and ribs. It's not worth the risk, I promise you. Especially Ace Bandages! They're designed to get tighter with movement - which is the last thing you want!

##### 2. Layering shirts

This can be super useful if you've already bound your chest and you still have some visible chest tissue, or if you don't own anything to bind with. It's not hugely effective if you have a large chest, but hey. Better than nothing. A tight sports bra or undershirt under one or two larger shirts (button up shirts hanging loose, particularly ones with pockets on the chest are great for this) can make your chest look dramatically smaller.

##### 3. Sports bra method

If you own a couple of sports bras at home, try this out sometime. A tight fitting sports bra can totally flatten a small chest, and for those of us who are a bit bigger, try layering a couple. If you wear one bra normally and a second one backwards, it can be even more effective. There's a few guidelines to follow, though! Try not to wear bras that are more than a size too small- they might fit tighter, but they can be super damaging. And if they're particularly tight, don't wear them for too long! I keep to a rule of 8 hours tops.

##### 4. Neoprene

This is a thick, kinda rubbery material. Like wetsuits. Actually, exactly like wetsuits. You can buy back braces and the like made out of this that will work for chest binding too. Just do them up under your arm to hide the Velcro, combine with a loose shirt and you're good to go. You might need to trim it a little bit to fit, but it's easy enough to do!

### 5. Sports compression wear

A lot of athletic companies make compression shirts. They're easy to put on and often in stock at places like SportsMart so you can even try them on!

### 6. The pantyhose method

Stockings and pantyhose with a 'control top' can be converted into a super cheap binder. They're not the most comfortable or effective things but when you're stuck, it'll help. Just trim the legs off, and cut a hole in the crotch for your neck- and voila! You might need to layer these, too, to make them more effective. Keep in mind that this isn't the safest method, and try not to do it for long, but it's good for an emergency.

### 7. Professional binders

There's a few companies that sell binders specifically for dealing with gynecomastia (growth of breast tissue) in cis men, and some that are even designed for trans people especially! Most of these you can only buy online, and they tend not to be cheap, but they're the most effective method out there. With a bit of googling you'll also find some good reviews of most of these to help choose before you spend all your money!

#### Useful Websites

Here's a list of a few wicked sites to check out if you're looking for a somewhere to start!

Underworks

The Tool Shed

Morris Designs

NouVelle

T-Kingdom of Taiwan

The Double T collection of Taiwan

Esha of Taiwan

Danae of Holland

If these are unaffordable for you, don't stress. There's a site out there especially to help out trans people who can't afford binders, plus a lot of people do giveaways of their old or mis-sized binders on Tumblr! Check out The T-Male Big Brothers Used Binder Program.

#### Safety Tips

Some use binding methods to help alleviate body dysphoria, but it has a level of risk attached to it. Because you are compressing tissue, it can cause damage and potentially even breakages to your ribs if done improperly, if things go wrong with your ribs, it has the potential to be lethal. So it's important to be careful, safe, and use correct and healthy methods to stay happy, healthy, and look after your own wellbeing.

Use the safest methods you can afford, and watch out for chafing, excessive sweating, rashes and pain. However, if you experience any issues around chafing, try wearing an undershirt or using a talcum powder under your binder of choice.

If you notice any pain in your chest, give yourself a breather and try to restrict yourself to 8 hours of binding at a time.

If you are having any difficulty breathing or are experiencing extreme pain, get your binder off. Straight away. And be sure to get yourself to a doctor or hospital as soon as possible if that doesn't make it go away.

Take breaks from binding, too. If you've been binding every day for a week, maybe stay home for a day where no one will see your chest, or try layering shirts for a day or two.

Remember, above all else, to listen to your body!

### **Tackling STI Fears**

<https://minus18.org.au/index.php/sex-love/item/513-so-you-got-an-sti-now-what?>

There's a lot of misconceptions and negative stigma around getting diagnosed with an STI, but what is it really like? I asked some of our very own crew about their experiences getting tested and diagnosed with some common STIs, to give you a personal look into the not-so-scary world of sexually transmitted infections.

Finn, Cis Male, 20 Year Old

So I done fucked up. Literally. One Grindr hook-up gone wrong, and that's how I got myself some gonorrhoea. But let's backtrack here so I can fill out some holes (pun intended) in my little life drama.

Long and short of it is that I had penetrative anal sex, in which I was the recipient where no condom was involved in the sexual activity. Do not do this. Ever. Never ever. The stress, time, and in my particular case, pain in the butt (literally) is NOT worth the twenty minutes of sort of decent missionary. Really. It isn't.

I decided to go to the Melbourne Sexual Health Centre (MSHC) with one of my closest friends who had been before. The service that they offer is completely free and treated with the utmost confidentiality and was quite painless really. As a new patient I got tested for EVERYTHING with the tests including a rectal swab (yes, a swab that goes up into your butt), a throat swab and a blood test. (Nothing went into the penis, so if you have one, do not worry).

Fast-forward a few days, I got the call from MSHC to tell me of my test results. I tested positive to gonorrhoea in my rectum. "Oh. Right" I replied to the nurse over the phone, who then continued on to explain the process moving forward. Treatment was a really simple process of one injection into the butt cheek (okay, I won't lie, it does sting a little) and two tablets to have with food after the injection. Two days later, everything all cleared up. It was not as scary as I thought! And the lovely team at MSHC try and make it as pain-free as humanly possible!

From my own personal experience, having any form of sex without a condom where you don't know the persons STI or HIV status is not worth the stress, pain and time wasted in waiting rooms. Just don't do it.

Ash, Non-Binary, 23 Year Old

I went to get a test just to be on the safe side, I thought everything would be negative because all the people I'd slept with had told me they were STI free. My test came back with an initial positive for chlamydia. I was mortified and shocked to say the least. I was treated the same day, and it was only two pills, which wasn't a lot easier than I expected. Antibiotics don't go well with my tummy, so no sex for a week, but that wasn't really a big deal. At the end of it all they called me a week later saying the further test came back negative anyway, so that rollercoaster of emotion was really for nothing.

Jon, Cis Male, 18 Year Old

I first realised something was wrong when something wasn't quite right 'down there'. The possibility of it being an STI didn't even come to mind at first because I had protected penetrative sex with the guy I was dating, and he had told me he was STI-free. So, of course, I started to get confused when things started to hurt and nothing seemed to be getting better. I was so nervous to go to my doctor who had no idea I'm gay and just had to tell them that something was wrong. Fortunately, my doctor understood that I had a medical problem, though she did negatively stereotype gay men, which was not cool! The first test I had was to see whether or not I had an infection... I did. So she put me on antibiotics that treat conditions like UTIs and told me to wait for the results. I didn't want it to be anything like an STI. I needed to get a further test... and I had to tell my mum.

She was mad and annoyed with me because she felt that I was pretty stupid to have gotten an STI considering I know all about safe sex... but I did have safe sex!

When the results came in I went to the doctor with my mum, because I wasn't sure how I would deal with it all. It turns out, I had gonorrhoea. BUT HOW?! I thought that the only way one could get an STI was through unprotected penetrative sex. I had no idea you could contract STIs when using a condom and through unprotected oral sex.

I felt quite dumb, ashamed and stupid during the afternoon because I thought I'd be smarter to not contract an STI. I got a simple injection and all of the symptoms passed in just a few days. Contracting such STIs are actually quite common. It wasn't the end of the world. It was just a part of life as a sexually active individual.

So In Conclusion...

So it's not as terrible as you may have expected, in fact it's not terrible at all. Most STIs can be detected from non-invasive urine and saliva samples, and if found early are easily cured. If you have sexual contact with someone whose STI status you're unsure of, make sure to get tested ASAP, as fast diagnosis can be key in treating some infections.

There's nothing wrong with having an STI, it doesn't make you dirty or undesirable, and you can still have safe sex even if you or your partner has one. Just remember to always practise safe and consensual sex, and get tested regularly – just in case!

Keep your eyes on this space for upcoming articles on what STIs are, what you can do to prevent them, and what to do if you get one.



<http://minus18.org.au/omgit/omgit-web.pdf>

### Penis Tucking

Tucking is used to create a flat front in the pants, and reduce the visibility of a penis. It's often done when wearing tight skirts and/or dresses, or just for personal comfort. Just like binding it's important to take care, tucking can cause injury if done improperly. Don't tuck for more than 4-6 hours at a time, and taking a break is a must.

Tucking sometimes involves a technique of placing the testicles back inside the pockets inside your abdomen that lie on either side of the penis. If it feels too weird, a tuck can still work without it. The next step is to pull the penis backwards, inbetween your legs. Secure everything and make sure it stays in place. Wearing a pair of slightlytoo-tight underwear and a pair of tights can be a way of securing your tuck.