



## Inquiry into Age Verification for online wagering and online pornography

*eChildhood* Submission - November 8, 2019

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eChildhood is currently the only Australian organisation to adopt and mobilise a public health response to address pornography impacts for the safety and wellbeing of children and young people.

eChildhood is a company limited by guarantee and registered charity with DGR status. The principal activity of eChildhood as a health promotion charity is to 'promote the prevention or control' of disease(s). This term is used in a broad sense and includes mental, emotional and physical health impacts.

We aim to connect the community to protect, support and equip children and young people to be free from pornography harms through promoting Digital Child Projection Buffers and mobilising a public health response.

[eChildhood.org](http://eChildhood.org)

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## 1 Executive Summary

- 1.1 eChildhood welcomes the Australian Government's inquiry into Age Verification for online wagering and online pornography.
- 1.2 The Internet has rapidly become an integral part of modern society and a mode of information dissemination and communication that is impossible to avoid. However, public policy in respect of how to address some of the technology's unintended and unforeseen consequences has not kept pace.
- 1.3 Significant numbers of children are being exposed and are regularly accessing readily available online pornography. Referred to as a stealth public health crisis, major childhood development and social issues have emerged. Failure to address this represents a mass abdication of responsibility on the part of adults to protect children from pornography. Thus far, the responsibility of solving this issue has primarily been projected towards three groups: parents, educators and children and young people themselves—these groups on their own—will not solve this public health crisis. We are often told that “it is parents and carers’ responsibility to protect their children from online pornography.” The problem with using this as a primary response, is that we live in a collective society. We don’t ask parents to fix pollution on their own, in order to prevent their kids from inhaling toxic air. We expect the government to ensure community health by leading socially responsible initiatives that set regulatory demands on the industries involved in creating and facilitating the pollution. Parents on their own, don’t have the power to prevent the pollution. It is the government's role to lead the way and implement all available protection measures <sup>1</sup>.
- 1.4 A UK expert panel investigated what considerations future governments should take into account in developing effective policy solutions to limit children’s viewing of pornography using mobile and Internet technologies <sup>2</sup>. Findings are best summarised by one expert statement:
- “...there is not going to be a complete technological solution that will provide a safety shield for young people, whether from extreme sexual material, or from extreme violence, hate or radicalisation. An effective policy solution needs to consider not just ‘how to limit children’s access’ but should also deal with the repercussions of their inevitable exposure to and uses of such sites.”*
- 1.5 Although steps have been taken around the world to implement legislative changes for the adequate protection of children from such inappropriate material, at present, a comprehensive “Age Verification” <sup>3</sup> regime has yet to come into force. Australia has a unique opportunity to become the world leader in implementing Age Verification within robust updated legislation underpinned by safety, security and privacy to protect our children from exposure to online pornography.
- 1.6 Referred to throughout this report, the most current and advanced piece of Age Verification legislation is the United Kingdom’s (UK)’s *Digital Economy Act 2017* (UK) (**Digital Economy Act**), which:
- (1) makes the distribution of online pornography without Age Verification an offence;

<sup>1</sup> eChildhood (2017). Porn Harms Kids Report: protecting our kids from online pornography is everyone's business. p10. Available from URL: [https://www.echildhood.org/report\\_2017](https://www.echildhood.org/report_2017)

<sup>2</sup> Nash, V., Adler, J.R., Hovarth, M.A.H., Livingston, S., Marston, C., Owen, G., & Wright, J. (2015). Identifying the Routes by which Children View Pornography Online: Implications for Future Policy-makers Seeking to Limit Viewing (Report of Expert Panel for DCMS, 12 November 2015). Available from URL: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/500701/Report\\_of\\_DCMS\\_Expert\\_Panel\\_Autumn\\_2015\\_FINAL\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/500701/Report_of_DCMS_Expert_Panel_Autumn_2015_FINAL_.pdf)

<sup>3</sup> “Age Verification” is a child protection regime underpinned by legislation, designed to create a safer online experience for children and young people. Adults accessing pornographic services are required to verify they are 18 or over by using Age Verification solutions. If a child stumbles upon a pornographic website or service that has Age Verification controls in place, they won’t be able to see pornographic content. Age Verification solutions are provided by third-party companies, so there is no need to share personal information directly with a pornographic website. An effective Age Verification regime requires user safety, security and privacy to be placed at the core. Penalties apply for non-compliant pornography companies. As defined in the eChildhood Report—KIDS AND PORNOGRAPHY IN AUSTRALIA: Mobilising a Public Health Response (November 2019—annexed to these submissions as Appendix 1). Further particulars related to Age Verification are detailed throughout these submissions.

- (2) sets out a regulatory regime for the enforcement of online pornography providers, including Age Verification requirements, with repercussions, including pecuniary penalties, for non-compliant entities; and
  - (3) empowers the British Board of Film Classification (**BBFC**) as the regulator to police compliance by online pornography websites.
- 1.7 Although implementation of the Digital Economy Act has been delayed, there is <sup>4</sup> a clear indication that Age Verification remains part of the plan, delivered via the UK's wider online harms approach.
- 1.8 The Australian Government's approach to legislating for and implementing an Age Verification regime in Australia can benefit from close examination of the UK experience.
- 1.9 Outside of the UK, a number of other countries are also exploring Age Verification options for online pornography. In particular, Spain, Ireland, Poland, Sweden <sup>5</sup> and New Zealand <sup>6</sup> have each acknowledged the harm that exposure to online pornography can do to children and are presently investigating appropriate methods for limiting access to online pornography by introducing Age Verification requirements. <sup>7</sup>
- 1.10 South Africa has also recently strengthened its regulation of online content. On 3 October 2019, South Africa amended its classification legislation to explicitly refer to the "protection of children from exposure to disturbing, harmful, or age-inappropriate materials". The amendments include an expanded definition of "distribute" to include online distribution, meaning that pornography websites must satisfy the Film and Publication Board that children under 18 would not be able to access age-inappropriate content. There are also financial penalties for non-compliance <sup>8</sup>.
- 1.11 The European Union, in its 2018 amendment to Directive 2010/13/EU, has recognised the necessity to restrict children from accessing online media content that might seriously impair their physical, mental or moral development <sup>9</sup>.
- 1.12 Experts and world leaders from around the globe world <sup>10 11</sup> indicate that Age Verification is the most important tool in the protection of children to ensure they are not exposed to online pornography. In 2017 at the *Child Dignity in the Digital World* event, global leaders issued a call for thirteen child protection measures, including:
- (1) To the leading authorities in public health to expand research into the health impacts resulting from the exposure of young children and adolescents to graphic, extreme internet pornography. [10]

<sup>4</sup> Letter response to John Carr (Secretary of the Children's Charities' Coalition on Internet Safety), from the overseeing MP, Matt Warman (Parliamentary Under Secretary of State for Digital and Broadband). 28 October 2019. Available from URL: <https://onedrive.live.com/?authkey=%21AHNBkQqgbU1V%5F4Q&cid=DE3750785A0D90C0&id=DE3750785A0D90C0%2157781&parId=DE3750785A0D90C0%2135532&o=OneUp>

<sup>5</sup> Doward, J. The Guardian. Adults only: the battle to keep online pornography from Britain's children. (News Article, 24 March 2019). Available from URL: <https://www.theguardian.com/culture/2019/mar/24/protecting-children-against-online-pornography-new-law-age-verification>

<sup>6</sup> Newshub. Children's Minister Tracey Martin plans online porn crackdown. (News Article, 10 August 2018). Available from URL: <https://www.newshub.co.nz/home/politics/2018/08/children-s-minister-tracey-martin-plans-online-porn-crackdown.html>

<sup>7</sup> Agego. More countries plan age verification to access adult sites. (Web Page, 13 June 2019). Available from URL: <https://www.agego.com/more-countries-plan-age-verification-to-access-adult-sites/>

<sup>8</sup> *Films and Publications Amendment Act, 2019*, Act No. 11 of 2019 (South Africa). Please note that although the Films and Publications Amendment Act has been passed, it has not yet come into force. As such, there is limited commentary about how this new regulation of online content will operate in practice.

<sup>9</sup> European Parliament and Council Directive 2010/13/EU of 10 March 2010 on the Coordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Provision of Audiovisual Media Services [2010] OJL 95/1, art 12. Available from URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0013&from=EN>

<sup>10</sup> Connecting to Protect. An Initiative to Address the Mental Health consequences of Children accessing Legal Online Pornography. Available from URL: <https://www.connectingtoprotect.org>

<sup>11</sup> Child Dignity Alliance. Protecting Children from Internet Pornography Working Group. Available from URL: <https://www.childdignity.com/working-group> Also see World Congress: Child Dignity in the Digital World

6 October 2017. Available from URL: <https://www.childdignity.com/blog/declaration-of-rome>

- (2) To leaders of the world's governments, legislative bodies, private industry and religious institutions to advocate for and implement techniques to deny access by children and youth to internet content suitable only for adults. [11]
  - (3) To governments, private industry and religious institutions to undertake a global awareness campaign directed at children and youth to educate them and provide them with the tools necessary to use the internet safely and responsibly, and to avoid the harm being done to many of their peers. [12]
- 1.13 This global shift towards restricting children's access to harmful online content, including pornography, via methods such as Age Verification, underlines the evidence that children accessing pornography online is a public health risk, and the responsibility of governments to implement appropriate protective controls. These obligations are also clear in the Convention on the Rights of the Child, of which Australia is a State Party.
- 1.14 The implementation of an Age Verification regime underpins the success of a number of different methods. In conjunction with appropriate initiatives such as parental controls, education programs, and therapeutic solutions, Age Verification is an imperative "cog in the wheel" <sup>12</sup> for creating a truly comprehensive regime of public health protection for Australian children.
- 1.15 eChildhood recognises <sup>13</sup> that Australia has a long history of investigating ways to protect children from pornography harms. Lessons learned from failed attempts such as ISP "clean feed" offer pertinent insight regarding measures to avoid when moving forward.
- 1.16 eChildhood recommends that Australia should learn from the challenges faced by the Digital Economy Act and implement a legislative regime for the protection of children in Australia from access to online pornography that seeks to address the concerns of adult pornography consumers.
- 1.17 In particular, we recommend that the Australian Government investigates further the Trusted Digital Identity Framework (**TDIF**) and the process which underpins it. Already in place in Australia, it can be adapted and implemented by requiring pornography websites to introduce Age Verification by leveraging the TDIF infrastructure (with minor adjustments). Utilising TDIF would bring significant benefits to the Australian regime over the Digital Economy Act, addressing the fears of privacy breaches, data subject targeting and data mining. It would also have the benefit of convenience for consumers and the regulator. This is explained in detail in section 5 below.
- 1.18 Attention also needs to be given to determining the best regulator for such a legislative regime in Australia.
- 1.19 Although we have set out specific recommendations below, the overarching objective of eChildhood is for the prevention of harm arising from children's access to pornography online. We believe that the best way to restrict children from accessing pornography online is to require pornography websites to implement Age Verification, and that a regulatory body be appointed to police compliance by pornography websites. Such a regulatory regime would not only effectively prevent children's access to online pornography, but it would also appropriately balance the rights of adult pornography consumers, the protection of user privacy and safety of children growing up in their online environments.
- 1.20 eChildhood is pleased to provide this submission in response to the Australian Government's inquiry into Age Verification for online wagering and online pornography. Our submission focuses on the way in which Age Verification can be implemented to prevent children's access to online pornography websites, using commercially available and proven technology in a manner that does not unreasonably interfere with adult pornography consumers and the privacy of individuals. eChildhood recognises that there are other online channels through which children could be exposed to pornography such as via social media and live streaming platforms. Whilst

<sup>12</sup> eChildhood Report, November 2019. Walker, E., & Newlands, T. KIDS AND PORNOGRAPHY IN AUSTRALIA: Mobilising a Public Health Response. Available from URL: [http://echildhood.org/report\\_2019](http://echildhood.org/report_2019) Also see diagram: eChildhood Public Health Approach—annexed to these submissions as Appendix 2.

<sup>13</sup> eChildhood (2017). Porn Harms Kids Report: protecting our kids from online pornography is everyone's business. p20. Available from URL: [https://www.echildhood.org/report\\_2017](https://www.echildhood.org/report_2017)

addressing those matters is beyond the scope of this Inquiry, we have made comments and would welcome the opportunity to make submissions in relation to those matters in the future.

- 1.21 The measures recommended by eChildhood equally apply to restricting minors' access to online wagering, alcohol and cigarette purchases, and other products or activities that are otherwise deemed illegal for children to access (for example, weapons). This submission, however, focuses specifically on the implementation of an Age Verification regime to ensure children's safety by protecting minors from pornography harms.

## 2 Terms of Reference

2.1 The House of Representatives Standing Committee on Social Policy and Legal Affairs' Terms of Reference have informed the submission by eChildhood. With specific regard to each Term of Reference, eChildhood makes the following submissions:

- (1) *Its potential as a mechanism for protecting minors online:* Age Verification is a suitable regime for protecting minors online by preventing accidental exposure and making intentional access more difficult. We elaborate on this in section 3 below.
- (2) *Requirements of Commonwealth, state and territory government laws, policies and practices that relate to, and enable improved age verification requirements:* Australia already has laws that permit restriction on Internet providers to protect vulnerable groups, such as children. Further, Age Verification for accessing online pornography is consistent with Australia's laws prohibiting the sale or supply of physical pornographic material to children. See section 4 below for further information.
- (3) *The potential benefits of further online age verification requirements, including to protect children from potential harm, and business and non-government organisations from reputation, operational and legal risks:* As outlined in response to the first Term of Reference, Age Verification as a prerequisite to accessing online pornography can protect children from significant potential harm online. We do not extensively consider the potential benefits to business and non-government organisations, save to say that Age Verification, with a clear regulatory system, will provide direction to entities on how to protect themselves from reputational or legal risk. See section 3 below generally for the benefits of Age Verification.
- (4) *The potential risks and unintended consequences in further restricting age verification requirements:* We acknowledge that there are concerns about potential risks of implementing Age Verification methods. We consider that the potential risks can be mitigated by leveraging the TDIF (with minor adjustments). In any event, we consider that any potential risk is outweighed by the public health benefit of protecting children from online pornography. See section 5 and 6 below for further information.
- (5) *Best practice age verification requirements internationally, including standards, verification and implementation timeframes, and particularly the likely effectiveness of the proposed age verification for access to online pornography in the United Kingdom's Digital Economy Act 2017:* The Digital Economy Act was the first model of Age Verification as a method to prevent children from accessing online pornography globally. Although this legislative framework has since been set aside, aspects of the Digital Economy Act can and should be considered as useful to a country deciding on its own Age Verification framework. Specifically, clear regulatory guidelines, empowerment of a regulator to enforce the legislation, and pecuniary or injunctive penalties. However, the UK model was criticised due to the potential impact of privacy breaches (the Age Verification providers storing personal data solely relating to adult access to online pornography), and the perceived unwieldy nature of a regulator monitoring multiple different Age Verification options and providers. We consider that, with amendments that respond to these criticisms (namely, safety, security and privacy), this regime would be both effective and acceptable to the population as a whole. We consider this further in section 5 below, where we address the limitations of the Digital Economy Act and why the Australian Age Verification legislation that we propose would not be subject to the same criticisms.
- (6) *Barriers to achieving stronger age verification requirements:* We do not consider there are any significant barriers to achieving stronger Age Verification requirements. The technology had already been developed in the UK—indeed, if the UK Government reversed their announcement or hastened the implementation of Age Verification within a broader online harms legislation, all mechanisms are set in place to bring this measure into force. Fundamentally, Age Verification is merely a subset of identity verification, and in Australia in particular, the TDIF already provides a viable digital identity verification mechanism which can be leveraged with minor modifications to provide a secure and privacy focused Age Verification regime. We elaborate on this further in section 5 below.

- (7) *Education and warning messages associated with age verification:* We have not expressly considered this term of reference, save to say that education is an important component of keeping children safe online, and children and adults alike should be educated in relation to Age Verification. Such education is consistent with primary (or universal) interventions—strategies that target whole population/communities in order to build public resources and attend to the factors that contribute to the occurrence of pornography harms. This is detailed in the eChildhood Report—KIDS AND PORNOGRAPHY IN AUSTRALIA: Mobilising a Public Health Response <sup>14</sup>—annexed to these submissions as Appendix 1 and covered more generally in sections 3 and 6 below. eChildhood is able to consult on education and warning messages associated with Age Verification moving forward.
  - (8) *The economic impact of placing further restrictions on age verification on business, including small business, and the potential financial and administrative burden of such changes:* There will be an economic and administrative impact on providers of online pornographic content. It is nevertheless possible that porn companies may enjoy a net gain in business as a result of introducing AV. Advertisers will know that the site's users are all adults and the companies will need less bandwidth. There is always a burden of responsibility on businesses that are regulated in the interests of public health, for example plain packaging and other restrictions on the tobacco industry. The content providers could be given the option of choosing their third-party Age Verification provider, which will assist in mitigating any impact on them. We consider that any economic or administrative impact is outweighed by cost savings through public health prevention and short- and long-term benefits of protecting children from accessing online pornography. We consider this in section 6 below.
  - (9) *The impact of placing further restrictions on age verification on other eSafety resourcing, education and messaging:* We do not have the necessary information to consider the financial or administrative burden that Age Verification may have on bodies such as the Office of the eSafety Commissioner (OeSC). We consider that any new method adopted in any sphere is likely to place a burden on relevant bodies, but this is a justifiable burden for the protection of children online. Further, bodies such as the OeSC are considered a global lead and have the requisite experience in responding to online activity, so as to mitigate any burden Age Verification may place on them. Please see section 5 below for further information on the role of the OeSC and the process of determining a regulator.
  - (10) *Australia's International obligations:* Australia has an International obligation to protect and act in the interests of children. Australia also has International obligations to protect an individual's privacy and their freedom of speech, but these may be restricted for a legitimate purpose so long as it is not unlawful nor arbitrary. This is considered in section 4 below.
  - (11) There is widespread community and stakeholder support for Age Verification. Child Focussed organisations, including Families Australia and the Alannah & Madeline Foundation, have added their names in support of the eChildhood submission, along with over 100 concerned citizens—annexed to these submissions as Appendix 4.
- 2.2 Alongside Age Verification, the importance of Australia implementing a public health response to pornography harms on children and young people is addressed in section 6 below. This section also addresses various supportive steps required to reach Age Verification implementation effectively.



### 3 The Problem: children's access to online pornography and the potential for serious harm

#### *Serious harms to children*

- 3.1 The types of harm to children and young people caused by them accessing online pornography have been extensively researched and documented.
- 3.2 It is estimated that one in three of all internet users in the world today are below the age of 18 <sup>15</sup>. In Australia, and around the world, children are increasingly accessing or being accidentally exposed to pornography on the internet. Whilst exact statistics vary due to the inherent research limitations <sup>16</sup> on this topic, studies have shown that high percentages of children and young persons above the age of 10 have been exposed to pornographic material, with males being at a significantly greater risk of exposure.
- 3.3 2017 Australian research <sup>17</sup> of 15-29-year-olds reflecting on first exposure indicated that 69% of boys and 23% of girls have seen pornography by age 13 or younger. These figures are consistent with a 2019 study <sup>18</sup> from Ireland which found that upon reflection of childhood experiences, 65.5% of boys and 30% of boys have seen pornography by age 13 or younger. It is possible that the first age of exposure may have dropped/rates of exposure may have increased in recent years. Extrapolating population data <sup>19</sup> and based on the 2017 research, approximately 1.66 million boys and half a million girls in Australia (13 and under) are exposed to pornography. Most will see violent depictions of sex before they've had their first kiss.
- 3.4 According to recent data <sup>20</sup> from an internet filtering software company used in schools, a third of students aged eight and under attempted to access online pornography in the past six months. This includes accidental access through unwanted pop-up ads and banners as well as deliberate searches for explicit material.
- 3.5 Peer-reviewed research indicates that primary school educators <sup>21</sup> are struggling to deal with younger and younger children enacting problem sexual behaviours. Children displaying problematic sexual behaviours has been observed by 40.8% of educator. Description of such occurrences include *children physically acting out sexually with other children, sexually harassing other children, verbally attempting to coerce other children to participate in sexual behaviour, and individual displays of sexual behaviour*. The same researchers cite a submission <sup>22</sup> to the 2016 Senate Inquiry into the harm being done to Australian children through access to pornography on the internet by Dr Michael Flood, a specialist in prevention of sexual violence and sexual assault.

<sup>15</sup> Livingstone, S., Carr, J. and Byrne, J. (2016). One in three: Internet Governance and Children's Rights. Innocenti Discussion Paper No.2016-01, UNICEF Office of Research, Florence. (Report). Available from URL: [https://www.unicef-irc.org/publications/pdf/idp\\_2016\\_01.pdf](https://www.unicef-irc.org/publications/pdf/idp_2016_01.pdf)

<sup>16</sup> Although there is an increasing amount of literature in this area, the groups considered vary by gender, age range, country and sample size. The conduct of explicitly sexual research with children, especially young children, is ethically problematic. See e.g. the discussion regarding the UK in Victoria Nash et al, *Identifying the Routes by which Children View Pornography Online: Implications for Future Policy-makers Seeking to Limit Viewing* (Report of Expert Panel for DCMS, 12 November 2015). Available from URL: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/500701/Report\\_of\\_DCMS\\_Expert\\_Panel\\_Autumn\\_2015\\_FINAL\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/500701/Report_of_DCMS_Expert_Panel_Autumn_2015_FINAL_.pdf)

<sup>17</sup> Lim, M.S.C.; Agius, P.A.; Carrotte, E.R.; Vella, A.M.; Hellard, M.E.; (2017). Young Australians' use of pornography and associations with sexual risk behaviours; Australian and New Zealand Journal of Public Health; 41(4): 438-443. DOI: 10.1111/1753-6405.12678

<sup>18</sup> Dawson, K., Gabhainn, S. C., & MacNeela, P. (2019) Dissatisfaction with school sex education is not associated with using pornography for sexual information, Porn Studies, 6:2, 245-257, DOI: 10.1080/23268743.2018.1525307

<sup>19</sup> eChildhood (2019). Number of Children in Australia Exposed to Pornography. Calculation Workings. Available from URL: <http://bit.ly/36OwjJO-age-exposure-eChildhood>

<sup>20</sup> Koziol, M. Sydney Morning Herald. Internet filter finds one in three children under eight trying to access pornography (News Article, 29 September 2019). Available from URL: <https://www.smh.com.au/national/nsw/internet-filter-finds-one-in-three-children-under-eight-trying-to-access-pornography-20190920-p52tcu.html>

<sup>21</sup> McInnes, E. & Ey, L-A. (2019). Responding to problematic sexual behaviours of primary school children: supporting care and education staff. Journal of Sex Education. DOI: 10.1080/14681811.2019.1621827. See also Ey, L-A., & McInnes, E. (2017): Educators' Observations of Children's Display of Problematic Sexual Behaviors in Educational Settings, Journal of Child Sexual Abuse, DOI: 10.1080/10538712.2017.1349855.

<sup>22</sup> Flood, M. (2016). Inquiry into the harm being done to Australian children through access to pornography on the internet Retrieved September 7, 2016. Available from URL: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Online\\_access\\_to\\_porn/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Online_access_to_porn/Submissions)

Flood provides a wide-ranging overview of the impact of pornography on the developing person, stating that research into the effects of pornography has found that viewing pornography is associated with eliciting shifts in sexual expectations, practices, attitudes, and repertoires, including engagement in multiple partnered sex, deep fellatio, anal intercourse, unsafe sexual behaviour, sexual objectification of women, and sexually aggressive behaviour and attitudes. The research journal article attested that *children viewing pornography are at risk of developmentally unfavourable outcomes, which indicates that it needs to be seen as a child protection issue.*

- 3.6 In a submission to this inquiry <sup>23</sup>, a school counsellor states that “In a meeting with 140 Year 6 children, age 11, 90 per cent said they had viewed pornography.” Reportedly <sup>24</sup>, sexting and pornography is rife. Children as young as seven are asking classmates for 'naked selfies', most students have seen explicit images or videos by Year seven, and there's concern about the number of young children presenting with porn addiction.
- 3.7 Australia's *Third Action Plan to Reduce Violence against Women and their Children 2010-2022* <sup>25</sup> has a focus on “better understanding and countering the impact of pornography given increasing evidence showing a correlation between exposure to online pornography and the sexual objectification of women and girls, the development of rape cultures and the proliferation of sexual assault”. Queensland's first Sexual Violence Prevention Framework—*Prevent. Support. Believe. Queensland's Framework to address Sexual Violence* <sup>26</sup>—recognises that pornography is a driver of sexual violence and problematic sexual behaviour that occurs between young people.
- 3.8 Importantly, research <sup>27</sup> has shown that it's just as common for children to be accidentally exposed to online pornography as it is for them to deliberately access. Access to pornography at a young age, when the child is still developing, can have extensive negative impacts on the child. The literature <sup>28</sup> reveals links between children's access to pornography and the following non-exhaustive list of outcomes:
- (1) Poor mental health – including, but not limited to, being distressed and upset by the images, self-objectification and body image concerns, sexual conditioning and developing an addiction to pornography;
  - (2) Sexism and objectification – such as reinforcing gender roles that women are 'sex objects' and men should be dominant while women should be submissive;
  - (3) Sexual aggression and violence – consistently, there is a demonstrated association between regular viewing of online pornography and the perpetration of sexual harassment, sexual coercion and sexual abuse by boys;
  - (4) Child-on-child and peer-on-peer sexual abuse; and
  - (5) Shaping sexual behaviours, such as engaging in younger sexual behaviour, more frequent premarital and casual sexual behaviour and more 'risky' sexual behaviour.
- 3.9 The late Professor Freda Briggs AO, Australian academic and child protection advocate revered for pioneering work in child protection revealed that <sup>29</sup> during interviews with more than 700 children for an Australian Research Council study, young boys between the ages of six and eight admitted that they and their dads watched pornography together for 'fun' because 'that's what

<sup>23</sup> See submission to this inquiry: sub033.

<sup>24</sup> Bickers, C. Federal Bureau Chief, Sunday Mail (SA). Sexts and porn rife in South Aussie schools (News Article, 2 November 2019). Available from URL: <https://www.adelaidenow.com.au/news/south-australia/sexts-and-porn-rife-in-south-aussie-schools/news-story/f62c83b9362399f0384a866195149757>

<sup>25</sup> Australian Government Department of Social Services. (2016). National Plan to Reduce Violence against Women and their Children 2010-2022. (Government Report). Available from URL: <https://www.dss.gov.au/women/programs-services/reducing-violence/third-action-plan>

<sup>26</sup> Queensland Government Department of Child Safety, Youth and Women (2019). Prevent. Support. Believe. Queensland's Framework to address Sexual Violence. (Government Report). Available from URL: <https://www.csyw.qld.gov.au/violence-prevention/sexual-violence-prevention/sexual-violence-prevention-framework>

<sup>27</sup> Martellozzo, E., Monaghan, A., Adler, J.R., Davidson, J., Leyva, R., and Horvath, M.A.H. Revised May 2017. “...I wasn't sure it was normal to watch it...” A quantitative and qualitative examination of the impact of online pornography on the values, attitudes, beliefs and behaviours of children and young people. Available from URL: <https://www.nspcc.org.uk/services-and-resources/research-and-resources/2016/i-wasnt-sure-it-was-normal-to-watch-it/>

<sup>28</sup> Walker, L. (2017). Statement of Research Relating to Pornography Harms to Children. Available from URL: <https://www.echildhood.org/statement>

<sup>29</sup> Tokaji, A. (2016). Due Diligence Obligation of a State to Children Harmed by Porn: A Critical Appraisal. Section V: Australia's Due Diligence Obligation to Protect Children from all Harm under International Law. Section V: The Western Australian Jurist. 7: 209-228—annexed as Appendix 3.

guys do.’ Consequently, there has also been a reported rise in children sexually abusing other children as a result of ‘acting out’ the images that they see on porn sites. One little boy’s behaviour has become so over sexualised, he has to be chaperoned at all times because of the risk that he may start playing “sex games” with other children. The reason? His young mind viewed online pornography, and now - he simulates oral and anal sex at play time. Professor Briggs’ Submission, tabled in the Senate, lists a ‘litany of attacks on children by classmates’ including a six-year-old boy who forced oral sex on kindergarten boys in the school cubby house. She also cited a group of boys who followed a five-year-old girl into the toilets, held her down and urinated in a ‘golden shower’.

- 3.10 Observations such as these can allegedly <sup>30</sup> lead to heinous crimes such as the murder of 14-year-old Ana Kriégel by two boys—Boy A recently sentenced to life; Boy B sentenced to 15 years. Documented in a court of law in Ireland, Mr Justice Paul McDermott said there was nothing in any of the psychiatric reports, nothing in their secure and caring family backgrounds or previous histories to suggest that they might commit these crimes. A comprehensive commentary of the case in *The Irish Times* states that although it was not mentioned in sentencing, perhaps the only thing that was out of the ordinary was the extent of Boy A’s appetite for extreme and violent pornography. The commentary poses questions that warrant urgent responses: “How does a child of 13 come to accumulate thousands of images of pornography on his devices without anyone noticing? Is pornography now just another unavoidable hurdle to be navigated in adolescence? And if so, what is the impact of exposure to explicit and sometimes violent images on a developing mind? Is an interest in online gore an indication of something darker manifesting in a child’s psyche?”
- 3.11 As a registered health promotion charity, eChildhood has dedicated resources to contribute to the growing volume of Australian literature on this topic. The latest eChildhood publication—*KIDS AND PORNOGRAPHY IN AUSTRALIA: Mobilising a Public Health Response*—is annexed to these submissions as Appendix 1.
- 3.12 Another key product of our work in this area is the eChildhood *Statement of Research Relating to Pornography Harms to Children (Statement of Research)*, which is annexed to these submissions as Appendix 5. The Statement of Research is endorsed by child youth advocates, anti-violence workers and key academics. The conclusions resulting from the eChildhood Statement of Research <sup>31</sup> are such that allowing children free and regular access to online pornography, whether purposeful or inadvertent, is a public health risk that the Australian Government must act to prevent.
- 3.13 In addition to our Statement of Research and the resources referred to therein, we also refer to the analysis contained in the following key Australian literature:
- (1) Quadara, A et al, *The effects of pornography on children and young people – an evidence scan*, Australian Institute of Family Studies Research Report 2017, Available at [https://aifs.gov.au/sites/default/files/publication-documents/rr\\_the\\_effects\\_of\\_pornography\\_on\\_children\\_and\\_young\\_people\\_1.pdf](https://aifs.gov.au/sites/default/files/publication-documents/rr_the_effects_of_pornography_on_children_and_young_people_1.pdf); and
  - (2) The Senate Environment and Communications References Committee, *Report into the Inquiry on Harm being done to Australian children through access to pornography on the Internet* (November 2016). Available at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Onlineaccessstoporn45/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Onlineaccessstoporn45/Report)
- 3.14 In addition, the guidance that underpins the United Kingdom’s Digital Economy Act is valuable, notwithstanding that legislation did not come into force. Although created by reference to UK society, the findings in that literature are equally applicable to Australian public health <sup>32</sup>.

<sup>30</sup> O’Donnell, J. Ana Kriégel murder: What it taught us about bullying, porn and boys. *The Irish Times*. (News Article, 9 November 2019). Available from URL: <https://www.irishtimes.com/life-and-style/health-family/ana-kri%C3%A9gel-murder-what-it-taught-us-about-bullying-porn-and-boys-1.4075774>

<sup>31</sup> See paragraph [3.7] above.

<sup>32</sup> See the resources available at Department for Digital, Culture, Media & Sport, ‘Guidance: Digital Economy Bill Part 3: Online Pornography’, *Gov.UK* (Web Page, 12 October 2018). Available from URL: <https://www.gov.uk/government/publications/digital-economy-bill-part-3-online-pornography>

*Age Verification: its potential and benefits*

- 3.15 As outlined above, children suffer harm when they access online pornography. Regardless of whether it's accidental or deliberate exposure, Age Verification has been proposed as a solution to children accessing pornography. We submit that Age Verification has the potential to significantly reduce access by children, especially inadvertent access.
- 3.16 The requirement to verify your age in order to access pornography is not a new phenomenon, with people having to prove their age in order to purchase or view pornography in the physical world. Just as people must be above the age of 18 to purchase alcohol or tobacco or to gamble, requiring Age Verification as a barrier to accessing pornography is a matter of the preservation of children's public health. The introduction of online Age Verification for and online wagering and pornography will ensure that the safeguards for children in the physical world are consistently reflected in the digital world.
- 3.17 In Australia, existing laws state the sale or provision of pornographic material is restricted to people above the age of 18, and in some cases prohibited from sale altogether<sup>33</sup>. As with most issues involving technology and the internet, it is unclear where the onus for preventing children's access to pornography should lie, and what repercussions the content provider should face if minors below 18 access a porn website. Introducing an Age Verification regime will not only provide protection to children by preventing them access, but it will also provide clarity to providers on how to responsibly and legally disseminate pornographic material and to whom.
- 3.18 Community expectations for safer offline environments for children see corporations and governments respond to calls for corporate social responsibility to reduce exposure to messages that promote sexual harassment and objectification. This is evidenced by the recent announcement of BP and 7-Eleven to stop stocking M15+ magazines<sup>34</sup>; and new laws introduced to Victorian parliament<sup>35</sup> forcing vehicle owners displaying offensive images or slogans to remove them or face registration sanctions.
- 3.19 **There is a common myth that all children are tech-savvy and capable of circumventing online safeguards such as Age Verification.** This was quickly debunked by a 2017 report by Ofcom, the UK's regulator for communication services, titled '*Children and Parents: Media Use and Attitudes Report*', which considered the technological literacy of children<sup>36</sup>. The report concluded that only 18% of children between the ages of 12 and 15 claimed to know how to bypass or disable an online filter, with only 6% claiming to have actually done so successfully. Further, only 7% of children between the ages of 12 and 15 claimed to know how to use a proxy server to access restricted websites or apps, with only 3% claiming they had actually done so successfully.
- 3.20 Consequently, Age Verification should not only prevent the accidental exposure of children to pornographic material online but should also prevent children actively seeking pornography online from accessing that material. Based on the above-mentioned Ofcom findings<sup>37</sup>, whilst it is acknowledged that a small percentage of determined youths may circumvent Age Verification, the vast majority of children—particularly throughout impressionable periods of development—will not have ready access. Similarly, vulnerable groups to pornography harms such as those on the spectrum or who have other mental health vulnerabilities or disabilities, will be significantly protected.
- 3.21 It is important to acknowledge that<sup>38</sup> "Age Verification is not a silver bullet." Whilst it is a key tool in order to comprehensively protect Australian children, it should be implemented together with other prevention initiatives. Such public health preventative measures are detailed

<sup>33</sup> See paragraph [4.3] below.

<sup>34</sup> New.com.au. BP joins 7-Eleven by pulling sexualised adult magazines from shelves. (News Article, 22 October 2019). Available from URL: <https://www.news.com.au/finance/business/retail/bp-joins-7eleven-by-pulling-sexualised-adult-magazines-from-shelves/news-story/d4c9b698160112641f9e53df6055fb1d>

<sup>35</sup> 7news.com.au. Plan to stop sexist slogans on Wicked Vans takes step in Victoria. (News Article, 29 October 2019). Available from URL: <https://7news.com.au/travel/plan-to-stop-sexist-slogans-on-wicked-vans-takes-step-in-victoria-c-529081>

<sup>36</sup> Ofcom, *Children and Parents: Media Use and Attitudes Report* (Research Report, 29 November 2017). Available from URL: <https://www.ofcom.org.uk/research-and-data/media-literacy-research/childrens/children-parents-2017>

<sup>37</sup> See paragraph [3.19] above.

<sup>38</sup> BBFC, 'Frequently asked questions', *Age-verification under the Digital Economy Act 2017* (Web Page) [19]. Available from URL: <https://www.ageverificationregulator.com/faq/#19>

comprehensively in the eChildhood Report, 2019—outlined directly below in paragraphs [3.21(1)-(7)], annexed to these submissions as Appendix 1 and addressed in Section 6 below.

- 3.22 Although the focus of this Inquiry is Age Verification and eChildhood considers that Age Verification is the most important and effective “Digital Child Protection Buffer”<sup>39</sup> for protecting children from online pornography, we submit that the following safety measures should also be considered and implemented as part of a child-protection focussed holistic public health response:
- (1) strong “Parental Controls”<sup>40</sup> which allows parents to monitor and regulate children’s internet use;
  - (2) the introduction of “Public Friendly WiFi”<sup>41</sup> in public places;
  - (3) relevant “Network Restrictions”<sup>42</sup>;
  - (4) implementing the “Safety by Design”<sup>43</sup> principles for protecting minors online;
  - (5) accountability for social media and live streaming platforms; and
  - (6) a robust education program designed to ensure that families understand Age Verification, its benefits and also its limitations.
  - (7) the implementation of a public health responses to pornography harms on children and young people. The eChildhood Public Health Approach includes robust solutions in the areas of:
    - (a) **Legislation and policy solutions:** Legislation & Regulation, National Frameworks, Best Practice Policy Frameworks, Justice & Governance Measures and Reporting Processes.
    - (b) **Digital Solutions:** Age Verification, Parental Controls, Public Friendly WiFi, Safety by Design Principles and Network Restrictions (Age Verification is defined in footnotes of paragraph [1.5]; other terms defined in footnotes below).
    - (c) **Education Solutions:** Parents & Carers, Industry & Decision-makers, People who serve Children & Youth, Educator Training and Children & Youth.
    - (d) **Therapeutic Solutions:** Evidence-based Recognition Framework, Treatment Provider Support, Treatment Protocols, Restorative Processes and Parent, Carer & Victim Support.

<sup>39</sup> “Digital Child Protection Buffers” to refer to the various ways in which technology can prevent pornography harms. See eChildhood Report, 2019—annexed to these submissions as Appendix 1.

<sup>40</sup> “Parental Controls” are currently the most readily known and available response to prevent access to pornography. The eSafety Commissioner indicates that Parental Controls are software tools that allow monitoring and limiting what children see and do online. They can be set up to do things like **block** children from accessing specific websites, apps or functions (like using a device’s camera, or the ability to buy things); **filter** different kinds of content — such as ‘adult’ or sexual content, content that may promote self-harm, eating disorders, violence, drugs, gambling, racism and terrorism; **monitor** children’s use of connected devices, with reports on the sites they visit and the apps they use, how often and for how long; and **set time limits**, blocking access after a set time. See eChildhood Report, 2019—annexed to these submissions as Appendix 1.

<sup>41</sup> “Public Friendly WiFi” is a buffer helpful to ensure safety standards for venues or precincts offering free public WiFi. Eligible entities may include public libraries and council spaces; chain stores; individual businesses; workplaces; transport companies; ISPs and secondary providers of WiFi products and services. Through an accreditation process, providers of WiFi must provide evidence to ascertain if the service they provide is safe for use within a public space. Upon accreditation, entities receive a ‘stamp of approval’ to display for public consumer confidence. Public Friendly WiFi is available in Australia, with the accreditation process undertaken by an independent accreditor, Digital Friendly WiFi, available in partnership with eChildhood. eChildhood Report, 2019.

<sup>42</sup> “Network Restrictions” incorporate filtering and device restrictions aimed at the network level. For example, Internet Service Provider (ISP) Level Filters, mobile device restrictions/child-safe sim cards, child-safe phones, etc. Network Restrictions are likely to innovate and adapt to shifting consumer needs. See further details regarding the approach of Network Restrictions (namely, ISP Level Filters) in paragraphs [5.56] - [5.62].

<sup>43</sup> “Safety by Design” principles are an initiative by the eSafety Commissioner that places the safety and rights of users at the centre of the design, development, and deployment of online products and services, with a focus on children and young people as consumers. eChildhood Report, 2019. Also see: eSafety Commissioner. Safety by Design. (Web Page). Available from URL: <https://www.esafety.gov.au/key-issues/safety-by-design>

- 3.23 As mentioned, the eChildhood Public Health Approach is further detailed in the report: KIDS AND PORNOGRAPHY IN AUSTRALIA: Mobilising a Public Health Response and available as an explanatory diagram annexed to these submissions as Appendix 2. We strongly urge the committee to review this report for additional insight and strategy <sup>44</sup>.
- 3.24 The importance of education cannot be underestimated, best summarised in the eChildhood Report (2019). Free and easy access to graphic and extreme content is not acceptable. Digital Child Protection Buffers are an essential solution; however, education is also an essential part of building children and young people's protective factors and effectively mobilising a public health response to pornography.  
Secretary of the Children's Charities Coalition on Internet Safety, John Carr, states it this way:

*"...it is not a binary choice. Educating children and young people about sex, sexuality and relationships have always been important and, if anything, the arrival of the internet has made it even more so. For this reason, I very much welcomed the announcement earlier this year that sex education is to be made a compulsory part of the national curriculum. But you cannot "educate" a 9-year-old girl out of the horror of witnessing or being exposed to some of the stuff that is readily available on many of the sites that will be caught by the Digital Economy Act."*

<sup>44</sup> See eChildhood Report, 2019—annexed to these submissions as Appendix 1. Available from URL: [https://www.echildhood.org/report\\_2019](https://www.echildhood.org/report_2019)

## 4 The Policy Objective: proportionate protections for children and the current Australian position

### *The importance of protecting children's public health*

- 4.1 As discussed above in section 3, a significant number of children are exposed to pornography online which causes them harm. Explored in depth below in section 5, Age Verification and similar protections limit exposure and as such, minimise harm to children.
- 4.2 eChildhood recognises that introducing the additional step of Age Verification and similar protections may pose an inconvenience to adult consumers of online pornography. However, we emphasise that this does not prevent adult consumers from accessing pornography and submit that this minor inconvenience is outweighed by the importance of the public health objective of protecting children from harm.

### *Australian legislation*

- 4.3 The current laws in Australia prohibit the sale or supply of pornographic material to anyone below the age of 18, and in some cases prohibit the sale, supply or importation of pornography altogether. Our submissions recommend robust updated legislation for safety, security and privacy, however, currently, the implementation of an Age Verification regime preventing persons under the age of 18 from accessing pornography online is consistent with these laws:
- (1) The *Classification (Publications, Films and Computer Games) Act 1995* (Cth) and its associated codes, regulations and amendments<sup>45</sup> outline the legal status of disseminating pornographic material (**National Classification Scheme**). The National Classification Scheme is then enforced in each State or Territory by State or Territory legislation (**Enforcement Legislation**)<sup>46</sup>. In summary, pornography cannot be sold or supplied to any person under the age of 18.
  - (2) The *Guidelines for the Classification of Publications 2005* (Cth) classifies any written or pictorial publication that contains pornography as either "Category 1 - Restricted", "Category 2 - Restricted" or "RC – Refused Classification" depending on the nature and content of the pornography. The impact of each of these classifications is:
    - (a) Category 1 – Restricted: Not available to persons under 18 years (Not to be sold in Queensland).
    - (b) Category 2 – Restricted: Not available to persons under 18 years (Not to be sold in Queensland).
    - (c) RC – Refused Classification: Cannot be legally imported or sold in Australia.
  - (3) The *Guidelines for the Classification of Films 2012* (Cth) classifies pornography as either "X18+ - Restricted" or "RC – Refused Classification". The impact of each of these classifications is:
    - (a) X18+ - Restricted: Restricted to adults 18 years and over. Available only for sale or hire in the ACT and Northern Territory.
    - (b) RC – Refused Classification: Cannot be legally imported or sold in Australia.
  - (4) The Enforcement Legislation extensively regulates pornography in the physical world, depending on the State or Territory, which includes, but is not limited to:

<sup>45</sup> See for example, paragraphs [4.3(2)] and [4.3(3)].

<sup>46</sup> *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* (ACT); *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (NSW); *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* (Vic); *Classification of Films Act 1991* (Qld); *Classification of Publications Act 1991* (Qld); *Classification (Publications, Films and Computer Games) Act 1995* (SA); *Classification (Publications, Films and Computer Games) Enforcement Act 1996* (WA); *Classification (Publications, Films and Computer Games) Enforcement Act 1995* (Tas); *Classification of Publications, Films and Computer Games Act 1985* (NT).

- (a) what age a person must be to buy or be supplied with pornography;
- (b) how pornography may be advertised;
- (c) when and where pornography may be shown or viewed, including in private or public spaces;
- (d) restrictions on possessing or copying pornography;
- (e) restrictions on the commercialisation of pornography, especially any which has not been classified; and
- (f) establishing penalties for breaches, including fines and imprisonment.

- 4.4 In contrast, there is no regulation, in law or otherwise, that sets out any restriction relating to Australian children's access to online pornography that is hosted outside of Australia. Although there is some regulation of the online pornography industry for websites hosted in Australia, it is unclear, drawn from a multitude of sources, and ultimately inadequate to truly protect children in Australia. In a digital world, where children's lives are increasingly spent on the Internet, the lack of any proportionate protections online is a deficit that must be addressed without further delay. It is important to note that existing classification laws applicable in the offline world, set down to protect children, are not being enforced online. These existing laws have not kept pace with digital technologies and online spaces, and as such, there is a community expectation and International obligation to update these laws for the protection of children.
- 4.5 The *Broadcasting Services Act 1992* (Cth) (**BSA**) is the primary legislation that regulates the Internet in Australia. A key objective of the BSA is protecting children from exposure to content that is unsuitable for children<sup>47</sup>. Schedules 5 and 7 of the BSA establish a system dedicated to regulating specific internet industries, and permit the creation, implementation and enforcement of industry standards. The obligations apply to both Australian hosted content providers and content hosted outside Australia. Australian hosted content providers may be subject to investigations, enforcement actions and takedown notices if they do not comply. In contrast, if a content provider hosted outside Australia is in breach, the BSA is only empowered to adopt a watered-down approach, such as referral to a relevant law enforcement agency (if appropriate) or notification to the relevant body, detailed in paragraphs [4.9], [4.12] and [4.13].
- 4.6 Additionally, the majority of the industry codes and regulations established under the BSA only apply to Australian hosted content providers. For example, under the Codes for Industry Co-Regulation in Areas of Internet and Mobile Content (2005) established pursuant to Schedule 5 of the BSA, Australian content providers must take all reasonable steps to ensure that Restricted Content, which is content classified as R / R18+ or higher, or content which has not been classified but would likely be classified as MA15+ or higher, is not provided to minors. An example of a "reasonable step" is the placement of a notice on the website which outlines that the content should not be accessed by minors. We submit that it is apparent that such "reasonable steps" are currently not being implemented, nor adequate, to protect children from access to online pornography.
- 4.7 Australian pornography websites are also subject to the obligations of the *Restricted Access Systems Declaration 2014* (Cth) established pursuant to Schedule 7 of the BSA<sup>48</sup>. The *Restricted Access Systems Declaration* requires the implementation of an access-control system for content rated MA 15+ or higher. This mandates the provision of warnings and confirmation of age. Whilst the obligations established under the *Restricted Access Systems Declaration* are mandatory, methods to ensure compliance with these obligations are ambiguous. It is unclear how these "confirmations of age" operate in practice, the exact content of the obligation with which Australian online pornography providers must comply, and how these obligations may be enforced. Consequently, in practice the *Restricted Access Systems Declaration* appears to be more of an aspirational statement rather than an effective regulatory tool. This system may be referred to as "age gating"<sup>49</sup> as opposed to Age Verification.

<sup>47</sup> BSA, Schedule 7 and see paragraph [5.9] below.

<sup>48</sup> Restricted Access Systems Declaration 2014. Broadcasting Services Act 1992. (Legislation, 15 December 2014). Available from URL: <https://www.legislation.gov.au/Details/F2014L01757>

<sup>49</sup> "Age gating" is a process where visitors to those sites must manually input their age without any independent verification of the age or date of birth required.



- 4.8 The effect of the various intersecting regulations on Australian online pornography websites, the lack of clarity about how these obligations are to be met in practice, and the imprecise nature of the requirements not only leads to insufficient protections, but also confusion for Australian hosts of pornographic content.
- 4.9 If prohibited content is hosted in Australia, the OeSC exercises its powers and directs the hosting provider to remove or restrict access to the content by serving a takedown notice <sup>50</sup>. The OeSC boasts a 100% industry compliance rate in response to requests that prohibited material hosted in Australia be taken down <sup>51</sup>.
- 4.10 Australian pornography websites advocate for <sup>52</sup> and encourage their members to follow the “Association of Sites Advocating Child Code of Protection” Code of Ethics, which involves implementing the RTA “Restricted to Adults” Website Label <sup>53</sup>—a protocol for website labelling that assists filtering services to identify adult sites. This is a voluntary system with no legal binding—the efficacy of this non-regulated system is unclear—the last update to guidelines occurred in 2010.
- 4.11 Australian industry representatives advise Australian producers to host overseas <sup>54</sup>. When Australian producers do host domestically, they are required by law to provide warnings and incorporate reasonable steps to confirm the age of applicants <sup>55</sup>. Non-compliant sites are subject to a takedown notice <sup>56</sup>. Only regulating Australian hosted pornographic content ignores the much larger problem of pornography hosted on foreign servers. The introduction of a holistic Age Verification regime for *all* pornography websites, hosted in Australia or overseas, would protect children from access to all online pornography and deliver clarity to the Australian pornography industry about best practice, without disadvantaging Australian hosted providers in comparison to their International counterparts.
- 4.12 To date, the Government has not used its powers pursuant to the BSA to create an Age Verification regime. Although Schedules 5 and 7 of the BSA could be used to implement Age Verification as an industry standard, it might be more difficult to implement and enforce than a new and clear framework. Accordingly, we submit that a new legislative and regulatory regime would be appropriate to effectively and clearly address the issues.
- 4.13 The *Enhancing Online Safety Act 2015* (Cth) established the Office of the eSafety Commissioner (OeSC) with the mandate to coordinate and lead online safety efforts across government, industry and the not-for profit community <sup>57</sup>. The OeSC also administers the online content schemes under Schedule 5 and Schedule 7 of the BSA.
- 4.14 The OeSC is an established body with the requisite resources and expertise, which would be ideal to support an Age Verification regime. We elaborate on the appointment of a regulatory body further below at paragraphs [5.48] to [5.55] below.

<sup>50</sup> See paragraph [5.49] below.

<sup>51</sup> eSafety Commissioner, ‘The action we take’, *eSafety Commissioner* (Web Page). Available from URL:

<https://www.esafety.gov.au/complaints-and-reporting/offensive-and-illegal-content-complaints/the-action-we-take>

<sup>52</sup> ASCAP (Association of Sites Advocating Child Protection). ASCAP Honors Founder and Supporters at XBIZ Awards (Web Page, 12 February 2008) Available from URL: <https://www.asacp.org/index.html?content=news&item=537> See also The Eros Association’s submission to this inquiry: sub065.

<sup>53</sup> “Association of Sites Advocating Child Code of Protection” - see INDUSTRY BEST PRACTICES Code of Ethics. Available from URL: [https://www.asacp.org/index.html?content=best\\_practices#adultsites](https://www.asacp.org/index.html?content=best_practices#adultsites) Also see RTA “Restricted to Adults” Website Label is a simple meta tag that can be pasted into the header of any web page, site or server: <meta name=“RATING” content=“RTA-5042-1996-1400-1577-RTA”/>. Embedding this code in page header metadata tags enables filtering via all of the various parental control mechanisms. RESTRICTED TO ADULTS - The RTA Labeling Initiative Progress Report: November 2010. (PDF Report). Available from URL: <http://www.rtalabel.org/rtapaper/rtalabel-paper-final.pdf> See also Restricted to Adults. Adult Entertainment/Adult Responsibility. Available from URL: <http://www.rtalabel.org/index.php?content=howto#individual>

<sup>54</sup> See paragraph [5.8] below.

<sup>55</sup> See paragraphs [4.5] to [4.9] above and [5.8] below.

<sup>56</sup> See paragraph [4.9] above.

<sup>57</sup> eSafety Commissioner, *eSafety strategy 2019-2022* (Report). Available from URL: <https://www.esafety.gov.au/about-the-office/role-of-the-office>

### *Australia's International obligations*

- 4.15 Australia is a State Party to the *Convention on the Rights of the Child*<sup>58</sup> (**Child Convention**) and owes an International obligation to ensure children are protected. Under the Child Convention, Australia is obligated<sup>59</sup> to:
- (1) ensure that in all actions concerning children, the best interests of the child shall be a primary consideration;
  - (2) ensure to the maximum extent possible the development of the child; and
  - (3) take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.
- 4.16 Australia recently affirmed its position by supporting the United Nations Human Rights Council resolution for “The promotion, protection and enjoyment of human rights on the Internet”, which was unanimously adopted without a vote<sup>60</sup>. By virtue of this, Australia has affirmed “that the same rights that people have offline must also be protected online” and that Australia must foster “an enabling online environment that is safe and conducive to engagement by all”.
- 4.17 Additionally, the UN Special Representative of the Secretary-General on Violence against Children has recognised that<sup>61</sup> “rapid development and expansion of ICTs have generated new opportunities for the realization of children’s rights as well as significant challenges for the protection of children”.
- 4.18 Australia, under the Child Convention, has an obligation to protect children, and this obligation is extended to children’s use of the internet. We acknowledge that this obligation must be balanced against Australia’s other International obligations, namely the obligations for freedom of expression and the right to privacy under the *International Covenant on Civil and Political Rights* and the *Universal Declaration of Human Rights*, respectively<sup>62</sup>.
- 4.19 We consider that our recommendations set out in these submissions are consistent with Australia’s International obligations. Also see Australia’s due diligence obligation to protect children from all harm under International law—annexed to this submission as Appendix 3.
- 4.20 Accordingly, it is our submission that a new positive framework, consistent with the principles of protecting children from harmful content in the form of online pornography, should be adopted. We maintain that this is a proportionate response to protecting children from harm that is consistent with Australia’s current laws and International obligations.

<sup>58</sup> Office of the High Commissioner. *Convention on the Rights of the Child*. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989; entry into force 2 September 1990, in accordance with article 49. United Nations Human Rights. (United Nations Publication). Available from URL: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>59</sup> Australian Human Rights Commission. *The UN Children’s Convention and Australia* (1991). (AHRC Publication). Available from URL: <https://www.humanrights.gov.au/our-work/childrens-rights/publications/un-childrens-convention-and-australia-1991>

<sup>60</sup> UN. Human Rights Council. *The promotion, protection and enjoyment of human rights on the Internet: resolution / adopted by the Human Rights Council on 5 July 2018*, GA Res 38/7, UN Doc A/HRC/RES/38/7 (17 July 2018). Available from URL: <https://digitallibrary.un.org/record/1639840?ln=en#record-files-collapse-header>

<sup>61</sup> Marta Santos Pais, *Annual Report of the Special Representative of the Secretary-General on Violence against Children*, UN Human Rights Council, 35<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/31/20 (5 January 2016) [99].

<sup>62</sup> See for example, UN High Commissioner for Human Rights, *The right to privacy in the digital age: Report of the United Nations High Commissioner for Human Rights*, GA Res 39/29, UN Doc A/HRC/39/29 (3 August 2018) [10]. Available from URL: <https://digitallibrary.un.org/record/1640588?ln=en>; David Kaye, *Report of the Special Rapporteur on the promotion and protection on the right to freedom of opinion and expression*, GA Res 38/35, UN Doc A/HRC/38/35 (6 April 2018) [7]. Available from URL: <https://digitallibrary.un.org/record/1631686?ln=en>

## 5 The Solution: best practice methods for the implementation of Age Verification online

### *UK Digital Economy Act*

- 5.1 As outlined in the Executive Summary, the most significant piece of Age Verification legislation designed to protect children from access to pornographic websites is the Digital Economy Act. The passage of the Digital Economy Act reflected the widespread, evidence-based recognition that accessing pornographic content online is likely to cause significant harm to children, whether or not the access is purposeful or inadvertent <sup>63</sup>.
- 5.2 Although the Digital Economy Act has been set aside by the UK Government with the intention of Age Verification sitting under a different legislative framework, its introduction remains significant; lessons can be learned from its drafting in terms of parts of it which are a useful model that should be followed in Australia. Further, Australia has the opportunity to learn from the Digital Economy Act's experience to ensure a robust and successful Age Verification regime is implemented in Australia,
- 5.3 The regulatory regime that was to govern online pornography in the UK was contained in Part 3 of the Digital Economy Act, which <sup>64</sup>:
- (1) made the distribution of online pornography in the UK without Age Verification controls an offence;
  - (2) introduced a new regulatory regime for the enforcement of online pornographic providers' compliance with Age Verification requirements; and
  - (3) empowered and required the regulator to collaborate with relevant industry stakeholders that facilitated the online pornography provider, to disrupt non-compliant providers' business models.
- 5.4 Under the Digital Economy Act, pornographic websites would have been required to implement Age Verification processes, with a nominated regulator overseeing and enforcing this. The BBFC was chosen as the Age Verification regulator in the UK. The BBFC was empowered to act against commercial online pornography providers who did not comply with the Age Verification regime, to:
- (1) give notice to any "payment-services provider" <sup>65</sup> or "ancillary service provider"<sup>66</sup> that the provider was contravening the Digital Economy Act; <sup>67</sup> and
  - (2) give notice requiring an internet service provider to block access to a non-compliant website in the UK.

<sup>63</sup> Consider for example the documents and studies, referred to by the UK government in support of the passage of the Digital Economy Act. Although the statistics are UK-specific, the conclusions are all equally applicable to Australian society. In particular, we direct the reader to the Bill Overview Impact Assessment published by the DCMS. The policy objectives set out in the Impact Assessment, as well as the cost benefit analysis undertaken, are analogous and pertinent to Australia as well.

<sup>64</sup> Department for Digital, Culture, Media & Sport, *Age Verification for pornographic material online* (Impact Assessment, No. RPC-DCMS-3101(2), 13 June 2018). Available from URL: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/747187/Impact\\_Assessment\\_Age\\_Verification\\_FINAL\\_20181009.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/747187/Impact_Assessment_Age_Verification_FINAL_20181009.pdf)

<sup>65</sup> "Payment services provider" is defined as "a person who appears to the age-verification regulator to provide services, in the course of a business, which enable funds to be transferred in connection with the payment by any person for access to pornographic material or extreme pornographic material made available on the internet by the non-complying person": Digital Economy Act, s 21(4).

<sup>66</sup> "Ancillary service provider" is defined as a person who appears to "provide, in the course of a business, services which enable or facilitate the making available of pornographic material or extreme pornographic material on the internet by the non-complying person, or advertise, on or via any internet site operated by the non-complying person or via any other means of accessing the internet operated or provided by that person, any goods or services provided in the course of a business": Digital Economy Act, s 21(5).

<sup>67</sup> Digital Economy Act, s 21.

- 5.5 The BBFC published a website <sup>68</sup> with resources setting out the above, and how Age Verification of the online pornography industry would have operated. As the designated Age Verification regulator, the BBFC also administered the ‘Age-verification Certificate’, which was a voluntary certification scheme that Age Verification providers could seek. Receiving certification would mean that the Age Verification provider in question had been vetted by the BBFC.
- 5.6 Although engaging with the certification scheme was voluntary, this did not mean that uncertified Age Verification providers would have been left unchecked. Under the Digital Economy Act, the BBFC would have been required to conduct a review of all pornography websites accessible in the UK, and the Age Verification provider used by those websites, to ensure that they were compliant with the Digital Economy Act and the BBFC’s guidelines, independent of the certification process.
- 5.7 Having initially opposed the legislation, the pornography industry now indicates its support of the regime under the Digital Economy Act and its willingness to comply with Age Verification <sup>69</sup>. US Industry body representative, the Free Speech Coalition, was reported in a 2018 XBIZ industry news update <sup>70</sup> as saying there’s an expectation for similar regulation to be implemented elsewhere. This same update forewarned the industry “it is inevitable that Age Verification will become more widespread over time simply due to advances in technologies and more widespread use of biometrics in end-user devices.” Warren Russell, the CEO of AVYourself, an Age Verification entity, told XBIZ that “ultimately for any industry to succeed with a diverse consumer choice there needs to be a level playing field. This can only be achieved with matching cross-border legislation.” The vast majority of pornography accessed in Australia is from Overseas Industry/Website Hosts—it is these entities that the UK Government successfully consulted throughout the Digital Economy Act planning stages. Although Age Verification in the UK is now proposed to come into force under an altered framework, we do not see any reason why the overseas industry position would be different <sup>71</sup> if Australia implements an Age Verification regime.
- 5.8 As a work-around to compliance legislation <sup>72</sup>, Eros (Australia’s adult entertainment trade group) advised member online adult site operators in 2016 to host such sites outside of Australia <sup>73</sup>. For Age Verification to achieve the goals of protecting children in Australia from harmful content, it is critical that all sites, regardless of domestic or overseas location, are included <sup>74</sup>.
- 5.9 To create parity, eChildhood recommends that the Restricted Access System Declaration 2014 <sup>75</sup> of the Broadcasting Act be superseded by legislation consistent with a robust Age Verification regime, applying to all domestic and overseas sites. An important part of the consultation process is to include Australian industry representatives.
- 5.10 Responses to the BBFC’s consultation on its draft guidance on Age Verification provides a good indication of the British public’s opinion on Age Verification <sup>76</sup>. The common theme throughout is that privacy concerns must be weighed against the public good of protecting children from access to online pornography, so that a proportional response is achieved. We submit that our recommendation, outlined further below, addresses these privacy concerns and is a proportionate response to combatting the harm caused by children accessing online pornography.

<sup>68</sup> See BBFC, *Age-verification under the Digital Economy Act 2017* (Web Page). Available from URL: <https://www.ageverificationregulator.com>

<sup>69</sup> Yagielowicz, S. BBFC to Give UK Age Verification Update at XBIZ Berlin. XBIZ (Web Page, 16 August 2019). Available from URL: <https://www.xbiz.com/news/246159/bbfc-to-give-uk-age-verification-update-at-xbiz-berlin>

<sup>70</sup> Yagielowicz, S. Special Report: Your Guide to Age Verification Issues and Solutions. (Web Page, 1 February 2018). Available from URL: <https://www.xbiz.com/news/233319/special-report-your-guide-to-age-verification-issues-and-solutions>

<sup>71</sup> Yagielowicz, S. Mandatory Age Verification: A Game Changer for Adult. XBIZ (Web Page, 30 September 2017). Available from URL: <https://www.xbiz.com/features/230287/mandatory-age-verification-a-game-changer-for-adult>

<sup>72</sup> See paragraph [4.11] above.

<sup>73</sup> Pardon, R. Australia Cracking Down on ‘Age Verification,’ Eros Says. XBIZ (Web Page, 16 September 2016. Available from URL: <https://www.xbiz.com/news/199063/australia-cracking-down-on-age-verification-eros-says>

<sup>74</sup> See paragraph [4.11] above.

<sup>75</sup> See paragraphs [4.7], [4.11] above and [7.3(6)] and [7.4] below.

<sup>76</sup> BBFC, *Draft Guidance on Age Verification & Draft Guidance on Ancillary Service Providers: Consultation Responses* (Report, 2018). Available from URL: <https://www.ageverificationregulator.com/assets/bbfc-guidance-consultation-responses-october-2018-updated.pdf>

- 5.11 Strong public support exists for Age Verification <sup>77</sup>. In the UK, 88% of UK parents with children aged 7-17 agreeing that there should be robust age-verification controls in place to stop children seeing pornography online. What's more, according to a 2018 New Zealand Report commissioned by the Office of Film & Literature Classification, young people overwhelmingly agreed that it isn't ok for children to look at pornography (89%). Most (71%) believe children and teens' access to online porn should be restricted in some way, including half (51%) of regular viewers of pornography.

*Privacy concerns and practical considerations*

- 5.12 A major concern that arose in response to the Age Verification regime proposed in the Digital Economy Act was the potential for the various third-party Age Verification providers to have poor data retention policies and to be susceptible to privacy breaches.
- 5.13 Australia, by way of the *Privacy Act 1988* (Cth) and the Australian Privacy Principles, already has a privacy regime in place. This regime includes the regulation of digital privacy in terms of data collection and use. The obligations under the *Privacy Act* and the Australian Privacy Principles would extend to cover Age Verification providers. However, due to the sensitive nature of access to and personal preferences with respect to online pornography, we submit that the existing Australian privacy regime should be supplemented with additional, more stringent privacy protections in order to mitigate against potential privacy breaches for consumers using third-party Age Verification providers.
- 5.14 One key addition that we recommend is that there should be included in any Australian Age Verification legislation the enshrinement of an individual's right to be forgotten. As stated in Article 17 of the European Union's General Data Protection Regulation (**GDPR**), the right to be forgotten means that, where an individual's data ceases to be relevant for the original purpose, individuals are entitled to have that data erased <sup>78</sup>.
- 5.15 Protection of the right to be forgotten is particularly pertinent for adults accessing online pornography who provide personal data in order to verify their age to access a pornography website. For adults who wish to access pornography online, the fact that they are accessing pornography and information regarding their personal pornography preferences, is sensitive personal information that must not be misused. Regardless of the Age Verification process that the Australian Government implements, it must ensure that any data collected from users in order to verify their age must not be passed on to any other sources, and a person's right to be forgotten is upheld. Making this a legislative requirement would quell concerns regarding data retention, data mining, and the hacking of Age Verification providers.
- 5.16 In particular, no identity or personal information needs to be passed between the Age Verification provider and the pornography website for the operation of Age Verification. The pornography website does not need to know or verify the identity of the individual seeking to access the website (including the name or contact details of the individual), and the Age Verification provider does not need to know the purpose of the Age Verification request. The pornography website only requires assurance (in digital form) from the Age Verification provider that the user of an online device seeking to access pornographic material is verified to be 18 years old or above. In implementing an Age Verification regime, it will be important to emphasise that no personal information will be passed between a pornography website and an Age Verification provider, in order to quell concerns around the potential privacy impact of an Age Verification regime.
- 5.17 Under the Digital Economy Act, the ability for pornography websites to use a third-party Age Verification provider of their choice, rather than the regulatory regime electing one, or a small number of, third-party Age Verification providers to be used by all websites, also raised questions about consistency and the practicality for adult users that may wish to visit more than one pornography website.

<sup>77</sup> UK Government Department for Digital, Culture, Media & Sport. 17 April 2019. Press release: Age-verification for online pornography to begin in July. Available from URL: <https://www.gov.uk/government/news/age-verification-for-online-pornography-to-begin-in-july>. See also NZ YOUTH AND PORN: Research Findings of a survey on how and why young New Zealanders view online pornography. Minds Over Media - an educational initiative from the Office of Film and Literature Classification. Colmar Brunton Social Research Agency. (Report). Available from URL: <https://www.classificationoffice.govt.nz/news/latest-news/nzyouthandporn/>

<sup>78</sup> Regulation (EU) 2016/679 (General Data Protection Regulation).

- 5.18 The BBFC only accredited one third-party Age Verification provider, Yoti. Yoti has developed an 'Age Scan' program that can identify and verify a user's age based on a photographic scan of their face. This system contains a margin of error <sup>79</sup> in identifying a user's age.
- 5.19 An important distinction to note—the BBFC contracted the NCC Group <sup>80</sup> to run a scheme which certifies companies against a security standard, namely ISO 27001. The NCC scheme does reference the PAS 1296 Age checking code of practice. As a comparison, an alternative scheme that does certify age check providers and references the PAS 1296 Age checking code of practice is the Age Check Certification Scheme <sup>81</sup>.
- 5.20 PAS 1296:2018 is a Code of Practice <sup>82</sup> for Online Age Verification service providers developed by the British Standards Institute and the Digital Policy Alliance <sup>83</sup> and is detailed as part of our recommendations in paragraph [5.30(3)] below.
- 5.21 Facial Age Verification <sup>84</sup> and the use of user photographic data generally, is also a source of significant public fear and criticism. The potential for the misuse of such personal data makes such technology unpopular and raises many privacy concerns that will need to be addressed if it were to be implemented in Australia. If the consultation process determined that facial recognition is to be offered as a form of Age Verification, eChildhood recommends that it be provided as one voluntary option among others for user-directed choice.
- 5.22 Based on myth <sup>85</sup>, common criticisms of the UK approach were that it was an imperfect solution that determined teenagers would be able to get around, such as through the use of VPNs. This does not detract from the fact that implementing Age Verification in Australia should eradicate the vast majority of children inadvertently or deliberately accessing online pornography. The significant public health benefits to children that will result from Age Verification are apparent and more than justify its implementation.
- 5.23 To avoid those concerns and potential issues, we propose that the Australian Government implements a regime that sets out a specific, trusted Age Verification regime that must be adopted by all pornography websites accessible in Australia, and one which provides the user with choice.

#### *The Trusted Digital Identity Framework*

- 5.24 Having regard to the privacy concerns raised by opponents of Age Verification systems and the need for a high degree of assurance of accuracy, eChildhood considers that an Age Verification regime requires further investigation to ensure it is robust for safety, security and privacy. eChildhood recommends consideration of the following features from a technical perspective:
- (1) the Age Verification service should be a general service, rather than a service only for accessing pornography websites;
  - (2) the pornography website should not be involved in the Age Verification process, including any collection of user information;
  - (3) the user should not be required to have an account with the pornography website in order to verify their age (but the Age Verification process should similarly not interfere with any existing account registration process which the website has, if such a feature exists); and

<sup>79</sup> Yoti, *White paper: Age Scan 'Powered by Yoti' – Public version* (Paper, 2019). Available from URL: [https://www.yoti.com/wp-content/uploads/2019/10/Yoti-Age-Scan\\_White-Paper-Oct19.pdf](https://www.yoti.com/wp-content/uploads/2019/10/Yoti-Age-Scan_White-Paper-Oct19.pdf)

<sup>80</sup> NCC Group (Web Site) Available from URL: <https://www.nccgroup.trust/uk/>

<sup>81</sup> Age Check Certification Scheme (Web Site). Available from URL: <https://accscheme.co.uk/>

<sup>82</sup> Age Check Certification Scheme. PAS 1296:2018 (Web Page). Available from URL: <https://accscheme.co.uk/home/pas-12962018/>

<sup>83</sup> Digital Policy Alliance (Web Site). Available from URL: <https://www.dpalliance.org.uk/>

<sup>84</sup> See paragraph [5.21] above.

<sup>85</sup> See paragraph [3.19] above.

- (4) the pornography website should not collect or receive any personal information about the user as part of the Age Verification process. Relevant processes relating to recommended best practice are further outlined in paragraph [5.34] below.
- 5.25 Notably, in Australia, the TDIF is an existing regime that provides a framework with these features.
- 5.26 The TDIF is a governance and technology framework underpinning a federated digital identity verification program that enables Australians to verify their identity with their accredited identity service provider of choice, and to then use that verification in order to access multiple government (and potentially non-government) digital services. The identity verification process is federated by an Australian government accredited identity exchange, which is currently operated by the Department of Human Services (**DHS**). This federated process is significant as it ensures that the identity service provider (which collects identifying information of users) cannot see what digital service the user is accessing, and the digital service that relies on the identity verification service cannot see a user's personal information without the user's consent. The TDIF framework also provides significant flexibility, because it contemplates the provision of computed attributes that are derived from raw attribute data, rather than the raw data itself (i.e. providing a proof of age attribute rather than the user's date of birth). This supports the additional privacy requirement of minimum disclosure, where only the minimum information needed to support the transaction should be disclosed.
- 5.27 To date, two digital identity service providers have been accredited – myGovID, which is operated by the Australian Tax Office, and Digital iD, which is operated by Australia Post.
- 5.28 eChildhood proposes that expanding the number of TDIF accredited digital identity service providers (third-party Age Verification providers) to prevent children's access to online pornography, would be the best method of Age Verification for Australian consumers.<sup>86</sup>
- 5.29 TDIF was developed by the Digital Transformation Agency, in consultation with the financial sector, privacy advocates, digital identity experts, industry groups, Government agencies, States and Territories, standards bodies, and the general public<sup>87</sup>. In order to become accredited under the TDIF, myGovID and Digital iD both satisfied a series of rigorous checks, to<sup>88</sup> “demonstrate their identity service is usable, privacy enhancing and is secure and resilient to cyber threats”. eChildhood recommends that Age Verification providers wishing to access the Australian market to service a range of products and services that require identification, be subjected to the same stringent accreditation process.
- 5.30 Requiring pornography websites to leverage off the TDIF as the method of Age Verification has the following benefits over the model proposed in the Digital Economy Act:
- (1) Digital identity service providers be required to pass stringent evaluations, particularly in relation to privacy, thereby addressing any privacy concerns;
  - (2) Existing digital identity service providers are already popular and widely used in Australia, and it would not be onerous for adult consumers of pornography to set up a profile with these providers (or others that emerge through the accreditation process) if they did not already have one;
  - (3) Because the TDIF can be used for multiple services, and TDIF accredited digital identity service providers are increasingly used by Australians, if it was revealed that an

<sup>86</sup> eChildhood notes that its proposal to use TDIF accredited programs is made with regard to the two programs that have already passed stringent checks and achieved accreditation in Australia. We do not consider that any additional identification process, such as facial biometrics, is required for the purpose of Age Verification to protect children from online pornography. Specifically, the GovPass digital identity program that is currently being considered by the Australian Government does not form part of the eChildhood submission regarding an appropriate Age Verification regime.

<sup>87</sup> Digital Transformation Agency, 'The Trusted Digital Identity Framework: Privacy Requirements', *Commonwealth of Australia: Digital Transformation Agency* (Website, 2019). Available from URL: <https://www.dta.gov.au/our-projects/digital-identity/trusted-digital-identity-framework>

<sup>88</sup> Digital Transformation Agency *Privacy Requirements: Trusted Digital Identity Framework Mark 2019, version 1.2* (Report, March 2019). Available from URL: <https://dta-www-drupal-20180130215411153400000001.s3.ap-southeast-2.amazonaws.com/s3fs-public/files/digital-identity/tdif-privacy-requirements.pdf>

individual had a profile with a TDIF accredited digital identity service provider, it would not immediately follow that that individual was a consumer of online pornography, nor would it reveal sensitive information about the individual's sexual preferences. This would address criticisms on the basis of privacy of the proposed Age Verification regime under the Digital Economy Act <sup>89</sup>;

- (4) Requiring pornography websites to use a TDIF accredited digital identity service provider would ensure that Age Verification was conducted by a truly independent third-party, with no risk of the mining and profiling of user data by pornography providers <sup>90</sup>;
  - (5) As the TDIF is a federated framework, it does not prevent new accredited digital identity service providers from being introduced in the future. For example, if new technology is developed for Age Verification purposes, such a provider may be able to obtain accreditation with TDIF and become an accredited identity service provider;
  - (6) Leveraging off the TDIF means that there is a common interface and framework, which reduces inefficiencies associated with online pornography websites having to implement different interfaces with different Age Verification providers. Similarly, adult consumers of online pornography would not need to set up multiple profiles with different third-party Age Verification providers;
  - (7) In order to encourage innovation, enabling multiple Age Verification providers to be accredited and regulated in accordance with the TDIF supports consumer choice and technology agility to evolve.
  - (8) It would be significantly easier for pornography websites to understand and comply with their obligation to implement Age Verification by leveraging off approved providers who have achieved rigorous TDIF standards and interface. In particular, because the TDIF is a federated model, pornography websites will not need to make any decision as to which TDIF accredited digital identity service provider is preferred. The TDIF gives that choice to the user from a list of accredited options, ensuring safety, security and privacy; and
  - (9) It would be significantly easier to regulate compliance by pornography websites if Age Verification must be implemented via a common interface provided by the TDIF.
- 5.31 For the avoidance of doubt, we emphasise that whilst the TDIF is fundamentally an **identity** verification framework, and thus is designed to perform detailed levels of identity checks and verification, eChildhood recommends that the TDIF is **only leveraged** to provide a specific Age Verification regime. In particular, eChildhood proposes that, for the purpose of an Age Verification regime, minor but significant modifications are made to the TDIF. Namely:
- (1) that **no identifying information** is sent or exchanged between the identity verification service provider and the pornography website (and the user will not ever be asked to consent to such disclosure); and
  - (2) that only a computed attribute—whether the user is verified to be aged 18 or above—is provided as a response to the pornography website, and this attribute is only temporarily linked to the browser session of the user, rather than stored as a persistent link associated with the user.
  - (3) that the TDIF be measured against UK standards—the PAS 1296 Age checking code of practice <sup>91</sup>. This Publicly Available Specification was published in 2018 by the British

<sup>89</sup> Open Rights Group, *Age Verification – Risks & Recommendations* (Briefing, 31 July 2018). Available from URL: [https://www.openrightsgroup.org/assets/files/pdfs/Article\\_13\\_briefings/ORG%20AV%20Briefing.pdf](https://www.openrightsgroup.org/assets/files/pdfs/Article_13_briefings/ORG%20AV%20Briefing.pdf)

<sup>90</sup> For example, major pornography provider MindGeek has introduced its own Age Verification tool for the purpose of compliance with the Digital Economy Act, which has sparked significant privacy concerns about the misuse of user data. See Damien Gayle, 'UK website age checks could create Facebook of porn, critics warn', *The Guardian* (News Article, 28 March 2018). Available from URL: <https://www.theguardian.com/technology/2018/mar/27/uk-website-age-checks-create-facebook-porn-critics-warn>

<sup>91</sup> See paragraph [5.19] above.



Standards Institution (BSI)<sup>92</sup>, the UK's National Standards Body, after extensive consultation with relevant industries. PAS 1296: 2018 is intended to assist providers of age restricted products and services online with a means to adopt and demonstrate best practice and compliance—verifying an individual's age without being able to access their full identity. The PAS 1296 Age checking code of practice provides recommendations to prevent ineligible users from:

- a.) Buying age-restricted goods online
- b.) Accessing age-restricted content online (e.g. adult content)
- c.) Using age-restricted online services (e.g. dating agencies)
- d.) Accessing harmful content on platforms and apps

- 5.32 No other identifying information (including the name or contact details of the user) needs to be verified or exchanged with the pornography website for the purposes of Age Verification. The website only requires assurance (in digital form) that the online device seeking to access pornographic material is controlled by a person whose age is verified to be 18 or above. Under the federated TDIF model, the “identity exchange” operated by DHS (which effectively acts as a “privacy barrier” between the identity service provider and the pornography website) will provide this digital assurance to the pornography website. This assurance could be received by the pornography website as a digital token, further explained in paragraphs [5.33] to [5.35] below.
- 5.33 The token could be linked temporarily to the browser session of the user, so that if the web browser is closed or restarted, the user would need to either re-enter the token or re-verify through the identity exchange.
- 5.34 In simple terms, the Age Verification service would, based on the credentials submitted by the user, return a digital token to the pornography website that indicates whether or not the user is at least 18 years old (“AREA”<sup>93</sup>).
- 5.35 In detailed terms (outlined in the PAS 1296 Age checking code of practice), *in instances where an individual wishes, for example, to purchase alcohol or view adult content, there is no legal requirement to know anything other than that the person is aged 18 years or over. Instead, single attributes of an individual's identity can be checked, for example, age-related eligibility. The response to a check, for example, on whether a user is over [18] years of age, is yes/no, and a trust score is provided by the age check service, which indicates the level of trust that can be placed in the response. The response can also be tokenized, which is a process by which certain data components are substituted with a non-sensitive equivalent. That equivalent is called the token. The token has no exploitable value, but it serves as an identifier. It is a reference that traces back to the original data. If this response is tokenized for re-use, a<sup>94</sup> “vectors of trust score” is supplied to subsequent recipient relying parties.*

<sup>92</sup> BSI. New guidance to protect children from viewing adult content online. (Press Release). Available from URL: <https://www.bsigroup.com/en-GB/about-bsi/media-centre/press-releases/2018/may/new-guidance-to-protect-children-from-viewing-adult-content-online>

<sup>93</sup> “AREA” (age-related eligibility assurance) is defined as a process by which a provider is able to confirm an individual's age-related eligibility to a specified degree of confidence. PAS 1296: 2018.

<sup>94</sup> “Vectors of trust” combine attributes of the user and aspects of the authentication context into several values. A “vector of trust score” communicates the level of reliability in the processes leading up to and including the authentication process itself, thus providing assurance that the person associated with an age-related eligibility assurance (AREA) token is, in fact, the person to which the token was assigned. A vector of trust is also a function of the processes, management activities, and technical controls that have been implemented by an age check service. PAS 1296: 2018.

- 5.36 To demonstrate the way in which a user would interact with the suggested technical framework based on the TDIF to obtain Age Verification, eChildhood submits the following high level overview: <sup>95</sup>
- (1) The user attempts to access the pornography website.
  - (2) The user is redirected to the TDIF identity exchange by the pornography website. The request to the identity exchange specifies the computed attribute that the pornography website needs for the user to access the digital service (that is, whether the online device seeking to access pornographic material is controlled by a person whose age is verified to be 18 or above).
  - (3) The identity exchange presents the user with a choice of identity service providers (currently, this is either myGovID or Digital iD, recommended for expansion <sup>96</sup>. The user chooses the identity service provider they wish to use to verify the user's age.
  - (4) The identity exchange redirects the user to login to the selected identity service provider.
  - (5) The user logs in to their account at the identity service provider. It is noted that this assumes that the user has an existing account with the identity service provider. An identity service provider may be able to allow a user to create a new account online immediately and provide the necessary documentation to prove the user's age.
  - (6) Based on the user's login credentials, the identity service sends the requested computed attribute (whether or not the user is 18 years old or above) to the identity exchange.
  - (7) The identity exchange displays the computed attribute received from the identity service provider and requests the user's consent to disclose this to the pornography website (and this will be the only attribute to be disclosed). The user provides consent to disclose their computed attribute to the pornography website. If the user has previously provided consent to share the computed attribute with this pornography website and has permitted the identity exchange to remember this consent, then this step may proceed without any user action being required.
  - (8) The computed attribute is received by the pornography website as a digital token, linked temporarily to the browser session of the user so that if the web browser is closed or restarted, the user needs to re-enter the token or re-verify. Similarly, the identity exchange should **not** store the link in a persistent manner – this represents the proposed deviation from the current operation of the TDIF for the purposes of Age Verification.
  - (9) The user is then able to access the pornography website for the duration of that web session.
- 5.37 There may be a further privacy concern that the identity exchange, having visibility of the pornography website that a user is wishing to access, and the response being passed from the identity service provider, could store the mapping of this information, thereby holding data which connects the user's identity with their consumption of pornographic websites. However, under the current TDIF federated model, the body that acts as the identity exchange is the DHS, which (unlike a commercial operator) has no commercial incentive to retain and process this data. To further quell these concerns, we repeat our submission at paragraph [5.30] above and submit that the TDIF be amended so that no persistent linkages are used or stored for Age Verification, which would protect against such cross mapping attempts, including by the identity exchange.
- 5.38 eChildhood provides caution on allowing conflicts of interest amongst age verifiers. One of the criticisms of the UK proposal was allowing MindGeek, a Canadian company behind many 'tube' sites such as PornHub, to be a provider of Age Verification tools through its 'AgeID' service. This move was criticised by open rights groups <sup>97</sup> as leading to a conflict of interest between the

<sup>95</sup> This overview is based on Figure 6, Authentication Entity Interactions, Digital Transformation Agency – Trusted Digital Identity Framework (TDIF™): Architecture Overview © Commonwealth of Australia (Digital Transformation Agency) 2019, p 22-22.

<sup>96</sup> See paragraph [5.27] above.

<sup>97</sup> Killock, J. The government is acting negligently on privacy and porn AV. Open Rights Groups. (Web Page, 8 May 2018) Available from URL:

privacy interests of the user, and the data-mining and market interests of the company. eChildhood agrees with these concerns and recommends preventing parties with clear conflicts of interests from accreditation as an age verifier under the TDIF.

*Internet advertisements containing inappropriate material*

- 5.39 When considering the issue of children's access to online pornography and the harm from a public health perspective associated with such access, it is important to acknowledge that potential exposure is not limited to direct access via pornographic websites. Children's inadvertent access to online pornography is often via sexual imagery and advertisements on non-pornographic websites.
- 5.40 The nature of pornographic advertising online means that these advertisements are subject to the requirements of appropriate age restrictions being in place, as set out in the BSA and its subsidiary regulations <sup>98</sup>. However, as previously discussed, not only do these obligations apply to Australian hosted content only, but the content of the obligations is unclear and not enforced in practice.
- 5.41 Australian advertisers, including Australian advertisers of pornographic content online, must also comply with the various Codes that have been adopted by the Australian Association of National Advertisers (**AANA**). The Codes are part of the advertising industry's self-regulation in Australia. Relevantly, the AANA Code of Ethics and the AANA Code for Marketing & Advertising Communications to Children each include requirements that advertising or marketing that relate to sex, sexuality and nudity, must only be directed to the relevant audience, and not to children.
- 5.42 The Code for Marketing & Advertising Communications to Children further sets out that advertising or marketing communications directed to children must not employ sexual appeal, include sexual imagery in contravention of prevailing community standards, or state or imply that children are sexual beings and that ownership or enjoyment of a product will enhance their sexuality.
- 5.43 However, although these Codes are laudable in principle, the limited enforcement powers of the AANA (especially with regard to International content) and its self-regulated nature means that the Codes are ultimately no more than statements of intent. Consequently, the content of online advertising remains effectively unregulated.
- 5.44 A review of the AANA Code of Ethics is in progress (submissions closed Friday 18 October 2019) with the intention to update and, where necessary, develop the Code and Practice Notes to ensure that it continues to meet community requirements and expectations <sup>99</sup>.
- 5.45 For the same public health reasons discussed above, in addition to the introduction of Age Verification barriers on pornographic websites, eChildhood submits that the Australian Government should also consider how to best put into place appropriate mechanisms to ensure that sexually explicit advertisements, hosted and/or created by pornography websites and appearing on non-pornographic websites, games and other online platforms, are not accessible by children. We understand that currently, website operators can configure their website to prevent advertisements from certain sensitive categories appearing on their site. For example, website operators that use Google AdSense <sup>100</sup> as an advertisement platform can use category filtering to block advertisements from certain sensitive categories, at the product level or at the site level. On this basis, the Australian Government could mandate that all website operators must not configure their websites to include sexually explicit advertisements unless their website is subject to an Age Verification barrier.
- 5.46 We are also aware that some of the large social media and search engine companies have in-house technical capabilities, built on machine learning and/or artificial intelligence, which automatically categorise sensitive advertisements. However, we are not aware that this

<https://www.openrightsgroup.org/blog/2018/the-government-is-acting-negligently-on-privacy-and-porn-av>

<sup>98</sup> See paragraphs [4.5] to [4.8] above.

<sup>99</sup> Code of Ethics Review. AANA discussion paper for public comment. (Discussion Paper, September 2019). Available from URL: <https://aana.com.au/content/uploads/2019/09/AANA-Code-of-Ethics-Review-Discussion-Paper-September-2019.pdf>

<sup>100</sup> See 'AdSense Help – Block sensitive categories in AdSense', *Google Support* (Web Page). Available from URL: <https://support.google.com/adsense/answer/164131?hl=en>

technology is made commercially available to website operators for the website operator to “self-classify” or “self-block” pornographic materials, and in any case (as is the case for any current artificial intelligence product) there is a margin of error associated with such automatic categorisation technology. Accordingly, at this stage we do not make any submission in relation to a more general mandatory requirement being imposed on website operators to block or filter all pornographic web advertisements; however, as new technologies emerge and improve, this may be something to consider.

- 5.47 We emphasise again the evidence of harm that children experience due to access to pornography, particularly when that access occurs inadvertently. In order to effectively combat this harm, eChildhood encourages the Australian Government to invest in determining and implementing the appropriate technology and mandates to uniformly place pornography websites and pornographic advertisements behind Age Verification barriers.

#### *The appointment of a regulatory body*

- 5.48 In Australia, there are various entities that may be well positioned to act in the role of a regulatory body. Such bodies may include the OeSC, the Australian Classification Board (**ACB**) or the Australian Communications and Media Authority (ACMA). eChildhood does not recommend a particular body to act as regulator to enforce an Age Verification regime, however, acknowledges that this decision is an important outcome of the consultation process.
- 5.49 As previously <sup>101</sup> mentioned, the OeSC is established and has a mandate to coordinate and lead online safety efforts. Currently, the OeSC has the power to assess online content against the National Classification Scheme <sup>102</sup>. The OeSC’s responsibility includes a variety of online issues, such as cyberbullying, image-based abuse and offensive and illegal content. The OeSC also provides educational programs and school guidance programs to promote digital intelligence skills and online safety and is responsible for certifying providers of online safety programs <sup>103</sup>.
- 5.50 The Cyber Report team of the OeSC investigates complaints about offensive and illegal online content, cyber bullying and image based abuse. Content hosted in Australia is served a takedown notice <sup>104</sup>.
- 5.51 The OeSC is also a member of INHOPE (the International Association of Internet Hotlines), which is a global network of hotlines in 45 countries that work together to rapidly remove child sexual abuse material from the Internet. In 90% of cases, any child sexual abuse content located in a member country that the OeSC has referred to the attention of the relevant enforcement agency in that country has been removed in less than 3 working days. For other prohibited content that may not be illegal in the member country, the OeSC liaises with Australian accredited providers of optional end user family friendly filters to ensure that families wishing to safeguard themselves from offensive and illegal online content are able to do so <sup>105</sup>. The efficacy of this system is scrutinised in paragraph [5.60(7)] below.
- 5.52 The OeSC may be well-positioned to regulate and enforce an Age Verification regime for the purpose of providing online safety to children. It already has similar obligations and responsibilities, is well-known and respected within the industry and has both national and International support networks. It has a platform within schools and other online safety education arenas to promote the system and disseminate information about it <sup>106</sup>. Given the wide remit of the OeSC, many factors would need to be considered via consultation if the Government opted to appoint this entity as the regulatory body, including ensuring adequate resources were provided to ensure effective implementation was maintained. This is a consideration that must be worked through regardless of who is appointed as regulator.

<sup>101</sup> See paragraph [4.9] above.

<sup>102</sup> See paragraph [4.3] above. See also eSafety Commissioner. What we can investigate. (Web Page). Available from URL: <https://www.esafety.gov.au/complaints-and-reporting/offensive-and-illegal-content-complaints/what-we-can-investigate>

<sup>103</sup> eSafety Commissioner. What we do. (Web Page). Available from URL: <https://www.esafety.gov.au/complaints-and-reporting/offensive-and-illegal-content-complaints/what-we-can-investigate>

<sup>104</sup> See paragraph [4.9] above.

<sup>105</sup> eSafety Commissioner, ‘The action we take’, eSafety Commissioner (Web Page). Available from URL: <https://www.esafety.gov.au/complaints-and-reporting/offensive-and-illegal-content-complaints/the-action-we-take>

<sup>106</sup> See generally, eSafety Commissioner, eSafety strategy 2019-2022 (Report). Available from URL: <https://www.esafety.gov.au/about-the-office/role-of-the-office>

- 5.53 Alternatively, the Government may prefer to empower the Australian Classification Board (**ACB**). The ACB regulates and monitors the implementation of the National Classification Code, which applies to films, publications and video games that are distributed in Australia.
- 5.54 Similarly, the Government may prefer to empower the Australian Communications and Media Authority (ACMA). ACMA is Australia's communications and media regulator, currently charged with investigations and compliance, checking whether broadcasters, telcos and other businesses are following the law.
- 5.55 eChildhood recommends investigating penalties for non-compliant pornography companies. The BBFC <sup>107</sup> established a course of action that involved penalties. *If a service is non-compliant because they don't have effective age-verification or they are providing extreme pornography, the BBFC has a number of enforcement powers. These include notifying ancillary service providers like social media and search engines of non-compliant services and requesting that they withdraw their services; notifying payment service providers and requesting that they withdraw their services; and instructing internet service providers to block them* <sup>108</sup>.

#### *The role of ISP filtering and blocks*

- 5.56 Whilst eChildhood recommends that Australia should adopt an Age Verification regime as set out above and this is our preferred approach, we acknowledge that there are other options available that could achieve some protection standards required to protect children from the harmful effects of online pornography. A valid question that is often raised is the role of ISP Level Filters and blocks, outlined below. At this point it is noteworthy to point out that Age Verification relies on a totally different regime than ISP filtering and blocks and as such, the latter lacks robustness.
- 5.57 ISP Level Filters are a buffer of "Network Restrictions" <sup>109</sup> that can be implemented in three main ways at the ISP Level "Opt-Out" Filters, "Opt-in" Filters and "Forced Blocks", defined in paragraphs [5.57], [5.58] and 5.61]. Different kinds of content that maybe be filtered <sup>110</sup> include 'adult' or sexual content, content that may promote self-harm, eating disorders, violence, drugs, gambling, racism and terrorism.
- 5.58 *ISP "Opt-Out"* <sup>111</sup> *Filters*: one option raised is to mandate all Australian ISPs to provide ISP Level internet filtering, which can be turned off by adult consumers via an 'Opt-Out' approach.
- 5.59 *ISP "Opt-In"* <sup>112</sup> *Filters*: this option makes provision for individual users to 'Opt-In' to request filtering of harmful websites at ISP level, including pornography (prohibited content) to be implemented. The OeSC suggests products accredited through the Family Friendly Filters scheme <sup>113</sup>.
- 5.60 Whilst eChildhood welcomes the investigation of other measures that reduce children's access to online pornography, it is not our recommendation to solely rely on ISP Level Filters for the following reasons:
- (1) Age Verification is a far more superior method of reducing children's access to online pornography. If porn publishers are required to carry out an Age Verification process before allowing anyone to view their materials, other measures (such as ISP Level Filters) become irrelevant because only adults will be able to view online pornography.

<sup>107</sup> See paragraph [5.5] above.

<sup>108</sup> BBFC. Age-verification under the Digital Economy Act 2017. Frequently Asked Questions. (Web Page). Available from URL: <https://www.ageverificationregulator.com/faq/#10>

<sup>109</sup> "Network Restrictions" incorporate filtering and device restrictions aimed at the network level. For example, Internet Service Provider (ISP) Level Filters, mobile device restrictions/child-safe sim cards, child-safe phones, etc. Network Restrictions are likely to innovate and adapt to shifting consumer needs. See eChildhood Report, 2019—annexed to these submissions as Appendix 1.

<sup>110</sup> eSafety Commissioner, 'Taming the technology – how to use parental controls and other tools to maximise online safety in your home', eSafety Commissioner (Web Page). Available from URL: <https://www.esafety.gov.au/parents/skills-advice/taming-technology>

<sup>111</sup> "Opt-Out": makes provision for default blocking. It allows individual age-verified users to 'opt-out' of blocking to still access content classified as illegal by the Classifications Scheme. eChildhood Report, 2019.

<sup>112</sup> "Opt-In" as defined in the eChildhood Report, 2019.

<sup>113</sup> eSafety Commissioner, 'Taming the technology – how to use parental controls and other tools to maximise online safety in your home', eSafety Commissioner (Web Page). Available from URL: <https://www.esafety.gov.au/parents/skills-advice/taming-technology>

- (2) eChildhood emphasises that ISP “Opt-Out” Filters (when the account holder of an Internet service is given the **option** to turn off the filter), would likely be considered to inappropriately infringe on the rights of the wider Australian population.
- (3) In 2013, the four main British ISPs—TalkTalk, Virgin Media, Sky and BT—introduced family friendly filters as an option available to all customers <sup>114</sup>. These filters applied to the customers’ whole internet connection – that is, they operated at a network level. Any device using that connection would not be able to access content that was deemed to be inappropriate. Customers were presented with the filters as an “unavoidable choice” – however, the onus remained on parents to turn on the filters for them to operate.<sup>115</sup> Consequently, the number of customers who implemented the family filters remained low, with only 4% of Virgin Media subscribers, 5% of BT customers, 8% of Sky members, and 36% of TalkTalk members signing up for the voluntary option <sup>116</sup>.
- (4) However, unlike in the UK, Telstra <sup>117</sup> is the only ISP which provides a filtering service, and it does so at an additional cost. Other third-party filtering services are available which operate independently from the customers’ ISP, also at an additional cost. Employing these tools requires significant initiative and oversight from parents. Age Verification significantly reduces the cost of burden to parents and families.
- (5) *Differentiating Parental Controls and ISP Level Filters*: Parental Control tools are available for Australian parents & carers to implement filtering of online content <sup>118</sup>. Parental Controls <sup>119</sup> are software tools that allow monitoring and limiting what children see and do online and can be set up to block, filter, monitor and set time limits—not all Parental Controls include all features. It is noteworthy that Telstra incorporates filtering and parental control features as part of their broadband products, however, the filtering product is not accredited as a Family Friendly Filter (this scheme is scrutinised in paragraph [5.59(7)] below).
- (6) Although no statistical evidence exists regarding the number of Australian parents who implement ISP Level Filters and parental controls, it is reasonable to assume that the numbers would be comparable to the low numbers in the UK. Relying on active participation from parents alone is not sufficient to protect children from accessing online pornography. Australian parents should be able to rely on the Government to take the appropriate action to protect our children online.
- (7) In Australia, all overseas-hosted prohibited and potential prohibited content investigated by the OeSC is referred to accredited providers of optional end user Family Friendly Filters. This scheme, operated by the Communication Alliance, is governed by non-binding relevant industry codes of practice <sup>120</sup>. This accreditation process offers rigorous independent testing to ensure filter effectiveness, ease of use, configurability, etc., of which very few filters have passed. The Communications Alliance states: *It is important to note that the use of filters is not mandatory in Australia, either under law or Industry Codes. Users can choose whether or not to install filters, and if and when to activate*

<sup>114</sup> Department for Digital, Culture, Media & Sport, *Age Verification for pornographic material online* (Impact Assessment, No. RPC-DCMS-3101(2), 13 June 2018). Available from URL: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/747187/Impact\\_Assessment\\_Age\\_Verification\\_FINAL\\_20181009.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/747187/Impact_Assessment_Age_Verification_FINAL_20181009.pdf)

<sup>115</sup> Department for Digital, Culture, Media & Sport, *Age Verification for pornographic material online* (Impact Assessment, No. RPC-DCMS-3101(2), 13 June 2018). Available from URL: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/747187/Impact\\_Assessment\\_Age\\_Verification\\_FINAL\\_20181009.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/747187/Impact_Assessment_Age_Verification_FINAL_20181009.pdf)

<sup>116</sup> Australian Human Rights Commission, Submission to the Senate Standing Environment and Communications References Committee, *Inquiry into harm being done to Australian children through access to pornography on the Internet* (16 April 2016) [44]. Available from URL: <https://www.humanrights.gov.au/our-work/legal/submission/inquiry-harm-being-done-australian-children-through-access-pornography>

<sup>117</sup> Telstra Broadband Protect. (Web Page). Available from URL: <https://www.telstra.com.au/internet/extras/broadband-protect>

<sup>118</sup> eSafety Commissioner, ‘Taming the technology – how to use parental controls and other tools to maximise online safety in your home’, *eSafety Commissioner* (Web Page). Available from URL: <https://www.esafety.gov.au/parents/skills-advice/taming-technology>

<sup>119</sup> As defined in paragraph [3.22] (footnote 40).

<sup>120</sup> eSafety Commissioner. The actions we can take. (Web Page). Available from URL: <https://www.esafety.gov.au/report/illegal-harmful-content/the-actions-we-can-take>

them. Similarly, ISPs are not required to filter or monitor internet traffic<sup>121</sup>. Significant concerns were raised<sup>122</sup> by the OeSC to the Minister for Communications about the effectiveness of this scheme in May 2017. Since this time, any gains made within the scheme appear minimal—only three filters have been tested and certified, and only one of those is recommended for children under 10 years of age and older. It stands to reason that any wide-scale implementation of ISP Level Filters at national level would require similar rigorous accreditation scrutiny, which appears to be arduous, if not impossible, to achieve effective levels of suitability for market and child safety.

- (8) It is notable that filtering services have a history of getting it wrong. An investigation conducted by the BBC revealed that the 2013 family filters introduced by major ISPs in the UK blocked sex education websites and domestic violence and sexual abuse resources but failed to filter out websites hosting hardcore pornography<sup>123</sup>.
- (9) The use of filtering services has historically raised concerns regarding unjustified restrictions on freedom of expression. For example, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has raised concerns about States' use of blocking and filtering technology, as<sup>124</sup> “they are often not sufficiently targeted and render a wide range of content inaccessible beyond that which has been deemed illegal”, and “content is frequently blocked without the intervention of or possibility for review by a judicial or independent body”. The introduction of Internet filtering has also been traditionally accompanied by fears of Government overreach.

5.61 *ISP “Forced Blocks”*<sup>125</sup>: with Age Verification implemented, forced blocks can be enacted when porn companies are non-compliant and fail to implement AV mechanisms. “Forced Blocks” are different to “Opt-Out” or “Opt-in” Filters in as much as this is not a system wide approach; however, where applicable, individual websites in breach of non-compliance are targeted at the ISP Level.

- (1) A similar model for this process would be the *Copyright Amendment (Online Infringement) Act 2015* (Cth) (**Piracy Block**), which introduced new laws that required Australian ISPs to, in effect, block access to websites hosted overseas whose primary purpose was to “infringe, or to facilitate an infringement of, copyright”<sup>126</sup>. This is legislative precedent and demonstrates the Government’s ongoing commitment to ensuring that online activity is regulated proportionately to the restrictions of comparable activity in the physical world. The scope of a Piracy Block goes further than what is recommended as necessary for the protection of children from access to online pornography.
- (2) eChildhood recognises the right of adults aged 18 and over to access commercial, legal online pornography—content classified as illegal for minors by the Classifications Scheme. We do not suggest that this content should be blocked or filtered in its entirety. Age Verification in the manner which has been outlined in these submissions is not censorship—adults aged 18 and over will still be able to access legal online pornography should they choose to do so via an Age Verification service. That said, there exists the potential to issue a takedown notice<sup>127</sup> for sites that are non-compliant to an Age Verification regime. eChildhood offers a cautionary note in as much that we, in no way, support any attempts to extend ISP Forced Blocks to censor content outside of non-compliant porn companies that fail to implement AV mechanisms.

<sup>121</sup> Australian Communications Alliance Ltd. Family Friendly Filters. (Web Page). Available from URL: <http://www.commsalliance.com.au/Activities/ispi/fff>

<sup>122</sup> Inman Grant, J. eSafety Commissioner. 29 May 2017. Letter to The Hon Mitch Fifield Minister for Communications; Minister for the Arts. Available from URL: <https://www.esafety.gov.au/sites/default/files/2019-10/Document%2007.pdf>

<sup>123</sup> Mike Smith, ‘Porn filters block sex education websites’, *BBC News* (News Article, 18 December 2013). Available from URL: <https://www.bbc.com/news/uk-25430582>

<sup>124</sup> David Kaye, Special Rapporteur, *Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc OL GBR 1/2017 (9 January 2017). Available from URL: [https://ohchr.org/Documents/Issues/Opinion/Legislation/UK\\_DigitalEconomyBill\\_OLGBR1.2017.pdf](https://ohchr.org/Documents/Issues/Opinion/Legislation/UK_DigitalEconomyBill_OLGBR1.2017.pdf)

<sup>125</sup> “Forced Block” as defined in the eChildhood Report, 2019.

<sup>126</sup> *Copyright Amendment (Online Infringement) Act 2015* (Cth), s 115A.

<sup>127</sup> See paragraph [5.49] above.

- 5.62 On balance, the criticisms of ISP Level Filters, especially the potential that educational and social welfare resources may be inadvertently blocked, make the use of the TDIF based accredited Age Verification providers our preferred approach.

*Other online platforms where children can be exposed to pornography*

- 5.63 Reiterating <sup>128</sup>, the implementation of an Age Verification regime underpins a safe online environment for children and will result in the vast majority of children being protected from online pornography harms because only adults will be able to view this content.
- 5.64 That said, it is recognised that children are exposed on other platforms (technology firms) including but not limited to social media, gaming platforms, apps, live streaming and broadcasting services, and online advertising for adult content.
- 5.65 These technology firms are the target of the Safety by Design Principles <sup>129</sup> initiated by the OeSC. Safety by Design is a set of principles—guidelines that provide a model to assess, review and embed user safety into online services. As SbD is not regulated or legislated, there is potential for developers to not implement the principles. An opportunity exists for the eSafety Commissioner to move the SbD principles to Codes of Practice, and for consumers to be made aware of those companies that underpin their products and services with SbD best practice <sup>130</sup>.
- 5.66 Age Verification applied to these online environments requires further investigation in order to provide minimum standards that safeguard children. It is outside the scope of this inquiry to respond to these items; however, it is anticipated that further conversations will ensue. eChildhood welcomes the opportunity to further consult in these areas.

<sup>128</sup> See paragraph [5.58(1)] above.

<sup>129</sup> See paragraph [3.19] (footnote 33) above.

<sup>130</sup> See eChildhood Report, 2019—annexed to these submissions as Appendix 1.



## 6 Steps to reach effective implementation

### *Relevant regulatory matters requiring attention*

- 6.1 The development and implementation of an effective Age Verification legislation for Australia must recognise the rights of children to online safety, prevent children's access to online pornography, balance the rights and privacy protections of adult pornography consumers, and create parity regardless of host location.
- 6.2 In order to ensure the design of new legislation is effective and dissolves the risk of lack of unworkable regulation (as is currently occurring), thorough consultation with all key stakeholders and digital experts is imperative. This will enable a robust, flexible and researched outcome that includes safety, security and privacy. Establishing clearly defined objectives and outcomes for the new Age Verification Legislation will guide and inform the review throughout the update and development process.
- 6.3 With the above consultation, research, key success factors and outcome objectives defined eChildhood recommends that to achieve this it is imperative that reviews and updates of current legislations, schemes and codes are completed or carried out.
- 6.4 Reviews and updates include but may not be limited to:
  - (1) the National Classification Scheme and Codes;
  - (2) completion of the review and activation of aligned recommendations of the Broadcasting services Act and Schedule 5 and 7 respectively;
  - (3) activation of aligned recommendations from the report developed from the review of the Enhancing Online Safety Act and Online Content scheme; and
  - (4) activation of aligned recommendations from the review of the Australian Association of National Advertisers (AANA) Code of Ethics.
- 6.5 Development of Age Verification Legislation in alignment with all key success factors and key considerations outlined within this document and identified via the thorough consultation process.
- 6.6 Appointment and resourcing of the appropriate regulator of the new Age Verification Legislation.
- 6.7 Implementation of the new Age Verification Legislation with timely reviews and troubleshooting methods in place.

### *Mobilising a Public Health Response*

- 6.8 A public health approach focuses on preventing health problems in a way that extends better care and safety to entire populations rather than individuals<sup>131</sup>. Parents & Carers cannot be expected to solely bear the burden of the public health harms of pornography on children and young people.
- 6.9 Pornography disrupts and harms the social, sexual, emotional, mental, physical and relational development of children and young people. Resulting from this is an economic burden that cannot be ignored. A recent report<sup>132</sup> by a group of organisations from the not-for-profit, research, philanthropy and business sectors, reveals that Australian governments are spending \$15.2 billion each year on high-intensity and crisis services for problems that may have been prevented had we invested earlier and more wisely. The report says, "the number of children and young people experiencing serious life challenges in Australia is alarming and increasing". Contributing issues faced by children and young people include mental health, physical health, family violence, justice, youth crime and child protection. Whilst pornography was not mentioned

<sup>131</sup> World Health Organization. (2002). World report on violence and health. Geneva: WHO.

<sup>132</sup> Summary report. How Australia can invest in children and return more. A new look at the \$15bn cost of late action. Available from URL: <https://colab.telethonkids.org.au/siteassets/media-docs---colab/coli/summary-report---how-australia-can-invest-in-children-and-return-more.pdf>

in this report, research at hand <sup>133</sup> relating to pornography harms identifies that it's prevalence in children and young people's lives is an inevitable contributor to these high social and economic costs.

- 6.10 eChildhood anticipates that a percentage of government spending due to late action could be attributed to the ease of access to pornography. The loss is first and foremost to our children, and the cost burdens (mental, physical, emotional, relational, social and financial) are rapidly accumulating <sup>134</sup>. The mechanism that facilitates this ongoing burden is failed legislation and policy, the first tier response to underpin the implementation of an Age Verification regime.
- 6.11 Collaboration with community stakeholders ensures the key risk factors in implementing a Public Health Approach are mitigated. Through the eChildhood Protection Coalition, eChildhood is committed to the creation, galvanisation and mobilisation of support for a national public health response to prevent and address pornography harms on children and young people in Australia.
- 6.12 There exists opportunity for widespread adoption of key public health responses by government, key stakeholders and community, including child focussed organisations. There are already significant gains being made towards online safety by organisations, some of which are listed in support of our submissions <sup>135</sup>.
- 6.13 As the only Australian organisation to adopt and mobilise a public health response to address pornography impacts for the safety and wellbeing of children and young people, eChildhood urges the Australian government to heed these submissions and take lead position globally for the effective implementation of Age Verification.

<sup>133</sup> Research highlighted in our submissions throughout. See also Appendix 5. See also The effects of pornography on children and young people – an evidence scan, Australian Institute of Family Studies Research Report 2017, Available at [https://aifs.gov.au/sites/default/files/publication-documents/rr\\_the\\_effects\\_of\\_pornography\\_on\\_children\\_and\\_young\\_people\\_1.pdf](https://aifs.gov.au/sites/default/files/publication-documents/rr_the_effects_of_pornography_on_children_and_young_people_1.pdf)

<sup>134</sup> eChildhood Report, 2019.

<sup>135</sup> Annexed to these submissions as Appendix 4.

## 7 Summary of Recommended Approach

- 7.1 The overarching objective of eChildhood is for the prevention of harm arising from children's access to pornography online. We believe that the best way to restrict children from accessing pornography online is to require pornography websites to implement Age Verification.
- 7.2 eChildhood does not recommend the introduction of legislation which effectively copies the Digital Economy Act in the UK as explained above. Instead, eChildhood emphasises that Australia has a unique opportunity to:
- (1) learn from the challenges of the UK;
  - (2) investigate an Age Verification regime which appropriately weighs the public health benefits of protecting children from access to online pornography with the rights of adults to access online pornography; and
  - (3) take lead position globally for the effective implementation of Age Verification within robust updated legislation underpinned by safety, security and privacy.
- 7.3 Australia should implement a third-party Age Verification regime which contains the safeguards we have discussed above. Notably:
- (1) using the digital identity programs that have already been accredited by the TDIF<sup>136</sup>, or a similarly trustworthy provider of Age Verification services, as a centralised provider, to ensure:
    - (a) consistency of the Age Verification providers used by pornography websites;
    - (b) a one-stop-shop, with no need for different Age Verification providers to be used by adults wishing to access more than one pornography website;
    - (c) security of adults' sensitive personal data;
    - (d) the sole purpose of the provider is not to provide Age Verification services for accessing online pornography; an adult has an account for various reasons and is protected from the assumption (and cyber-attack and data mining risks that go with that assumption) that they only have an account because they want to, or are, accessing online pornography;
    - (e) expand the number of accredited identity service providers, offering the user choice as to which service they use to carry out Age Verification;
    - (f) Age Verification services be measured against UK best practice standards—the PAS 1296 Age checking code of practice;
    - (g) investigating penalties<sup>137</sup> for non-compliant pornography companies;
    - (h) considering how appropriate mechanisms to ensure that sexually explicit advertisements, hosted and/or created by pornography websites and appearing on non-pornographic websites, games and other online platforms, are not accessible by children.
  - (2) implementing clear and compulsory privacy protections within the system to ensure the permanent deletion of data to prevent data leaks or hacks;

<sup>136</sup> See paragraph [5.28] (footnote 86) above. Reiterating, we do not consider that any additional identification process, such as facial biometrics, is required for the purpose of Age Verification to protect children from online pornography. Specifically, the GovPass digital identity program that is currently being considered by the Australian Government does not form part of the eChildhood submission regarding an appropriate Age Verification regime.

<sup>137</sup> See paragraphs [1.6] and [5.55] [5.61] above. For example, give notice to any "payment-services provider" or "ancillary service provider" that the provider was contravening legislation (i.e. notify search engines, social media sites, payments providers, and other online ancillary service providers), and give notice requiring ISPs to block access to non-compliant websites—relating to ISP Forced Blocks, see paragraph [5.60(2)] above.

- (3) the system is regulated by the appropriate identified regulator and all Age Verification providers be subjected to the same stringent accreditation process; and
  - (4) pornography websites should not be involved in the Age Verification process, including collection of user information and preventing parties with clear conflicts of interests from accreditation as an age verifier;
  - (5) the system, including privacy requirements, is appropriately enforced; and
  - (6) the system creates parity in the ways in which domestic and overseas sites are legislated.
- 7.4 Any Age Verification regime must be capable of restricting minors access to pornography, whether pornographic content is hosted domestically in Australia or is hosted Internationally <sup>138</sup>.
- 7.5 The system must be clear, unambiguous and ubiquitous. For Age Verification to be effective, it is important that the regulator, the content provider and the consumer all understand the system's requirements and the penalties for breaching those requirements.
- 7.6 The system must include provision for parents and other concerned community members to report non-compliant sites, and for there to be widespread awareness of this service. Such a reporting service already exists, managed by the OeSC—an established body with the requisite resources and expertise, which would be ideal to support an Age Verification regime.
- 7.7 eChildhood recommends investigation into broader policy challenges and implications, including consideration of potential long-term social and economic benefits of implementing an Age Verification regime—with a particular focus on schools and other organisations who serve children and young people. In the interim, relevant funding allocation is required in order to effectively respond to the repercussions of the current inevitable exposure of children and young people to pornographic sites <sup>139</sup>.
- 7.8 eChildhood recommendations are consistent with Australia's International obligations; namely, our obligation to protect children under the Child Convention, balanced against freedom of expression and the right to privacy, including an individual's right to be forgotten.
- 7.9 The measures recommended by eChildhood equally apply to restricting minors' access to online wagering, alcohol and cigarette purchases, and other products or activities that are otherwise deemed illegal for children to access.

<sup>138</sup> See paragraphs [4.7], [4.11] and [5.9] above.

<sup>139</sup> See paragraph [1.4] above.

## 8 Concluding Remarks

Since the establishment of eChildhood as a registered health promotion charity in 2017, we have made significant inroads in understanding the issues related to children, youth and pornography.

eChildhood believes that every child in Australia deserves a porn free childhood. The reality is, we are failing our kids because they currently have 24/7 access to hardcore porn. Without intervention, education and support, our kids are developing distorted sexual expectations which can lead to addiction, sexual abuse and other negative individual, relational and social outcomes<sup>140</sup>.

eChildhood has framed a Public Health Approach and is calling on Australia to implement a public health response. Under the Child Convention, Australia has an obligation to protect children, and this obligation is extended to children's use of the internet.

A key component underpinning the success of a safer online digital environment for children is the implementation of an Age Verification regime within robust updated legislation underpinned by safety, security and privacy. eChildhood recommends that good government policy include the implementation of such a system, no matter where content is hosted, to restrict minors' access to all commercial porn websites.

In the Convention on the Rights of the Child, the State is called to take all appropriate measures to protect the child from all forms of violence, injury or abuse, including sexual abuse, including through forms of prevention. The connection between the State's obligations under the International principles of due diligence, and the State's responsibility to not only protect children from harm, but also prevent harm from occurring to children is clear and evident <sup>141</sup>.

The consensus which has emerged amongst child safety advocates and health professionals is sufficient to prompt the application of the precautionary principle and do all that we can to reduce children's access to this harmful content.

*"The true character of society is revealed in how it treats its children."*

*~ Nelson Mandela*

This submission to the Parliament of Australia House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into Age Verification for online wagering and online pornography was prepared by eChildhood Deputy Chair, Liz Walker and Executive Director, Tamara Newlands.

<sup>140</sup> See eChildhood Report, 2019—annexed to these submissions as Appendix 1.

<sup>141</sup> Tokaji, A. (2016). Due Diligence Obligation of a State to Children Harmed by Porn: A Critical Appraisal. Section V: Australia's Due Diligence Obligation to Protect Children from all Harm under International Law. Section V: The Western Australian Jurist. 7: 209-228.

## Appendix 1

Access the eChildhood 2019 report from URL: [https://www.echildhood.org/report\\_2019](https://www.echildhood.org/report_2019)



# KIDS AND PORNOGRAPHY IN AUSTRALIA

Mobilising a  
Public Health Response

November  
2019

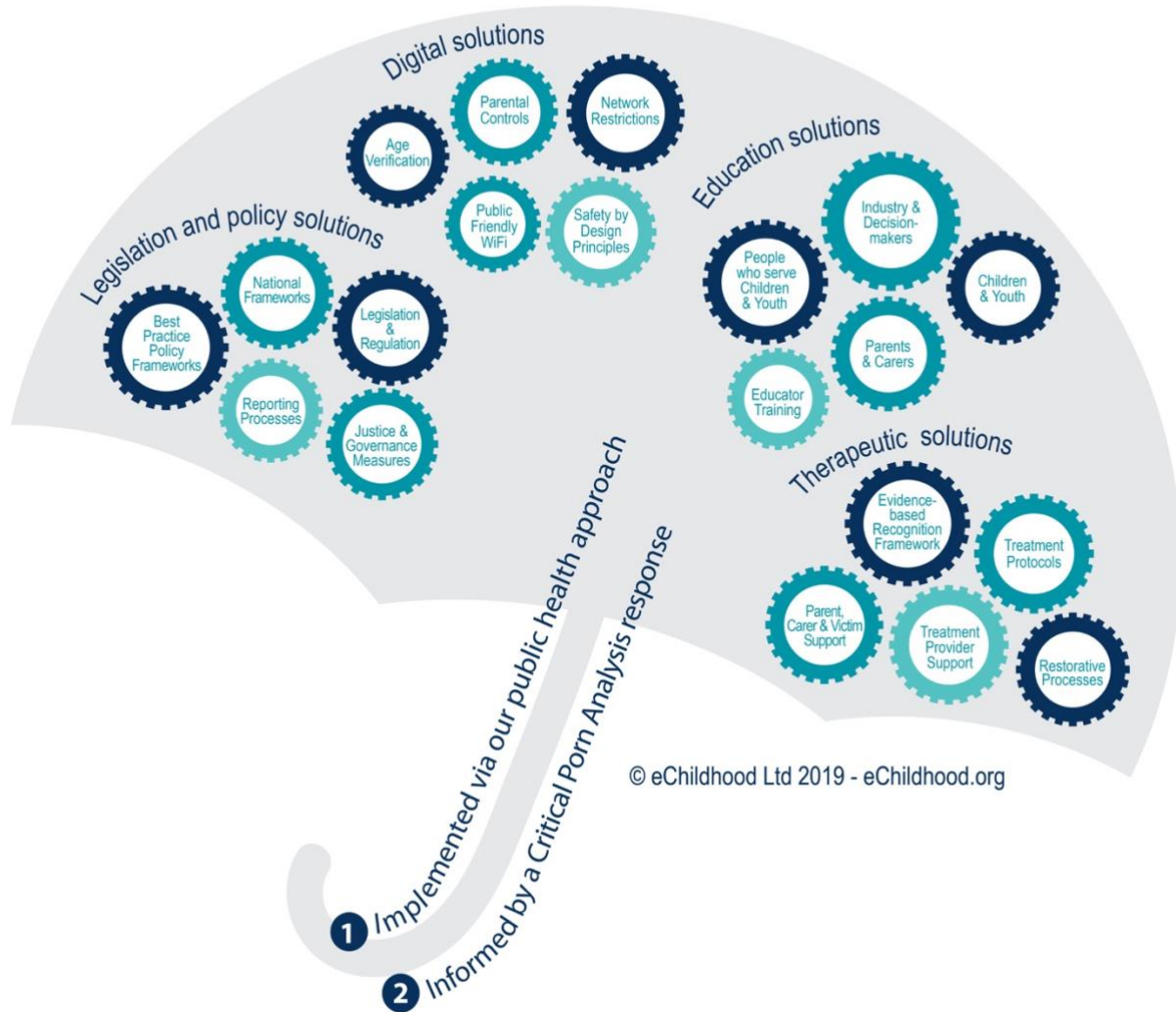
  
eCHILDHOOD

*Prepared by eChildhood Deputy Chair, Liz Walker  
and Executive Director, Tamara Newlands*

## Appendix 2

### eChildhood Public Health Approach

Mobilising responses that reduce the harms of pornography on children and young people



## Appendix 3

### Australia's Due Diligence Obligation to Protect Children from all Harm Under International Law

#### Section V: Australia's Due Diligence Obligation to Protect Children from all Harm under International Law

Human Rights Lawyer - Andrea Tokaji. The Western Australian Jurist. 7: 209-228. Available from URL:  
<http://classic.austlii.edu.au/au/journals/WAJurist/2016/7.pdf>

Following the rule of customary International law that obliges States to prevent and respond to acts of violence against women with due diligence,<sup>44</sup> emphasised in International case law, and in soft law, through Rapporteur Recommendations, and the interpretation of International instruments such as the Committee's Commentary on the Convention of the Elimination of Discrimination Against Women (CEDAW) in various International Commentaries, it is clear that the State has an obligation to protect its citizens from harm, and to ensure any foreseeable harms is prevented.

The case of *Osman v United Kingdom*,<sup>45</sup> as well as Commentary of the CEDAW Committee conclude that a state can be found complicit in human rights abuses perpetrated by non-State actors.<sup>46</sup> In the landmark cases of *Bevacqua and S. v Bulgaria*<sup>47</sup> and *Opuz v Turkey*,<sup>48</sup> both cases held national governments responsible for failing to exercise due diligence to adequately protect individuals from domestic violence, recognising that a state's failure to exercise due diligence to protect women against domestic violence is gender-based discrimination, violating women's right to equal protection of the law.<sup>49</sup>

The foundation for State responsibility was established in the case of *Velasquez Rodriguez v Honduras*,<sup>50</sup> in which it was articulated that: the extent of the State's due diligence responsibilities extended to effective responses from law enforcement, formal measures of protection, including civil protection orders, and punishment and prosecution of perpetrators.<sup>51</sup>

The ruling in *M.C. v Bulgaria*<sup>52</sup> affirmed and strengthened the State responsibility standards, noting that the State has a positive obligation to first enact criminal law provisions that criminalise non-consensual sex and then 'apply them in practice through investigation and prosecution'.<sup>53</sup>

Within the context of the International principle of the best interest of the child<sup>54</sup>, children have a right not to be harmed psychologically, emotionally and physically, as laid out in the Convention on the Rights of the Child (CRoC). As signatories to this International convention, Australia has a due diligence responsibility to protect children from non- State actors perpetrating such harm against them.

In the Convention on the Rights of the Child, the State is called to take all appropriate measures to protect the child from all forms of violence, injury or abuse, including sexual abuse, including through forms of prevention.<sup>55</sup>

The connection between the State's obligations under the International principles of due diligence, and the State's responsibility to not only protect children from harm, but also prevent harm from occurring to children is clear and evident.



REFERENCES (as numbered and cited in the original journal article):

- 44 Yakin Erturk, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women: The Due Diligence standard as a Tool for the Elimination of Violence Against Women*, ESC Res 2005/41, (29 January 2006).
- 45 *Osman v United Kingdom*, 1998-VIII Eur. Ct. H.R. 3124.
- 46 Lee Hasselbacher, 'State Obligations regarding Domestic Violence: The European Court of Human Rights, Due diligence, and International Legal Minimums of Protection' (2010) 8 *Northwestern Journal of International Human Rights* 2, 200.
- 47 *Bevacqua v Bulgaria* (2008) Eur Court HR.
- 48 *Opuz v Turkey* (2009) Eur Court HR.
- 49 Hasselbacher, above n 46.
- 50 *Velasquez Rodriguez v Honduras* (1988) Inter-American Court of Human Rights (Ser. C).
- 51 Hasselbacher, above n 46, 195.
- 52 *M.C v Bulgaria* (2003) Eur Court HR.
- 53 Citing *Osman v United Kingdom* (1998) Eur Court HR, and General Recommendation 19 of the Committee on the *Convention on the Elimination of Discrimination Against Women*.
- 54 As also expressed in art 21 on the *Convention on the Rights of the Child*  
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>
- 55 *Convention on the Rights of the Child*, art 19.

## Appendix 4

### *Organisations and Public Figures supportive of this submission by eChildhood*

Alannah & Madeline Foundation - Safeguarding our children's future together. The Foundation cares for children who have experienced or witnessed serious violence and runs evidence-based programs that prevent violence and advocate for children's safety and wellbeing.

Families Australia - a national, not-for-profit, peak organisation that strives to improve the wellbeing of Australian families, especially the most vulnerable and marginalised

Dr Justin Coulson - parenting author and speaker

Dr Collette Smart - psychologist, qualified teacher and internationally published author

Dr Allan Meyer - Careforce Lifekeys Community Resources Inc.

Chris Miller - 3rd Degree consulting

Youth Wellbeing Project - supporting Schools and Community with holistic education to counteract hypersexualised porn culture

Aware – a world without pornography

WACSS (WA Child Safety Services) - specialist provider of Protective Behaviours, Cyber Safety and Pornography education programs and resources.

Safe4Kids - Australia's first choice for child protection education

PB West - Leaders in Protective Behaviours Training

Juli Sharpe - Executive Officer - Education Services Coordinator [beREADY Programs]

### *Publicly named individuals supportive of this submission by eChildhood*

Petrina Freedman

Cathy Moriarty

Selena Protheroe

Sandra Lewis

Peter & Lisa St Henry

Sue Allen CPA

Elizabeth Briese

Renya Sweetman

Tim Mapperson

Nicolle Marques

Celine Leslie

Joseph Tang

Graeme Furlong

Aeron Heffernan

Colin Ware

Valma Iacono

### *Anonymous individuals supportive of this submission by eChildhood*

Number in total: 115

## Appendix 5

Access the Statement of Research and PDF version with references from URL:  
<https://www.echildhood.org/statement>

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### Statement of Research Relating to Pornography Harms to Children

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The harms of pornography to children and young people are becoming increasingly difficult to ignore. Messages that children and young people learn from pornography, shape themselves and the culture we live in. [Worldwide](#), pornography is now being framed as a [Public Health Crisis](#) by many governments, health, violence prevention and advocacy organisations. Given there is significant evidence indicating that pornography is linked to negative mental health outcomes for young people, sexist attitudes, sexual aggression and violence, child-on-child sexual abuse, and high risk sexual behaviours, this issue has not received adequate public attention.

This statement of research is endorsed by child youth advocates, anti-violence workers and key academics, including Dr Gail Dines, Founder of [Culture Reframed](#), Dr Michael Flood, Dr Caroline Norma, Dr Heather Brunskell-Evans, Dr Meagan Tyler and others.

Areas of pornography's impact on children and young people include:

- Poor mental health
- Sexism and objectification
- Sexual aggression and violence
- Child-on-child sexual abuse
- Shaping sexual behaviours

#### Rates of exposure

Trends in children and young people accessing online pornography show an increase.

- In 2011, it was reported that over two in five (44%) Australian 9-16-year-old's had seen sexual images in the past 12 months. This is much greater than the 25-country average of 23%. ([Green et al. 2011](#))
- Between 2008 and 2011, exposure to porn among boys under the age of 13 jumped from 14% to 49%. Boys' daily use more than doubled. ([Sun et al. 2016](#))
- In 2016, a study of 1565 18-19-year-old Italian students ([Pizzol et al. 2015](#)), 4 out of 5 stated they consumed pornography. Almost 22 per cent (21.9%) reported that it became habitual, 10% stated that it reduced their sexual interest towards potential real-life partners, and 9.1% reported a kind of addiction.
- In 2017, a Swedish study reported that nearly all respondents (98%) had watched pornography, although to different extents. Eleven per cent were found to be frequent users (watched pornography one or more times per day), 69 per cent average users (at least once a month up to several times a week, but less than once per day), and 20 per cent infrequent users (less than once a month). ([Donevan and Mattebo 2017](#))
- In 2006, 35 per cent of Dutch children aged 8 to 12 had had a negative Internet experience in the home, involving an encounter with pornography. ([Soeters and van Schaik 2006](#))

- Well over two-thirds of 15-17-year-old adolescents have seen porn websites when they did not intend to access them, with 45% being 'very' or 'somewhat' upset by it. (Kaiser Family Foundation 2001)

For the purposes of the following research, adolescents are defined as primarily between the ages of 13-18. The rise in rates of child-on-child sexual abuse indicates younger children are inadvertently exposed to pornography.

### **Poor mental health**

In a research review by [Owens et al. \(2012\)](#), the authors stated that:

*The structural deficits in brain maturation of adolescents, and theories such as the picture-superiority effect, offer insights into the ways adolescents may be disproportionately vulnerable to negative consequences when exposed to sexually explicit material.*

Whilst the literature varies in its ability to show if pornography directly causes mental health issues or instead, conditions are correlational (existed prior to viewing), or a combination of both, studies indicate that porn users experience:

- higher incidence of depressive symptoms
- lower degrees of social integration
- decreased emotional bonding with caregivers
- increases in conduct problems
- higher levels of delinquent behaviour

Research suggests links between mental health issues and problematic porn use, such as low self-esteem and depressive traits ([Doornwaard et al. 2016](#)), and impacts to academic performance ([Beyens et al. 2014](#)). Almost 22 per cent (21.9%) of young people report habitual use ([Pizzol et al. 2015](#)), 9 – 11% report frequent use or a kind of addiction, and a further 10% indicate that pornography reduces sexual interest towards potential real-life partners ([Donevan and Mattebo 2017](#)). The Swedish authors stated, *it is striking that one-third of frequent users admitted they watch pornography more than they want to. Since adolescents' brains are still in their development phase, young people may be especially vulnerable to problematic pornography use.* The adolescent brain is highly impressionable and vulnerable to forming addictions ([Chein et al. 2011](#); [Crews et al. 2007](#)).

Studies also indicate that pornography impacts self-image; for girls, this relates to feelings of physical inferiority, and for boys, fear of not measuring up, with both virility and performance. ([Owens et al. 2012](#), [Sun et al. 2016](#)).

In addition, adult cohort studies have identified that pornography use and associated sexual arousal patterns have been found to interfere with decision making ([Laier et al. 2014](#)); is linked to diminishing working-memory ([Laier et al. 2013](#)); and decreased ability to delay gratification ([Negash et al. 2016](#)). Adult users of pornographic material also report greater depressive symptoms, poorer quality of life, more mental- and physical-health diminished days, and lower health status than compared to nonusers. ([Weaver et al. 2011](#))

### **Sexism and objectification**

The relationship between pornography, sexual coercion, abuse and sexting was explored in a large European survey of 4,564 young people aged 14-17 ([Stanley et al. 2016](#)). The authors of this study argued that pornography is both underpinned by and perpetuates gender inequality, and that boys who regularly watched online pornography were significantly more likely to hold negative gender attitudes.

Other studies show that sexual arousal to online pornography by adolescents leads to sexist attitudes and notions that women are sex objects ([Peter and Valkenburg 2007](#), [Hald et al. 2013](#)) These findings are consistent with a review of 20 years of research that found

pornography use was associated with more permissive sexual attitudes and tended to be linked with stronger gender-stereotypical sexual beliefs. ([Peter and Valkenburg, 2016](#))

### **Sexual aggression and violence**

Consistently, findings link the viewing of violent pornography to increased tendencies for sexually aggressive behaviour ([Owens et al. 2012](#), [Sun et al. 2016](#)).

- there is a clear association between regular viewing of online pornography and perpetration of sexual coercion and abuse by boys. ([Stanley et al. 2016](#))
- both regularly watching pornography and sending or receiving sexual images or messages were associated with increased probability of being a perpetrator of sexual coercion. ([Stanley et al. 2016](#))

In a 2017 mixed-gender Swedish study of 946 students ([Donevan and Mattebo 2017](#)), frequent users watched hard core and violent pornography to a higher extent, were more likely to have engaged in a wider range of sexual activities, fantasised about trying sexual activities seen in hard core pornography, and showed signs of sexual preoccupation and problematic pornography use.

Rather than relying on a single research paper to draw conclusions, a meta-analysis synthesises data from a range of studies and looks for common and consistent findings. A meta-analysis is the “gold star” of research papers. [Wright et al. \(2016\)](#), carried out a Meta-Analysis of Pornography Consumption and Actual Acts of Sexual Aggression in General Population Studies. Their findings stated that:

*“the accumulated data leave little doubt that, on the average, individuals who consume pornography more frequently are more likely to hold attitudes conducive to sexual aggression and engage in actual acts of sexual aggression than individuals who do not consume pornography or who consume pornography less frequently.”*

### **Child-on-child sexual abuse**

Freely available online pornography is shaping the sexual conditioning of increasing numbers of young people. Australian research findings ([Etheredge, 2015, citing Lemon, 2014](#)), highlight that 75% of 7-11-year-old boys and 67% of 7-11-year-old girls in treatment for Problem Sexualised Behaviours (PSBs) reported early sexualisation through online pornography.

Between 2013 and 2016, police figures in the UK show a rise of child-on-child sexual offences by almost 80% ([Barnado's, 2016](#)). Australian practitioner, [Russell Pratt](#) says:

*One thing seems clear: pornography provides a “how to” manual, showing every possible angle of what goes where and who can do what to whom, as well as providing sexual stimulation and shaping patterns of sexual arousal. When coupled with other risk factors present in the young person’s life, pairing the “how to” with the sexual stimulation provided by pornography both equips and primes youth to undertake more advanced sexual practices earlier than they otherwise might or earlier than those who have not accessed pornography, simply because they have just that – a template for what to do, based on the graphic nature of pornography.*

### **Shaping sexual behaviours**

Exposure to sexually explicit Internet material directly predicts adolescents' willingness to engage in casual sex ([van Oosten et al. 2016](#)). A review of the research also identified that it is connected to higher levels of permissive sexual attitudes, sexual preoccupation and earlier sexual experimentation ([Owens et al. 2012](#)), including younger ages for first oral sex and sexual intercourse ([Kraus and Russell, 2008](#)).

The ways in which pornography is influencing young people's sexual experiences is reflected in research by [Marston and Lewis](#) (2014). Their qualitative, longitudinal study of 130 men and women aged 16-18 from diverse social backgrounds in the UK, found a normalisation of painful, risky, coercive heterosexual anal sex. Interviewees frequently cited pornography as the explanation for anal sex, a practice they expected to be painful for young women but pleasurable for young men. Participants described an expectation that young men would persuade or coerce a reluctant female partner.

Amongst college students, research has also demonstrated that higher frequency porn viewing correlates with an increased number of sexual partners and higher incidence of hooking up ([Braithwaite et al. 2015](#)).

In addition to these studies, another meta-analysis asked the question: *Is sexual content in new media linked to sexual risk behaviour in young people?* ([Smith et al. 2016](#)). Exposure to sexually explicit websites was correlated with condomless sexual intercourse; and sexting was correlated with ever having had sexual intercourse, recent sexual activity, alcohol and other drug use before sexual intercourse, and multiple sexual partners. The authors stated:

*"Cross-sectional studies show a strong association between self-reported exposure to sexual content in new media and sexual behaviours in young people."*

These studies identify significant areas that require action to prevent harms in children and young people's health, mental-health, physical safety, and wellbeing, and as a part of broader societal effects to prevent violence against women.

To date, this statement of research is endorsed by over 60 child youth advocates, academics, anti-violence workers and community organisations.

Additional research may be found at:

- [https://www.echildhood.org/journal\\_articles](https://www.echildhood.org/journal_articles)
- [https://www.echildhood.org/the\\_facts](https://www.echildhood.org/the_facts)

In addition to our Statement of Research and the resources referred to therein<sup>142</sup>, we also refer to the analysis contained in the following key Australian literature:

- (1) Quadara, A et al, *The effects of pornography on children and young people – an evidence scan*, Australian Institute of Family Studies Research Report 2017, Available at [https://aifs.gov.au/sites/default/files/publication-documents/rr\\_the\\_effects\\_of\\_pornography\\_on\\_children\\_and\\_young\\_people\\_1.pdf](https://aifs.gov.au/sites/default/files/publication-documents/rr_the_effects_of_pornography_on_children_and_young_people_1.pdf); and
- (2) Senate Environment and Communications References Committee, *Report into the Inquiry on Harm being done to Australian children through access to pornography on the Internet* (November 2016). Available at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Onlineaccesstoporn45/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Onlineaccesstoporn45/Report)
- (3) NZ YOUTH AND PORN: Research Findings of a survey on how and why young New Zealanders view online pornography. Minds Over Media - an educational initiative from the Office of Film and Literature Classification. Colmar Brunton Social Research Agency. (Report). Available from URL: <https://www.classificationoffice.govt.nz/news/latest-news/nzyouthandporn/>

<sup>142</sup> See paragraphs [3.12] and [5.11] above.