



Submission by eChildhood

Reviews of the Enhancing Online Safety Act 2015 and the Online Content Scheme

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Submission can be made public

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This submission by *eChildhood* is underpinned by 4 main points:

- POINT 1** It is the view of *eChildhood* that the current responses of the eSafety Commissioner are limited by legislation that is outdated, convoluted and requires extensive overhaul in order to enable effective digital protection of children from hardcore pornography. All areas for comment in this review need to be considered within updated 'all encompassing' legislation.
- POINT 2** The harms of pornography on children and young people are extensively supported by research. Whilst *eChildhood* acknowledges that not all children are harmed in the same ways, combined with ease of access via digital technologies, pornography can contribute to significant short and long-term impacts for child development, physical, emotional, mental and sexual wellbeing, and sustainable relationships. For research, refer to Appendix B for the *eChildhood Statement of Research*, and the Australian Institute of Family Studies publication entitled *The effects of pornography on children and young people: An Evidence Scan*¹.
- POINT 3** A Child's Rights approach must be adopted for this issue. In particular², Article 3: *The best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children. This particularly applies to budget, policy and law makers*; and Article 17: *Children have the right to get information that is important to their health and well-being. Governments should encourage mass media – radio, television, newspapers and Internet content sources – to provide information that children can understand and to **not promote materials that could harm children***. [emphasis added]
- POINT 4** Pornography is a social problem and hence cannot be simply addressed by focusing on an individual level. The paper³ *Health education's role in framing pornography as a public health issue: local and national strategies with international implications*, states:
Social issues from the public health perspective involve problems that affect individuals or groups beyond their capacity to correct. Social issues are detectable when responsibility is shifted from individuals being able to adequately make changes themselves, toward holding external social causes or influences accountable. It is clear that many aspects of pornography meet this definition of social issue, and warrant public health advocacy efforts.
Given pornography is a matter of public health concern, responsibility must be shared between government intervention, education across all sectors, policy and digital solutions, and shifting the bulk of the responsibility to the porn industry themselves through effective legislation that focuses on child safety. The Australian Government and broad community expect the tobacco and alcohol industries and their outlets to do everything within their power to limit children's access to harmful products - the same rule should apply to the pornography industry.

Many of the responses contained in the *eChildhood* submission were first published in *The Porn Harms Kids Report: Protecting our kids from online pornography harms is everyone's business*⁴ (or have been modified from this publication). This report was tabled in September 2017 to The Online Safety Consultative Working Group (OSCWG), the eSafety Commissioner's advice forum, as well as various other government ministers and child protection agencies.

¹ The effects of pornography on children and young people: An evidence scan (2017)

² Unicef. FACT SHEET: A summary of the rights under the Convention on the Rights of the Child.

³ Perrin et. al. (2008)

⁴ Porn Harms Kids Report (2017)

Review of the Online Safety Act

Questions & Answers

1 Functions and powers of the eSafety Commissioner

Question 1(a): *Are the current functions and powers in the Online Safety Act sufficient to allow the eSafety Commissioner to deliver on the role's mandate? If not, what additional functions could make the eSafety Commissioner more effective? Are there any of the current functions that could be removed?*

In part. The Online Safety Act enables the eSafety Commissioner to enact some of the roles mandate. However, a key role of protecting children against pornography harms is not sufficiently supported with the current functions and powers. Rather than considering individual functions, it is the view of *eChildhood* that effectiveness will only be obtained if the legislation is completely overhauled as noted in POINT 1, page 2.

Question 1(b): *Are the rules about information handling and disclosure too restrictive considering that the eSafety Commissioner's functions include consulting and cooperating with bodies that may not be specified as permitted disclosees?*

Yes. The rules about information handling and disclosure are too restrictive. A request was made for information about the use of the complaints line regarding prohibited content to help ascertain if the process was being used, Australian's awareness of this feature, and indication of its effectiveness. Disclosure of information was refused. As an Australian charity focused on improving the safety of children online and addressing the harms of pronography on children and young people, *eChildhood* is directly aligned and in support of the mission placed in the hands of the eSafety Commissioner. Therefore, having access to such information would enable more informed support to be provided by *eChildhood* to the eSafety Commissioner. The request was not outside the typical remit of 'Freedom of Information'.

Question 1(c): *Schedules 5 and 7 of the BSA (Online Content Scheme) provide additional functions for the eSafety Commissioner. Is there any merit in moving the Commissioner's Online Content Scheme functions into the Online Safety Act so that all of the eSafety Commissioner's functions and powers are in the same legislation?*

The current legislation and accompanying schedules are confusing and result in significant gaps in power for the eSafety Commissioner to protect children from the harms of pornography. *eChildhood* recommends these powers be revised and improved, and a regulator appointed to oversee the implementation of updated legislation. Measures for revised legislation would encompass the implementation of a full spectrum of digital child protection buffers, including Age Verification gateways applied to all pornographic content entering Australia, thereby effectively protecting Australia's children. Further details provided throughout.

Question 1(d): *Does the way the eSafety Commissioner's functions and powers are specified create barriers preventing, or limiting, the Commissioner from enhancing online safety for Australians or that may prevent, or limit, the Commissioner from responding to new risks in the future?*

Yes. The current functions and powers result in a number of gaps in how the eSafety Commissioner can ensure the safety of children from the harms of pornography, as well as limit the ever increasing technology

platforms that pornography is accessed via. Emerging technologies such as virtual reality, explicit cartoon content, deep fake pornography involving digital manipulations, Artificial Intelligence and ‘yet to be developed’ ways to sexually harass others online, need to be included within the eSafety Commissioner remit of functions and powers. Further details are outlined in the submission, in particular, Question 9 (b).

2 Administration of the eSafety Commissioner

Question 2(a): *Do the administrative and other provisions in the Online Safety Act provide an appropriate governance structure for the eSafety Commissioner?*

No. As illustrated in Question 1(b), there are concerns relating to accessing important information relevant to children’s online safety. When inquiries or concerns are unable to be effectively responded to, there needs to be an alternative source of governance to provide oversight and resolution.

Question 2(b): *Is ACMA still best placed to provide administrative support to the eSafety Commissioner?*

eChildhood believes that the current system is falling dangerously short in preventing children from accessing prohibited content. As such, we do not see fixing a broken system as a viable option to effectively address the issue of children having unfettered access to online hardcore pornography (prohibited content / Refused Classification). An updated and ‘all encompassing’ legislation is required as stated in POINT 1, page 2.

Question 2(c): *Should the Online Safety Act be amended to give the eSafety Commissioner more independence, particularly in relation to resourcing (including staffing) and funding? If so, is there other legislation that provides an appropriate model?*

Question 2(d): *Does the eSafety Commissioner require a broader delegation power? If so, how would it be limited?*

Question 2(e): *Should the eSafety Commissioner consider delegating some or all functions to a body corporate?*

Question 2(f): *The eSafety Commissioner is not an entity or accountable authority under the PGPA Act or an agency head under the Public Service Act. Is this still appropriate?*

The questions relating to expansion of remit, broader delegation of power, delegation of functions to other bodies, and accountability needs to be informed by a stakeholder process to overhaul legislation. For suggestions relating to legislation, refer to responses in Question 6 on page 6 & 7 in the Review of the Online Content Scheme comments, Question 9(c), and Question 10(d).

3 Effectiveness of the eSafety Commissioner

Question 3(a): *Has the eSafety Commissioner been effective in enhancing online safety for Australian children since its establishment in 2015?*

The eSafety Commissioner has achieved enormous gains in the Government Response to ‘revenge porn’ (Image Based Abuse) and cyberbullying; particularly given the current Commissioner has been in office for only 18 months – and in an office whose role has been significantly expanded.

eChildhood applauds that as part of its current investigative role, the eSafety Office has convened the Online Safety Consultative Working Group (OSCWG). The OSCWG has reported to the Government on strategies to inform an effective policy response to ensure best efforts to protect children from potential harm. However, as this issue is a matter of public concern and child safety, and to enable greater transparency and cohesiveness of attempts to support the eSafety Commissioner in this space, this report should be made public to assist key stakeholders working on this issue.

For the many gains that have been made, feedback to *eChildhood* indicates that a huge number of Australian families have no knowledge of the Office of the eSafety Commissioner, or how the Office is able to support children's safety.

Feedback to our health promotion charity also indicates confusion within the community as to why content that is Refused Classification (RC), X 18+ and R 18+ is only "potentially prohibited"⁵. As published in a news update⁶ by *eChildhood*, *if someone tries to bring a suitcase of Refused Classification (RC) DVDs through customs, they will be refused entry. ...we have clearly defined terms for RC, X 18+, and R18+ content - Federal Legislation states that all of them are unsuitable for minors to see. Online content is assessed against the National Classifications Scheme, yet the current status is that, without Digital Child Protection Buffers, minors can readily and regularly access it all.*

Community feedback specific to pornography, is that the eSafety Commissioner has not been effective in enhancing online safety for children. *eChildhood* acknowledges that the current responses of the eSafety Commissioner are limited by legislation that is outdated as stated in POINT 1, page 2.

Question 3(b): *The scope of the Online Safety Act was expanded in 2017 to cover all Australians. Has it been effective in relation to groups other than children?*

The expansion of the Online Safety Act has allowed for other serious issues to be addressed and public attention to be administered in these broader areas; however, the negative side is that children's safety specific to pornography access appears to have received less public attention.

4 Regulatory approach

Question 4(a): *Is the balance right between government intervention and other measures (e.g. developing an individual's ability to identify, assess and self-manage risks) to address online safety in Australia?*

No. The focus is imbalanced with too much emphasis placed on parents to ensure the safety of children and young people online. Given pornography is a public health issue as outlined in POINT 4, page 2, responsibility must be shared between government intervention, education across all sectors, policy and digital solutions, and shifting the bulk of the responsibility to the porn industry themselves through effective legislation that focuses on child safety.

Question 4(b): *The Online Safety Act does not have an express statement about regulatory approach. This is common in other Acts such as the Broadcasting Services Act 1992. Does the Online Safety Act need a regulatory approach statement?*

Refer to POINT 1, page 2.

⁵ eSafety Complaints and Reporting

⁶ *eChildhood* news. Crossing Borders - Pornography's mode of travel (2017)

5 Cyberbullying complaints system

In relation to Cyberbullying, the scope of the questions asked within this review fall outside the main remit of *eChildhood*.

However, as outlined in our recent extensive submission to the Queensland Anti-Cyberbullying Taskforce, it is essential to the safety of Australian children to note the evidence of how unfettered access to online **pornography is an underlying driver of Online Sexual Abuse** - a subset of harms within cyberbullying.

To summarise, *eChildhood* recommends that by minimising access to pornography and providing support and education, we can significantly reduce the underlying drivers of sexual harassment and abuse online.

To effectively disrupt the normalisation of Online Sexual Abuse, it is the view of *eChildhood* that by implementing legislative and digital solutions at a Federal level to reduce children and young people's access to hardcore pornography, along with access to robust education, all Australian children will rightfully benefit by accessing a safer, less toxic online environment.

This submission may be found on our website: <https://www.echildhood.org/submissions>

Review of the Online Content Scheme

eChildhood provides the following feedback on the Online Content Scheme:

- The current scheme means that the onus is on concerned citizens to complain about overseas-hosted prohibited content, that by definition, should be not accessible by children. If materials are deemed prohibited content (or RC - Refused Classification), then it is untenable to rely on the general public to inform the eSafety Office of its presence online.
- Dealing with content hosted in Australia differently to content hosted overseas is leaving children and young people in Australia vulnerable to its harms. Considering that somewhere in the vicinity of 90% (or more) of online pornography would be classified as prohibited content, due diligence demands that the government enact legislation to prohibit access to this content, rather than relying on the general public to provide notification.

eChildhood recommends that the Online Safety Scheme be completely reworked to reflect the same process the UK is currently implementing with Age Verification measures. Under The Digital Economy Act, 2017⁷, all content classified as prohibited must be placed behind an Age Verification gateway. In addition to shifting the bulk of the responsibility to the porn industry through Age Verification measures that focus on child safety and public health (refer to POINT 4 on page 2), an 'all encompassing' digital legislation considers a broad range of factors such as the overhaul of telecoms infrastructure and regulation, internet speeds, copyright issues, privacy and data.

If this approach were adopted within Australia, an independent regulatory body would be given powers to enact updated legislation and regulate enforcement. With similar directives as outlined in the UK, legislation would include the powers to enforce Age Verification, and if not adhered to, issue notice of warning, restriction of access to financial services to infringing sites, followed by restriction of ISP services.

⁷ Digital Economy Act, 2017

In addition, updated legislation needs to include a review of how children can be protected from accessing prohibited content via all other online platforms that currently hosts such content. For example, social media platforms, children's apps, online games, blogs, and user-created platforms. An updated 'all encompassing' legislation needs to be in place to ensure that wherever children can access online spaces, either Age Verification or codes of conduct regulation are enforced, thereby ensuring children are protected from accidental and deliberate exposure to prohibited content wherever possible.

eChildhood also recommends a review of the definitions contained within the National Classifications Scheme, outlined further in Question 8(a).

New legislation needs to acknowledge that the implementation of Age Verification does not mean that the processes for removing illegal content such as Child Sexual Exploitation Material would change. Legislation, regulation, and codes of conduct must ensure there remains a clear and proficient process for removal of this illegal content.

eChildhood acknowledges it is important that solutions be implemented via stakeholder involvement, with provision made for adoption over a reasonable period of time to accommodate the changes and costs required for the implementation of new legislation and regulations.

Questions & Answers

6 Online content complaints system

Question 6(a): *The Online Content Scheme was enacted at different times in two separate schedules to the BSA. Is there clarity about the scope of each schedule?*

The Schedules are incredibly confusing, more so how they are implemented. The schedules require overhauling with updated legislation as stated in POINT 1, page 2.

Question 6(b): *Is the Online Content Scheme effective in limiting the availability of prohibited content?*

No. The Online Content Scheme allows prohibited content that is hosted overseas to be accessed by children on the internet, unless a parent has a filter in place.

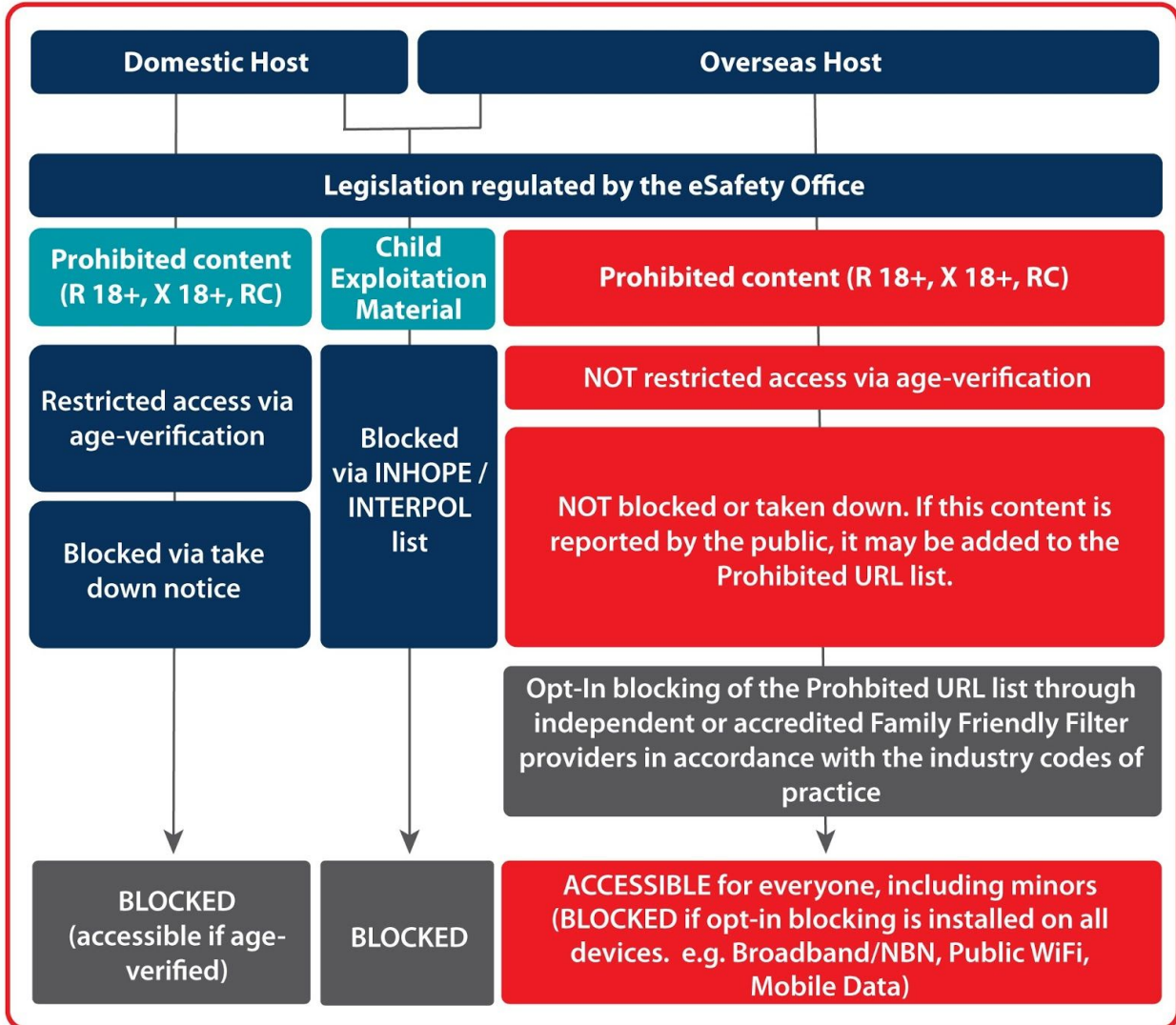
The Online Content Scheme abdicates government responsibility by relying upon the general public to notify the eSafety Office of prohibited content. In the time it takes for the notification to reach the eSafety Office, investigate the content, then request removal or enforce an Age Verification gateway (only applicable to sites hosted in Australia), many more children access this content and are potentially harmed.

Considering the number of pornography websites, social media platforms, apps and public production content pages available online that now also pay to advertise such content, parents and concerned citizens are faced with an unmanageable responsibility to ensure the online safety of their children, including in public WiFi places or via other children accessing online platforms.

This current approach raises serious child safety concerns and demands a robust response from the government. Allowing such an ineffective scheme to exist is a major failure of upholding the Australian Convention on the Rights of the Child.

To illustrate, *eChildhood* produced the following (DIAGRAM 1) to provide a visual explanation on how the current digital environment fails to protect children.

CURRENT DIGITAL ENVIRONMENT



**the diagram is only pictorial and not definitive indications of percentages of content coming from hosts domestically and internationally*

Question 6(c): Is the Online Content Scheme providing an adequate safeguard for Australian children?

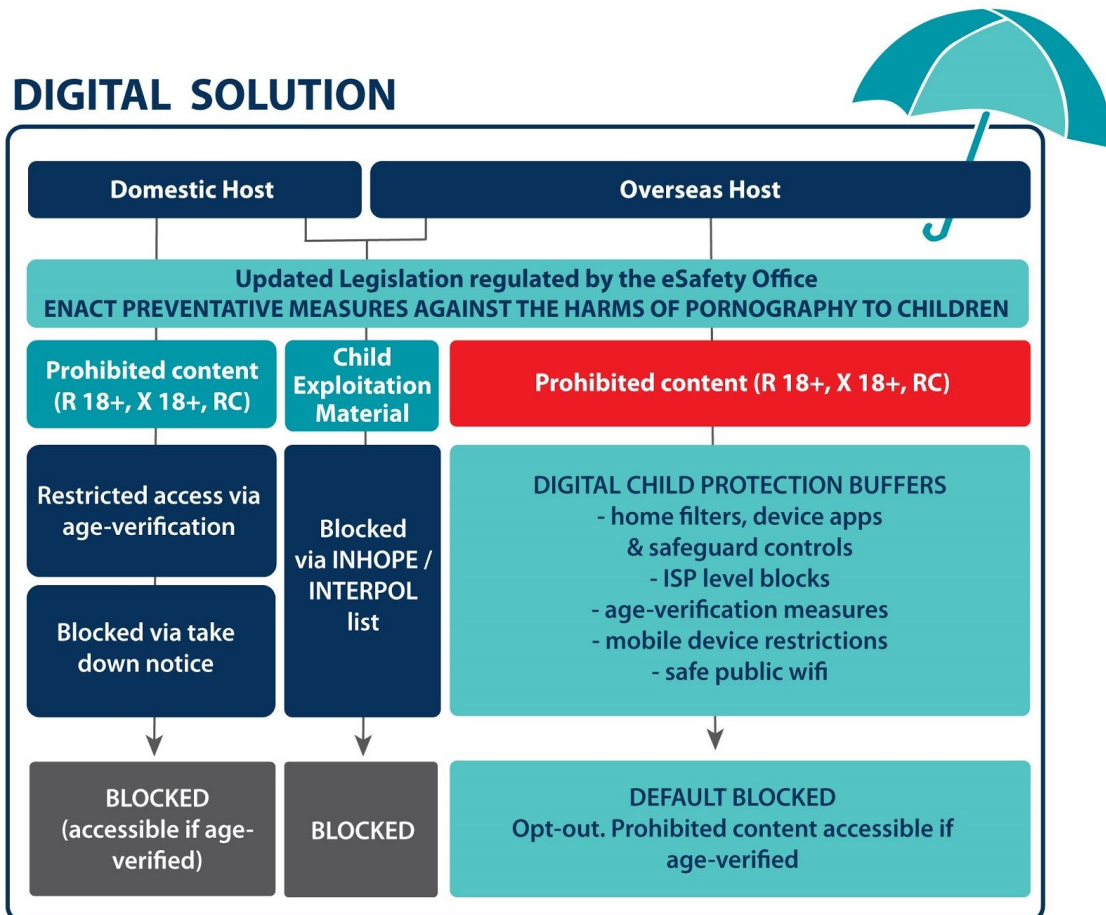
As detailed in 6 (b), the Online Content Scheme currently fails to provide adequate safeguard for children and young people. *eChildhood* observes numerous opportunities to implement safeguarding measures:

1. Acknowledge the violent nature of pornography and its contribution to an increase in sexual assault against women and children, and remedy the legislation accordingly.
2. Stop relying on a non-compulsory filtering product to protect children that requires payment by a parent/carer to a business supplying internet access.
3. Stop putting the burden of uncovering prohibited content on Australians.

4. Stop distinguishing the government response based on whether the content is hosted/located domestically or overseas - create a robust response that includes all potential platforms that could host pornography online - social media, blogs, apps, games, and self-created content.
5. Appoint a regulator to enforce and oversee Age Verification measures to prevent all porn sites being accessed by minors from within Australia, no matter where they are hosted.
6. Prevent as opposed to respond, and make it incumbent on the overseas profit makers to prove to the Government regulator that they comply with updated digital legislation.
7. Assess state law penalties relating to non-compliance to the classifications code against Federal laws, and provide consistencies that adequately comply with the laws and needs of society for protection.

In addition, in consideration of the different social media platforms and child/youth apps available for minors to access, *eChildhood* recommends a review of the advertising standards and implementation of clear guidelines relating to where pornographers, and other sex-trade platforms or influencers, are allowed to advertise their content. These advertisements contain content that would be classified as prohibited, and as such, should be subject to new standards, definitions and codes of conduct, including coming under the jurisdiction of a regulator to ensure the codes are enacted.

Implementing these measures creates a safer online environment for children, as well as equity and fairness for content providers and recipients of that content. *eChildhood* produced the following (DIAGRAM 2) to provide a visual explanation on an effective digital environment that protects children.



**the diagram is only pictorial and not definitive indications of percentages of content coming from hosts domestically and internationally*

Question 6(d): Does the Online Content Scheme give the eSafety Commissioner appropriate powers to investigate and resolve complaints?

No. The process of complaints is convoluted. There are two areas when complaints may be raised by the public.

The first is when prohibited content is reported to the eSafety Office. As detailed in Question 1(b), *eChildhood* has been unable to ascertain information that would enable us to comment further on the effectiveness of resolving complaints.

The second is when a concerned citizen issues a complaint to their State or Federal MP outlining the failure of the current Online Content Scheme. In response, the complainant receives a generic letter (often via the Department of Communications) that has limited substance due to shortcomings of the Online Content Scheme. This results in no resolution for the complainant due to flaws in the legislation, and the inability for any serious action to be taken that would actually protect children.

Given the eSafety Commissioner is charged with investigating potential prohibited content online, *eChildhood* recommends that in the process of overhauling legislation, an independent regulator be appointed to resolve issues related to the effectiveness or ineffectiveness of this process. This would result in a fairer complaints system, leaving the eSafety Commissioner to continue to be in charge of online content complaints and removal of harmful content such as Prohibited Content, Image Based Abuse, and cyberbullying.

7 Online content enforcement mechanisms

Question 7(a): Are the enforcement tools available to the eSafety Commissioner appropriate?

No, however as previously stated, *eChildhood* believes that in order to achieve effective protection for children and young people in Australia against the harms of pornography, the current system needs a full overhaul (refer to POINT 1, page 2).

Question 7(b): Do the 'take-down', 'service-cessation' and 'link-deletion' notices provided by Schedule 7 to the BSA ensure that, once detected, prohibited content is removed quickly and effectively?

As above.

Question 7(c): Is the 'take-down' notice provided by Schedule 5 to the BSA effective, particularly in relation to content hosted outside of Australia?

As above.

8 Link with the National Classification Scheme

Question 8(a): Is reliance on the National Classification Scheme categories to identify prohibited and potential prohibited content appropriate and sufficiently flexible to respond to the types of content that may emerge in the online environment?

No. *eChildhood* recommends a review of the definitions contained within the National Classifications Scheme. Expansion of definition needs to include other forms of online media that depict sexual images and

create a negative impact, other than those involving real-life humans. For example, Hentai, Manga Comics, and user-created depictions of sex and rape acts via children's gaming platforms such as Roblox, and similar. Further to this, see comments provided to Questions 1(d) and 9(b).

Question 8(b): *Is it appropriate that content must be classified by or referred to the Classification Board for a take-down notice to be issued?*

No. As outlined in on page 6 & 7 in the Review of the Online Content Scheme comments, it is untenable to rely on the general public to inform the eSafety Office of the presence of prohibited content online. This approach should be a secondary response to a more robust legislation where content is firstly blocked via Age Verification.

9 Regulatory framework

Question 9(a): *Should Schedules 5 and 7 be repealed and a new combined scheme for regulating prohibited content created? If so, should any new scheme remain in the Broadcasting Services Act?*

Yes. A full review of the current schedules is required. Refer to POINT 1, page 2.

Question 9(b): *Should the current regulatory framework be replaced by a technology-neutral scheme that captures newer platforms and services? If so, how could a new scheme address the definitional and operational issues identified in the current scheme?*

Yes. With the continued innovation of platforms and services that facilitate the carriage of prohibited content to children, it is imperative that a technology neutral scheme is implemented to capture all current and new platforms as they develop. Considering the proliferation of new platforms emerging on a regular basis, it would be ineffective to review the definitions of platforms every three years when this review takes place. *eChildhood* recommends that definitions encapsulate all types of content, regardless of the platform that they are hosted on.

It is necessary to incorporate legislation that is broader and more comprehensive, including emerging technologies so that the law is future-proofed and covers all scenarios. For instance, in consideration of non-consensual taking and sharing of intimate images, or threats to do so, or altered images such as via deep fake technologies. In addition, the legislation needs to address the myriad of ways that people are using technologies to sexually abuse, coerce, manipulate or exploit others online.

Further to this, see comments provided to Questions 1(d) and 8(a).

Question 9(c): *Are there any other options for regulating online content, including overseas models, which could work in Australia? If so, what are the advantages and disadvantages of such models?*

As previously outlined on page 6 & 7 in the Review of the Online Content Scheme comments, the UK has adopted Age Verification measures via the The Digital Economy Act, 2017 that will be implemented in late 2018⁸. This legislative measure creates penalties for online pornographers who do not verify the age of their

⁸ Monaghan & Yoo, 2018

customers, and ISP-level blocking of non-compliant sites. Age Verification occurs through utilising a third-party trusted verification process that accesses existing robust data sources (credit card, mobile ID etc.). This form of eID is currently being implemented in a European countries and is intended to protect the privacy of the user, with the site accessed not privy to information other than if the user has been age-verified or not.

This measure utilises legislation and regulations that force the pornography industry to comply with existing classification and protective measures already implemented across other sectors (i.e. Film and Media). The UK legislation applies to any party based anywhere in the world who makes money from or provides online porn - if these parties wish to access the UK market, they must comply with the legislation. Pornography industry webmasters who don't meet the requirements will be blocked at the UK ISP level.

10 Industry codes

Question 10(a): *Is the co-regulatory approach (that is, based on the four industry codes) operating as it should? Do the codes provide adequate safeguards without imposing unnecessary financial and administrative burdens on the internet and content services industry?*

No. The industry codes do not provide adequate safeguards for children. Given the Australians Communications Alliance is an 'industry representative body', the current system is unable to achieve this end. The Comms Alliance represent Australia's Internet Service Provider (ISP) industries and as such, are invested in self-interests rather than the safety of children. Their website⁹ 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 them. Similarly, ISPs are not required to filter or monitor internet traffic.

As relayed by Internet Safety Expert John Carr in our Porn Harms Kids Report on page 46:

Whilst the involvement of ISPs to provide blocks to pornography are an important part of digital solutions, they are only one (comparatively) small cog in the much larger wheel of the internet. They sometimes, with justification, may feel they are unduly put upon to solve problems which are created by other online businesses' bad or poor behaviour or inattention. It is not the place of ISPs (or any other digital solution provider), to be put in the position of arbiters around issues that are seen as being sensitive free speech or political debates.

*When terrorism, hacking and fraud are such major national security concerns, child protection seemingly slips down the list of priorities. In other words, online child protection is not a high enough political priority. This is what must change. It should never be either/or. In a country where the rule of law is honoured, nobody's free speech, political or artistic rights are threatened by well thought-out online child protection measures. As such, **the underpinning of enacting legislation provides a way forward for ISPs to carry out directives that are in the best interests of children.** [emphasis added]*

The historical lack of commitment to the Family Friendly Filter Scheme, the reality that not all ISPs are members of the Communications Alliance, and failure to independently show corporate social responsibility to implement digital measures that are in the best interests of children, means that the Codes need radical overhaul and enforcement through updated 'all encompassing' legislation.

⁹ Communications Alliance (n.d.)

Question 10(b): *The industry codes were made in 2005 and 2008. Have the Codes kept pace with changes in technology and consumer behaviour?*

No. As clearly stated in Questions 1(d), 8(a) and 9(b), emerging technologies and exploitative behaviours have meant that similar to the Regulatory Framework and other areas available for comment, the Codes are well out of step with the ways in which people, particularly children, are being harmed.

Question 10(c): *Have the industry codes encouraged the development of internet technologies and their application?*

Yes, to some degree through accreditation of effective filtering mechanisms. However, this does not alter the fact that this measure does not prevent children from being at significant risk of harm from unfettered access to pornography via a range of digital devices, including in public spaces. With overhauled and enforced industry codes through updated legislation, the same ‘vehicle’ of technology that facilitates this risk to children’s wellbeing, could also be used in the reverse to ensure their safety.

Question 10(d): *There are four separate codes, found in two separate documents. Would a combined, single code provide clarity and be easier to administer and enforce?*

Including a single code within a “Digital Economy Act” legislative approach would result in the opportunity for the eSafety Office or independent regulator to facilitate oversight of ISP membership to the Communications Alliance; including compliance by all providers of internet services to the proposed updated legislation and binding codes of conduct; and the issuing of penalties for non-compliance.

In addition, updated legislation would place demands on the Communications Alliance lead ISPs to ensure:

- (i) Mandatory provision of ISP blocking tools to reduce access to prohibited content.
- (ii) Cooperation with calls to implement Age Verification measures to manage prohibited content
- (iii) Monitoring adherence of ISPs to an accreditation process that measures effectiveness of blocking tools that restrict access to prohibited content.
- (iv) Restriction of prohibited content on all digital devices that connect to Broadband/NBN, WiFi, Public WiFi, Mobile Data.
- (v) Provision of a process for all ISPs to be connected through membership to the Comms Alliance, to position them to adhere to the proposed updated legislation and binding codes of conduct.

Question 10(e): *Do the industry codes reflect current community attitudes?*

No. Current community attitudes have shifted to acknowledge the importance of child protection, particularly as a result of The Royal Commission into Child Sexual Abuse. This inquiry produced findings¹⁰ that seem to indicate that children who are harmed by violent pornography, are then expressing tendencies to perpetuate those harms upon others.

¹⁰ Royal Commission, Final Report: Volume 10 (2017)

This view of the negative effect of pornography on children's sexual behaviours is consistent with evidence Australian treatment providers and academics have submitted to the Royal Commission and other government inquiries. One practitioner who treats children with harmful sexual behaviours told us at a private roundtable, 'I can't think of anything that is going to impact us or what is actually happening for our young kids as much as the easy access of quite hardcore pornography'.

In addition, community standards demand a response to factors that contribute to attitudes supportive of violence against women. The National Plan to Reduce Violence against Women and their Children 2010-2022¹¹ states that:

The Third Action Plan will have 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.

The Industry Codes do not acknowledge nor address the ease of access to pornography by children, and how it is contributing to issues of child safety, the objectification of women, and the proliferation of sexual assault.

Question 10(f): *Is the Family Friendly Filter (FFF) scheme effective in protecting Australian families from prohibited content?*

No. The Family Filter Scheme can not be effective because filters are not mandated in Australia, either under law or Industry Codes. The most recent mention on the Communications Alliance website accrediting a filter was in October 2017¹², and only to the level of recommendation for children over the age of 15. Prior to this, two other filters were accredited in 2015 and 2013.

This system was recently revived by the eSafety Office, however still relies on non-enforceable and outdated codes. The Communications Alliance website indicates that several ISPs provide information about online safety, however as illustrated in Diagram 3, Telstra is the only ISP that provides any robust provision of filtering protection for children. This is a paid service, and again places the burden on families to arrange for their own children's protection. This issue will only be resolved by updated legislation (POINT 1, page 2).

¹¹ The Third Action Plan 2016–2019 of the National Plan to Reduce Violence against Women and their Children 2010–2022

¹² Communications Alliance - Family Friendly Filters (n.d.)

DIAGRAM 3.


ISPs have a responsibility to exercise due diligence to protect children from online harms

HOW DOES YOUR INTERNET SERVICE PROVIDER RATE?

Internet Service Provider	Default block	Opt-in-block	Free to user	Set time restrictions	Social network protection	Device protection	Customisable controls	Implements safe searches	Mobile device protection
Telstra	✗	✓	✗*	✓	✓	✓	✗	✗	✓
OptusNet	✗	✗	✗	✗	✗	✗	✗	✗	✗
TPG	TPG	✗	✗	✗	✗	✗	✗	✗	✗
	iiNet	✗	✗	✗	✗	✗	✗	✗	✗
	Internode	✗	✗	✗	✗	✗	✗	✗	✗
	Westnet	✗	✗	✗	✗	✗	✗	✗	✗
Vocus	iPrimus	✗	✗	✗	✗	✗	✗	✗	✗
	Dodo	✗	✗	✗	✗	✗	✗	✗	✗
Foxtel	✗	✗	#	✗	✗	✓	✗	✗	✗

* free to new customers
free 60-day trial

Kids deserve Digital Child Protection Buffers
PREVENT | EQUIP | RESTORE



Question 10(g): Are there any other commercial content filtering or automated content monitoring solutions (such as algorithms) that can help to protect Australian families? What options are there for identifying harmful or prohibited content?

The emergence of new technologies to address complex harms are constantly being developed. It is the view of eChildhood that if technology has facilitated the problems caused by 24/7 access to pornography, technology also exists to solve it.

The vision of leading technology entities such as Thorn¹³ is to “build technology to defend children from sexual abuse.” Their website states that: *Every new platform and new technology could enable an abuser. It can also be our best weapon against them. We are dedicated to ending child sex trafficking and the sexual exploitation of children. And we won’t stop until every child, can just be a kid.*

Investigating all areas of collaboration to find dual-purpose in new technologies to identify harmful or prohibited content should be of utmost priority to governments and the tech industry.

¹³ Thorn - <https://www.wearethorn.org/>

Question 10(h): *Is prohibited content a subject that is better dealt with in an industry standard or determination than in legislation?*

Legislation and policy collectively underpin the operations of every small-to-medium size business, government and non-government department, non-profit, company, large corporation, state and nation. When an entity functions smoothly, it is pointless to invest time and resources into adjusting legislation and policy. However, when entities are making losses (of any measure), one of the first places for scrutiny would be to understand ‘what’ the cost is; followed by review of the mechanism that facilitates this loss.

In the instance of pornography, the loss is first and foremost to our children, and the cost burdens (mental, physical, emotional, relational, social and financial) are rapidly accumulating. The mechanism that facilitates this ongoing burden is failed legislation and policy. Whenever an entity has direct or indirect influence with children and young people, there exists opportunities

to strengthen responses and adjust the mechanism of legislation and policy. This includes (but is not limited to) child and youth services, educational sectors, mental health and allied health professions, government and non-government sectors; and sporting and community groups. Areas relevant to each entity for considered change may include:

- national frameworks
- codes of practice
- reporting processes of harms
- regulatory body responses, and
- justice and governance measures

Stakeholders within each sector are best positioned to consider how a response to the harms of children and young people may be met through these changes with the knowledge of a public health approach and critical porn analysis.

11 Other issues

Question 11: *Please provide any additional comments about the Online Safety Act or the Online Content Scheme that have not been covered in your answers to other questions in this discussion paper.*

Please see below for recommendations of further reading, references, and Appendix B for the *eChildhood Statement of Research*, confirming the harms of unfettered access to pornography on children and young people.

In closing, when considering the safety of children and young people online, there is no greater cost to our society than that of not protecting our children and future generations from harms that negatively impact their healthy development. Robust digital safeguards are a must.

eChildhood recommends a multi-layer approach to ensure children are safe via Digital Protection Buffers as illustrated in diagram 4, Appendix A. Implementation of Digital Protection Buffers, along with placing greater demands on the industry to take responsibility for its content, as well as social media platforms, children's apps, online games, blogs, and user-created platforms to provide safer designs, would ensure that no matter

where the child is accessing the online environment, they are protected from exposure or access to inappropriate and prohibited content.

Relying on Australian families to ensure that prohibited content is not accessible by their children, leaves 100,000's of children vulnerable, especially considering:

- Not all parents are aware their children have access to prohibited content, so don't install a filter.
- Many are not aware of the potential harms associated with this exposure, so don't understand the potential risk and therefore, don't investigate how to mitigate it.
- Many are unaware of how to effectively use a filter. Some filters require complex set up and technical knowledge to implement effectively, so parents don't try, or are ineffective in attempts.
- The cost of filtering is not always an accessible option for some demographics, leaving already at risk and vulnerable children accessing the internet without filtering; in turn, being placed at higher risk due to exposure to inappropriate and prohibited content.
- Due to the rapid variety of technology platforms, and considering children are no longer just exposed to prohibited content via websites and applications that fall under the filtering software, means that even when a filter is in place, there is still the potential for exposure on other platforms or removal of filtering due to technical know how. The more digital child protection buffers are implemented, the greater chance of effective online safety.
- With more and more businesses and public spaces offering free unfiltered WiFi, children are not only vulnerable at school or home, but when connected in public spaces.
- Mobile devices are most often, not protected, leaving children vulnerable to being exposed by other children or youth in schools, public transport and public spaces.

eChildhood notes that although there is action being taken to improve availability of Family Friendly Filters and a working group has been set up by the government to address the harms (OSCWG), the burden of responsibility continues to be disproportionately placed on parents and children. Considering internet access is now readily available on mobile devices, from businesses, schools, public places and almost every single home, it is not enough to just rely on Family Friendly Filters for those who choose to use them.

Further services to consider when updating legislation include but are not limited to:

- The establishment of a phone hotline for parents by the eSafety Office, to assist in providing technical advice to implement and monitor home filters and device apps.
- Safe accounts (on any digital platform, including mobile devices) automatically offered to under 18's – with default privacy settings, proactive blocking of harmful content and mechanisms to guard against grooming.
- Google Safe Search automatically switched on with the onus on the user to turn it off when Age Verified if they wish to access content deemed only suitable for those over the age of 18.
- Penalties for non-compliance for social media companies who fail to protect children.

Relying on parents and the general public to protect children via filtering is leaving children vulnerable, for all reasons stated throughout our submission. Therefore, we need an updated and 'all encompassing' legislation to implement Digital Child Protection Buffers so that no matter where kids go, access to hardcore pornography and other harmful content is restricted as much as possible.

Further reading

The case for age verification for pornography sites. Carr, J. (2018). Desiderata. Available at: <https://johnc1912.wordpress.com/2018/04/29/the-case-for-age-verification-for-pornography-sites/>.

The End of the Age of Innocence - And The Beginning of Responsible Age Verification. Walters., L. (2018). Walters Law Group. Available at: <https://www.firstamendment.com/innocence/>

References

1. The effects of pornography on children and young people: An evidence scan (2017). Australian Institute of Family Studies, Australian Government. Available from URL: <https://aifs.gov.au/publications/effects-pornography-children-and-young-people>
2. Unicef. FACT SHEET: A summary of the rights under the Convention on the Rights of the Child. Available from URL: https://www.unicef.org/crc/files/Rights_overview.pdf
3. Perrin, P.C., Madanat, H.N., Barnes, M.D., Carolan, A., Clark, R.B., Ivins, N., Tuttle, S.R., Vogeler, H.A., Williams, P.N. (2008) Health education's role in framing pornography as a public health issue: local and national strategies with international implications. *Promot Educ.* 2008;15(1):11-8. DOI: 10.1177/1025382307088093. Available from URL: <https://www.ncbi.nlm.nih.gov/pubmed/18430690>
4. The Porn Harms Kids Report: protecting our kids from online pornography is everyone's business. (2017) Stage 1 Action Plan: 2017 - 2020. Available at: https://www.echildhood.org/report_2017
5. eSafety Complaints and Reporting. Offensive and Illegal Content Complaints. What we can investigate. Available from URL: <https://www.esafety.gov.au/complaints-and-reporting/offensive-and-illegal-content-complaints/what-we-can-investigate>
6. eChildhood news. Crossing Borders - Pornography's mode of travel (2017). Available from URL: https://www.echildhood.org/crossing_borders
7. Digital Economy Act 2017. Available at: <http://www.legislation.gov.uk/ukpga/2017/30/contents/enacted>
8. Monaghan, A., Yoo, DY. (2018). Age Verification for Online Pornography - no silver bullet, but a good start. *London School of Economics*. April 26, 2018. Available at: <http://blogs.lse.ac.uk/mediapolicyproject/2018/04/26/age-verification-for-online-pornography-no-silver-bullet-but-a-good-start/>
9. Communications Alliance - Family Friendly Filters (n.d.) Available from URL: <http://www.commsalliance.com.au/Activities/ispi/fff>
10. Royal Commission into Institutional Responses to Child Sexual Abuse (2017). Final Report: Volume 10, Children with harmful sexual behaviours, p. 66. Available from URL: https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_10_children_with_harmful_sexual_behaviours.pdf
11. The Third Action Plan 2016–2019 of the National Plan to Reduce Violence against Women and their Children 2010–2022, p24: https://www.dss.gov.au/sites/default/files/documents/10_2016/third_action_plan.pdf
12. Communications Alliance - Family Friendly Filters (n.d.) Available from URL: <http://www.commsalliance.com.au/Activities/ispi/fff>
13. Thorn (2018). Available from URL: <https://www.wearethorn.org/>

APPENDIX A

DIAGRAM 4.



Mobile device restrictions: This buffer requires that every mobile phone number is an account in its own right (irrespective of the device or handset into which the SIM is installed). Every account is assumed to belong to a child and therefore access to content on the prohibited URL list is restricted unless and until the account holder completes an age-verification measure. Mobile Network Code of Practice. This buffer is not available in Australia. This measure is best supported through the implementation of legislation.

ISP Level Blocks: This level of buffer can be implemented in 2 main ways. Opt-In block makes provision for individual users to request blocking of harmful websites, including pornography (prohibited content) to be implemented at ISP level. Or Default Block, which makes provision for ‘blanket’ blocking of harmful websites, including pornography (prohibited content) to be implemented at ISP level. Individual users could enact an ‘opt-out’ feature, enabling age-verified users to still access content classified illegal by the classifications scheme. This measure is partially available in Australia with Telstra providing an opt-in block (which occurs a cost for existing users). ISPs would be best supported to implement this measure underpinned by legislation.

Safe Public WiFi: This buffer is to ensure safety standards for venues or precincts offering free public WiFi. Entities may include public libraries and council spaces; chain stores; individual businesses; workplace environments; 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 approval, they receive a ‘stamp of approval’ to be displayed for public consumer confidence. In the UK, this accreditation process is undertaken by an independent accreditor, Digital Friendly WiFi; some organisations have commenced this process in Australia.

APPENDIX B – Statement of Research Relating to Pornography Harms to Children

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. <https://www.echildhood.org/statement>

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 olds 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.