

DUE DILIGENCE OBLIGATION OF A STATE TO CHILDREN HARMED BY PORN: A CRITICAL APPRAISAL

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ABSTRACT

This article looks at the rise of children sexually abusing other children as a result of watching porn on line, and the need for restorative justice measures to be applied in the context of the State's due diligence obligations to protect children from harm.

I INTRODUCTION

36% of Internet content is pornographic, and there has been a recorded rise in the viewing of pornography on line by children. Not only is harmful, violent and degrading sexual images accessible to children¹ on their smartphones, their tablets and computers², many Australian children

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¹ 'How the dark world of pornography is damaging kids' lives forever', News.com.au (online), 13 February 2016

<<http://www.news.com.au/technology/online/how-the-dark-world-of-pornography-is-damaging-kids-lives-forever/news-story/bec519e56373f344adb95c8c2113c8db>>.

² The *Australian Medical Association* has stated that: 'children and young people are being exposed to a vast range [of] pornography, which is readily available on the internet' in their Submissions: Senate Standing Committees on Environment and Communications, Australian Parliament House, *Harm being done to Australian children through access to pornography on the Internet* (2016):

now live in households alongside large-scale pornography users. The result is that children are recklessly being exposed to pornography and even masturbation in the family home, as seen in the case of *Corby & Corby*,³ heard by the Federal Circuit Court of Australia last year.

The law is inconsistent, however, in relation to the protection of children to the exposure to pornography in the private or household sphere,⁴ and Australian institutions do not appear to recognise the abusive nature of these forms of exposure inflicted on children in households, unless they are part of schemes of grooming to facilitate sexual abuse.⁵ Legislative provisions against ‘exposure to indecent materials’ should be strengthened in Australia, and no longer only be subject to the act of ‘grooming’.⁶

The Australian Childhood Foundation⁷ state that over 90% of boys under the age of 16 have visited a pornography site online, and that 93% of males and 62% of females aged 13 to 16 had seen pornography online.⁸

<http://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Online_access_to_porn/Submissions>.

³ *Corby & Corby* (No.2) [2015] FCCA 3213.

⁴ For example, the *Criminal Code 1995* (Qld) criminalises too weakly activities that facilitate children’s exposure to pornography in households.

⁵ In other jurisdictions – such as NSW, i.e., the *Crimes Act 1900* (NSW) s 66EB(3) – criminalises only the pornography exposure that is part of a scheme to acculturate a victim to sexual abuse.

⁶ As in the case of s66EB(3) of the *Crimes Act 1900* (NSW) and s226(1) and (2)(d) of the *Criminal Code 1995* (Qld).

⁷ The Australian Childhood Foundation, <<http://www.childhood.org.au/>>.

⁸ M Fleming et al, ‘*Safety in Cyberspace: Adolescents’ Safety and Exposure Online*’ (2006) 38 *Youth and Society*, 135-154.

Professor Freda Briggs revealed that during interviews with more than 700 children for an Australian Research Council study, young boys⁹ between the ages of six and eight admitted that they and their dads watched pornography together for ‘fun’ because ‘that’s what guys do.’¹⁰

Consequently, there has also been a reported rise in children sexually abusing other children¹¹ as a result of ‘acting out’ the images that they see on porn sites.¹²

One little boy’s behavior has become so over sexualised, he has to be chaperoned at all times because of the risk that he may start playing “sex

⁹ *Love and Sex in an Age of Pornography* (Directed by Crabbe and Corlett, 2013): in their ground-breaking Australian research show clearly that young men actually believe that what they are watching provides real templates for sexual activity.

¹⁰ ‘Professor Freda Briggs tackled the systemic problem of child sexual abuse’, *The Sydney Morning Herald* (online), 12 June 2016 <<http://www.smh.com.au/comment/obituaries/professor-freda-briggs-tackled-the-systemic-problem-of-child-sexual-abuse-20160609-gpfz92.html>>.

¹¹ Lorna Knowles and Alison McClymont, ‘Rise in Number of Preschoolers Sexually Abusing Peers, University of South Australia Expert Says’, *ABC* (online), 31 Jul 2014

<<http://www.abc.net.au/news/2014-04-30/rise-in-number-of-pre-schoolers-sexually-abusing-peers:-expert/5419214>>.

¹² A submission from Children's eSafety Commissioner Alastair MacGibbon notes: ‘The proliferation of smartphones, tablets and devices [has] changed the amount and ease of access to sexually explicit content’ in Senate Standing Committees on Environment and Communications, Australian Parliament House, *Harm being done to Australian children through access to pornography on the Internet* (2016) <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Online_access_to_porn/Submissions>.

games” with other children. The reason? His young mind viewed online pornography, and now - he simulates oral and anal sex at play time.¹³

Professor Briggs’ Submission,¹⁴ tabled in the Senate,¹⁵ 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.¹⁶ 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’.¹⁷

¹³ Mamamia (29 February 2016) <<http://www.mamamia.com.au/porn-and-young-children/>>.

¹⁴ The Senate's environment and communications committee is to report its findings in the inquiry into Harm being done to Australian children through access to pornography on the Internet# by 1 December 2016.

¹⁵ Senate Standing Committees on Environment and Communications, Australian Parliament House, *Harm being done to Australian children through access to pornography on the Internet* (2016) <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Online_access_to_porn/Submissions>.

¹⁶ ‘Porn turning kids into predators’, *The Australian* (online), 2016 <http://www.theaustralian.com.au/subscribe/news/1/index.html?sourceCode=TAWEB_WRE170_a&mode=premium&dest=http://www.theaustralian.com.au/national-affairs/education/porn-turning-kids-into-predators/news-story/7f665119f267490ab3c2595bd329e9b1&mimetype=anonymous>.

¹⁷ Senate Standing Committees on Environment and Communications, Australian Parliament House, *Harm being done to Australian children through access to pornography on the Internet* 2016 <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Online_access_to_porn/Submissions>.

In January this year, the prestigious Trinity Grammar School¹⁸ made headlines when a six-year-old boy was removed from the school following a series of ‘sexualized’ incidences where boys were getting naked and performing sex acts on each other in the school toilets and playground.¹⁹

The number of children sexually abusing other children has risen steeply, with treatment services such as the Royal Children’s Hospital Gatehouse reporting that pornography and family violence are fuelling the trend, and saw 350 new cases in the past financial year – more than double the previous year. Of those children, 60% were abusing a sibling. The seriousness of the sexual acts have also escalated in recent years, as online pornography is being used as a ‘technical manual’ for abuse.

¹⁸ Although the viewing of pornography, and the assault and abuse of children takes place at their schools with children as the perpetrators, some parents have specifically been asked not to report child sexual abuse to police to protect “the good name of the school, recognising that abuse by a child can be as traumatic for victims as abuse by adults –Emeritus Professor Freda Briggs AO, Foundation Chair of Child Development, University of South Australia, Magill Campus 5072, Submission for the Inquiry into the harm being done to Australian children through access to pornography on the internet: <file:///D:/Downloads/sub02.pdf>.

¹⁹ Nelson Groom, ‘Six-year-old boy removed from prestigious private school after Year One pupils were found to be “getting naked and performing sex acts on each other”’, *Daily Mail Australia*, 16 January 2016 <<http://www.dailymail.co.uk/news/article-3401279/Group-Year-One-Students-public-school-Sydney-caught-performing-sex-acts-other.html>>.

II WHAT IS THE HARM TO CHILDREN ACCESSING PORN ONLINE?

Researchers confirmed that the age of the offender does not determine the degree of harm caused to victims. Abuse by a school peer or sibling can be just as frightening and harmful as abuse by an adult.²⁰

A growing body of research demonstrates the harmful impact of pornography on children and young people's attitudes and beliefs, sexual behaviour, sexual aggression, self-concept and body image, social development, and brain development²¹, and there is sufficient evidence to indicate that children's exposure to pornography can adversely affect their developmental capacity to form trusted, reciprocal relationships with others.

Anxiety, fear, and suicidal ideas and behaviour have also been associated with a history of childhood sexual abuse, and male victims of child sexual abuse show disturbed adult sexual functioning²², and there is evidence that compulsive viewing of pornography, particularly in adolescents, changes the brain chemistry – that pornography affects the brain in much the same way as drugs. Watching porn can become addictive.

²⁰ Submission for the Inquiry into the *Harm being done to Australian children through access to pornography on the internet*, Emeritus Professor Freda Briggs AO, Foundation Chair of Child Development, University of South Australia, Magill Campus 5072, Submission for the Inquiry into the harm being done to Australian children through access to pornography on the internet: <file:///D:/Downloads/sub02.pdf>.

²¹ Eric Owens et al, 'The Impact of Internet Pornography on Adolescents: A Review of the Research (2012) 19 *Sexual Addiction and Compulsivity* 19.

²² Joseph Beitchman, 'A review of the long-term effects of child sexual abuse' (1992) 16 *Child Abuse & Neglect* 1, 101–118.

The Royal Australian and New Zealand College of Psychiatrists has revealed that children and adolescents who are exposed to porn can ‘exhibit inappropriate and distorted behaviour’, and that ‘anecdotally, exposure to pornography is an element of some presentations at child and adolescent mental health services’.²³

Cyber-safety expert and former police officer Susan McLean²⁴ has told the Porn Harms Kids Sydney Symposium in February this year that ‘the results of early exposure and engagement [of porn] can vary from bed-wetting to triggers for child-on-child sexual assaults, which are on the rise’.²⁵

Jason Huxley²⁶ travels the country teaching people about the effects of pornography, as a recovered addict himself. He recently stated in a government submission: ‘We repeatedly see that porn viewing during childhood changes behaviour and perspectives of normality, ultimately leading to addiction and/or harmful habits in adulthood’.²⁷

²³ Senate Standing Committees on Environment and Communications, Australian Parliament House, *Harm being done to Australian children through access to pornography on the Internet* 2016 <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Online_access_to_porn/Submissions>.

²⁴ <<http://www.cybersafetysolutions.com.au/more-about-susan.shtml>>.

²⁵ Susan McLean, (Speech delivered at the Porn Harms Kids Sydney Symposium, Sydney, February 2016).

²⁶ Founder and Director of Guilty Pleasures <<http://guiltypleasure.org/>>.

²⁷ Senate Standing Committees on Environment and Communications, Australian Parliament House, *Guilty Pleasures Submission* 2016 <<file:///C:/Documents%20and%20Settings/John/My%20Documents/Downloads/sub107.pdf>>.

Pornography changes children's attitudes toward women and sex. According to Paolucci and others in *A Meta-Analysis of the Published Research on the Effects of Pornography*, they state that there is: '...clear evidence confirming the link between increased risk for negative development when exposed to pornography. These results suggest that the research in this area can move beyond the question of whether pornography has an influence on violence and family functioning', and that

exposure to pornography is one important factor which contributes directly to the development of sexually dysfunctional attitudes and behaviours. The results are clear and consistent; exposure to pornographic material puts one at increased risk of developing sexually deviant tendencies, committing sexual offences, experiencing difficulties in one's intimate relationships, and accepting the rape myth.²⁸

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

[p]ornography in itself glamorizes the degradation and maltreatment of women, and asserts their subordinate function as mere receptacles for male lust, ... causes more violence against women ... significantly increases attitudinal measures known to correlate with rape and self-reports of aggressive acts – measures such as hostility towards women, propensity to rape, condoning rape, and predicting that one would rape or force sex on a woman if one knew one would not get caught.²⁹

²⁸ Elizabeth Oddone Paolucci, Mark Genius and Claudio Violato, 'A Meta-Analysis of Published Research on the Effects of Pornography' 1997 *ResearchGate*.

²⁹ Radhika Coomaraswamy, United Nations Special Rapporteur on violence against women, its causes and consequences, Report 50 Session, Agenda Item 11(a).

The Australian Federal Police have identified children's exposure to inappropriate content and sexually explicit material, including pornography, as a critical challenge of the digital age,³⁰ and the Victorian Police report that the number of young child sex offenders has increased and victims are getting younger and younger,³¹ and children as young as three and four were referred for treatment for sexual aggression.³²

Victoria Police warned that adolescent access to child porn was a growing problem that had become 'a premier threat to child protection in the community'. By 2008 there were more adolescent sex offenders reported than adults.³³

The rate of children viewing pornography, and acting what they see out in harmful ways is on the rise, and is deeply affecting not only its victims, but also the perpetrators by setting them up on a trajectory of unhealthy and abusive sexual behaviour and assault. Parents are not sure how to respond, and Schools seems to be sweeping these incidences under the carpet, for fear of litigation, and a bad reputation.

³⁰ Australian Federal Police, 'ThinkUKnow' (Media Release, Corporate Report 2015).

³¹ All members of America's paedophile club NAMBLA (advertised on the internet) who were interviewed for their YouTube clip said they were sexually abusing younger boys from the age of eight.

³² Emeritus Professor Freda Briggs AO, Foundation Chair of Child Development, University of South Australia, Magill Campus 5072 <file:///D:/Downloads/sub02.pdf>.

³³ C Crawford and G Wilkinson, 'Teenagers are becoming major makers of child pornography in Victoria, new statistics show' *Herald Sun* (online), 2 July 2008.

Because of a lack of capacity of a child recognised under criminal law, and the required criminal element of mens rea³⁴ in any conviction, the actions of the child perpetrator are at the moment being ignored as ‘normal childhood developmental sexual experimentation’, which has a risk of being normalised in the child’s minds. This may lead to the perpetrator child reoffending into their adolescence and adulthood – given a lack of action to deter, condemn or discuss their harmful behaviour at the time of the incident.

The State is not intervening, and children are not being held accountable for their actions. So, what should the State be doing? What can wider society do?

III CURRENT LEGAL PROTECTIONS

The existing regulation of pornography is governed by the Broadcasting Act 1992 (Cth).³⁵ A range of material is deemed prohibited content under the Act,³⁶ and for a website to be deemed as ‘prohibited content’, a number of conditions must be met. Media is regulated in Australia by the

³⁴ Division 7 of the *Criminal Code 1995* (Cth) deals with Circumstances involving lack of capacity, stating in 7.1 that: ‘a child under 10 years old is not criminally responsible for an offence’, and at 7.2 that ‘a child aged 10 years or more but under 14 years old can only be criminally responsible for an offence if the child knows that his or her conduct is wrong’. The question whether a child knows that his or her conduct is wrong is one of fact. The burden of proving this is on the prosecution.

³⁵ *Broadcasting Services Act 1992* (Cth) sch 7 pt 1.

³⁶ Including content that is: i, classified as MA15+ if commercially available (i.e., for a fee) but not behind an age restriction scheme ii, classified as R18+ content if it is not behind an age restriction scheme iii, classified as X18+ and iv. classified as RC.

Classification Board, and explicit material is classified into ratings categories.³⁷

For a website to be classified as ‘prohibited content’, the website must be hosted in Australia, and a complaint must be lodged with the Australian Communications and Media Authority (ACMA) – the ACMA must then refer the website to the Classification Board for formal classification. Once it is deemed as prohibited content by the classification board, ACMA is then able to issue the website owner with a takedown notice and direct the content provider to remove or restrict access to the content.

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

Overseas hosted ‘prohibited content’ is therefore accessible unless a third party filter is installed. Additionally, the Australian Federal Police now compel ISPs, in accordance with their obligations under the Telecommunications Act 1997, to block websites featuring child pornography and abuse, using a blacklist maintained by Interpol.

Those attempting to access a blocked URL see a page giving information on why it was blocked. The blacklist only includes websites featuring

³⁷ Eros Parliamentary Information Guide, *Censorship, Public Opinion and Adult Retailing* in *Australia* <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/censorshipebrief>.

content considered by Interpol to be ‘severe’, and the Interpol list only targets pornography involving children under the age of 13.³⁸

A large part of overseas-hosted pornography does not require age verification, which leaves Australian children potentially exposed to overseas hosted hard-core pornography, except where a filtering application is installed on a device or network. The current regulatory framework, therefore, leaves the majority of children in Australia exposed to material that is harmful to them.

Child Exploitation Material is currently blocked at ISP level under the Telecommunications Act 1997. Content that is Refused Classification (RC) or classified X 18+ is prohibited, so children accessing explicit adult content: RC content - may be reported to the eSafety Commissioner.³⁹

IV WHY AUSTRALIA SHOULD INTRODUCE A NATIONAL CLEAN-FEED ISP STANDARD

The UK introduced⁴⁰ clean-feed internet by default last year, and it is a model that Australia should replicate. The Online Safety Bill [HL] 2016-

³⁸ Criteria for Inclusion in the Worst of List, Interpol <<http://www.interpol.int/Crime-areas/Crimes-againstchildren/Access-blocking/Criteria-for-inclusion-in-the-Worst-of-list>>.

³⁹ eSafety Commissioner Complaints and Reporting Page <<https://www.esafety.gov.au/complaints-and-reporting/offensive-and-illegal-content-complaints/i-want-to-report-offensive-or-illegal-content>>.

⁴⁰ In July 2013 David Cameron announced voluntary agreement with major ISPs to implement a ‘default-on’ filter. A quote from his speech:

a free and open internet is vital. But in no other market and with no other industry do we have such an extraordinarily light touch when it comes to

17⁴¹ promotes online safety, and requires internet service providers and mobile phone operators to provide an internet service that excludes adult-only content; requires information to be provided about online safety by internet service providers and mobile phone operators; makes provision for parents to be educated about online safety; makes provision for the regulation of harmful material through on-demand program services; and introduces licensing of pornographic services, for connected purposes.⁴²

This should be Australia's standard – ISPs should provide a default option of a pre-filtered service to block pornography and other sites harmful to children, and require provable age verification for all pornography websites.

The ISP filter should be by default, where adults who wish to view adult material on their PC's, Tablets or smart-phones can opt-out of the Nation-wide standards of clean feed internet provided to all Australians – with the objective of protecting children.

These measures would be consistent with international best practice in the best interest of the child, as held in the Convention on the Rights of the Child.⁴³

protecting our children. Children can't go into the shops or the cinema and buy things meant for adults or have adult experiences; we rightly regulate to protect them. But when it comes to the internet, in the balance between freedom and responsibility we've neglected our responsibility to children.

⁴¹ *Online Safety Bill 2016-17* (UK), [House of Lords] <<http://services.parliament.uk/bills/2016-17/onlinesafety.html>>.

⁴² Summary of the *Online Safety Bill 2016-17* (UK), [House of Lords] <<http://services.parliament.uk/bills/2016-17/onlinesafety.html>>.

⁴³ *Convention on the Rights of the Child*, art 3, 13, 17–19, 27, 34, 36.

V AUSTRALIA'S DUE DILIGENCE OBLIGATION TO PROTECT CHILDREN FROM ALL HARM UNDER INTERNATIONAL LAW

Following the rule of customary international law that obliges States to prevent and respond to acts of violence against women with due diligence,⁴⁴ 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*,⁴⁵ as well as Commentary of the CEDAW Committee conclude that a state can be found complicit in human rights abuses perpetuated by non-State actors.⁴⁶ In the landmark cases of *Bevacqua and S. v Bulgaria*⁴⁷ and *Opuz v Turkey*,⁴⁸ both cases held national governments responsible for failing to exercise due diligence to adequately protect individuals from domestic violence,

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.

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.⁴⁹

The foundation for State responsibility was established in the case of *Velasquez Rodriguez v Honduras*,⁵⁰ 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.⁵¹

The ruling in *M.C. v Bulgaria*⁵² 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'.⁵³

Within the context of the international principle of the best interest of the child⁵⁴, 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,

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>>.

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.⁵⁵

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. There is therefore a strong argument to be made for the application of a Nation-wide opt-out Clean feed Internet Service Provision to all homes, tablets, smartphones and other devices that have the potential to host harmful material online which can be viewed by children.

VI RESTORATIVE JUSTICE - A POTENTIAL WAY FORWARD

Of course, children harming other children do not meet the criminal threshold required for criminal liability through the requirement of mens rea and actus reus – given their lack of capacity.⁵⁶ Their actions have to be acknowledged as wrong nonetheless - and rehabilitation programs

⁵⁵ *Convention on the Rights of the Child*, art 19.

⁵⁶ *Criminal Code 1995 (Cth) 1995*, div 7: deals with Circumstances involving lack of capacity, stating at 7.1 that: 'a child under 10 years old is not criminally responsible for an offence', and at 7.2 that 'a child aged 10 years or more but under 14 years old can only be criminally responsible for an offence if the child knows that his or her conduct is wrong'. The question whether a child knows that his or her conduct is wrong is one of fact. The burden of proving this is on the prosecution.

through education for both the child victim and the child perpetrator should be provided in all instances.

Even though rape and sexual assault are known to have one of the lowest conviction rates among all of the criminal justice matters, the use of restorative justice is a positive way forward for both child victim and perpetrator. The benefits of the use of restorative justice have been laid out in various academic studies in the criminal justice system – particular in its use with young offenders.

A 2015 study by the University of Bedfordshire consisting of a web-based survey of 121 community members, 40 of whom identified themselves as survivors of sexual violence, indicated that both survivors and non-survivors of sexual violence express positive attitudes towards the use of restorative justice in these cases.⁵⁷

Restorative justice is known to have a general deterrent impact on crime, and is instrumental in developing ‘restorative communities’, particularly amongst communities that are fractured by high rates of crime,⁵⁸ it substantially reduces repeat offending for some offenders, and reduces recidivism more than prison.⁵⁹

⁵⁷ Francesca Marsh and Nadia M. Wager, ‘Restorative Justice in Cases of Sexual Violence: Exploring the views of the public and survivors’ (2015) *Probation Journal*

<https://www.academia.edu/12276208/Restorative_Justice_in_Cases_of_Sexual_Violence_Exploring_the_views_of_the_public_and_survivors>.

⁵⁸ Ibid.

⁵⁹ The Smith Institute, *Restorative justice: The Evidence*
<<http://hdl.handle.net/10149/600940>>.

The restorative justice process permits the victim to tell their story, which is so often desired by survivors,⁶⁰ and the process of restorative justice is more likely to encourage admissions of guilt by the perpetrator.

Where restorative justice is used as an adjunct, it has been suggested that the process will address survivors' needs that are left unmet by, or go some way to ameliorate the harm done by the secondary victimisation arising from engagement with the adversarial system.⁶¹

VII FINAL CONSIDERATIONS

The Australian Government needs to consider a restorative justice model of reconciliation and accountability for children's actions when sexually abusing other children. In doing so, the child perpetrator will understand the social norm that this behaviour is harmful, and not acceptable in our society. Within the restorative justice process, the child should face their victim to say sorry, and the perpetrator should be encouraged to engage in community service of some sort at their school or local community centre under guardian or parental supervision as an acknowledgment for their wrong actions. I am not supporting the idea that children obtain a criminal record for these acts, but only to acknowledge the wrong they have done, and apologise to their victim.

If we don't do something fast, we will have a generation of young people who are deeply affected and traumatised by their exposure not only to harmful images online, but victims also to experiencing these abuses first hand. Indeed, Liz Walker,⁶² sex educator with YouthWellbeing Project, states that the lack of action by governing bodies and ISPs to respond to

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Liz Walker, Youth Wellbeing Project
<<http://www.youthwellbeingproject.com.au/>>.

children accessing adult pornography draws parallels to the once ignored but ‘now important’ Royal Commission into Institutional Responses to Child Sexual Abuse. The reports of children negatively impacted by pornography flood in, yet its harms are often overlooked and underplayed. Children are exploiting other children and childhood sexual exploitation has reached new peaks and without targeted strategies, this trend is unlikely to reverse.

So what are the responses our community can have to the rise of this abhorrent abuse of children?

Firstly, the Commonwealth Government needs to legislate a universal, by-default, ISP-level ‘clean-feed’ internet regime, filtering out adult content and thereby protecting children from harmful exposure, for both fixed line and mobile services. Provision should be made for adult customers to opt out of the ‘clean-feed’ on request to their ISP or mobile provider, using an age verification process.

Secondly, the ACMA should conduct an annual review of ‘clean-feed’ services being provided by ISPs and mobile operators, and publish the result of the review, along with recommendations – in the best interest of the child, under the State’s obligation to protect children from harm and provide mechanisms to prevent such harm. Legislative provisions against ‘exposure to indecent materials’ should also be strengthened in Australia, and no longer only be subject to the act of ‘grooming’.

And thirdly, restorative justice responses need to be set up for the victim and perpetrator children who have engaged in, or experienced harmful, abusive, sexual abuse or misconduct by other children, followed up by a thorough education program around healthy sexuality, healthy relationships and the harms of abusive behaviour.

Let us do all we can to protect our most innocent.