



**Human Rights and Equal
Opportunity Commission**
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Submission of the

**HUMAN RIGHTS AND EQUAL OPPORTUNITY
COMMISSION**

to the

**SENATE STANDING COMMITTEE ON
ENVIRONMENT, COMMUNICATIONS AND THE
ARTS**

on the

**INQUIRY INTO THE SEXUALISATION OF
CHILDREN IN THE CONTEMPORARY MEDIA
ENVIRONMENT**

18 April 2008

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A. Introduction

1. The Human Rights and Equal Opportunity Commission (HREOC) welcomes the opportunity to make this submission to the Senate Standing Committee on Environment, Communications and the Arts (the Senate Committee) inquiry into the sexualisation of children in the media environment (Inquiry).
2. HREOC is established by the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) (HREOC Act). HREOC is Australia's National Human Rights Institution.
3. HREOC's functions are set out in section 11 of the HREOC Act and include promoting an understanding and acceptance, and the public discussion, of 'human rights' in Australia.
4. 'Human rights' are defined for the purpose of the HREOC Act to include the rights and freedoms set out in the Convention on the Rights of the Child (CRC).
5. The HREOC Act gives HREOC the power to:
 - a. make recommendations for the implementation of the CRC; and
 - b. promote public understanding of children's rights in Australia.

B. Recommendations

6. HREOC recommends that:
 - a. a child rights-based approach is adopted by the Senate Committee in conducting its Inquiry;
 - b. any strategies for addressing the sexualisation of children in the media take into account the evolving capacities of children;
 - c. any regulatory strategies to address the sexualisation of children in the media do not go further than the requirements set out in article 13(2) of the CRC;

- d. any strategies to address the sexualisation of children in the media are guided by the provisions of articles 17 and 29 of the CRC;
- e. the Senate Committee encourages the development of appropriate guidelines to protect the child from information that is injurious to his or her wellbeing;
- f. the development of any strategies to address the sexualisation of children in the media is based on a definition that seeks to prevent the sexual abuse or other exploitation of children; and
- g. the Senate Committee endorse strategies that use a child rights-based approach for addressing the sexualisation of children.

C. The Convention on the Rights of the Child

- 7. All human rights apply to children and young people. The CRC is the specific human rights instrument that applies to children and young people under the age of 18 years.
- 8. Australia ratified the CRC in December 1990.
- 9. The CRC incorporates all human rights - civil, political, economic, social and cultural - and sets out the specific ways these rights should be ensured for children and young people.
- 10. The CRC recognises that the degree to which children can exercise these rights independently is influenced by their evolving maturity. It also emphasises the rights and responsibilities of parents where applicable.
- 11. The Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (Optional Protocol) was adopted by the United Nations General Assembly in 2000.
- 12. Australia ratified the Optional Protocol in 2007. The Optional Protocol elaborates on the definition of pornographic material which is relevant to the Inquiry.

D. The Child Rights Committee

13. The United Nations Committee on the Rights of the Child (the Child Rights Committee) monitors the implementation of the CRC. The Child Rights Committee also encourages a child's rights perspective in policy making.¹
14. In 1996, the Child Rights Committee's day of general discussion (1996 Discussion) focussed on children and the media. The purpose of the annual days of general discussion is to promote a deeper understanding of specific articles or topics in the CRC.
15. The 1996 Discussion centred on the following three topics:²
 - a. child participation in the media;
 - b. protection of the child against harmful influences through the media; and
 - c. respect for the integrity of the child in media reporting.
16. The participants at the 1996 Discussion used the articles of the CRC as a framework for developing strategies to address the complex and challenging issues raised by these topics.
17. The Child Rights Committee's 1995 general day of discussion (1995 Discussion) focussed on the girl child. The report of the 1995 Discussion stated that the exploitative images of girls in the media and advertising contributed to the perpetuation of inequality and inferiority.³

E. The child rights-based approach

18. A child rights-based approach is based on the human rights obligations set out in the CRC. A child rights-based approach recognises children and young people as capable of holding rights. A child rights-based approach requires that all human rights in the CRC be treated as indivisible, interdependent and interrelated.

¹ Committee on the Rights of the Child, *General Comment No. 5* (2003), UN Doc CRC/GC/2003/5.

² Committee on the Rights of the Child, *Report of the Thirteenth Session* (1996), UN Doc CRC/C/57, para 245

³ Committee on the Rights of the Child, *Report on the Eighth Session* (1995), UN Doc CRC/C/38, para 291

19. Although all human rights in the CRC inform a child rights-based approach, some specific rights are more relevant in certain situations. This enables different rights to be considered and balanced according to the situation.
20. For example, a child rights-based approach enables the rights of children to access and participate in media to be balanced with the need for children to be protected from the media exploitation or the media's harmful influence. The specific rights relevant to this Inquiry are set out below at section G.
21. HREOC recommends that a child rights-based approach is adopted by the Senate Committee in conducting its Inquiry. **[Recommendation no. 1]**

F. The definition of 'children'

22. The CRC uses the term child to include children and young people from birth to 18 years of age. The Inquiry's terms of reference do not define 'children' in terms of an age bracket.
23. In this submission the terms child, children, adolescent and young people are used to describe people under the age of 18 years.
24. Further, the recommendations in this submission account for a definition of children that covers children and young people in the age bracket of 0 to 18. It is appropriate and inevitable that different strategies should be adopted for infants, young children and adolescents in determining policy.
25. The human rights set out in the CRC concerning children and the media allow for this flexibility.
26. Article 5 of the CRC contemplates that parental and community guidance is required to assist children in the exercise of human rights. Under article 5, this guidance is to be provided consistent with the evolving capacities of the child. As children mature less guidance is required.
27. HREOC recommends that any strategies for addressing the sexualisation of children in the media take into account the evolving capacities of children.
[Recommendation no. 2]

G. Australia's human rights obligations regarding the sexualisation of children in the media environment

28. The CRC sets out several human rights obligations that are specifically relevant to the issue of sexualisation of children in the media environment.
29. The recommendations made by the Child Rights Committee help to interpret those obligations.
30. The obligations set out in the CRC and the recommendations of the Child Rights Committee establish the following general principles:
 - a. the 'best interests' of the child must be a primary consideration in all actions concerning the child (article 3, CRC);
 - b. children capable of forming views can express those views freely (article 12, CRC);
 - c. children have the freedom to seek, receive and impart information in any media (article 13(1), CRC);
 - d. children should have access to information from diverse sources, especially those aimed at promoting social, spiritual, moral well-being, and physical and mental health (article 17, CRC);
 - e. the education of children should include promoting the equality of sexes and respect for all racial groups (article 29(d), CRC);
 - f. children are to be protected from all forms of sexual exploitation and sexual abuse (article 34, CRC);
 - g. children are to be protected from all other forms of exploitation that is prejudicial to a child's welfare (article 36, CRC); and
 - h. the media has a role to play in upholding the CRC (article 42, CRC).
31. The CRC envisages that some restrictions on these general principles may be necessary.

32. The right of the child to seek, receive and impart information in any media can be restricted by law under article 13(2) of the CRC in order to:
 - a. respect the rights of others; or
 - b. protect national security, public order, public health or morals.
33. HREOC recommends that any regulatory strategies to address the sexualisation of children in the media do not go further than the requirements set out in article 13(2) of the CRC. **[Recommendation no. 3]**
34. The CRC also envisages the important educative role of the media and that governments have a role in:
 - a. encouraging the media to disseminate information that is of social and cultural benefit to children especially in promoting equality of the sexes and respect for all racial groups (article 17(a) and 29(d), CRC); and
 - b. developing appropriate guidelines to protect the child from information that is injurious to his or her wellbeing (article 17(e), CRC).
35. HREOC recommends that any strategies to address the sexualisation of children in the media are guided by the provisions of articles 17 and 29 of the CRC. **[Recommendation no. 4]**
36. HREOC recommends that the government develop appropriate guidelines to protect the child from information that is injurious to his or her wellbeing. **[Recommendation no. 5]**

H. The definition of ‘premature sexualisation’

37. The Inquiry’s terms of reference do not define the term ‘premature sexualisation’.
38. The CRC does not discuss measures to prevent the ‘premature sexualisation’ of children, nor does it define sexualisation of children. The CRC does, however, discuss measures to prevent sexual abuse and other forms of exploitation of children.

39. Where the sexualisation of children involves exploitation or abuse, it is a breach of human rights.
40. Under article 34(a) of the CRC, countries must take appropriate measures to prevent the 'exploitative use of children in pornographic performances and materials'. The CRC does not define what the exploitative use of children in pornographic performances and materials entails.
41. Under article 2 of the Optional Protocol, the definition of child pornography is 'any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child, the dominant characteristic of which is depiction for a sexual purpose'.
42. Exploitative child pornography is an example of extreme sexualisation of children in the media and must be prevented. Exploitative or abusive sexualised images of children in press and other media are other examples. Governments have a responsibility to address this form of extreme child exploitation.
43. However, where there is no exploitation or abuse, it is important to respect the rights of the child to freedom of expression and participation in the media. An example might be adolescent modelling work for the purposes of advertising. Assuming the modelling work is consensual, it is unlikely to be child exploitation or abuse.
44. Children and adolescents may express themselves in ways that may be sexualised by others. Children and adolescents should not be penalised by having their human rights restrained because of the actions of others.
45. HREOC recommends that the development of any strategies to address the sexualisation of children in the media is based on a definition that seeks to prevent the sexual abuse or other exploitation of children. **[Recommendation no. 6]**

I. Strategies for addressing the sexualisation of children in the media environment

46. In the report of 1996 Discussion several strategies for addressing the issue of children and the media were identified.⁴ Some strategies that are relevant to the Inquiry include:
- a. educative programs that aimed to build children's awareness of how to handle media issues;
 - b. the need to protect and preserve cultural diversity and avoid cultural stereotypes;
 - c. the need for media professionals to draft or to amend guidelines for media in the light of the CRC;
 - d. countries to develop hotlines where internet users could transmit information on existing harmful sites; and
 - e. the need to share responsibility for screening materials between the industry, parents, teachers and children.
47. Following the 1996 Discussion, the Child Rights Committee made the following recommendations:⁵
- a. media literacy for children should be encouraged; and
 - b. specific guidelines for media reporting of child abuse should be created.
48. Those recommendations were advanced by UNICEF and others by:
- a. establishing an International Clearinghouse on Children, Youth and Media (the Clearinghouse). The Clearinghouse collects and prepares research on children, youth and media in a rights based framework. The website of the Clearinghouse is <http://www.nordicom.gu.se/clearinghouse.php>; and

⁴ Committee on the Rights of the Child, *Report of the Thirteenth Session (1996)*, UN Doc CRC/C/57, paras 253 - 255

⁵ Committee on the Rights of the Child, *Report of the Fifteenth Session (1997)*, UN Doc CRC/C/66, Annex IV

- b. the creation of the Children's Rights and Media guidelines adopted by the International Federation of Journalists. The guidelines include avoiding the use of sexualised images of children in reporting.
- 49. Guidelines, self-regulation or codes of conduct by various players could be promoted by the government as strategies to prevent the sexual abuse or exploitation of children in the media environment.
- 50. Education programs for children and others that aim to support the rights of children in the media environment could also be promoted by government.
- 51. HREOC recommends that the Senate Committee endorse strategies for addressing the sexualisation of children in the media that use a child rights-based framework. **[Recommendation no. 7]**