ATTORNEY GENERAL; MINISTER FOR COMMERCE

Our Ref: 44-11393

Ms Lisa Baker MLA
Chair
Joint Standing Committee on the Commissioner for Children and Young People
Parliament House
PERTH WA 6000

Dear Ms Baker

JOINT STANDING COMMITTEE ON THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE REPORT NO 3 – SEXUALISATION OF CHILDREN

Please find below the Government's response to the 14 proposals put forward in the Joint Standing Committee on the Commissioner for Children and Young People's *Report on the Sexualisation of Children* (the 'Report').

Proposal 1: Longitudinal research of the views of children and young people

The Government recognises the importance of such longitudinal research to better inform policy decisions related to addressing the issue of the sexualisation of children and acknowledges the extensive work on this matter which has been completed to date by the Office of the Commissioner for Children and Young People and the Department for Local Government and Communities.

The Government will consider options for building on the research and analysis which has been completed on this matter to date.

Proposal 2: Parent education

The Government notes that it already currently provides universal parenting services to families with children pre-birth to 18 years through 'Parenting WA'. Parenting WA is a service which includes a 24/7 telephone line, parenting courses, topical workshops, consultations and information.

There are also three Parenting WA Guides of particular relevance which have been made available on the Department of Local Government and Communities website and through the Parenting WA Line and Coordinators. The guides are:

- Sexualisation of children and young people in the media
- Cyber safety
- Playing it safe – children and electronic games

In addition Parenting WA staff have been specifically trained and equipped with information and resources to raise awareness of the issues associated with the sexualisation of children and internet safety, and to respond to the concerns and questions of parents and caregivers on what they can do to safeguard the wellbeing of their children.

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Proposal 3: Cyber safety education strategies

The Government does not favour a mandatory audit that schools would be required to implement and resource, as it is important that schools are able to make local decisions about how their resources are deployed to best meet the educational needs of their students and local community.

However, the Government recognises the importance of cyber safety education and supports the development of a practical self-audit tool to assist schools in assessing their cyber safety education needs in consultation with the school community. As noted in the response to Proposal 2, there is a range of existing resources that are useful in promoting cyber safety education.

Proposal 4: Australian curriculum – health and physical education

The Government agrees that the inclusion of broad sexual and health education in the Health and Physical Education curriculum has merit. The Government will continue to ensure teachers are provided with access to appropriate professional learning supports, including 'Teacher Development Schools' and online classroom resources, to support them regarding the curriculum.

The Government has also funded the development of the Sexuality and Relationships Education (SRE) program, which covers topics such as communication in relationships, social media, sexting, self-esteem, gender diversity, bullying and resilience, as well as teen pregnancies and safe sex. This program will be offered through the School of Education at Curtin University to provide WA teachers with a range of innovative and interactive teaching strategies, and enhance their skills in teaching students about sexuality and relationships.

Proposal 5: Amendments to the Classification (Publications, Films and Computer Games) Enforcement Act 1996 (WA)

In July 2011 at the then Standing Committee of Attorneys General, Ministers agreed to introduce an R18+ category for computer games. Accordingly, all jurisdictions amended their enforcement legislation to provide for the introduction of R18+ computer games.

The agreed amendments to the *Classification (Publications, Films and Computer Games) Enforcement Act 1996* (the 'WA Enforcement Act') came into effect on 1 January 2013. The amendments, among other things, make it an offence for a person to –

- demonstrate an R18+ computer game in a public place; and
- sell or supply an R18+ computer game to a minor unless the person is the parent or guardian of the minor.

These provisions pertaining to R18+ computer games are similar to those which apply to R18+ films. Section 79 of the WA Enforcement Act makes it an offence for a person to sell or supply an R18+ film to a minor unless that person is the parent or guardian of the minor. Similarly, section 65D(1) of the WA Enforcement Act also makes it an offence for a person to sell or supply a Category 1 publication to a minor unless the person is the parent or guardian of the minor.

The Government is of the view that it is proper for parents to determine if they wish to allow their children to view certain adult material. The WA Enforcement Act, which has the support of WA Police, is consistent with legislation in all Australian jurisdictions. In the light of the mechanisms already in place, the Government does not intend to amend the WA Enforcement Act as set out in Proposal 5.

Proposal 6: Development of a national classification system for publications

The National Cooperative Classification Scheme (NCCS) for publications, films and computer games is implemented through the Commonwealth *Classification (Publications, Films and Computer Games) Act 1995* (Clth) (the Commonwealth Act') and complementary State and Territory enforcement legislation. The NCCS is underpinned by the Intergovernmental Agreement on Censorship, which provides that all ministers must consider and approve any proposed amendments to the National Classification Code or Guidelines.

Sections 13A and 20 of the Commonwealth Act relate to conditions and consumer advice in regard to unrestricted publications.

Pursuant to section 13A(1) of the Commonwealth Act, the Classification Board may, if it classifies a publication Unrestricted, impose a condition that it not be sold, displayed for sale or delivered unless it is contained in a sealed package.

Under section 20(2)(a) of the Commonwealth Act, if the Classification Board classifies a publication 'Unrestricted', it may determine consumer advice giving information about the content of the publication.

As noted in the Report, the Classification Board does not routinely classify all publications. Rather, it classifies publications which are likely to receive a restricted classification because they are expected to be, inter alia, unsuitable for minors. Given the sheer volume of publications released throughout Australia annually, it is not practical for every publication to be classified to provide advice about its suitability for children and young people of differing ages. Furthermore, it is not the intention of the legislation nor is it possible to ban or restrict all material that some individuals may find offensive or unsuitable for a minor.

Given the very low level of complaints in relation to publications and the operation of the NCCS, this proposal is not supported.

Proposal 7: Referral of a review of the Classification (Publications, Films and Computer Games) Enforcement Act 1996 (WA) to the Law Reform Commission of Western Australia

The WA Enforcement Act provides, among other things, for restrictions on the publication and possession of publications, films and computer games and the enforcement of those restrictions.

This statute, which is complementary to the Commonwealth Act, is similar to other enforcement legislation which operates in all jurisdictions throughout Australia. It is noted that there has not been any significant level of complaints in the last 15 years regarding the operation of the WA Enforcement Act.

The Commonwealth Government has primary responsibility for considering the recommendations made in the Australian Law Reform Commission Report on the National Classification Scheme titled *Classification – Content Regulation and Convergent Media* (the 'ALRC Report').

Any decisions made by the Commonwealth in regard to the ALRC Report recommendations will be considered by Attorneys General at meetings of the Law, Crime and Community Safety Council, established by the Council of Australian Governments.

Consequently, the Government considers it unnecessary for the Law Reform Commission of Western Australia to conduct a review of the WA Enforcement Act at this time.

Proposal 8: Review of classification scheme for music videos

The transmission of music videos through broadcasting services such as television and online services is a matter which falls within the responsibility of the Commonwealth Government.

The Government will continue to work through the inter-jurisdictional Law, Crime and Community Safety Council to ensure that any proposed classification process for music videos reflects the concerns of the WA community.

Proposal 9: Monitor the Commonwealth government's response to the recommendations of the review of the self-regulatory system of advertising in Australia

The Government notes that the Commonwealth is primarily responsible for this matter and it is envisaged that any response will address concerns on a national basis rather than on an individual state basis. It is noted that there has been very few complaints about the content of advertising in the past 15 years in the context of classification laws.

However, the Government will continue to monitor initiatives in other jurisdictions relevant to this issue such as the Commonwealth Government's response to the *Inquiry into billboard and outdoor advertising* and the ALRC Report.

Proposal 10: Consideration of a referral of a review of Western Australian laws and regulations that impact on billboard and outdoor advertising

The Government considers it premature to make the proposed reference to the Law Reform Commission at this time given the Commonwealth Government's response to the Australian Law reform Commission's Report has yet to be released, and the low level of complaints in relation to advertising and classification laws.

Proposal 11: Consideration of amendments to the Children and Community Services Act 2004 (WA) to create an offence to use children in sexually provocative advertising

The Government is of the view a new offence is not warranted. The *Children and Community Services Act 2004* is designed to protect an individual child from "performing" in certain employment situations in a manner that clearly contravenes social behavioural norms for a child (by reference to recognised criminal concepts) and is likely to be harmful to the child

The Government does not agree with the assertion in the Report that the threshold for an offence under section 192 of the *Children and Community Services Act 2004* (WA) must entail proof that a child "engaged in an activity of a sexual nature, was in the presence of another person who was engaged in an activity of a sexual nature or was required to pose or move in a manner calculated to give prominence to sexual organs".

While the behaviours identified in section 192(3)(a)(i) to (iii) fall within the concept of "indecent, obscene or pornographic manner" for the purposes of the offences outlined in section 192(1) and 192(2), these behaviours are not intended to exhaustively limit the range of behaviours which may fall within these concepts. As such, some forms of sexually provocative behaviour may already be captured by existing provisions under the terms "indecent, obscene or pornographic".

It should also be noted that in addition to section 192, the Chief Executive Officer (CEO) of the Department for Child Protection and Family Support already has the power to issue a notice to a child's parent and the child's employer prohibiting or limiting that child's employment if the CEO considers that the wellbeing of a child or a group of children is likely to be jeopardised by the nature the work the child is employed to carry out. The maximum penalty for contravening such a notice is a fine of $36,000 and imprisonment for three years.

As such, the *Children and Community Services Act 2004* already provides mechanisms for addressing situations where children are used in advertising which may be considered sexually provocative.

Proposal 12: Consideration of amendments to the Children and Community Services Act 2004 (WA) to regulate child beauty pageants in Western Australia

The Government is of the view that such legislation is an unwarranted response to the issues raised in the Report. In particular, issues relating to potential damage to a child's self-esteem which may be linked to ongoing exposure to, or participation in, child beauty pageants are more appropriately dealt with through other measures such as parent education.

The current provisions of the *Children and Community Services Act 2004* already provide a good level of protection for the wellbeing of children who may participate in beauty pageants which may take place in Western Australia. For instance:

Workplace inspections

Under section 195 of the *Children and Community Services Act 2004*, authorised DCPFS officers and Industrial Inspectors from the Department of Commerce have powers of entry, inspection and compulsory interview at places where a child is employed, or where it is reasonably expected a child will be employed in the future.

Prohibitions against indecent, obscene or pornographic performances

If during the course of a beauty pageant a child is engaged to perform in a manner which may be considered indecent, obscene or pornographic, the child's parent and/or employer may be prosecuted and face a penalty of up to 10 years imprisonment.

Section 193 Notices

The *Children and Community Services Act 2004* currently makes provision for the CEO to limit or prohibit the employment of a child if the CEO considers that the child's employment (of itself), or the nature or extent of a child's employment is, or is likely to be, harmful to the child's wellbeing. This is achieved by issuing a notice to the child's parent or to a particular employer where children are, or are expected to be, employed.

Proposal 13: The development of a voluntary code of conduct for retailers

The Government does not believe that government intervention to establish a code of conduct for retailers is warranted at this time. Further, given the dominance of national and international retailer chains in the WA market, any such retailer code of conduct should be developed on a national rather than a jurisdictional level.

Proposal 14: Monitor the recommendations of the Victorian Parliamentary Law Reform Committee inquiry into sexting

The Government notes that in Western Australia both adults and juveniles who engage in sexting may be charged with offences relating to "child exploitation material" under sections 217 – 220 of the *Criminal Code.* In the four financial years from July 2010 to June 2014, 15 juveniles had one or more charges lodged in the Children's Court relating to child exploitation offences pursuant to sections 217, 218, 219 or 220 of the *Criminal Code*. Of these juveniles, six received convictions, two were referred to a juvenile justice team, four had the charges dismissed or discontinued, and three are still before the court.

As noted in the Victorian Report, a young person convicted of sexting could become a registered sex offender. In Western Australia, the registration of such offenders is provided for in the *Community Protection (Offender Reporting) Act 2004* (the 'Community Protection Act')

WA Police has advised that a young person charged with an offence related to "child exploitation material" involving sexting will not automatically become a "reportable offender" under the Community Protection Act, and it is highly unlikely that sexting would of itself result in a juvenile being placed on the ANCOR register.

Section 6(4) of the Community Protection Act also provides that a person may not be considered a reportable offender merely because he or she as a child committed a single offence (including an offence under the laws of a foreign jurisdiction) that falls within the prescribed classes of offences related to child exploitation material.

In addition, the Commissioner of Police has the power pursuant to section 61 of the Community Protection Act to suspend the reporting obligations of offenders found guilty of certain offences, including those involving sexting, where the Commissioner is satisfied that the reportable offender does not pose a risk to the lives or the sexual safety of others. As such, the Government believes the current legislative framework in WA is robust enough to cater for situations where the practice of sexting may be engaged in willingly between juveniles, as well as circumstances where it may involve overt or implicit coercion, and respond accordingly.

Thank you for the opportunity to respond to the Report.

Yours sincerely

Hon. Michael Mischin MLC
ATTORNEY GENERAL; MINISTER FOR COMMERCE

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