

**REGULATING INTERNET PORNOGRAPHY AS AN ISSUE
OF SEX DISCRIMINATION**

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DECLARATION

I declare that this thesis is my own account of my research and contains as its main content work which has not previously been submitted for a degree at any tertiary institution.

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Michelle Evans

ABSTRACT

This thesis will critically analyse Australia's censorship laws with a specific focus on the regulation of pornography distributed via the internet, a means of mass production and distribution of pornography.

It will be argued that Australia's current censorship laws are deficient because their focus is morality based. A morality based approach does not take into account what pornography is and does; in particular, the sex equality harms to real women¹ and the inequality within society caused by pornography.

This thesis will argue that the current censorship regime is an ineffective means of regulating internet pornography because it fails to address the complexities of internet regulation and the selling and marketing of sexual inequality online. This thesis will also

¹ This thesis will not discuss the harms of lesbian or gay male pornography as this is beyond the scope of this thesis. I accept, however, that no distinction should or can be drawn between the individual and systemic harms caused by same-sex pornography and heterosexual pornography. Both constitute an issue of sex discrimination. Academics like Christopher N. Kendall, for example, argue that, like heterosexual pornography, gay male pornography is harmful, not only to the real men used in gay male pornography, but also in promoting and maintaining homophobia and systemic inequality. Kendall, in his book, *Gay Male Pornography: An Issue of Sex Discrimination* (Vancouver: UBC Press, 2004), 108 argues that gay male pornography is a source of homophobic oppression and inequality for gay men because it sexualises dominance and submission and the sex-based, patriarchal hierarchies that flow from a system in which "male" is top and "female" is bottom. Kendall writes that the gender hierarchies in gay male pornography mimic those in heterosexual pornography and consequently serve to reinforce inequality between men and all women and men and gay men. By maintaining these hierarchies, Kendall argues that gay male pornography buys into the very system it seeks to subvert – a homophobic power structure in which heterosexuality is compulsory and in which gay men, like all women, are inferior and unequal. On the harms of lesbian pornography, see for example, Jeffreys, Sheila, *The Lesbian Heresy* (Melbourne: Spinifex Press, 1993) and Reti, Irene (ed.), *Unleashing Feminism: Critiquing Lesbian Sadoomasochism in the Gay Nineties* (Santa Cruz: Her Books, 1993).

argue that these censorship laws have had little or no impact in reducing the availability of pornography distributed via the internet.

This thesis argues that a civil rights/equal opportunity approach to pornographic harm, as proposed by the anti-pornography civil rights ordinance drafted by American feminists Catharine MacKinnon and Andrea Dworkin² (“the ordinance”), should be adopted into Australian law. The ordinance will be examined with a particular focus on how it can be amended and incorporated into Australian equal opportunity legislation in order to more effectively regulate the distribution of pornography via the internet in a manner that addresses the harms to social inequality caused by pornography.³

² MacKinnon, Catharine and Dworkin, Andrea, *In Harm's Way: The Pornography Civil Rights Hearings*, (Boston: Harvard University Press, 1997), at 426-461 for the Minneapolis, Indianapolis and Massachusetts civil rights ordinances. Reference to the “ordinance” in this thesis is a reference to MacKinnon and Dworkin’s “Model Antipornography Civil Rights Ordinance” in Dworkin, Andrea and MacKinnon, Catharine A., *Pornography and Civil Rights: A New Day for Women’s Equality* (Minneapolis: Organizing Against Pornography, 1988), Appendix D

³ This thesis adopts the definition of pornography formulated by Catharine MacKinnon and Andrea Dworkin in clause 1, section 2 their civil rights ordinance. Specific types of pornography available via the internet are discussed in chapter 2 of this thesis.

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