



# Presenter Paper

## Body Image and the Law

This is an important and unusual discussion and one you should watch. Length: 14:13. In addition, you will find an article by Marilyn in the Sydney Morning Herald published on Monday 11 July at <http://www.smh.com.au/comment/unhealthy-models-and-photoshopped-images-should-be-banned-20160708-gq1xo3.html>

### **Discussion Includes**

- What is the connection between women seeing images of unhealthily thin women, body image and eating disorders?
- What is 'Body Image Law'?
- Has the Australian Government passed any laws that are similar to those in France and Israel?
- The reaction to Bromberg-Krawitz's article published in the Journal of Law and Medicine
- What support is there for the Australian Government passing a law similar to those of Israel and France?

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# Beauty is only photoshop deep: Legislating models' BMIs and photoshopping images

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*Many women struggle with poor body image and eating disorders due, in part, to images of very thin women and photoshopped bodies in the media and advertisements. In 2013, Israel's Act Limiting Weight in the Modelling Industry, 5772-2012, came into effect. Known as the Photoshop Law, it requires all models in Israel who are over 18 years old to have a body mass index of 18.5 or higher. The Israeli government was the first government in the world to legislate on this issue. Australia has a voluntary Code of Conduct that is similar to the Photoshop Law. This article argues that the Australian government should follow Israel's lead and pass a law similar to the Photoshop Law because the Code is not sufficiently binding.*

## INTRODUCTION

Christina Aguilera may sing "we are beautiful, no matter what they say" in her hit song "Beautiful",<sup>1</sup> but it is doubtful that the majority of women living in Western countries feel that way. The ideal woman's body in Western countries today is a thin one.<sup>2</sup> The advertising, fashion and media industries regularly create images using unhealthily thin models.<sup>3</sup> These industries also photoshop images, so that women appear thinner and more attractive.<sup>4</sup> To "photoshop" means to alter an image digitally.<sup>5</sup> Due to increasing numbers of obese people in Australia, "[t]he discrepancy between the thin media ideal and women's actual size has widened",<sup>6</sup> leading to poor body image and other problems as a result of seeing images of unhealthily thin women and images that have been photoshopped.<sup>7</sup> Body image is the extent that a person is comfortable with their body's appearance.<sup>8</sup>

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<sup>1</sup> See lyrics published by Sony/ATV Music Publishing LLC, <http://www.metrolyrics.com/beautiful-lyrics-christina-aguilera.html> viewed 17 November 2013.

<sup>2</sup> Glazer RN, "Women's Body Image and the Law" (1993) 43 Duke LJ 113 at 115.

<sup>3</sup> Lumby C, "Girls and the New Media" (1997) 56(1) *Meanjin* 105 at 105.

<sup>4</sup> Diedrichs PC and Lee C, "GI Joe or Average Joe? The Impact of Average-Size and Muscular Male Fashion Models on Men's and Women's Body Image and Advertisement Effectiveness" (2010) 7 *Body Image* 218 at 218.

<sup>5</sup> Donovan KC, "Vanity Fare: The Cost, Controversy, and Art of Fashion Advertisement Retouching" (2012) 26 *Notre Dame JL Ethics & Pub Pol'y* 581 at 581.

<sup>6</sup> Boyd ER and Moncrieff-Boyd J, "Swimsuit Issues: Promoting Positive Body Image in Young Women's Magazines" (2011) 22(2) *HPJA* 102 at 105.

<sup>7</sup> Owen R and Spencer RMC, "Body Ideals in Women After Viewing Images of Typical and Healthy Weight Models" (2013) 10 *Body Image* 489 at 493.

<sup>8</sup> Yoonhyeung YC, Leshner G and Choi J, "Third-Person Effects of Idealized Body Image in Magazine Advertisements" (2008) 52(2) *ABS* 147 at 148.

The National Advisory Group on Body Image in Australia created the *Voluntary Industry Code of Conduct* in 2009.<sup>9</sup> The Code informs people who work in the fashion, media and advertising industries about the actions that they can take to improve the public's body image.<sup>10</sup>

A few years later, in January 2013, *The Act Limiting Weight in the Modelling Industry* (5772-2012) (ISR) came into effect in Israel.<sup>11</sup> Known as the "Photoshop Law",<sup>12</sup> it requires all models in Israel who are over 18 years old to have a body mass index (BMI) of 18.5 or higher.<sup>13</sup> BMI is a common formula used to calculate a person's weight to height ratio.<sup>14</sup>

Whilst the Photoshop Law and the Code are similar, the key difference between the two is that the Photoshop Law is legally binding and the Code is not.

This article discusses eating disorders in Australia generally. It considers the connection between eating disorders and media images, providing a brief history of the Australian government's regulation of cigarette advertising as an example. Next it considers the Code, the Photoshop Law and the actions that have been taken in other countries on this issue. It explains why freedom of speech is no bar to the Australian government passing a law similar to the Photoshop Law. Ultimately, it argues that the Australian government should pass such a law.

This article focuses on Australian women's body image. Australian men's body image and associated concerns are outside of the scope of this article.<sup>15</sup> However, any legislation that improves women's body image may also improve men's body image.

## EATING DISORDERS IN AUSTRALIA

Eating disorders are a type of mental illness.<sup>16</sup> An eating disorder is "characterised by obsessive thoughts about food and body weight".<sup>17</sup> Approximately 10 million women and one million men have eating disorders worldwide.<sup>18</sup> When people have poor body image, they are more likely to suffer from eating disorders.<sup>19</sup> Low self-esteem and using food to deal with psychological challenges can be

<sup>9</sup> Australian Government, *Voluntary Industry Code of Conduct on Body Image* (2009) p 2, [http://www.youth.gov.au/sites/Youth/bodyImage/codeofconduct/Documents/Voluntary\\_Industry\\_Conduct\\_Code\\_Body\\_Image\\_20100627.pdf](http://www.youth.gov.au/sites/Youth/bodyImage/codeofconduct/Documents/Voluntary_Industry_Conduct_Code_Body_Image_20100627.pdf) viewed 14 November 2013 (Code).

<sup>10</sup> Code, n 9, p 2.

<sup>11</sup> *The Act Limiting Weight in the Modelling Industry*, 5772-2012, 2347 LSI 230 (ISR), s 7(A) (Translated by Joe Kaplan) (Photoshop Law).

<sup>12</sup> Nota B, "Israeli Law Bans Skinny, BMI-Challenged Models", *ABC News* (3 January 2013), <http://abcnews.go.com/International/israeli-law-bans-skinny-bmi-challenged-models/story?id=18116291> viewed 16 November 2013.

<sup>13</sup> Photoshop Law, ss 1, 2(A).

<sup>14</sup> Fleischhacker S, "Weighing the Legal & Ethical Implications of BMI Measurements in Schools" (2008) 12(1) *Mich St UJ Med & L* 185 at 188. The author of this article notes that some researchers think that there are problems when using BMI as a measurement tool. See, for example, Rothman KJ, "BMI-Related Errors in the Measurement of Obesity" (2008) 32(3) *Int J Obesity* 56.

<sup>15</sup> For information about men's body image concerns, see Lewis V, "Body Image: Is It Just for Girls" (2012) 34(4) *In-Psych* 18.

<sup>16</sup> Youth Beyond Blue, *Fact Sheet 18: Understanding Eating Disorders*, <http://www.youthbeyondblue.com/factsheets-and-info/fact-sheet-18-understanding-eating-disorders> viewed 15 November 2013.

<sup>17</sup> Sane Australia, *Eating Disorder*, <http://www.sane.org/information/factsheets-podcasts/179-eating-disorder> viewed 16 November 2013.

<sup>18</sup> Malachowski C and Myers SA, "Reconstructing the Ideal Body Image in Teen Magazines" (2013) 27(1) *Communication Teacher* 33 at 33.

<sup>19</sup> National Eating Disorders Collaboration, *What Is Body Image?*, <http://www.nedc.com.au/body-image> viewed 16 November 2013.

factors that cause people to develop eating disorders.<sup>20</sup> Many people who have eating disorders refuse to admit that they have them.<sup>21</sup>

Anorexia nervosa is a type of eating disorder where a person is scared of gaining weight and takes extreme measures to lose weight and avoid gaining weight (for example, he or she does not eat).<sup>22</sup> Bulimia nervosa is an eating disorder where a person binges on food, then purges,<sup>23</sup> whereas binge eating disorder involves a person frequently eating large amounts of food, but not purging the food.<sup>24</sup> There are other types of eating disorders, but exhaustive explanations are beyond the scope of this article.

A 2012 Mission Australia survey of over 15,000 Australian youths found that body image was one of the top three topics that troubles them.<sup>25</sup> Approximately one in 100 adolescent Australian girls suffers from anorexia nervosa.<sup>26</sup> It is estimated that 10 per cent of Australian young women and one per cent of Australian young men between the ages of 14 and 24 suffer from eating disorders.<sup>27</sup> Eating disorders are the second most likely cause of Australian young women being admitted to hospital.<sup>28</sup> A study on eating disorders in South Australia found that there was a "significant and over two-fold increase" of men and women who suffered from eating disorders between 1995 and 2005.<sup>29</sup> It is possible that a similar increase in eating disorders occurred in other parts of Australia during that period. Five in 100 Australians have bulimia nervosa.<sup>30</sup> People with eating disorders may also suffer from depression and anxiety.<sup>31</sup> One in four Australians knows someone who has an eating disorder.<sup>32</sup>

The social and economic costs of eating disorders in Australia in 2012 was approximately \$69.7 billion.<sup>33</sup> So, from an economic perspective, the Australian government could save money if it implemented a law similar to the Photoshop Law.

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<sup>20</sup> Eating Disorders Victoria, *What Is an Eating Disorder?*, <http://www.eatingdisorders.org.au/eating-disorders/what-is-an-eating-disorder> viewed 16 November 2013.

<sup>21</sup> Soltis CA, "Dying to Be a Supermodel: Can Requiring a Healthy BMI Be Fashionable?" (2009) 26(1) J Contemp Health L & Pol'y 49 at 68.

<sup>22</sup> Fzai RUK, "Eating Disorders" (2009) 15(1) Chisholm Health Ethics Bull 5 at 5.

<sup>23</sup> Gonzalez A, Clarke SD and Kohn MR, "Eating Disorders in Adolescents" (2007) 36(8) Aust Fam Physician 614 at 615.

<sup>24</sup> Grilo CM, Masheb RM and Wilson GT, "Subtyping Binge Eating Disorder" (2001) 69(6) J Consult Clin Psych 1066 at 1066.

<sup>25</sup> Mission Australia, *Youth Survey 2012* (2012) p 14, <https://www.missionaustralia.com.au/what-we-do-to-help-new/young-people/understanding-young-people/annual-youth-survey> viewed 16 November 2013.

<sup>26</sup> McCartney T, "Making a Stand Against Media-Distorted Body Image", *Australian Women Online* (15 February 2011), <http://www.australianwomenonline.com/making-a-stand-against-media-distorted-body-image> viewed 16 November 2013.

<sup>27</sup> Pepin G and King R, "Collaborative Care Skills Training Workshops: Helping Carers Cope with Eating Disorders from the UK to Australia" (2013) 48(5) Soc Psychiatry Psychiatr Epidemiol 805 at 805.

<sup>28</sup> Pepin and King, n 27 at 805.

<sup>29</sup> Hay PJ et al, "Eating Disorder Behaviors Are Increasing: Findings from Two Sequential Community Surveys in South Australia" (2008) 3(2) PLoS One 1 at 4.

<sup>30</sup> Eating Disorders Victoria, *Key Research and Statistics*, <http://www.eatingdisorders.org.au/key-research-a-statistics> viewed 15 November 2013.

<sup>31</sup> Rhode DL, *The Beauty Bias: The Injustice of Appearance in Life and Law* (Oxford University Press, 2010) p 39.

<sup>32</sup> Youth Beyond Blue, n 16.

<sup>33</sup> Butterfly Foundation, "Paying the Price – 70 Billion Reasons to Get Eating Disorders Right" (Media Release, 11 December 2012), <http://thebutterflyfoundation.org.au/wp-content/uploads/2012/12/Paying-the-Price-70-Billion-reasons-to-get-eating-disorders-right-11-December-Final.pdf> viewed 17 November 2013.

## CONNECTION BETWEEN EATING DISORDERS AND MEDIA IMAGES

Different cultures have different opinions about the ideal body image for women and these opinions can change over time.<sup>34</sup> However, for more than 50 years the ideal body image for women in Western countries has been a thin one.<sup>35</sup> Feminists offer different explanations for this ideal,<sup>36</sup> saying that it has led to women being preoccupied with size rather than on other aspects of their lives.<sup>37</sup> This ideal has also been used as an explanation for women discarding their traditional role “as mother and nurturer”.<sup>38</sup> People in the fashion industries perpetuate this ideal by typically hiring thin models.<sup>39</sup> A fashion model’s weight is usually 20 per cent lower than a healthy person’s weight.<sup>40</sup> The thin ideal has led to some models starving themselves to death in an effort to maintain a weight appropriate for their industry.<sup>41</sup> The use of thin models has “coincided” with an increase in the number of women who suffer from eating disorders.<sup>42</sup>

The thin body image is also perpetuated through photographs of models that are photoshopped to make the models appear thinner and more attractive.<sup>43</sup> Hany Farid, a Dartmouth College professor who specialises in digital photograph forensics, claims that all photographs in magazines are photoshopped and that readers do not know this.<sup>44</sup> While it is unlikely that all photographs in the media are photoshopped due to time, money and other constraints, it is possible that readers do not recognise when, or which parts of, a photograph have been photoshopped.<sup>45</sup>

Media images showing models who are unhealthily thin or who were photoshopped can damage women’s psychological health<sup>46</sup> because women may believe the images depict reality.<sup>47</sup> Photographs of very thin people in the media can amplify women’s dissatisfaction with their own bodies,<sup>48</sup> even if they are highly accomplished in other aspects of their lives.<sup>49</sup> Women may believe that the models’ figures in the photographs are typical, when they are not.<sup>50</sup> They may try to change their bodies to look like these models<sup>51</sup> because they associate people in photographs as being beautiful.<sup>52</sup> Seeing

<sup>34</sup> Glazer, n 2 at 114-115.

<sup>35</sup> Glazer, n 2 at 115; Korn JB, “Fat” (1997) 77 BUL Rev 25 at 30-31.

<sup>36</sup> Korn, n 35 at 31.

<sup>37</sup> Korn, n 35 at 31.

<sup>38</sup> Korn, n 35 at 32.

<sup>39</sup> Cochrane K, “Why Are Models Still So Thin?”, *The Guardian* (15 March 2010), <http://www.theguardian.com/lifeandstyle/2010/mar/14/kira-cochrane-thin-models> viewed 17 November 2013.

<sup>40</sup> Soltis, n 21 at 53.

<sup>41</sup> Soltis, n 21 at 49.

<sup>42</sup> Yoonhyeung et al, n 8 at 147.

<sup>43</sup> Diedrichs and Lee, n 4 at 219.

<sup>44</sup> Donovan, n 5 at 589.

<sup>45</sup> Rea J, “‘Actual Results May Vary’ Toward Fiercer National Regulation of Digitally Manipulated Cosmetics Advertisements” (2012) 19(1) Wm & Mary J Women & L 161 at 184.

<sup>46</sup> Soltis, n 21 at 68.

<sup>47</sup> Hunter N, “Beauty Is In the Eye of the Retoucher: Why Photoshopped Magazine Images Require Regulation” (2011) 33 Women’s Rts L Rep 82 at 93.

<sup>48</sup> Boyd and Moncrieff-Boyd, n 6 at 102.

<sup>49</sup> Beck KS, “Advertising, Women and Censorship” (1992) 11(1) Law & Ineq 209 at 212.

<sup>50</sup> Beck, n 49 at 212.

<sup>51</sup> Diedrichs and Lee, n 4 at 219; Donovan, n 5 at 592.

<sup>52</sup> Diedrichs and Lee, n 4 at 219.

these images can lead some women to start dieting<sup>53</sup> and to develop eating disorders.<sup>54</sup> There are other potential harmful effects of using thin models and photoshopping images but a detailed explanation of them is beyond the scope of this article.<sup>55</sup>

It has been found that young people who see images of average-sized people in the media, as opposed to very thin people, are more likely to have a better body image.<sup>56</sup>

### AUSTRALIAN GOVERNMENT'S REGULATION OF CIGARETTE ADVERTISING

It may be helpful to consider how the Australian government regulated advertising in other health-related areas, such as cigarettes, to support the idea recommended in this article that the government should adopt a law similar to Israel's Photoshop Law. Advertisements for cigarettes and advertisements of people who were photoshopped or that show very thin people can both influence Australians to participate in unhealthy behaviour.

Smoking is one of the highest causes of preventable deaths in Australia.<sup>57</sup> Evidence about the effects of smoking became more widely known in the mid-20th century. The Australian government, in the 1960s, considered limiting advertisers' ability to advertise cigarettes.<sup>58</sup> It subsequently banned television and radio broadcasters from advertising cigarettes in 1976,<sup>59</sup> and the print media from advertising cigarettes in 1990.<sup>60</sup> Further, in 1992, the government passed the *Tobacco Advertising Prohibition Act 1992* (Cth), which also made it tougher to advertise cigarettes at sporting matches.<sup>61</sup> The Australian government was one of the first governments in the world to ban all cigarette advertising,<sup>62</sup> in an effort to reduce the number of people who either smoke or start smoking.<sup>63</sup>

In 2011, the Australian government passed a law requiring cigarette packages to have plain packaging.<sup>64</sup> It was the first government in the world to pass a law of this kind.<sup>65</sup> When cigarette companies do not advertise their products, the number of people who smoke decreases.<sup>66</sup> People worldwide are interested in the outcome of the Australian government's decision to require plain

<sup>53</sup> Lumby, n 3 at 105; Holmqvist K and Frisen A, "'I Bet They Aren't That Perfect in Reality': Appearance Ideals Viewed from the Perspective of Adolescents with a Positive Body Image" (2012) 9 *Body Image* 388 at 389.

<sup>54</sup> Malachowski and Myers, n 18 at 33; Lumby, n 3 at 105. There are other factors that can cause eating disorders, in addition to seeing images of unhealthily thin women and photoshopped images in the media, see Donovan, n 5 at 615.

<sup>55</sup> For example, see a discussion about how photoshopped images can encourage men to act violently to women: Beck, n 49 at 250-252.

<sup>56</sup> Diedrichs and Lee, n 4 at 218; Boyd and Moncrieff-Boyd, n 6 at 103; Owen and Spencer, n 7 at 493; Diedrichs PC and Lee C, "Waif Goodbye! Average-Size Female Models Promote Positive Body Image and Appeal to Consumers" (2011) 26(10) *Psychol Health* 1273 at 1286. Note that some researchers claim there is no correlation between photographs of thin women in the media and women's poor body image: see, for example, Holmstrom AJ, "The Effects of the Media on Body Image" (2004) 48(2) *J Broadcast Electron* 196 at 197.

<sup>57</sup> Australian Government Department of Health and Ageing, *Easy Guide to the Tobacco Advertising Prohibition Act 1992* (2007) p 6, <http://www.health.gov.au/internet/main/publishing.nsf/Content/egtap> viewed 16 November 2013.

<sup>58</sup> McCallum B, "Australian Cigarette Advertising and its Semiotic Nemesis: Health", *tetendi* (10 August 2013), <http://brendanmccallum.com/2013/08/10/australian-cigarette-advertising-and-its-semiotic-nemesis-health> viewed 16 November 2013.

<sup>59</sup> National Archives of Australia, *Tobacco Advertising Ban in Australia – Fact Sheet 252*, <http://www.naa.gov.au/collection/fact-sheets/fs252.aspx> viewed 16 November 2013; for the current legislation prohibiting cigarette advertisements, see *Tobacco Advertising Prohibition Act 1992* (Cth), ss 13, 15.

<sup>60</sup> Kirby T, "Australia to be the First Country to Use Plain Cigarette Packaging" (2011) 12(5) *Lancet Oncol* 427 at 427.

<sup>61</sup> Kirby, n 60 at 427.

<sup>62</sup> Chapman S and Wakefield M, "Tobacco Control Advocacy in Australia: Reflections on 30 Years of Progress" (2001) 28(3) *Health Educ Behav* 274 at 275.

<sup>63</sup> Australian Government Department of Health and Ageing, n 57.

<sup>64</sup> *Tobacco Plain Packaging Act 2011* (Cth), ss 18-20.

<sup>65</sup> Kirby, n 60 at 427.

<sup>66</sup> Sweanor DT, "Effective Beats Dramatic: A Commentary on Australia's Plain Packaging of Cigarettes" (2011) 30 *Drug Alcohol Rev* 683 at 683.



packaging on cigarettes.<sup>67</sup> As the government has been a world leader in regulating cigarette advertising, it could similarly be a leader in creating a Photoshop Law for Australia.

Tobacco companies have argued that there is no evidence to prove that plain packaging on cigarettes will reduce the number of people who smoke.<sup>68</sup> They also argued publicly for many years that cigarettes were not harmful to people's health, even though they knew that the opposite was true.<sup>69</sup> This type of lobbying by tobacco companies did not prevent the Australian government from banning tobacco advertisements; nor should the government be swayed by the fashion, advertising and modelling industries if they were to lobby against a Photoshop Law in Australia.

The Australian government's national anti-smoking advertising campaign in the 1990s has helped to reduce the number of Australians who smoke.<sup>70</sup> A similar advertising campaign encouraging Australians to be satisfied with their bodies could potentially improve body image and decrease the number of people who develop or have eating disorders. It could also encourage Australians to think about beauty in a different way.<sup>71</sup> A campaign of this kind, however, should not be confused with the government's existing anti-obesity advertising campaign.

In 2012, the Australian government modified the *Tobacco Advertising Prohibition Act 1992* (Cth) to forbid cigarette advertising on the internet.<sup>72</sup> With many Australians, particularly young Australians, spending more time looking at the internet than traditional media, increased exposure to online cigarette advertising could potentially have led to an increase in smoking rates in Australia.

The *Tobacco Advertising Prohibition Act 1992* (Cth) expressly states the penalties that apply if cigarettes are advertised in traditional media and online.<sup>73</sup> Express penalties could also be included in an Australian Photoshop Law to increase the chance that the law is followed, with the money collected potentially used to treat people with eating disorders.

As demonstrated above, the Australian government did not legislate a ban against cigarette advertising overnight. It went through a step by step process that took decades. An incremental approach to legislating a Photoshop Law in Australia might also be appropriate.

## AUSTRALIA'S CODE

The former Australian Minister for Youth, Kate Ellis, formed the National Advisory Group on Body Image in 2009<sup>74</sup> to recommend initiatives for the government to take to improve Australians' body image.<sup>75</sup> The Group created the Code to inform people in the fashion, media and advertising industries about how they could help to improve the public's body image.<sup>76</sup>

<sup>67</sup> West R, "Preventing Tobacco Companies from Advertising Using their Packaging Could Be an Important Component of Comprehensive Tobacco Control: A Commentary on Australia's Plain Packaging of Cigarettes" (2011) *Drug Alcohol Rev* 681 at 681.

<sup>68</sup> West, n 67 at 681.

<sup>69</sup> West, n 67 at 681.

<sup>70</sup> Wakefield M, "Anti-Smoking Advertising: Lessons Learned" (Paper presented at the DrugInfo Seminar and Forum, Melbourne, 7 September 2005), <http://www.druginfo.adf.org.au/druginfo-seminars/mass-media-campaigns-seminar-wakefield> viewed 16 November 2013.

<sup>71</sup> Holmqvist and Frisen, n 53 at 394.

<sup>72</sup> Australian Government Department of Health, *Tobacco Advertising*, <http://www.health.gov.au/internet/main/publishing.nsf/Content/tobacco-advert> viewed 16 November 2013; *Tobacco Advertising Prohibition Act 1992* (Cth), s 15A.

<sup>73</sup> See, for example, *Tobacco Advertising Prohibition Act 1992* (Cth), ss 15, 15A.

<sup>74</sup> Australian Government, *The National Advisory Group on Body Image*, <http://www.youth.gov.au/sites/youth/bodyimage/pages/advisorygroup> viewed 14 November 2013.

<sup>75</sup> Australian Government, *The National Advisory Group on Body Image*, n 74.

<sup>76</sup> Code, n 9, p 2.

The Code encourages people in the fashion, media and advertising industries to use models who are different sizes and from different races.<sup>77</sup> It recommends that models are “clearly of a healthy weight”.<sup>78</sup> The Code refers people to a few websites and recommends that they consult doctors to obtain more information about what is a “healthy weight”.<sup>79</sup> The Code encourages people in the relevant industries to refrain from photoshopping images to make models appear “unrealistic or unattainable through healthy practices”.<sup>80</sup> It does not, however, define the words “unrealistic or unattainable through healthy practices”. The Code uses general language, such as requesting that advertisers embrace “positive and healthy body image behaviour”,<sup>81</sup> making it difficult for people and businesses who want to follow the Code to decide how they should follow it. The Code urges clothing retailers to sell clothing in diverse sizes.<sup>82</sup> If more people in the relevant industries adopt the Code, then Australians’ body image may improve.<sup>83</sup>

Ms Ellis created a “body image tick of approval” for use by businesses that implement the Code.<sup>84</sup> If businesses use the tick on their websites, in the signature of their staff’s emails or in other prominent places, it could encourage other people and businesses to think about trying to improve Australians’ body image and to follow the Code. The Australian government also gives “Positive Body Image Awards” annually to people and businesses who support positive body image initiatives.<sup>85</sup> People and businesses who win an award may use it in their advertising.<sup>86</sup>

The Code is voluntary, rather than mandatory, because its drafters believed it would be too subjective for people in the relevant industries to decide whether or not models are at an appropriate weight.<sup>87</sup> This is not the case in Israel, where a BMI of 18.5 has been set as an appropriate minimum weight for Israeli models.

The Code does not state any penalties for businesses or people who do not follow it,<sup>88</sup> and the government does not enforce the Code.<sup>89</sup> It is less likely that people will follow a voluntary Code than a mandatory law.

Approximately a year after the Code was created, Boyd and Moncrieff-Boyd examined the swimsuit issue of seven popular Australian women’s magazines to determine the extent to which they

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<sup>77</sup> Code, n 9, p 2.

<sup>78</sup> Code, n 9, p 2.

<sup>79</sup> Code, n 9, p 3.

<sup>80</sup> Code, n 9, p 2.

<sup>81</sup> Code, n 9, p 2.

<sup>82</sup> Code, n 9, p 2.

<sup>83</sup> Code, n 9, p 3.

<sup>84</sup> Kennedy J, “Fashion Industry Asked to Adopt Body Image Code”, *ABC News* (28 June 2010), <http://www.abc.net.au/news/2010-06-27/fashion-industry-asked-to-adopt-body-image-code/883620> viewed 16 November 2013.

<sup>85</sup> Australian Government, “Body Image”, *youth.gov.au*, <http://www.youth.gov.au/sites/youth/bodyimage/awards/pages/faqs> viewed 16 November 2013.

<sup>86</sup> Ellis K, “Ministry Calls for Industry Action on Body Image” (Media Release, 28 June 2010), <http://www.kateellis.com.au/newsroom/355> viewed 16 November 2013.

<sup>87</sup> Freedman M, “Voluntary Code of Conduct: Why I Was Wrong”, *Mamamia* (18 May 2011), <http://www.mamamia.com.au/news/should-disclosure-of-re-touching-be-mandatory-not-voluntary> viewed 16 November 2013.

<sup>88</sup> McPhee L, “Body Image Campaign ‘Not Working’”, *The West Australian* (21 March 2011), <http://au.news.yahoo.com/thewest/a/-/wa/9044661/body-image-campaign-not-working> viewed 16 November 2013.

<sup>89</sup> Australian Government, “Body Image”, n 85.



followed the Code.<sup>90</sup> The magazines' circulation ranged from 61,912 to 151,213.<sup>91</sup> Boyd and Moncrieff-Boyd found that only one of the magazines followed each of the Code's suggestions.<sup>92</sup>

They also found that the majority of these magazines adopted parts of the Code by showing different-sized women's bodies in some sections.<sup>93</sup> Boyd and Moncrieff-Boyd indicated that the magazines' partial adherence to the Code may be "placatory and short-lived".<sup>94</sup>

Boyd and Moncrieff-Boyd also found that while some of the magazines used some photographs of larger models, those photographs did not usually replace the photographs of unhealthily thin women.<sup>95</sup> It is possible that women who look at those magazines will ignore the photographs of the larger models and focus their attention on the photographs of the unhealthily thin women. If this is the case, then arguably there is little point in those magazines having the photographs of the larger women in the first place. It is also possible that the editors of the magazines are taking an incremental approach to diversifying the body sizes of the models in their magazines. They may try to add more images of bigger models over time. Admittedly, Boyd and Moncrieff-Boyd used a small sample size.<sup>96</sup> Perhaps they or other researchers should replicate the study with a larger sample size. They were also unsure of how the magazines' partial adherence to the Code impacted upon Australian women's body image.<sup>97</sup> More research in this area is necessary. Boyd and Moncrieff-Boyd confined their study to print magazines.<sup>98</sup> It is possible that women are more likely to look at and be influenced by images in other media, such as online magazines. If that is the case, then even if all seven media fully complied with the Code, Australian women's body image might still be poor because women look at other media that display heavily photoshopped images.

In contrast to these findings, Zubcevic-Basic claims that while the Australian magazines *Dolly* and *Girlfriend* appear to have made some progress in implementing the Code, the majority of other Australian magazines have not.<sup>99</sup> She believes that the best way to ensure that people in the fashion and advertising industries implement the Code is to legislate in this area.<sup>100</sup>

There is little scholarly information to be found about whether the media and advertisers follow the Code, perhaps because the Code has been in place for just five years or perhaps because researchers do not find the issue sufficiently important. It is to be hoped that the latter is not the case because it is important that Australian women have a healthy body image.

The Australian government's creation of the National Advisory Group on Body Image may indicate that it considers women's body image and eating disorders to be an important issue. It may also indicate that the government would consider creating an Australian Photoshop Law in the future.

<sup>90</sup> Boyd and Moncrieff-Boyd, n 6 at 103. The magazines were: *Cleo*, *Cosmopolitan*, *Dolly*, *In Style*, *Madison*, *Marie Claire* and *Shop Til You Drop*.

<sup>91</sup> Boyd and Moncrieff-Boyd, n 6 at 103.

<sup>92</sup> Boyd and Moncrieff-Boyd, n 6 at 104.

<sup>93</sup> Boyd and Moncrieff-Boyd, n 6 at 105.

<sup>94</sup> Boyd and Moncrieff-Boyd, n 6 at 105.

<sup>95</sup> Boyd and Moncrieff-Boyd, n 6 at 105.

<sup>96</sup> Boyd and Moncrieff-Boyd, n 6 at 105.

<sup>97</sup> Boyd and Moncrieff-Boyd, n 6 at 105.

<sup>98</sup> Boyd and Moncrieff-Boyd, n 6 at 102.

<sup>99</sup> Zubcevic-Basic N, "Reining In Advertisers to Curb Australia's Body Image Distortion", *The Conversation* (30 November 2012), <https://theconversation.com/reining-in-advertisers-to-curb-australias-body-image-distortion-10387> viewed 16 November 2013.

<sup>100</sup> Zubcevic-Basic, n 99.

## ISRAEL'S PHOTOSHOP LAW

In Israel, doctors diagnose over 1,500 new people with an eating disorder annually.<sup>101</sup> Ten per cent of Israeli teenagers suffer from eating disorders.<sup>102</sup> Israeli fashion model agent Adi Barkan saw many Israeli women who suffered from eating disorders through his work.<sup>103</sup> For many years, he tried to persuade the Israeli government to create the Photoshop Law<sup>104</sup> because a model friend of his died from bulimia nervosa.<sup>105</sup> Barkan believes that legislation is the only way to decrease the number of Israeli models who have eating disorders. He stated that “the change had [to] be forced on the industry. There was no time to waste, so many girls were dieting to death”.<sup>106</sup> Barkan should be praised for championing the Photoshop Law. He probably faced opposition from people with whom he worked because he supported such a radical change to the modelling, fashion and advertising industries.

The Photoshop Law took effect on 1 January 2013.<sup>107</sup> The explanatory notes attached to the Photoshop Law state that the law “is designed to minimize the negative impact of exposure to advertisements depicting models as extremely thin on positive body image and self esteem and on the development of eating disorders in Israel”.<sup>108</sup> The Photoshop Law states that all models used in advertisements, commercials or other media who are aged 18 or over must provide doctors' certificates that state they have a BMI of 18.5 or higher,<sup>109</sup> which is the figure used by the World Health Organisation as an indicator of a healthy BMI.<sup>110</sup> The doctors' certificates must be dated within three months of the relevant photo shoot or filming.<sup>111</sup> It is hoped that because the Photoshop Law requires models to provide recent doctors' certificates, models will consistently keep their BMIs above 18.5. The Photoshop Law will likely add to the workload of commercial directors and advertisers because they must check these doctors' certificates regularly. However, this extra work could save models' lives in the long term and could promote a healthier body image. The BMI minimum requirement is an objective measurement that doctors can check, whereas a requirement that models must have “a healthy weight”, like in the Code, is too subjective to enforce. It is possible that some Israeli models may start yo-yo dieting as a result of the requirement that they must provide doctors' certificates to their employers. The models may ensure that they have BMIs of 18.5 to obtain the required doctors' certificates and may then spend the next three months after their doctors' appointments but before their photo shoots trying to lose weight to reach BMIs below 18.5. It is to be hoped that this is not the case, because the creators of the Photoshop Law would not have intended for this to happen.

<sup>101</sup> Minsberg T, “What the US Can – And Can't Learn – From Israel's Ban On Ultra-Thin Models”, *The Atlantic* (9 May 2012) at [11], <http://www.theatlantic.com/international/archive/2012/05/what-the-us-can-and-cant-learn-from-israels-ban-on-ultra-thin-models/256891> viewed 14 November 2013.

<sup>102</sup> Minsberg, n 101.

<sup>103</sup> Minsberg, n 101.

<sup>104</sup> Fantz A, “New Israeli Law Bans Use of Too-Skinny Models in Ads”, *CNN* (20 March 2012), <http://news.blogs.cnn.com/2012/03/20/new-israeli-law-bans-use-of-too-skinny-models-in-ads> viewed 15 November 2013.

<sup>105</sup> Steinberg J, “Photographer Who Pushed Through Israel's ‘Skinny Model’ Law Now Seeks to Do the Same in the US”, *The Times of Israel* (18 May 2012), <http://www.timesofisrael.com/a-photographer-took-on-the-fashion-industry-to-change-the-outlook-on-body-image> viewed 16 November 2013.

<sup>106</sup> Minsberg, n 101.

<sup>107</sup> Photoshop Law, s 7(A).

<sup>108</sup> Levush R, “Israel: Restrictions on Depiction of Underweight Models in Commercials”, *Library of Congress* (26 March 2012), [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_l205403053\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403053_text) viewed 16 November 2013.

<sup>109</sup> Photoshop Law, ss 1, 2(A).

<sup>110</sup> Associated Press, “Israeli Law Aims to Make Ultrathin Models Models Obsolete”, *USA Today* (10 January 2013), <http://www.usatoday.com/story/news/world/2013/01/10/models-israel-law-weight/1822481> viewed 16 November 2013. For information about the World Health Organisation, see *About WHO*, <http://www.who.int/about/en> viewed 17 November 2013.

<sup>111</sup> Photoshop Law, ss 1, 2(A).

Advertisers, photographers and editors have the choice to create and publish images of models that are photoshopped or not. Where the images are digitally modified to make the models appear thinner, the images must state that they were altered and the reasons why.<sup>112</sup> The statement must feature prominently, taking up a minimum of seven per cent of the entire image.<sup>113</sup> It is constructive that the Photoshop Law gives specific information about the size of the statement. This will help to ensure that the people who look at photoshopped images are aware that the images are not completely real. It is interesting that the Photoshop Law requires statements to declare why the images were photoshopped, in addition to simply stating that they were photoshopped. Such statements may encourage women to start thinking critically about photoshopped images of models and to recognise that the images do not depict real body shapes. In turn, this requirement could have a positive impact upon models' health and Israeli women's body image as well as the body image of women outside of Israel, if other countries were to implement a law similar to the Photoshop Law.

People who breach the Photoshop Law will not face criminal punishments, only civil lawsuits.<sup>114</sup> An Israeli politician provided the following example of how such a civil lawsuit might work: there are parents of a teenager who suffers from an eating disorder. The parents believe that the reason why their teenager developed the eating disorder was because she saw an advertisement with a model who had a BMI under 18.5. The parents can sue the people who produced the advertisement.<sup>115</sup> It is possible the parents may not have the money or time to take legal action. They may also prefer to focus their efforts on trying to help their child recover, in which case the people who breached the Photoshop Law may not be sanctioned. It may also be difficult to prove that a specific advertisement or advertisements partially or entirely caused the teenager to develop the eating disorder. Perhaps a consumer law community legal centre in Israel, with time and resources, could be established to help such parents litigate. Even if few lawsuits pursuant to the Photoshop Law occur, the Law is still a step in the right direction because it indicates to the fashion, advertising and media industries that it is not acceptable to use models who are unhealthily thin and it is not acceptable to photoshop images so that models' bodies look unrealistic.

It may also be possible under the Photoshop Law for Israeli models to sue modelling companies "for being influenced to lose weight".<sup>116</sup> It would be interesting to see how this litigation might work, because Israeli advertisers and modelling agents may "influence" models to lose weight in many different ways. For example, they could expressly tell models orally or in writing that they must lose weight. Models may also infer that they need to lose weight if they are not hired when they have a BMI that is over 18.5.

The Israeli government was the first in the world to legislate on this issue.<sup>117</sup> The international media gave considerable attention to the politicians who helped to create it.<sup>118</sup> The law has ignited controversy about whether the government should legislate on this issue.<sup>119</sup> It has also made people in other countries consider whether their government should legislate similarly.<sup>120</sup> One may wonder why the Israeli government was the first in the world to legislate on this issue. Perhaps it is simply because Barkan lobbied the Israeli government on the issue for years. As Israel is a relatively small country, it probably has fewer models who are unhealthily thin and fewer women who have body image issues than other larger countries. Some people who work in the fashion and advertising industries say that

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<sup>112</sup> Photoshop Law, s 3(A).

<sup>113</sup> Photoshop Law, s 3(B).

<sup>114</sup> Fantz, n 104. Note that an earlier version of the *Bill Limiting Weight in the Modelling Industry*, 5772-2012, 2347 LSI 230 (Isr) s 5(a), (b) (Translated by Joe Kaplan) stated that people who breached the Bill would be liable to pay a monetary fine.

<sup>115</sup> Fantz, n 104.

<sup>116</sup> Steinberg, n 105.

<sup>117</sup> Minsberg, n 101.

<sup>118</sup> Minsberg, n 101.

<sup>119</sup> Minsberg, n 101.

<sup>120</sup> Minsberg, n 101.

the Photoshop Law is not needed.<sup>121</sup> They argue that the Photoshop Law is unfair to models who are naturally thin<sup>122</sup> and may still be healthy at a BMI under 18.5.<sup>123</sup> These models could lose their jobs due to the Photoshop Law.<sup>124</sup> Despite this, the benefits that the Photoshop Law may bring to the health of Israeli models and Israeli women generally outweigh the possible job and financial losses that naturally thin, healthy models may face. The law may even help to create new jobs for models who have BMIs of 18.5 or higher.

The Photoshop Law does not apply to advertisements created for people outside of Israel.<sup>125</sup> Theoretically, Israeli models who have BMIs under 18.5 can move to countries outside of Israel and continue modelling at their current BMIs. If the governments of other countries pass laws similar to the Photoshop Law, then these models may not be able to continue modelling. This could encourage models who have eating disorders to seek help for their illnesses.

## ACTIONS TAKEN IN OTHER COUNTRIES

The governments and people in the clothing and advertising industries in countries other than Australia and Israel have taken different types of action to address body image issues.

In December 2005, a law was passed in Argentina that required stores in the Buenos Aires province to carry larger sizes of clothing because many stores sold clothes that only about 30 per cent of women could fit into.<sup>126</sup> A similar law was passed in 2009 that applied specifically to Argentina's capital city.<sup>127</sup> If stores carry a more varied range of sizes, then people may come to think of their body shape as average or normal and their body image may consequently improve.

Spanish fashion industry administrators were the first in the world known to have banned very thin models from participating in a fashion show in 2006.<sup>128</sup> They required models who participated in the Madrid Fashion Week to have BMIs of at least 18.5,<sup>129</sup> and they had medical practitioners at the fashion show to inspect the models.<sup>130</sup> Shortly after this, Italian fashion administrators required models to have BMIs of at least 18 to participate in fashion shows.<sup>131</sup> Despite these steps, there are reports that fashion show officials are not enforcing minimum BMI requirements for fashion models.<sup>132</sup> Researchers in this area should consider trying to attend fashion shows in Madrid and Italy to see if the BMI requirements for models are being enforced. Since many people watch these fashion

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<sup>121</sup> Nota, n 12.

<sup>122</sup> Nota, n 12.

<sup>123</sup> Lis J and Shalev S, "Knesset Passes Bill Banning Use of Underweight Models in Advertising", *HAARETZ* (20 March 2012), <http://www.haaretz.com/print-edition/news/knesset-passes-bill-banning-use-of-underweight-models-in-advertising-1.419616> viewed 17 November 2013.

<sup>124</sup> Nota, n 12.

<sup>125</sup> The Knesset, "Approved for Second and Third Reading: Minimum Weight Restriction for Advertisement Models" (Press Release, 5 March 2012), [http://www.knesset.gov.il/spokesman/eng/PR\\_eng.asp?PRID=9906](http://www.knesset.gov.il/spokesman/eng/PR_eng.asp?PRID=9906) viewed 16 November 2013.

<sup>126</sup> Mowat L, "Size Discrimination in Buenos Aires", *The Argentina Independent* (23 November 2011), <http://www.argentinaindependent.com/socialissues/urbanlife/size-discrimination-in-buenos-aires> viewed 16 November 2013.

<sup>127</sup> Mowat, n 126.

<sup>128</sup> CNN, "Skinny Models Banned from Catwalk" (13 September 2006), <http://edition.cnn.com/2006/WORLD/europe/09/13/spain.models> viewed 16 November 2013.

<sup>129</sup> Soltis, n 21 at 50.

<sup>130</sup> CNN, n 128.

<sup>131</sup> Soltis, n 21 at 50.

<sup>132</sup> See, for example, Gentile D, "Does ANYONE Think This Is a Good Look? Gaunt Model Shocks at Milan Fashion Show", *Mail Online* (27 September 2011), <http://www.dailymail.co.uk/femail/article-2042345/Gaunt-model-shocks-Gianfranco-Ferr-Milan-fashion-show.html> viewed 17 November 2013.

shows worldwide,<sup>133</sup> the shows could have a negative impact on body image if models have BMIs under the required minimum.

In 2010, Spain's Lower House of Parliament passed a law that forbade television networks from showing advertisements for plastic surgery, diet products and some cosmetics during certain times.<sup>134</sup> One can infer that the Spanish government passed this law to improve its citizens' body image. If this is true, then one may wonder why the Spanish government did not pass a law that forbade the advertising and fashion industries from using models who have low BMIs, or require editors to include statements on images that were photoshopped. This is especially the case given the Spanish fashion industry's leadership in regulating models' BMIs at the Madrid Fashion Week.

Politicians in France and the United Kingdom also took action on this issue.<sup>135</sup> Valerie Boyer, a member of the French National Assembly, introduced a Bill in 2009 that required all photoshopped images available to the public to include a warning that they were photoshopped.<sup>136</sup> People who breached the law could receive a maximum fine of approximately \$55,000.<sup>137</sup> The Bill made it through its first reading in the French Parliament,<sup>138</sup> but failed to make it through all of the steps necessary to become legislation.<sup>139</sup>

In the United States, the *Healthy Media for Youth Act* was introduced in Congress in 2010. The Act was established to support grants that could be used for programs to improve youth's media literacy.<sup>140</sup> It also stated the government would support the media and other businesses that promoted positive body images.<sup>141</sup> The Act intended to create the National Task Force on Girls and Women in the Media.<sup>142</sup> The Act was to establish voluntary guidelines for the media recommending the use of images showing people who have healthy figures.<sup>143</sup> Academy Award winner Geena Davis championed the Act,<sup>144</sup> but it did not become a law.<sup>145</sup> No law in the United States currently exists that regulates the media photoshopping images.<sup>146</sup>

In the United Kingdom, members of Parliament from different parties formed the All Party Parliamentary Group on Body Image.<sup>147</sup> The Group undertook an inquiry into body image and its

<sup>133</sup> See, for example, Gara T, "Analysts Reluctantly Attend Victoria's Secret Fashion Show", *The Wall Street Journal* (14 November 2013), <http://blogs.wsj.com/corporate-intelligence/2013/11/14/analysts-reluctantly-attend-victorias-secret-fashion-show> viewed 17 November 2013.

<sup>134</sup> Tremlett G, "Spain Curbs Body Image Ads on Television", *The Guardian* (18 January 2010), <http://www.theguardian.com/media/2010/jan/18/spain-television-advertising> viewed 16 November 2013.

<sup>135</sup> Diedrichs and Lee, n 4 at 219.

<sup>136</sup> Donovan, n 5 at 585.

<sup>137</sup> Donovan, n 5 at 585.

<sup>138</sup> "French MPs Want Health Warnings on Airbrushed Photographs", *The Telegraph* (21 September 2009), <http://www.telegraph.co.uk/news/worldnews/europe/france/6214168/French-MPs-want-health-warnings-on-airbrushed-photographs.html> viewed 17 November 2013.

<sup>139</sup> Magee H, "The Ethics of Digital Photo Manipulation: Alterations in Pursuit of 'Beauty'", *Ethical Inquiry* (Brandeis University International Center for Ethics, Justice and Public Life, August 2012), <http://www.brandeis.edu/ethics/ethicalinquiry/2012/August.html> viewed 16 November 2013.

<sup>140</sup> *Healthy Media for Youth Act*, HR 4925, 111th Congress, § 3(a) (2010).

<sup>141</sup> *Healthy Media for Youth Act*, HR 4925, 111th Congress, § 3(a)(2)(G) (2010).

<sup>142</sup> *Healthy Media for Youth Act*, HR 4925, 111th Congress, § 5(a) (2010).

<sup>143</sup> *Healthy Media for Youth Act*, HR 4925, 111th Congress, § 5(c) (2010).

<sup>144</sup> Girl Scouts, "Sen Hagan, Rep Baldwin, Gina Davis, Seek Healthy Media for Youth" (News Release, 13 July 2011), [http://www.girlscouts.org/news/news\\_releases/2011/seek\\_healthy\\_media\\_for\\_youth.asp](http://www.girlscouts.org/news/news_releases/2011/seek_healthy_media_for_youth.asp) viewed 16 November 2013.

<sup>145</sup> See <https://www.govtrack.us/congress/bills/111/hr4925> viewed 16 November 2013.

<sup>146</sup> Hunter, n 47 at 83.

<sup>147</sup> All Party Parliamentary Group on Body Image, *Reflections on Body Image* (2012) p 4, [http://www.ncb.org.uk/media/861233/appg\\_body\\_image\\_final.pdf](http://www.ncb.org.uk/media/861233/appg_body_image_final.pdf) viewed 16 November 2013.

associated issues from November 2011 until February 2012.<sup>148</sup> The Group prepared a report, *Reflections on Body Image*, that recommended actions that people can take to improve their body image and other people's body image.<sup>149</sup> In 2009, the Liberal Democrat party in the United Kingdom suggested a policy that all photoshopped photographs should state that they were manipulated.<sup>150</sup> The party also proposed that advertisements for cosmetic surgery state their "success rates".<sup>151</sup>

The Advertising Standards Authority (ASA) in the United Kingdom prohibited two advertisements for makeup products in July 2011.<sup>152</sup> The advertisements, for Lancôme's Teint Miracle and Maybelline's The Eraser, made promises about the products that Jo Swinson MP believed were misleading: she did not think that using the products would actually make the celebrities look like they did in the advertisements without being photoshopped.<sup>153</sup> The ASA investigated the matter and one of its spokespeople stated: "[o]n the basis of the evidence we received, we could not conclude that the ad image accurately illustrated what effect the product could achieve and that the image had not been exaggerated by digital post-production techniques".<sup>154</sup>

The actions that Ms Swinson and the ASA took probably made some people in the United Kingdom critically think about whether the images of people who they see in advertisements and the media are real or photoshopped. These actions likely also started to make people in the advertising and similar industries start to think that they cannot simply photoshop images as much as they would like, irrespective of how unrealistic the images may appear.

The relevant industries have also taken some action on this issue. In May 2012, the editors of all international *Vogue* magazines agreed not to use models who are under the age of 16 or who look like they are suffering from eating disorders.<sup>155</sup> This action could have significant impact because the magazine is well known worldwide. In 2010, the website for Canadian women's clothing store Jacob stated that the company would stop photoshopping its models' bodies in its advertisements.<sup>156</sup> Hopefully other retailers will follow suit.

The Council of Fashion Designers of America suggested health guidelines for the fashion industry in 2007.<sup>157</sup> The guidelines included that the industry would: (1) support models who have eating disorders and not encourage them to work; (2) recommend that models receive regular health checkups; and (3) be educated about the warning signs for eating disorders. The guidelines did not state a minimum BMI that models must have to be permitted to work. Since the guidelines are voluntary, the fashion industry does not need to follow it.

## WHY THE AUSTRALIAN GOVERNMENT SHOULD LEGISLATE A LAW SIMILAR TO THE PHOTOSHOP LAW

There are many reasons why the Australian government should create legislation that is similar to the Photoshop Law. The government should legislate on this issue because it could help stop women from

<sup>148</sup> All Party Parliamentary Group on Body Image, n 147.

<sup>149</sup> All Party Parliamentary Group on Body Image, n 147.

<sup>150</sup> Prince R, "Airbrushing of Photos Should Be Banned, Liberal Democrats Say", *The Telegraph* (3 August 2009), <http://www.telegraph.co.uk/news/politics/liberaldemocrats/5962358/Airbrushing-of-photos-should-be-banned-Liberal-Democrats-say.html> viewed 16 November 2013.

<sup>151</sup> Prince, n 150.

<sup>152</sup> Rea, n 45 at 161.

<sup>153</sup> Rea, n 45 at 161-162.

<sup>154</sup> Luft O, "L'Oreal Cosmetics Ads Banned After MP Complains", *Campaign* (27 July 2011), <http://www.campaignlive.co.uk/news/1081978> viewed 16 November 2013.

<sup>155</sup> Cohen T, "Fashion Bible Vogue Vows to Ban Underweight and Underage Models", *Mail Online* (4 May 2012), <http://www.dailymail.co.uk/femail/article-2139471/Vogue-vows-ban-underweight-underage-models.html> viewed 16 November 2013.

<sup>156</sup> Jacob, *No Retouching Policy*, <http://www.jacob.ca/about-us/no-retouching-policy> viewed 16 November 2013.

<sup>157</sup> Council of Fashion Designers of America, *CFDA Health Initiative* (2007), <http://cfda.com/wp-content/uploads/2012/06/HEALTH-INITIATIVE-GUIDELINES.pdf> viewed 16 November 2013.



trying to obtain the unhealthy bodies that they see in photoshopped images and photographs of unhealthily thin women.<sup>158</sup> It may also result in young women's health improving<sup>159</sup> by reducing the number of women who have eating disorders.

If the Australian government legislates on this issue, then people in other countries may respect it for being courageous enough to be one of the first governments to legislate in this area. This could have other positive repercussions. For example, medical researchers from overseas could spend time in Australia to study the impact that Australia's Photoshop Law equivalent has on Australian women's body image.

It is important that the Australian government legislates in the area of advertising when it is necessary to protect people who cannot shield themselves from the relevant advertising.<sup>160</sup> It is probable that the majority of Australians who suffer from the advertising, fashion and media industries using unhealthily thin models and photoshopping photographs cannot protect themselves from the photographs, since the photographs are everywhere. Nor would they find it easy as individuals to try to convince the relevant people to change the types of models or images they use.

Some important people and organisations in this area support making the Code mandatory, which would have similar effect to enacting a law. Mia Freedman is the former chair of the National Body Image Advisory Group. She believes the Code should be mandatory, because in its voluntary form, Australian magazine editors give it a "fashionable middle finger".<sup>161</sup> In other words, she thinks that few Australian media editors implement the Code.<sup>162</sup> Members of the Australian organisation Equality Rights Alliance also believe that the Code should become compulsory.<sup>163</sup> The organisation is "Australia's largest network advocating for women's equality, women's leadership and recognition of women's diversity".<sup>164</sup> Similarly, staff of Women's Health Victoria have said the Code should become mandatory because they want to see "healthier" and "more diverse" women portrayed in the media.<sup>165</sup> Women's Health Victoria is a not-for-profit organisation that tries to advance women's health.<sup>166</sup>

Those against the implementation of a Photoshop Law in Australia may argue that people do not find advertisements with women who have larger figures as appealing as advertisements using smaller-sized figures.<sup>167</sup> However, studies have found that people who see advertisements with models who have average sizes find the advertisements just as appealing as ones using extremely thin models.<sup>168</sup>

Those against the implementation of a Photoshop Law may also state that women read magazines to escape from the world, so they should be able to fantasise about having a body that is unrealistic or unhealthy.<sup>169</sup> If a Photoshop Law was passed in Australia and other countries, perhaps this view might change. There may be a greater acceptance of different body shapes, leading to a decrease in the number of women who struggle with body image and suffer from eating disorders.

<sup>158</sup> Soltis, n 21 at 67.

<sup>159</sup> Soltis, n 21 at 51.

<sup>160</sup> Harker D and Harker M, "The Role of Codes of Conduct in the Advertising Self-Regulatory Framework" (2000) 20(2) J of Macromarketing 155 at 164.

<sup>161</sup> Freedman, n 87.

<sup>162</sup> Freedman, n 87.

<sup>163</sup> Equality Rights Alliance, *Industry Code of Conduct for Body Image: It Should Be Mandatory*, <http://www.equalityrightsalliance.org.au/news/industry-code-conduct-body-image-it-should-be-mandatory> viewed 16 November 2013.

<sup>164</sup> Equality Rights Alliance, *About Us*, <http://equalityrightsalliance.org.au/iwd/about-us/index.html> viewed 16 November 2013.

<sup>165</sup> Women's Health Victoria, "Body Image and Melbourne Spring Fashion Week" (Media Release, 4 September 2012), <http://whv.org.au/static/files/assets/8db26685/MediaRelease-Body-image-and-Melbourne-Spring-Fashion-Week-04.09.2012.pdf> viewed 16 November 2013.

<sup>166</sup> See Women's Health Victoria website, <http://whv.org.au> viewed 16 November 2013.

<sup>167</sup> Diedrichs and Lee, n 4 at 219.

<sup>168</sup> Diedrichs and Lee, n 4 at 218-219.

<sup>169</sup> Donovan, n 5 at 587.

It might be argued that if people do not like seeing photoshopped images, then they should buy other media products.<sup>170</sup> Unfortunately, the use of photoshopped images in media is widespread, with few alternatives.<sup>171</sup>

If a Photoshop Law was implemented in Australia, it is possible that models who do not meet the requirements of the Law would leave Australia to work in countries that have no restrictions. However, if other countries were to implement similar laws, then it would be difficult for these models to find work and move elsewhere, as well as to apply for the necessary visas and work permits.<sup>172</sup>

It could be argued that it would be impossible to regulate a Photoshop Law in Australia because it is impossible to regulate the internet, but the approach taken by Israeli courts in future cases may provide guidance on dealing with breaches of the Photoshop Law on the internet.

It could also be argued that voluntary guidelines, like the Code, are better than no guidelines at all.<sup>173</sup> That is true, but legislation with mandatory requirements would have far greater impact.

If a Photoshop Law was passed in Australia, it could encourage the media to give greater attention to body image and eating disorders. Further, it could encourage Australians with eating disorders to seek treatment. It could also encourage the friends and family of Australians with eating disorders to give extra support.

There may also be other outcomes, both positive and negative, of a Photoshop Law not mentioned here.<sup>174</sup>

## FREEDOM OF SPEECH

It may be argued that banning unhealthily thin models and requiring photoshopped photographs to state that they are photoshopped breaches the right to freedom of speech.<sup>175</sup>

Australia is a party to the *International Covenant on Civil and Political Rights*, a United Nations treaty.<sup>176</sup> Article 19 of the Covenant states that “[e]veryone shall have the right to freedom of expression”. This is qualified by Art 19(3)(b), which identifies situations where one may not have this right, such as when one needs to breach the freedom for “public health” reasons. An Australian Photoshop Law, therefore, would not violate the Covenant because it would be implemented in the interest of “public health”.

It is also unlikely that an Australian Photoshop Law would breach the Australian *Constitution* as the *Constitution* does not expressly state that Australians have a right to freedom of speech; nor does Australia have a federal bill of rights that gives its citizens this right.<sup>177</sup> Most Australians support freedom of speech in principle.<sup>178</sup> In *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1 at 18 and *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106 at 142, the High Court found that the Australian *Constitution* has an implied freedom of communication for political matters. In *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 527, their Honours stated that this freedom could be implied from ss 7 and 24 of the Australian *Constitution*.

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<sup>170</sup> Rea, n 45 at 173.

<sup>171</sup> Rea, n 45 at 173.

<sup>172</sup> For a discussion of models applying for visas, see Johnson K, “Importing the Flawless Girl” (2012) 12(3) Nev LJ 831.

<sup>173</sup> Hunter, n 47 at 109.

<sup>174</sup> For example, models who have very low BMIs may argue that they are being discriminated against due to their appearance. For a discussion about appearance discrimination, see Rhode DL, “The Injustice of Appearance” (2009) 61(5) 61 Stan LR 1033; Baron SS, “(Un)lawfully Beautiful: The Legal (De)construction of Female Beauty” (2005) 46(2) BCL Rev 359.

<sup>175</sup> See, for example, Donovan, n 5 at 583; Hunter, n 47 at 82; Rea, n 45 at 174; Beck, n 49 at 241.

<sup>176</sup> Australian Government Attorney-General’s Department, *Right to Freedom of Opinion and Expression*, <http://www.ag.gov.au/RightsAndProtections/HumanRights/PublicSectorGuidanceSheets/Pages/Righttofreedomofopinionandexpression.aspx#1what> viewed 17 November 2013.

<sup>177</sup> Pearson M, “The Media Regulation Debate in a Democracy Lacking a Free Expression Guarantee” (2012) 18(2) PJR 89 at 99.

<sup>178</sup> Gelber K, “Freedom of Speech and Australian Political Culture” (2011) 30(1) UQLJ 135 at 141.

Supporters of freedom of speech may argue that the government should not choose which information might hurt the public and which might not.<sup>179</sup> They may also state that if all information is available, people can choose to ignore the information that may hurt them.<sup>180</sup> However, when people are exposed to the same photoshopped images frequently over time, they may not be able to critically analyse them for accuracy.<sup>181</sup> It is also possible that those images affect people's subconscious.<sup>182</sup>

Flint says that it is not the role of the government to "stop people from engaging in acts which may damage themselves – smoking, at least in private, or gluttony in private or public – is none of their business".<sup>183</sup> By extension, it may be none of the government's business if photographs of thin models cause people to develop eating disorders. But historically the Australian government has restricted Australians' ability to advertise whatever they want to, particularly when there is an impact on public health.<sup>184</sup> For example, advertising restrictions exist to protect the public from harmful products and misleading conduct by traders,<sup>185</sup> as well as poisons and medicines.<sup>186</sup> The government should similarly legislate in the area of unhealthily thin models and photoshopping images.

## CONCLUSION

In relation to Israel's Photoshop Law, Barkan states that "I believe this small movement that began in Israel is like a stone thrown into the lake. The waves can reach very far."<sup>187</sup> This article has argued that the Australian government should follow Israel's lead and implement a similar law because it would have significant public health benefits. Australia has been a world leader in the area of cigarette advertising – it should not shy away from taking a leadership role in the area of women's body image.

There are additional possibilities for future research in this area: (1) the content that the Australian government should include in a Photoshop Law; (2) the best methods to enforce such a law in Australia; (3) how the government should regulate websites and social media that expressly encourage young people to develop eating disorders;<sup>188</sup> (4) how many Israelis in the relevant industries follow the Photoshop Law; and (5) whether Israeli women's body image has improved since the Photoshop Law came into effect.

Chanel designer Karl Lagerfeld is famous for saying "[n]o-one wants to see curvy people on the catwalk".<sup>189</sup> In the opinion of the author of this article, what Lagerfeld should have said was: no-one wants to see any more women suffer from poor body image and eating disorders. If the Australian government passes a law similar to the Photoshop Law, perhaps the latter statement can become true in Australia.

<sup>179</sup> Beck, n 49 at 241.

<sup>180</sup> Beck, n 49 at 242.

<sup>181</sup> Beck, n 49 at 244.

<sup>182</sup> Beck, n 49 at 247.

<sup>183</sup> Flint D, "The Importance of Defending Freedom of Commercial Speech" (Speech delivered at the Australian Association of National Advertisers, Australian Museum, Sydney, 27 November 2003) pp 11-12, [http://www.acma.gov.au/webwr/aba/newspubs/speeches/documents/flint\\_aanaconf031127.pdf](http://www.acma.gov.au/webwr/aba/newspubs/speeches/documents/flint_aanaconf031127.pdf) viewed 16 November 2013.

<sup>184</sup> Blakeney M and McKeough J, "The Right to Advertise the Cigarette Debate" (1984) 31 MIA 42 at 43.

<sup>185</sup> Blakeney and McKeough, n 184 at 43.

<sup>186</sup> Blakeney and McKeough, n 184 at 43.

<sup>187</sup> Minsberg, n 101.

<sup>188</sup> See, for example, Cox L, "Donna Air's Horror at Being Anorexia 'Pinup': TV Presenter Among Celebrities Used on Websites that Encourage Eating Disorders", *The Mail Online* (2 October 2013), <http://www.dailymail.co.uk/news/article-2442155/Donna-Air-used-eating-disorder-pro-ana-websites.html> viewed 17 November 2013.

<sup>189</sup> "Curvy French Women File Complaint Against Chanel Designer Karl Lagerfeld Over Comments", *ABC News* (30 October 2013), <http://www.abc.net.au/news/2013-10-30/curvy-french-women-fat-chanel-karl-lagerfeld/5056630> viewed 16 November 2013.