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# **“You Are Beautiful, No Matter What They Say”: Applying An Evidence-Based Approach To Body Image Law**

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**ABSTRACT:** Israeli and French Governments passed Body Image Laws that require models to have a minimum BMI or be of a healthy weight and if an image was modified to make the model appear thinner, it must have a warning. Are these laws merely symbolic, to focus a spotlight on this issue, or can they too have an impact? This article analyses some of the criticisms of the Body Image Laws by applying existing evidence from health research. Ultimately, it argues that there are many

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## flaws with the Body Image Laws and that such a law should not be passed in Australia.

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### I. Introduction

A slim figure with little body fat<sup>1</sup> is currently the modern body ideal for women. Yet for most people, it is impossible to attain. Recent World Health Organization (WHO) global estimates indicate that 40% of women worldwide are overweight and 15% are obese.<sup>2</sup> Only about 5% of women are naturally the same size as models and for the past several decades, the average model's body size has been lower than the average person's body size.<sup>3</sup> The fashion, media and advertising industries perpetuate this 'thin culture' by using rake-thin models on runways and to advertise their brands.<sup>4</sup> 'Extreme photoshopping'<sup>5</sup> is also rampant: bodies are reshaped, skin is smoothed and teeth are whitened.<sup>6</sup>

Social Comparison Theory suggests that if a person does not have an objective standard, they will judge their appearance by comparing it to others. People often compare their appearance to the images of models and celebrities who they see. Many feel inadequate when they feel that they are not as thin as the models and celebrities.<sup>7</sup>

Body image is 'the perception that a person has of their physical self and the thoughts and feelings that result from that perception.'<sup>8</sup> Many women experience

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<sup>1</sup> D.M. Lorch, *The Effect of Retouched Media Images on Body Dissatisfaction* (PhD Dissertation, The University of Alabama at Birmingham, 2017) 4.

<sup>2</sup> World Health Organization, *Obesity and Overweight* (16 February 2018) <<https://www.who.int/news-room/fact-sheets/detail/obesity-and-overweight>>.

<sup>3</sup> C. Byrd-Bredbenner, J. Murray and Y. R. Schlusel, 'Temporal Changes in Anthropometric Measurements of idealized Females and Young Women in General,' *Women and Health* 4, no. 2 (2005): 20-23.

<sup>4</sup> D.M. Lorch, *The Effect of Retouched Media Images on Body Dissatisfaction* (PhD Dissertation, The University of Alabama at Birmingham, 2017) 1 - 3.

<sup>5</sup> To Photoshop means: 'to digitally edit or alter a picture or photograph' K.C. Donovan, 'Vanity Fare: The Cost, Controversy, and Art of Fashion Advertisement Retouching,' *Notre Dame Journal of Law Ethics & Public Policy* 26 (2012): 581, 581, 620.

<sup>6</sup> B.Y. Lee, *New French Law Requires Label for Digitally Altered Photos of Models* (1 October 2017) *Forbes* <<https://www.forbes.com/sites/brucelee/2017/10/01/new-french-law-requires-label-for-digitally-altered-photos-of-models/#46a6a6601e0e>>.

<sup>7</sup> N. Paraskeva, H. Lewis-Smith, and P.C. Diedrichs, 'Consumer Opinion on Social Policy Approaches to Promoting Positive Body Image: Airbrushed Media Images and Disclaimer Labels,' *Journal of Health Psychology* 22, no. 2 (2017): 164-175, 165; B. Bury, M. Tiggemann and A. Slater, 'Directing Gaze the Effect of Disclaimer Labels on Women's Visual Attention to Fashion Magazine Advertisements,' *Body Image* 11 (2014): 357, 357. Also see: D.M. Lorch, *The Effect of Retouched Media Images on Body Dissatisfaction* (PhD Dissertation, The University of Alabama at Birmingham, 2017) 3-4; R.B. Clayton, J.L. Ridgway and J. Hendrickse, 'Is plus Size Equal? The Positive Impact of Average and plus-Sized Media Fashion Models on Women's Cognitive Resource Allocation, Social Comparisons, and Body Satisfaction,' *Communication Monographs* 84, no. 3 (2017): 406-422, 409.

<sup>8</sup> Australian Government Department of Health, *NEDC Fact Sheet - Body Image*, National Eating Disorders Collaboration <<http://www.nedc.com.au/files/Resources/Body%20Image%20Fact%20Sheet.pdf>>.

negative body image as a result of constantly comparing themselves to the ‘unhealthy, distorted fantasy’<sup>9</sup> portrayed by the fashion, media and advertising industries. This can contribute to the development of an eating disorder.<sup>10</sup>

Governments worldwide have begun taking action to combat negative body image and the prevalence of eating disorders. This action is in the Body Image Law area.<sup>11</sup> Body Image Law encompasses ‘the bills, laws and government actions (such as establishing parliamentary inquiries and creating policies) that may help to improve the body image of the general public, and particularly young people.’<sup>12</sup>

In 2013 Israel took an important step in Body Image Law. It became the first country to introduce legislation requiring a minimum Body Mass Index (BMI) for models and a warning on photoshopped images that states that the image was photoshopped.<sup>13</sup> France followed with a similar law. In 2010, Australia introduced a Voluntary Industry Code of Conduct (Code) that gives general recommendations to the advertising industry and similar industries regarding actions that they can take in this area. For example, it states that only models who ‘are clearly of a healthy weight’ should be used and that photos should not be altered to make bodies appear ‘unrealistic or unattainable through healthy practises.’<sup>14</sup> The Code has not prompted significant cultural change in the industries.<sup>15</sup>

Bury, Tiggemann and Slater state that ‘[i]nternationally, policy makers and governments have been searching for quick and easy-to-implement universal prevention strategies in an attempt to prevent women from feeling dissatisfied with their bodies following idealized media exposure’.<sup>16</sup> This comment aligns with the authors’ view that the Israeli and French Body Image Laws do not sufficiently take into consideration the evidence from allied health researchers in this area that relate to Body Image Law.

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<sup>9</sup> C.A. Soltis, “Dying to Be a Supermodel: Can Requiring a Healthy BMI Be Fashionable,” *Journal of Contemporary Health Law & Policy* 26 (2009): 49, 53.

<sup>10</sup> N. Paraskeva, H. Lewis-Smith and P.C. Diedrichs, ‘Consumer Opinion on Social Policy Approaches to Promoting Positive Body Image: Airbrushed Media Images and Disclaimer Labels,’ *Journal of Health Psychology* 22, no. 2 (2017): 164–175, 165; B. Bury, M. Tiggemann and A. Slater, “Disclaimer Labels on Fashion Magazine Advertisements: Does Timing of Digital Alteration Information Matter?,” *Eating Behaviors* 25 (2017): 18, 18.

<sup>11</sup> M. Bromberg and C. Halliwell, ‘All about That Bass and Photoshopping a Model’s Waist: Introducing Body Image Law,’ *University of Notre Dame Australia Law Review* 18 (2016): 1, 2.

<sup>12</sup> M. Bromberg and C. Halliwell, “All About That Bass’ and Photoshopping a Model’s Waist: Introducing Body Image Law’ (2016) 18(1) *University of Notre Dame Australia Law Review* 1, 1.

<sup>13</sup> M. Bromberg and C. Halliwell, ‘All about That Bass and Photoshopping a Model’s Waist: Introducing Body Image Law,’ *University of Notre Dame Australia Law Review* 18 (2016): 1, 6 - 8.

<sup>14</sup> Australian Government, Voluntary Industry Code of Conduct on Body Image The Butterfly Foundation <[http://thebutterflyfoundation.org.au/wp-content/uploads/2012/12/A10-0361-YTH-Body-Image-CommunicationProducts\\_conduct\\_webaw.pdf](http://thebutterflyfoundation.org.au/wp-content/uploads/2012/12/A10-0361-YTH-Body-Image-CommunicationProducts_conduct_webaw.pdf)>.

<sup>15</sup> C. de Freitas, H. Jordan and E. K. Hughes, ‘Body image diversity in the media: A content analysis of women’s fashion magazines,’ *Health Promotion Journal of Australia* (2017): 3-5.

<sup>16</sup> B. Bury, M. Tiggemann and A. Slater, ‘Disclaimer Labels on Fashion Magazine Advertisements: Does Timing of Digital Alteration Information Matter?’ (2017) 25 *Eating Behaviors* 18, 18.

This article will first discuss the prevalence of body image disturbances (as this has a strong influence on dieting behaviours which are in turn one of the highest risk factors for the development of eating disorders), then it will give some background information regarding Israeli, French and Australian body and diet culture and their advertising and media industries as they concern body image. Then, it will discuss the Israeli, French and Australian action taken in the Body Image Law area. After this, it will discuss the areas in Body Image Law where evidence from allied health exists (effectiveness of warning labels, using diverse images of models, social media and photoshopping). Ultimately, it argues that Australia should have an evidence based mandatory code of conduct in this area, which contains civil penalties. The information and arguments in this article are useful for any government internationally that is considering implementing a body image law.

Discussing the French Body Image Laws that criminalize encouraging 'excessive leanness' through pro-anorexia websites<sup>17</sup> and unhealthy body ideals for men are outside the purview of this article.

## II. The Prevalence of Eating Disorders: A Public Health Problem

The Global Burden of Disease study (GBD) provides global estimates of disease prevalence. Reviews of GBD data show that mental health disorders coverage is not globally robust. Of the countries included in the GBD data, 66% have no data for mental health diseases (conduct disorder, attention deficit/hyperactivity disorder, autism spectrum disorders, eating disorders, depression and anxiety) in 5-17 year olds.<sup>18</sup> Baxter et al.<sup>19</sup> also found a dearth of information for mental health diseases prevalence data in 18-80 year olds. Whiteford et al.<sup>20</sup> found that mental health and substance use disorders accounted for 7.4% of disability-adjusted life years (DALYs), of which 1.2% were eating disorders. Obtaining accurate data on the prevalence of eating disorders is difficult and the existence of such quality, evidence-based data is close to non-existent.

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<sup>17</sup> M. Bromberg and T. Fitzgerald, 'Let's starve down to the bone: Pro-anorexia websites and the law' (2017) 25 *Journal of Law and Medicine* 124; T. Fitzgerald and M. Bromberg, 'Should 'pro-ana' websites be criminalised in Australia?', (23 June 2017) *The Conversation* <<https://theconversation.com/should-pro-ana-websites-be-criminalised-in-australia-79197>>; A. Toor, 'France bans pro-anorexia websites and underweight models', (3 April 2015) *The Verge* <<https://www.theverge.com/2015/4/3/8339177/france-bans-pro-anorexia-websites-too-skinny-models>>.

<sup>18</sup> H. E. Erskine, A. J. Baxter, G. Patton, T. E. Moffitt, V. Patel, H. A. Whiteford and J. G. Scott, 'The global coverage of prevalence data for mental disorders in children and adolescents,' *Epidemiology and Psychiatric Sciences* 26 (2017): 397.

<sup>19</sup> A. J. Baxter, G. Patton, K.M. Scott, L. Degenhardt and H.A. Whiteford, 'Global Epidemiology of Mental Disorders: What Are We Missing?' *PLoS ONE* 8(6) (2013): 1-7.

<sup>20</sup> H.A. Whiteford, L. Degenhardt, J. Rehm, A.J. Baxter, A.J. Ferrari, H.E. Erskine, F.J. Cherpson, R.E. Norman, A.D. Flaxman, N. Johns, R. Burstein, C.J.L. Murray and T. Vos, 'Global burden of disease attributable to mental health and substance use disorders: findings from the *Global Burden of Disease Study* 2010,' 382 (2013): 1575-86.

Body image dissatisfaction has been seen, time and time again, to be one of the main risk factors for developing eating disorders.<sup>21</sup> It is influenced by media images through upward social comparison and linked to higher chances of eating disorder development.<sup>22</sup> Body image dissatisfaction often leads to dieting which is another one of the main risk factors in the development of eating disorders.<sup>23</sup>

### A. France

Body image dissatisfaction and eating disorders thrive in societies that deeply value and admire thinness. France is one.<sup>24</sup> A recent review of European studies found that in Europe, anorexia nervosa is reported by 1-4%, bulimia nervosa by 1-2%, binge eating disorder by 1-4% and subthreshold eating disorders by 2-3% of women. 0.3-0.7% of European men reported eating disorders.<sup>25</sup> Accurate eating disorder prevalence data for France is not available. French news outlets have however estimated that 600,000 young people in France suffer from an eating disorder of some kind<sup>26</sup> and that anorexia affects between 30,000 and 40,000 people. 90% of these people are women in their early or late adolescence.<sup>27</sup>

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<sup>21</sup> E. Stice, C. N. Marti and S. Durrant, ‘Risk factors for onset of eating disorders: Evidence of multiple risk pathways from an 8-year prospective study,’ (2011), *Behaviour Research and Therapy* 49(10), 622-627. Also see: G. Lopez-Guimera, M.P. Levine, D. Sánchez-carracedo and J. Fauquet, ‘Influence of mass media on body image and eating disordered attitudes and behaviours in females: a review of effects and processes,’ (2010) *Media Psychology* 13:387-416.

<sup>22</sup> S. Reaves, J. Bush Hitchon, S-Y. Park and G. Woong Yun, ‘If looks could kill: digital manipulation of fashion models,’ (2004) *JMME* 19:56-71. Also see: M.F. Sypeck, J.J. Gray and A.H. Ahrens, ‘No longer just a pretty face: fashion magazines’ depictions of ideal female beauty from 1959 to 1999,’ (2004) *International Journal of Eating Disorders* 36:342-7.

<sup>23</sup> G.C. Patton, R. Selzer, C. Coffey, J.B. Carlin and R. Wolfe, ‘Onset of Adolescent Eating Disorders: Population Based Cohort Study over 3 Years,’ *British Medical Journal* vol 318(no 7186) (1999) 765-768. Also see: E. Stice, ‘Risk and maintenance factors for eating pathology: a meta-analytic review,’ (2002) *Psychology Bulletin* 128(5):825-48.

<sup>24</sup> K. Taylor, ‘French Women Do Too Get Fat,’ (23 February 2005) Slate <[http://www.slate.com/articles/life/food/2005/02/french\\_women\\_do\\_too\\_get\\_fat.html](http://www.slate.com/articles/life/food/2005/02/french_women_do_too_get_fat.html)>. For more information about eating disorders generally, see: M. Krawitz, ‘Beauty Is Only Photoshop Deep: Legislating Models’ BMIs and Photoshopping Images,’ *Journal of Law and Medicine* 21 (2014): 859–874, 861; Suzanne Abraham, *Eating Disorders* (Oxford, 7th ed, 2015).

<sup>25</sup> A. Keski-Rahkonen and L. Mustelin, ‘Epidemiology of eating disorders in Europe: prevalence, incidence, comorbidity, course, consequences and risk factors,’ (2016) *Current Opinion in Psychiatry* 29(6):340-5.

<sup>26</sup> News Wires, ‘France Cracks Down on Super-skinny, Airbrushed models,’ (6 May 2017) France24 <<http://www.france24.com/en/20170506-france-health-skinny-airbrushed-models-fashion-anorexia>>.

<sup>27</sup> News Wires, ‘France Cracks Down on Anorexia,’ (17 April 2008) France24 <<http://www.france24.com/en/20080416-france-cracks-down-anorexia-france-health>>.

## B. Australia

Body image issues are also widespread amongst Australian women. It was reported that about 80 per cent of adult women dislike their bodies.<sup>28</sup> According to Mission Australia 'about 38 per cent of teenage girls are extremely concerned about their body image.'<sup>29</sup>

The number of Australians suffering from an eating disorder is estimated to be around one million, or four per cent of the population.<sup>30</sup> When narrowed to young Australian women, the statistic is more alarming: ten percent of women between 14 and 24 years old have an eating disorder.<sup>31</sup> It is the second highest cause of hospital admissions for women.<sup>32</sup> These statistics do not take into account under-reporting and under-treatment.<sup>33</sup> An estimated 20% of females have an undiagnosed eating disorder.<sup>34</sup>

## C. Israel

Accurate eating disorder prevalence data is not available for Israel. Israeli news outlets however claim that recent research reveals that approximately 14% of Israeli girls aged 9-14 have the potential to develop an eating disorder.<sup>35</sup> There are believed to be 1,500 new cases of eating disorders each year in Israel with 10% of teenagers suffering from a form of the mental illness.<sup>36</sup> Studies have found that between 60-80% of Israeli female adolescents are not satisfied with their weight and shape, regardless of the major-

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<sup>28</sup> PR Newswire, 'New Dove Research Finds Beauty Pressures Up, and Women and Girls Calling for Change,' (21 June 2016) <<https://www.prnewswire.com/news-releases/new-dove-research-finds-beauty-pressures-up-and-women-and-girls-calling-for-change-583743391.html>>.

<sup>29</sup> S. Berry, 'The Unique Body Image Problem Posed by Social Media,' *The Sydney Morning Herald* (September 19, 2016) <<https://www.smh.com.au/lifestyle/health-and-wellness/the-unique-body-image-problem-posed-by-social-media-20160919-grjflz.html>>.

<sup>30</sup> 'Legislating Healthy Body Image: BMI Minimums and Photoshop Law,' The College of Law, February 28, 2017, <<https://www.collaw.edu.au/news/2017/02/27/legislating-healthy-body-image-bmi-minimums-and-photoshop-law>>.

<sup>31</sup> M. Krawitz, 'Beauty is only photoshop deep: Legislating models' BMIs and photoshopping images' (2014) 21 *Journal of Law and Medicine* 859, 861.

<sup>32</sup> M. Krawitz, 'Beauty is only photoshop deep: Legislating models' BMIs and photoshopping images' (2014) 21 *Journal of Law and Medicine* 859, 861.

<sup>33</sup> Australian Government Department of Health, NEDC Fact Sheet - Eating Disorders in Australia, National Eating Disorders Collaboration, 6 <[http://www.nedc.com.au/files/pdfs/Eating%20Disorders%20in%20Australia\\_ENG.pdf](http://www.nedc.com.au/files/pdfs/Eating%20Disorders%20in%20Australia_ENG.pdf)>.

<sup>34</sup> Eating Disorders Victoria, Key Research and Statistics <<https://www.eatingdisorders.org.au/key-research-a-statistics>>.

<sup>35</sup> A. Press, 'Eating Disorders a Problem among Haredim,' in Ynetnews.Com, 2011, <<https://www.ynetnews.com/articles/0>>.

<sup>36</sup> T. Minsberg, 'What the U.S. Can—and Can't—Learn From Israel's Ban on Ultra-Thin Models,' *The Atlantic*, May 9, 2012, <<https://www.theatlantic.com/international/archive/2012/05/what-the-us-can-and-cant-learn-from-israels-ban-on-ultra-thin-models/256891/>>.

ity being in the normal to low weight range.<sup>37</sup> Dieting behaviour is also reported to be higher among Israeli adolescent girls and boys compared to thirty four other countries.<sup>38</sup>

### III. Taking Action: Body Image Law in Israel, France and Australia

#### A. Overall

On 1 January 2013, *The Law for Limiting Weight in the Modelling Industry*, 5772-2012 (also known as the Photoshop Law) came into effect in Israel.<sup>39</sup> With this law, Israel became the first country in the world to legislate on the issue of body image. The legislation was the result of intense lobbying by industry participants like Adi Barkan, an Israeli modelling agent and photographer and Rachel Adato, an Israeli parliamentarian.<sup>40</sup> The Photoshop Law introduced restrictions for photoshopping advertisements, as well as requirements aimed to ensure that only healthy models would be pictured in such advertisements.

France adopted a two-pronged approach with its legislation, similar to Israel's. The laws were not enacted on a whim. First discussed in 2009, and passed through the National Assembly in 2015, France's Body Image Laws came into legal effect in 2017 after publication in the *Official Journal*.<sup>41</sup>

In Australia, a National Advisory Group on Body Image was appointed by the Australian government in 2009 by former Minister for Youth Kate Ellis. The government called for self-regulation of the industries by introducing the Code; but this was 'given the fashionable middle finger' and not implemented sufficiently.<sup>42</sup>

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<sup>37</sup> Y. Latzer, E. Witztum, and D. Stein, 'Eating Disorders and Disordered Eating in Israel: An Updated Review,' *European Eating Disorders Review: The Professional Journal of the Eating Disorders Association* 16, no. 5 (2008): 361–374, 364.

<sup>38</sup> Y. Latzer, E. Witztum, and D. Stein, 'Eating Disorders and Disordered Eating in Israel: An Updated Review,' *European Eating Disorders Review: The Professional Journal of the Eating Disorders Association* 16, no. 5 (2008): 361–374, 364.

<sup>39</sup> *The Law for Limiting Weight in the Modeling Industry*, 5772-2012, s 7(a) (English Translation provided by Israel Ministry of Health).

<sup>40</sup> T. Minsberg, 'What the U.S. Can—and Can't—Learn From Israel's Ban on Ultra-Thin Models,' *The Atlantic*, May 9, 2012, <<https://www.theatlantic.com/international/archive/2012/05/what-the-us-can-and-cant-learn-from-israels-ban-on-ultra-thin-models/256891/>>.

<sup>41</sup> V. Friedman, 'A New Age in French — Modeling', *The New York Times* (online), 8 May 2017, <<https://www.nytimes.com/2017/05/08/fashion/france-laws-thin-models.html>>; S. Mitchell, 'France's New Laws To Safeguard the Health of Models inspire Getty Images', *Ethical Marketing News* (online), 1 October 2017, <<http://ethicalmarketingnews.com/frances-new-laws-safeguard-health-models-inspire-getty-images>>.

<sup>42</sup> M. Freedman, 'Voluntary Code of Conduct: Why I Was Wrong' *MamaMia*, 18 May 2011, <<https://www.mamamia.com.au/should-disclosure-of-re-touching-be-mandatory-not-voluntary/>>.

## B. Content of Israel and France's Body Image Laws versus Australia's Code

### 1. Ensuring the Health of Models

In Israel, advertisements must not feature 'underweight' models. 'Underweight' is defined in the Photoshop Law as having a Body Mass Index lower than 18.5.<sup>43</sup> Models must present a medical certificate (obtained from a doctor no longer than three months preceding the photoshoot) stating that they are not underweight.<sup>44</sup> This aspect of the Photoshop Law not only ensures that models maintain a healthy weight, but aims to present the public with advertisements that portray a healthy body image.

In France, models are now required to provide a medical certificate to work.<sup>45</sup> This medical certificate will attest that a model's health, 'evaluated in particular regard to body mass index', is compatible with their work.<sup>46</sup> It will be valid for two years.<sup>47</sup> While previous drafts of the law included a minimum BMI of 18, this was not implemented after opposition from fashion executives and modelling agencies.<sup>48</sup> Medical professionals have the responsibility of assessing if a model is too thin.<sup>49</sup> A model's BMI will be considered against the World Health Organization's BMI guidelines, which classifies a BMI below 18.5 to be underweight, and below 18 to be malnourished.<sup>50</sup>

The Australian Code outlines that the fashion, media and advertising industries should 'use models that are clearly of a healthy weight.'<sup>51</sup> Similar to the French law, there is no specific BMI requirement. Indeed, there is no mention of using BMI to measure a model's health at all. The Code provides no standard for the industries to apply to determine whether a model is 'clearly of a healthy weight.' This invites differing, subjective interpretations of the phrase 'clearly of a healthy weight.' Coupled with the Australian

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<sup>43</sup> The Law for Limiting Weight in the Modelling Industry, 5772-2012, 1. (The Photoshop Law).

<sup>44</sup> The Photoshop Law 2(a).

<sup>45</sup> Article L7123-2-1, Subsection 2, Section 1 of Chapter II, Title II, Book I, Part 7, Legislative Part of the Labor Code (Created by Law No. 2016-41 of 26 January 2016- article 20).

<sup>46</sup> Article L7123-2-1, Subsection 2, Section 1 of Chapter II, Title II, Book I, Part 7, Legislative Part of Labor Code (Created by Law No. 2016-41 of 26 January 2016- article 20).

<sup>47</sup> C.D. Rosa, 'France Outlaws 'Unrealistic Body Images' for Models,' *Fashion Industry Broadcast*, May 10, 2017, <<https://fashionindustrybroadcast.com/2017/05/10/france-outlaws-unrealistic-body-images-for-models>>.

<sup>48</sup> L. Dearden, 'France Bans Unhealthy Thin Models with Law Requiring Doctor's Certificate', *Independent* (online), 6 May 2017, <<http://www.independent.co.uk/news/world/europe/france-bans-unhealthy-thin-model-bmi-doctors-certificate-photoshopped-images-a7721211.html>>.

<sup>49</sup> D. Gayle, 'Fashion models in France need doctor's note before taking to catwalk', *The Guardian*, 6 May 2017, <<https://www.theguardian.com/fashion/2017/may/06/fashion-models-france-doctors-note-thin-health-photographs>>.

<sup>50</sup> World Health Organization, 'Body Mass Index – BMI,' (2019) <[www.euro.who.int/en/health-topics/disease-prevention/nutrition/a-healthy-lifestyle/body-mass-index-bmi](http://www.euro.who.int/en/health-topics/disease-prevention/nutrition/a-healthy-lifestyle/body-mass-index-bmi)>.

<sup>51</sup> M. Freedman, 'National Body Image Advisory Group's Recommendations and Industry Code of Conduct,' *Mamamia*, October 28, 2009, <<https://www.mamamia.com.au/national-body-image-advisory-groups-recommendations-and-industry-code-of-conduct/>>.



Code being voluntary, this has allowed Australian industries to continue with business as usual. There is little evidence that it has changed publishing practices.

## 2. Warnings on Photoshopped Images

The Israeli Photoshop Law requires that advertisements which were digitally altered to make the model thinner must include a ‘clarification’ that ‘graphic editing for the purpose of reducing body measurements’ was used.<sup>52</sup> Importantly, the Photoshop Law details how this ‘clarification’ should be presented. The clarification must ‘appear in the advertisement in a prominent place, and in a color and size that are clear to the eye, spread on an area that is no smaller than at least 7% of the total publicity area of the advertisement.’<sup>53</sup>

The second prong of France’s Body Image Law targets the advertising industry. The law requires a photoshopped image to be labelled ‘photographie retouchée’, meaning ‘retouched photograph’.<sup>54</sup> This law came into legal effect on 1 October 2017.<sup>55</sup> The law requires that the warning appear on commercial photographs of models ‘whose body appearance was modified by image processing software in order to refine or thicken the silhouette of the body.’<sup>56</sup> This means that the warning label required in France doesn’t increase awareness about all forms of photoshopping, for example, retouching skin complexion and altering a model’s hair and eye color. The regulations outline that the warning label applies to ‘commercial photographs of models inserted in advertising messages.’<sup>57</sup> The label ‘shall be affixed in an accessible, easily legible and clearly differentiated manner to the advertising or promotional message.’<sup>58</sup> Small, plain text warnings

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<sup>52</sup> The Photoshop Law 3(a).

<sup>53</sup> The Photoshop Law 3(b).

<sup>54</sup> Article L2133-2, Chapter III, Title III, Book I, Part 2, Legislative Part of the Public Health Code (Modified by Order No 2016-462 of 14 April 2016- article 3).

<sup>55</sup> Decree No. 2017-738 of 4 May 2017, Article 2: ‘The provisions of this decree come into effect on October 1, 2017.’

<sup>56</sup> Article L2133-2, Chapter III, Title III, Book I, Part 2, Legislative Part of the Public Health Code (Modified by Order No 2016-462 of 14 April 2016- article 3). Decree No. 2017-738 of May 4 2017 relating to commercial photographs of mannequins whose body appearance has been modified: ‘the decree lays down the procedures for the application and control of the obligation to accompany the commercial photographs of mannequins whose appearance has been modified (to refine or thicken their silhouette) with ‘retouched photograph’, defined in Article L. 2133-2 of the Public Health Code. It identifies the types and media of communication covered by this obligation, defines the modalities of presentation of the mention ‘retouched photograph’ and specifies the responsibilities of the actors.’

<sup>57</sup> Article R2133-4, Section 2, Chapter III, Title III, Book I, Part 2, Regulatory Part of the Public Health Code (Created by Decree No 2017-738 of 4 May 2017- article 1).

<sup>58</sup> Article R2133-5, Section 2, Chapter III, Title III, Book I, Part 2, Regulatory Part of the Public Health Code (Created by Decree No 2017-738 of 4 May 2017- article 1).

risk getting lost in the busyness of fashion advertisements.<sup>59</sup> It has been found that vivid warnings evoking emotional reactions will be noticed more.<sup>60</sup>

The Australian Code provides that digital technology should not be used ‘in a way that alters images of people so that their body shape and features are unrealistic or unattainable through healthy practices.’<sup>61</sup> The industries should ‘make consumers aware of the extent to which images of people have been manipulated.’<sup>62</sup> However, the Australian Code does not specify how consumers should be ‘made aware’ – it does not provide minimum requirements for presenting a warning label on a photoshopped image. Labelling photoshopped images is supposed to function by informing the person viewing the image that what they see is not normal, so they should not compare themselves to it.<sup>63</sup> Some have suggested the adoption of warning labels that operate as a rating system and specify exactly what photoshopping was done.<sup>64</sup> High and low level warnings could be used depending on the extent of the photoshopping employed.<sup>65</sup>

### C. Penalties and Enforcement

In Israel, there are currently no specified penalties contained in Body Image Law non-compliance. The only enforcement mechanism is for someone who has been negatively affected by a non-compliant advertisement to commence a civil lawsuit against the creator.<sup>66</sup> There are concerns about the difficulty of proving that one particular advertisement caused someone to develop an eating disorder.<sup>67</sup> Further, considering time and expense, many of those affected will not be in a position to commence a civil lawsuit

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<sup>59</sup> A.C. Tschannen, ‘An Argument for Incentivising Voluntary Regulation of the Fashion and Modelling Industries,’ *Washington University Jurisprudence Review* 6 (2014): 421–441, 441.

<sup>60</sup> A.C. Tschannen, ‘An Argument for Incentivising Voluntary Regulation of the Fashion and Modelling Industries,’ *Washington University Jurisprudence Review* 6 (2014): 421–441, 439.

<sup>61</sup> M. Freedman, ‘National Body Image Advisory Group’s Recommendations and Industry Code of Conduct,’ *Mamamia*, October 28, 2009, <<https://www.mamamia.com.au/national-body-image-advisory-groups-recommendations-and-industry-code-of-conduct/>>.

<sup>62</sup> M. Freedman, ‘National Body Image Advisory Group’s Recommendations and Industry Code of Conduct,’ *Mamamia*, October 28, 2009, <<https://www.mamamia.com.au/national-body-image-advisory-groups-recommendations-and-industry-code-of-conduct/>>.

<sup>63</sup> N. Paraskeva, H. Lewis-Smith, and P.C. Diedrichs, ‘Consumer Opinion on Social Policy Approaches to Promoting Positive Body Image: Airbrushed Media Images and Disclaimer Labels,’ *Journal of Health Psychology* 22, no. 2 (2017): 164–175; 6; B. Bury, M Tiggemann and A. Slater, ‘Disclaimer Labels on Fashion Magazine Advertisements: Does Timing of Digital Alteration Information Matter?,’ *Eating Behaviors* 25 (2017): 18.

<sup>64</sup> K.C. Donovan, ‘Vanity Fare: The Cost, Controversy, and Art of Fashion Advertisement Retouching,’ *Notre Dame Journal of Law Ethics & Public Policy* 26 (2012): 581, 587.

<sup>65</sup> K.C. Donovan, ‘Vanity Fare: The Cost, Controversy, and Art of Fashion Advertisement Retouching,’ *Notre Dame Journal of Law Ethics & Public Policy* 26 (2012): 581, 587.

<sup>66</sup> M. Bromberg and C. Halliwell, ‘All about That Bass and Photoshopping a Model’s Waist: Introducing Body Image Law,’ *University of Notre Dame Australia Law Review* 18 (2016): 1, 9.

<sup>67</sup> M. Krawitz, ‘Beauty Is Only Photoshop Deep: Legislating Models’ BMIs and Photoshopping Images,’ *Journal of Law and Medicine* 21 (2014): 859–874, 868.

against large fashion and advertising companies.<sup>68</sup> Despite Israel being at the forefront of introducing a Body Image Law, the level of enforcement has been questioned.<sup>69</sup> The authors are unaware of the commencement of any civil lawsuits pursuant to the Body Image Law to date.<sup>70</sup>

In contrast, the French Body Image Laws have express criminal sanctions for breaching them.<sup>71</sup> If a modelling agency employs a model without a valid medical certificate, the contravention will be ‘punishable by six months imprisonment and a fine of €75,000 [approximately A\$117,000]’.<sup>72</sup> If an image is photoshopped, but a compliant warning label is not included, the breach is ‘punishable by a fine of €37,500 [approximately A\$58,000], the amount of which may be increased to 30% of advertising expenses.’<sup>73</sup> Some critics believe these penalties may be too harsh.<sup>74</sup> They send a clear message about the importance France places on combatting negative body image and eating disorders. However, the penalties will be meaningless unless they are properly enforced by French authorities.<sup>75</sup> Checking models’ BMIs and medical certificates and ensuring that every photoshopped image contains a warning will be difficult.<sup>76</sup> Only time will tell if France is serious about enforcing these laws.<sup>77</sup>

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<sup>68</sup> M. Krawitz, ‘Beauty Is Only Photoshop Deep: Legislating Models’ BMIs and Photoshopping Images,’ *Journal of Law and Medicine* 21 (2014): 859–874.

<sup>69</sup> ABC Radio National, ‘Body image and the law’ *The Law Report*, 28 January 2014 (Damien Carrick) <<http://www.abc.net.au/radionational/programs/lawreport/body-image-and-the-law/5198942#transcript>>.

<sup>70</sup> ABC Radio National, ‘Body image and the law’ *The Law Report*, 28 January 2014 (Damien Carrick) <<http://www.abc.net.au/radionational/programs/lawreport/body-image-and-the-law/5198942#transcript>>.

<sup>71</sup> M. Bromberg and C. Halliwell, ‘All about That Bass and Photoshopping a Model’s Waist: Introducing Body Image Law,’ *University of Notre Dame Australia Law Review* 18 (2016): 1, 8.

<sup>72</sup> Article L7123-27, Section 4, Chapter III, Title II, Book I, Part 7, Legislative Part of the Labor Code (Modified by Law No. 2016-41 of January 26, 2016- article 20)

<sup>73</sup> Article L2133-2, Chapter III, Title III, Book I, Part 2, Legislative Part of the Public Health Code (Modified by Order No. 2016-462 of April 2016- article 3).

<sup>74</sup> M. Bromberg and C. Halliwell, ‘All about That Bass and Photoshopping a Model’s Waist: Introducing Body Image Law,’ *University of Notre Dame Australia Law Review* 18 (2016): 1, 10.

<sup>75</sup> M. Bromberg and C. Halliwell, ‘All about That Bass and Photoshopping a Model’s Waist: Introducing Body Image Law,’ *University of Notre Dame Australia Law Review* 18 (2016): 1, 11.

<sup>76</sup> M. Bromberg and C. Halliwell, ‘All about That Bass and Photoshopping a Model’s Waist: Introducing Body Image Law,’ *University of Notre Dame Australia Law Review* 18 (2016): 1, 11.

<sup>77</sup> M. Bain, ‘Ads with Photoshopped Models Are Being Treated as a Public Health Problem in France,’ *Quartz*, October 3, 2017, <<https://qz.com/1091907/a-new-french-law-targets-ads-with-photoshopped-models/>>.

There are no penalties for non-compliance with the voluntary Australian Code: the Australian government does not enforce it.<sup>78</sup> A ‘public relations sanction’ may exist.<sup>79</sup> An example of this occurred when top Australian designer Alex Perry publicly apologized in 2014 for his ‘lapse of judgment’ in allowing a severely underweight model to walk in his Fashion Week show.<sup>80</sup> When introduced, the Code offered incentives for adherence by giving Body Image Awards and a ‘tick of approval’.<sup>81</sup> There is no evidence to suggest that these measures are still in place, further demonstrating the Code’s irrelevance.<sup>82</sup>

## IV. Applying the Evidence

### A. The Effectiveness of Warning Labels

Several studies have considered the impact that a warning label on a photoshopped image has on the person viewing the image. They have found that labels that generally or specifically state that an image was photoshopped or that an image was not photoshopped do not have any ‘short-term benefits’ for women’s body image.<sup>83</sup> This is despite eye-tracking confirming that women actually read the labels.<sup>84</sup> In some studies, exposure to the labels increased women’s body dissatisfaction.<sup>85</sup>

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<sup>78</sup> M. Krawitz, ‘Beauty Is Only Photoshop Deep: Legislating Models’ BMIs and Photoshopping Images,’ *Journal of Law and Medicine* 21 (2014): 859–874, 865.

<sup>79</sup> M. Bromberg and C. Halliwell, ‘All about That Bass and Photoshopping a Model’s Waist: Introducing Body Image Law,’ *University of Notre Dame Australia Law Review* 18 (2016): 1, 10, 10.

<sup>80</sup> M. Freedman, ‘MIA: Dear Fashion Industry, here’s your code of conduct’ *MamaMia*, 9 April 2014, <<https://www.mamamia.com.au/fashion-industry-code-of-conduct/>>.

<sup>81</sup> C. de Freitas, H. Jordan, E.K. Hughes. ‘Body image diversity in the media: A content analysis of women’s fashion magazines,’ *Health Promotion Journal of Australia* 29 (2018): 251-256. See also: *MamaMia* Team, ‘The Australian mags that are refusing to airbrush’ *MamaMia* (4 July 2012) <<https://www.mamamia.com.au/8-quick-questions-with-helen-mccabe/>>; *MamaMia* Cares, ‘Join the revolution: Positive Body Image Awards 2013’ *MamaMia*, 7 November 2013, <<https://www.mamamia.com.au/join-revolution-positive-body-image-awards-2013/>>; SeeMe, Positive Body Image Awards <<http://seeme.org.au/activity-4.html>>.

<sup>82</sup> C. de Freitas, H. Jordan, E.K. Hughes. ‘Body image diversity in the media: A content analysis of women’s fashion magazines,’ *Health Promotion Journal of Australia* 29 (2018): 251-256. Also see: M. Bromberg-Krawitz, ‘Skinny models and Photoshopped images are hurting women’, *The Sydney Morning Herald* (online), 11 July 2016, <<http://www.smh.com.au/comment/unhealthy-models-and-photoshopped-images-should-be-banned-20160708-gq1xo3.html>>.

<sup>83</sup> N. Paraskeva, H. Lewis-Smith, and P.C. Diedrichs, ‘Consumer Opinion on Social Policy Approaches to Promoting Positive Body Image: Airbrushed Media Images and Disclaimer Labels,’ *Journal of Health Psychology* 22, no. 2 (2017): 164–175, 166.

<sup>84</sup> N. Paraskeva, H. Lewis-Smith, and P.C. Diedrichs, ‘Consumer Opinion on Social Policy Approaches to Promoting Positive Body Image: Airbrushed Media Images and Disclaimer Labels,’ *Journal of Health Psychology* 22, no. 2 (2017): 164–175, 166.

<sup>85</sup> N. Paraskeva, H. Lewis-Smith, and P.C. Diedrichs, ‘Consumer Opinion on Social Policy Approaches to Promoting Positive Body Image: Airbrushed Media Images and Disclaimer Labels,’ *Journal of Health Psychology* 22, no. 2 (2017): 164–175, 166.

A British study asked consumers for their opinion on whether labelling media images with a warning stating that an image was photoshopped would prevent the images from negatively impacting on viewers’ body image.<sup>86</sup> The majority believed that such a warning would not assist.<sup>87</sup> Lorch made similar findings.<sup>88</sup>

Bury, et al. considered whether giving disclaimer labels to viewers separately before they saw the image could make the warning labels more effective.<sup>89</sup> The researchers put a short disclaimer on the cover of a folder which stated that the images of models in fashion advertisements were altered. Participants then saw the original advertisement and another advertisement that had a disclaimer label.<sup>90</sup> The advertisements contained images of thin women from popular women’s fashion magazines, such as *Cleo*, *Marie Claire* and *Vogue*.<sup>91</sup> The study found that providing the informational message before the advertisements did not make the disclaimers on the images more effective.<sup>92</sup>

Another study concluded that generic and specific warning labels can improve women’s body image when attached to fashion shoot images, rather than advertisement images.<sup>93</sup> However, an attempt to replicate the finding showed no positive benefit to women’s body image due to disclaimer labels.<sup>94</sup>

This same study also examined the effect of disclaimer labels of different sizes. Small, large and very large label sizes were tested, with the very large label sizes representing the label specified by the Israeli Photoshop Law.<sup>95</sup> Findings showed that there was no

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<sup>86</sup> N. Paraskeva, H. Lewis-Smith, and P.C. Diedrichs, ‘Consumer Opinion on Social Policy Approaches to Promoting Positive Body Image: Airbrushed Media Images and Disclaimer Labels,’ *Journal of Health Psychology* 22, no. 2 (2017): 164–175, 165-167.

<sup>87</sup> N. Paraskeva, H. Lewis-Smith, and P.C. Diedrichs, ‘Consumer Opinion on Social Policy Approaches to Promoting Positive Body Image: Airbrushed Media Images and Disclaimer Labels,’ *Journal of Health Psychology* 22, no. 2 (2017): 164–175, 172.

<sup>88</sup> D.M. Lorch, *The Effect of Retouched Media Images on Body Dissatisfaction* (PhD Dissertation, The University of Alabama at Birmingham, 2017) 28.

<sup>89</sup> B. Bury, M. Tiggemann and A. Slater, ‘Disclaimer Labels on Fashion Magazine Advertisements: Does Timing of Digital Alteration Information Matter?,’ *Eating Behaviors* 25 (2017): 18, 18.

<sup>90</sup> B. Bury, M. Tiggemann and A. Slater, ‘Disclaimer Labels on Fashion Magazine Advertisements: Does Timing of Digital Alteration Information Matter?,’ *Eating Behaviors* 25 (2017): 18, 19.

<sup>91</sup> B. Bury, M. Tiggemann and A. Slater, ‘Disclaimer Labels on Fashion Magazine Advertisements: Does Timing of Digital Alteration Information Matter?,’ *Eating Behaviors* 25 (2017): 18, 19.

<sup>92</sup> B. Bury, M. Tiggemann and A. Slater, ‘Disclaimer Labels on Fashion Magazine Advertisements: Does Timing of Digital Alteration Information Matter?,’ *Eating Behaviors* 25 (2017): 18, 21.

<sup>93</sup> N. Paraskeva, H. Lewis-Smith, and P.C. Diedrichs, ‘Consumer Opinion on Social Policy Approaches to Promoting Positive Body Image: Airbrushed Media Images and Disclaimer Labels,’ *Journal of Health Psychology* 22, no. 2 (2017): 164–175, 166.

<sup>94</sup> M. Tiggemann et al., “Warning: This Image Has Been Digitally Altered’: The Effect of Disclaimer Labels Added to Fashion Magazine Shoots on Women’s Body Dissatisfaction,” *Body Image* 21 (2017): 107–113, 110 - 112.

<sup>95</sup> M. Tiggemann et al., “Warning: This Image Has Been Digitally Altered’: The Effect of Disclaimer Labels Added to Fashion Magazine Shoots on Women’s Body Dissatisfaction,” *Body Image* 21 (2017): 107–113, 108 - 109.

difference in effect across the various sizes of disclaimer labels. Overall, this study found disclaimer labels ineffective at reducing body dissatisfaction.<sup>96</sup>

By contrast, it has been shown that ‘retouch free’ disclaimer labels may be useful.<sup>97</sup> Cornelis and Peter compared the effect of ‘retouch free’ disclaimer labels and ‘retouched’ disclaimer labels. Advertisements with a ‘retouch free’ disclaimer were associated with greater appearance satisfaction, attitude towards the advertisement, and intentions to purchase the brand.<sup>98</sup> It also found that authenticity mediated these variables. The study went further by breaking down authenticity into two components: realism and meaningfulness.<sup>99</sup> Realism of the model mediated the positive effect on body satisfaction whilst meaningfulness mediated the positive effect on attitudes and purchase intentions.<sup>100</sup>

Research has also found that women who experience high levels of appearance comparison and internalization of the thin ideal can experience increased body dissatisfaction when using disclaimer labels, most notably specific disclaimer labels.<sup>101</sup> Additionally, internalization of the thin-ideal has been found to predict body dissatisfaction.<sup>102</sup> Studies have shown that disclaimer labels do not reduce the perceived realism of models or levels of social comparison engaged in by women,<sup>103</sup> especially for women with high trait<sup>104</sup> and state<sup>105</sup> appearance comparison.

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<sup>96</sup> M. Tiggemann et al., “Warning: This Image Has Been Digitally Altered’: The Effect of Disclaimer Labels Added to Fashion Magazine Shoots on Women’s Body Dissatisfaction,” *Body Image* 21 (2017): 111–112.

<sup>97</sup> E. Cornelis and P.C. Peter, ‘The Real Campaign: The Role of Authenticity in the Effectiveness of Advertising Disclaimers in Digitally Enhanced Images,’ *Journal of Business Research* 77 (2017): 102 - 112.

<sup>98</sup> E. Cornelis and P.C. Peter, ‘The Real Campaign: The Role of Authenticity in the Effectiveness of Advertising Disclaimers in Digitally Enhanced Images,’ *Journal of Business Research* 77 (2017): 105, 109.

<sup>99</sup> E. Cornelis and P.C. Peter, ‘The Real Campaign: The Role of Authenticity in the Effectiveness of Advertising Disclaimers in Digitally Enhanced Images,’ *Journal of Business Research* 77 (2017): 102–112, 107, 109.

<sup>100</sup> E. Cornelis and P.C. Peter, ‘The Real Campaign: The Role of Authenticity in the Effectiveness of Advertising Disclaimers in Digitally Enhanced Images,’ *Journal of Business Research* 77 (2017): 102–112, 110.

<sup>101</sup> M. Tiggemann et al., “Warning: This Image Has Been Digitally Altered’: The Effect of Disclaimer Labels Added to Fashion Magazine Shoots on Women’s Body Dissatisfaction,” *Body Image* 21 (2017): 107–113, 111 – 112; M. Tiggemann et al, ‘Disclaimer Labels on Fashion Magazine Advertisements: Effects on Social Comparison and Body Dissatisfaction,’ *Body Image* 10 (2013): 48 – 51;

<sup>102</sup> M. Tiggemann et al., “Warning: This Image Has Been Digitally Altered’: The Effect of Disclaimer Labels Added to Fashion Magazine Shoots on Women’s Body Dissatisfaction,” *Body Image* 21 (2017): 107–113.

<sup>103</sup> M. Tiggemann et al., “Warning: This Image Has Been Digitally Altered’: The Effect of Disclaimer Labels Added to Fashion Magazine Shoots on Women’s Body Dissatisfaction,” *Body Image* 21 (2017), 111 – 112.

<sup>104</sup> M. Tiggemann et al., “Warning: This Image Has Been Digitally Altered’: The Effect of Disclaimer Labels Added to Fashion Magazine Shoots on Women’s Body Dissatisfaction,” *Body Image* 21 (2017), 111 – 111.

<sup>105</sup> B. Bury, M. Tiggemann and A. Slater, ‘Disclaimer Labels on Fashion Magazine Advertisements: Does Timing of Digital Alteration Information Matter?’, *Eating Behaviors* 25 (2017): 18, 20 – 22;

The current body of evidence suggests that disclaimer labels - both generic and specific, and of various sizing - are not effective in reducing the negative impact of fashion images on women's body satisfaction. Some positive results were found when using 'retouch-free' disclaimer labels attached to unmodified images. This needs more investigation.<sup>106</sup> Research suggests that policy efforts aimed at reducing the negative impact of media images on body image may be better directed toward advocating for more diverse and realistic representations of bodies in the media.

### **B. Using Diverse Images of Models**

There has been little research regarding how women feel when they see images of women who have varied body sizes.<sup>107</sup> In one of the few studies in this area, 291 Australian male and female university students were given advertisements with no models, advertisements with thin models, and advertisements with average-sized models.<sup>108</sup> Study participants had to view the images online and then answer open ended questions.<sup>109</sup> The women who were exposed to models who were average sized had much better body image than women who were exposed to thin models and also had better body image than the women who were not exposed to any models.<sup>110</sup> In another study on this topic, women participants saw a two minute nature video as an introduction. After this, they saw images of a series of models from different media online. Then they were asked many questions, including questions about body satisfaction. They were shown another video 'to clear short-term memory'. They were then shown further images and asked questions related to body size.<sup>111</sup> The results were as follows. '[W]e found that exposure to images of one's ideal body type (i.e., thin models) resulted in the greatest amount of dejection-related emotions, specifically fewer reports of body satisfaction. Interestingly, we found that body satisfaction linearly increased as the models moved further away from one's ideal. That is, participants reported greater body satisfaction after viewing

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M. Tiggemann et al., "Warning: This Image Has Been Digitally Altered": The Effect of Disclaimer Labels Added to Fashion Magazine Shoots on Women's Body Dissatisfaction,' *Body Image* 21 (2017), 110 – 112; M. Tiggemann et al, 'Disclaimer Labels on Fashion Magazine Advertisements: Effects on Social Comparison and Body Dissatisfaction,' *Body Image* 10 (2013): 48 – 51.

<sup>106</sup> E. Cornelis and P.C. Peter, 'The Real Campaign: The Role of Authenticity in the Effectiveness of Advertising Disclaimers in Digitally Enhanced Images,' *Journal of Business Research* 77 (2017): 102–112.

<sup>107</sup> R.B. Clayton, J.L. Ridgway and J. Hendrickse, 'Is plus Size Equal? The Positive Impact of Average and plus-Sized Media Fashion Models on Women's Cognitive Resource Allocation, Social Comparisons, and Body Satisfaction,' *Communication Monographs* 84, no. 3 (2017): 406–422, 409.

<sup>108</sup> P.C. Diedrichs and C. Lee, 'Waif Goodbye! Average-Size Female Models Promote Positive Body Image and Appeal to Consumers,' *Psychology & Health* 26, no. 10 (2011): 1273–1291, 1277 - 1278.

<sup>109</sup> P.C. Diedrichs and C. Lee, 'Waif Goodbye! Average-Size Female Models Promote Positive Body Image and Appeal to Consumers,' *Psychology & Health* 26, no. 10 (2011): 1280.

<sup>110</sup> P.C. Diedrichs and C. Lee, 'Waif Goodbye! Average-Size Female Models Promote Positive Body Image and Appeal to Consumers,' *Psychology & Health* 26, no. 10 (2011): 1282.

<sup>111</sup> R.B. Clayton, J.L. Ridgway and J. Hendrickse, "Is plus Size Equal? The Positive Impact of Average and plus-Sized Media Fashion Models on Women's Cognitive Resource Allocation, Social Comparisons, and Body Satisfaction," *Communication Monographs* 84, no. 3 (2017): 406–422, 411.

average-sized models relative to thin size models, and even greater body satisfaction when viewing models that were participants' least ideal body type (i.e., being plus size models)...It is possible that women felt disappointed with their actual self when viewing their ideal body type, resulting in decreased body satisfaction reports.<sup>112</sup> Importantly, they further stated 'we found overwhelmingly that there is a clear psychological advantage of depicting the non-ideal body type in media campaigns. These findings suggest that incorporating more realistically sized fashion models in the media might have its benefits in terms of improved health outcomes, potentially including experiencing less dejection-related emotions (i.e., less body dissatisfaction) and accentuated negative outcomes.'<sup>113</sup> This study showed that using average-sized models in advertisements had equal marketing appeal to consumers as advertisements using thin models.<sup>114</sup>

Before claiming that their marketing and product appeal will suffer by using more realistically representative models in their advertisements and promotion, advertisers should first look at the research where they will find that such claims were not supported.

Aerie is a lingerie and intimate apparel sub brand of American Eagle Outfitters. In 2014 Aerie launched its Aerie Real Campaign, a corporate-initiated advertising campaign, to promote positive body image. There is one empirical evaluation study which showed that the Aerie Real campaign seems to be less detrimental to young women's body image than traditional thin-ideal advertising campaigns.<sup>115</sup> The study compared the effects on body image of the Aerie Real campaign images and the past Aerie campaigns' retouched images (Aerie Retouched). For women low on appearance comparison there was no difference in the effect on body image, however for women high on appearance comparison (therefore, the most vulnerable) the Aerie Real images led to a reduced decrease in body satisfaction compared to the Aerie Retouched images.<sup>116</sup>

The Aerie Real campaign has started to diversify the bodies represented in its images, in terms of shape and size as well as ethnicity.<sup>117</sup> Such campaigns could prove

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<sup>112</sup> R.B. Clayton, J.L. Ridgway and J. Hendrickse, "Is plus Size Equal? The Positive Impact of Average and plus-Sized Media Fashion Models on Women's Cognitive Resource Allocation, Social Comparisons, and Body Satisfaction," *Communication Monographs* 84, no. 3 (2017): 406–422, 417.

<sup>113</sup> R.B. Clayton, J.L. Ridgway and J. Hendrickse, "Is plus Size Equal? The Positive Impact of Average and plus-Sized Media Fashion Models on Women's Cognitive Resource Allocation, Social Comparisons, and Body Satisfaction," *Communication Monographs* 84, no. 3 (2017): 406–422, 419.

<sup>114</sup> P.C. Diedrichs and C. Lee, "Waif Goodbye! Average-Size Female Models Promote Positive Body Image and Appeal to Consumers," *Psychology & Health* 26, no. 10 (2011): 1273–1291, 1273, 1283, 1286, 1288.

<sup>115</sup> A.D. Convertino, R.F. Rodgers, D.L. Franko and A. Jodoin, 'An Evaluation of the Aerie Real Campaign: Potential for Promoting Positive Body Image?,' *Journal of Health Psychology*, 2016, 1–12.

<sup>116</sup> A.D. Convertino, R.F. Rodgers, D.L. Franko and A. Jodoin, 'An Evaluation of the Aerie Real Campaign: Potential for Promoting Positive Body Image?,' *Journal of Health Psychology*, 2016, 1–12, 1, 6, 9.

<sup>117</sup> A.D. Convertino, R.F. Rodgers, D.L. Franko and A. Jodoin, 'An Evaluation of the Aerie Real Campaign: Potential for Promoting Positive Body Image?,' *Journal of Health Psychology*, 2016, 9 - 10.



to be powerful tools in the tasks of diversifying body imagery in the media, media environment and social norms.<sup>118</sup> Further research and evaluation in this area is needed.

### C. Social Media

Research among female pre-teens, teenagers and young adults has found a link between Facebook use and higher levels of body dissatisfaction, drive for thinness, thin-ideal internalization, body surveillance, self-objectification, appearance comparisons and dieting.<sup>119</sup> Facebook use has also been linked to increased negative mood.<sup>120</sup> Women with higher levels of appearance comparison have been found to want to change their face, hair and skin features after spending time on Facebook.<sup>121</sup>

A recent study analyzing appearance comparisons across different contexts - social media, magazines and in person - found that women mostly made upward social comparisons, regardless of the context.<sup>122</sup> These upward comparisons were associated with less positive mood, and social media had the most effect on mood.<sup>123</sup> Social media was also shown to have the most negative effect on appearance satisfaction, comparison and thoughts of diet and exercise.<sup>124</sup>

There has been a growing body of literature investigating the effects of media images on body image satisfaction and how to reduce the negative impacts on body image. This has mostly been in the context of magazine images and advertisements. Researchers should apply the same questions to social media images.

### D. Photoshopping

Lorch considered whether viewing unaltered or photoshopped images of models who were already thin impacted upon the body dissatisfaction of the women who viewed them.<sup>125</sup> The study gave college students photos of models who were photoshopped and

<sup>118</sup> A.D. Convertino, R.F. Rodgers, D.L. Franko and A. Jodoin, ‘An Evaluation of the Aerie Real Campaign: Potential for Promoting Positive Body Image?’, *Journal of Health Psychology*, 2016, 9 -10.

<sup>119</sup> J. Fardouly and L.R. Vartanian, ‘Social Media and Body Image Concerns: Current Research and Future Directions,’ *Current Opinion in Psychology* 9 (2016): 1–5.

<sup>120</sup> J. Fardouly et al., “Social Comparisons on Social Media: The Impact of Facebook on Young Women’s Body Image Concerns and Mood,” *Body Image* 13 (2015): 38, 42-44.

<sup>121</sup> J. Fardouly et al., “Social Comparisons on Social Media: The Impact of Facebook on Young Women’s Body Image Concerns and Mood,” *Body Image* 13 (2015): 43-44.

<sup>122</sup> J. Fardouly, R.T. Pinkus, and L.R. Vartanian, “The Impact of Appearance Comparisons Made through Social Media, Traditional Media, and in Person in Women’s Everyday Lives,” *Body Image* 20 (2017): 31, 34, 36 - 27.

<sup>123</sup> J. Fardouly, R.T. Pinkus, and L.R. Vartanian, “The Impact of Appearance Comparisons Made through Social Media, Traditional Media, and in Person in Women’s Everyday Lives,” *Body Image* 20 (2017): 37, 37 - 38.

<sup>124</sup> J. Fardouly, R.T. Pinkus, and L.R. Vartanian, “The Impact of Appearance Comparisons Made through Social Media, Traditional Media, and in Person in Women’s Everyday Lives,” *Body Image* 20 (2017): 35 - 38.

<sup>125</sup> D.M. Lorch, ‘The Effect of Retouched Media Images on Body Dissatisfaction,’ (PhD Dissertation, The University of Alabama at Birmingham, 2017).

placed these next to images of models before they were photoshopped. Another phase of Lorch's study involved giving participants a link to view either photoshopped or non photoshopped images. Afterward, students were shown a collage of all of the images they had seen and were asked to state which they found most attractive.<sup>126</sup> Lorch found that viewing the images before they were photoshopped had the same impact as viewing the images after they were photoshopped.<sup>127</sup> That is, exposure to the unedited images before viewing the photoshopped images did not improve outcomes. Consequently, Lorch argues that rather than legislating against photoshopping models, it would be more beneficial to have minimum BMIs for models.<sup>128</sup>

### **E. Media Literacy**

Media literacy teaches critical thinking about the media and to think about why certain images are posted.<sup>129</sup> It also involves thinking about how realistic an image in the media appears to be.<sup>130</sup> Ultimately, media literacy aims to lower the impact that the media has on an individual.<sup>131</sup> It enables people to 'critique and deconstruct media images'.<sup>132</sup> Media literacy can include considering how the media impacts people, why advertisers use certain images and discussing how images can be modified from their original version.<sup>133</sup> As yet, there is little evidence that media literacy training can improve body image.<sup>134</sup> However, some research suggests that people who have high levels of media literacy, in particular critical thinking skills, can mitigate the negative effects of seeing images of people who are unhealthily thin.<sup>135</sup>

The Queen Victoria Women's Centre's pilot project, 'See Me: the Media, My world and Me' was an interactive online media literacy curriculum resource aimed at addressing

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<sup>126</sup> D.M. Lorch, 'The Effect of Retouched Media Images on Body Dissatisfaction,' (PhD Dissertation, The University of Alabama at Birmingham, 2017) 15 - 16.

<sup>127</sup> D.M. Lorch, 'The Effect of Retouched Media Images on Body Dissatisfaction,' (PhD Dissertation, The University of Alabama at Birmingham, 2017) 9.

<sup>128</sup> D.M. Lorch, 'The Effect of Retouched Media Images on Body Dissatisfaction,' (PhD Dissertation, The University of Alabama at Birmingham, 2017) 32.

<sup>129</sup> P.C. Diedrichs and C. Lee, "Waif Goodbye! Average-Size Female Models Promote Positive Body Image and Appeal to Consumers," *Psychology & Health* 26, no. 10 (2011): 1273–1291, 1275.

<sup>130</sup> S.A. McLean et al., "A Pilot Evaluation of a Social Media Literacy Intervention to Reduce Risk Factors for Eating Disorders," *International Journal of Eating Disorders* 50, no. 7 (2017): 847–851, 848.

<sup>131</sup> P.C. Diedrichs and C. Lee, "Waif Goodbye! Average-Size Female Models Promote Positive Body Image and Appeal to Consumers," *Psychology & Health* 26, no. 10 (2011): 1273–1291, 1275.

<sup>132</sup> P.C. Diedrichs and C. Lee, "Waif Goodbye! Average-Size Female Models Promote Positive Body Image and Appeal to Consumers," *Psychology & Health* 26, no. 10 (2011): 1273–1291, 1275.

<sup>133</sup> S.A. McLean, S.J. Paxton and E.H. Wertheim, "The Role of Media Literacy in Body Dissatisfaction and Disordered Eating: A Systematic Review," *Body Image* 19 (2016): 9–23, 10.

<sup>134</sup> S. McLean, S. Paxton and E. Wertheim, 'Does Media Literacy Mitigate Risk for Reduced Body Satisfaction Following Exposure to Thin-Ideal Media?' (2016) 45(8) *Journal of Youth and Adolescence* 1678.

<sup>135</sup> S.A. McLean et al., "A Pilot Evaluation of a Social Media Literacy Intervention to Reduce Risk Factors for Eating Disorders," *International Journal of Eating Disorders* 50, no. 7 (2017): 847–851, 1690.

young people’s concerns around the media’s unrealistic portrayal of body image and gender roles.<sup>136</sup> That project attempted to use digital media literacy training to ‘reduce the internalization of unrealistic media notions of the ‘body ideal’, ‘beauty’, and narrow gender stereotypes of young women and men participating in the pilot phase of the project and ‘reduce the ‘body dissatisfaction’ of young women and men participating in the pilot phase of the project.’<sup>137</sup> Overall, issues with methodology, study design and sample size make extrapolating the results from that project difficult. As the final evaluation report notes, ‘caution must be taken when interpreting these results. The small sample size, although highlighting indicative differences and potential patterns, precludes the ability to make any precise conclusions about the impact of SeeMe according to these groupings.’<sup>138</sup> Considering this, the results from the pilot project do not suggest that media literacy training on its own will have a significant impact on body image. Indeed, that study noted, ‘there was also a small decrease in those who were ‘totally happy’ with their bodies before SeeMe. This could speak to the intervention affect that O’Dea describes whereby interventions can inadvertently contribute to the problem under investigation or cause greater harm when a participant adopts a ‘disordered’ behavior as a result of being made aware of it.’<sup>139</sup> Similarly, Tiggmann and McGill’s study highlights the pitfalls of program evaluations whereby a process of ‘self-to-model’ comparison can occur when participants engage with media content within a program or evaluation setting. In some cases, they found, this can result in increased negative mood and body dissatisfaction.’<sup>140</sup>

## V. Should Governments Intervene?

At present, the Australian Code represents the extent of the Australian Government’s intervention in Body Image Law. There is little evidence that the Australian Code has changed industry practice. This has led commentators to suggest that the present voluntary code is insufficient.

The regulatory framework can be strengthened by amending and prescribing the existing Australian Code. In 2017, Treasury published an ‘Industry Codes of Conduct Policy Framework’, aimed at providing ‘businesses, consumers, industry representatives

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<sup>136</sup> Education Services Australia, ‘SeeMe Media Literacy Project Research and Scoping Study Report’ (29 April 2011) <[https://seeme.org.au/verve/\\_resources/SeeMe\\_Media\\_Literacy\\_Project\\_Research\\_and\\_Scoping\\_Study\\_Report\\_final.pdf](https://seeme.org.au/verve/_resources/SeeMe_Media_Literacy_Project_Research_and_Scoping_Study_Report_final.pdf)> 3.

<sup>137</sup> Education Services Australia, ‘SeeMe Media Literacy Project Research and Scoping Study Report’ (29 April 2011) <[https://seeme.org.au/verve/\\_resources/SeeMe\\_Media\\_Literacy\\_Project\\_Research\\_and\\_Scoping\\_Study\\_Report\\_final.pdf](https://seeme.org.au/verve/_resources/SeeMe_Media_Literacy_Project_Research_and_Scoping_Study_Report_final.pdf)> 4.

<sup>138</sup> Foundation for Young Australians and Queen Victoria Women’s Centre, ‘SeeMe Media Literacy Project Evaluation Final Report’ (May 2012) <<https://www.qvwc.org.au/wp-content/uploads/2012/03/QVWC-SeeMe-Evaluation-Report-FINAL-4-May-2012.pdf>> 35.

<sup>139</sup> J.A. O’Dea, ‘Evidence for a Self-Esteem Approach in the Prevention of Body and Eating Problems among Children and Adolescents,’ *Eating Disorders*, 12 (2004):225-239.

<sup>140</sup> M. Tiggemann and B. McGill, ‘The Role of Social Comparison in the Effect of Magazine Advertisements on Women’s Mood and Body Dissatisfaction,’ *Journal of Social and Clinical Pathology*, 23 (2004): 35.

and policy makers with an understanding of industry codes of conduct prescribed under the *Competition and Consumer Act 2010* (Cth) (*CCA*).<sup>141</sup> That report explains that, '[u]nder Part IVB of the *CCA*, regulations may be made to prescribe industry codes to regulate the conduct between industry participants or towards consumers in the industry. Being an industry code 'prescribed under the *CCA*' means that the code has the force of law. A breach of an industry code is a breach of the *CCA*.'<sup>142</sup>

In 2014 the *Competition and Consumer Amendment (Industry Code Penalties) Act 2014* (Cth) amended the *CCA* to allow for the introduction of civil penalties for breach of an industry code. Section 51AE provides:

Regulations relating to industry codes

1. The regulations may:
  - a. prescribe an industry code, or specified provisions of an industry code, for the purposes of this Part; and
  - b. declare the industry code to be a mandatory industry code or a voluntary industry code; and
  - c. for a voluntary industry code, specify the method by which a corporation agrees to be bound by the code and the method by which it ceases to be so bound (by reference to provisions of the code or otherwise).
2. If regulations prescribe an industry code, the industry code may prescribe pecuniary penalties not exceeding 300 penalty units for civil penalty provisions of the industry code.

Very few industry codes contain such a provision. The Industry Codes of Conduct Policy Framework notes 'currently, only the Franchising Code and Horticulture Code contain civil penalties, and only for breaches of certain provisions of the codes that were deemed to be serious or egregious in nature.'<sup>143</sup>

Broadly, the Australian Government has expressed preference for industry self-regulation, noting 'Government intervention will only be considered where there is a demonstrable problem affecting industry participants or consumers which the market cannot or will not overcome, and where such intervention is likely to result in a net public benefit.'<sup>144</sup> The policy framework notes that codes of conduct may be appropriate where there are market failures. While the examples outlined in the policy framework are narrow economic considerations – asymmetric information and imperfect competition – the definition of market failure is cast more broadly; '[m]arket failure occurs

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<sup>141</sup> 'Industry Codes of Conduct Policy Framework' (Treasury, 30 November 2017) 1 <<https://static.treasury.gov.au/uploads/sites/1/2017/11/p2017-t184652-5.pdf>>.

<sup>142</sup> 'Industry Codes of Conduct Policy Framework' (Treasury, 30 November 2017) 3 <<https://static.treasury.gov.au/uploads/sites/1/2017/11/p2017-t184652-5.pdf>>.

<sup>143</sup> 'Industry Codes of Conduct Policy Framework' (Treasury, 30 November 2017) 6 <<https://static.treasury.gov.au/uploads/sites/1/2017/11/p2017-t184652-5.pdf>>.

<sup>144</sup> 'Industry Codes of Conduct Policy Framework' (Treasury, 30 November 2017) 7 <<https://static.treasury.gov.au/uploads/sites/1/2017/11/p2017-t184652-5.pdf>>.

when there are problems with the operation of a market that prevents it producing optimal outcomes.<sup>145</sup>

In economic terms, the photoshopping of images is an example of asymmetric information. Publishers know which images have been digitally altered and to what extent. Consumers do not. To the extent that the code of conduct requires disclosure of that information, it will resolve the asymmetric information problem. Indeed, this is precisely the rationale for the Franchising Code, which ‘requires a disclosure statement be provided to prospective franchisees so they can make a reasonably informed decision about entering into a franchise agreement.’<sup>146</sup>

Plainly, by exacerbating body image issues in members of the public, the advertising and publishing industries are not ‘producing optimal outcomes.’ The impetus for intervention in the market remains. The danger is that the impact of photoshopping of images is not merely economic. Further, as we have seen, solving the technical economic problem – the problem of asymmetric information – does not reduce the social harm associated with these images. While economic analysis might recognize a familiar problem, the usual economic solutions are simply ineffective.

Instead, the evidence suggests that it is the nature of the images themselves, not the alterations to the images, that is the problem. It is nearly 30 years since the publication of Naomi Wolf’s seminal work, *The Beauty Myth*, which noted that ‘the modern arsenal of the myth [of ideal female beauty] is a dissemination of millions of images of the current ideal...’ which ‘directs attention to imagery of the Iron Maiden, while censoring real women’s faces and bodies.’<sup>147</sup> Since that time, the saturation of such images has increased, markedly. True enough, widespread image manipulation may have exacerbated the situation. Yet, while that barrage of imagery persists, resolving the problem of asymmetric information around photoshopping is unlikely to have any significant effect.

Ordinarily, when industries cause harm the legal system offers an opportunity for redress. Civil causes of action permit plaintiffs to recover their losses from tortfeasors. However, one must prove causation to claim redress in a civil cause of action. Further difficulties arise where the harm is mental or emotional distress.<sup>148</sup> As noted above, in relation to the Israeli laws, these issues present significant legal barriers for those individuals who are harmed by images of this kind. Similar issues are likely to arise in Australia.<sup>149</sup> Yet, despite the challenges in establishing legal causation in any individual

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<sup>145</sup> ‘Industry Codes of Conduct Policy Framework’ (Treasury, 30 November 2017) 8 <<https://static.treasury.gov.au/uploads/sites/1/2017/11/p2017-t184652-5.pdf>>.

<sup>146</sup> ‘Industry Codes of Conduct Policy Framework’ (Treasury, 30 November 2017) 8 <<https://static.treasury.gov.au/uploads/sites/1/2017/11/p2017-t184652-5.pdf>>.

<sup>147</sup> Naomi Wolf, *The Beauty Myth* (Vintage, 1993) 16, 17.

<sup>148</sup> E. Descheemaeker, “Rationalising Recovery for Emotional Harm in Tort Law” *Law Quarterly Review* 134, no. 134 (2018): 602-626.

<sup>149</sup> M. Bromberg and T. Fitzgerald, “Let’s Starve Down to the Bone: Pro-Anorexia Websites and the Law,” *Journal of Law and Medicine* 25, no. 1 (2017): 124–135.

case, it is clear that - in both general terms and in specific cases - the proliferation of these images does cause harm.

There is, then, a clear case for legislative intervention. The challenge is establishing what intervention is likely to be effective. As the Industry Codes of Conduct Policy Framework notes, 'while codes offer a flexible regulatory tool to address market concerns, it is important to remember that codes do come at a cost to business. Codes are only prescribed by the Government in very limited circumstances where there is a compelling case for intervention, supported by robust evidence.'<sup>150</sup> Warning labels about manipulated images might be desirable for reasons of transparency. However, there is little evidence to suggest that they will mediate the harms in this case. The best current evidence suggests that changing the nature of the images - to reflect a wide range of healthy bodies - reduces those harms.

An effective, evidence based legislative response should, then, go beyond warning labels. In light of this, the Israeli regulation - which mandates minimum BMIs for models - has much to commend it. However, as noted above, those regulations require individuals to seek civil redress in any particular case. The challenges of establishing causation are such that the French model of regulation - which sets penalties for breach of the code - is likely to be preferable. Transferring these insights to an Australian context, effective, evidence-based legislative intervention will require three things; a mandatory code of conduct; civil penalties for breach of that code and specific guidelines, including minimum BMIs. A prescribed industry code under s 51AE of the CCA would meet those criteria.

## VI. Conclusion

The ideal body image for young women today is 'a prison of contempt, insecurity and suffering for many women across the world.'<sup>151</sup> The Australian fashion industry mimics international trends in style and color. It may want to consider also mimicking other international trends by developing a stronger and more effective approach to combatting negative body image and the prevalence of eating disorders.<sup>152</sup>

The research findings discussed in this article have shown that appearance comparison and internalisation of the thin-ideal are important factors contributing to women's body dissatisfaction and how media images, across different contexts, more negatively impact their body image. This is further evidence of the complex nature of body image.

Governments and agents for change are after a quick and easy-to-implement strategy (such as image disclaimer labels) in the fight to reduce body image issues in the face

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<sup>150</sup> 'Industry Codes of Conduct Policy Framework' (Treasury, 30 November 2017) 1 <<https://static.treasury.gov.au/uploads/sites/1/2017/11/p2017-t184652-5.pdf>>.

<sup>151</sup> A.C. Tschannen, "An Argument for Incentivising Voluntary Regulation of the Fashion and Modelling Industries," *Washington University Jurisprudence Review* 6 (2014): 421-441, 452.

<sup>152</sup> E. Seselja and E. Sakzewski, 'Are Body Standards in Australia's Fashion Industry up to Scratch?,' ABC News, May 18, 2017, <<https://www.abc.net.au/news/2017-05-18/body-image-industry-standards-questioned/8537226>>.

of retouched, body-ideal depicting media images. It may be time to consider that such strategies may not be effective enough to address such a complex issue.

Current efforts are focussed on drawing attention to the unrealistic nature of models' body image, the rampant use of photoshopping techniques, and reducing the number of dangerously thin models. A real hard focussed effort is necessary to promote and adopt a truly representative diversity of models. Media advertising and images need to incorporate a broad range of genders, ages, body shapes, body sizes and skin colours. Research supports this and further shows that advertisers will not incur reduced product/company appeal by using realistically sized models.<sup>153</sup>

Finally, if true accountability is to be achieved strategies need to include tangible actions and measures along with repercussions when actions are not adhered to or implemented. Voluntary measures, time and time again, have fallen short and produced no real change. It is time for Australia to have a mandatory code of conduct in this area with civil penalties that are enforced.

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<sup>153</sup> P.C. Diedrichs and C. Lee, “Waif Goodbye! Average-Size Female Models Promote Positive Body Image and Appeal to Consumers,” *Psychology & Health* 26, no. 10 (2011): 1273–1291, 1286, 1288.

