

CHAPTER 2

Key issues

Introduction

2.1 Stakeholders involved in the inquiry identified several key matters in relation to options for addressing the issue of sexting by minors. These centre around the need for reform to the legislative framework for dealing with the issue of sexting by minors, and effectively targeting educational initiatives to help young people, parents and school teachers deal with this issue.

2.2 A multi-faceted approach to dealing with sexting by minors was favoured by submitters. The Australian Federal Police (AFP) stated:

Of paramount importance is the prevention of the circulation of explicit images of minors, and the immediate and longer term consequences of actions associated with sexting. A multi-faceted response consisting of education, awareness raising and the application of either Commonwealth or State and Territory legislation are required to address the issue of sexting.

Any strategy to address this issue needs to ensure that youth are empowered to make informed decisions about themselves, including images of themselves, and how they want their 'brand' portrayed now and into the future.¹

Options for legislative reform

2.3 Submitters to the inquiry proposed several options for possible legislative reform to help address the issue of sexting by minors in Australia. These include introducing defences into Commonwealth child pornography offences to cover consensual sexting between minors; introducing a new criminal offence to cover the non-consensual distribution of sexting images; and introducing a new statutory tort for the invasion of privacy.

Possible changes to child pornography offences

2.4 Various stakeholders expressed the view that the scope of the existing Commonwealth child pornography offences needs to be altered in order to exclude non-harmful sexting behaviour between minors so that young people do not unwittingly commit a serious and punishable offence.²

Problems with applying existing Commonwealth offences to sexting cases

2.5 Several submitters argued that sexting behaviour should not be treated in the same way as the creation or distribution of child pornography. For example, the Australian Universities' Anti-Bullying Research Alliance noted that minors can

1 Australian Federal Police, *Submission 4*, p. 9.

2 See for example, Law Council of Australia, *Submission 19*, p. 18.

currently be charged under child pornography offences with 'little recognition...of the inherent differences between their image sharing, and either those of paedophiles sharing and distributing images or adults sharing intimate images of partners'.³ Telstra commented that that young people under the age of 18 'who have *consensually* produced or circulated images of themselves cannot be viewed through the same lens as the *non-consensual* production or circulation of sexual imagery, or child pornography'.⁴

2.6 In relation to the adequacy of legislation covering these issues, the Australian Universities' Anti-Bullying Research Alliance argued:

...the laws which we currently have are being outstripped at a rapid rate. They have been written for a previous era, by adults who have never experienced being adolescents surrounded by this avalanche of technology which is changing the ways they think, operate and relate.⁵

2.7 The Law Council of Australia (Law Council) contended:

Whilst sexting may not always be innocuous or victimless, nor something to be encouraged or condoned...sexting by young people (that is, those aged under 18 years) is not necessarily the type of predatory and exploitative behaviour sought to be targeted by laws that are designed to criminalise child pornography activity.⁶

2.8 The Law Council advocated for the introduction of a 'more comprehensive and satisfactory legislative solution' to distinguish between the different types of conduct which could currently be captured by the child pornography provisions, such as sexting, and behaviour that could be described as 'genuine child pornography'.⁷

2.9 These submitters argued that the potential penalties associated with child pornography offences are disproportionate to the level of harm caused in sexting cases. For example, Youth Off The Streets argued that it is 'absurd that two consenting teens can text each other and end up on the registered sex offenders list for the rest of their lives' as a result of conviction under child pornography offences.⁸

2.10 A representative from the Department of Broadband, Communications and the Digital Economy informed the committee that the potential liability of victims of non-consensual sexting under child pornography offences can act as a disincentive to reporting harmful incidents to the relevant authorities:

The research that has been done shows that people are not really sure who to report to. But it also shows that, when a child becomes aware that they

3 Australian Universities' Anti-Bullying Research Alliance, *Submission 18*, p. 10.

4 Telstra, *Submission 22*, p. 2.

5 Australian Universities' Anti-Bullying Research Alliance, *Submission 18*, p. 20.

6 Law Council of Australia, *Submission 19*, p. 4; see also Youth Law Centre ACT, *Submission 24*, p. 5.

7 Law Council of Australia, *Submission 19*, p. 11.

8 Youth Off the Streets, *Submission 6*, [p. 4].

may, by taking such an image and sending it consensually to their boyfriend or girlfriend, have committed an offence, that acts as a disincentive for them to report. So there is the normal embarrassment and difficulty most children would experience when dealing with the police. On top of that, if they know that they might actually be liable to be prosecuted themselves if they want to take action in relation to the non-consensual on-sending of their images, that is a disincentive.⁹

Reliance on the discretion of law enforcement agencies in charging minors

2.11 Submitters noted that law enforcement agencies, at both Commonwealth and state and territory levels, can exercise discretion in deciding not to charge minors with Commonwealth child pornography offences.¹⁰ Some submitters questioned whether this represents an adequate safeguard against disproportionate penalties being applied in sexting cases. The Law Council argued:

...police appear to have used discretion in not charging any person under 18 years of age with sexting type offences under the [Commonwealth] Criminal Code to date. Notwithstanding this, the Law Council remains concerned that as long as the child pornography offences remain the only option for dealing with sexting, there is the possibility that young people may be convicted of these serious offences in circumstances where the behaviour may not be of an exploitative nature, which these offences are primarily aimed at addressing.¹¹

2.12 Sexting cases do not appear to be treated uniformly by the AFP and the other state and territory police agencies.¹² The AFP informed the committee that it has not charged any persons under the age of 18 years with 'sexting' type offences under the Criminal Code, and noted:

Current agreements within the justice system focus upon intervention (diversion), interview and education as opposed to formal criminal proceedings unless the behaviour is deemed as exceedingly predatory or malicious (such as in instances of 'sextortion').

In practice, the application of criminal law to sexting type offences is decided on a case-by-case basis and referred to State police for their discretion.¹³

2.13 Tasmania Police noted that it has adopted a policy position that consensual activity between children generally should not be dealt with as a criminal matter, and that it would only consider the use of child exploitation material offences against a

9 Ms Angela Flannery, General Counsel, Department of Broadband, Communications and the Digital Economy, *Committee Hansard*, 1 August 2013, p. 6.

10 See for example, Australian Federal Police, *Submission 4*, p. 8; Attorney-General's Department, *Submission 5*, pp 3–4.

11 Law Council of Australia, *Submission 19*, p. 10.

12 See for example, National Children's and Youth Law Centre, *Submission 20*, pp 2–3.

13 Australian Federal Police, *Submission 4*, p. 8.

young person in circumstances where the conduct is clearly exploitative.¹⁴ Similarly, NSW Police have indicated that they will typically not press charges in cases of sexting between minors unless the behaviour is malicious.¹⁵ In contrast to this approach, it has recently been reported that in Queensland, 240 children were charged with child pornography offences between January and May 2013 for sexting-related behaviour.¹⁶

2.14 The National Children's and Youth Law Centre (NCYLC) argued that the different approaches taken by law enforcement agencies create uncertainty as to the repercussions of sexting for young people.¹⁷

Recommendations from a Victorian Parliamentary Committee

2.15 In its *Inquiry into Sexting* report, the Parliament of Victorian Law Reform Committee recommended that Victorian child pornography laws be amended, to create a defence against prosecution to cover most forms of consensual sexting by young people. The Victorian Parliament Report recommended that this defence should operate where:

- (a) The film or photograph depicts only the accused person; or
- (b) That, at the time of making, taking or being given the film or photograph, the accused was not more than 2 years older than the minor was or appeared to be; and
 - (i) The film or photograph depicts the accused person engaged in lawful sexual activity; or
 - (ii) The film or photograph depicts the accused person and another person or persons with whom the accused could engage in lawful sexual activity; or
 - (iii) The film or photograph depicts a person with whom the accused could engage in lawful sexual activity, or more than one person, all of whom the accused could engage in lawful sexual activity with.¹⁸

2.16 This proposed defence would cover instances of sexting where a minor takes a self-portrait, or other instances where the sexual acts depicted are lawful, or the

14 Tasmania Police, *Submission 3*, p. 1.

15 Ministry for Police & Emergency Services NSW, *Submission 25*, p. 1; see also National Children's and Youth Law Centre, *New Voices / New Laws: School-age people in New South Wales speak out about the criminal laws that apply to their online behaviour*, November 2012, p. 19.

16 Katherine Feeney, 'Sexting children charged with porn offences', *Brisbane Times*, 25 June 2013 <http://www.brisbanetimes.com.au/queensland/sexting-children-charged-with-porn-offences-20130625-2oub3.html> (accessed 8 August 2013).

17 National Children's and Youth Law Centre, *Submission 20*, p. 2.

18 Victorian Parliament Law Reform Committee, *Inquiry into Sexting*, 29 May 2013, p. 145 (Recommendation 6).

accused could lawfully engage in sexual activity with other persons depicted in the sexting material.

2.17 Further, the Victorian Parliament Report recommended that the Victorian Government advocate to the Standing Council on Law and Justice that the Commonwealth, states and territories amend their criminal legislation to provide defences to child pornography offences, consistent with the new Victorian defences.¹⁹

2.18 Several submitters to this inquiry expressed support for the approach recommended in the Victorian Parliament Report, and suggested that this approach be adopted in relation to Commonwealth child pornography offences.²⁰

Possibilities for a new offence for non-consensual sexting

2.19 The Victorian Parliament Report further recommended that, in addition to removing most sexting cases from prosecution under child pornography laws, a new offence relating to non-consensual sexting be introduced in Victoria. The Report stated:

...Victorian child pornography offences were created to apply to people who engage in predatory and sexually exploitative conduct involving children. It is not appropriate that a person who is not behaving in a sexually exploitative way could face child pornography charges. Nevertheless, a person who acts maliciously, or even carelessly, in sexting conduct, while not being exploitative, can still cause serious harm to the victim depicted in the image or footage. Given the harm that can result from non-consensual sexting, and general community recognition that this is not appropriate behaviour, it is strongly arguable that non-consensual sexting should be considered criminal behaviour.²¹

2.20 This proposed offence would cover instances where a person intentionally distributes, or threatens to distribute, an intimate image of another person or persons, without the subject(s) of that image consenting to the distribution.²² This offence would carry less severe penalties than child pornography offences, with penalties of up to two years imprisonment.

2.21 Some submitters expressed support for the creation of this type of summary offence, and argued that such an offence should be introduced across Commonwealth and state and territory jurisdictions.²³

19 Victorian Parliament Law Reform Committee, *Inquiry into Sexting*, 29 May 2013, p. 146 (Recommendation 7).

20 See for example, Civil Liberties Australia, *Submission 1*, p. 2; The Alannah and Madeline Foundation, *Submission 7*, p. 3; National Children's and Youth Law Centre, *Submission 20*, p. 3; Youth Law Centre ACT, *Submission 24*, p. 6.

21 Victorian Parliament Law Reform Committee, *Inquiry into Sexting*, 29 May 2013, p. 150.

22 Victorian Parliament Law Reform Committee, *Inquiry into Sexting*, 29 May 2013, p. 152 (Recommendation 9).

23 See for example, Youth Law Centre ACT, *Submission 24*, p. 6.

The need for national consistency

2.22 Several submitters argued that the lack of consistency in relation to the laws that could apply to sexting in different Australian jurisdictions creates confusion and uncertainty for young people. For example, BoysTown stated:

...the confusion created by the Australian legislative environment regarding sexting makes the delivery of consistent, uncomplicated messages about sexting a challenge. Definitions of child pornography in a legal context differ between the states in Australia which leads to complications and ambiguity. One reason for the ambiguity is that the legal definition of a 'child' varies between, and even within jurisdictions.²⁴

2.23 The NCYLC commented:

Under the current framework, a young person can be charged both under the Commonwealth and their State's legislation. In many situations the State's legislation differs greatly from the related Commonwealth offences, where the relevant cut off age for child exploitation and child pornography material is lower than it is for the Commonwealth offences.

Furthermore, the inconsistency in laws dealing with sexual behaviour (i.e. sexting and sexually intimate behaviour) can cause confusion among young people. This confusion further renders the child pornography laws incapable of deterring young people from committing offences. It also leaves victims of sexting related harm without certain options for recourse and resolution.²⁵

A statutory tort for invasion of privacy

2.24 Some submitters argued that the issue of non-consensual distribution of sexting images could be dealt with through the introduction of a statutory tort for invasion of privacy, rather than a new criminal offence relating to sexting.²⁶ The introduction of a statutory tort for invasion of privacy has variously been recommended by the Australian Law Reform Commission, the New South Wales Law Reform Commission and the Victorian Law Reform Commission (in their relevant jurisdictions) over the last several years.²⁷ The Victorian Parliament Report into sexting also recommended that the Victorian Government consider introducing a statutory tort for invasion of privacy in that jurisdiction.²⁸

24 BoysTown, *Submission 14*, p. 14.

25 National Children's and Youth Law Centre, *Submission 20*, p. 2.

26 Civil Liberties Australia, *Submission 1*, p. 1; Assistant Professor Bruce Arnold and Mr Benjamin Smith, *Submission 11*, pp 6–7.

27 Assistant Professor Bruce Arnold and Mr Benjamin Smith, *Submission 11*, p. 7.

28 Victorian Parliament Law Reform Committee, *Inquiry into Sexting*, 29 May 2013, p. 188 (Recommendation 12).

2.25 Assistant Professor Bruce Arnold and Mr Benjamin Smith argued that a privacy tort would be preferable to criminal offences for sexting:

It is axiomatic – and should be recognised in Australian law – that the dissemination of intimate images that have either been taken without consent, or published to a third party without consent is a serious invasion of privacy...

Remedies under such a tort for unauthorised making and/or dissemination of sexting images would include compensation and apology. Such an apology would we believe be welcomed by many victims of disregard of their privacy, people who are interested in vindication – in an acknowledgment that they were wronged and that the offender (the person inappropriately making the image or disseminating the image) is contrite.

We do not believe that every victim of sexting would seek to use the tort. In practice they do not need to; it will be sufficient if a handful of people (adults and minors) successfully take action and thereby indicate to the community that particular behaviour is condemned by both ordinary Australians and the law.²⁹

2.26 While noting that the first national symposium on Bullying, Young People and the Law supported the adoption of the Victorian Parliament Report's recommendations, including that in relation to the introduction of a privacy tort, The Alannah and Madeline Foundation commented that young people's concept of privacy may differ from that of other groups:

It is...debatable whether all people subscribe to fundamentally similar notions of privacy; that is that one controls information about oneself and shares it only to certain individuals. Young people have grown up in an environment where sharing sometimes quite intimate thoughts – and images – are seen as the norm. Private and public selves are entwined in ways it's difficult for older generations to understand.³⁰

Attorney-General's Department's view on existing Commonwealth legal framework

2.27 The Attorney-General's Department (AGD) expressed the view that the current Commonwealth legislative regime is adequate at the present time. AGD noted that recent reforms introduced by the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* were 'designed to ensure that child sex-related offences in areas of Commonwealth responsibility remain comprehensive and able to deal with contemporary forms of offending'.³¹

29 Assistant Professor Bruce Arnold and Mr Benjamin Smith, *Submission 11*, pp 6 and 7.

30 The Alannah and Madeline Foundation, *Submission 7*, pp 4, 5 and 8.

31 Attorney-General's Department, *Submission 5*, p. 2.

2.28 AGD went on to comment that the offences under the Criminal Code are subject to a range of protections to ensure that behaviour such as sexting, which is not exploitative of or harmful to children, is not inappropriately captured. These protections include:

- scope for law enforcement to take the circumstances of the particular case into account before proceeding to investigate or prosecute such offences;
- prosecution agencies are required to consider whether the prosecution of a young person is, in all the circumstances, in the public interest, before proceeding with the case;
- under section 474.24C of the Criminal Code, the consent of the Attorney-General is required prior to the commencement of proceedings for an offence against Subdivision D of Part 10.6 of the Code (which includes Commonwealth online child pornography offences) if the person was under 18 years of age at the time he or she allegedly engaged in the conduct constituting the offence;³²
- under the Commonwealth *Crimes Act 1914* (Crimes Act) and the Criminal Code, a child under the age of 10 years cannot be held criminally responsible for an offence; and
- under the Commonwealth Crimes Act and the Criminal Code, there is a presumption that a child aged between 10 and 14 years cannot be held criminally responsible, with the prosecution bearing the onus of proving that the child knew that their conduct was wrong.³³

2.29 AGD concluded:

The Commonwealth child sex-related offence regime has been comprehensively reviewed and updated to ensure it is adapted to suit modern forms of offending, including sexting. The Commonwealth approach upholds community interest in preventing the circulation of sexually explicit images of minors by young people and avoids problematic legislative distinctions between legal and illegal forms of sexting-related behaviour.

The provisions of the Criminal Code allow the specific circumstances of each incident to be taken into account in determining whether to investigate or prosecute a young person for online child pornography offences, thereby ensuring that such offences can be dealt with appropriately...the offences strike an appropriate balance between preventing inappropriate prosecutions for sexting and ensuring children and young people are adequately protected from online sexual exploitation.³⁴

32 Attorney-General's Department, *Submission 5*, pp 3–4.

33 Mr Anthony Coles, Assistant Secretary, Attorney-General's Department, *Committee Hansard*, 1 August 2013, p. 41.

34 Attorney-General's Department, *Submission 5*, p. 4.

2.30 In relation to existing Commonwealth child pornography charges, AGD argued that persons under 18 years of age should not automatically be excluded:

[These offences] are not designed to target young people engaged in sexting and similar behaviours. However, persons under 18 years of age are not excluded from the operation of the provisions...such an exclusion would potentially reduce protections for children and young people against online child pornography offences in circumstances where the incident involved malicious or exploitative behaviour.³⁵

Educational initiatives

2.31 Submitters to the inquiry emphasised the importance of creating appropriate educational strategies to help young people, parents and teachers as being the primary driver of positive behavioural change in relation to sexting.³⁶ In the view of many stakeholders, the legal framework for dealing with sexting should only operate as a 'last resort' where education and awareness raising has been unsuccessful.³⁷ For example, the Australian Psychological Society stated:

...the legal implications surrounding sexting by children and young people should not lead to a solely legal solution to the issue. Informed parenting, school-based practices and educational approaches offer the most productive way forward.³⁸

Successful approaches to educational initiatives

2.32 Submitters raised several issues in relation to the best way to formulate and target educational and awareness raising initiatives in this area. The Australian Communications and Media Authority (ACMA) stated that educational programs relating to cyber safety:

- must be effectively targeted to the audience;
- should use a variety of delivery mechanisms to maximise engagement;
- must be evidence based, and evaluated to ensure they are driving behavioural change; and
- should incorporate a partnership approach between industry, government and non-government stakeholders.³⁹

35 Attorney-General's Department, *Submission 5*, p. 3.

36 See for example, Australian Universities' Anti-Bullying Research Alliance, *Submission 18*, p. 12.

37 See for example, St John Ambulance Australia, *Submission 8*, pp 1–2; Australian Communications and Media Authority, *Submission 9*, p. 5; Assistant Professor Bruce Arnold and Mr Benjamin Smith, *Submission 11*, pp 3 and 5.

38 Australian Psychological Society, *Submission 16*, p. 5.

39 Australian Communications and Media Authority, *Submission 9*, pp 5–8.

2.33 BoysTown noted the success of approaches which are age-appropriate and presented in the media with which young people regularly engage. BoysTown argued that campaigns targeting young people should include:

- user interactivity;
- less formal, more conversational tone;
- youth-focused concepts;
- empowering messages; and
- opportunity for peer-based learning and support.⁴⁰

2.34 Several submitters emphasised the importance of including parents and carers as well as young people in targeted education strategies. Youth Off The Streets argued that parents need to be given appropriate tools to be able to discuss online behaviour with their children.⁴¹ BoysTown agreed, advocating further support for 'adequately-funded initiatives to increase the knowledge, understanding, skills and confidence of parents and carers in fostering a safe digital communications culture among children and young people'.⁴²

Strategies for responding to sexting incidents

2.35 The NCYLC argued that there needs to be a greater focus on providing guidance in how to respond to sexting incidents:

...there is a preponderance of cyber safety programs and initiatives with a major focus on prevention and education but there is a dearth of resources directed to advocating for quick and effective solutions once an incident has occurred.⁴³

2.36 The NCYLC articulated three key principles it believed should inform strategies to respond to sexting incidents:

- every party involved in sexting incidents (including victims, alleged perpetrators, schools and in particular, police) must have access to accurate legal information and advice about sexting and appropriate referral pathways to ensure there is a holistic response;
- responses to sexting should provide the young people involved with the opportunity to participate in the resolution of the incident, which will in turn facilitate informed decision making by all parties; and
- this participation should be guided by principles of procedural fairness.⁴⁴

40 BoysTown, *Submission 14*, p. 16.

41 Youth Off the Streets, *Submission 6*, [p. 4].

42 BoysTown, *Submission 14*, p. 3; see also Australian Psychological Society, *Submission 16*, p. 18.

43 National Children's and Youth Law Centre, *Submission 20*, p. 5.

44 National Children's and Youth Law Centre, *Submission 20*, p. 5.

Existing educational and awareness raising initiatives

2.37 Several existing educational initiatives relating to cyber safety and sexting that are currently operating in Australia were mentioned by submitters.

ACMA's Cybersmart Program

2.38 The ACMA informed the committee that it operates a suite of educational initiatives in this area, through its Cybersmart Program. This incorporates a number of elements, including:

- the Cybersmart Outreach program, delivering face-to-face presentations for young people, parents and teachers alongside full day or half day Professional Development modules for teachers, and tailored sessions for Pre-Service teachers;
- the Cybersmart website, which offers general information, education programs and lesson plans, as well as specific information on sexting including content to help young people who have sent a sext and subsequently regretted it, advising them of practical steps they can take to help remedy the situation;
- the Cybersmart Online Helpline, a free, confidential counselling service for young people impacted by sexting and other cyber issues offered in partnership with Kids Helpline;
- *Tagged*, a short film and education package for teens dealing with the issues of cyberbullying, sexting, and digital reputation management; and
- Cybersmart's Facebook campaign for teens, 'The Cloud', which provides engaging content in a humorous, teen-friendly format, with opportunity for user comment and feedback.⁴⁵

2.39 The AMCA noted that its Cybersafety programs are evidence based and targeted to reach not just persons directly involved in sexting, but peers, parents and teachers.⁴⁶

Other government initiatives

2.40 The AFP stated that it operates several educational initiatives in relation to online safety, including:

- cyber safety educational presentations, delivered to school aged children on online safety risks including sexting; and
- the 'ThinkUKnow' cyber safety program, delivering awareness-raising sessions to parents, carers and teachers on issues including cyber bullying, sexting and online grooming.⁴⁷

45 Australian Communications and Media Authority, *Submission 9*, pp 6–7.

46 Australian Communications and Media Authority, *Submission 9*, pp 5 and 7.

47 Australian Federal Police, *Submission 4*, pp 4–5.

2.41 The Department of Broadband, Communications and the Digital Economy noted that it runs a Budd:e program to teach school aged children about the risks of providing personal information and images to others.⁴⁸

Non-government sector programs

2.42 Several industry and non-government organisations also informed the committee about educational programs and awareness raising initiatives currently being implemented.

2.43 The Alannah and Madeline Foundation runs the eSmart Schools and eSmart Libraries programs. eSmart Schools is designed to help schools manage cyber safety and deal with cyber bullying and bullying. It is available to all schools across Australia with more than 1,700 schools participating. The eSmart Libraries is a behaviour change system for libraries to improve cyber safety and wellbeing and deal with cyber bullying. It is being piloted in 21 library services.⁴⁹

2.44 BoysTown operates Kids Helpline, a national telephone and online information support and counselling service for young people, which includes information and resources relating to sexting and cyber bullying.⁵⁰

Other issues

2.45 In addition to the strong focus on the legislative and educational framework surrounding the issue of sexting, it was also suggested in evidence to the committee that a national digital communications tribunal be established.

A national digital communications tribunal

2.46 Further to any possible legislative changes, the Victorian Parliament Report recommended that the Victorian Government advocate that the Standing Council on Law and Justice consider issues surrounding the creation of a national Digital Communications Tribunal to deal with and resolve complaints about harmful digital communications.⁵¹

2.47 Currently, the ACMA has a role in investigating complaints about prohibited and potentially prohibited material posted online. The ACMA is only able to request that material be removed where it is prohibited under the Australian National Classification Scheme, and can only issue take-down notices in relation to material that is hosted in Australia.⁵² In certain circumstances individuals may also be able to

48 Department of Broadband, Communications and the Digital Economy, *Submission 13*, [p. 4].

49 The Alannah and Madeline Foundation, *Submission 7*, pp 5–6.

50 BoysTown, *Submission 14*, pp 6 and 8–9.

51 Victorian Parliament Law Reform Committee, *Inquiry into Sexting*, 29 May 2013, p. 202 (Recommendation 14).

52 Victorian Parliament Law Reform Committee, *Inquiry into Sexting*, 29 May 2013, pp 196–197.

take complaints in relation to material posted online to the Australian Competition and Consumer Commission or the Australian Federal Police.⁵³

2.48 In relation to material posted to online social media or other sites, most major social media services require users to comply with terms of use that prohibit unlawful or offensive content, with mechanisms for users to report inappropriate content for removal by the service provider.⁵⁴

Conclusion

2.49 The evidence provided to the committee during this inquiry indicates that sexting has become a regular activity for many minors (young people aged under 18 years). The emergence of new technologies has facilitated the creation and transmission of sexual content through electronic media.

2.50 Much of this activity takes place between consenting young people and is therefore relatively benign. However, in some instances, sexting activities are coercive, exploitative or undertaken with malicious intent. It was argued by many submitters that the current legislative framework requires review to ensure that consensual sexting is not captured by those laws targeting child pornography. Evidence was also received which supported the introduction of changes to effectively address non-consensual sexting.

2.51 The committee considers that the evidence it received demonstrated the serious and complex nature of sexting by minors. However, given the short timeframe in which it has had to undertake this inquiry, the committee was unable to fully explore all the issues raised in the evidence. In particular, the committee considers that the suggestions made in relation to changes to Commonwealth laws including amendments to the child pornography laws and the introduction of a new offence for non-consensual sexting require further, in-depth consideration.

2.52 In addition, some submitters called for the creation of a national digital communications tribunal. The committee considers that further work is necessary to determine whether such a body could effectively provide access to remedies other than those that are already available under the current regulatory framework.

2.53 The committee therefore considers that an inquiry into options for addressing the issue of sexting by minors be re-referred by the Senate in the 44th Parliament in order to investigate and deliberate further on the matters raised in evidence.

Senator Catryna Bilyk
Chair

53 Victorian Parliament Law Reform Committee, *Inquiry into Sexting*, 29 May 2013, p. 198.

54 Victorian Parliament Law Reform Committee, *Inquiry into Sexting*, 29 May 2013, pp 191-93.

