



Commissioner for Children and Young People
Western Australia

Ms Christine McDonald
Committee Secretary
Senate Select Committee on Cyber Safety
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms McDonald

Inquiry into options for addressing the issue of sexting by children and young people under 18

Thank you for your letter inviting a written submission to the Senate Select Committee on Cyber Safety (the Committee) inquiring into options for addressing the issue of 'sexting' by children and young people under 18 years of age. The practice of sexting by children and young people has emerged in recent years as serious issue from a number of perspectives, particularly in relation to its legal consequences under current law. I am pleased the Committee is inquiring into options for responding to growing concerns about its impacts on children and young people.

Role of the Commissioner for Children and Young People

As the inaugural Commissioner for Children and Young People in Western Australia (WA) appointed under the *Commissioner for Children and Young People Act 2006* (the Act) in December 2007, my role is to advocate for WA children and young people under the age of 18 years. My functions under section 19 of the Act include promoting and monitoring the wellbeing of children and young people generally; promoting their participation in decisions that affect their lives and encouraging government and non-government agencies to seek their participation; and monitoring and reviewing written laws, draft laws, policies, practices and services affecting their wellbeing.

In carrying out my functions I must give priority to Aboriginal and Torres Strait Islander children and young people and to those who are vulnerable or disadvantaged for any reason, and I must have regard to the United Nations Convention on the Rights of the Child. I must also observe four guiding principles:

- Children and young people are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation

Caring for the future growing up today

- The contributions made by children and young people in the community should be recognised for their value and merit
- The views of children and young people on all matters affecting them should be given serious consideration and taken into account
- Parents, families and communities have the primary role in safeguarding and promoting the wellbeing of their children and young people and should be supported in carrying out their role.

As Commissioner, I travel extensively throughout WA consulting widely with government and non-government agencies as well as with children, young people and their families in metropolitan, regional and remote communities. It is with these responsibilities and perspectives in mind that I write to the Inquiry about sexting.

Legal consequences

Legislation created to protect children and young people from sexual exploitation and harm through predatory sexual behaviour is critical and supported. However, I am concerned that an unintentional consequence has been to criminalise a range of peer directed behaviours grouped broadly under the term 'sexting'. In 2009 I raised these concerns in my submission to WA's Legislative Council Standing Committee on Uniform Legislation and Statutes Review which was inquiring into the *Child Exploitation Material and Classification Legislation Amendment Bill 2009*.

Legislation establishing child sex offender registers in each state and territory jurisdiction¹ heightens the stakes for children and young people who engage in sexting behaviour: sexting can result in registration as a child sex offender if prosecuted and convicted. This is particularly so in WA where there is currently no judicial discretion about whether a young offender is registered as a child sex offender.

In WA, the Law Reform Commission of Western Australia considered the issue of sexting by children and young people in its report *Community Protection (Offender Reporting) Act 2004: Final Report*, January 2012² (the Report) and its preceding Discussion Paper published in February 2011. The Report highlighted the need for judicial discretion in determining whether offences committed by young people warrant sex offender registration.

I also support the application of judicial discretion. In 2011, I raised my concerns about the treatment of young offenders under WA's sex offender register legislation in a submission to the statutory review of the *Community Protection (Offender Reporting) Act 2004* (CPOR Act). A copy of my submission is available at www.ccyp.wa.gov.au.

Additional research and information

There is a growing body of research on the practice of sexting and its implications for children and young people. To inform its deliberations, I refer the Committee to the following research and resources in addition to the reports and submission referred to above:

- Law Reform Committee 2013 *Inquiry into sexting: Report of the Law Reform Committee*, Legislative Assembly, Parliament of Victoria. This report comprehensively examines issues surrounding sexting and law in Victoria, including the application of the sex offender register to sexting offences.

¹ The state and territory registers feed into ANCOR - the Australian National Child Offender Register.

² Project No. 101

- Albury K, Crawford, K., Byron, P. & Mathews, B. *Young People and Sexting in Australia: ethics, representation and the law*. April 2013. ARC Centre for Creative Industries and Innovation/Journalism and Media Research Centre, The University of New South Wales.
- Tallon K, Choi A, Keeley M, Elliott J, and Maher D 2012, *New Voices / New Laws: School-age young people in New South Wales speak out about the criminal laws that apply to their online behaviour*, National Children's and Youth Law Centre and Legal Aid NSW.
- Sydney Institute of Criminology at the University of Sydney (along with the University of NSW and University of Western Sydney) is currently researching 'Sexting and Young People', with a Criminology Research Grant and contribution from the NSW Commission for Children and Young People. The research includes an anonymous online survey for young Australians (aged 13 and above) and seeks to understand the sexting practices and perceptions of young Australians, gauge community perceptions and analyse current laws.

The views of children and young people

In my submission of 24 June 2010 to the Committee during its earlier inquiry into cyber safety, I emphasised the importance of hearing from children and young people themselves. Children and young people already inform much of the available research on sexting. However, I recommend the Committee consider meeting directly with representative groups of children and/or young people to hear first-hand their experiences and views on how governments should respond to the potential legal, personal and social impacts that are specific to the practice of sexting. The involvement of young people will contribute to the development of effective policies and programs for responding to the issues the Committee identifies. My participation guidelines on involving children and young people are available on my website at www.ccyp.wa.gov.au and may provide some assistance in how to involve young people.

I would be happy to discuss any queries you may have in relation to this letter.

Yours sincerely

MICHELLE SCOTT

Commissioner for Children and Young People WA

6 August 2013