



Australian Government

**Department of Broadband,
Communications and the Digital Economy**

**SUBMISSION TO THE SENATE SELECT
COMMITTEE ON CYBERSAFETY**

INQUIRY INTO SEXTING BY MINORS

JULY 2013

Introduction

The Department of Broadband, Communications and the Digital Economy (the Department) welcomes the opportunity to provide input to the Joint Select Committee on Cybersafety's inquiry into sexting by minors. The potential consequences of sexting is a key policy concern affecting young Australians and their parents.

For the purposes of this submission the Department considers sexting to be the creating and sharing of sexually explicit images via the internet, mobile phones or other electronic devices. The Department has limited this submission to sexting undertaken by children under the age of 18 years.

Research conducted by the University of New South Wales has found that young people, while familiar with the term sexting, did not use the term themselves in relation to sending naked or semi naked pictures. Young people said that they preferred using general terms such as 'selfies' or 'pictures' as the term sexting is viewed as inherently negative. Sexting is considered a term used by the media and adults.¹

While substantial research has not been undertaken into the prevalence of sexting, the available research indicates sexting is becoming a more common practice for young people. Research from 2011 indicated that 15 per cent of Australian children have seen or received sexual messages online and 4 per cent have sent or posted a sexual message.² In 2012 the National Children's and Youth Law Centre (NCYLC) conducted an online survey which found that 21.9 per cent of respondents had received a nude or semi-nude image and 10.8 per cent had sent such an image of themselves.³ The NCYLC has indicated that sexting, as a topic, is gaining increased interest with an increase in visitors to their website and contacting them through their *Lawmail Service*.⁴

Advice received from members of the Youth Advisory Group on Cybersafety (YAG) indicates that sexting is prevalent amongst young Australians. YAG members agreed that most young people are not aware of the consequences of sexting, which they consider to be guilt, shame and the inability to take it back once it has been sent.

Sexting by minors

The Victorian Law Reform Committee distinguishes between two types of sexting, consensual and non-consensual,⁵ while the National Children's and Youth Law Centre (NCYLC) identifies four stages of sexting being, requesting an image, creating an image, sharing an images with an intended

¹ Albury, K., Crawford, L., 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, Australia.

² Green, L., Brady, D., Olafsson, K., Hartly, J. & Lumby, C. *Risks and safety for Australian children on the internet*. (2011). ARC Centre of Excellence for Creative Industries and Innovation.

³ Tallon, K., Choi, A., Keeley, M., Elliott, J. & Maher, D. *New Voices/New Laws: School-age young people in New South Wales speak out about the criminal laws that apply to their online behaviour*. (November 2012) National Children's and Youth Law Centre and Legal Aid NSW, Sydney.

⁴ Ibid.

⁵ Victorian Law Reform Committee: Inquiry into sexting (May 2013). Retrieved from <http://www.parliament.vic.gov.au/lawreform/article/944> on 25 July 2012. Albury, K., et al. (2013).

recipient (consensually) and distributing an image to others (non-consensually).⁶ The NCYLC states in most cases, where sexting fits into the first three above mentioned stages, the subject may not experience any harm.⁷ An individual is more likely to face harm or potential negative impacts of sexting when the image is non-consensually distributed more broadly or there is a threat to do so.

Consensual sexting

Consensual sexting occurs where an individual takes a picture or allows a picture to be taken of them and it is distributed by the individual to a trusted individual or group. There may also be consensual sending of the image in this context where the individual is aware or may expect that the picture will be distributed within the trusted group.

Where sexting occurs in this context participants have reportedly found it to be empowering, demonstrating an awareness and acceptance of their bodies. It is also considered a method of flirting among teenagers.⁸ It is likely that a majority of sexting occurs in these confines and as the participants do not consider it to be offensive or inappropriate it is not reported.

Despite the increase in social acceptance of sexting, the children that participate by sending or receiving explicit or nude images may be in contravention of state, territory or Commonwealth law.

Albury, et al.⁹ state in their research that young people are confused by the discrepancy between the age of consent for sexual activity, being 16, but to take, send or receive a sext individuals must be over 18. Participants in Albury's, et al. study suggested that the child pornography laws should be applied differently to those under the age of 18 compared to the application to those over the age of 18.¹⁰ Research undertaken by Green, et al.¹¹ in 2011 found that the older the child the more likely they were to have been exposed to sexting with 18 per cent of 15 and 16 year olds having received a sext. Green, et al. also found that the 15 to 16 year old age group was more likely to be asked to take an inappropriate picture of themselves.

These findings are consistent with research undertaken by the NCYLC in 2012 that found that the rates of sexting increased with age with 16-17 year old respondents being more than three times as likely as 12-13 year olds and almost twice as likely as 14-15 year olds to have experienced or know someone who has experienced sexting.

This research indicates that sexting is more prevalent amongst older children and, depending on relevant state and territory legislation, the participants may be the age of consent or older.

Non-consensual distribution of a consensual picture

Non-consensual distribution of a consensual picture occurs where an individual takes a picture or allows a picture to be taken of them with the expectation that it will not be distributed beyond a trusted group or relationship, but due to a breakdown in a relationship or breach of trust, the

⁶ Tallon, K. et al (2012)

⁷ Ibid.

⁸ Ibid.

Albury, K., et al (2013).

⁹ Ibid.

¹⁰ Ibid.

¹¹ Green, L. et al (2011)

picture is distributed non-consensually to another party or a broader audience. This can also be considered a form of cyberbullying.

Where non-consensual distribution of a picture occurs it may result in negative consequences for the individual whose picture is being distributed such as embarrassment, social ridicule, extortion and mental health implications. The NCYLC consider that, 'At this stage, harm is more probable and substantial. The subject of the image is likely to feel betrayed, humiliated, angry and upset. If the photo is shared widely, the subject is likely to feel a sense of helplessness and loss of control. The subject is also likely to worry about long lasting damage to his or her reputation and even job prospects. If the image is passed around among the subject's peers, he or she may also experience bullying and harassment.'¹²

The Department is aware that concerns have been raised by legal groups, such as the NCYLC, that current laws act as a disincentive for minors to report incidents that fall into this category due to concerns of being prosecuted for creating and/or distributing child pornography. There are concerns that the current laws, while intended to target adult offenders and combat the sexual exploitation of children, technically apply to the interactions between children. Albury (et al)¹³ note that these laws were not intended to apply to minors engaging in consensual sexual activity, such as sexting, which was not a part of mobile phone culture at the time the laws were created.

There are a number of existing Commonwealth, State and Territory offences which may apply to sexting where a criminal justice response is warranted. These laws provide a framework to deal with instances of children sending non-consensual images.

The Attorney-General's Department has advised that, to date, no minor has been prosecuted under the Commonwealth's child pornography offences for an activity that falls under the category of sexting.

Additionally, section 474.17 of the Commonwealth *Criminal Code Act 1995* makes it an offence to use the internet, including social media, to menace, harass or cause offence. This is a broad offence that captures serious instances of cyberbullying behaviour associated with sexting.

The Department understands the submission being provided by the Attorney-General's Department to this inquiry details the current Commonwealth legislative framework as it relates to sexting including the safeguards included to protect minors.

Non-consensual distribution of a non-consensual picture

Non-consensual distribution of a non-consensual picture occurs where a picture is distributed that was taken without the subject being aware the picture was being taken or where the picture was taken under coercion and pressure without the subject's consent.

The NCYLC have reported that in instances when images are distributed non-consensually there is a greater probability of negative consequences for the subject of the image.¹⁴

¹² Tallon, K. et al. (2012)

¹³ Albury, K. et al. (2013)

¹⁴ Tallon, K. et al. (2012)

Reporting sexting offences

The NCYLC have identified in their research that the majority of sexting incidents that are referred to the police are end of relationship incidents¹⁵. In these incidents the images were shared between two consenting parties within a trusted relationship with the expectation that the images would remain private. However, with the breakdown of the relationship the images are shared, or one of the parties threatens to share the images, with a broader group.

The NCYLC has indicated that there is a lack of clarity about how these circumstances should be dealt with. They suggest the development of a formal set of police guidelines to be shared with young people, their families, educators and other advocates to provide transparency and certainty for young people on how and when to report a sexting incident.

The development of such police guidelines would help fill the gap identified in Albury's, et al.¹⁶ research which indicates that there is a lack of education and resources focusing on responding to and managing sexting incidents. They would help provide clear avenues for minors to seek assistance to mitigate the potential damage from the circulation of inappropriate images.

NCYLC has also suggested that an effective and accessible dispute resolution mechanism with the power to issue take down and delete orders would help minimise harm and ensure that more formal legal remedies or criminal prosecution remain a measure of last resort.¹⁷

These issues require further consideration including in the context of the new Australian Cybercrime Online Reporting Network (ACORN). ACORN will be a centralised online reporting facility to receive cybercrime reports from the public, provide users with general and targeted education advice and refer reports to law enforcement and government agencies for further consideration. When the ACORN is released in 2014 individuals will be able to report sexting and cyberbullying incidents online. The Department is working with the Attorney-General's Department in the development of the ACORN.

Education and awareness

It is important to educate young Australians, and their parents, to the risks of sexting and to increase awareness of the processes and avenues for recourse available to victims.

The Department's Budd:e program teaches school aged children about the risks of providing personal information and images to others.

The Australian Communications and Media Authority (ACMA), through the Cybersmart Program, raise awareness and educate young people, parents and teachers about sexting and general internet safety awareness. Other initiatives undertaken by the ACMA include:

- Cybersmart Online Helpline, a counselling service provided for young people in partnership with the Kids Helpline.

¹⁵ *ibid.*

¹⁶ Albury, K. et al. (2013)

¹⁷ Tallon, K. et al. (2012)

- Tagged, a short film and education package for teens dealing with cyberbullying, sexting and digital reputation management.
- The Cloud, a Facebook campaign for teens – sexting is one of the issues covered.

The National Safe Schools Program also provides information on sexting. The study *Young people and sexting in Australia: Ethics, representation and the law* showed that feedback from parents indicated that while there is a lot of focus on prevention, more information and resources should be made available to dealing with instances that have occurred.¹⁸

Online safety and security will also be included in the new Australian Curriculum, commencing in some states from 2014.

¹⁸ Albury, K., et al (2013).