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

Dear Ms McDonald

Thank you for the opportunity to comment on the committee's inquiry into options for addressing the issue of sexting by minors.

In Tasmania the relevant legislation and applicable offences including involving persons under 18 years in production of child exploitation material, production of child exploitation material, distribution of child exploitation material, and possession of child exploitation material are contained in Sections 130-130C of the *Tasmanian Criminal Code*.

These indictable child exploitation material laws are also mirrored by summary versions of the offences in Sections 73, 72A, 73A, and 74A of the *Tasmanian Classification (Publications, Films and Computer Games) Enforcement Act 1995*.

Although the legislation does not differentiate between material produced by adults or young people, Tasmania Police has taken the policy position that the legislation was intended to criminalise the actions of those exploiting children, and that consensual activity between children generally should not be dealt with as a criminal matter.

The preferred authority to address issues of consensual sexting by young people is their parents, or schools where the activity occurs within a school context. We view the primary role of police in regard to this issue as being to support parents and schools through the provision of advice and to engage Child Protection Services in circumstances where it is identified a young person may not have an adequate level of parental support.

Tasmania Police would only consider the use of child exploitation material offences against a young person in circumstances where the conduct is clearly exploitative. As these circumstances would usually involve a substantial age difference, we apply the age defences contained in Section 124 of the *Criminal Code*, to both adults and children for whom a prosecution may be considered, albeit they are not a legislative defence to the child exploitation material laws.

With regard to sexting images, of adults or children, being forwarded without their consent, our position is that prosecution should only occur where the sender's intention was clearly malicious. In such circumstances we do not have local legislation that appropriately covers the conduct, and instead would likely rely on the offence of *Using a carriage service to menace, harass or cause offence* contrary to Section 474.17 of the *Criminal Code* (Cth).

We also have other legislation in this State that deals with issues on the periphery of this subject, such as Sections 13A-13D of the *Police Offences Act 1935*, which covers the covert observation or recording of persons in circumstances where they would expect privacy, and the possession or publishing of such recordings.

It is also worth highlighting that even in circumstances where police decide to take action against a young person for a breach of the criminal law, young people in Tasmania are dealt with under the provisions of the *Youth Justice Act 1997*, and where possible are diverted from the court system by cautioning or conferencing.

Finally, with regard to the potential for the Commonwealth to legislate in this area, we are of the view that it is always preferable for issues intended to be enforced by State and Territory police to be dealt with under their respective State or Territory legislation. State and Territory police officers performing general duties, who are most likely to deal with issues such as this, are familiar with the legal frameworks within their jurisdictions, but less familiar with Commonwealth frameworks and powers, such as search, arrest and investigative detention. Further, there are substantial procedural and legal differences surrounding the collection and processing of forensic evidence for Commonwealth offences, with which our members are unlikely to be familiar, and which do not integrate with our State legislation or procedures.

Should you have any queries regarding this submission, please do not hesitate to contact Acting Inspector Luke Manhood within our legislation development and review area. Acting Inspector Luke Manhood can be contacted on (03) 6230 2363 or by email at luke.manhood@police.tas.gov.au.

Yours sincerely

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COMMISSIONER OF POLICE