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# Official Committee Hansard

SELECT COMMITTEE ON CYBER SAFETY

THURSDAY, 1 AUGUST 2013

MELBOURNE

BY AUTHORITY OF THE SENATE

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**SELECT COMMITTEE ON CYBER SAFETY**

**Thursday, 1 August 2013**

**Members in attendance:** Senators Bilyk, Parry, Stephens.

**Terms of Reference for the Inquiry:**

To inquire into and report on:

Options for addressing the issue of sexting by minors

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**TROTTER, Ms Sharon Ann, Manager, Cybersmart Program, Australian Communications and Media Authority**

**WRIGHT, Ms Andree, Executive Manager, Security Safety and Education, Australian Communications and Media Authority**

**Committee met at 10:33.**

**CHAIR (Senator Bilyk):** Welcome. Today the Select Committee on Cyber Safety is holding a private briefing to canvass issues relating to sexting by minors. I welcome officers from the Department of Broadband, Communications and the Digital Economy and the Australian Communications and Media Authority. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. I remind witnesses that the Senate has resolved that an officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or the President. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

I note that the committee has received a submission from the department. Today's proceedings will be recorded by Hansard. However as this is a private briefing, the Hansard transcript will not be made public unless the committee agrees to do so. Should this occur, the committee will contact you before publication to ascertain your views concerning the publication of your evidence. I now invite you to make a short opening statement and at the conclusion of your remarks we will proceed to questions and a general discussion relating to sexting.

**Ms Wright:** Thank you, Senator. The ACMA welcomes the opportunity to be here today along with our colleagues from the department to meet with you and to express our appreciation for the work that the committee is doing. We think that this is a very vital and important area. As some of you may be aware, in the online safety area our role dates back to 2000 when amendments to the 1992 Broadcasting Services Act gave the ACMA a new role to investigate complaints about prohibited and potentially prohibited online content. Since that time, we have investigated more than 25,000 complaints about that prohibited and potentially prohibited content.

However, our regulatory role in relation to online content, while important, is not the only role we undertake in helping Australians to address online risks. In fact it is our strategic goal to make communications and media work in Australia's public interest. I think the phrase that best portrays our focus is 'communicate, facilitate and regulate'. I think that describes the levers at the authority's disposal.

In relation to the topic that we are talking about today, the communicate and facilitate levers are very much in play for us when we are dealing with issues around sexting. We have provided a comprehensive list of our resources and information in our submission to you and we believe that these resources are designed to equip Australian citizens with the skills, knowledge and behaviours they need to manage the range of online risks with confidence and safety. Our resources are distributed widely and they are provided free of charge.

Our website, which has received 2.8 million-plus visitors since 2009 and 18 million-plus page views since our launch two to three years ago, provides, we hope, a user-friendly front door for targeted advice on sexting for teachers, parents and young people. It also links to the Cybersmart online help line which offers free and confidential counselling for young people who are impacted by sexting and cyberbullying. The resources that we provide are informed by research and we have included some material in our submission about our latest research findings. We draw on research that we undertake and the research which is undertaken by others.

What I particularly want to mention today is the experience that we are able to draw on through our Cybersmart outreach education trainers, because they are at the coalface with students, teachers and parents. We find that it is really helpful to have their engagement with real people and real problems. It brings us face to face with the sorts of peer pressures and the emotions that young people have as they navigate the path to maturity in a digital world.

Since 2009, over 13,000 teachers have participated in the ACMA's full-day Cybersmart professional development workshops for teachers and over 755,000 teachers, students and parents have attended one of our internet safety and awareness presentations. So we are going to be drawing on some of the feedback that we get in those sessions and those interactions to craft the resources that we have, endeavour to keep them up to date and endeavour to make sure they are engaging with the problems that we are hearing about when we go out to the schools and communities.

We are very much looking forward to discussing our programs, our resources and our research with you today, but I would like in closing to share some of the insights that have come to us from parents who attend our presentation. I note in the media that young people themselves are a particular focus, but we are not always hearing about the parents or the issues they have with that or how we could help them. Parents are telling us that sexting is often a topic which they find difficult to bring up with their child, and many are surprised or unaware that sexting is in fact happening in a school environment or, indeed, that their child is exposed to sexting. They are also often unsure about how they should be dealing with sexting and are looking for clear directions on, for example, when they should contact the school or when they might need to contact the police. They have indicated that they find that there are very few support services for them to deal with the emotional trauma of discovering their child has been involved in sexting. It can be a struggle for them, if they have seen the images of their children, to be dealing with that. They find it very confronting and concerning.

It is feedback along those lines that we are engaging with at the moment. We feel we have an excellent suite of resources that give advice to young people going forward on how they may conduct themselves, but we are focusing particularly on customising a resource for young people who have sexted and then have to deal with problems that are real and no longer theoretical. We are also looking at the issue of the parents and how we can meet those needs. Thank you.

**CHAIR:** Thank you. Mr Kelleher, do you have an opening statement?

**Mr Kelleher:** We welcome the opportunity to provide input to the committee and thank you for the invitation. We were going to keep it fairly informal and present to the committee the way that we are looking at this issue in terms of your terms of reference for developing options and the categories that we see drop out. I will shortly ask Lucy to lead off for us. We see maybe five categories of research, education, awareness raising and counselling, reporting, deterrence measures and resolution as being a possible framework for coming to the issue of developing options. I know you have a few comments on the point of research. If it is useful for the committee, we are happy to take questions as we go through this.

**CHAIR:** I think that is probably the easiest way to go with the small group we have. Ms Kobier, do you want to talk about the research issues?

**Ms Kobier:** Sure. As the committee would be aware, sexting is a relatively new issue facing kids in Australia today, and there is a lack of consistent research out there. It is difficult for us to draw conclusions on the prevalence of the issue due to that lack of research and the context in which it is occurring. The department welcomes further research into this topic, including its prevalence, the views of young people, the effects of both consensual and non-consensual sexting and the ways in which the issues are being dealt with in other jurisdictions. One thing we have noted with the research that is out there and also with the challenge being faced with gathering further research is the ability to actually ask these questions of teenagers and young people—the appropriateness of asking the questions—to get a sound response and knowledge base that we can actually work from. I know questions along these lines are certainly ones I would not be answering in front of my mother, so it is making sure that, when we are researching, the data that is getting collected is representative and an accurate representation of what is happening.

**Senator STEPHENS:** Has the department commissioned research itself?

**Ms Kobier:** No.

**Ms Trotter:** The ACMA has commissioned some research which we are about to fully publish tomorrow. We outline the key findings in our submission. Picking up on Lucy's point: being aware of the sensitivities of conducting research of this nature, we asked questions of 16- to 17-year-olds only in our study. It was a broader study overall; but, when it came to sexting, we just took that subset. We asked them questions along the lines of, 'Have you or anyone in your friend group ever sent or received a sext?' We were not necessarily asking them to implicate themselves in that way. We also asked their parents ahead of them—it was an online study—if they were okay with seeing those questions as well. We had 241 of our respondents in that 16-to-17 age group, and 13 per cent of them reported that either they or someone in their friend group had sent a sexually suggestive image

and 18 per cent reported that they or someone within their group of friends had received a sexually suggestive image.

**CHAIR:** And that was out of 241?

**Ms Trotter:** Yes. That was a subset of our broader 8- to 17-year-old categories we asked the broader suite of questions. We also found, interestingly, that there were big differences between children reporting exposure to sexually explicit images and their parents' understanding that they had been. There was a 10 per cent difference between children reporting it and parents saying that, yes, their children had seen such images. I think that was another interesting finding. As Lucy said, it is the start of research and prevalence and there is a lot more that can be done, but we have those findings.

**Ms Wright:** When we are ascertaining the prevalence, a helpful focus might be thinking from the viewpoint of the real at-risk groups. We are very aware when we put information out for our programs that you need to be careful that you are not providing information to people who are never going to need it at the expense of properly targeting the people who actually do. So it is prevalence of risk and then going into that nest of issue that I think come from the complexity of this issue of motivations for young people when they are sexting, why they are doing it and the sorts of incentives that could be offered—particularly positive ones—for good behaviour that would make young people make a positive decision. I know there is a lot of discussion in the media about negative incentives, but we have found in the work that we do with schoolchildren that positive incentives for doing the right thing can be a very important motivator if you crack that.

**Senator PARRY:** Sometimes you need a framework that says, 'This is bad behaviour,' and that has to be reinforced by legislation to then do what you are saying with the positive message. I do not think you can do one without the other.

**Ms Wright:** And we do, in the work that we do with children and through our resources, go to that legal context of the risks they are running and put it in that framework. But it is building on that to find that something else. We are aware that, on the one hand, there is the issue of images, technology and circulation, and on the other that this is actually an area of emotional trauma for young people when it goes wrong and the belief that the trust in the relationship or interaction has failed. Often in the areas of young people making not-so-good choices it is because of self-esteem issues and all of those nests of behaviours.

**CHAIR:** Everybody is doing it—

**Ms Wright:** Once you have worked out where the at-risk groups are and who they are, focusing down on what can make a difference for them is something we are thinking a lot about at the moment.

**CHAIR:** Ms Kobier, did you want to say anything else about your research before we jump into some of the open questions or are you happy to go this way?

**Ms Flannery:** I think there is one other point that we should make: the research that has been conducted is showing that it is the older teens who are doing this, but one of the things we need to keep aware of and which will come out in the other points we wanted to talk about is that what may be a factor is that at the moment it is more the older teens who have access to mobile phones. As more younger children get more access to that technology, we could have a problem in the younger groups. Even if you see consensual sexting as not an issue for 16- or 17-year-olds, you may have a different policy response if it becomes more prevalent in the younger age groups.

**CHAIR:** Or younger.

**Ms Flannery:** Yes. So that research is not just a matter of doing it now but an ongoing process.

**Ms Wright:** We find that, at most of the secondary schools we go to, our trainers are giving us feedback that, over the past two years, most of these schools are dealing with issues of sexting. Some of the secondary schools have commented that they are dealing with sexting on a regular or even weekly basis. To take up your point, Angela, which I think is important: some of the primary schools we go to have also indicated that they have had sexting issues.

**CHAIR:** I read in a submission—I cannot remember which—that only adults call it 'sexting'. Younger people do not even refer to it as 'sexting', so there is even language disparity in trying to deal with the issue. I want to quickly ask anybody what the relationship is like with the AFP and the police with regard to developing these programs and doing research?

**Ms Kobier:** The AFP have their own program in this space—the ThinkUKnow campaign—and they are out in schools promoting that as well. They are aware of it as a problem and have provided a submission to your inquiry which has more information about what they are doing. Generally our conversations with them through the

Consultative Working Group on Cybersafety have been positive and they are happy to work towards an outcome that is positive for the community.

**Mr Kelleher:** I think the general point is there is a lot of value through that forum and others in coordinating the material.

**CHAIR:** Are you talking about the youth advisory group?

**Ms Kobier:** There is the Youth Advisory Group on Cybersafety as well, and we have raised it with the secondary spheres in that. They have discussed it and told us that it is an issue as well. But we also have the Consultative Working Group on Cybersafety, which has representatives from industry, government and non-government to talk about cybersafety issues affecting children.

**Ms Trotter:** We have worked with Victorian police, New South Wales police and Queensland police, amongst others, looking at their experiences of sexting. One of the things that is problematic for parents and schools is when to refer matters through to the police, so we have worked with them for advice around things like when and how to collect evidence and that kind of things. That is something where we are still actively pursuing those connections and having those discussions.

**CHAIR:** Also, the differentiation between consensual and non-consensual sexting has already been mentioned today and came up in a number of submissions as well. I wonder if you think there is a need to differentiate in law between those two different types. If so, do you have any ideas on how you can do that—what we need to do with that—and what sort of process we need to have to engage with young people to let them know? At the moment it is unlawful in most states and territories, and we implemented the legislation—the name of which I cannot quite recall at the moment—not that long ago that says it is unlawful. But each state and territory has different ages where it makes it illegal and things like that. I am wondering if you have any comments on those comments I have just made with regard to what might need to be done.

**Mr Kelleher:** I have one comment. Your point touches particularly on the issue in the education space, which is where the conversation has been recently. The feedback that we have observed through submissions to the inquiry but also which we are keen to put before the committee is that education, in part, delivers a better outcome where there is a clear message. I think it may have been the AFP; I am not certain. They just point to the ambiguity that can arise for individuals between legal ages of consent and the situation here with child pornography and the like. So I would not suggest or be comfortable with going any further to say what might be a way to address that, but there does seem to be an issue. Education can get you somewhere, but it will be held back if there is ambiguity in terms of what is the message, what is the recourse and what is the particular offence. I would just make that observation.

**Ms Flannery:** Yes. I think that just links to consistency. Obviously there are state and territory laws—and there is the Commonwealth Crimes Act as well—that can potentially be used. Certainly consistency across all of them is ideal, as well as consistency, obviously—as Brian was saying—with the age of consent. With a good law, you do not need to have exceptions, so if exceptions were considered—for example, for consensual sexting—I think a few of the submissions made it clear that they thought that would need to be given very serious consideration to make sure that you do not end up having conduct that slips through the cracks that you might otherwise want to regulate.

**Mr Kelleher:** That is very real, I guess, from the perspective of both the young individual and those support providers, and even law enforcement. Again, the point was made—maybe in the submission from Tasmania Police, but I cannot be certain—that junior officers in the field will be aware of their own jurisdiction but, when there is inconsistency, that becomes a challenge for them.

**CHAIR:** That is right. Just for clarity's sake and for Hansard's sake, it was the Commonwealth Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010 that came into effect last April. I note that any proceedings against a person under 18 years of age require the consent of the Commonwealth Attorney-General, so maybe that says to us that it will not be frivolously used or wrongly used. But that idea between consenting and non-consenting opens up a few cans of worms for me, if I can put it that way, because when you are 16 or 14 and you consent to something with someone, and then two years later the relationship breaks up and they do something with it, I am not sure where those borders lie. I think we need to clarify those sorts of borderlines, which becomes very complicated but is an important thing to do.

**Senator PARRY:** I just want to pick up on a couple of things that you mentioned earlier about the encouragement or the positive messages. Can I liken it to, say, motor vehicle stealing. At the age of 14, you know that you are not allowed to steal a motor vehicle, because the law is there, and that is the backstop, if you like, and it applies to all children. Therefore, any positive message about not stealing a motor vehicle is going to be



reinforced by that. I then pose this question: are we looking at maybe developing a legislative framework that says you are not allowed to send images of anyone across any electronic device or through the mail, if that could be a way of dealing with it? Then we go into this strong education program about not just sexting but everything around what you do on the internet. I have been fortunate enough to travel around a number of schools around the country on this very topic, and it is amazing how kids nowadays understand—it is drilled into them—that anything you put on the net today is there forever. I think this comes down to body images as well as information about yourself. So is that the aim? Do you think—I would be interested in a discussion about this—that we should start with a legislative provision that stops people doing this, no matter what age? I respectfully disagree with my chair; I do not think we need to look at consenting. I think it is all in or all out, for the very good reasons you both explained a moment ago. Is that where we start—getting a strong legislative framework and then making sure we back it up tremendously with complete education about the dangers of transferring any material electronically?

**Ms Wright:** Perhaps I should answer that. In the course of our research, we have come across information that lent a complexity to the problem that we are trying to resolve. I suspect I initially thought that the images, from an adult perspective, would of course be a bad thing which would not be in children's interest, but we have been exposed to some research that is, in a sense, knitting this behaviour into online sexual etiquette or even sexual etiquette today. This is something that I had not expected. So, without expressing an interest on this, either way, I think it might be helpful to talk about. Some young people—for example girls—felt that sending photos gave them more control over a sexual relationship than risking having their boyfriends in their rooms. So it was a way of keeping a sort of flirtation alive but feeling quite safe. That was not something that I had originally thought about. So, we need research around the area of sexual etiquette today, and how it is fitting into young people's lives, and the force that comes from that. Our work with young people has conditioned us to see that if they think there is a positive in it they are likely to pursue it, because the negative consequences seem more distant.

Understanding that they have got some issues around the control of their sexuality and how they are presenting themselves in their relationships is something that I think would repay working through, ahead of coming to a legislative position. We would then know how it fits into young people's lives.

**Senator PARRY:** Just to help us, I want to challenge that in a very friendly way. If you then say, 'Let's just let everyone do this because it could be a better aid to their relationship than developing a more physical sexual relationship.'—it's now just a virtual sexual relationship, if you want to call it that—because it might have some good consequences, then way down the track there may be really bad consequences of having naked images of you on the internet forever. I cannot equate the two. I cannot see that just having a lax attitude here is going to help the issue down the road.

**Ms Wright:** I suspect we are not so far apart. What I am saying is that before we set a legislative template we should work through those issues so that whatever legislative solution is reached is cognisant of those issues. Rather than finding that they then undermine what you have put in place it is important from our perspective to be working through that in crafting any legislative framework that you wish to reach.

**Senator PARRY:** Legislation can always be drafted—I refer to the old defilement laws in the Criminal Code in Tasmania—where you have a defence based upon your age and the consent involved. That could probably be a legislative provision for a defence—a mitigating circumstance in statute form. That may be a way of getting around your specific issue but I still fail to see how it lessens the problem. You solve one significant problem but you could develop a bigger problem or a range of problems for that individual further down the track, especially when the relationship breaks up. It is a common theme when there is a relationship break-up that images are posted for whatever reason—vexatious or otherwise.

**Ms Wright:** We would say that a range of levers are necessary here. There is work in the legislative sphere; there is work in the education sphere. If something goes wrong one can minimise the trauma for young people. For example, we encourage young people to report to an adult—a teacher, the police or whatever—but then we have a lot of discussions about how well equipped adults are to deal with this in a positive way, because we are aware that if an adult does not know how to handle the situation they can make it worse, and much more traumatic, for the young person, who is, after all, likely to be a minor and finding themselves emotionally way out of their depth. They may have a lot of emotional issues swirling around.

My colleague here will talk a little bit about the advice we give parents about, for example, trying to keep these things in perspective when they feel, understandably, confronted themselves. What we wish to avoid is increasing making the trauma for the young person. It might help to hear some of the messages that we are giving out and how we try to put it into perspective for adults.

**Ms Trotter:** As Ms Wright was saying, we do ask parents to be mindful of the legal framework and to be aware of the possible consequences of their child sending these kinds of images. Alongside that, we also ask

them, if their child has been sexting, to keep it in proportion and be aware that their child is certainly not the only person who has done this—to have that sense that these things happen. We ask them to not forward on any images, which could increase the harm, and to be aware of how they handle the images.

Ultimately, we encourage parents to keep engaging with their child around these issues so that they have open lines of communication and the child feels that, if they get into trouble, they can go to their parents and they will provide them with some helpful advice. So it is that kind of thing—it is around equipping parents to understand the nature of the problem and also equipping them to, if it does happen, provide the child with the advice that it is not necessarily the end of the world and advise the teen of some helpful things they could do to limit the damage. The teen may be suffering some social or emotional consequences.

**Senator PARRY:** To raise an obvious question we probably should have asked in the beginning: what is the legislative framework at the moment for sending images? Does it come under the normal pornographic provisions?

**Ms Flannery:** Correct. It is currently illegal.

**Mr Kelleher:** That is correct, and, to build on that, there are two aspects: the aspect of child pornography as defined and the aspect of sending of malicious, harmful images via a carriage service.

**Ms Flannery:** Yes. At a federal level, and obviously at the state and territory level, it largely relates to the child pornography laws.

**Senator PARRY:** One of the concerns I have heard in the past is that the child could end up with a conviction on their record for life, so that is another harmful aspect—it is not just having the images but having a conviction. In some jurisdictions, having a conviction of that nature prevents you from taking up a range of occupations.

**Ms Flannery:** Yes. You can end up on the child sexual offender register. So that is obviously one of the issues that you need to take into account. It also links to the reporting and who to tell if there is non-consensual sexting that you want to try to take action on. 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 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. That is also something that would need to be taken into consideration.

**CHAIR:** I presume that, under duty of care type legislation, if students talk to a teacher the teacher may be obligated to report.

**Ms Kobier:** They understand they are obligated to report now.

**CHAIR:** So how it gets dealt with in individual states varies as well.

**Senator PARRY:** That would be the same with a medical practitioner or a police officer, depending on who received the first report. In my understanding, if an adult sends a pornographic picture of another adult to another adult there is no offence whatsoever in Australia. That is my understanding. Is that correct?

**Ms Kobier:** That is my understanding.

**CHAIR:** You might need to double-check that with the Attorney-General this afternoon.

**Mr Kelleher:** It depends on the nature of the—

**CHAIR:** If it is malicious, I think there is an issue, isn't there?

**Mr Kelleher:** It depends whether the intention is malicious or defamatory or what have you, yes.

**Senator PARRY:** But let us say it was done—

**CHAIR:** By agreement.

**Senator PARRY:** by agreement within a relationship and then the relationship goes sour two years later and that is when the issue occurs. Would we be better off looking at—again just exploring—an offence of sending any image of anyone that depicts them in a light that they do not want to be depicted in? How we define that would be very skilfully done, I am sure. Would that be a better offence and then we could remove the provision for anyone under the age of 18 to be charged and placed on the sex offenders register for sending pictures of themselves? Do we need to limit the impact of the good legislation, which is there for the right reasons but which affects children in the way that you have been describing, by having a general provision to stop anyone sending anything that depicts anyone in a position that they should not be depicted in? This would even lend itself to the Australian Defence Force scandal and things of this nature. It would send a very clear message across the whole community

that sending images of that nature is not to be tolerated. It would capture people under the age of 18 if it were a more general provision but not targeted at a child pornography provision, which is the only statute that we currently have. Is that a way of looking at it—just introducing a lesser provision but making it widespread to change behaviour?

**Mr Kelleher:** I understand that at least one submission to the committee opens up the prospect of coming to this issue from the perspective of someone breaching consent or not seeking consent or obtaining consent to on-forward something.

**Ms Flannery:** It links also with privacy issues. For example, if a policy decision were made to pursue a statutory privacy tort, it is arguable that you could cover this entirely within the privacy tort, so anyone who did not consent to the on-sending of the sext would arguably have a claim under a privacy tort.

**Senator PARRY:** Do you see that as a very practical and effective way of achieving the educational outcome, the deterrent effect, for both children and adults? I suppose adults will be more easily deterred because they will understand the ramifications, but do you see that as being a useful tool?

**Mr Kelleher:** We would suggest it is an option to be explored. Just to go back to Angela's earlier point around repercussions, it is one that we think education needs to address—not just affirming positive behaviour but informing about risks. Senator, you made the point about digital footprints and what the consequences are. Similarly, you would need to be able to educate on repercussions. To the extent you can be clear on what the repercussions are and remove ambiguity, that seems to be a positive. As to whether a tort for a serious invasion of privacy or what have you is the most appropriate mechanism, I—

**Ms Flannery:** It really is, in a sense, a policy issue for how you want to implement deterrents, whether as a matter of policy you want to leave it as a criminal offence or whether, as a deterrence mechanism, you want to have something less, such as a fine, which a tort of privacy could facilitate. Normally, obviously, for torts you sue for damages, but another option to the tort of privacy, which is also canvassed in some of the papers, would be a fining mechanism.

**Mr Kelleher:** Potentially community service.

**Ms Flannery:** Potentially community service.

**Senator PARRY:** Similar to smoking under the age of 16—or 18; it has changed again. But with the smoking legislation everyone knew it was wrong. People would still smoke, but the majority of people did not because they knew it was illegal. But it did not carry a criminal penalty, of course; it was just a standard offence.

**Mr Kelleher:** That is an option. I do not think we are in a position to suggest how viable, feasible, practical, it would be. It would require some analysis, just in the discussion happening around the issue of a tort for a serious invasion of privacy, that looks at the barriers to accessing that as a remedy—having to take a legal action.

**Ms Flannery:** Which is why a more simplified system might work, but everything links back to Lucy's original point of research. If the intention is to deter spiteful partners at the breakup of a relationship from on-sending images therefore causing hurt to their ex partners, will a fine work? Is that the appropriate remedy? There is the question of whether that is more effective than counselling or community service as possible alternative options to just having a criminal offence.

**Mr Kelleher:** A recurring point within the submissions is: this will be case by case, so perhaps that does not say there is only a single point. Maybe there is a backstop, but is there anything before the backstop? Doing some research establishing some evidence as to what is effective is a common process both the regulator goes through and we look to go through saying: 'Where will you get an effective response if you ...'

**Senator PARRY:** By running counselling because they have done something wrong. If we are saying it is wrong, there should be an offence attached to that wrongdoing as (a) a deterrent and (b) to simply state that this is wrong. I do not necessarily agree that it should be on a case-by-case basis. I think at the end of the line somewhere there has to be: this is wrong; this is going to be an illegal activity. What happens post or pre that—pre that is a strong education campaign like all legislation should have and post that is you will be charged. We are saying we do not want these people necessarily to appear on a sex offenders register, be marred for the rest of their lives and prohibited from doing certain types of jobs or roles in the community but we need to say that it is an offence of some description. How we define the severity and how we deal with that offender is probably where we are getting to.

**Mr Kelleher:** For the sake of clarity, my comments were directed at what tools there are for dealing with instances.

**Ms Wright:** Has the recent work that has been done by the New Zealand law reform commission in this space been drawn to your attention?

**Senator PARRY:** Not to my attention.

**Ms Wright:** Some work has been done there. I do not know if the Alannah and Madeline Foundation are appearing before you, but at their recent symposium on cyberbullying they focused on the work being done which proposes a new civil enforcement system. So you might find, if you are traversing that ground, that that information would be of interest to you. Sharon, I do not know if you have anything more to add that might be of interest to the committee in that area.

**CHAIR:** I want to find out where the new Australian Cybercrime Online Reporting Network is at. Has it actually started? Can people report to it yet? Sorry, that is a departmental question.

**Ms Kobier:** ACORN—that is currently being developed by the Attorney-General's Department, CrimTrac—and the ACCC, but do not quote me on that. We are working with AGD to ensure that cyberbullying instances are captured and reported through ACORN. Their rollout time line at the moment is for a mid-2014 launch.

**CHAIR:** Do you know if that is meant to help with dispute resolution or is it just a reporting mechanism?

**Ms Flannery:** It is not finalised but the current proposal—and Lucy will jump in if I am wrong—is that you report online what has happened and you will get feedback. If it is a breach of the law, it will direct you to contact the police but it will also give you access to alternative services that exist for potentially resolving the dispute or counselling, and finding out more information and education. You have to take further steps yourself but it will give you those options.

**CHAIR:** Notwithstanding anything Senator Parry has already discussed—because I think there are important issues around clear guidelines—do you have any comments on people being ordered to take down and delete and how that might work with social media forums like Facebook?

**Ms Flannery:** In a sense, that is a separate issue from sexting. Sexting, in its true form, just goes from one mobile, to one mobile, to one mobile. I think it is almost impossible to get a take-down—

**CHAIR:** Or from one mobile to a whole contacts list.

**Ms Flannery:** Correct. But that is not like a social media site where you can order something to come down; you almost have to find each mobile. The department has been looking separately at social media sites and issues that arise in relation to those.

**Senator STEPHENS:** In terms of the research that you are releasing tomorrow, it seems to me that some of the most useful information would be coming from your trainers. Do you see a place in the scheme of things for some sort of restorative justice process so that the victim is able to confront the perpetrator in a constructive way and the perpetrator is first of all able to admit what they have done is wrong and then deal with the consequences of his or her actions and the victim gets the chance to see that there has been some sort of justice?

**Ms Trotter:** It sounds very good in theory, and I think some schools probably try to go through that kind of process. I have not personally heard of cases where that has been applied. I guess there are all sorts of issues with that. It sounds like it would be a good thing but I am not sure we have heard anything from our trainers about whether it has been successfully applied.

**Senator STEPHENS:** It is a technique that is used particularly in juvenile justice where you are trying to deal with young, immature people dealing with the emotional and psychological consequences of something they may have done.

**Ms Trotter:** Yes, and it would presumably be a good way for the person sending the image to become aware of the impact of what he or she has done.

**Ms Wright:** I think it is interesting and would fit into some of the things we are exploring at the moment about using the exposure that we have through our face-to-face presentations to also actively identify positive case studies. We are interested in hearing from teachers and parents of young people who have dealt with these situations successfully about what they did and asking them to work with us beyond those sessions with a view to furthering that and giving it a public profile so people know what works. We do hear from a lot of people where it has not worked. You can hear very clearly what has not worked but that does not always help them know what to do. So we have made a decision to start identifying people who tell us in those presentations what has worked and to collect those things to share. So I am wondering whether the sorts of things that you are talking about here might fit into the way we look at offering more positive case studies.

We are also very interested in providing material to teachers—we know schools sometimes have policies, and we encourage them to have policies, but we are also thinking about what teachers can do. We think they can play

a role in actively identifying the bullies and the victims. Again, this is part of a constellation of what you were suggesting. We heard recently of one school that uses a simple and very effective too, which is one of the ones we were going to gather up and share. Sometimes, as a result of sessions in this area, they pass out a worksheet with three columns that they ask the young people to fill in. The first is: who are the bullies in your class? The second is: who are the victims? And the third goes beyond that—Sharon, do you remember?

**Ms Trotter:** I think the third one is: just write anything, so it looks like someone is always writing. It basically does not mean anything.

**Ms Wright:** There is a column, perhaps, to give your thoughts about bullying. So you do not have the bullies looking around the class seeing who is writing in the column, because everybody is writing. That is the way that that school could identify who was doing the bullying behaviour and who was a victim. Because sexting, when used without consent, is going into the cyber-bullying prism, that was one of the tools we thought would be quite simple for us to advocate that teachers take up. Your suggestion is something we will be adding into that mix, trying to find out the positive things that are working and that can be offered. We are hearing again and again from teachers, parents and kids that they know the messages about what not to do but when it has gone wrong they want to know what else can be done or who can step up to play a stronger role and know what to do.

**Ms Trotter:** You are right that our trainers provide a really good insight into what is happening on the ground and, potentially, how we can identify best practice behaviour and start pushing it out.

**Ms Flannery:** One thing to mention is the National Children's and Youth Law Centre, which we think may have lodged a submission but which was not on the site yesterday. One of the suggestions they had was to develop a form of dispute resolution mechanism so that, if you have already sent the sext to people, while it is hard to get a take-down order we can at least get a stop-order and use dispute resolution to really explore those avenues for resolving the dispute before it escalates to a different level in the case of non-consensual on-sending. I am not sure whether they are appearing, but that was definitely something they were very supportive of.

**Senator STEPHENS:** Can I ask a technical question? I am not very technical at all. Say a young person sends a text message to several people, and then someone reports it, but they delete it from their phone, what are the options for a victim or a parent or a teacher to produce the evidence except if someone else has saved it to their phone? The prime mechanism has disappeared, so what happens?

**Ms Trotter:** They get rid of the evidence.

**Senator STEPHENS:** That is right.

**Ms Trotter:** That comes back to the question of when to delete it and when to keep it if required as evidence. It is not a straightforward question because the law is not that straightforward there. If it has gone from the sender's phone then chances are it will be out there somewhere, but it is not that easy to track down.

**Senator PARRY:** You are relying on the goodwill of someone to delete it, really.

**Senator STEPHENS:** No, I am saying that if the perpetrator deletes all of the sent messages from his or her phone then it is difficult to have the evidence that it came from that phone unless the person has saved it.

**Ms Flannery:** That is not actually that difficult for the mobile phone services. You would be able to get the evidence from Telstra as to whose phone it had come from.

**Senator PARRY:** Forensically, phones can be examined for that purpose, but what police jurisdiction is going to place all those resources into a sexting issue?

**Senator STEPHENS:** That is right. Exactly. And what capacity does an individual, like a distressed parent, have to go into a telco and say, 'Where did this come from?'

**Senator PARRY:** You do not.

**Ms Kobier:** It is saving on the phone it has been received from, though.

**Senator STEPHENS:** Yes, unless it is blocked.

**Ms Kobier:** I have not known a text message to be blocked. I do not know if that is technically possible.

**Ms Flannery:** That will not actually work, because there are lots of programs out there that allow you to pretend it came from someone else's phone. So a parent is not ever going to be able to take action definitively, and I suspect that that would not be a good option. If you were to have some sort of resolution of the dispute that did not involve the police, I think you would need to have something like what the NCYLC has suggested: an ad hoc dispute resolution process where you could have a more independent third person speaking to the alleged sender and seeing if they will admit to having sent it. I do not think you could have parents demanding phones.

**Senator STEPHENS:** No, that is right. The Victorian—

**Mr Kelleher:** Senator, I think you make a really good point—and none of us are professing to be technical experts—that the technology does complicate the issue quite substantially. The point has been made that there are suggestions you can forward material and it will self-destruct and you could have confidence in that, but equally there are applications and programs to capture only temporary images. Yes, that needs to by all means be built into the education campaign, but it makes it very difficult to have that certainty as to where the image is generated and where it is out. I think the default—as Senator Parry has mentioned—is that, once it has left your phone, you have to presume that it just lives on.

**Senator STEPHENS:** Yes, that is right.

**Ms Trotter:** Just briefly, on the dispute resolution we have been talking about, the New Zealand model that Andree referred to before basically sets up what I think is called the harmful digital communications proposal. It is still in a proposal form from the New Zealand Law Commission, but it would set up a mediation point in the first instance for two people to come together to discuss these kinds of issues, and that panel can make a recommendation around the image coming down and/or anything else relevant. If it is not agreed at mediation, it would then go through to a tribunal, who would make a final ruling. So it might be interesting to do that.

**Senator STEPHENS:** That is one of the recommendations from the Victorian parliament's committee: the establishment of a national digital communications tribunal to deal with and resolve harmful digital communications.

**Senator PARRY:** And that was across all age barriers? It was not age specific?

**Senator STEPHENS:** No.

**Senator PARRY:** Good.

**Senator STEPHENS:** What do you think about that? Do you think that a tribunal is something that would actually help you in your work, or is it yet another layer of complexity?

**Mr Kelleher:** I think, at least from the department's perspective, we would not be able to speak with confidence as to the model being proposed by New Zealand.

**Senator STEPHENS:** Yes, sure. But my question is: do you see, as the Victorian parliamentarians thought, that there is a gap that needs to be plugged somehow?

**Ms Flannery:** I think that they were talking in a broader context than just this specific issue. I think we would have to say that the department has not formed a view as to whether that would be appropriate.

**Senator STEPHENS:** That is fair enough.

**CHAIR:** I did not get the idea that the tribunal was meant to be sort of a broad educative process—just one to deal with—

**Senator STEPHENS:** No.

**CHAIR:** If you have concerns, yes. If child A sexts child B or whatever—

**Mr Kelleher:** Or on Facebook.

**CHAIR:** Yes, Facebook—whatever.

**Mr Kelleher:** Full-time resolution of issues as opposed to part-time.

**CHAIR:** Yes—some tribunal. I do not think they were at all descriptive of how it should be set up or anything, so that is all—

**Ms Flannery:** But I think we can say that we are supportive of quick resolution of these issues, because obviously the sooner you deal with it the better. Intuitively it makes sense that that would limit the on-spread, whether it is a sext or something that is posted online, and limit the emotional damage.

**Senator STEPHENS:** Do your trainers do any of that kind of work or are they only there educating parents, students and teachers?

**Ms Wright:** The trainers have two principal strands of work. One is the professional development for teachers, which is a day-long workshop. Each state education department recognises and accredits those courses, which is important because it means a relief teacher can take the class and they can be released. We are doing something with that which I think is relevant. We had started off with the day workshop, but of course the environment online has become more complex, so we now have a half-day which is common to every one of these workshops but we have crafted a series of modules so that, in the afternoon, those teachers can have chosen which modules are likely to address the particular issues their schools are confronting. My colleague might want to speak more about this, but we have come up with one that focuses on the importance of ethical behaviour

around issues such as sexting and cyberbullying, again to equip the teachers with strategies. So that is where teachers then can go back into the school and they know what resources are available, they know what they can do. Usually when we have had a trainer in that area—because a number of schools may come together—there would then be a session in the early evening where the teachers, the young people and their parents can all come together and ask questions.

At the moment, we are funded to provide six trainers. I go to sleep at night wishing we could reach every child, every school, every year. That is not the current situation we are in. We also have a huge demand for these trainers. Sometimes our waiting list is six months long. So their capacity to do more at the moment would be limited. We have all sorts of resources to fill the gap, and online modules. We have a package for as soon as the school contacts us, called Get Cyber Started, which we can provide to them ahead of us being able to find a diary match with their own timetables. But, while we are also working hard in the virtual classroom and with virtual presentations for parents, particularly, again and again when people are starting out in the area they want the face to face. Our trainers are very stretched in servicing that, but we would like to do more. We pick up so many ideas from these interactive sessions. Perhaps I could express the richness of that by saying that each of our presentations and our modules turn over completely in content every six months. That is how dynamic it is in taking up what we hear and how we address it. People back in our workplace help to recraft the programs with our trainers so that they can keep meeting the needs. With everything you are saying, I know Sharon is taking notes so that we can consider this when we go back.

**Senator STEPHENS:** Just thinking about that and thinking about the rapid growth and, as you say, the complexity of the technology, is there any potential for your six trainers now to develop a train the trainer module to train more teachers—and not just teachers; I am thinking PCYC workers or YWCA people, those people are running youth programs more broadly?

**Ms Wright:** With the professional development module for teachers, we expect a teacher representing a school to be able to take that back and share it with all the teachers in that school. In that sense, it is train the trainer in that school environment for all teachers. That is the way it is working there. We have feedback on the particular value of our model. We turn the content over every six months and our trainers do not just go out and say and do things ad hoc; they all talk together and with us about what is needed. So there is that quality control and that real commitment to working out what would be the most helpful thing to say there. So within the school community it is, in effect, train the trainer for each of those communities.

**Senator STEPHENS:** I guess it is not more broadly accessible. With the child protection model, it is 'train the trainer', with key people in organisations dealing with the target population, a community of interest online, continuing education, resource sharing and those kinds of things. It spreads not just the reach but also the responsibility deeper into the community.

**Ms Wright:** There is also our idea of enlisting people who have had the positive experiences to keep working with us beyond that and then perhaps our digital citizens portal, which we released last week. We had tremendous buy-in from industry, government and NGOs, who have all come together with their resources for it. We are thinking that perhaps the next step to keep it alive would be to make it a centrepiece for that type of information on what is working and what those people who would then do more work with us could produce. So I guess we are slightly morphing the model to pick up some of those things. We think it could work, but it is early days. It has been in only the last week or two that we have started to explore that approach. Last week we launched the *Digital Citizens Guide*. It was interesting because that goes again to the positive, ethical and proactive behaviours.

We did research again with the community and also with industry and the 'real people' take was: 'I don't want 12 principles on the page. I want three cornerstones that resonate with me.' We came to a landing after doing a lot of work with people on the engaged-no-choose model. People then said, 'We want to know what to do.' We thought that, rather than reinventing the wheel, we would ask everyone that we work with in government, NGOs and industry to say: 'If somebody wants to know more about the ways you can engage or the choices you need to make, what resources have you got? Tell us and we will provide them, linked through this platform.' So we think there is the ability to bring together all the things that can help under those three banners. People then said: 'We want to keep this alive. We want it to be an active thing but we want it to be simple, and we want to know what to do. We don't want to just be told: do X or do Y. We have come to you because we want to know how to do it.' That is something as well. Hence, the idea of getting our trainers to ask people: 'What's worked in the situation? How can we bring that back? How can we share that with everybody?' That is our current point of engagement. So I think the questions you are asking are very much feeding into our thinking on that, so thank you.

**Ms Trotter:** Sexting is not just a problem in the school environment. We have been able to do some work, for example, with sporting clubs and, down here, the VFL. We are working with Victoria Police about getting messages out so that we are not just limiting ourselves to the school environment.

**CHAIR:** I know that you do lots of work with young people across all age groups, including very young children, in school situations. You talked about the fact that research shows that the age of people sexting might well be getting lower. I am just wondering whether your programs are tailored for the time when, instead of it predominantly being 16-year-olds, it is 13-year-olds or even younger. It is part of the etiquette that was mentioned before too, isn't it? It is about even a very young person having those skills or that knowledge of how to behave online. It is a case of 'Don't put anything online you wouldn't show your grandmother' type of thing. Then it should stay with them throughout their life. I am wondering how the department or the ACMA deals with progressing that?

**Ms Wright:** I know you are familiar with *Tagged*. When we had that evaluated we were very happy; it was a good program and it had won a lot of international awards. But we thought we should not rest there, and the company that we commissioned to independently evaluate it by working with teachers and students did come back to us with some further suggestions which we have taken up and Sharon can talk to. It also focused our attention, because people kept saying, 'What about *Tagged 2*?' They were not quite sure what they meant by that, but something that was going to have been that effective is that program.

**CHAIR:** That was part of an age group—

**Ms Wright:** So we are now working on an approach there, and that is for younger people. As you know, *Tagged* focused on that sexting, digital identity and cyberbullying suite of issues. So we are scripting at the moment a resource which will bring that down to the younger age groups.

**Ms Trotter:** The new resource we are doing is particularly around the role of the bystander, which is important for things such as cyberbullying but also for sexting. I guess we are trying to look at what—as opposed to simply saying to the bystander, 'Stand up and speak out'—will make that action credible to somebody who has seen something happen, because we know it is not always easy for the person in that position to make a stand, particularly if they are concerned that they will then get poured into that swirl of behaviour. So that is what we are doing with the *Tagged* resource.

Another example of how we are adapting our resources is with our lesson plans. We have had sexting lesson plans for middle and upper primary school and we are about to rerelease them, again focusing on plans particularly for the lower secondary school. We are looking at how we can and whether we should introduce the issue at the primary school age. Our outreach trainers, when they talk to students, do not talk about sexting at primary school, because there is a point at which you do not want to introduce people to ideas that they are not familiar with and have them then copy that behaviour. How we will do that with the lesson plans I think is by pulling it into that broader context of being aware of what you post and ethical, responsible online behaviour. So we are not actually naming it as sexually suggestive material but dealing with it in that broader kind of way. So we are bringing our resources down, in terms of who we are targeting, but we are just making sure that we continue to target appropriately, with the guidance from educators.

**CHAIR:** It is part of the safety program, too, isn't it? There are certainly cases where we know young people have committed suicide because something has been sexted about them to other people. There is a safety component of people being able to feel safe in life. Young children learn that—there are all sorts of programs out there to help young children to learn to be safe: anti stranger danger and all that sort of thing that is out there. Just this week I saw the Alannah and Madeline Foundation's 'Ditto' campaign. I was at a school where kids from kindergarten to grade 6 were involved in that, and they certainly got the hang of that. I was just wondering if there was some way you could link it more to personal safety as opposed to the sexuality of it even. Is that a gap? Do we just look at it as the sexuality issue of sexting, as opposed to the personal safety issue?

**Ms Flannery:** It is more cybersafety, I think.

**CHAIR:** Yes.

**Mr Kelleher:** One point we have perhaps not mentioned—correct me if I am wrong—is that it is our understanding that cybersafety will be included in the Australian curriculum and, while it is not clear at this point that sexting is not a specific topic—

**CHAIR:** It should be.

**Ms Wright:** This is the nexus, as you have said, between the sexting, the cyberbullying and the whole issue of digital identity and managing your digital reputation.



**Senator PARRY:** On that, is that definite? From when is it going to be in the curriculum?

**Mr Kelleher:** I do not have any more detail at the moment. I can come back to you on that. I imagine we can turn that around pretty quickly.

**Ms Wright:** We cannot say that that side of it is going to be included.

**Ms Trotter:** I am not sure that it is. I think our colleagues at DEEWR would certainly be able to clarify that.

**Senator PARRY:** You are not sure that the curriculum is going to include cybersafety, or that sexting will be a subset?

**Ms Trotter:** It will include cybersafety, yes, but as to sexting—

**Senator PARRY:** I am sure it would have to be.

**Ms Trotter:** From my understanding—and I could be wrong—it is—

**Mr Kelleher:** Whether it has been specified as—

**Ms Trotter:** Yes. It is certainly picked up as components of the health and wellbeing curriculums around positive online relations, making positive choices and those kinds of things. So there is scope for it in there.

**Senator PARRY:** At what level? What age bracket has it been targeted for, do we know?

**Mr Kelleher:** We will come back to you with that detail.

**Senator STEPHENS:** Can I just go to another aspect? We have talked about the issue of malicious sexting. But the Victorian parliamentarians also defined 'sexting' in terms of the careful grooming of young people. To what extent is that part of what you have been thinking about?

**Ms Trotter:** I think it is a different suite of issues, certainly in terms of the responses. In the legislative responses I think it is different. Our programs do deal with the issue of grooming. In fact, we have an online interactive program which targets 10- to 11-year-olds which looks at the dangers of posting information online and being aware that the person you are talking to may not be who you think they are. So we target that kind of issue from quite a young age and then with materials going up. It is certainly something we consider and target.

**Ms Wright:** When we first started in the area, grooming was something that we were very conscious of. With the set of issues that have come around sexting there is much less differentiation potentially in the age of those who are sexting. With the grooming there has been, from our observations, often much more hardcore or almost commercial material that has been used to groom, whereas this is coming initially out of presumably, in some cases, consensual relations. I mentioned right at the beginning that we have a hotline for prohibited and potentially prohibited material which does not go to private communications. But in the complaints we have received and the material we have looked at there has been much more commercialised or professionally produced material. We are not actually getting complaints about material that appears to have resulted from sexts coming through. So I am thinking that there are some important points of difference as well as some similarities there.

**Ms Trotter:** We are also aware from research studies that have come through that self-generated sexting images can end up being collected and used on paedophile sites. I do not know too much about that, but I think that came out of the Victorian inquiry.

**Ms Wright:** Yes, and the UK are looking at that too.

**Ms Trotter:** Yes.

**Senator STEPHENS:** I want to come back to Senator Parry's earlier questions. To what extent is this issue actively being pursued by state and territory police ministers or attorneys-general?

**Ms Wright:** That is probably a question that our Attorney-General's colleagues, who I think are appearing shortly, would be able to answer through the standing committee and general process that they would be privy to. We are at more of a remove.

**Ms Trotter:** I think so. I certainly know that the state police forces are very interested in the issue, but the details of the question are probably best referred.

**Senator STEPHENS:** So you do not yourselves have an interaction with either of those standing committees?

**Ms Wright:** No, but we do with all police jurisdictions.

**Senator STEPHENS:** So where that intergovernmental work might be happening you do not work with the child protection agencies or council of community services ministers?

**Ms Wright:** I am sure the department will have their own perspective on this. For the ACMA as an agency, as opposed to a department, we tend to work more with other agencies just as we do not work with the collective for the police. It would largely be the same in those other areas for us.

**Mr Kelleher:** As Ms Kobier mentioned earlier, there is the Consultative Working Group on Cybersafety, and that involves AGD and the AFP. More recently we have been looking to involve an AGD process that links in with state and territory police. I cannot go much further than that. There are mechanisms in place. Could they be worked harder? I think they could. That is one of the issues we are looking at.

**Senator STEPHENS:** To what extent do you have the input of young people? Do you have young people on consultative groups that you work with to understand how they are using the technology?

**Mr Kelleher:** There is the Youth Advisory Group on Cybersafety. Broadly, that is a mechanism where the department engages with students and seeks their input in terms of what they are seeing in cybersafety. Each year it reports to government on the issues emerging. As I understand it from talking to our colleague who is actually running the annual forum—the Cybersafety Summit—in Melbourne tomorrow, sexting is an emerging issue. Unfortunately, the reporting time frame for the YAG, as it is described, is late 2013, but that is an annual process and one that we continue to build in its level of student participants. We have trained staff who engage online with students from schools to, essentially, advise us and, in turn, government on the issues happening out there. It is one of a number of different mechanisms, a number of which the ACMA has touched on today, to hear from students.

**Ms Wright:** From our perspective, the advisory group is very valuable for us because we are also able to work with the department to test some of our resources as we are creating and perfecting them with the youth advisory group as well as to draw on the links that we have with schools. It is not uncommon after we have done a professional development in the school for the school to actively invite us to come back, meet with students and test material on them—basically being of assistance to us in any way they can, which is valuable as well. Any program we develop goes through a number of testing stages with young people before the program is even piloted. Then we continue to engage over the life of the program to make a decision on when it should be retired or whether it should be enhanced. I think all of those links are very important to have that sort of dialogue. If what we are doing is unable to have positive impacts on young people, we should not be in the field, so it is crucial.

**Senator STEPHENS:** To come back to your research: I wonder if you were able to identify any kind of relationship between the issue of sexting and racism.

**Ms Trotter:** No, we did explore that issue. It is not our central remit. The questions we were able to ask in this study, which was a broad quantitative study around a range of cybersafety behaviours certainly did not go down to that level of detail, so we have not explored the issue of cyber racism.

**Senator STEPHENS:** Who have you identified as the most vulnerable groups?

**Ms Trotter:** Again, because this is a broad population study, it has not really enabled us to do that level of digging down. What we understand from our trainers and the psychologist we have on staff who works in the school environment when she is not working for us is that their views would be very much that people who are vulnerable in this area are those who are vulnerable in other areas of their lives as well, whether because they are risk takers, because of some disadvantage or because of whatever it is. I think it is probably a subset of other things happening in their lives as well.

**Ms Wright:** I think it is also what we found in the grooming area. That has been something we focused on longer. Certainly in the dialogue we have had with the various police jurisdictions they would say things like 13-to-15-year-old girls are a very vulnerable group, especially those with low self-esteem. We have been interested in the sexting area where, while there are young people in relationships who sext each other with no problems resulting—young people tell us that, so we know it is not all bad—there can also be young people who are not in a relationship but hope to be in a relationship. They will send a sext as part of that because they are being asked to do so, and their esteem is not resilient enough to say, 'No, I don't want to do that' or 'I'm uncomfortable with that.' They are hoping it might lead to something that would enhance their lives. It is those sorts of self-esteem issues that catch you out every time.

**Senator PARRY:** On that point: I have just spent two days at the International Serious and Organised Crime Conference with Minister Clare and others, and that is a real concern with child exploitation. The low-level entry is sexting, and it can develop. So it is a concern.

I go back to the schools that you cover with your program. How do you select the schools? You outlined the limited resources earlier. How do you prioritise?

**Ms Wright:** Basically, when we started this program we contacted all school principals. We have found since that time that in fact we are very well known, and they contact us. We have contact points ahead of every school year where we make contact. We are careful not to use that period of the cycle where principals get so many materials that they just go straight in the bin, because we know that can be a problem.

**Senator PARRY:** But you actively market the schools, and they say yea or no as to whether they want you. Then you determine which ones?

**Ms Wright:** We send out general information and draw attention to our resources. In the office today the phone rings hot. The emails come in with people wanting to book or find what resources we have.

**Senator PARRY:** You are not quite answering my question. How do you target? You send material to every school in Australia?

**Ms Wright:** Yes, from time to time.

**Senator PARRY:** What do you call 'from time to time'?

**Ms Trotter:** At least twice a year we send out our schedule for each state.

**Senator PARRY:** Okay. So then you offer the service. What is your take-up rate? Do you have a percentage of schools that get back to you and say, 'Yes, we're interested?' Would it be over or under 50 per cent of the schools that you canvass?

**Ms Wright:** I do not have them today, but we can provide material on how many schools we have done presentations in. It is very credible.

**Senator PARRY:** The question is: how many respond?

**Ms Wright:** I was going to build on that. As a percentage of schools, they are the ones who have taken up the offer, and often they want to take it up repeatedly, but then we have to allocate time and agree with them, taking into consideration school terms and exams for when we can be in the area.

**Senator PARRY:** I understand all that; I am just trying to get a handle on the stats. I just want stats. I do not need anything else at the moment. Would you say less than 50 per cent of the schools you send to respond to you seeking further information or a training program?

**Ms Wright:** I would have to take that on notice.

**Senator PARRY:** You know it is not 90 per cent or 100 per cent.

**Ms Wright:** I would also say that if we had more resources to offer we would market more and we would have more schools coming back wanting the resources.

**Senator PARRY:** I appreciate that—

**Ms Wright:** I think this is pertinent. We do not market more than we do because at times we can have a six-month waiting list.

**Senator PARRY:** But you send some form of marketing or promotional material to every school in Australia, is that correct?

**Ms Wright:** Yes.

**Senator PARRY:** Is that the only way you solicit a response from the schools?

**Ms Wright:** What is important is the word of mouth around our programs, and that has a catalyst effect, too.

**Senator PARRY:** If you have the information available could you provide how many schools respond to your original letter or introductory offer? Out of those responses—I am just interested in a percentage or a volumetric if you wish—how many do you go back to with your program and how do you prioritise if you are vindicated, if you are oversubscribed and you cannot fill the response? Am I correct in understanding that?

**Ms Wright:** Broadly. We will endeavour to provide that material. As I mentioned earlier, to meet the demand we have which is in excess of what we can provide we have developed online resources like Connect.ed and the Get Cyberstarted pack. Our problem is that we already have more demand than we can supply.

**Senator PARRY:** I understand. There are other providers in this market space, too, aren't there? Private providers as well as public. I think the Queensland education department even run their own, is that correct?

**Ms Wright:** We work very closely with Queensland.

**Ms Trotter:** There is a private consultant in Queensland that you may be thinking of.

**Senator PARRY:** Is there one in South Australia?

**Ms Wright:** It is like any market; people will enter into this market if there is opportunity or they have the skills, and we are aware that there are others in the marketplace. Schools seem often to select organisations on their ready availability and the quality of their program, as well as what underpins it. What has given the ACMA credibility in this area is the strong evidence base that comes from our research and our ability to distil what we are hearing at the coalface and take it forward. Through our Cybersmart website, which has an amazing number of hits, as I mentioned earlier on, people know that that is a portal for resources. If we are doing the one-day workshop with teachers there will be a time that morning where we take them through where they can look for available resources and then supplement what they have heard and revisit it. Schools are making the decisions on those criteria.

**Senator PARRY:** Do you charge a fee for your service?

**Ms Wright:** No.

**Senator PARRY:** It is completely free?

**Ms Wright:** That is correct.

**Senator PARRY:** Good. Would the concept be better served if every school had a teacher or a member of staff dedicated to implementing the program? If you could train someone in every school, would that be a better way of reaching them? This would then become a continual program, provided that the teachers moderated and kept up to date what was happening in that space.

**Ms Wright:** I mentioned my dream of every child, every school, every year—

**Senator PARRY:** Is that a way of doing it?

**Ms Wright:** If we could touch through having the engagement of one teacher from each school every year who could have that ripple effect then we would think that was a great outcome.

**Senator PARRY:** That would be a better reach, and probably a better use of Commonwealth resources, to ensure there was a trained, dedicated teacher in this space in every school.

**Ms Wright:** And, as I said earlier, we found that schools were greatly helped once our programs became accredited by the education departments and relief teachers could be provided. It then works with the way the schools work. Having somebody who was identified, as you have suggested, in a school like that could have a similar positive impact.

**Senator PARRY:** Good. Thank you.

**Senator BUSHBY:** I have listened to what has been going on with interest and I have read through the submissions, so I am particularly keen not to cover too much ground that has probably already been covered in the last almost two hours. Just for my benefit—I apologise if we are covering old ground—what do you see as the main challenge? Is it reducing the incidence of texting, or is it ensuring that there is an appropriate legal framework to address that incidence, or is it a combination of both? That is the first question.

**Ms Flannery:** I think that from the department's perspective it is a combination of both. We talked about this at the beginning. From the department's perspective, we see a number of key areas. One is to build up the research in this area to find out how big the problem really is and what the age groups are. There is also the key issue of education, awareness raising and counselling, and then separately dealing with reporting, deterrence measures and resolution of the issue. So it is effectively a combination of education and a legal framework, and what falls within that legal framework and what you try to resolve outside of a legislative answer.

**Senator BUSHBY:** Okay.

**Ms Wright:** We had some discussion this morning about the fact that within the education frame there are the programs, and we have also had some discussion on legislative options that would be preventive. We have also talked about the importance, once something has happened, of having programs that assist the management of what has happened in terms of both the availability of the image and the emotional trauma that is caused to young people in that situation.

**Senator BUSHBY:** Okay. That quite broadly answers the question. Looking through the submissions, there seemed to be a suggestion. The Attorney-General's Department thinks that the legal framework that exists at the moment is appropriate and that it gives the option both to protect those who may have images of themselves distributed inappropriately and, at the same time, to assess the consequences of taking action against other minors who may be involved in that distribution or the sexting aspect of it that might otherwise breach the law. Has there been any discussion today about the appropriateness or the need for adjusting that legal framework to better address the issues—whether there is that need, as suggested by others, or whether the existing legal framework is appropriate, as suggested by the Attorney-General's Department?

**Ms Flannery:** We have considered whether there are other options that could be looked at. There is the question of whether you have the legislative framework that is currently in place but put exclusions or defences, as was suggested in the fairly recent Victorian report, or whether you have a different range of options for the penalties that you face if you breach what is effectively the same law.

**Mr Kelleher:** A broader range.

**Ms Flannery:** Yes, a broader range—so whether you could look at fines, community service or counselling, and whether you could also put something in between education and a criminal sanction, such as a dispute resolution process that you would need to go through first as a precursor, at least in this sphere, to getting to the criminal sanctions.

**Senator BUSHBY:** So that was discussed already this morning?

**Ms Flannery:** Yes.

**Senator BUSHBY:** Okay. As I said, I do not want to go over the same ground in too much detail. When I first joined the teleconference I was listening to you talking about your activities in schools. Is there anything in the national curriculum that looks at these issues?

**Mr Kelleher:** We have taken on notice, and will turn around as quickly as we can, some detail on that. We understand that cybersafety will be included in that national curriculum. Specifics around timing and content have been requested of us, as we will come back with that as soon as we can.

**Senator BUSHBY:** So there is nothing in it at the moment but it is on the table, so to speak.

**Mr Kelleher:** Our response will look to clarify both the current situation and what is happening over the course of the next 12 to 24 months.

**Senator BUSHBY:** As I understand, from what I was just listening to, the department—or is it ACMA; I am not sure who was speaking at the time—has written to all schools in Australia offering the services that you outlined. And it is up to the schools whether they take that up. Is that a correct summation?

**Ms Wright:** Yes, the ACMA's outreach program has the task of communicating with schools and offering those resources. We have done so for a number of years and we would expect, as the national curriculum comes into place, that a lot of the programs and the resources that we have provided will fit very well within that envelope.

**Senator BUSHBY:** What research has been conducted to establish the degree to which the information that you provide to schools actually works to reduce the incidence of texting?

**Ms Wright:** We have had some discussions, over the course of the morning, about the research that we do—formal, commissioned research and our attention to the research of others—and I said early on that, because of the reach of our programs, we have that ready input, in return, from parents, teachers, students and schools. And we work with the youth advisory group to continue to test programs to see if they are having a positive impact and that behaviours are changing. So we are looking at a catchment of inputs, over the last three or so years, of about 780,000 teachers, children or students, as well as the formal research. My colleague Sharon Trotter can talk more about the research and program evaluation that we do, if that is of interest to you.

**Senator BUSHBY:** I am particularly interested in the program evaluation in terms of actual outcomes.

**Ms Trotter:** As well as our research looking at prevalence, we ensure that all of our programs are formally evaluated. I will just give one example—our program called Tagged, which deals with cyberbullying, sexting and digital reputation. First of all we certainly tested the script for that program with young people, and we showed it to the youth advisory group at a development stage. Subsequent to its being developed we undertook qualitative testing with a group of teenagers and teachers to ensure that the messages that we had intended were getting across to them, and that it would change their behaviour going forward. So we ensure that that process is built in to all our program delivery.

**Ms Wright:** I think it is important to mention that by having the programs independently assessed we are not looking for a rubber stamp. We were also able to garner feedback from teachers and students about what we could do to supplement that resource and build on it. We have undertaken some of those extra steps—have we Sharon?—now.

**Ms Trotter:** Yes we have. That is correct.

**Senator BUSHBY:** That is good. I have no issues at all with that. It is good to test and to make sure that what you are doing is likely to change behaviour. Do you have any evidence—any post-program research—which indicates that it has changed behaviour?

**Ms Wright:** Informally, whenever we conduct sessions, we start with a questionnaire on behaviours—on what young people, teachers or whoever are likely to do—and at the end of the session we test again so that we can see where there have been changes. One piece of feedback that I remember in particular was the email follow-up from a session where a group of young people in a class had all agreed to meet online and change their privacy settings on Facebook. They did that as a group on the night after the session and they emailed to let us know. Also, in the formal program evaluations, we may look to go back in six months time to see what the state of play is in that school at that time. So we put a lot of thought into the way we evaluate programs.

When we were working with the European Commission and their network of 40 cybersafety centres, we asked them, 'What do you do?' They said: 'We think Australia is leading the world in this. You're ahead of us.' We have found that we have had to work in a focused way to design tests and ways of evaluating the programs because so little of this is done overseas.

**Senator BUSHBY:** I heard you or somebody say that part of the research was to try to establish the extent to which sexting is occurring. Is any of your post-program evaluation going to look at the extent to which the program is impacting on deterrence at the broad level? The example about the Facebook privacy settings was a particular good example. Are you doing that at the broader level, the cross-society level, are you doing that?

**Ms Wright:** Because this is a relatively new area—in fact, our research findings on the prevalence among 16- and 17-year-olds are about to be formally released tomorrow; we have given the committee a taster of that ahead of the official release—we are considering how we will carry this forward. This morning there was some discussion about the work that needs to be done around prevalence, to see where the risks really lie and which groups need to be targeted, and the further research that needs to be done after that to understand the complexity around the motivations and behaviour of the most at-risk groups. That is where we were looking to go to inform programs.

There will be a point in the future where we will wish to measure again. The research that we are releasing tomorrow is, in the broad, a follow-up study to the research we did in 2009, documented in the report *Click and connect*. In some instances, we have looked at trends, following up on that research. In other instances, because we have found new problems and behaviours, we have chosen to measure them. So we have a pathway to get to that second measurement point. I hope I have been able to explain what we will do along that pathway.

**Senator BUSHBY:** Coming back to the issue of the legal framework and how you deal with alleged transgressions of the law, there have been submissions from outside parties who are particularly concerned about the legal status of minors who might be committing offences. To me, it seems that, whatever we put in place, the primary concern should be the people who are going to be subjected to it, people who may be the subject of bullying, the people whose image is being distributed and so forth. What is the department's view in terms of that balance? The Attorney-General's Department's submission suggested to me they think the balance is about right as it is now. Without asking you to disagree with other departments, is that consistent with your conclusions?

**Ms Flannery:** One of the things that we talked about at the beginning was the question that although there is some research there is not a comprehensive amount of research. In part, doing that analysis would inform the department's view on how you should deal with these issues. There is already a legislative framework in place. You have had in the submissions a variety of responses as to whether that is seen as effective. One of the options you have is to look at a range of other legal mechanisms, whether they be fines, having a lesser offence or, as one of the submissions looked at, having a privacy tort. There were some very interesting comments in that submission. We are certainly not suggesting that our fellow department is incorrect, but it is an issue that you, the committee, would need to look at.

**Mr Kelleher:** I will make an additional point to the statement that Ms Flannery provided. One useful point that came out during the conversation with your colleagues was around the timeliness of the redress for the victim. To put that into the mix, that is one thing that any enforcement mechanism should really bear in mind. Yes, we agree with your point that the victim needs to be considered here and the damage in part is how long the material is left unaddressed.

**Ms Flannery:** That is a general issue not just in relation to sexting; cyber bullying should I think get addressed in the broader framework of that.

**Senator BUSHBY:** I would certainly agree with that. What I am getting at is ensuring that there is a suitable disincentive. Education plays a major part. You obviously have to ensure that as many people as possible are educated about the risk to themselves of exposing themselves to the possibility that they could become victims, but also ensure that other young people understand the consequences if they are the perpetrators of some of this. But no matter how good your education is there will be some people who will still be tempted to do the wrong

thing, particularly those on the perpetrator side. I guess I am keen to ensure that we maintain a sufficient disincentive for those who, regardless of the education they have received, still decide to proceed and do things that they should not and to ensure there is an appropriate disincentive so that we do not get to the point where we have victims, so that we minimise the number of victims that we actually end up having.

**Mr Kelleher:** We agree with that view that there needs to be a clear disincentive. It has just been suggested that there may be a number of disincentives that you could apply depending on the circumstances. I think that some of the submissions made the point that in certain circumstances you may need to be quite heavy-handed and forceful if the circumstances require that. That is not a point that we would contest at all.

**Senator STEPHENS:** Is your research going to be launched tomorrow as part of the cybersecurity conference?

**Ms Wright:** Yes.

**Senator STEPHENS:** In what format is it going to be launched?

**Ms Trotter:** It is an online format. There are both a qualitative report and a quantitative report, so two reports. It will be live on the Cybersmart and the ACMA websites.

**Senator PARRY:** What time is the launch? Do you have a formal time?

**Ms Wright:** I believe it will be after Minister Lundy speaks.

**Mr Kelleher:** It would be a matter of our making a phone call when we leave this hearing and coming back to the secretary to let you know.

**Senator PARRY:** It might be handy.

**CHAIR:** I thank everyone for their submissions, for appearing today and for the evidence you have given today. If the committee has any other inquiries the secretariat will be in touch with you.

**Proceedings suspended from 12:29 to 13:27**

**CRAIG, Ms Sandra, Manager, National Centre Against Bullying, Alannah and Madeline Foundation**

**FERRARI, Ms Georgie Marie, Chief Executive Officer, Youth Affairs Council of Victoria**

**NICHOLSON, The Hon. Alastair, AO, QC, RFD, Chair, National Centre Against Bullying, Alannah and Madeline Foundation**

**SLOCOMBE, Dr Judith, Chief Executive Officer, Alannah and Madeline Foundation**

**CHAIR:** I welcome witnesses from the Alannah and Madeline Foundation and the Youth Affairs Council of Victoria to the committee's private briefing on sexting by minors. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. I note that the committee has received a submission from the Alannah and Madeline Foundation. Today's proceedings will be recorded by Hansard. However, as this is a private briefing, the *Hansard* transcript will not be made public unless the committee agrees to do so. Should this occur, the committee will contact you before publication to ascertain your views concerning the publication of your evidence. I invite you, Dr Slocombe, to start, and then you, Mr Nicholson, if you have a brief statement to add—or are you all doing it?

**Mr Nicholson:** Actually, we had an arrangement that I would make an opening statement. I should have said that before.

**CHAIR:** Fine. I am very happy when it is all sorted out for me, so thank you. If you would like to make a brief opening statement, please do so, and at the conclusion of your remarks we will proceed to questions and a general discussion relating to sexting.

**Mr Nicholson:** Perhaps I should open by briefly explaining that the National Centre Against Bullying is an organisation that was founded by the Alannah and Madeline Foundation in 2002. They approached me to chair it at that time, and I have been chairing it ever since. The centre consists of, we would say, probably the leading academic experts in the field of bullying in Australia, from all states. We also have psychologists and other people with a particular interest in the area—obviously people interested in education, like former high school principals and people of that sort. It is not a formal organisation in the sense of having a constitution, but we do have regular meetings, usually twice a year, and we hold conferences, seminars and symposiums to try and bring out issues in relation to bullying. We have had very successful biennial conferences since about 2002, with a lot of international contributions and quite a lot of international visitors. Bullying, of course, is an international problem, and it has been a very useful way to deal with it.

We have become, in a sense, involved in the issues in relation to sexting because, as you would be aware, sexting often involves or may involve forms of bullying in different ways. Using photographs to humiliate people has unfortunately become quite a common feature of the use of mobile phones and the like, and it varies from public humiliation, such as happy slapping—humiliating someone by taking a photograph of them in circumstances that are embarrassing and then publicising that—to the use of sexually suggestive photography, film and so on, which is often disseminated through the net or through the schools or otherwise without the consent of the person involved. Those are clearly forms of bullying that concern us.

At the same time, our main brief is dealing with children and young people, which effectively means under-18s, and we are concerned that they should not be subjected to the sorts of adult penalties for adult offences that relate to the dissemination of pornographic material. It seems to me that one of the difficulties about this whole bullying area is that, where legislation has been introduced to deal with issues, it has been done by adapting other forms of legislation for the purpose, so you get issues where there may be very severe penalties attached to the available offences. Of course, in the case of so-called sexting, those offences are very serious and may carry very serious connotations. I think it was a very good thing that the Commonwealth legislation was passed requiring the Attorney-General's consent to deal with any issue relating to a young person.

**Senator PARRY:** To prosecute?

**Mr Nicholson:** Yes. As far as I understand, that has been pretty effective. The trouble is, of course, that it does not apply to similar legislation in the states, and that does not help. In the states they tend to use that legislation rather than Commonwealth legislation. So I think that raises one of the serious issues that no doubt you have to consider, and that is whether the Commonwealth should exercise its powers to cover the field in this area and lay down one particular code in relation to the use of cyberspace and the like. I know that has its difficulties as well, but I simply mention it in passing at this stage.

It is also worth mentioning that, as late as Friday of last week, we concluded a two-day symposium dealing with issues of bullying young people and the law. That was attended by quite a significant range of people, including the National Children's Commissioner, the President of the Court of Appeal of Victoria, the President of



the Children's Court of Victoria and a number of New Zealand representatives, including the Principal Youth Court Judge of New Zealand. We had visits from Queensland and ACT magistrates as well. So we had a mix of legal academics and others, and we were examining, amongst other things, the issue of sexting. We had presentations from Kelly Tallon from a New South Wales based organisation—it is the National Children's—

**CHAIR:** The National Children's and Youth Law Centre.

**Mr Nicholson:** You have no doubt heard from them or are familiar with their work and also Dr Kath Albury from the University of New South Wales who produced an interesting report on the attitudes of young people. We also had a similar presentation but different research from one of our NCAB members, Dr Barbara Spears, from the University of South Australia, who also dealt with young people's attitudes. There was quite an interesting presentation from her. Also present was Clem Newton-Brown, the president of the Law Reform Committee, and his deputy. Without going into detail, I mention that the recommendations are appended to our submission. We supported—rather, when I say 'we', the seminar supported—the recommendations of the Victorian committee. Just looking again, it is appendix 1 to our submission, and no doubt you have seen that.

**CHAIR:** Yes, I have. I have it right in front of me.

**Mr Nicholson:** I suppose the interesting ones here were we—or it—recommended the adoption of the Victorian Law Reform Committee report in all states and territories. It also recommended the federal government establish a national digital communications tribunal with a power to act swiftly and in an informal manner to effect immediate removal of offensive material from the net. That was following the New Zealand Law Commission recommendation which you no doubt are also familiar with.

**CHAIR:** We have only had access to that today. We have not had a chance to read it in depth yet, but I am sure we will.

**Mr Nicholson:** The opening presentation of our symposium on Thursday from the senior researcher of the New Zealand law reform commission, Cate Brett, together with Judge David Harvey from the district court who peer reviewed the report before it went through. It was an interesting presentation, and we had also Martin Cocker from NetSafe in New Zealand, which is the NGO that they rely heavily on in this area. That set the tone of the seminar. I am not here to talk about cyberbullying, so I will not go into that area, which obviously they were dealing with and bullying generally, but I simply mention that.

The other important thing from our point of view—and no doubt Dr Slocombe will be able to talk about that—is the Alannah and Madeline Foundation's eSmart operations, which have been accepted by all state schools in Victoria and Queensland and also the proposals to widen the availability of eSmart into the workplace through libraries. I will let Dr Slocombe deal with that—I do not know if you want to say anything at this stage or whether we pick up as we go.

**CHAIR:** I am happy for you to comment now, if you wish.

**Dr Slocombe:** The Alannah and Madeline Foundation, as you understand, is a children's charity with the remit of keeping children safe from violence. We have been very much involved in the area of bullying and cyberbullying over many years. When you deal with any issues in cyberspace, you recognise there are other risks, and sexting is part of the bullying suite of problems online in its right as well as all the other risks that children face online.

We strongly believe that you need a legislative framework that sits tightly and establishes community norms as well as dealing with issues that occur in the community. The National Centre Against Bullying has been an important part of that thinking for us. We believe there need to be outcomes if people are bullied or if sexting does occur. Our core expertise is at the preventions side of this: how do we actually create a community where people understand the consequences of things like sexting and other negative behaviours online? We developed the eSmart approach which is really taking a cultural change approach to create positive behaviours online.

We base it on SunSmart. Where SunSmart has slip, slop, slap, we have smart, safe, responsible. We want everyone to use technology and really embrace it, get the best out of it. We know our children need it for their future, so we want them to be smart and we want them to know how to keep themselves safe: 'Why should I not sext; what are the outcomes of sexting?' We want people to be responsible towards others and think about the consequences of their actions towards others. We want to create a whole community that thinks like that. We subscribe to the philosophy that, if you do not surround children with adults that behave in the appropriate way, you cannot expect young people to demonstrate those behaviours.

We started with eSmart in schools, just like SunSmart did. We have been able to really establish it well in schools. We are in over 1,800 schools across Australia and we are starting to get the research data back from that to show that it is really having a very positive effect on the culture in schools. Cyberbullying is reduced and the

principals and teachers are saying it is the solution they need to be able to progress and work through these cyber issues, sexting included. So the data is very exciting and really positive.

We have been funded through the Telstra Foundation to roll eSmart out to every public library in Australia, all 1,500 in every community across Australia. The reason we are going to libraries is that they have become the technology hubs of the community. They are where a lot of young people access technology when they do not have access to it at home, and there are issues happening there. We hear of girls having fights over Facebook posts, arguing about their sexting messages. We need to find other settings where eSmart is appropriate. So we have designed the framework for libraries to help libraries be able to deal with these issues, set themselves up well and know how to educate the people who use libraries.

We have found that parents are often accessing the eSmart Libraries website and the eSmart Schools website, and we recognise there is a gap there, because those products are very much for schools and libraries to deal with it, and, while they have to deal with the general population around them, including the parents, there is not actually an answer for parents. So we are designing, as we speak, eSmart Homes—how would you set up your home so that you have in place what you need to protect your children? To give you an example: if you have got a little child, you might want to put a filter on; you do not want them to access porn inadvertently. If you have got a teenager, you might want to have the conversation about what the risks of sexting are. But people are looking for that information.

I should point out that our model does not include us creating all the answers. We use the best information available and direct people through the eSmart system to the experts who are dealing with those issues. In that way, we know we are at the cutting edge all the time because we are going to the right people, whether it is a school that needs information or whether it is a library or whether it is a parent. There is a lot of really good information out there. Schools, parents and libraries are saying to us: 'We just don't know where it is, which is good and which is relevant for me for this issue.' That is what we map out for them. Libraries are being piloted in 103 libraries, and we are just ready to start the rollout now. Homes we are developing as we speak. The other aspect of homes is that we have found that parents need a way of engaging their children. How can you have the conversation about sexting if children do not see parents as a credible source of information about cybersafety? And they do not; they see their parents probably a bit as duffers about the technology.

**Senator PARRY:** Dinosaurs.

**CHAIR:** I have been referred to by my children as inept in regard to technology.

**Dr Slocombe:** We want to be able to broker those conversations with parents, give them an opportunity to have a conversation with their children. That has really evolved into eSmart digital licence, which is a bit like getting a pen licence when you are a little or perhaps getting a driver's licence when you are older. It is basically an online testing system. A child will take the test. When they fail a question, they will go off to a really fun gamified solution, a bit like Mathletics or Reading Eggs. They will do that learning and then take the test again. They will get a report on their progress, and the parent will get a report on the progress. It is a conversation starter. Parents have to sign their children up for it. It is really quite an exciting product. We have done a lot of research in the community and there is a big demand for it, but it is a way of—

**CHAIR:** Is it age targeted?

**Dr Slocombe:** Yes, it is. We are actually starting off with a product that will target seven- to 12-year-olds, because that is just where we are starting and there is probably a big demand there. We would like to go to lower primary. The latest conversations I have had are that Apple are actually developing an iPad for 18-month-olds. So people who are new parents really need to start this sort of stuff. Fisher-Price have a device that you can put around your iPad that makes it safe for youngsters to use. We want to go into the preschool area and then early high school. We are starting off with the seven- to nine-year-olds but we have got a whole suite of questions and we have got a whole team of experts right across the various sectors to help us design these.

We will be getting about 3,000 children to take this test, and then we will be able to norm it, so we will be able to say, 'This is what you would expect a grade 5 to know, a grade 6 to know and a grade 7 to know.' We are actually mapping it to the curriculum right across Australia, so the questions target what we are expecting children to know through the curriculum to reinforce that sort of knowledge.

Parents are really excited. They are saying: 'At least I know my child has the right knowledge to be able to get a mobile phone. They understand what sexting is and what the consequences of it are.' We are not going to guarantee that they will not do the right thing. It is like when you get a drivers licence—it does not guarantee you will not speed. But there is basic information that children are not learning now, and we need a really good and engaging way for children to learn it. There are a couple of big milestones in children's digital lives. This will give

parents the comfort that, when the school gives them their first laptop, they actually know the right things to do, and they know how to use it well. That is the principle behind it.

After completing the eight modules, children will get a digital licence. That will be an aspirational thing for them.

**CHAIR:** What is the time frame for the rollout?

**Dr Slocombe:** We should have our beta version ready at the end of this month or the beginning of next month. It will not have the norming done, because we have to get out into the marketplace to get the data in. It has a very rich way of capturing data behind it. We will be able to look at where, geographically, children are doing well and where there are holes: which school systems have holes. It is going to be quite powerful for collecting data on how children are doing. We would like to have our full version ready for when people start buying mobile phones for Christmas. Then, perhaps, we will have another marketing effort before school goes back, when they get their laptops.

At this stage our funding model is for people to pay for it, because we do not have any other way of sourcing funding. If we had the funding we would give every child the opportunity to get a digital licence for free. We are very aware of social equity and have developed a system of eSmart scholarships, where people can buy a digital licence for a child whose family cannot afford it. We have already been fortunate enough to have been given \$30,000 from Google, for example, to buy digital licences for youngsters. Our goal is for every child to have the opportunity to get one for nothing. That is the goal.

**CHAIR:** Will schools be able to, for example, buy bulk licences or something?

**Dr Slocombe:** Yes. It is interesting. I do not know if you know how Mathletics evolved. We have look at their model. They started off by charging parents \$90 for a Mathletics subscription for a year. Then parents started saying: 'My child loves doing Mathletics and they don't like doing your homework. This is really fun. Why don't you have the children use Mathletics as the homework base?' So schools started buying it in classroom lots. If you buy it in a school lot it is only \$30 a child. Schools are often putting it on the school book list. It would be lovely if we could find some system like that for cybersafety. We do not want this to become the schools' issue. This is really about parents and their parenting role. It would be good to have a report go to schools, and we could easily develop that, but we do want to keep parents engaged in their children's digital lives. So we are working through a lot of issues. It has a lot of potential to be something that would give schools confidence that children understand the issues. That relates to schools, libraries and homes.

The last one that we are dealing with—we were not going to start developing this yet but we have brought it forward—is eSmart workplaces. We are working with Damian and Rae Panlock, who lost Brodie Panlock, if you recall, to a terrible workplace-bullying incident. Of course, cyberbullying, sexting and all sorts of other things happen in the workplace. Wrapping children in a world that is e-smart and creating an e-smart Australia is probably the missing piece. We are already starting to design and develop—and Sandra has had a very big input into this—an eSmart workplace model. I have to acknowledge Sandra Craig's input into eSmart. She was one of the team who developed eSmart schools. She is steeped in knowledge about cultural change and educative principles. It is a really wonderful, very effective product.

The eSmart workplace is in development, led by Sandra, and it is about what a workplace needs to put in place so that people use technology in a really smart way. You get rid of that covert bullying, and the sexually specific messages that go around. It will also have an impact on some of the other violence, sexual harassment and other behaviours that happen in some workplaces. We will build it so that it is very flexible; a tiny little business can do what it needs to do but a very big business will probably put a lot more time and effort in. We are working on what sort of model that should be. We need the money to develop it and pilot it. I have in the back of my mind that we will probably look at charging \$5 or \$10 per employee, or something like that, which is quite doable for a very small business. We have not done modelling on how we would finance it.

Ultimately, that also has a big impact on young people going into apprenticeships, and trainees, who age from only 15 up to about 25. They are often the ones who experience a lot of bullying, including sexting issues, in the workplace. We know that in some areas over half the apprentices and trainees leave their apprenticeships in the first year because of these issues. If we can reduce that then it will have a very big, positive impact on the economy and productivity. We see that eSmart workplaces will have a lot of consequences that will be secondary, but very powerful.

That is the eSmart goal. We are hoping to create an eSmart Australia. There is no-one else in the world who has done this sort of thing; it would be a real first for Australia to be there. We feel like we are well on the

journey, with many schools involved. Every library will be covered and we would like to see one or two million children with a digital licence in the next five years. That is the eSmart story.

**Mr Nicholson:** It is worth mentioning, apropos of that, that the Commonwealth largely funded the first part of it.

**Dr Slocombe:** They did.

**Mr Nicholson:** That was what really kicked it off.

**Dr Slocombe:** We were given \$3½ million from the department of education in 2010, and we piloted eSmart schools. That is where we really developed the principles about how to use a cultural change approach to create positive online behaviours. Of course, it has a really big impact on offline behaviours because the values and the culture and the underpinnings that allow violence and bullying and sexting to occur in negative ways are all the same. We have found that it has had a big impact on face-to-face bullying and online bullying, while reducing all those other online risks. Sexting is one of the most common ones that children deal with.

**CHAIR:** Mr Nicholson, you mentioned the issues around legislation, and that is, critically, what we are here to discuss and get some ideas on. One of the issues that has come up in a number of submissions is that different states and territories have different ages of consent. I am wondering if any of you have any comments to make with regard to that? The other issue, linked to that, is what people deem to be consensual and non-consensual texting. What you one day consent to be sent between yourself and another person has the potential to turn into something if things go awry and turn nasty, as they often do in young people's relationships. There is that issue to delve into as well.

Do you think there should be some sort of fining system or penalty system, specifically where it is malicious and harmful to people? I am opening it up for any views you might have in those areas.

**Mr Nicholson:** I make it very clear that so far as the law is concerned I do not see the law as a solution to any of these problems, but it is important that the law operates as a framework to which reference can be made and, in the final analysis, resort can be had to it. But issues like what Dr Slocombe was talking about are much more important in the overall scheme of things. But I think the law is important in the sense of providing a backing, a framework and, really, a boundary as to how far you can go and how far you cannot go without coming up against it. I do not think it does, and I think the sort of thing you mentioned—the differing ages of consent in one country—is an absurdity. But how you overcome it is really a matter of getting cooperation from the states and territories, because the Commonwealth obviously cannot fix that.

I think there has to be some sanction for certain types of behaviour. The Victorian committee's approach is quite a good one in a way, in my view, because it says, 'Okay, you can have consensual sexting between young people and that shouldn't be an offence of itself, but once someone steps outside the line and breaches the confidence or the privacy of the other person then that should become an offence.' That seems to me to be a pretty sensible way to go. It is pretty clear if you are able to say to people, 'Look, if you do engage in this sort of behaviour, that's one thing, but if you breach the privacy of the other person and send it elsewhere then it's another.' I think that that is a message that is not difficult to get across. If we did something like that, it would be effective—or as effective as it can be.

With the threat of the child pornography laws, one of the interesting things that have been striking me when I have been reading some of the material and listening to some of the views that are expressed, particularly by young people, is that the law is not effective at all, because they do not know anything about it and there is no simple explanation of what you can and cannot do. In fact, I think the helpline people will tell you that the kids mainly will just say: 'We didn't know that was an offence. We don't know what we can and can't do. We need something clear.'

That is why I quite like the Victorian government approach of sexting being an offence when it is a breach of privacy. Then I think it should be regarded, depending on the circumstances, as quite serious, but you do not want a penalty of 10 years or something like that, which a lot of offences, such as the pornography offences, have. I would have thought it should have, as a maximum, somewhere in the range of up to 12 months imprisonment, which would rarely be imposed but would be there for the bad cases. The really bad cases, I think, tend to get picked up anyway by other laws. One of the disputes we had—or not disputes but debates—at this seminar was that there was a group of people saying, 'You've already got laws that deal with a lot of these things.' Other people were saying, 'That's all very well, but if you have these severe penalties of 10 years imprisonment then police aren't going to charge people with those sorts of offences for what they see as a comparatively minor matter'—and I agree. You would not want them to do it.

**CHAIR:** Especially with minors.

**Mr Nicholson:** With minors particularly, yes. So there should be some clear law. When you are dealing with minors, children's courts usually use things like intervention orders; in Victoria I know they use intervention orders if there is a breach so that people know that, if anything further happens, they are in real trouble, and that can be very effective. I think that is one option, and then there are all the other options of diversion—warnings and all the rest of it—which most children's courts use around Australia.

One other difficulty about age is that, apart from the age of consent, Queensland does not recognise the same age for a child as the rest of the country, which is a problem. I do not know what we do about that. But I think there is room for attention to be directed to the need to do something about that.

Going back to the Commonwealth law, it probably does not have much effect at the moment, correctly, because of the need to have the Attorney-General's permission in relation to children. But maybe there should be something separate—arguably something like the sexting law passed by the Commonwealth, whether it is covering the field or is simply in the same category as existing legislation. It is something that is worth considering anyway. There are all sorts of ramifications of these things. That is why I am not too definite about it. At our symposium I was struck by what the Assistant Commissioner of the AFP said when he commented that if you have laws covering the field everyone will expect the AFP to enforce them. They are not set up to do it around the states and that is worth noting. There is no reason why state and territory police could not, but you could see that there are factors that you would have to consider. There are training aspects about that, for instance, and so on. But it may be that at least the Commonwealth could achieve a consistent law in relation to the electronic media. I think that is really worth considering, but it does have its problems.

**CHAIR:** Thank you. Before we move on, I forgot to ask, Ms Ferrari from the Youth Affairs Council of Victoria whether she had an opening statement—my apologies. If you do have an opening statement, would you like to make it now?

**Ms Ferrari:** Thanks, and I thank the Senate Select Committee on Cyber Safety for the opportunity to present today. YACVic, the Youth Affairs Council of Victoria, is the peak body for young people and the sector that supports them in Victoria. We are a member-driven organisation of about 350 members across the state and a large number of our members are young people aged 12 to 25. We are funded through the Victorian government.

I also thank the committee for their focus on sexting. It is an important issue facing our community broadly, and it is an issue obviously that the Victorian government has recognised with their work through the Attorney-General with the Law Reform Commission. We welcomed the Law Reform Commission's report that was released in May of this year and we support their recommendations in full. We will draw on their findings extensively and the conversation we are about to have. We also note Alannah and Madeline Foundation's submission to this committee and we endorse their findings and recommendations in full also. I did not know that they were going to be here today, but I read through their written submission beforehand and thought it was an excellent summary.

From YACVic's perspective, we would like to open by noting that sexting is a complex issue, as we have already said. There is a wide range of behaviours and actions by adults and young people that falls into the category of texting. I think it would be fair to say that we do not have a common understanding of the prevalence of this issue. The Law Reform Commission's report noted that the reporting rates were anything from 40 per cent to seven per cent particularly, I think, in relation to whether young women had been involved in a sexting incident. We noted the diversity of situations in which sexting can take place, and the Law Reform Commission again talked about a range of things that could be covered under the sexting name. I will not go into all of those details as I think I can assume that the committee has a pretty clear understanding of the diversity of that.

**CHAIR:** Yes.

**Ms Ferrari:** I have just a couple of points in summing up around it. Effective responses to sexting need to be based on an understanding of the nuanced and complex ways that sexting occurs and that the phenomenon of sexting is not something unique to young people—adults engage in it also. As the Alannah and Madeline Foundation suggest in their submission, it exists within a context of image-sharing. There is a culture of image-sharing particularly with young people and, in the sexually permissive society that we all exist in, we need to see it in that context.

My next point is around the fact that young people have diverse perspectives and complex understandings around sexting, and I think that Alastair Nicholson alluded to this point in terms of knowing when it is or when it is not. Young people may see the issue as quite different from the broader community or the way adults see it.

You may be familiar with a small piece of research that was conducted by Kath Albury, Kate Crawford, Paul Byron and Ben Mathews in 2012. It is a small focus group—and I am not asserting that it is necessarily

statistically significant—but in the face of not terribly much research it is something that we would like to draw on. The focus group comprises 16 young people aged 16 and 17 from the Sydney area. It indicated that many young people have considered the issue in quite a lot of detail and, again, in the nuanced way and that we should not shy away from discussing the issue with young people because it is part of their lives.

Their research also found that the term 'sexting' is something that young people do not necessarily relate to. It is an adult concept that we may be using to describe something that young people do not necessarily see. That is supported by work that the Young and Well Cooperative Research Centre did as well.

**CHAIR:** What do they call it?

**Unidentified speaker:** 'Selfies', and there is another one as well—

**Ms Ferrari:** Yes. Young people noted that some photos did not have sexual connotations, and they used terms like 'selfies' and 'sneaky hat images', which I did not even understand the concept of. Sneaky hat images are where a hat might be used to cover certain parts of the body. It is often seen as a joking use of photography, rather than something that is sexual or implicitly negative in nature. Participants said sexting was okay as long as it was consensual. But again, as previous speakers have noted, the notion of consent is particularly fraught; it is implied that consent should be withdrawn once a relationship breaks down, but there is a lack of clarity around that for young people. They also discussed the fact that young people could consent to having images taken of some situations but not when producing and sharing images. That is a legal anomaly that was also noted by the Law Reform Commission. I have a quote: 'I think there is a difference between a 17-year-old male having a photo of his girlfriend or something naked and a 40-year-old man having a photo of a young kid. I don't think it should be the same punishment.' That is the sort of stuff we have talked about already. Understanding young people's perspectives and motivations and experiences of sexting is essential for any response to be effective. Additional research is also needed to explore young people's perspectives around sexting. That is also noted as recommendation 1 of the Law Reform Commission's report.

Young people need to be directly engaged in the development of solutions—which, again, the Alannah and Madeline foundation has suggested as well—and responses to sexting. This is important for both educational and legal responses, we would assert. The researchers in that focus group noted that sexting is not purely a technological event and it is not simply an outcome of bad choices made by individuals. Often, but not always, the production and sharing of sexual images takes place in relationships among intimates, friends and strangers. But it needs to be understood in the broader social context—and I think we have talked about that as well.

There is high value in educational responses to address sexting behaviour—so we need to look at the preventive end, which we have already discussed as well—and education needs to be about helping young people to think through the decisions they make and equipping them to understand the implications of their actions and to make safer decisions. We believe that education around respectful relationships, self-image and healthy gender dynamics needs to be considered in this. We think there is often a gender issue around sexting. The work that the Victorian government has done in schools around the promotion of respectful relationships should certainly encompass considerations around sexting.

I do not want to duplicate or repeat too much of what has gone on, so I will just skip to the points that I think are most salient here. The need for greater consideration of the legal responses to sexting is also important in this discussion. I take the point that Judith made before, which was that the legal side of things is often really important in terms of setting what is acceptable in terms of social norms. But, again, Alistair Nicholson said it cannot be a deterrent if young people do not know the law exists. That is part of the problem we face. We support the Victorian Law Reform Commission's recommendations around the current laws being inadequate and new laws needing to be introduced.

We also wondered whether there was some opportunity at the federal level for the attorneys-general to get together to look at a spent convictions scheme across Australia. At the moment, Victoria does not have any rules around spent convictions for young people, particularly around this issue. I understand that other jurisdictions also do not. I am not sure if you are aware of which ones do and which ones do not. We recognise that young people can make bad decisions and mistakes early in their lives, but it should not go on to affect them throughout their lives.

The current law in Victoria could be significantly detrimental in terms of sex offence convictions. But, even if new convictions were brought in, we would want to see some consideration of a spent conviction scheme for young people so that it does not follow them right throughout their lives and impact their opportunities for employment.

**Mr Nicholson:** If there were consistency throughout Australia.

**Ms Ferrari:** I am looking for opportunities where this committee could have some impact at the federal level around looking at some consistency across the board with this issue. That would be very welcome. I will leave it there. Thank you.

**Senator STEPHENS:** Witnesses this morning had a small research project on sexting, but I was interested in whether or not there was evidence of an element of sexting—as I have heard in Western Sydney but only anecdotally—that relates to racism, particularly in harassing young women. Are any of you aware of that?

**Mr Nicholson:** No; but one could imagine it happening, though.

**Senator STEPHENS:** Obviously, it was happening in this particular school that I was in. But I wonder whether it is more broadly reported.

**Ms Ferrari:** No, I haven't heard of it.

**CHAIR:** This question is for anyone to answer: currently if you report a sexting issue there is a possibility of it ending up being treated as a criminal offence. Do you think that actually stops people from reporting? Is there any evidence out there about that at all?

**Ms Ferrari:** I am looking at some information that the Young and Well Cooperative Research Centre will be releasing next week. They call it 'From cyber safety to cyber savvy'. It looks at how young people are responding in cyber-savvy ways.

**CHAIR:** Who is it?

**Ms Ferrari:** This is from the Young and Well CRC, and I understand it is going to be released next week on their website. They found in their research that 30 per cent of young people were able to report an incident to a site manager on a website—I know this is not exactly relating to sexting necessarily, although it could be—31 per cent sought advice about what to do if they observed mean or cruel behaviour online and 10 per cent reported an incident directly to an authority like a teacher or the police. While those numbers are not high, we could invert them and say: 70 per cent are not doing that. I think they are really promising numbers, because, again, we do not know how many young people have had cause or an incident to report.

**Ms Craig:** It is interesting that the reported figures for percentages of kids who report bullying are not too dissimilar. We know that the incidence is quite high but that the reporting incidence is relatively low. I am not sure, but we might be able to draw assumptions.

**Mr Nicholson:** We had a youth panel of only about eight kids at our symposium. They were asked what they would do if they were subjected to some kind of harassment on the net and where would they go. I think only one talked about going to their parents. The rest of them would not consider it. They talked about going to their friends.

**Dr Slocombe:** They actually said, 'If I went to my friend and my friend recommended I should go to my parent, I would go to my parent then.'

**Mr Nicholson:** Yes.

**Ms Craig:** They are keen for that peer support.

**Mr Nicholson:** It was very much the peer theme.

**Ms Ferrari:** That is reflected in those figures, too. It is also reflected in Mission Australia's annual survey of young people on their help-seeking behaviour. It is exactly consistent that they will go to peers, friends, and trusted adults next.

**Dr Slocombe:** We do know that part of the problem for children is they do not know where to go and they do not know what the boundaries are. We know that even parents who are aware of a bullying or a sexting incident do not know where to go, and part of what we are trying to do is to make sure that everybody is on the same page about who to report to—who do I go to at school; when do I bring in the police? That becomes quite difficult when we do not have a legislative framework that everybody understands. What was really interesting with this group of young people at the symposium was that they turned the view of the symposium very strongly to the fact that we do need a law about bullying. I think if we had asked the question about sexting, they would have said the same. They said: 'It is all very well to have all those laws out there but we do not know about them, we do not understand them. We just want it to stop.' They actually asked for a law where they could say that bullying was against the law—and I assume sexting as well. They want the clarity. They want to know what it is. They want to be able to say to their friends that it is against the law.

**Ms Craig:** So, the societal laws that you were talking about before.

**Senator PARRY:** Everyone wants parameters. That is right.

**Senator STEPHENS:** I thought those stats about the bystander issue were quite interesting—the number of those not directly involved but observing it happening and being caught not knowing what to do and where to go as someone who is not immediately involved as either the perpetrator or the victim of this whole thing. What is their role? What is their responsibility in reporting it?

**Dr Slocombe:** We know that 80 per cent of young people do not report bullying, even if they are bystanders, because they do not want to become involved themselves and become targets. It does not get better and, in some cases, it gets worse. That really goes to the fact that teachers and parents do not know how to deal with it adequately.

**Ms Craig:** Especially in the case of technology, as kids are afraid that access is going to be taken away. So it makes them much less apt to report.

**CHAIR:** Education for the parents or caregivers is really important because often the initial response is, 'We'll stop you having your technology and that will stop it happening.' But in this day and age I know an eight-year-old with a mobile phone, heaven forbid! One of the submissions I read is that it is just like having a pen. I always say it is just like us learning the alphabet, if I can encompass most people in the room into one age group. We learned the alphabet; they learn how to use technology. That is the way they communicate. If you take it off them then you are denying them a whole lot of things.

**Dr Slocombe:** The only strategy they have is controlling the device. They need to have other strategies, which is what we call being a smart parent. How to parent in a digital world is quite different.

**CHAIR:** Parents might think they control the device but often teenagers have extra devices they share in groups and all sorts of things, I have come to learn. It is amazing the things you find out! So, yes, that is an issue too.

**Senator STEPHENS:** I was just thinking about being e-smart and that licence idea and whether or not a digital licence concept could be not part of the point of sale of the actual phone's SIM but that material could be there where the phones—

**CHAIR:** On how to access—

**Senator STEPHENS:** Yes. Or if you are buying a phone for your child at that point of sale there could be material available to direct people and ask, 'Is your child ready to have this?'

**Dr Slocombe:** We have had some conversations, particularly with Telstra, because they funded the e-smart libraries, about what would be a good point of marketing for it. Definitely we need to make people aware when they go and buy their child their first mobile phone that there is a core body of knowledge that that child needs to know and that they as a parent need to know. It is quite interesting that in the first suite of questions that we developed many of the people who would probably consider themselves quite smart failed a number of them. It is really quite a complex amount of knowledge that we are expecting young people and their parents to know to safely use these devices.

**CHAIR:** The issue around point of sale, as Senator Stephens mentioned, has also been discussed in previous inquiries that the joint select committee has undertaken, so there is certainly an underlying thought there that nothing has actually been developed yet.

**Mr Nicholson:** Going back to the issue of outcomes, I think sometimes when these photos turn up at school it seems to be that a teacher gets hold of them or someone refers them to the teacher and then they will call in the police. There was a report in the *Age* earlier this month on where that very thing happened. There were four kids arrested by the police straight after that, but they did not do anything to them, which was probably the sensible way to handle it. But it just shows that it is really a tip-of-the-iceberg thing. I think it is just chance if it comes to adults' attention. The parents had no idea this was going on.

**CHAIR:** There is probably a subtle difference—I was going to say between bullying and maliciousness, but 'bullying' is probably not quite the right word—between someone thinking they are taking some sort of revenge, say, on their girlfriend or boyfriend or whatever, when the relationship breaks up two years after the photo was taken, by forwarding the photo on to people and being deliberately malicious in that you just want to get it and send it out. I am not quite sure if I have made myself very clear there, but there are varying degrees, aren't there?

**Ms Craig:** Do you mean the intention to hurt?

**CHAIR:** Yes.

**Ms Craig:** It is very much something that underlies bullying, we consider—the intention to commit harm on somebody else. It cuts across both spheres, very clearly.



**CHAIR:** But someone who might not necessarily be deemed a bully, at the end of a relationship breakup might just think, 'Oh well, I am just going to send this to everyone to embarrass X.' Do you know what I mean? And, by default, that does make them a bully; I understand that. But they might not be a bully in other aspects of their life.

**Ms Craig:** Speaking as a former teacher, you often find kids who are just wonderful to you but really horrid to one or two out there.

**CHAIR:** I worked in the early childhood area for 12 years. I have seen a lot of that.

**Dr Slocombe:** Young people at the symposium were actually quite sophisticated in their understanding of bullying and using images in a negative way, and they were quite clear that there are young people who will bully in one context and actually will be the targets in another. So they do see it as much more nuanced than the baddies and the goodies.

**CHAIR:** Sorry, yes—that is what I was trying to get at: that sort of nuance of differences and how we deal with them.

**Dr Slocombe:** And they were quite clear that that should be taken into account when you are looking at laws and that there needs to be quite a nuanced application of the law, which is educating the people around young people on how to deal with it.

**Mr Nicholson:** Asking the question, 'Why are they bullying?'

**Dr Slocombe:** And 'Why are they generating images?' Are you aware of the work of Nina Funnell? She has done some really interesting research about why young people take pictures of themselves and disseminate them, and one of the things that was really interesting—and correct me if I am wrong, Sandra—is that she was talking about young women who have quite a different concept of privacy. For them it is part of their sexual development: they use 'selfies' to develop a relationship with their boyfriend, and they actually find that a lot safer than being in a room alone with the boyfriend because they can stop and control the relationship.

**CHAIR:** That is what the ACMA were relating to us this morning.

**Dr Slocombe:** The other thing is that there is a real gendered perspective to it in that boys and girls will send around pictures of naked girls. The girls will do it perhaps to belittle or just to share. The boys will do it because it makes them look like heroes with their mates. But neither gender will send around, very commonly, pictures of boys; the girls because they do not want to be considered to be loose, and the boys because they do not want to be considered to be homosexuals—gay. So there is a big tendency for girls to be harmed a lot more than boys through sexting.

**Ms Ferrari:** That is why I raised that point earlier about the need for respectful relationship education to really consider this, and I would really encourage the committee to consider this in a gendered context for a lot of it.

**Ms Craig:** The respectful relationships, the digital citizenship, the ethical behaviour online and off-line—because these worlds seamlessly coalesce—is very important.

**Senator PARRY:** Can I just take us back to the legislation—in particular, to your comments, Mr Nicholson, but everyone has said something similar. If we were to make new legislation—legislation that did not necessarily reflect a high criminal element to sexting or even just sharing of images, whether it be adult to adult let alone child to child—then I am sure that one of our key objectives—and in your opening remarks you were concerned about the harmonisation of legislation and the lack of consistency—would be harmonisation, and that usually happens through ministerial councils or through COAG arrangements. So that is probably how we would achieve that, because there is a crossover of state and territory and federal legislation here. Whilst federal legislation is always the superior of any legislation, we have got to have a Constitutional authority to operate within that space and so that is another complication too.

On the legislative front—and I hear what you are saying, and we had this discussion this morning about girls—it is a safer environment, if you like, for them. But at the end of the day we still need some sort of legislative backstop that says: at the end of the road, if you cross this boundary you are committing an offence. If that happens, then you end up having those parameters—and I was so pleased that you spoke about them. Were these the children at your forum who spoke about parameters and wanting laws?

**Mr Nicholson:** Yes.

**Senator PARRY:** Okay, that is very good. That is quite encouraging, because there is a lot of anecdotal evidence that children in not just this sphere but any spheres want parameters around their lives, and they do not

have enough of them. We have been throwing them away rapidly and they actually need some sort of consistency, so it is encouraging to hear that.

With the legislation, one of the discussions we had this morning was around the idea of having it at a lower grade, for example, a less categorised offence further down the offence scale, if you like, and certainly not a crime. It is like smoking: if you smoke under age, there is a penalty. It is not severe but, nevertheless, it is a penalty. I do share very strongly the views of having a spent sentence. I think that is very important. You can make some terrible mistakes once in your life—and I am a former police officer—and you learn tremendously from that experience, but that should never bar you from then becoming a model citizen somewhere else and having a good vocation without that sort of inhibiting factor. A classic example is motor vehicle stealing. Kids at the age of 14, 15 and 16, through whatever peer pressure and for whatever reason, could be charged with stealing a motor vehicle. For the rest of your life, that then prevents you from getting certain occupations, and that should not be the case if it is a one-off offence. So, yes, I think there are some good points around this. Do you share views, or do you have a view about having a lesser grade of offence for sexting in particular but also areas around sharing information without consent on the internet?

**Mr Nicholson:** Yes, I do, very strongly and for very much the same reason that you have advanced. It seems to me that that is the sort of thing that could easily affect young people if that is an offence. It gives them a clear indication and it could be dealt with in all sorts of ways. That was really the debate we had the other day—though that was more directed at bullying. But it was the same issue, and a number of us were saying that it is not much good having laws that no-one knows about and it is not much good having laws that the police cannot use because they are too serious. I think that is spot-on.

**Senator PARRY:** Maybe a monetary penalty and maybe a conviction recorded for a finite period of time, and if you do commit a second offence, well, that is a different matter.

**Ms Ferrari:** What we have found in Victoria around the imposing of financial penalties on young people is that they generally just turn into unpaid fines or the parent pays on behalf of the child. While I would agree concerning a lesser penalty—

**Senator PARRY:** So community work orders, for example—

**Mr Nicholson:** Yes.

**Senator PARRY:** Okay. That is the point, because we do not want to let them off the hook completely either. Just moving slightly from where we are, but I think this would be a good way of introducing legislation: do you think it should be appropriate for all ages, that the categorised offence was not just for people under the age of 18, for example, but across the board and if you were sending images without consent it should be an offence?

**Mr Nicholson:** Absolutely, I would have no hesitation about that. One of the ironic thing is about the current situation is that you have got adults behaving in this way—and there have been some highly publicised cases of it and it is really worrying to the people concerned—and there has been no effective response.

**Senator PARRY:** And to my way of thinking, apart from the fact of consistency and it being always good to have legislation that is for all and not just for groups, it becomes adult legislation then and so kids can see that there is an adult form of punitive action.

**Mr Nicholson:** I think that is really important.

**Dr Slocombe:** It also goes to the heart of adults modelling the appropriate behaviour for young people.

**Senator PARRY:** Correct. Another issue that was raised—and I think it was by you, Dr Slocombe, in your remarks—is that it is a parental issue rather than a school issue in relation to the education program aimed at getting the e-smart kits to—

**Dr Slocombe:** I would say it is both.

**Senator PARRY:** Good, because it is quite often out of the realm of a parent's ability to handle. This is the problem in not just this area of society but many other areas. Schools have become the front-line. I have been to many schools about cyber issues in general. Schools have become the front-line of where the fight starts because of texting or sexting over the weekend and the schools end up dealing with it regardless. You cannot isolate it as a parental issue. I think the aim has to include the school environment.

**Dr Slocombe:** No. I was merely saying that if you look at the whole suite of things that we are doing with e-smart, we have e-smart schools with very directly involved principals and teachers on that issue. We need a way to engage parents with that. The digital licence is really aimed at connecting parents to the issue. Young people need their parents, their teachers and everybody else on the same page about this. So it definitely is an issue that extends from schools to home. Our goal is to get them all talking on the same page and understanding that issue.

**Senator PARRY:** I saw a great example of a school where they issued laptops to each student in year 8. I might have the year wrong, but it was around that age group. Actually I think it was at the commencement of high school, so in year 7. The only way the student was allowed to collect their laptop was if one of their parents or guardians came in and did a cybersafety course for the use of the laptop with the child. It is a great carrot.

**Dr Slocombe:** We have a number of e-smart schools that do that. It really is that the child needs to hear at home the same messages they are hearing at school. That is really our goal—to have that same cultural overlay of smart cybersafety at schools and smart cybersafety at home.

**Senator PARRY:** Another great example was where they had parents together and then students together. Without parents present, only teachers, students were asked how many had set up the safety lock and security measures at home. They all said it was them, the kids. We got the parents in and they said exactly the same—the kids do it. This is another problem, I think. Parents are far less literate in this area than the kids of today. The grade 10s seem to be far less literate than the grade 6s and 5s. I think we are going to get there if we start early enough and get it through an education process, but—

**Dr Slocombe:** We do not expect parents to become computer geniuses. Again, it goes back to, 'What is the basic knowledge a parent should know to be able to be an effective parent in that space?'

**Ms Craig:** And what are their responsibilities as well. It is about being responsible for educating yourself as a parent to be able to be a credible guide as well.

**CHAIR:** I have been to a couple of schools where I have asked the question, 'How many in the room are on Facebook?' I happened to ask this of a group of year 6 students, who are 12 and below the legal age. A number of hands went up very proudly, thank you very much. When I asked, 'How can you be on there? You are not of legal age,' they said, 'My parents told me to put in a different age.' So we have this whole dilemma with parents. I suppose peer pressure to be on Facebook is so great with young people that parents will cave in, no matter that the law says you have to be 13.

**Senator PARRY:** I think that has now been removed, or it is about to be removed, which I think is a good thing because there are people of 15 who should not be on there and there are people—

**CHAIR:** Of course. There are people of 60 who should not be on it, to tell you the truth.

**Senator PARRY:** That is right.

**CHAIR:** I know someone who has been bullied by a 60-year-old on Facebook.

**Senator PARRY:** It is an arbitrary thing. But what we were doing then—as you rightly say, Chair—was encouraging children to lie at that age to participate in a fairly good social function that was very exciting. I think it was in Ballarat where we heard that two sporting teams circulate the sporting roster, the car pool roster and everything else through Facebook. So if you were not on Facebook you could not pick them up. There are just practical reasons to be on there.

**CHAIR:** I noticed in your recommendations you were talking about the establishment of a national digital communications tribunal with the power to act speedily and in an informal manner to direct the immediate removal of offensive material from the internet. We actually discussed this with the previous witnesses as well, so I was just hoping that you might be able to expand on what your ideas were there, and we can have a bit of a chat around those issues as well.

**Mr Nicholson:** Yes. Perhaps I could go back a step on that one. The New Zealand Law Commission recommended such a tribunal in New Zealand, but of course it is a bit easier in New Zealand, as we know, because there is only one jurisdiction.

**Senator PARRY:** Tell us about it!

**Mr Nicholson:** But the reason we suggested that that should be at a federal level is that we feel that that would be the only way that would be really effective across Australia. The Victorian committee report recommended a tribunal in Victoria, and that is fine; it would probably be better than nothing. But it seemed to us that the federal tribunal would be better in this way, because if an order is made by it then it applies in every state, whereas a Victorian order would not. So that is why we went down that track.

The practicality of it—again going back to New Zealand—is not as simple as that, though. I understand that the New Zealand government is going to give the responsibility to the District Court instead of the tribunal. In a sense that defeats the object of having a simple, straightforward exercise.

**CHAIR:** Yes.

**Mr Nicholson:** I think that in Australia we could do it as an administrative tribunal. We are used to administrative tribunals in other areas, and tacking it onto another one might be a way of doing it. But it has to be something that can act quickly. The New Zealand concept, which I think is right, is that you act on the papers and you do not have lawyers involved. If someone wants to argue about it afterwards, they can, but the tribunal can make the order first. Any legislation of that sort has to be carefully drafted, of course, because you would no doubt have strong opposition from Google and various other people.

**CHAIR:** Senator Stephens mentioned earlier in the day how difficult it might be in regard to sexting. It is different from Facebook, Google and whatever all those other things are out there in the cyberworld; there seem to be a plethora of activities. You can send photos through it, in fact. She mentioned that it might be really hard to direct people to take sexting down, because once it has been sent how do you know where it has been sent? If it has been sent to multiple people and then they have sent it on and the next people have sent it on—

**Mr Nicholson:** It could be all around the world. Yes, that is right. Nothing is a perfect solution. I think it is very difficult to deal with that. On the other hand, you could say to a person who blatantly had it somewhere, 'Well, you could take it down anyway.'

**Senator PARRY:** I suppose you could ask them to repeat the path of the original distribution with a claiming back or whatever. That may work. It may be ineffectual, but it might be a start.

**CHAIR:** It might be a deterrent.

**Senator PARRY:** You might have success in some cases and not others. At least you are removing images where possible. In the absence of anything else, it would be better than nothing.

**CHAIR:** Yes, I am not disagreeing. I am just trying to draw out the various issues.

**Senator PARRY:** It would be very difficult.

**Senator STEPHENS:** Of course, the other issue that you have is that, if you text from iPhone to iPhone, there is not a charge.

**Ms Ferrari:** Because of the iMessage.

**Senator PARRY:** With Facebook it is more difficult.

**Mr Nicholson:** They are destroyed after 24 hours or something like that, I think.

**Senator STEPHENS:** While we were having this conversation about the broader links between bullying and violent behaviour, I was thinking about the White Ribbon campaign and whether or not this might be some connection that you might be able to make in the future. Now we have such strong ambassadors for White Ribbon Day, they might be willing to engage in a future conversation about sexting and the inappropriateness of that, using that network of role models to advance this a little.

**Dr Slocombe:** That is interesting, because I was talking to Elizabeth Broderick about using the same sort of thinking in relation to violence specifically against women, let alone general violence in the community. I think the same sorts of underpinning behaviours, values, responsibility and respect underpin all those behaviours, and a concerted effort that covers all of those would be really valuable.

**Mr Nicholson:** The difficulty, though, if I may say so, is that, to get back to the types of sexting, if it is simply one kid sending a photo to another and they have a relationship or something like that, it would be difficult to persuade them that there was anything wrong with that. In fact, they cannot be persuaded—that is one of the problems. I do not think any number of role models could correct that problem. But sending it somewhere else is the key. Once it is sent on, it is a problem.

**Senator STEPHENS:** That is the point, yes.

**Senator PARRY:** That is the point where the offence is created. That is a very good point. Controlling what you get is a bit more difficult, but it would be like it is with property—you could be charged with receiving stolen property. Maybe that is another way of looking at it—receiving an unauthorised image.

**CHAIR:** There is always one policeman, or ex-policeman, in the room, isn't there?

**Senator PARRY:** We have good solutions, though.

**Ms Ferrari:** I think we do have an opportunity to intervene at that level, and I take on the point that, when it is consensual between two adults or two young people, it is problematic to intervene in that way. Just last week in Victoria we saw the launch of the Foundation to Prevent Violence against Women and their Children, which is a joint federal and state government initiative.

**CHAIR:** Minister Collins—

**Ms Ferrari:** Yes, Minister Collins, at the federal level, and Minister Mary Wooldridge, at the state level, launched that. I think there is enormous potential there for their remit to be quite broad around violence and for them to bring cybersafety, cyberbullying and sexting into that consideration. A lot of the sexting stuff I have seen has been around a drunk young female sexting, and then several people taking that image and it going everywhere. That is really about attitudes towards women. Why aren't we approaching that in relation to prevention and in a caring way? A young woman in that situation needs help rather than to be exploited and ridiculed. Again, there are underlying attitudes and messages about women that we need to clamp down on and address. I think the foundation could potentially have a point of intervention there.

**Dr Slocombe:** That is actually the context that I was discussing with Elizabeth Broderick at the function.

**Mr Nicholson:** That is right. One of the reasons the National Centre Against Bullying was founded was a concern that bullying and that sort of behaviour is behaviour learned during childhood which is reflected in adult life. That is why we concentrated on kids in relation to it. But that does not mean that it cannot extend further than that. I think—and I am speaking now from my Family Court background—there is a lot to be said for the proposition that violence in the home is often a continuation of a learned bullying behaviour either at home or at school. That is why it is so important that we do something about.

**CHAIR:** If that is the environment you are brought up in, you do not know anything else, do you?

**Mr Nicholson:** That is right.

**CHAIR:** It is a nasty one.

**Senator STEPHENS:** It comes back to the discussion we had about nuanced behaviour and the fact that very often those who bully have been bullied themselves.

**Ms Craig:** How many times have you had an interview with a kid about bullying and then called their parents in and said to yourself, 'Hello; that's where they got it from'?

**Senator STEPHENS:** That is right.

**Mr Nicholson:** I know we have covered a lot, but there is one thing I mean to mention arising from what Senator Parry said. It relates to the responsibility of schools. I think that is a very important point in these areas. One of the comments that was made at the symposium and that I have encountered on other occasions is that schools do not know where their responsibilities begin and end. So you will find that one principal who gets a complaint about behaviour outside the school will say, 'It's nothing to do with me,' and another one who gets such a complaint will say, 'of course it's to do with me,' and will do something about it. There is that uncertainty for parents. What is a parent going to do if they go to a school and get that response? I hope that does not happen very often, but there is evidence that it does happen. I think that perhaps at some stage in the legislative sense—and South Australia has done it—it should be directed that the school does have a continuing responsibility—

**Dr Slocombe:** There is a 24/7—

**Mr Nicholson:** It is 24/7, and that is very important. Again, it is a matter that could be considered in a legislative sense.

**Senator PARRY:** Schools are feeling that, because it is becoming more and more the norm that with many things the schools are becoming de facto parents, not only during daytime but also after hours. Disputes are reintroduced during the week.

**Dr Slocombe:** That is part of the reason we are trying to find some way of engaging the parents in it, so that they can support the schools rather than it becoming entirely the school's responsibility. They do need to work hand in hand.

**CHAIR:** Yes, it is a whole-of-community issue.

**Dr Slocombe:** That's right. We know that you will not create cultural change, which is fundamentally what we are trying to do, unless everybody—school, parents, children, the broader community organisations that interact—is involved.

**Ms Ferrari:** You mentioned earlier Barbara Spears—she is a researcher from South Australia. I know that she has done a lot of work around this very thing. She talked about schools' responsibility existing outside the 9 to 3 framework. She has also, I think, written a lot around the dynamics of the bully and the bullied and the interchangeability of the two.

**Senator PARRY:** Are you aware of any research or of any country in the world where they are identifying addressing all cyber issues with children at a very early age as part of a formal curriculum? Are you aware of any

country that is doing it well? Or is every country struggling like we are at the moment to get our framework just right? It is a whole new field.

**Mr Nicholson:** I think Canada is struggling, but there is a lot of movement at the provincial level in Canada to introduce various types of legislation. I think about five provinces have now legislated in one way or another against cyberbullying and others have legislation in the pipeline. They all tend to be different in their approach, which adds to the complexity of it. New Zealand, I suppose, is the one that is looking hard at it.

**CHAIR:** The UK was, wasn't it?

**Dr Slocombe:** I am not sure about the preschool level. It is something we are starting to talk about ourselves and starting to look at ways that we can take some of the learnings and the cultural change approaches down into the preschool area.

**Ms Craig:** It will probably be the subject of our next NCAB conference.

**Senator PARRY:** There is no doubt that the awareness and the e-capability, if I can use that term, of children under the age of six is very, very sophisticated. If we can teach correct cyber-etiquette and cybersafety at that age it will carry through and this problem will only be a generational thing that will wash through—hopefully.

**Ms Craig:** The thing about it is that it is applicable in settings like early childhood settings, and it does really concentrate not just on cybersafe behaviours but on ethics and values as well. It is that attitudinal stuff that underpins good behaviour.

**Ms Ferrari:** One other point I would like to make is the importance of our being adaptable in this space, because the technology that we are dealing with today—I don't think it is a static thing of us going: 'Right, we've sorted out that problem now, tick.' The technology is going to change and the young people we are talking about today will probably be the dinosaurs that will be talking about it in 20 years time, because there will be a whole range of new technology. We need to keep pace with it and never think that we have sorted out the problem of whatever it be, cybersafety or sexting. There will always be a new technology and young people will be the adopters of that well before you and I catch up with it.

**CHAIR:** I think that's right. I think the importance of evaluating any of the programs that are out there—whether they be through Alannah and Madeline, ACMA or other independent groups such as Bravehearts—is that those things do change very quickly. It is an important lesson that we need to keep at the forefront of our minds.

**Dr Slocombe:** I think the foundation needs to be on a common understanding of what ethical and responsible behaviour is. I think that is the foundation that does not change. Then it does not matter what happens with the technology, because everybody has a base understanding of what respectful, responsible behaviour looks like.

**Ms Craig:** One of the papers I was reading this morning was talking about people using polaroids to take the early—the prehistoric—sexts. But really we are talking, exactly as Judith said, about behaviours and attitudes that really do not change, and it behoves us, as educators, lawmakers, whatever, to put in place those programs that encourage that.

**Senator PARRY:** We are dealing now with tools that have evolved so quickly in front of us. They have not evolved so that we can actually keep pace; they have evolved while we talk about these things. They are evolving even at that stage. It is difficult. It is a good point.

**Ms Ferrari:** One of my staff members yesterday made the point that we carry around more technology in our pocket than was used for the first lunar landing. It really does put it in a bit of context.

**Dr Slocombe:** It is true.

**Ms Craig:** That is amazing. I will have to remember that one.

**CHAIR:** Are there any more questions?

**Senator PARRY:** No. That was a good discussion. Thank you.

**CHAIR:** Thank you all for attending today and for your submissions and for giving evidence today. If the committee has any other issues they will be in contact with you. But, once again, we really appreciate your input into this inquiry; it is of great significance to us. We will now have a 10-minute break.

**Proceedings suspended from 14:50 to 15:00**

**KOOPS, Dr Vaughn Lester, former Executive Officer, Law Reform Committee, Victorian Parliament**

**NEWTON-BROWN, Mr Clem, former Chair, Law Reform Committee, Victorian Parliament**

[15:00]

**CHAIR:** Welcome to the Senate Select Committee on Cyber Safety private briefing on sexting by minors. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. Today's proceedings will be recorded by Hansard; however, as this is a private briefing, the Hansard transcript will not be made public unless the committee agrees to do so. Should this occur, the committee will contact you before publication to ascertain your views concerning the publication of your evidence.

I now invite you both to make a short opening statement, and at the conclusion of your remarks we will proceed to questions and a general discussion relating to sexting.

**Mr Newton-Brown:** Thank you very much for inviting us to appear before you today. This issue was the subject of a very interesting inquiry that the Law Reform Committee undertook. That committee was formed in response to newspaper reports in the *Age*, probably two years ago now. I think it was the *Sunday Age* that raised concerns about children being placed on the Sex Offender Register as a result of sexting. It got a lot of publicity. There was a lot of concern and, as a result of that, the Attorney-General asked the Law Reform Committee to inquire into it. I suppose at the forefront of my mind was the issue of whether it was appropriate for children to be put on the Sex Offender Register for doing this sort of activity.

From the evidence that we received from the police, the committee found that the concerns raised by the media at the time were actually unfounded. The police evidence was that very few children were placed on the Sex Offender Register and that those who were placed on it were there for good reason in that there were exacerbating circumstances which took it beyond being simply a snapshot that got shared. There was one example of a child who threatened to distribute a photo of his partner if they did not keep having sex with him.

The evidence was that the hysteria around kids being on the Sex Offender Register was not warranted, but the committee did feel that it was not appropriate for the police to have this great big stick to wield against children. While it appeared that to date the police had exercised their discretion very sensibly, the committee felt that it was not appropriate that such a serious charge could be laid on children. We were not comfortable with the community relying on the good sense and discretion of the police in this matter. The committee found that a sexting offence which was age appropriate and which had no other circumstances surrounding it to aggravate it did not have the nature of a child pornography offence. A child who is interested in other children sexually is not a paedophile. We thought it was important to make the recommendation that there be defences to child pornography charges such that if it was an age appropriate gap—in other words, if two people could lawfully have sex—then it should not be an offence for them to be taking intimate photos of each other. We basically suggested the two-year gap, which I presume is similar in other jurisdictions around Australia. Is that right, Vaughn?

**Dr Koops:** It is fairly similar.

**Mr Newton-Brown:** That was the recommendation and why we came to it.

Also growing out of the inquiry was the suggestion of a new offence. We felt that while the police were happy to have this charge to threaten people with it was rarely used. In circumstances where kids were disseminating photographs without consent, while they could technically be charged with disseminating child pornography, the evidence from the police was that they were never charged unless there were aggravating circumstances. We felt it was appropriate to look at whether another offence, a different type of offence, would be appropriate, and we found a lower-level summary offence would send the message to a community that if you receive an image by consent it is not okay to forward that on without the consent of the other person, whether children or adults. That part of the recommendation would be a world first if taken up by the government.

The government has not yet responded to our inquiry or to our recommendations.

**CHAIR:** What is the time frame?

**Mr Newton-Brown:** There are probably a few months to go.

**Dr Koops:** Yes, six months from when it was tabled. That will make it November.

**Mr Newton-Brown:** The idea of a new offence was one which we thought was important to send a message to the community and also give the police something they could use more regularly and which would not have the impact of destroying someone's life as being put on the sex-offenders register would.

The other major recommendation we made was that there be better education for kids, particularly, on the impacts of behaviour which, while you do not want to encourage it, is certainly something they should be educated about insofar as what the impacts on their lives could be if a photo goes viral. That is where all the harm occurs. Between consenting kids and consenting adults there is very little harm, in the committee's view—if everybody is consenting and it does not go any further. The harm happens, typically, when a couple breaks up and one of them sends on a photo to their friends and, exponentially, it goes out of control. Once that happens there is very little you can do to get any redress at all, either by way of compensation for the harm or in stopping further dissemination.

That was part of the reason we also recommended that there be a tribunal that could deal with these sorts of cases. We suggested that perhaps an existing tribunal could have another list attached to it which could sit as required. It is VCAT in Victoria, the Victorian Civil and Administrative Tribunal. In that circumstance, if you had a photo go viral and you were able to quickly get an order from a tribunal, it would add weight. If you had to contact Facebook or Twitter or one of these big multinational companies, having the weight of a court order to get images removed would assist. Of course, you are never going to be able to clean up the whole internet of an image that has gone viral, but at least it is something.

They were the major areas of recommendations that we covered. Vaughn, do you have anything to add? Have I missed anything?

**Dr Koops:** There were some interesting observations about the kinds of advertising used to educate children about the dangers of sexting, and they often had a strongly gendered component, principally focusing on the girls, saying, 'Don't do it in the first place.'

We have heard evidence here and from overseas that there is quite a strong gender dimension to sexting activities. A lot of it reinforces stereotypes about girls who are promiscuous and guys who are studs. So the campaigns focused on the girls are not taking proper account of the cultural and social context in which sexting occurs, in which there is a significant amount of social pressure on girls to participate. I think that was behind the committee's thinking that you really had to focus on the consensual aspects of it because that was the where the harm occurred. The dangers are that, if you are typically blaming the girls for what happens when those images are subsequently misused, you are re-victimising the victims.

**Mr Newton-Brown:** So education in relation to 'it is not okay to be forwarding images' is where we came to, rather than demonising the person taking a photo of themselves, typically a girl—having education around the idea of non-consensual distribution of images. That is where a new offence would assist in making that seem real to people.

**CHAIR:** So the advertising campaign should be aimed more at the person receiving the text message to make sure they do not then do something malicious with it?

**Mr Newton-Brown:** Yes.

**Dr Koops:** I guess the responsibility is with the person sending it. It is just about trying to reinforce respectful relationships and respect for other people.

**CHAIR:** We heard earlier that a lot of young girls now use it as just a form of flirtation and that it may well slow down any sort of sexual activity. They feel that if they send a photo it 'keeps the boys out of the bedroom'—I think that was the quote we heard earlier today.

**Senator PARRY:** It keeps them interested but not there!

**CHAIR:** Yes! So your recommendations may well cover that off, if that is the way young people have relationships now.

**Mr Newton-Brown:** You do not want to be encouraging kids to do stupid things. I would say this is a stupid thing to do, but many kids see it as something that is just accepted practice. The evidence we have is that, when the picture does not go further than the intended recipient, there is very little harm done.

**CHAIR:** You mentioned lower level summary offences. What 'penalties', for lack of a better word, would you suggest?

**Mr Newton-Brown:** That would be something for government to consider, but I would have thought it would be something at a very low level—a fine, or something like that.

**CHAIR:** I will play devil's advocate here and say we have heard that the parents would end up paying the fine anyway. I think it was Senator Parry who suggested community orders or something like that. Do you have any views on those sorts of comments that we had earlier?



**Mr Newton-Brown:** That would be up to the presiding magistrate or judge. If there is a penalty suggested in the act, then there would always be options for community orders as well.

**Dr Koops:** In the report we did suggest that it be up to two years imprisonment, which is similar to the penalty for upskirting. But that is a maximum penalty, of course.

**CHAIR:** And it would depend on whether it was consensual. We have had a discussion throughout the day about consensual and non-consensual.

**Mr Newton-Brown:** A big element of the offence would be that it was without consent that a photo was disseminated.

**Senator PARRY:** The forwarding on.

**Mr Newton-Brown:** So you would not anticipate somebody being imprisoned, but I suppose if that is—

**Senator PARRY:** It is a good upper limit.

**Mr Newton-Brown:** It is an upper limit, yes.

**Senator PARRY:** Can I commend you on the report. I have simply just glanced at it—it was only given to me today—but it looks good. I had a look at one of the case studies and I think it is a well-presented report. I am looking forward to getting into it in a bit more detail when I have the opportunity. We seem to be heading down that same path of consideration; the only thing I suppose is that we could look at jurisdictional issues—federal and state—and I assume that if we did anything from a federal perspective we would be looking at harmonised legislation. So you have done some of the hard work already, which is good. I do commend you for that.

The other thing I have noticed—and correct me if I am wrong, because I have only just glanced at the recommendations—is that you are making this non-age-specific, aren't you? That is good. It is right across the board. That is great. And you have, at recommendations 6, a list of defences, which I think is also good, which then covers some of the minors and that aspect—

**Mr Newton-Brown:** The defences relate to the existing child pornography laws and then, separate to that, we have proposed new offences which will cover adults and children, which is simply the dissemination of images without consent.

**Senator PARRY:** So recommendation 6 is simply to remove the obligation on a presiding magistrate or judge to place someone on the sex offenders register for those sorts of issues?

**Mr Newton-Brown:** Well, it is designed to give children a defence should a policeman exercise their discretion to charge them with child pornography offences simply because you have taken a photo of yourself and forwarded it on. So it gives them that defence. As far as the sex offenders register goes, and the potential for adults to be on a sex offenders register: it is mandatory if they are found guilty of a child pornography offence. So, in theory, for every day that ticks over there are thousands of people turning 18 holding images on their phones of children who may have sent them photos in the past, and so they are technically able to be charged with child pornography offences, and if they are found guilty then they have to be put on the sex offenders register. While the evidence was that that was not happening, the potential for it to happen is a real concern.

**Senator PARRY:** You will never be able to lock the gate, and say, 'It can't happen. We will lock the gate in this case.'

**Mr Newton-Brown:** That is right.

**Senator PARRY:** What about retrospectivity? Again, as I said, I have not read the report. So, for example, if this became law, would you consider retrospectivity where you would allow people who were already on there for committing exactly what this is designed to avoid?

**Mr Newton-Brown:** I think it would be fair to say we heard conflicting evidence. We heard evidence from children—or from people who were on the sex offenders register who felt that they were put on there unfairly, and we heard evidence from the police saying that, as to everybody who is on there, they are satisfied that they should be on there. So, without making a call as to who is correct, we did decide that it would be appropriate to have some sort of mechanism where those who are on the register could apply to have their case reviewed.

**Senator PARRY:** That way you still have control. Thank you, Chair. That was all I had.

**CHAIR:** Thank you. I noticed that at recommendation 13 you recommend considering creating a digital communication tribunal either as a stand-alone body or as a list within the Victorian Civil and Administrative Tribunal, and you have mentioned that. I am not sure that a lot of people still come forward and say that somebody is sending on explicit photos that they did not want sent on, or that they did not give consent to. I

would have seen that as maybe outside the court proceedings or as a bit more informal. Do you have views on that?

**Mr Newton-Browne:** In the report, Vaughn has done some great work looking at the state of the law and what redress there is available to somebody who has had an image forwarded without their consent. The summary is that there is really not very much you can do at all. In some circumstances, the forwarding of an image could really be devastating for somebody and have a very serious impact on them.

**CHAIR:** I know there have been cases of suicide among young people.

**Mr Newton-Browne:** So my view is that it would be appropriate to have a formal tribunal set up to deal with that because of the seriousness of the harm that can be caused. Vaughn, do you want to add anything on that?

**Dr Koops:** Yes, but I think of it more as a backup as well for you to take informal steps or contact a service provider such as Facebook, Google or whatever and say, 'These images are up here; can you please take them down.'

**CHAIR:** So that someone can make the order and then, as we heard earlier, it gives you something to go to people with.

**Dr Koops:** Yes. The idea of the tribunal is that it would give you an avenue to seek to have things removed after you have taken suitable steps to try and have it removed prior to that. Probably the big ones nowadays would take things down fairly quickly, but if you are able to back yourself up and say, 'Look, my next step is going to the tribunal for a take-down or desist order or something like that,' then that would assist you in dealing with whoever it is—the telecommunications provider or internet site provider or whatever it is. So the tribunal is there as a mechanism to back that up and perhaps offer some weight behind those requests.

**CHAIR:** Are you able to give us a bit of an insight into some of the issues you learnt about from overseas while the inquiry was going?

**Dr Koops:** We went to Canada and the United States. I guess there are a lot of impressions we had about the suitability of pursuing the child pornography charges. Although some jurisdictions embraced that, it is probably fair to say most of the committee members were not so sure about the wisdom of taking that approach, which is clearly how we ended up with the report. But it did make us very mindful of the importance of not leaving loopholes so that genuine paedophiles would be able to find ways out, which is why the committee tried to be quite careful—and probably succeeded, I hope—in formulating its defences to child pornography offences for Victoria, with the two-year gap but also having some extra conditions. The age of consent in Victoria is 16 years and older, which has a tension with 18 years or younger for child pornography. So just to make sure that age gap of two years stayed in place for 16- and 17-year-olds—because legally a 16-year-old can have sex with a 60-year-old, and that might have—

**CHAIR:** Yes. But it is two years. It is something to do with the appearance of the person or something, isn't it? I have concerns with that.

**Dr Koops:** There are defences there, and—

**CHAIR:** In Tassie we had a very high-profile child prostitution case where people tended to get off because they said, 'Well, she was 12 but she looked 17 or 18.' I think 17 is the age of consent in Tassie. A lot of young girls obviously look a lot older than they are, so I am just wondering how that might play out as a defence for people. Are they all going to claim, 'Well, she looked 18, so I thought she was,' and that type of thing?

**Dr Koops:** I think that is what we are thinking with the 16-year-old thing as well. Web paedophiles might be claiming, 'Here's a 16-year-old,' and they all know behind closed doors that they are actually talking about a 12-year-old or something. So that is why we had the two-year gap between—

**CHAIR:** So it is two years between the offender and the person sending the sext or whatever.

**Dr Koops:** And the other person depicted, unless they are legal adults, in which case that would not apply. For the Commonwealth offences, I think you have different safety mechanisms there, such as the Attorney-General having to consent to a prosecution.

**CHAIR:** Yes, that is right.

**Dr Koops:** So in a way there are safeguards there, whereas we talked about more explicitly having those defences available, and that pretty much aligned with age of consent, with a few things around the edges to suit other conventions.

**CHAIR:** Sorry. I might have misread or misunderstood what you are saying. So, if they are a 12-year-old but the argument is that they looked 18, that would not hold any water, because they were not 16—if the age of consent were 18.

**Dr Koops:** What we discussed was aligning with the defences to the age of consent. If it is a 12-year-old, the other person has to be 14, and older than that just does not wash at all.

**CHAIR:** Thanks. Sorry, I was—

**Dr Koops:** It is still a bit problematic, but it is always going to be problematic.

**CHAIR:** Of course.

**Dr Koops:** I guess you are just trying to capture as many variations as you can.

**CHAIR:** What were some of the other concerns that you picked up out of America and Canada?

**Mr Newton-Browne:** One group that stuck in my mind was that in Canada the schools board were really well set up to deal with this issue. We had evidence that on most Monday mornings they have to put all these spot fires because kids have been at a party and had a few drinks, and then there is another group of kids at another party, and they start texting each other, and then before you know it there is sexting going on between the groups, and then typically the school gets a call on Monday morning about someone's son or daughter having had an image go viral. They had what seemed to be a very effective means of trying to put a fence around it and closing it as best they could. Vaughn, do you remember the details of that?

**Dr Koops:** Yes. They had programs through the schools, so they would get on to things quite quickly, particularly in Toronto but also in other Canadian jurisdictions. The police had a real role in social media, so they had dedicated police officers. We talked to a police officer who was pretty much tweeting or Facebooking the whole time, showing us how connected he is with the kids.

**CHAIR:** Senator Parry might want to know about solutions again!

**Dr Koops:** What he and some of his colleagues were doing seemed to be quite successful. They had a special unit within the city police who were tracking social media and encouraging people to be their friends and let them know what was going on and things like that. It seemed to be really successful there. I guess that goes both ways.

**CHAIR:** It takes resources.

**Dr Koops:** It is another bunch of adults earning significant trust from a group of children. You are putting a lot of responsibility in individuals' hands at that point and trusting the individuals to be good.

**Mr Newton-Browne:** The other thing that was apparent through our talks with the Los Angeles Police Department was that a lot of these selfies end up on child porn sites. People will trawl through Facebook and Twitter and find these pictures. So, even though the person who has taken the photo may not consider it to be sexually explicit, some of them are explicit enough to end up on these sorts of sites.

**Dr Koops:** A very strong thing that came through from a lot of the police agencies over there was that they very much endorse the idea of parents monitoring their children's internet and device use through surveillance software and other things like that—monitoring covertly as well as overtly. That came more from police than, perhaps, from others.

**CHAIR:** For the parents to monitor covertly?

**Dr Koops:** Yes. That is something that came out strongly there. I am not sure that all of us or the committee felt that that was necessarily the best way to go. There is also a more personal feeling that encouraging trust and responsible behaviour was better than keeping tabs on every single move.

**Senator PARRY:** That has the potential to destroy parent-child trust.

**CHAIR:** That is right.

**Dr Koops:** That resilience can be undermined significantly if you destroy that relationship—well, not destroy it, but—

**Senator PARRY:** It seriously damages it.

**Dr Koops:** Yes.

**Senator STEPHENS:** In chapter 5, which was about diversionary programs and things of that nature, section 527 talks about the Ropes Program diversion; it is one option that can be used in Victoria. Did you see examples of other diversionary programs from the other states that you were impressed with?

**Mr Newton-Brown:** As far as children and the law goes, I think even if children were found to be guilty of any new offence, you would still want to try to get them out of the criminal law system, the court system, as

quickly as possible. Diversion programs are a great way to do that. The child has gone through the experience of being charged but they have not had their lives wrecked. The committee was very supportive of having an expanded role for diversion. As far as specific courses go, I do not recall, Vaughn, whether we had any particular—

**Senator STEPHENS:** I was just wondering about the programs in the other states.

**Mr Newton-Brown:** I am sure all states do this sort of thing. I think even with our own state there are multiple diversion programs, some of which are specific to particular courts.

**Senator STEPHENS:** Did you look at the issue of restorative justice?

**Dr Koops:** I guess we considered these things but we were mindful that it was an inquiry into sexting and not more generally about mechanisms within the justice system.

**Senator STEPHENS:** I was just thinking in terms of using the restorative justice principles as a way for the young person to take responsibility for what they have done. You might not be able to get those photos back but you might be able to make some redress by acknowledging the damage that you might have done.

**Mr Newton-Brown:** It sounds like a good idea. Having children thinking about the implications of their actions is all part of the education process.

**Senator STEPHENS:** It is certainly being used a lot more in New South Wales. Restorative justice is used in the Department of Community Services and in Indigenous families, with lots of kids in care.

**Dr Koops:** You can imagine this is the sort of circumstance in which that would be an appropriate course to take, given that it is about relationships and that it intersects with the responses to bullying as well.

**Senator STEPHENS:** Absolutely.

**Mr Newton-Brown:** In general terms, the committee felt that, in most cases, when sexting goes wrong, it is not really a sexual offence; it is more a bullying, harassing type of offence, if it is done maliciously. So we thought it was not appropriate to have it as a sexual offence and particularly as a potential child pornography offence. That is why we thought having a new offence which did not carry the stigma of a sexual offence was important for both children and adults.

**Senator STEPHENS:** Thank you for that. It is really interesting. The report is fantastic.

**CHAIR:** Can I thank you for your submission and evidence today. It has been very helpful to us. As we alluded to earlier, we did get the hard copy today; but I am sure we will all take it away and read it. Thank you for the preliminary work you did in it. You have saved us a lot of work.

**Mr Newton-Brown:** We would be very pleased if the federal government created new laws around our recommendations which applied across the states. This is obviously an international issue and it would make sense for Australia to have national laws on this. I understand the recent bullying symposium—and I think you have just heard from Judge Nicholson—

**CHAIR:** Yes, we did.

**Mr Newton-Brown:** recommended that all states take up the recommendations of the Victorian Law Reform Committee. So of course we agree with that!

**Senator PARRY:** I think that, as far as we are concerned, this is the only comprehensive report by any state or territory in the Commonwealth, isn't it?

**CHAIR:** Yes, I think so. Well, I think it is all we have had access to so far.

**Senator PARRY:** So well done, anyway.

**CHAIR:** Thanks again. We will now have a quick break.

**Proceedings suspended from 15:35 to 15:49**

**COLES, Mr Anthony, Assistant Secretary, Criminal Law and Law Enforcement Branch, Attorney-General's Department**

**HARTIGAN, Ms Brooke, Principal Legal Officer, Criminal Law Reform Section, Attorney-General's Department**

**PRIESTLY, Ms Jenna, Legal Officer, Criminal Law Reform Section, Attorney-General's Department**

*Evidence was taken via teleconference—*

**CHAIR:** Welcome. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you. Can I remind witnesses that the Senate has resolved that an officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or the President. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. I note that the committee has received a submission from the department.

As this is a private briefing, the *Hansard* transcript will not be made public unless the committee agrees to do so. Should this occur, the committee will contact you before publication to ascertain your views concerning the publication of your evidence. I now invite you to make a short opening statement. At the conclusion of your remarks, we will proceed to questions and a general discussion relating to sexting. Would you like to lead off, Mr Coles?

**Mr Coles:** I will. Thank you, Senator. I have some opening remarks which in part reflect the submission that we made to the committee. Also, I hope that they will serve to address some of the key questions that you might have today. Can I start by saying we welcome the opportunity to brief the committee on cybersafety, on the criminal law framework and on the application of existing criminal laws to sexting activity.

The Attorney-General's Department administers the Criminal Code, the full reference being the Criminal Code Act 1995. The code does not directly criminalise sexting. However, as noted in our submission and a number of others, sexting activity may be captured by offences which criminalise the use of a carriage service, such as internet or mobile phone, for child pornography. The child pornography offences in the code are designed to combat a range of serious offences against children. They are not designed to target young people engaged in sexting. However, having said that, those offences I have just referred to do not exclude people under the age of 18 years from their operation, and the government has previously expressed the view that such an exclusion would be inappropriate because, primarily, it would reduce the protections for children and young people in circumstances where an incident involved clearly malicious or exploitative behaviour.

The other point to make here is that, on the other hand, it would be inappropriate for the Criminal Code offences to be applied to activities by young people, such as sexting, which are not exploitative or harmful to children. I think that is a point that has been made in several submissions to the committee. For that reason, picking up the need to ensure the offences are not applied inappropriately, there are a number of protections in place to ensure that does not happen.

The first one of those is that there is scope for police to take the circumstances of the particular case into account before proceeding with an investigation. I think the AFP submission references that kind of discretion. The second point is that there is a requirement for prosecution agencies to consider whether the prosecution of a young person is in the public interest before proceeding. Thirdly, the Criminal Code expressly requires the Attorney-General to give his or her consent to child pornography proceedings before they are commenced against a person who is under the age of 18 years. As a matter of practice, based on our records the Attorney's consent has only been sought in circumstances where a young person's conduct was in fact clearly malicious or exploitative.

Finally, under the Commonwealth Crimes Act and also the code, a child under the age of 10 years cannot be held criminally responsible for an offence. Beyond that, there is a further rebuttable 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. So that sets up a continuum of criminal responsibility in the transition from childhood to full adult criminal responsibility.

Do the offences relating to child pornography need to be reviewed? The department is clearly aware of the Victorian Law Reform Commission report tabled recently on its inquiry into sexting, which made a number of recommendations relating to the current laws, including, as I am sure you know, that the Victorian government should amend its existing child pornography offences to provide offences specific to sexting and also to create a new summary offences provision.

The department does not support amendments to the Commonwealth's existing criminal law. I think it is important to note that the child pornography provisions in the code were comprehensively reviewed in 2010. The amendments that followed were designed to ensure that the laws remain comprehensive and able to deal with modern and emerging forms of offending—clearly, within the cybercrime space this is an area that continues to move rapidly. That review process involved extensive consultation with law enforcement agencies, non-government organisations and also the public. In our view it took account of emerging trends in the use of technology to sexually exploit children, it took account of law enforcement operational experience and it also took account of domestic and international best practice. All that being the case, we are confident that the Commonwealth child sex related offence regime appropriately covers modern forms of offending, including sexting.

The approach adopted by the Commonwealth upholds, we think, community interest in preventing the circulation of sexually explicit images of minors by young people and avoids problematic distinctions in legislation between legal and illegal forms of sexting related behaviour. As I have said, the provisions in the code allow the specific circumstances of each incident to be taken into account in determining whether an investigation or a prosecution of a young person should follow for a child pornography offence.

Putting all that together, with the safeguards that I have outlined we think the offences strike an appropriate balance between preventing inappropriate prosecution for sexting and ensuring that children and young people are adequately protected from online sexual exploitation.

**CHAIR:** Did I hear you say there has only been one case of a young person's conduct in which the Attorney-General recommended prosecution?

**Mr Coles:** There have been two cases where the Attorney's consent has been sought to proceed with prosecution.

**CHAIR:** Since 2010?

**Ms Priestly:** Yes. The first one was in September 2011 and the most recent one was in June this year.

**CHAIR:** Why shouldn't consensual sexting between minors be removed from child pornography offences, rather than having to rely on the discretion of law enforcement officials? Isn't it just another job for law enforcement officials?

**Mr Coles:** Sorry, what was the question, 'Why shouldn't consensual sexting be removed'?

**CHAIR:** Yes—why should we not change the law so that it is removed as an offence between consenting minors? At the minute it is an offence—is that correct?

**Mr Coles:** At the moment, based on what we have said in our submission, I think sexting activity would, on the face of the legislation, be caught. But the range of protections that I have set out in our view provide the safeguards to ensure that those offences are not applied inappropriately. Just to complete that thought: for example, the submission from the Tasmanian police, certainly, and I think also the AFP, offered some views on how those safeguards are being applied in practice by police in these kinds of cases. So the focus is very much on the cases where there is harmful or exploitative conduct.

**CHAIR:** Yes, I understand that, but—and I am playing devil's advocate a bit here—doesn't it make a bit of an ass out of the law if the law says it is illegal when it appears to be quite a commonplace occurrence between minors but obviously they are not all going to be charged with criminal offences? So, shouldn't there be some process where, if it is a criminal offence, first of all they are not actually ever put on a sex offenders register or whatever, but also so that it is not deemed to be a criminal offence if it is between two consenting minors?

**Mr Coles:** I understand what you are putting to me. I suppose, in response, what I would say is that I think that, even if you were minded to take that approach—and I think I have made it clear that that is not the current position, but if you were minded to take that approach—there are quite obvious and complex issues when you are talking about consent in respect of minors, and all of those sorts of issues are at the heart of the sexting issue around the potentially damaging effect that decisions that young people might make about what they do or do not do online would come into play there. So there would be some real difficulty about saying, 'What is consenting behaviour between minors?' and 'Is consent, on the face of a set of facts, actually informed consent?' Another issue that I think would cause problems would be viral dissemination, for want of a better phrase. So, even if you could get to a point where there might be consent between two individuals, what would the implications be in the event that there was a sext which was further circulated? So I think the whole area of consent becomes problematic, both in terms of, 'What does consent actually mean vis-a-vis minors?' and, even if you could be confident about that, 'How would you make that work sensibly in respect of sexting offences?'

**CHAIR:** Just going back to those two cases where there was obviously some malicious intent or it was meant to be exploitative in some way, presumably, those are two cases that did get charged. Are you able to tell us how many cases might have come up before the Attorney-General in that same time frame?

**Mr Coles:** I think there have been only two before the Attorney. So there have been only two cases in respect of which the relevant consent provision in the Criminal Code has been triggered. But that is not to say that, for example, states and territories may not have pursued these kinds of offences using only their own laws.

**CHAIR:** Sure.

**Mr Coles:** And we do not have records of that.

**CHAIR:** I wanted to mention the states and territories next. As I understand it, with regard to this issue, the states and territories have different ages of consent and what is acceptable and what is not acceptable based on that. Is there any potential to have some sort of harmonised Commonwealth law on this issue, whatever it might be?

**Mr Coles:** The Commonwealth law is harmonised insofar as it is criminal law within the ambit of the Commonwealth's ability to legislate in the area. It is open to the states and territories to use it, if they wish; but it is also open to them to use their own offences that may relate to this kind of behaviour. That is not unique. That is characteristic of how the interaction of Commonwealth and state laws in the criminal sphere work in any number of contexts.

**CHAIR:** I am acutely aware of that. What I am asking is: has there been any discussion on trying to get the states to come into line with Commonwealth legislation with regard to this issue?

**Mr Coles:** I think broadly that is the sort of rationale of the Criminal Code. It offers a model for states and territories to adopt, if they wish to. That applies more broadly—not only in the sexting context, clearly. That sort of adoption of the Criminal Code is a discussion that has been going on for a long time. Ultimately, it is a matter for each jurisdiction to make its own decision.

**Senator PARRY:** Have you read the report of the Victorian Law Reform Committee following its inquiry into sexting?

**Mr Coles:** I have, yes.

**Senator PARRY:** Do you have an opinion?

**Mr Coles:** Do I have an opinion?

**Senator PARRY:** Yes, on the report: its content and some of the recommendations.

**Mr Coles:** I found it interesting because it is relevant to an area of law which we have policy responsibility for in the Commonwealth; but, beyond that, I do not know that my personal opinion is helpful.

**Senator PARRY:** I am not really supposed to ask you your personal opinion either, I should add. We have just had the chair and the executive officer of that former Victorian committee appear before us to give evidence. Their report had a couple of good ideas in it. One of them talked about what happens to someone who is about to turn 18. The day before they turn 18—when they are 17 years and 364 days—they have a picture of maybe their naked 16-year-old girlfriend on their phone, which has been on there for some time. The day they turn 18 that picture can be regarded as child explicit material under our legislation. Have we got any protection mechanisms for that? Does this problem exist at the federal level at the moment?

**Mr Coles:** You are talking about two minors who—

**Senator PARRY:** Two minors have pictures of each other, naked, on their phones. When one of them turns 18, they then run the risk of carrying child exploitation material on their phone.

**Mr Coles:** It would still go back to the issue that I raised at the beginning.

**Senator PARRY:** So it will come down to the DPP and the consent? No, they would be over 18 then, so it would be a different matter.

**Mr Coles:** The only difference would be that the Attorney's consent would not be required because the proposal would no longer be that a minor would be charged with an offence; the proposal would be that an adult would be charged with the offence. The other issue in the first instance is that the police investigatory discretion and, secondly, the DPP discretion would apply, as they do in all cases.

**Senator PARRY:** Yes, and I would probably concur with that view that that is what would happen in practice. But in this case though, we are relying upon the discretion of two agencies.

**CHAIR:** I think section 474. 24(c) of the Criminal Code covers that. It is in your submission at the bottom of page 3 of six, item 13.

**Mr Coles:** That is the provision that covers consent to prosecute where the defendant is under the age of 18. As I understood what had just been put to us, we were talking about—

**Senator PARRY:** Someone over the age of 18 so that does not apply.

**CHAIR:** It does say 'at the time he or she allegedly engaged in conduct constituting the offence', though, if the person were under 18 years of age 'at the time he or she allegedly engaged in the conduct constituting the offence'. I am taking this from your submission so I am presuming that it is correct.

**Mr Coles:** You are absolutely right, Senator. I am happy to talk about the offences but inevitably you get into hypotheticals on very specific case facts. For example, it may not matter if a person has the offending image on their phone the day before they turn 18 and they have it also the day after they turned 18. Arguably, for example, under 474.20, the person still has possessional control of the material. There might be a question about which point in time you are engaged in the commission of the offence but, again, that is why we would say that police and prosecution discretion is important in all these kinds of cases.

**Senator PARRY:** Just shifting tack for a minute, then—and thank you for that—with the issue of harmonised legislation around the country, do you think it is advisable or desirable for the Commonwealth to develop legislation in relation to the matters that we are inquiring into if indeed further legislation needs to be developed or amended, and then seek through the COAG process or through SCAG to organise for harmonised legislation around the country? Do you think that is the most desirous way, or do you think that the Commonwealth should have its own legislation and let the states develop theirs as they see fit?

**Mr Coles:** I think that what I would say is what I have already said: that the Commonwealth already has developed its own legislation in this area, which are the offences in the code. They are offences which, if jurisdictions were minded to, they could adopt themselves. But it is open to jurisdictions to also take a different approach. In response to a question about COAG or other processes, I just do not think I can comment on that because that would ultimately be a matter for the Attorney-General.

**Senator PARRY:** Thank you.

**Senator STEPHENS:** Just following up there on Senator Parry's question, Mr Coles, has SCAG or the Ministerial Council for Police Ministers and Emergency Management considered this issue?

**Mr Coles:** Can I just confer with my colleagues briefly on that question?

**Senator STEPHENS:** Sure—and we will have to start playing the music soon.

**Ms Hartigan:** There has been some ongoing work on a uniform criminal code for Australia through the Standing Council on Law and Justice for some time. I do not believe it is a current item anymore.

**Senator STEPHENS:** So it is not on the agenda anymore?

**Ms Hartigan:** I would probably have to clarify that.

**Mr Coles:** We might have to take that on notice and come back to you on it.

**Senator STEPHENS:** If you could, that would be helpful. So that is with the attorneys-general.

**Ms Hartigan:** Yes.

**Senator STEPHENS:** What about the police ministers?

**Ms Hartigan:** Not that we are aware of, but again we can clarify that on return.

**Senator STEPHENS:** Thank you. That is all I have.

**CHAIR:** If there are no other questions, can I just thank you all for taking the time to appear by teleconference today and for the submission that we received previously. If the committee has any further issues, it will be in contact with you. I also thank the secretariat and Hansard for today.

**Committee adjourned at 16:16**