



Victorian Law Reform Committee Inquiry into Sexting

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Executive summary

Women's Health West (WHW) welcomes the opportunity provided by the Law Reform Committee of the Parliament of Victoria for public comment on the incidence, prevalence and nature of sexting, and the efficacy of current educational initiatives for young Victorians. We commend the committee on its consideration of legislative reform to better ensure an appropriate and effective response to sexting.

WHW asserts that while 'sexting' can involve consensual sexual expression and behaviour, it can also be harmful, non-consensual and a form of violence against women. Sexting is a gendered phenomenon, and as such we recommend the introduction of a series of non-legislative reforms. These include:

- Further Victorian research to examine the prevalence, incidence and nature of sexting among young people, and to establish good practice in sexting education
- Sexting education and awareness initiatives aimed at young people that are embedded in a gendered, primary prevention and whole-school approach
- Public awareness campaigns that educate young people about their legal and ethical rights and responsibilities in relation to sexting

It is the position of WHW that the existing laws pertaining to sexting and young people are both inappropriate and ineffective. In order to strengthen Victoria's legislative response to sexting, WHW recommends the following legislative reforms:

- Amendment to sections 67A – 70AC of the *Crimes Act 1958* (Vic) to exclude 'sexting' type offences where the offender/s and the victim/s are minors
- Amendment to the *Sex Offenders Registration Act 2004* (Vic) to exclude its application to minors convicted under 'sexting' type offences where the offender/s and the victim/s are minors
- Amendment to the *Crimes Act 1958* (Vic) to ensure that non-consensual sexting type behaviour comes within the ambit of provisions governing sexual offences
- The creation of a new offence that governs technology-related sexual offences and its inclusion in the *Crimes Act 1958* (Vic)

WHW strongly recommends that any legislative reform occurs in conjunction with a community awareness campaign that educates young people about the legal parameters of sexting.

Introduction

Women's Health West (WHW) is the women's health service for the western metropolitan region of Melbourne. Our services include research, health promotion, community development, training and advocacy around women's health, safety and wellbeing. Since 1994, WHW has hosted the region's largest family violence crisis support and prevention program. These two main arms of the service place WHW in a unique position to incorporate women's experiences directly into our research, health promotion and project work, ensuring that we clarify the connections between structural oppression and individual experience.

As a feminist organisation we focus on redressing the gender and structural inequalities that limit the lives of women and girls. WHW's work is underpinned by a social model of health, recognising the important influence of, and aiming to improve, the social, economic and political factors that determine the health, safety and wellbeing of women and their children in our region. By incorporating a gendered approach to health promotion work that focuses on women, interventions to reduce inequality and improve health outcomes will be more effective and equitable.

Informed by our vision of equity and justice for women in the west, WHW's work is guided by the following five strategic goals:

- Delivering and advocating for accessible and culturally appropriate services and resources for women across the region
- Improving conditions in which women live, work and play in the western region of Melbourne
- Putting women's health, safety and wellbeing on the political agenda to improve the status of women
- Recognising that good health, safety and wellbeing begins in our workplace
- Working in partnership with others to achieve our goals.

Response to the terms of reference

WHW is of the opinion that the committee's terms of reference present important opportunities to implement a number of key legislative reforms that, if passed by the parliament, will significantly strengthen Victoria's response to sexting where it is harmful, non-consensual and a form of violence against women.

(1) The incidence, prevalence and nature of sexting in Victoria

The nature of sexting

Increasingly, the lives of young people are permeated by social media and Information and Communication Technologies (ICTs), particularly in the realms of social networks and peer relations. Research by the Australian Communications and Media Authority (2007) suggests

that the use of technology among teenagers and young adults in Australia is prolific, with 79 per cent of 14-17 year olds and 90 per cent of those aged 18-24 using mobile phones. In particular, it has been noted that for young people, ICTs have become a forum for the exploration and expression of their sexuality and sexual identities (Powell 2010). Sexting can therefore include behaviour that is consensual and can be considered an expression of young people's sexuality and sexual agency. Sexting in and of itself is not entirely problematic (Albury & Crawford 2012). Rather, it is when sexting reinforces gender stereotypes, inequitable gendered power relations and coercion (Ringrose et al 2012) that the practice is harmful and a form of violence against women.

It is well established that gender norms have a powerful influence on people's sexual identity, practices and behaviour, and the way in which they enact their sexuality. Gender-based power inequities between men and women serve to create and maintain social pressures and constraints through which women, particularly young women, negotiate sexual encounters. Such social pressures and constraints placed on young women have a direct impact on their ability to negotiate and make decisions about safe sexual practices, including their participation in sexting behaviour (Rosenthal & Browning 2005). Consequently, among young people, it is increasingly expected that young women will engage in sexting as a part of what is deemed 'normal' sexual behaviour and relationships (Powell 2010).

Preliminary findings from Victorian research conducted with young people highlights the gendered expectations in relation to sexting, with peer pressure on boys to have sexually explicit images of girls, and immense peer pressure placed on girls from boyfriends and strangers to send sexual images of themselves (Education Review 2011). American research conducted in 2008 with teenage boys and girls found that 51 per cent of teenage girls reported engaging in sexting because of pressure from boys, whereas only 18 per cent of young boys reported pressure from their female counterparts as the reason for sexting (The National Campaign to Prevent Teen and Unplanned Pregnancy 2008). Research also shows that young women are more likely than young men to suffer negative social consequences from the redistribution of their 'sexts' to third parties without consent (Bailey & Hanna 2011).

Indeed, sexting can be harmful, non-consensual and a form of violence against women. Research suggests that coercion and pressure placed on young women is a significant contributor to their participation in sexting behaviour (Ringrose et al 2012). In instances when sexting involves sexual assault, the severity and impact on victim/survivors is heightened by ICTs potential to distribute their images globally and for them to remain permanently online.

- **Recommendation: Education and awareness initiatives for young people must acknowledge gender-based power inequities between young men and women, and gendered norms and stereotypes, in the proliferation of sexting.**
- **Recommendation: Young people must be educated about what constitutes sexting that is harmful, non-consensual and a form of violence against women.**

The incidence and prevalence of sexting

While originally conceptualised as a term to define the convergence between sexual activity and text messaging (hence a combination of the words 'sex' and 'texting'), sexting is now understood as encompassing a wide variety of behaviours, visual content and modes of transmission (Bailey & Hanna, 2011). As such, WHW welcomes the definition provided under section 33 of the *Parliamentary Committees Act 2003* that outlines sexting to be:

the creating, sharing or posting of sexually explicit messages or images via the internet, mobile phones or other electronic devices by people, especially young people.

We deem this definition to be an accurate account of what constitutes sexting and therefore makes way for a more appropriate educational and legislative response.

- **Recommendation: Sexting is defined in accordance with section 33 of the *Parliamentary Committees Act 2003*.**

It is widely recognised that sexting among young people is increasing, however the exact prevalence of sexting in Victoria is unknown (CASA 2009; Powell 2010). In 2011, research undertaken by WHW with 187 year nine students found that there was a high prevalence of students sending and receiving text messages of an explicit nature. When asked if sexting was an issue for students at their school, one in three boys (30 per cent) and one in four girls (23 per cent) reported that it was somewhat of a concern (GTGT, 2011a). Alarming, were reports from one in six girls (14 per cent) and one in ten boys (11 per cent) that sexting among students was both frequent and serious in nature (GTGT, 2011a).

In focus groups conducted with 18 students from a school in Melbourne's west, young people reiterated that sexting, including posting sexually explicit imagery of themselves on social networking sites, was prevalent (GTGT, 2011a). Students raised concerns about the use of information communication technologies as another avenue for bullying, as well as concerns about consent, privacy and the permanent nature of images circulated online.

'There was a situation where this boy made this photo of him loving [student] He photo-shopped the photo ... and everyone saw it on Facebook because he tagged everyone.' (Year nine girl)

'It doesn't really happen that much. But I know someone from another school that had that happen to her. Like this guy - she sent a picture to him – and then he hacked into her Facebook and put it as her profile picture so that everyone could see. And now like anyone could get that picture and send it around and stuff.' (Year nine girl)

Research conducted in the United States of America found that 20 per cent of young people reported that they had electronically sent or posted online a nude or semi-nude image of themselves. Additionally, 40 per cent of all respondents reported they had been shown a sexually suggestive text or image, which was originally intended to be private (The National

Campaign to Prevent Teen and Unplanned Pregnancy, 2008). While alarmingly, the CASA House 'Respect My Space' project found that schools had identified the increasing use of technology in cases of sexual assault.

Despite increased public concern regarding sexting among young people, the practice remains significantly under-researched. While there is notable research conducted in the USA and England, there remains a paucity of Australian and indeed Victorian research that investigates the prevalence and incidence of sexting and the contexts within which it occurs (Albury & Crawford 2012; Powell 2010).

- **Recommendation: Further quantitative Australian research is required to establish the prevalence of sexting amongst young people.**
- **Recommendation: Further qualitative Australian research is required to understand the discourses within which young people engage in sexting, the meanings they attach to this behaviour, and the contexts in which it occurs.**

(2) The extent and effectiveness of existing awareness and education about the social and legal effect and ramifications of sexting

There are a variety of tools and resources currently being used in Victorian schools that seek to provide education to young people about sexting. 'ThinkUKnow', a partnership between the Australian Federal Police and Microsoft Australia, has produced the educational video *Megan's Story*. Additionally, *Photograph* is another educational resource produced by the CentaCare Sandhurst Loddon-Mallee Cyber Safety Project, and the Australian Communications and Media Authority have also produced a resource entitled, *Tagged*.

- **Recommendation: Further research is required that examines what is good practice in the education of young people regarding sexting.**

Despite the existence of a variety of educational tools currently being used in Victoria, there is minimal research that establishes what constitutes good practice in the education of young people with regard to sexting. Of particular concern is the propensity of tools that focus on educating young people about the social and legal consequences of producing and distributing sexually explicit images. This often places the onus of responsibility on victim/survivors (mainly young women), rather than the perpetrators. Research suggests it is important that education initiatives redress the roles and responsibilities of young men and women in sexting behaviour, rather than frame the problem as one of young women taking sexually explicit images of themselves (Ringrose et al 2012).

Sexting among young people can, in many instances, objectify women (and in some instances men) as sexual objects that exist only in relation to men's desire (MacKinnon, 1987). The sexual objectification of women and girls through sexting has the potential to dehumanise them as sexual objects and commodities that can be 'shared around' by young men through

the use of ICTs. The practice can perpetuate gendered stereotypes and negative social norms that position young women, and the images of their bodies, as the property of men. Indeed, the pervasive sexualisation of young women in contemporary media, the internet, and through practices like sexting can and does have detrimental implications for women's health, safety and wellbeing.

Research shows a clear association between exposure to imagery in film, advertising and ICTs that sexually objectifies women and girls, and violence-supportive attitudes and a tolerance for physical and sexual violence (The National Council to Reduce Violence against Women and their Children, 2009). Pornographic imagery has been found to further exacerbate attitudes that support and condone violence against women (The National Council to Reduce Violence against Women and their Children, 2009). Educational programs must therefore support young people to think critically about the impact of sending and receiving sexually explicit imagery.

WHW strongly recommends that educational initiatives in Victoria that seek to redress the harmful aspects of sexting adopt a primary prevention approach to violence against women, alongside risk reduction educational strategies. Importantly, a primary prevention approach works to redress unequal power relations between women and men, adherence to gender stereotypes, and broader cultures of violence, as the key determinants of violence against women (VicHealth 2007).

A primary prevention approach to sexting education for young people that exists alongside risk reduction strategies would include:

- Healthy and respectful relationships education – including challenging harmful gendered roles, norms and stereotypes for young women and men
- A focus on the rights and responsibilities (both legal and ethical) of young people in regards to sexting behaviour
- Informed decision-making around sexting and its social ramifications
- Healthy sexuality, sexual identity and sexuality expression education - counteracting the sexualisation of young women
- An approach that positions responsibility for harmful, non-consensual and violent sexting behaviour with the perpetrator, and not the victim/survivor

- **Recommendation: Sexting education for young people must adopt a primary prevention approach to violence against women to redress the underlying causes of harmful non-consensual sexting, alongside strategies around informed decision-making and safe sexting education.**

WHW also strongly recommends that education for young people around the social and legal affects of sexting needs to be embedded within school curriculum and a whole-school approach. A whole-school approach incorporates three interconnected fields:

1. Curriculum, teaching and learning
2. Community links, partnerships and services: recognising the central roles of parents and families as well as local communities in supporting learning
3. School organisation, ethos and environment: the culture of the school and its social environment (attitudes, values) as well as its physical environment (buildings, grounds and equipment). A school's practices, policies, procedures and codes of conduct (or lack thereof) often have the strongest influence on its organisation, ethos and environment (GTGT, 2011b).

Evidence shows that education programs that engage all three fields are far more effective and sustainable than one-off education sessions or education programs that only engage with school curriculum.

- **Recommendation: Sexting education for young people must be embedded within a whole-school approach.**

The current legislation pertaining to sexting presents significant challenges in raising awareness among young people about the legal ramifications of sexting. Australian research suggests that young people are seldom aware of the legal parameters and penalties associated with sexting, particularly in relation to the production and distribution of sexually explicit images (Albury & Crawford 2012). As such, it is necessary that the legality around sexting and what constitutes illegal and legal sexting behaviour for young people is clearly established, in order for educational and awareness campaigns to be effective.

- **Recommendation: Public awareness campaigns are required that specifically educate young people about their legal rights and responsibilities associated with sexting.**
- **Recommendation: Any law reform must occur in conjunction with a community awareness campaign that educates the public, particularly young people, about the legal parameters of sexting.**

(3) The appropriateness and adequacy of existing laws, especially criminal offences and the application of the sex offenders register, that may apply to the practice of sexting, particularly with regard to the creation, possession and transmission of sexually suggestive or explicit messages and images in circumstances where a person:

- (a) creates, or consents to the creation of, the message or image for his or her own private use and/or the use of one or more other specific persons; or**

(b) creates, or consents to the creation of, the message or image and without their knowledge and/or their consent the message or image is disseminated more broadly than the person intended.

The purpose of the *Sex Offenders Registration Act 2004 (Vic)* as outlined in section 1 is to ensure that people convicted of child sex offences are adequately monitored by police. It is also designed to increase the safety of the community by reducing the risk of paedophilic recidivism. It is clear from the purpose of the Act that the Sex Offenders Register was not designed to punish and monitor minors who have perpetrated 'sexting' type offences against other minors; but rather, to monitor and control adults convicted of sexual offences against children. It is the position of WHW that the application of child pornography offences pursuant to sections 67A – 70AC of the *Crimes Act 1958 (Vic)* to young people sending and receiving sexually explicit images, especially in regard to young people being automatically registered on the Sex Offenders Register, is an inappropriate response.

- **Recommendation: Amend subsection 67A – 70AC of the Crimes Act 1958 (Vic) to exclude 'sexting' type offences where the offender/s and the victim/s are minors.**
- **Recommendation: Amend the Sex Offenders Registration Act 2004 (Vic) to exclude its application to minors convicted under 'sexting' type offences where the offender/s and the victim/s are minors.**

While it is the position of WHW that the application of child pornography offences pursuant to the *Crimes Act 1958 (Vic)* and registration of minors under the *Sex Offenders Registration Act 2004 (Vic)* is inappropriate, it is our strong view that existing laws and protections available to victims/survivors of sexting are grossly inadequate. Sexting behaviours that involve coercion and violence are currently caught within the ambit of a range of disparate criminal laws and civil remedies. These include criminal laws surrounding sexual assault and a range of civil laws that govern privacy, defamation, confidentiality, surveillance, and copyright (Svantesson 2010).

It is our intention that protection and justice for victims/survivors of sexting should not be dependent on their ability to bring about civil proceedings. In particular, it is our position that where sexting type offences are committed by minors against other minors and a lack of consent is evident; the offence should be prosecuted under existing sexual assault legislation, as applied to juvenile offenders. Alternatively, a new offence that governs technology-related sexual offences should be created and inserted into the *Crimes Act 1958 (Vic)*.

CASA House (2006) defines sexual assault as:

any sexual behaviour that makes a person feel uncomfortable, frightened or threatened. It is sexual activity to which a person does not consent. The use of emotional or physical violence to force another person to engage in sexual activity also constitutes sexual assault. Sexual assault can take various forms, some of which are criminal offences:

- touching, fondling, kissing
- being made to look at, or pose for, pornographic photos
- voyeurism
- exhibitionism
- sexual harassment
- verbal harassment/innuendo
- rape
- incest/intra familial child sexual assault
- stalking

In accordance with CASA's definition, a 'sexted' image that is circulated without consent (even if consent was given when the sexually explicit image was taken) constitutes sexual assault. As Powell (2009: 6) contends:

It might also be argued that the unauthorised taking and distribution of images of an otherwise consensual sexual encounter is similarly part of a continuum of gendered sexual violence and harassment primarily targeting women. The distribution is itself a violation of an individual's sexual autonomy with the effect of humiliating, intimidating or otherwise harassing the victim. For this reason, the extent to which the unauthorised taking and distribution of images of otherwise consensual sexual encounter causes harm to victims should be recognised.

Therefore, where coercion, a lack of consent and violence is present, sexting behaviour must be dealt with under criminal law, with the application of similar penalties to that of a juvenile sex offender. Criminal sanctions are important as sexting that is non-consensual is essentially a form of violence against women.

- **Recommendation: Amend the Crimes Act 1958 (Vic) to ensure that non-consensual sexting comes within the ambit of provisions governing sexual offences.**
- **Recommendation: Alternatively, create a new offence that governs technology-related sexual offences and insert into the *Crimes Act 1958 (Vic)*.**

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