

VICTORIAN GOVERNMENT RESPONSE TO THE LAW REFORM COMMITTEE INQUIRY INTO SEXTING

10 DECEMBER 2013

Government Response to the Parliamentary Law Reform Committee Inquiry into Sexting

Recommendation	Response	Comments
<p>Recommendation 1 (Page 52) That the Victorian Government periodically commission research to examine qualitative and quantitative aspects of sexting practices by children and adults in Victoria.</p>	Accept in principle	<p>The Government accepts that research to examine qualitative and quantitative aspects of sexting practices by children and adults in Victoria is of considerable benefit to the Victorian community. The Government will investigate the possibility of tasking the Australian Institute of Criminology, through the Police and Attorneys-General Ministerial Councils, to conduct national research over 3 years.</p>
<p>Recommendation 2 (Page 69) That the Victorian Government, through the Department of Education and Early Childhood Development, ensure all Victorian schools adopt holistic, integrated programs for internet and communications technologies awareness and safety into the school curriculum.</p>	Accept	<p>The Government is committed to ensuring the curriculum of Victorian schools adopt holistic, integrated programs for internet and communications technologies awareness and safety. There have been a range of recent developments which demonstrate this commitment, including the DEECD Bully Stoppers online toolkit (www.education.vic.gov.au/bullystoppers). Bully Stoppers includes a wealth of advice and resources that addresses the safe and responsible use of digital technologies, and sexting in particular. This toolkit has been developed to support and empower everyone in the school community to prevent and respond to bullying and other inappropriate behaviours, including those that take place in the online environment.</p> <p>The Office of the Victorian Privacy Commissioner, in partnership with the Australian Communications and Media Authority, South West Grid for Learning and Cybersafe Kids has produced a new resource entitled 'So you got naked online...'. This provides help and advice for young people who may find themselves in a situation where they or a friend have put a sexting image or video online and have lost control over who it is being shared with. The resource offers children,</p>

	<p>young people and parents advice and provides strategies to support the issues resulting from sexting incidents. A circular to schools promoting the resource was sent out in the week of 7 November, and a link to this resource added to the Bully Stoppers online toolkit.</p> <p>Further resources to assist school communities, including a cybersafety curriculum and an incident response tool are currently under development and will be released progressively between now and the end of 2013.</p> <p>The DEECD has invested \$10.5M into the implementation of eSmart, an initiative of the Alannah and Madeline Foundation that supports schools to embrace the benefits of technology and ensure they are doing everything possible to address the issues of cybersafety, cyberbullying and bullying. The DEECD has made this available to every Victorian Government school and 300 Catholic and independent schools at no charge. Currently, 1700 Victorian schools are working towards being eSmart.</p> <p>In June 2013, the DEECD issued a request for tender for the development of a Resilience Framework for Victorian schools. The aim of this work is assist schools in supporting students across key aspects of health promotion, student wellbeing and engagement. This includes building students into resilient, capable citizens equipped with good decision-making skills, self-awareness and relationship skills. The Framework is intended to be aimed at both primary and secondary school students.</p>
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<p>Recommendation 3 (Page 70) That the Victorian Government, through the Department of Education and Early Childhood Development, continue to encourage current and pre-service teachers to take part in professional development programs focusing on cybersafety education.</p>	Accept	<p>The Government is committed to the professional development of Victorian teachers in relation to cybersafety. There are a number of recent developments that demonstrate this commitment.</p> <p>Two online learning modules for teachers are available on the Bully Stoppers online toolkit, one is on the safe and responsible use of social media for teachers, and the other on responding to bullying and cyber bullying. Bully Stoppers also provides links to a range of cyber safety education programs and opportunities available for teachers including:</p> <ul style="list-style-type: none"> • Australian Media and Communications Authority's <i>Connect.ed</i> program designed to train teachers how to protect students from potential online dangers • Australian Federal Police's <i>ThinkUKnow</i> site, • Department of Broadband, Communications and the Digital Economy (DBCDE)'s <i>Stay smart online</i> site. <p>eSmart Schools is a behaviour-change framework that guides the introduction of policies, practices and whole-school change processes to support the creation of a cybersafe or 'eSmart' environment. Over 1760 Victorian schools are now working through the eSmart framework as a result of the Government's \$10.5 million investment in eSmart. eSmart includes links to the Department's Bully Stoppers online toolkit resources.</p> <p>With respect to teacher capacity building in relation to student mental health and wellbeing, the DEECD and headspace have entered into a Partnership Agreement whereby headspace will be funded \$750 000 to develop a range of resources and approaches to assist in the early identification and support for children and young people with mental</p>
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		health issues such as anxiety and depression.
Recommendation 4 (Page 71) That the Victorian Government ensure that educational and media campaigns directed toward sexting focus on the appropriateness of the behaviour of people who distribute intimate images or media without consent, rather than on the person who initially creates the intimate images or media.	Accept	<p>The government accepts the importance of ensuring that educational and media campaigns directed toward sexting focus on the appropriateness of the behaviour of people who distribute intimate images or media without consent, rather than on the person who initially creates the intimate images or media.</p> <p>Bully Stoppers reinforces the view that cybersafety is not the sole responsibility of the ICT teacher and that schools and their teachers have a responsibility to educate children and young people and address the underlying values and responsible behaviours expected of them regardless of their physical location. Schools are recommended to take a holistic approach to cybersafety education and are encouraged to include cybersafety issues and practices within the school's curriculum planning and for these matters to be taught explicitly.</p> <p>ACMi, SECASA and Canterbury Girls Secondary College have been working together to develop an information and game based iPhone application. The application will define sexting, its consequences (legal and reputation) and ways for people to protect themselves. The application includes a game that demonstrates how quickly and easy a photo can go viral. It is expected that this Application will be released in March 2014.</p>
Recommendation 5 (Page 121) That Victoria Police review its policies to ensure that opportunities are provided for adults charged with offences in relation to sexting-type	Accept in principle	Victoria Police agrees that diversion can be an appropriate response for some offenders in relation to sexting-type behaviour. Victoria Police will review its policies in this regard.

<p>behaviour, where there is no evidence of exploitative behaviour, to be offered diversion by Police prosecutors.</p>		
<p>Recommendation 6 (Page 145) That the Victorian Government introduce legislation to amend each of the child pornography offences in the <i>Crimes Act 1958</i> (Vic) and the <i>Classification (Publications, Films and Computer Games) (Enforcement) Act 1995</i> (Vic) to provide defences to the effect of the following:</p> <p><i>It is a defence to a prosecution for an offence against subsection (1) to prove that:</i></p> <p class="list-item-l1">(a) <i>the film or photograph depicts only the accused person; or</i></p> <p class="list-item-l1">(b) <i>that, as the time of making, taking or being given the film or photograph, the accused was not more than 2 years older than the minor was or appeared to be; and</i></p> <p class="list-item-l2">i. <i>the film or photograph depicts the accused person engaged in lawful sexual activity; or</i></p> <p class="list-item-l2">ii. <i>the film or photograph depicts the accused person and another person or persons with whom the accused could engage in lawful sexual activity; or</i></p> <p class="list-item-l2">iii. <i>the film or photograph depicts a person with whom the accused could engage in lawful sexual activity, or more than one</i></p>	Accept in principle	<p>The government agrees that the creation of defences to child pornography offences is necessary. The Government will legislate to introduce amendments that most appropriately meet the policy objectives of the Committee's report.</p>

<p><i>person, all of whom the accused could engage in lawful sexual activity with.</i></p>		
<p>Recommendation 7 (Page 146) That at such time as the Victorian Parliament introduces legislation to give effect to Recommendation 6, the Victorian government advocate to the Standing Council on Law and Justice that the Commonwealth, States and Territories amend their criminal legislation to provide defences to child pornography offences, consistent with new Victorian defence.</p>	Accept	<p>The Government agrees to advocate to the Standing Council on Law and Justice that the Commonwealth, States and Territories amend their criminal legislation to provide defences to child pornography offences, consistent with the proposed new Victorian defences, once they have been implemented.</p>
<p>Recommendation 8 (Page 146) That following the coming into operation of legislation from Recommendation 6, Victoria Police and the Victorian Office of Public Prosecutions adopt an express policy that they will not prosecute Commonwealth child pornography offences where an accused person would have a valid defence to child pornography charges under Victorian legislation.</p>	Accept in principle	<p>The Government notes that there are relatively few Commonwealth offences prosecuted by the Victorian Office of Public Prosecutions (OPP), as most relevant offences prosecuted by the OPP are under the <i>Crimes Act 1958</i>. The Government will work with the OPP and Victoria Police to consider ways in which an express Victorian non-prosecution policy regarding Commonwealth child pornography offences where an accused person would have a valid defence to child pornography charges under Victorian legislation, may be developed.</p>
<p>Recommendation 9 (Page 152) That the Victorian Government introduce a specific offence for sexting to the <i>Summary Offences Act 1966</i> (Vic).</p>	Accept	<p>The Government will legislate to introduce a specific sexting offence that ensures the Committee's policy objectives are met.</p>

<p>Recommendation 10 (Page 161) That, if Recommendation 6 and Recommendation 9 are not accepted in full, the Victorian Government introduce legislation to amend the <i>Sex Offenders Registration Act 2004</i> (Vic) so that sentencing judges have discretion whether to order that an adult offender convicted of a sexting-related offence be listed on the Sex Offenders Register.</p>	<p>Noted, no further response required</p>	<p>As recommendations 6 and 9 are accepted in full, it is not necessary to consider this recommendation further.</p>
<p>Recommendation 11 (Page 162) That, following the coming into operation of legislation from Recommendation 6, the Victorian Government establish a mechanism to review the registration of any person currently listed on the Sex Offenders Register, where that person would have had a defence under legislation introduced in accordance with Recommendation 6.</p>	<p>Accept in principle</p>	<p>The Government will work with Victoria Police to consider the viability of establishing a mechanism to review the registration of any person currently listed on the Sex Offenders Register, where that person would have had a defence under legislation introduced in accordance with Recommendation 6. It may be possible to implement a mechanism, as there are only approximately 4,500 people on the Sex Offenders Register, and the majority have been placed on the Register after conviction for serious offences.</p>
<p>Recommendation 12 (Page 188) That the Victorian Government consider introducing legislation to create a statutory cause of action for invasion of privacy by the misuse of private information, following recommendations 23, 25, 27, and 29 to 33 of the Victorian Law Reform Commission's <i>Surveillance in Public Places: Final Report 18</i> (2010).</p>	<p>Not accept</p>	<p>The Government does not intend to consider introducing legislation to create a statutory cause of action for invasion of privacy by the misuse of private information at the present time.</p>

<p>Recommendation 13 (Page 201) That the Victorian Government consider creating a Digital Communications Tribunal, either as a stand-alone body or as a ‘list’ within the Victorian Civil and Administrative Tribunal, to deal with complaints about harmful digital communications. Development of the Digital Communications Tribunal should be informed by the New Zealand Law Commission’s proposal for a Communications Tribunal.</p>	Not accept	<p>The Government does not intend to consider creating a Digital Communications Tribunal at the present time. The Government is of the view that, if such a Tribunal is considered appropriate, a national Tribunal would be preferable.</p>
<p>Recommendation 14 (Page 202) That the Victorian Government advocate that the Standing Council on Law and Justice consider issues surrounding the creation of a national Digital Communications Tribunal.</p>	Under Review	<p>The Government agrees that if a Digital Communications Tribunal is considered appropriate, a national Tribunal would be preferable. The Government will consider the viability of raising this issue before the Standing Council on Law and Justice.</p>