

CORRECTED VERSION

LAW REFORM COMMITTEE

Inquiry into sexting

Melbourne — 27 July 2012

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Ms K. Hogan, Manager, and

Ms C. Whitehouse, Senior Clinician, Gatehouse Centre, Royal Children's Hospital.

The CHAIR — Welcome to the Law Reform Committee. We receive references from Parliament to investigate various areas of law reform. This is the second inquiry that we have been given in this Parliament. We call for and get written submissions and invite people to come and present to us orally. Thank you for coming in. It is a good opportunity for us to ask some more questions about the evidence you have already given. Anything you say here is protected by parliamentary privilege but not outside the room. Just be aware that there is quite a bit of media interest in this issue. If you could start with your names, professional addresses and who you represent and then launch into what you want to tell us.

Ms HOGAN — My name is Karen Hogan. I am Manager of the Gatehouse Centre, which is a department of the Royal Children's Hospital that specialises in seeing children, young people and their families where sexual abuse has occurred.

The CHAIR — And the address?

Ms HOGAN — Flemington Road, Parkville.

Ms WHITEHOUSE — I am Caroline Whitehouse. I am one of the senior clinicians at the Gatehouse Centre, which is at the Royal Children's Hospital, Flemington Road, Parkville.

The CHAIR — You have given us a written submission. Did you have a plan to talk us through it? We do not need you to read through it, but perhaps you could highlight the issues that you think should be highlighted.

Ms HOGAN — The submission we sent we just thought we would refer to briefly and then see if you had some questions for us, because certainly among the numbers of children and young people that we see at the Gatehouse Centre this is a major issue for them. The prevalence is increasing, and as far as the knowledge from working with these children, young people and their families, there is very little understanding of the implications of this in our young community and our clients.

The CHAIR — Are these clients you are seeing on the issue of sexting, or is it something that happens to be in their background that is a problem?

Ms HOGAN — We have two streams of counselling or therapeutic intervention that we work with. One is the victims, who are victims of sexual assault, and the other is those who have what we call problem sexual behaviours, that is aged up to 10, or children or young people who have sexually abusive behaviours, and that is up to 15 or 16. They are the kind of two streams. The children, young people and their families who come to us have either been abused themselves or are abusing others. So this is a fairly vulnerable population.

The CHAIR — So are you seeing people who have been impacted by sexting, and that is why they have come to see you?

Ms HOGAN — Some of them, yes; absolutely. Some of the victims will report that sexting has had a major impact on their lives in numbers of circumstances. The other thing we find just in the counselling with these children and young people is that they will tell us that that is what they are doing, because they do not see it as a problem. It is just what they do.

The CHAIR — How would you define sexting? What sort of activity does it cover?

Ms HOGAN — I think for us what we are talking about is from the very minimal taking of photos, having digital images of their own genitalia or whatever, right through to filming, taking pictures of whatever — actual sexual assault or rape — and distributing that as well. It is from an individual taking photos right through. It is on a continuum, certainly, as far as what we are seeing.

Ms WHITEHOUSE — Some of which are being disseminated with consent and some of which are not.

The CHAIR — The ones that are being disseminated with consent — do people present to you with problems arising from that despite it being by consent?

Ms HOGAN — If the agreement changes, yes. So if the young people are in a relationship, there might be some agreement, but if that relationship turns sour or something happens, then that can often become a problem as well, because the agreement changed. Once the image is there, then it can be used by others. A number of the

young girls we see will also tell us that they have been filmed, and it is with their knowledge, but not with their consent that it has been spread around their boyfriend's friends and things like that as well.

We have seen a marked increase, and I think also for us it is in the context that over the years there has been a marked increase in the availability of pornography and access to pornography. I have been working in this job a very long time — some say far too long — and probably in the last five to eight years the access to pornography is absolutely enormous, and at a very young age. This, along with what are normal sexual relationships and sexual activity through to what they see repeatedly on pornographic websites — and this is very young children — it complicates the issue. That is the other area that we are seeing.

You asked what sexting is. For us it is from just taking pictures of themselves right through to things going viral with many hundreds of people seeing a possible abuse and things like that. A number of those cases have been in the media, but it is not that unusual that you will see young women who have been sexually assaulted and raped and then those acts are actually then spread around their community. Once they get on the internet, it then goes much wider.

The CHAIR — The dissemination of the images, is that generally done as a form of violence to cause harm, or is it generally, I'll just share it with my mates for a laugh'.

Ms WHITEHOUSE — I think it could be anywhere along that continuum. We have certainly seen incidents where young people have no idea that what they are doing is in any way illegal or wrong through to young people who are very deliberately using those images as a way to bully and to abuse someone else, so depending on the case it could be anywhere along that.

Ms HOGAN — But there are a significant number of boys, mainly, who have no idea of the damage it will do. They are a group that we are really concerned about and that we need to be able to educate and be able to have some assessment to actually understand why they are doing it. Maybe it might be just an education program they need, or they might need some assistance.

The CHAIR — Is there a particular age where boys are more likely to be doing sexting?

Ms HOGAN — We have seen 9-year-olds and 10-year-olds right up to 17-year-olds and 18-year-olds.

The CHAIR — When people are in their 20s do they grow out of it?

Ms HOGAN — Maybe they get some more sense, or maybe we just do not see them; because we are a children's hospital we do not see them after they are 18.

Ms WHITEHOUSE — But even among those who are using those images to abuse and bully, our work with young people with abusive behaviour says that most of those young people, once they have received treatment, will not continue those behaviours. I think the same would apply to sexting.

Mr CARBINES — Just on people not perhaps understanding the implications of their actions, is that them not understanding the sanctions and the trouble that they could get themselves into, or is it about the effect their actions could have on others?

Ms WHITEHOUSE — I think it is both. Particularly the young women we see who have allowed photographs to be taken of themselves do not understand the implications of having those photographs out there on social media or whatever forever. I do not think they understand that or the possible implications of that when they are trying to find a job or something like that. I do not think they know. We have not found any young people who have received any actual education around these implications. I did a bit of a Google search and saw that the Australian Communications and Media Authority has done some fantastic lesson plans and made some movies and things about sexting, but we did not know that existed beforehand. We do a lot of work in schools, and none of the schools that we worked with were aware that that was there either.

Mr CARBINES — Just on that, once people get an understanding of the effect that these actions can have on them, either through sanctions or psychologically or what have you, what do you think seems to affect their behaviour more?

Ms WHITEHOUSE — I think that needs to be assessed. Each young person needs to be assessed for what is the real function of the behaviour. Is it that they did not know any better, or was it actually a deliberately abusive act, in which case they need treatment for it?

Mr CARBINES — What in broader terms drives people's behaviour and leads to them getting into this sort of sexting activity? Are there any consistent aspects of behaviour that drive the people who end up coming to you, or are they affected by a range of things? If so, what might some of those be?

Ms HOGAN — The population that we see is vulnerable, that is why they end up seeing us. The issue of sex and sexual abuse and therefore their behaviour around sexual acts is often impacted by a violent environment or a lack of attachment with key adults for them to really know what is going on. We have a more vulnerable population than the general population, but I really believe that the general population of young people out there have no idea that this is a problem and that what they are doing is illegal. As far as understanding the implications of it are concerned, I think a lot of them actually do not really think through what the serious implications could be of sending out messages or pictures.

The CHAIR — Serious implications such as being put on the sex offenders register?

Ms HOGAN — When you say that to them, they look at you and go, 'Phut, you've got to be joking. You're old; you've got no idea. No-one would do that. Why is it a problem?'. As I said, our population is more vulnerable, and therefore they will have had people like us talking at them for a time, so they may be more informed than even the general population. But they have no idea — none.

Mr CARBINES — Does that mean that in the cohort of people who come through your organisation there may well be a group of people whose behaviour might be affected more by the sorts of things you have talked about, if they were more widely understood, as opposed to those who come from more vulnerable circumstances and may be more inclined to get caught up in sexting? Potentially there might be some who would be separated by having a greater understanding of the implications of their actions whereas some would not understand?

Ms HOGAN — Yes. We would assess these kids, and part of that is understanding this behaviour as well as the other behaviours they bring to us and then working out a plan of how we are going to assist them. We find that numbers of them have no idea; education on what this is, what sexting is and why it is not a good idea is an education program that we would run informally with them. There are some with whom we then pick up some difficult behaviours that need some intervention — some treatment, as we call it — to assist their understanding. We think that where this is identified as a problem we need to be able to assess whether we have an education stream or a treatment stream of some kind. Certainly with the schools programs that we run in the areas that we cover in the western and northern metro areas of Melbourne there are no programs that we know of that are addressing it widely. With an education program we might assist the general population to become aware of it and therefore not continue with some of this behaviour.

The CHAIR — The public discussion that has been generated over the last year or so, I suppose, around sexting, which has led to this inquiry, has focused on the law reacting too severely against children who have done something stupid but which do not necessarily warrant the penalties which are currently out there. From your evidence it goes deeper than that. It is actually something which does cause harm and is something that you do not want to be encouraging. With that in mind, what sorts of penalties do you recommend the law should be imposing to discourage this sort of behaviour, but without being so draconian as to destroy people's lives?

Ms HOGAN — I suppose I would see it running parallel to the other kinds of legal requirements we have with some clients who come in. Children who come in who have sexually abused others can be put on a therapeutic treatment order. Are you aware of those? That is through a recommendation that goes before the Children's Court. It is actually saying that if you attend treatment — counselling — it is like a diversion program. I suppose the way we operate and our belief system, our research and our clinical practice say we need to assist children and young people rather than just look at a punitive whatever at the other end. As Caroline said, with treatment a lot of the young people who come in who have abused others do not go on to do that in adulthood. We see this as part of that learning that young people need and maybe some treatment to assist them.

The CHAIR — We talked about sexting as being one thing when it is clear it is a range of things ranging from a picture of your own genitals through to the filming of a rape. There are also issues as to consent between the parties, whether there is consent or not, and issues as to dissemination, whether you consent to the photo being sent to one person but not to 500 people. Do you think the law should respond by looking at the range of activities that would encompass sexting and having different sorts of penalty streams for each of those?

Ms HOGAN — Certainly I would say the extreme end needs to be dealt with as a very serious crime. You cannot rape someone, take pictures of it and send them off and not have any consequences at all. The behaviour is on a continuum, and maybe the legal response needs to be on a continuum. But except for the really extreme end of sexting behaviour, we would encourage intervention so that you can assess it and then work with them to try to alleviate the problem.

The CHAIR — Should there be any penalty when there is consent involved?

Ms HOGAN — I think it depends on the age of the parties and it depends on the age variation. In our experience it also depends on the developmental age, so a 14 to 15-year-old girl who has an intellectual disability may have a lot less ability to make an informed decision because of her intellectual capacity. Numbers of the girls that we see really have no idea what they are agreeing to — like none — and you will find someone has actually targeted them because they are vulnerable.

Mr NORTHE — Karen, just further to that, in your submission you talk about decriminalising the sending of photos between two younger people who are in a relationship. Can you perhaps be a bit more specific about that? Who are 'young people' and how do you deem their relationship?

Ms HOGAN — My children will tell you that I am the last person who should be telling you anything about young people or anything else as well. Again when we look at the law and say that the two years difference in relationships is something that we usually look at as being reasonable, the developmental age is also important as well. Someone with an intellectual disability is more vulnerable. Usually we talk about a couple of years; in young people we are talking about 14, 16 — things like that. That is the age range we are talking about.

Mr NORTHE — In terms of the other recommendation, in part, about those who are over 18 years, you talk about the restorative justice program — about the graded penalties. Can you just elaborate on that a bit more?

Ms HOGAN — One of the things we have been looking at is that restorative justice-type program so that someone who offends in the areas we work in actually is held accountable and that the victim has some rights in being able to have some outcomes that they want, because so often where sexual abuse occurs there are no winners in it at all, especially if it is intra-familial or with friends or in a community. There are losses all round. So it is trying to assist the victims and for them to be able to have some say about what they want out of that but also not to lock up and throw away the key for some of the young people who actually behave in this way. Obviously extreme rape and filming of that is not what we would agree to at all, but there is a lot of misunderstanding, as we see on Facebook and with things that people put on Facebook and are continuously doing. It is there forever, and they have very little understanding, because it is a very different world to the world the law was set up to deal with.

The CHAIR — Do you have any clients who are on the sex offenders register as a result of sexting?

Ms HOGAN — Yes.

The CHAIR — Can you give us some details — obviously not names — as to the circumstances of them being on the register?

Ms HOGAN — One in particular I know and you probably will not know. It was initially in consent between numbers of males, but then there was a falling out, and one of the young boys became quite traumatised and severely depressed and all those other things. That was the basis of the original behaviour before one of them was charged in the end. It was not that clear cut. I do not necessarily want to comment in a lot of detail, because some of it is quite identifying.

The CHAIR — Okay. Without going into detail, can you say anything about the impact of the person being on the sex offenders register? Is it useful, or has it been — —

Ms HOGAN — It has been overwhelmingly difficult for him and his family. They were shocked and horrified to find themselves in this position. The young person has actually been quite depressed and quite anxious. He dropped out of school for a while. It is kind of a label. To get him into another school was very difficult.

The CHAIR — How old is he?

Ms HOGAN — I think he was 15 or 16. It has had a massive impact, and it is very well known by their community as well, which was a fairly small community. It has been absolutely devastating for him, his family and his grandparents and all of those kinds of things as well. He was a really quite shattered young man. He had no understanding. He was being a bully and inappropriate, but the implications of what he has done for his life and his family's life after that — —

Ms WHITEHOUSE — Considering that most of our young people do not have a sexual interest in children and have not developed that yet — they are still adolescents who do not go on to reoffend — the implications of being on something like the sex offender register are enormous. We do not see the benefit. It does not act as a deterrent, because they probably would not do it again anyway, and the weight of the implications of that on their lives is just enormous.

The CHAIR — But it would be a deterrent amongst those people who are aware that he has been put on the register though, presumably, amongst his own circle of friends and family. While I am not suggesting that it is not a disproportionately harsh punishment, I presume it would be a deterrent.

Ms HOGAN — I do not know actually if it affected his friends' behaviour so much.

The CHAIR — Really?

Ms HOGAN — Yes. That was one of the things he could just not believe, because it was like, 'This is my phone; who is going to see it? I can do what I like'. In discussions with this young person and his friends, they felt he must have done something else a lot worse to get on there. It did not bear any resemblance to their current activities — that it would have an impact on them. So, no, there is just not the link. They do not understand. They thought he must have done a whole lot worse than he did not tell them to actually get on something as bad as a sex offender register.

The CHAIR — Thank you very much for coming to see us. That has been really helpful. Thanks for taking the time to do a submission.

Witnesses withdrew.