

CORRECTED VERSION

LAW REFORM COMMITTEE

Inquiry into sexting

Melbourne — 27 July 2012

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Ms E. Taylor, Sexual and Reproductive Health Coordinator,
Ms L. Forwood, Health Promoting Schools Coordinator, and
Ms S. Rich, Health Promotion Worker, Women's Health West.

The CHAIR — Welcome everybody. The Law Reform Committee is given references by Parliament to investigate and recommend legislative reform. We presented a report just a few months ago on an inquiry concerning donor-conceived children and the rights to know their biological father, so this is our second inquiry. Basically we put out calls for people to produce submissions, and then we ask them to come in to talk to us. The evidence we receive helps inform us as we make our recommendations, so thank you very much for your support in sending in your submission and also in coming in here today.

As to the way things proceed here today, everything gets recorded and you receive a transcript at the end of it, within a week or two. If there are any corrections required, let us know. You are covered by parliamentary privilege in this room but not outside the room, so just be aware of that if you are making any comments to journalists or the public. If we could start with your names and professional addresses, then I will ask you to launch into what you want to tell us.

Ms TAYLOR — My name is Elly Taylor. I work for Women's Health West as a health promotion coordinator.

Ms RICH — I am Stephanie Rich, and I work at Women's Health West as a health promotion worker.

Ms FORWOOD — My name is Lucy Forwood. I also work at Women's Health West, and I am the health promoting schools coordinator.

The CHAIR — And Women's Health West is at 317-319 Barkly Street, Footscray?

Ms TAYLOR — Yes.

The CHAIR — How do you want to do this? We do not need you to read through your submission, but perhaps if you could talk us through the points that are most relevant, we will jump in with questions as they arise.

Ms RICH — Absolutely; that sounds great. I just wanted to firstly thank you for inviting us here today. I will give you a bit of background about Women's Health West. We are the women's health service for the western metropolitan region of Melbourne. We have two main arms, basically: family violence service and also our health promotion, research and development program. In the western region we are the lead agency in the two portfolio areas of the prevention of violence against women and sexual and reproductive health, so sexting law and practice has significant implications for the work we do with young people.

The CHAIR — Is there a Women's Health East, North and South as well?

Ms TAYLOR — Yes. There are 13 women's health services across the state.

The CHAIR — And they are all connected in some way, are they?

Ms TAYLOR — Yes.

The CHAIR — And you are funded by the state government or the federal government?

Ms TAYLOR — Our arm of the organisation is primarily funded by the Department of Health. Our family violence service is funded by the Department of Human Services, but we also receive a little bit of federal funding.

Ms RICH — Firstly, I thought we would talk about some of the key elements of what we know currently about sexting through our own research and our own practice work. Information and communication technologies — ICTs, as they are commonly known — are a significant part of the social networks and the peer relations of young people, so it is not surprising then, I guess, that these are becoming an avenue through which young people are exploring and expressing their sexuality and their sexual identity. I guess in this sense it is our understanding that sexting, when it is done in a safe and respectful way, is a part of young people's sexual agency and their right to express themselves in ways that they deem sexually meaningful and appropriate to them. However — and it is a big 'however' — sexting can indeed be problematic when it is non-consensual and when it reinforces and replicates inequitable power relations between young men and women.

The CHAIR — But are you saying that, on the whole, the vast majority of sexting is okay, consensual, no problem for us to be concerned about?

Ms TAYLOR — I think it is difficult to tell in relation to prevalence, because sexting is certainly under researched in Victoria. So the extent to which we can classify some as problematic and essentially a form of violence against women and some as consensual — an expression of young people's sexuality — is actually difficult to determine at this stage. Would you agree with me?

Ms RICH — Yes, absolutely, but we do know that non-consensual sexting activity is a problem amongst young people and it is occurring. Yes, more evidence around the exact prevalence or incidence we are not sure of at this time.

The CHAIR — Should the Victorian law be concerned with sexting that is consensual? Should there be any laws around it or not?

Ms RICH — I do not think there is a place for the law to be having a position on young people's consensual sexting activity. It is an avenue that means something to them — ICTs and communication technologies.

The CHAIR — What if it is between a minor and an adult? Say, a 15-year old and an 18 or 19-year old, but it is consensual?

Ms TAYLOR — I think then you would look to the Victorian legislation around sexual activity and the age at which consent can be given. So if you are 15, it is a year's difference, but I think if you are 15 to 18, it is considered two years. So I think the current legislation as it stands in relation to consensual sexual activity would need to apply in these instances, but if you were over 18, then I think that is when the sex offenders register would need to come in.

The CHAIR — So if you have consensual sexting activity going on within those age cohorts, which you say is not really a problem, should there be laws around the secondary dissemination of that consensual material? Say two kids who are each 16 send a picture to each other privately, and you are happy with that, it is not something the law should be concerned about, but then one of them sends it on to one of their mates, is that something that should be — —

Ms RICH — Yes, absolutely.

The CHAIR — Because I suppose it is not consensual then, is it?

Ms RICH — Yes, and I think, as you have highlighted, that is a prime example of how consensual activity can really transform into non-consensual sexting activity. So an initially consensual image that has been taken can then transform later with a transmission, where lack of consent is evident. That is a place for the law.

Ms TAYLOR — I would also add that Women's Health West is not of the opinion that all sexting that is not a form of violence is unproblematic. I think we can see with pornography and other forms of information technology that there is reinforcing of gender stereotypes and the objectification of women, but I would not see that as an area of the law. That is essentially around respectful education, and Lucy's kind of whole-of-school approach is essentially around educating young people around what their rights are but also their responsibilities in relation to their peers.

Mr NORTHE — Can I just step in on that point. I am reading your submission, and there are a lot of good recommendations, so thank you and well done — that is what we like — but a lot of the focus is around education and awareness initiatives. Could you maybe just elaborate on some of the practical approaches to that that you may have considered?

Ms FORWOOD — Currently a lot of the education initiatives in relation to sexting and respectful relationships education are one-offs. So it might just be a one-classroom session. At the moment in a lot of it basically they are using the consequence of the possibility of ending up on the sex offenders registration list, so it is sort of scare tactics. It is most often not connected to any other work within the school. The way we run our respectful relationships education program at Women's Health West, which is called Girls Talk – Guys Talk, is that, for example, with the topic of sexting, we would most certainly cover that in the classroom context. There

are some terrific audiovisuals. There is one called *Photograph* and another one called *Tagged*. There are some great resources that young people relate to.

But then also with that what we do is make sure that the teachers have lots of professional development, because not only are they informing students about the issue and their rights and responsibilities, they also have a role to play in terms of school policies. So where there is a good policy around sexting and cybersafety, the teachers need to be really aware of that. That is the other element of the whole-of-school approach — to work with schools in an inclusive way to develop policies and make sure that they are activated. Instead of just having a school rule, we make sure that every teacher is aware of it, and when that rule is broken — and if it is in relation to sexting — the school will take the appropriate course of action so that everyone in the school is educated around the policy.

Mr NORTHE — What about from a broader community perspective; do you have any ideas around that? Whilst it is important to get to the schools, there is also the community. Are there ways and means to get the message out there?

Ms FORWOOD — Definitely in terms of schools, I will just mention the parent community. We would always have parent information nights and include information in school newsletters. In terms of broader community education, particularly when the law is changed, most certainly the information would need to be disseminated in a really broad, multipronged way throughout the community. At the moment a lot of students are not even aware of the current law, so they get an awful shock when all of a sudden they hear that the police might be coming to the school when they themselves had no idea or have no idea of the ramifications of what they have got themselves into by sending a picture on.

Ms TAYLOR — I think in relation to the broader community, clear community education and awareness programs around legislative reform are really pivotal. We saw in Victoria around the change of the Family Violence Protection Act 2008 that there was a really sophisticated and broad community approach around the legislative reform with the Enough campaign. Not only did it kind of demonstrate to the community that certain behaviour was no longer deemed appropriate or acceptable, but it also sent really clear expectations around what Victoria expects in relation to certain behaviour.

Ms RICH — I also think particularly the campaigns that target young people, as Lucy pointed out, would be required, because, as we know, research suggests that at this point they are not even aware of the current legislation pertaining to sexting. Also, obviously, schools are a massive setting in order to do education, but to engage young people who are attending schools is obviously really important and also to acknowledge that sexting practices amongst young people are occurring outside of school settings, so addressing it in sports clubs and all of those types of areas is really important.

I guess we have sort of covered some of the educational aspects that I was going to discuss. Were there any other questions that you had around the education that we spoke about and the awareness raising that you would like to discuss?

Mr CARBINES — I was going to ask what feedback you have had from the initiatives you have taken into the community around educating people about their obligations and the consequences around sexting and those sorts of issues?

Ms FORWOOD — It is often new news. Schools really welcome new information. In terms of it being, like I was saying, a multifaceted approach, we are talking to parents, students and school staff and involving local agencies. It means that it is a holistic response to the issue. In that case, I guess, in terms of longitudinal outcomes, it is difficult to measure, because the information around sexting is relatively new. The schools that we work in, where the students are informed of the issue, are making healthier and more sensible decisions.

Mr CARBINES — I suppose there are a couple of follow-ups to that, then. Perhaps an observation we might make is that with cyberbullying and some of the discussions and awareness that is available to people around it, there is a bit of a cachet about it at the moment. Do you find that the opportunity to come and talk about these other matters that is instigated by the schools is about also having a look at what are the best practice programs that are kicking around that you have been able to draw on, or are you having to find your own way, and is there much resistance from school communities about providing this sort of information?

Ms FORWOOD — A lot of it is about availability. So, for example, at the moment I am located at Footscray City College. The Australian Communications and Media Authority, ACMA, came to the college the other day and did fantastic work. During the day they worked with the students delivering information around sexting and cybersafety, and then straight after school they did a professional development session with the teachers and ran a parent information evening. So they hit the right areas. It was a two-year wait to get them. Footscray City College has been waiting two years to get them. I think schools are really welcoming, but there are not the services to provide information at the moment.

Mr CARBINES — We have heard a few people touch on ACMA's material or work, so that is something else for us to look at.

Mr NORTHE — Just keeping on the school theme for a moment, in your experiences what have you found the school policies to be around the issue of sexting; is it varied?

Ms FORWOOD — It seems to sit with their cybersafety policy. Without blowing the trumpet of Women's Health West, I have to say that the best policies are the ones that we work on, because it is not just the policies; it is the process of how they have been developed. We will get student input into the policy development process, staff, school leaders — so that is assistant principals and principals — and we always welcome parent input. As much as the policies have concrete elements and are in relation to the law, people feel ownership of them and are more likely to adhere to them, and they are coupled with education on all levels. It is more in the context of school rules, so sexting would come under school rules, guidelines and protocol. A principal might announce it at assembly, backed up by classroom sessions and parent information evenings, teacher PDs et cetera.

The CHAIR — Has your organisation dealt with any people who have been put on the sex offenders register?

Ms FORWOOD — It seems to be the case that boys and girls are perpetrating sexting, but generally the victims of it are girls. The most common scenario is the one you first mentioned, Clem, which was about the boyfriend and girlfriend. He asks her for a picture; she sends it to him. They split up, he disseminates it to his mates and then it goes viral with devastating effects for her. That is common. I think there are cases of that in nearly all the schools that I have worked in. In terms of girls, there were some girls who were in a clothing shop in a local shopping centre. One of the girls went into the change rooms to try on a dress. Another girl pulled open the curtains, took a photo of her and then put that on Facebook. And there are lots of cases where girls are posting pictures of themselves; it is not just boys taking pictures of girls and sending them on.

The CHAIR — Why do the girls post pictures of themselves?

Ms RICH — I guess that is drawing on all we have said in our submission around the gender nature of sexting. Research has highlighted that sexting is a gender practice. International research as well as some research that has been done in Victoria has highlighted that there is pressure on young men to have sexted images of girls. Similarly there is intense pressure on young women to send sexted images of themselves to their boyfriends, to their peers and also to strangers. I think we see this phenomenon of sexting occurring within a broader context. It is not occurring obviously in the abstract; it is occurring within the context of gender norms and stereotypes, which do position men as sexually powerful and women as sexually available. Therefore it is not surprising that it is becoming common practice for young girls to send sexy photos of themselves to their boyfriends or to their peers, and there is an expectation among young people that they will. Research has also identified that experiences of coercion and intimidation have been found to be key contributors to young women partaking in sexting.

The CHAIR — But you are saying that is not generally the case, though; that there is a bit of a culture there that girls are willing participants in facilitating pictures of themselves going out to friends and acquaintances?

Ms RICH — I think 'willing' is a difficult concept in terms of the fact that I think there is intense pressure on girls to produce images of themselves and send them out. I guess the issue for us is that if there has been significant coercion involved, and if there has been a lack of ability to give free agreement or consent to the image, then that is when it becomes particularly problematic. It is problematic when young women or young men feel pressured to send images on to other parties. However, we are mindful of the role of the law in being able to play a role in peer pressure circles, which we see with binge drinking, smoking and a lot of other issues.

I would add also that with some of the education initiatives that we see at present there is an onus of responsibility it seems on the person who is producing sexual images, which tends to be young women a lot of the time. What we end up seeing through this is the onus of responsibility does tend to be placed on young women a lot of the time to not place themselves at risk of being sexually exploited rather than looking at the rights and responsibilities of young men and women engaging in sexting and the social and legal ramifications of it, which is the work we try to do.

Would you like me to talk now about our discussion around the efficacy and appropriateness of the law at the moment?

The CHAIR — Yes.

Ms RICH — Great. It is our understanding that the application of child pornography laws and sex offender registration to young people who are engaged in sexting is not an appropriate legislative response. It is our understanding that child pornography laws are there to protect young people from sexual exploitation from adults and those who are in positions of authority. Similarly the sex offenders register is there to monitor and control adults who have been convicted of sexual offences against young people. We do not see those two laws as playing a role in being designed to monitor and punish young people who are engaged in sexting activity.

The CHAIR — But you have given evidence as to the damaging nature of sexting, so why would you not like them to be included in child sex offenders registers if there are adults who are over 18 pressuring girls to provide those images?

Ms RICH — We do believe that the current laws pertaining to child pornography should relate to adults, so it should be applied to those who are over 18 if they are producing or distributing or possessing child pornography, including sexted images of minors.

Mr NORTHE — Sorry to interrupt, but by the same token I guess in some sense this inquiry was initiated by the fact we might have had an example of an 18-year-old who had taken a photo with consent and that photo was provided to a mate who then sent it on. That particular person, who has just turned 18, a male in that case, has then been charged with making child pornography and has ended up on the sex offenders register. The reason I raise that is that in your recommendations you talk about minors being exempt from that, but maybe some regard needs to be given in that circumstance as well.

Ms TAYLOR — I suppose it is about how old the victim is. If you are talking about an 18-year-old perpetrator and if you are talking about a 17-year-old victim, are you really then talking about paedophilic behaviour?

Mr NORTHE — In that case I guess you would assume a person has made a mistake rather than been a predator. I am saying somebody has made a mistake and ended up on the sex offenders register rather than having habitual, predatory behaviour towards children.

Ms TAYLOR — Absolutely.

Mr NORTHE — I just pick it up, because it is in your recommendation, where you have both the offenders and victims as minors. I am not critical of your recommendations. It is good to have them, because that is what we need, but I guess some regard needs to potentially be given to such a circumstance.

Ms RICH — Yes, absolutely.

Ms FORWOOD — Often, I suppose, the younger boys and girls do not realise the seriousness of what they are doing. They do not realise the ramifications. It is silly, it is stupid, it is disrespectful; it is all of those things. But they are not perpetrators of paedophilia.

Mr NORTHE — No. I guess that is the thing we have to grapple with as part of this whole inquiry, those types of circumstances.

Ms TAYLOR — Absolutely. But then you also see the flipside of that when you see the infamous case in Werribee where a group of 14-year-old boys sexually assaulted a young woman and videotaped it, and then it went viral. So in these instances it is not a silly mistake. It is actually premeditated.

Mr NORTHE — Yes. I guess a comment from my perspective is that is what we have already seen. There are different categories of this to consider and contemplate.

Ms TAYLOR — Yes, so we would be arguing in that sense that there needs to be a newly created offence around sexting behaviour that is non-consensual and hence a form of violence, because I think in that instance we saw minors being prosecuted for sexual offences, and rightly so. But the added layer of that is the visual presentation of a form of violence against women, or a woman, going viral on the internet or news channels playing it. The ramifications of that for her and her family and the community are incredible, so I think there does need to be a specific law pertaining to sexting-type offences that can constitute a form of violence against women but is separate from paedophilic activity, I suppose, is what we would be arguing.

Ms RICH — Yes, and I think that is the point. We acknowledge what you were saying around — we do not believe that 18-year-olds, if they are taking photos of their 17-year-old girlfriend et cetera, are producing child pornography, but in saying that we recognise that the role of the law is there to protect and to ensure that non-consensual sexting behaviour is not occurring. I guess that really does lead into why we believe that it appears that the absence of specific legislation pertaining to technology-related sexual offences is problematic, and we feel like there is a gap that needs to be addressed, acknowledging that different sanctions, as per common practice, would apply to minors.

The CHAIR — If you were creating a new offence with new penalties for people who create a sexting image, would the law you create have greater or lesser penalties for a person who is a secondary distributor of that image?

Ms TAYLOR — Tricky; we had that conversation this morning!

The CHAIR — Is that more serious than the person who initially created the image, assuming it was consensual?

Ms RICH — I am sort of hesitant to put a hierarchical value on that.

Ms TAYLOR — I think it is dependent on whether the circumstance in which the image was taken was actually consensual or not. In the circumstance I speak of in Werribee, where what had occurred was a serious act of violence, the person who then distributes it would, I think, be more accountable than if, say, that image initially had been consensual. I think it is tricky.

Ms RICH — I think that there does need to be recognition and that each separate sexting activity needs to be looked at separately, as we have discussed.

The CHAIR — The offence — —

Ms RICH — Yes, absolutely — in terms of appropriate activities.

The CHAIR — So, from that comment, would you support the proposition that magistrates and judges who hear these types of cases should have a right of discretion to look at all the circumstances of each case?

Ms RICH — Yes, absolutely; context and detail is very important in situations like this.

Ms TAYLOR — Particularly when you are applying numerous laws. There might be an offence where there is a sexual assault plus an instance where there is a sexting offence on top of that, if there were to be a new law created. The discretion of magistrates is kind of pivotal in summing up the whole criminal gamut, I suppose.

Another thing is that Women's Health West is finding specifically in our family violence arm is that coercion and the use of sexted images is also an issue for older women. We have women who come in as victims of family violence who have sent consensual images to a partner. Then there has been a breakdown of that relationship due to family violence, and he is using that as a mechanism by which to get her to come back to the relationship to ensure access to the children. I think that whilst it is an issue that is specific to young people — and hence the need for education — it is also an issue that affects adults as well.

Ms RICH — Absolutely. I have had conversations myself with one of the police officers who works in our western region and in sexual offences. They confirmed that a significant majority are young women, but there

are numerous cases — when I spoke to the detective she said that the other day there was a situation where a relationship had broken down between adults, and it was being used as threats.

The CHAIR — Is there any offence committed where it is an adult picture that has been sent with consent and it is sent on?

Ms TAYLOR — Where it has been sent in Victoria?

The CHAIR — Yes.

Ms TAYLOR — Not to our knowledge. Is there?

Ms RICH — Are you asking is there evidence around whether consensual images have then been sent on non-consensually for adults?

The CHAIR — You may not know the answer to this — our next witness might be in a better place to be able to answer it — whether there is an offence. Presumably there is blackmail in this sort of situation and then there is a different offence, but where there is somebody who has a picture or a naked shot that was sent by an adult to them and they forward it on without that person's consent — whether that actually is an offence now or not.

Ms TAYLOR — We do not believe so.

Ms RICH — No, it is not, on my understanding.

The CHAIR — Your evidence would be that we should consider whether a new offence should be created for that non-consensual secondary dissemination.

Ms RICH — Yes, absolutely. The frustration at trying to absolutely apply a variety of different laws that may be applied to sexting in those cases was expressed by the police officer when I did speak to her. She said that there was this case where a situation happened, and she was like, 'We weren't sure whether we could do it under blackmail, or was it stalking'. What was considered property and data was also coming into the discussion, so she herself expressed frustration at trying to navigate all these different laws that could be applied to that particular scenario.

The CHAIR — All right. Have you finished or — —

Ms RICH — Yes. That led us into our discussion of the legality around the situation. Are there any questions from you?

The CHAIR — Thank you very much for that. That has been very helpful to us, and thank you for bringing it all together and coming to see us.

Ms RICH — Good luck. We would also like to say that we think this review is really timely and important, so we really welcome this inquiry and are looking forward to some reform that is appropriate and effective.

The CHAIR — I think it had something to do with our friends in the media who brought this up, highlighting some issues, so the Attorney-General moved fairly quickly to instigate this inquiry.

Ms FORWOOD — Because the current situation, from the coalface, from everyone out there in the schools, is not working.

The CHAIR — All right. Thank you.

Witnesses withdrew.