

CORRECTED VERSION

LAW REFORM COMMITTEE

Inquiry into sexting

Melbourne — 7 August 2012

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Ms J. Karena, Manager, Community Development, Macedon Ranges Shire Council,

Ms P. Neil, Team Leader, Youth Development, Macedon Ranges Shire Council,

Detective Sergeant S. Brundell, Macedon Ranges Crime Investigation Unit, Victoria Police

Leading Senior Constable J. Grbac, Macedon Ranges Youth Resource Officer, Victoria Police and

Ms D. Cole, Youth Partnerships Officer, Macedon Ranges Shire Council, Macedon Ranges Local Safety Committee.

The CHAIR — Welcome everybody. This is a cross-party committee set up by Parliament to investigate various issues in relation to law reform. This is the second inquiry we have been given. Everything you say in the room is covered by parliamentary privilege, but not outside the room. Just be aware that this inquiry has quite a bit of media interest, and if you are asked questions outside the room, you do not have the privilege that you have inside. We record everything, and then you get a copy of your transcript in the next week or two. If there are any changes or corrections required, please let us know.

If you could start with your name and professional address, we will just run through each of you for the purposes of the transcript first, and then after that you could talk us through your submission.

Leading Sr Const. GRBAC — My name is Joe Grbac. I am a police officer with Victoria Police, and my role is as a Youth Resource Officer for the Macedon Ranges area.

The CHAIR — And your professional address?

Leading Sr Const. GRBAC — Kyneton police station.

The CHAIR — What street is that in?

Leading Sr Const. GRBAC — That is in Jennings Street in Kyneton.

Det. Sgt BRUNDELL — I am Shane Brundell, Detective Sergeant attached to the Macedon Ranges Crime Investigation Unit at the Kyneton police complex in Jennings Street, Kyneton.

Ms COLE — Darlene Cole, Youth Partnerships Officer, Macedon Ranges Shire Council. That is at 129 Mollison Street in Kyneton.

Ms NEIL — Pauline Neil, Coordinator of Youth Development, also at Macedon Ranges Shire Council at 129 Mollison Street.

Ms KARENA — Jill Karena, Manager of Community Development at Macedon Ranges Shire Council, again at 129 Mollison Street, Kyneton.

The CHAIR — All right. Darlene, you look like you are about to launch into it.

Ms COLE — Yes, that is it! I will start off with our statement. Macedon Ranges Local Safety Committee acknowledges that some young people are choosing to explore and express sex and sexuality in cyber environments. The reality of the risks associated with these activities to the safety of young people was first brought to our attention in 2009 as a result of a sexting incident that occurred in the Macedon Ranges. Our learning from this particular case enabled us to identify and respond to issues that are relevant to the terms of reference of this inquiry. We therefore take this opportunity to reiterate that case, highlight the problems it presented and explain our response to date.

The CHAIR — Can I just ask — you are from the council?

Ms COLE — Yes, that is right.

The CHAIR — Why did the council get involved with a sexting matter?

Ms COLE — Council is represented on the Safety Committee.

The CHAIR — Right.

Ms COLE — In the Macedon Ranges case a teenage boy and girl consensually exchanged a sexually explicit image and video via mobile telephone following discussions of a sexual nature. Some time later the girl attended a party and informed another teenage boy about the video of herself. The girl declined to show the boy the video, but while she was distracted the boy stole her phone, located the video and bluetoothed it to his own mobile. This boy then sent the video to a number of other boys and so forth.

The matter came to the attention of the secondary school at which the girl and boy attended. The school elected to deal with the incident in house by speaking with the students involved. On becoming aware of the incident

and school response, a concerned parent of a friend of the girl in the video reported the incident to police. Police commenced an investigation and approached the school to ascertain details of the incident. The school was reluctant to provide statements it had obtained, resulting in police executing a search warrant to obtain any evidence that was in the school's possession. The girl and her parents were then approached with regard to formalising a police response. The girl disclosed issues of self-harming, elevating the police response to ensure that the victim had minimised impact.

Through the police investigation eight boys were identified as being involved in the transmission and possession of the video. This resulted in these students being interviewed by police in the presence of their parents for offences relating to possession of child pornography. Seven of the boys were cautioned by way of the police child caution program. The other boy was charged with possession of child pornography, owing to a previous caution for similar behaviour. This young person subsequently pleaded guilty at the Children's Court and was placed on a ROPES program without conviction. The victim was referred to counselling.

Approximately four months after the initial incident had been resolved the same girl produced a second sexually explicit video of herself on her mobile telephone and forwarded it to a different boy at his request. The boy forwarded the video to other students at a different school. Information about the incident was brought to the attention of police by a parent of one of the boys who had been involved in the first incident. A police investigation was commenced as a matter of urgency to prevent the video from going viral. The girl was interviewed in relation to producing child pornography. The boy who received the video was interviewed in relation to possessing child pornography. Both the girl and boy in this case received a caution for their behaviour.

The CHAIR — Darlene, can I just interrupt there? Perhaps I am jumping around a bit. Joe, do you deal with the police responses to these issues in the area?

Leading Sr Const. GRBAC — My role is to support the reactive response, if you like, and to initiate proactive initiatives as a result.

The CHAIR — I notice you receive complaints about sexting on a fairly regular basis. Whether or not you proceed with charges in relation to child pornography, does the fact that you know that a person is going to end up on a sex offenders register if they plead guilty or are found guilty impact on your making a decision as to whether or not to proceed with child pornography charges?

Leading Sr Const. GRBAC — My understanding of how the sex offenders register works is that it is not automatic for young people under the age of 18 years; it is fairly difficult for a young person under 18 years to be listed on that sex register. I think my main concern in a lot of those issues will be the victim's position rather than worrying too much — I still have to take into consideration the offender's situation, because in other areas there is a history where offenders who, I guess, have been driven by guilt, have maybe done some damage to themselves, and that is a concern as well. There are some kids who just make very poor decisions, not so much with evil intent, but just dumb.

The CHAIR — If you had a situation where the images were produced when they are children and one of them, particularly the male, becomes an adult and then imports that image, would you consider whether or not to charge that person with child pornography given the mandatory nature of being put on the sex offenders register once you are over 18 years? Would that be a concern that you would consider?

Leading Sr Const. GRBAC — It is obviously something that I would not then determine — as to whether someone gets on the sex offenders register. I am going to rely on the judiciary, for instance, to make the decisions correctly and in terms of the referral stuff. Sergeant Brundell is probably more equipped because he will have dealt with issues with the sexual offences unit. He will probably be able to answer that question.

The CHAIR — Shane, do you have any response to that?

Det. Sgt BRUNDELL — So far as being under the age of 18 years as an offender in possession of that sort of material, there is the possibility that they could end up on the sex offenders register; that is correct — it is a possibility. The reality is far different to that. It is not a mandatory thing for the Children's Court to do, and my experience has been that children are not being placed on the sex offenders register for these sorts of issues.

The CHAIR — What about adults?

Det. Sgt BRUNDELL — If it is an adult, is it something they have acquired as a child and then slipped into adulthood?

The CHAIR — Yes, that seems to be it.

Mr NORTHE — Where they have been tried in the Magistrates' Court rather than in the Children's Court.

Det. Sgt BRUNDELL — Okay. So it is possession that has taken place as a child and then with the passage of time they have slipped over into adulthood, or are over the age of 18 years, and then they are found in possession of it for whatever reason.

The CHAIR — Yes, and that seems to be one of the primary issues we are considering here — that is, the fact that it is mandatory for them to be put on the sex offenders register.

Det. Sgt BRUNDELL — Yes, I understand. Perhaps if those circumstances were made available to the court and ultimately if the court had discretion, perhaps it may not be a mandatory thing.

The CHAIR — Yes. Would that be your recommendation to the committee — that is, that the courts should have discretion as to whether to put people on sex offenders registers?

Det. Sgt BRUNDELL — In relation to those circumstances I think that would probably be a fair recommendation. I am just mindful that if you say it is discretionary for all adults in possession of child pornography that I do not necessarily agree with that. But in circumstances where it has been a consensual act as a child that they have retained and where there are no other aggravating circumstances and it is, say, a one-off image type-thing, why could those circumstances not be put to the court and the court have discretion?

The CHAIR — Sorry, Darlene. I interrupted you there.

Ms COLE — The Safety Committee's analysis of this case study highlighted a number of issues. Firstly, sexting cannot be categorised as only one type of activity. The chain of events in this case study highlights the problem of lumping together different types of actions and defining them all as sexting. Actions within the case differed according to the intent, consent, risk and harm. The actions with the most harmful impact to the young girl occurred at a time when she could not, apparently, revoke her consent.

When it comes to understanding the nature of sexting, the Safety Committee therefore urges this inquiry to make distinctions between sexting activities according to their intent and consent. Further to this, the Local Safety Committee is concerned that different opinions exist regarding the gendered nature of sexting violations. In general, we believe that not enough local evidence exists to support the suggestions of who, what, where, when, how and why young people are participating or not in consensual or non-consensual sexting. Our own discussions and informal interviews with various community representatives, including young people, reveal different opinions regarding the nature of sexting and minimal awareness regarding the incidence and prevalence of sexting and sexting violations occurring in our own area. More broadly, we are concerned that there appears to be limited research on the matter at a state level.

The Safety Committee, therefore, makes a recommendation that the issue be explored deeply and extensively through relevant research. Secondly, the Macedon Ranges case highlighted an apparent complacency, or at least a lack of awareness, amongst the broader community of the social and legal implications when sexting does go wrong. The Safety Committee believes it has been very effective in responding to this problem in our own area. Since the 2009 case, we have worked in a collaborative manner to design and deliver programs that are complementary to one another. Local police, council, schools, health services and other stakeholders have contributed to the delivery of programs that appear to be making a difference. Examples of programs currently being delivered include the Local Police Prevention through Education program, including local youth resource officer presentations and the Live4Life and CyberLife programs.

Together these programs deliver on a wide range of goals and take a proactive approach to addressing the risk and harm that may be associated with behaviour such as sexting. To young people, the programs promote healthy, moral and ethical decision making; awareness of the changing nature of privacy; understanding of the changing nature of friendship and relationships in the digital age; and help-seeking behaviour. To young people,

families and schools, the programs are educational regarding safe cyber behaviour and the current legal ramifications. The Safety Committee has strong links to local educational institutions, enabling network partners to deliver presentations and programs in school settings. As a result of this, the presentations and programs over the past three years have reached many, many hundreds of students, teachers and families in the Macedon Ranges.

Aside from these programs, the Safety Committee believes it is also important to comment on other activities that were inspired by the initial intervention, as well as to express concerns about the apparent gap in primary prevention programs related to respectful relationships. The 2009 Macedon Ranges case was the first of its kind brought to the attention of local police. There was no template for dealing with sexting. As a result local police initiated a forum with principals from all local schools and the education department, along with the local council and community health. This enabled conversations in relation to cyber and sexting incidents, duty of care, reporting protocols, police response and available networks for support, as well as a policy that enabled a consistent response to cyber and sexting incidents. This policy was implemented through local police at training sessions.

In general the value of our experiences from the earlier incident has enabled a more dynamic and definitive response to other incidents that have arisen since. There is a sense that local young people are more empowered and informed to do something about this sort of behaviour. There is also a greater understanding of the roles of partnership agencies and the service that they can provide in both prevention and intervention. The recent downward trend in reported incidents and requests for assistance might in large part be due to the effectiveness of the network of programs that are operating at the local level.

The Safety Committee notes, however, that the approach needs to be further developed. A broader audience must be engaged in relation not only to ethical cyber citizenship but, more importantly, respectful relationships in general. This will require a commitment from a multitude of agencies and a sustainable infrastructure rather than one of responses. The Safety Committee therefore recommends a commitment being made to supporting primary prevention programs in educational settings. These programs must promote respectful relationships between young people in, and beyond, cyber settings.

Finally, there is the problem of inadequate and inappropriate legislation. There is simply no state legislation that clearly matches sexting offences. Police in the Macedon Ranges 2009 case were attempting to ensure a just outcome for both victim and perpetrator. The barrier to this was that police had no option to consider charges that truly matched the offence. There is a substantial gap between state laws relating to child pornography and any other criminal law that may be considered somewhat applicable. In the Macedon Ranges case the victim produced the image but her intent was in no way related to producing child pornography. Nor does this law match her experience of her violation. It is also most unlikely that the intent of the offenders in any way related to having the intent to transmit child pornography. Without doubt, there are other legislative issues — jurisdictional boundaries and our concept of child and adolescent being two of these.

However we look at it, existing legislation presents a barrier to how sexting violations, particularly those concerning adolescents of a consensual age, should be understood. Legislation that is available is neither adequate nor appropriate for distributing justice to either the victim or the offender. For this reason, the Safety Committee makes two further recommendations to this inquiry: that new criminal offences relevant to violations associated with sexting be recognised — and these offences must enable the distinction between consensual sexting behaviour and violations arising from non-consensual activities, and this may mean that more than one offence is recognised — whatever the new legislation, it must enable the delivery of meaningful and relevant justice to both victim and perpetrator, and finally, that a commitment be made to supporting resources for a cohesive, consistent and coordinated law-enforcement response to enact this new legislation.

The CHAIR — Thank you very much. Do you speak for everybody, or do others want to add anything to the submission?

Ms NEIL — Really that is just a summary of what you have before you, and it is from the Local Safety Committee, which is a combination of the police, the council and community health. I guess the case was tabled at the Local Safety Committee and there was a collaborative response as a result of that. We try and keep fairly close tabs on those sorts of issues that are arising within our community. It is a smallish community, so we have the opportunity to do that. There is a lot of learning that came out of that.

Mr NORTHE — I am just wondering — on the education program through CyberLife and so forth, has there been a proper analysis done on that just to, I guess, consider the efficacy of the program?

Ms NEIL — CyberLife fits into a much bigger program called Live4Life, which is essentially a suicide prevention strategy. At the initial launch of Live4Life we showed 600 year 8 students *The Photograph* DVD. I am not sure if you are familiar with the — —

Mr NORTHE — I have not seen that.

Ms NEIL — I have a copy which I can leave with you. It really depicts a typical sexting scenario amongst adolescents. We showed it to 600 year 8 students and had some conversation around that. The focus groups we ran in the evaluation demonstrated an incredible learning curve for these young people. They had no idea about the sorts of offences that they could be — —

Mr NORTHE — The consequences?

Ms NEIL — Yes, confronted with if found with this. We believe it had a large impact on that year 8 group, which is now currently year 10. We were just talking about whether or not any of those 600 year 10s across five secondary schools have been caught with any sort of sexting — not to our knowledge.

Ms COLE — I guess we are relying anecdotally at the moment on reports or stories that people are telling. From what I can understand through the interviews I was doing with different people, in the first instance Joe had reported that he was taking quite a lot of phone calls in the early days about things that were occurring, whereas those phone calls have now reduced greatly.

Leading Sr Const. GRBAC — If anything we are now just getting to that nuisance value of the cyber stuff — the harassment and stuff — but the sexual stuff seems to have dissipated, which is great. But then obviously we are going to have the next group of kids coming through, so we cannot just be satisfied with our current results.

Can I also stress that in terms of the partnerships that have been established and with the Local Safety Committee providing that forum, the partnerships have been essential. We now have, for instance, the ability to have the council through its youth space being able to monitor different sites and so forth, to have the communication with us to have that dialogue. We have done things like when gossip sites have surfaced — and they can be nasty pieces of work — alerted schools to let them know; the student welfare officers, to be aware that this may be coming at them. We have that dialogue happening now as preventive stuff which I think is unique.

The CHAIR — It seems that you have been very effective in dealing with the issue internally, but is there an issue from a police perspective that even a child taking a picture of themselves is guilty of producing child pornography? Should there be some mandatory requirement for reporting to police any instances of sexually explicit photos of children on phones, however they may be produced or whoever they are shared amongst?

Det. Sgt BRUNDELL — It is a very difficult scenario. If you have, say, a 15-year-old producing it to give to another 15-year-old boyfriend or girlfriend, and it is freely consensual, is that an issue? Is that a real crime issue? It may not be safe behaviour, but is it a real crime issue? Where someone has taken a photograph of themselves or a film and it is very forced — fraud or misrepresentation on the part of another party — I see that as a different issue; I see that as a crime issue. I do not know that — —

The CHAIR — What is the crime that is being committed in that circumstance?

Det. Sgt BRUNDELL — If I was to create a false identity, even if I was a 15-year-old, to engage another 15 or 16-year-old for the purpose of getting a sexually explicit image from them, the fact that I have created that false identity to begin with, with that intent, to me shows that I have sinister intent in my mind. Otherwise — —

The CHAIR — It would be producing child pornography then?

Det. Sgt BRUNDELL — At the moment it would be procuring a child for child pornography. We need to also be cognisant of those occurrences and make sure that whatever we do captures those incidents in the future, because to me the victim, even if they had been given a name, that person was a false identity or

misrepresenting their intentions — is that freely consenting to that act? I would argue it is not. If they had known the true circumstances, there is no way known they would have consented to that act.

The CHAIR — Whilst theoretically between two consenting 15-year-olds, a crime has been committed and the child pornography has been produced — —

Det. Sgt BRUNDELL — Technically as it currently stands — yes.

The CHAIR — But the current practice, though, is not to proceed with charges in those circumstances, so in essence you are exercising some discretion.

Det. Sgt BRUNDELL — Absolutely.

Leading Sr Const. GRBAC — I think you will also find there is that two-year age gap which applies to this situation as well. As long as there is no more than a two-year age gap, that applies. But I guess the other thing is that what we are coming across is that they are maybe playing doctors and nurses, if you like, and using technology. But then it gets to the stage where something comes to our attention, and that is when the consent then has been withdrawn. Something that the Law Reform Committee needs to have a look at is when consent has been withdrawn. I think you already have that set up with the meaning of consent in other legislation, which clearly would apply in this situation as well.

The CHAIR — Putting aside the production of child pornography, in the case of adults sexting each other where consent has been withdrawn but the image is disseminated, what crime has been committed there?

Det. Sgt BRUNDELL — At the moment, depending upon what flows from it, it might be a stalking.

Leading Sr Const. GRBAC — There is also a menace, harass or cause offence under federal legislation as well.

Det. Sgt BRUNDELL — Yes, that is right. There are still deficiencies in state legislation, as I see it. Section 36 of the Crimes Act really governs the whole definition of ‘consent’ and when consent is informed. It goes into force, fear, fraud, misrepresentation and a whole range of things, including the withdrawal of consent. I think those definitions really related to the physical act of sexual penetration when it was initially rolled out in relation to the withdrawal of consent to sexual penetration. But really nothing covers the withdrawal of consent in relation to an image.

The CHAIR — Presumably in most cases it is not a matter of withdrawal of consent, because the consent is there for the party to receive the image. But in most cases there is probably never any consent to further disseminate the image.

Det. Sgt BRUNDELL — Absolutely. For sure.

The CHAIR — So you are saying there is no real crime to fit that act at the moment?

Det. Sgt BRUNDELL — Yes. You would have to look at it on a case-by-case basis. You would really have to look at all the circumstances unique to that case to see whether it does slot into some other crime. For example, to use the example of kids, you have two 16-year-olds consensually exchange photos. Two weeks later they fall out of love, and therefore they say, ‘You’ve got those images of me. I want you to destroy them’, and they do not. They withdraw consent; the other party does not destroy them, then we say that they commit an offence.

Leading Sr Const. GRBAC — Are they now in possession?

Det. Sgt BRUNDELL — Are they now in possession of child pornography or should there be some other stopgap offence short of child pornography in between?

The CHAIR — But regardless of consent, they are still in possession of child pornography, are they not?

Det. Sgt BRUNDELL — Yes.

Ms COLE — That is again where we are trying to make the offence fit the law, rather than the law fit the offence.

Det. Sgt BRUNDELL — More to a sexting-type issue. Okay, there has been a withdrawal of consent. It was never their intention to produce child pornography, which would have been the intent of the legislators, I am sure, when they first enacted those child pornography offences. There should be something short of that, unique to sexting, unique to these circumstances, so that should consent be withdrawn, then we have that lesser offence rather than having to resort to child pornography.

Leading Sr Const. GRBAC — That is what we are left with at the moment — the intent if you like, with that paedophile legislation. That is pretty heavy for kids just playing doctors and nurses. I guess that is the compromise we have to look at, but still looking at it seriously with the possibilities of what could happen afterwards given the fragility of, say, the victims in these situations or the parties involved. That is why it has to reflect that. But I am also talking perpetrator, if you like — offender and victim — because we also have the situation with kids who just did not know and they have been driven by guilt. We have had that situation as well. That is the difficulty you have, I think, too.

The CHAIR — Yes, we know.

Mr NORTHE — We have had Privacy Victoria here providing some evidence this morning, and one of the things that they have recommended, in terms of whether you are a victim, is the suggestion that we incorporate a statutory action for a breach of privacy when those images might be sent off obviously without that authority. I wonder what your opinion on such a recommendation might be.

Det. Sgt BRUNDELL — It is a breach of privacy.

Mr NORTHE — I guess at the moment some criminal offences can apply to the perpetrator, then what becomes of a — —

Det. Sgt BRUNDELL — Are we talking about as a recourse criminally or as a recourse civilly?

The CHAIR — A civil recourse only.

Mr NORTHE — Yes, a civil recourse.

Det. Sgt BRUNDELL — Without knowing what is proposed it is hard to form an opinion. But it is an option, is it not?

Ms COLE — I think it still comes back to: do we know anything about how the victim might actually feel about that? Is that what their biggest problem is, the breach of privacy, or is it more serious than that? We do not know that. That is what I am saying; there is really no evidence to suggest how victims are feeling, or how offenders are feeling for that matter, in terms of what they have actually done or what has been done to them. I think we need to find out more about that.

Leading Sr Const. GRBAC — Can I add something else, too? I am currently live in one of these situations at the moment, on the sexting area. On the ability to get rapid response from areas like Facebook, once we give an email address we then have to go through Microsoft to get that, and once we get that we have to come back through Telstra and we have to pay a fee to get an identification of that person — we are talking, say, four, six, eight weeks before we can get some sort of response, unless there is some method I am not aware of where we can expedite things. Then also for things that are done, for instance, on mobile phones, Telstra is now telling me that it is made even more difficult to identify anybody. I have got this scenario: someone sets it up all on phones, goes off to McDonald's where they can get free internet, and then — 'Try and find me'.

Mr NORTHE — A good point.

Leading Sr Const. GRBAC — I am just wondering how you are going to deal with that as well. There is another one I have got for you.

Mr NORTHE — A very valid point.

Det. Sgt BRUNDELL — The ideal situation would be, if these harmful sites have been identified, that we could shut it down quickly before any real damage is done. At the moment there are a lot of barriers to achieving that.

Leading Sr Const. GRBAC — But I also have to stress that our partnerships, though, have been successful in shutting that down. We have not had the need to recourse to going to Facebook and all that sort of stuff because of the partnerships we have had through the Youth Space and other areas. We have been able to identify people who have been responsible and been able to shut them down through our networks without having to use that recourse through Facebook and so forth. That is the advantage of the partnerships.

I feel like we have hogged the whole conversation here, but I think the issue of the partnerships has really been crucial here. That is not only in terms of asking for legislation and so forth; it has also been very important in providing that support and those networks where that is required and also being able to think laterally about how to resolve this, whether it be, say, through mediation or whatever may be required. Maybe there are other alternatives — restorative justice; there is a whole range of other issues. This is where we have got a really strong foundation to be able to provide that. How are you going to build that in too? That would be something else in terms of the penalties you are going to be suggesting. It is one of the alternatives available. It does not always have to be so punitive; other orders need to be considered. But we have got that support here.

The CHAIR — As far as your investigation options go, if free wi-fi is being used, for example, at McDonald's, is your only way of collecting evidence then to actually physically get the device that they were using when they were in McDonald's? Or are there other means by which you can find the electronic footprint?

Leading Sr Const. GRBAC — I have been advised, and you might need to correct it, that Telstra have been telling our police people in town that if it is a use by phone it is difficult because it is a roaming number, if you like; it is not automatically fitted to it. It is similar, for instance, to if you are using Skype; you do not get a bill for it because it does not use the network. It piggybacks off it. That is the situation we are facing. That is what makes it difficult. But the crucial thing about kids having images in their possession and then allowing those images to be just sitting with some kid's phone, and giving it three weeks — or giving it two months by the time we find out — is that there could be a lot of damage done in that time. That is why we need a more rapid response.

The CHAIR — I suppose we are sitting on a time bomb that Parliament needs to deal with here, because this sexting is so prevalent and there are potentially tens of thousands of kids with images of other kids on their phones. As they click over to 18, if they still have the same phone they are all in danger of being charged with holding child pornography in the adult jurisdiction.

Det. Sgt BRUNDELL — As it currently stands, yes. But I would raise this, too. If you had a consensual photograph of your girlfriend from when she was 15 and you were 15, and you are now 25, why would you still want that image? Let us be real. Why would you still want an image of a 15-year-old girl, as an adult? Ethically and morally I cannot see why you would want to retain it.

The CHAIR — I think the issue can arise — and I think has arisen — with some examples where it is stored on the device. Even though you may not know where it is, there is an electronic footprint of it there.

Det. Sgt BRUNDELL — Most of the interrogation of that device will probably support that concept, because it is probably a one-off, but if there is a whole number of different photos, it blows that argument out the window. I get back to why an adult male or female would want to retain an image that was taken 10 or 15 years ago when they were consenting children. I would seriously question why they would want to retain it.

The other thing too is that from that Macedon Ranges experience we had the opportunity to speak with a girl from that school some time later on the outside. We had a chat with her: 'Did you have education programs in place at the school at the time?'. 'Yes, we did'. That was already there. The kids knew that it was wrong behaviour, that they should not be doing it. The comment that burnt in my mind was, 'Well, why were you doing it?'. The response to that was, 'We kept doing it until the police actually did something. We knew it was wrong, but we kept pushing the boundaries until the police did something'.

What does that tell us? The kids know it is wrong. They know the outcomes from it, but they were willing to push the boundaries — just as we probably all have as children at some stage — until the police did something.

For those reasons alone, when education and the proactive measures all fall down, there has to be that offence for it. I just do not know that child pornography, as it currently stands, is the appropriate offence. I would like to see something before that and leave child pornography as the last resort for what was initially intended, and that is my view on it.

Mr NORTHE — Just quickly, the Ropes program, can you — —

Leading Sr Const. GRBAC — It is an alternative to, or a proactive initiative if you like. The courts can direct a young person to — —

Mr NORTHE — So under 18.

Leading Sr Const. GRBAC — For under 18. That is the sort of stuff that is available as a sentencing option, as a diversion.

Mr NORTHE — Would you suggest that something along similar lines should be available for those over 18? I am trying to paint the picture of what the Chair has articulated in a story where somebody might have those images on their phone, all of a sudden they turn 18, it is a whole different ball game, if you like, and there are consequences.

Leading Sr Const. GRBAC — I think the situation then is obviously the responsibility for dealing with this should not just be the police. It can be something where it might be something to do with psychology, or maybe a referral through an agency and so forth, which again we try to pride ourselves on. We have done that. Where we have had young people who have required those referrals, we have organised that so we did not have to go punitive. That was able to resolve it. I think your discussions probably then have to be with some of the organisations that are geared up for it. To finance it and to have that done, how does that happen? Then again I do not like the idea that if we cannot do it financially, let us just do the punitive stuff. That is not how it should be going, because I do not think that is what the lawmakers should be considering.

Det. Sgt BRUNDELL — Could it be an option that in those circumstances where it is the one-off image that has been retained from a consenting act as children that — and I do not want to call them an offender in these circumstances — they provide an explanation as to how they consensually came into possession of that image? We make the follow-up inquiry. The other party says, ‘Yes, I did consent to that back at the time’. It is a one-off image. We say ‘Okay’ and have the ability to say, ‘All right, we can eliminate that image from your database. You can get it back and there will not be any charges in relation to it in those circumstances’. If there are no other aggravating circumstances and nothing else, is that an option?

Leading Sr Const. GRBAC — With the understanding, though, that if the image should then suddenly resurface off another device, then, ‘Sorry, you were given the option, and you should have taken that option’.

Ms NEIL — Another thing that we have talked about in the past around this issue of diversion is that we have seen some really effective diversion programs in relation to under-age drinking in our local area and whether there could be a similar diversion program set up, and we have actually toyed with the idea of piloting something. One of the police members in the local area, the SOCO worker, has said in the past that some of these young guys she has dealt with over potential offences had no idea that what they were doing was sexual assault. What that says to us is we need to educate young people about what sexual assault is and what sexting is, and maybe the diversion program is something we can consider.

Leading Sr Const. GRBAC — Obviously that would be linked to something like a community health centre or maybe even with CASA or something similar like that.

Ms NEIL — It needs to be, and I think that what we have seen as effective on the ground is when it is a whole-of-community response, not just a punitive response.

Det. Sgt BRUNDELL — Yes, spot-on.

Ms NEIL — When we have worked together as a collective we have seen some really good results from that. I think the diversion is something the local area needs to roll out, but it is worth considering.

Leading Sr Const. GRBAC — But it also has to be an option that Parliament, say for instance, allows for us to be able to do from a police perspective. Even with our police cautioning set-up there has to be certain criteria and everything has to be mapped out. What Pauline was saying is absolutely spot-on. I think that has been the asset of our response here. We are now doing stuff with the Victorian Country Football League to support their cyber policies. We have just had meetings with Koori WebWise, for instance, here in Melbourne. We are trying to make the stuff that we are doing in Macedon Ranges bigger than Ben Hur.

The CHAIR — So is it the view of Macedon Ranges that every instance of sexting which involves a child — given that regardless of how it is produced, it is still by definition child pornography — is referred to the police or is there discretion undertaken by Macedon Ranges as to whether the police get involved or not?

Ms NEIL — I think the answer to that sits with some of the schools. I think what happens is schools to some degree will use their own discretion as to whether or not they will produce it up the chain. Whether they view it as a mandatory reporting issue I cannot tell you.

Leading Sr Const. GRBAC — Sorry, I feel like I have got to jump in here. We have had that situation with John North from the critical incident unit in the education department. We have had those discussions with him. We have also gone out to the schools to explain duty of care and that schools have a duty of care which is greater than that of the ordinary citizen and that they can be held liable for failing to take action. Clearly for kids at risk they have to notify.

The CHAIR — Is it mandatory, though, for schools to notify the police of a sexting incident?

Leading Sr Const. GRBAC — We have protocols. With a child at risk I suggest they probably are mandated. The problem is that sometimes the schools will do their investigations and then it is about having to expedite it.

Ms COLE — Yes, it is whether the school actually understands it as being serious enough. Sure, our local schools probably do now because that is the way they have been educated.

Leading Sr Const. GRBAC — We have been very successful.

Ms COLE — But it is how we understand sexting: do people understand it as being a serious crime and so then do they report it?

Det. Sgt BRUNDELL — Let's face it: schools are not going to become aware of images or videos where two kids are consenting and that is where it has remained, between those two kids. Schools are not going to be aware of that; no-one else is going to be aware of it as there has been no breach of privacy or trust or consent there. So the only ones the schools are going to become aware of is where there has been some sort of breach.

Ms COLE — When things go wrong.

Det. Sgt BRUNDELL — When things go wrong. Now, in those circumstances should the expectation be that they report those matters to police? Why has it come to their attention? It has come to their attention because it has gone wrong.

Ms COLE — It is serious.

Det. Sgt BRUNDELL — Therefore should it be reported to police for further attention? I say yes, so long as there is the ability for police to apply discretion and there is the ability once again — and I will keep harping on it — to apply another stopgap offence between the incident and child pornography.

Ms COLE — Yes, I think it came up in our interviews and discussions that the school in this case was reluctant in the first place to report it to police probably because when the police come to you with charges of child pornography — or that is how you will be interviewing people — I guess they are really worried about what that might mean for their reputation or the reputation of their students.

Mr CARBINES — I would like to ask a question of Shane in particular. Obviously we have been grappling with how we might address issues for youths and sexting and how we might better apply the law in those instances. When we are suddenly moving into an adult population in relation to sexting and how the law is

applied, has it been your experience that there is a different common thread in the scenarios involved? Given that at the moment we spend a lot of our time grappling with how we might make changes in relation to those who are not 18 and the sorts of instances that are more common in the school environment, as the law applies, is it fair and reasonable? Does it suddenly change so dramatically, or is it more reasonable to think that the sorts of dealings you have with Victoria Police for that different cohort means that the law as it stands works?

Det. Sgt BRUNDELL — We do not get so many cases. I am only aware of one report where there have been consenting adults involved in a sexting-type issue where the relationship has gone sour and then, subsequently to that, the other party has seen fit to send those images on in an attempt to get back at the other person. Apart from that, every other report has been in relation to people who are under 18, and largely they have been initiated by very concerned parents when it has come to their attention that their child's reputation is concerned, images of their child have gone viral and they want some action, because something has gone terribly wrong.

In relation to adults, we are not seeing the same issue. I am not seeing the same issue. We are just not getting those reports. Is that because the law is sufficient, or is it because with mature heads people are aware of where the line in the sand is, so they do not engage in the same risky behaviour?

Mr CARBINES — I just wanted to be clear about — really reaffirming where the — —

Det. Sgt BRUNDELL — I am not seeing the same issues arise.

Leading Sr Const. GRBAC — I guess the issue of violence against women would be another consideration here. It is nice to be able to distinguish that, if we have a strong victim here, it does not make any difference; the offence is there. But I still think that we should offer protection for people in an adult sphere as well. There might be the issue of that activity, for instance; but then if it is in terms of the youth area and if it is exploitation of youth, maybe it is an aggravated set of circumstances. I do not know, but there are options there. As we do with assaults, for instance, there can be aggravation depending on circumstances. Maybe that is available through the sentencing process as different alternatives.

Mr CARBINES — We had Women's Health West here, and they talked about assault or abuse through telecommunication devices in the context that you are talking about.

Leading Sr Const. GRBAC — Yes, so that military situation if you like.

Mr CARBINES — Yes, all of that.

Det. Sgt BRUNDELL — If there was force, fear, fraud, misrepresentation and all of those sorts of things in relation to adult parties, then is that consensual? You would have to say no, so those protections need to be built in.

Leading Sr Const. GRBAC — There is also the issue of withdrawn consent where it starts off as a loving relationship and freedom, but now those images have turned into weapons. That is where it has to be — —

Det. Sgt BRUNDELL — It is so damaging. It goes viral so quickly and is so damaging.

Ms KARENA — One thing is the exploration of this issue has raised a perspective that we may not have looked at as strongly before, because we are now involved in a prevention of violence against women program. This has emerged as a type of violence against women that really is not well understood. We know that it happens, but we do not have the legislative framework to deal with it effectively. I think what it has done is underline the success of our approach in working with young people around respectful relationships and equity and non-violent responses. I guess we are seeing that the way forward is around educating young people so that the situation does not arise in the first place and they understand the implications of the behaviour that they are engaging in. We are looking at how we can strengthen both the partnerships that we have with the other agencies and the programs that we are currently running with young people to really reinforce that message and make sure that it does not arise.

Det. Sgt BRUNDELL — Education is the key. Prevention is better than cure.

Leading Sr Const. GRBAC — And a whole-of-community response, not just selective groups. They can be like your football clubs that acknowledge that, it can be netball clubs, it can be the community health centre response — the partnerships that are established — not just relying purely on the legislation to fix it all.

If you look at the Quit campaign, for instance, why has it been successful? It is because it is becoming antisocial to do that sort of thing. It is at multiple levels, through OHS and all the rest of it that there has to be a global response.

The CHAIR — Thank you very much for, first of all, preparing your submission. Obviously a lot of work has gone into it. We greatly appreciate the work you have put into that to help us in grappling with this complex issue and also your taking the time to come in today to talk further about those issues. It is commendable that Macedon Ranges seems to be on the front foot on this and you have come up, of your own volition, with some responses that seem to be working. We will certainly take those into account when we are preparing our report to Parliament. Thank you.

Ms NEIL — I will leave the *Photograph*, which is the educational tool that we use. It depicts a classical sexting situation in a school.

The CHAIR — Is that a film you have produced?

Ms NEIL — It was produced in Bendigo with some local schoolkids.

Ms COLE — But local police were interviewed for it.

Leading Sr Const. GRBAC — As a result of what happened at Macedon Ranges we have had a lot of communication; we came down and we were able to transfer a lot of the material that was successfully done. We were able to get it to the youth advisory unit police and then had it disseminated statewide, again acknowledging the fact that there are no boundaries for this stuff. That is where we have been doing that so that wherever you go in Victoria your response will be the same; that was the hope, and I guess that is what we are still looking at.

The CHAIR — I saw what I think was a federal short movie on YouTube that goes for about 2 minutes.

Leading Sr Const. GRBAC — Some of the ACMA material?

The CHAIR — Yes. Looking at that, it seemed very effective.

Leading Sr Const. GRBAC — You will enjoy this one.

The CHAIR — How long does that go for?

Ms COLE — Fifteen minutes.

Leading Sr Const. GRBAC — It is a whole concept. It goes with just a scenario, then post interviews with the people staying in character about how they should have responded and how they felt about it — great stuff — interviews with police and community members. It is a whole community response. It is a very good resource.

Ms COLE — We had a theatre of year 8s almost booing one of the characters as he was speaking about his response, ‘Well, she’d put it up there anyway, so what’s it matter?’. It is a great tool.

Leading Sr Const. GRBAC — If he had been in the audience, he would have been in a bit of trouble.

The CHAIR — Thank you very much.

Witnesses withdrew.