

CORRECTED VERSION

LAW REFORM COMMITTEE

Inquiry into sexting

Melbourne — 27 August 2012

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Mr D. Flynn, Victorian State Director, Australian Christian Lobby.

The DEPUTY CHAIR — I am Jane Garrett, the Deputy Chair and acting as chair today, of the Law Reform Committee. Clem Newton-Brown, who is the chair, is an apology; he is at a funeral and is sad that he could not be here. We are an all-party committee, and obviously today we are holding a public hearing into the sexting inquiry. We will be inviting you to make a short submission. Just be aware that what you say in here is covered by parliamentary privilege, as it would be in a house of Parliament, but anything you say outside would not be so covered. I will now ask you to state your full name, your professional address, the organisation you are representing and the position you hold within that organisation.

Mr FLYNN — My full name is Daniel Flynn. I am the Victorian Director of the Australian Christian Lobby.

The DEPUTY CHAIR — Thank you. You can assume that we have read the written submission, so we just invite you to speak for 10 to 15 minutes to that, with anything you would like to add, and then the committee members will ask questions as appropriate.

Mr FLYNN — I indicate first of all that the submission that has been filed makes a few references to ‘minors’, which would probably be better said as ‘young persons’ to broaden the scope of it.

It is to be applauded that there is an inquiry in relation to sexting. It is clearly something that is becoming more prevalent — and the reports and various submissions filed indicate that — the biggest risk being that once an image is taken and forwarded, however consensually, it affects the digital footprint of that person permanently and can be circulated to the permanent damage of that individual and the mental health issues that follow. One of the matters that is certainly raised in this submission is that of Jessica Logan in 2008. She was from Cincinnati, Ohio. Her picture was circulated and went to a number of high schools. She went on television to talk about that, but a few days later she committed suicide. The nude image of her was just something that was not going to go away and had a serious impact.

When I consider the Australian Christian Lobby’s submission against a lot of other submissions, perhaps we are in the minority in that it is our submission that sexting should not be decriminalised, and I will come back to that in more detail.

Clearly the current legislative framework needs to be amended. We have a situation now where people over the age of 18 who are involved in sexting and found guilty must be placed on a sex offenders register for a long period of time, and that needs altering. There is a legislative way forward here and there is an educational way forward. It is certainly the submission of the Australian Christian Lobby that the Victorian government should actively discourage sexting through educational and awareness activities as a priority and that much more can be done in that way than can be done by the blunt axe of the law, so to speak.

There has been a Victorian Law Reform Commission report on sex offenders registration, tabled in April this year, recommending the individual assessment of offenders rather than the automatic inclusion of offenders on the sex offenders register for offences which currently require registration. This move is supported by the Australian Christian Lobby.

In relation in particular to sexting, there has been some work in various United States jurisdictions to change sexting from a felony to a misdemeanour, to have some discretion about whether the offender should be on a sex offender registry and in some cases to do away with that. We support any amendment that would ensure that the punishment matches the offence for young people. Our submission says:

ACL strongly opposes decriminalisation of sexting, but acknowledges that the penalties can be quite onerous and may be inappropriate and disproportionate for some minors —

I would be grateful if you would read that as ‘for some young people’ —

For this reason, ACL supports the application of judicial discretion, especially in relation to placing sexting offenders on the sex offenders register.

The decriminalisation of sexting has this problem: once it is seen to be okay then it is likely to increase. People will be more attracted to the idea of doing it, and the message will be that this is now okay. It may lead to greater pressure on young people to send and onsend images.

Publishing other submissions online on this committee's website has been an excellent initiative. I have been able to read some of those. The Criminal Bar Association of Victoria made a good submission which speaks about Victoria Police being able to include sexting within the diversion program. That would be a healthy outcome for situations where young people are exchanging these photographs and are caught up in an offence. There could be some sexual counselling as one of the terms of the diversion program. There is also the position put by the Child Safety Commissioner, which is that there needs to be a balanced and graduated approach to sentencing. We support that. Judge Grant of the Children's Court has made submissions relevant in this regard, and we generally support those.

This is a little bit like seatbelt legislation for young people who send these images. The vice, done to themselves in an ongoing way, is so significant that it ought not to be taken off the statute books. We do not submit that it needs to be a child pornography offence — it can be an offence worded in a different way that does not carry that level of stigma — but it ought to be an offence nevertheless. One wonders whether it could be something that could even be dealt with by way of an infringement notice for somebody who sends, consensually, an image that is likely to later cause them damage. The beauty of an infringement notice is that once it is paid the matter is expiated and there is no record of ever being charged with an offence. That would be a great outcome for those at the lowest end of the scale. The police are generally the best placed to assess the criminality and the intent of those who send these images.

Another matter that is raised not only in our submission but also in other submissions is that sexting takes place in a culture of pornography. Pornography is easily accessed on the internet, including through mobile phones, and we have a sexualisation of culture that is prevalent and puts the wellbeing of children at risk. A recent Senate inquiry said exactly that. I note the Alannah and Madeline Foundation's submission on sexting, which said it is as part of an image-sharing culture in a sexually permissive society and that it is perhaps unrealistic to expect children to live up to a higher standard than we set for the rest of society. That is a point well made. The Child Safety Commissioner, who has made a submission to this committee, speaks of the negative impact on children and how this explosion of digital technology and the sexualisation of the culture make it a complex world to navigate. Again it is police who can sort through the criminality involved.

The women's health group from the Grampians, speaking on the sexualisation of culture, says that advertising and music clips are becoming increasingly sexualised and sexting provides a digital forum where this sexualisation of young women can occur. It is generally young women who are exploited in this way. The Australian Christian Lobby has made several submissions to federal Parliament in relation to a filter for refused classification material. This federal government — the Australian Labor Party — prior to the 2010 election made a promise to implement an internet filter to prevent refused classification material coming through the internet. That has not materialised, but it is suggested, given the number of people who say that this is part of the sexualisation of culture, that that is one tangible thing that could be done. We as citizens cannot readily access X-rated movies unless we opt in by going and particularly seeking a product. In relation to the internet, there is no barrier, and there is no relevant child supervision. That is to be seen in this context.

In conclusion, the recommendation, as I mentioned, is that sexting not be decriminalised, but that there be discretion about whether or not an offender is placed on the sex offenders register. Where an adult is guilty of sexting but the sexting is consensual and within a genuine relationship the court should have discretion to determine whether the offender is placed on the sex offenders register on a case-by-case basis. Caution should be used in drafting legislation to ensure that there are no loopholes which allow genuine predatory adults to avoid being placed on a sex offenders register when guilty of producing or transmitting child pornography.

There has been talk about Victorian schools implementing a code of conduct, and that is certainly supported. The idea of that is that the schools would have to give an account to the department of how that code of conduct is being implemented. It is a major point in this submission that there be acknowledgement that this is in the context of the sexualisation of society, which has damaging impacts on children. One practical step that can be taken is to block refused classification material.

Mrs PETROVICH — Thank you very much for your submission. You draw parallels between pornography and highly sexualised society, and sexting has obviously become a disturbing part of that. The question I have is: how do we send a message in this environment to inform all members of the community, particularly young people, about the risks of sexting?

Mr FLYNN — I think it is a deep educational program within the schools. I think it is a little bit of a taboo topic in the schools; principals are probably reluctant to raise it because children might think it is a great idea and be attracted to doing it. However, there needs to be some deep work done, community police attending and probably reference to some of those bad outcomes, such as the case of Jessica Logan in Ohio. There is a similar one in Florida involving a young girl of 13. There should be mention of the connection between these images and the bullying and harassment that can result from them, such as the way it might play out when a relationship or friendship is over and someone is in a position of power holding a particular image. I think some good scenario working, and perhaps the department of education employees working together on that.

Mr NORTHE — Daniel, just to clarify the position in respect to, say, two 16-year-olds who are in a consensual relationship and undertaking sexting, mutually agreeable, is there a difference between two 16-year-olds and two 30-year-olds consensually sending sexting material? Is there a distinction, as you would see, between the two if it was consensual?

Mr FLYNN — The distinction that exists at the moment is an image of one of the 16-year-olds or both the 16-year-olds will be child pornography as defined because one of the participants is under 18, or the image is under 18. The short answer is yes. With two 30-year-olds, I suppose you could say that their brain has better developed and they have a better understanding of the consequences of their decisions. I think it is really about putting the children first and providing some protection around that, so there is quite a big difference, but then again if the 30-year-old behaviour is associated with bullying and harassment, then they should feel the full force of the law.

Mr NORTHE — Just a comment if I could, just to say that obviously, Daniel, with the recommendations that you have made, they are very consistent with a lot of the evidence that we have heard thus far.

The DEPUTY CHAIR — They are very considered.

Mr NORTHE — Congratulations on your submission.

Committee adjourned.