

CORRECTED VERSION

LAW REFORM COMMITTEE

Inquiry into sexting

Melbourne — 10 December 2012

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Dr A. Shields Dobson, School of Political and Social Inquiry,
Dr M. Rasmussen, Faculty of Education, and
Dr D. Tyson, School of Political and Social Inquiry, Monash University.

The CHAIR — Thank you very much for coming in. We are a cross-party group that has been put on the Law Reform Committee, which is one of a dozen or so committees in Parliament. We are separate to government, so we get references and we report back to government with recommended changes to law. This is our third inquiry. Thank you very much for your contribution and for coming today. There has been a bit of media interest about this, particularly today, so if you are asked questions outside the room, you do not have parliamentary privilege, but you do have it here in the room. The hearing will be recorded by Hansard. Could you start with each of your names and professional addresses for the purposes of the recording and then launch into taking us through your submission?

Dr SHIELDS DOBSON — I have prepared a brief statement in relation to expanding on a few of the points, and then I will pass over to Danielle to say a bit about summarising our position under the law. My name is Dr Amy Shields Dobson. I am from the School of Political and Social Inquiry at Monash University.

Dr RASMUSSEN — I am Dr Mary Lou Rasmussen. I am from the Faculty of Education at Monash University.

Dr TYSON — I am Dr Danielle Tyson from the School of Political and Social Inquiry at Monash University, in the Department of Criminology.

Dr SHIELDS DOBSON — Our professional address is Wellington Road, Clayton 3800.

I wanted to start by saying that we welcome this inquiry, and we are very grateful to have the opportunity to contribute to it, so thank you very much for inviting us here today. I will go straight into what I think I would like to say in terms of awareness and education interventions that I think we need in this area. We need more integrated, holistic approaches to the issues that sexting raises. The issue of sexting raises things like gender power dynamics, respectful relationships and ethical decision making. Education interventions that focus more on ethical decision making are necessary for both girls and boys. We think girls are disproportionately addressed in some of the current popular videos that are being used in this area.

Those are the two points I am going to expand on more today, but I wanted to summarise at the start by saying that, thirdly, education interventions that are informed by young people and their experiences of sexting are really crucial here, both negative and positive experiences of sexting. This should provoke discussion with rather than at young people, as several submissions have now highlighted. We need qualitative research into young people's cultures and how technology is a part of these cultures, and such research could be used to vastly improve the current education resources we have in this area.

I want to expand on what I mean by why we need a holistic approach to the issues that sexting raises. Quite a few submissions have mentioned that sexting is not necessarily a term young people are using to describe their communication practices, and our view is that the kind of singular focus we have seen on sexting is unhelpful, particularly when we are talking about teens and young people and their gendered social cultures. So we think that sexting incidences are very important because they highlight how the social sexual pressures that young people face are very different for girls and boys, and often very intense.

The CHAIR — In relation to the term 'sexting', is there some other term that is being used?

Dr SHIELDS DOBSON — When we talk about this issue in writing about it, I always use the term 'mediated sexual communication' or 'digital sexual communication', because I think we have to try to be as precise as we can when we are differentiating between different types of sexual communication, right? In this inquiry you guys have been talking about a range of different practices that go from consensual image swapping, perhaps text messaging as well, right down to the filming of abuse and the distribution of the filming of abuse. I think it is important to be precise in what we are referring to, and that is why I think it is also important to steer away sometimes from that term 'sexting'. Of course the term 'sexting' has also become quite provocative, and the way that it has been picked up by the media sometimes serves to glamorise or incite this behaviour in certain ways, so that is why I make that suggestion there.

So I think we kind of have to be clear here that it is not the technology that produces the profoundly gendered sets of risks and harms that we are seeing emerging in reports around sexting practices. Rather, many of the harms reported by young people and researchers and practitioners in this inquiry stem from much broader

sociocultural gendered double standards around sex and around the objectification of women's bodies in media culture.

The kind of sexist cultural dynamics we can see evident in some of the emerging research into sexting, both here and in the UK, are the same sexist cultural dynamics that have been part of our media landscape for a long time now. I am referring, in relation to the research into sexting, to the way in which it seems that, first, images of girls' bodies function as social currency, there is pressure on girls to display a certain kind of sexy body and pressure on boys to display a strong interest in heterosexual sex, and where girls must also then police themselves and their desires because they are still socially shamed for demonstrating any kind of sexual desire.

That is why we say we would like to see the underlying gender issues and gender peer cultures addressed further here in relation to our responses to sexting, rather than the abstinence approach to sexting, which treats the technology itself as a problem. We are suggesting that a lot of the harms that are coming out of this are related to underlying gender peer dynamics here rather than just the technology itself.

I would like to say a bit more about what we see as a bit wrong with some of the prominent current videos that are being used in this area. Several submissions have pointed out that we do not know the effectiveness of the videos, or really any of the education responses that are being used, like *Tagged, Megan's Story* and *Photograph*, which are the ones we have seen mentioned quite often in this inquiry, so we need longitudinal studies and research in this area. But behaviour change through scare campaigns and abstinence approaches is unlikely based on what we know about media effects, about young people and risk-taking and also about social constructions of youth. I want to explain a bit more about what I mean by that.

Nina Funnell says that teens are likely to perceive authorities as liars if some of these severe and harsh legal consequences and social consequences that we have been talking about and which are depicted in our education campaigns have not manifested for them, and we can presume that this is the case for young people, because this is an area where it has been said that underreporting is massive. So we can presume that a lot of young people may be engaging in this behaviour and not experiencing the harsh legal and social consequences that are depicted in those scare campaigns. This has the possibility to mean that young people do not take those warnings seriously. We think that is a real issue.

In fact we are warning that this kind of really harsh scare tactic, warning campaign approach may incite sexting behaviour. We say this because youth research tells us that young people are unlikely to respond well to risk-focused warning campaigns because participating in risk-taking behaviour is part of the appeal for a lot of the behaviours that we are talking about. That is true in regard to a range of risky behaviours like drinking, drug-taking and sex.

We also know that for years now in our media culture constructions of coolness for youth have focused around risk-taking, participating in dangerous behaviour, rule-breaking and so on. In my research into the way that young women represent themselves on their social network site profiles we can see clear examples of this. I have seen the way that young women are constructing their identities around qualities like wildness, being random, being spur of the moment, being outrageous in their behaviour and so on. This is the kind of identity that I think they are trying to produce on their own social network sites. So we see them depicting drinking behaviours, we see them depicting raunchy photographs and all of this kind of stuff.

Young women are in a real double-bind I think here, because in some ways the sexting practices that we are talking about fit very well into this popular construction of youth as dangerous and deviant, and it also fits well into the popular construction of girlhood. But at the same time we are seeing girls still being incredibly harshly socially punished for this behaviour.

The CHAIR — When you say 'harshly punished', you mean that — —

Ms GARRETT — Shamed.

Dr SHIELDS DOBSON — Shamed.

The CHAIR — By?

Dr RASMUSSEN — By peers and by families for being involved, being culpable themselves in the sexting.

Dr SHIELDS DOBSON — Scared about telling their families, scared about telling in a range of — —

The CHAIR — This is once a picture goes viral you are talking about?

Dr SHIELDS DOBSON — Yes, or even if they are just worried about that possibility that a picture will go viral. That sense of shame makes it very prohibitive for them to talk about this.

The CHAIR — One of our people who gave evidence — I do not know who it was — suggested that maybe we are making too big a deal of sexting in that the people who do it know what they are doing, they are putting themselves out there and they are not actually that fussed about other people seeing naked pictures of themselves. Do you have a response to that?

Dr SHIELDS DOBSON — Look, it is really hard to make generalisations about that, isn't it?

The CHAIR — Of course it will be difficult, yes.

Dr SHIELDS DOBSON — Of course that is going to be the case for some young people, but I would not want to generalise and say that that is the case for girls across the board. I think they are experiencing unintended consequences a lot of the time from this behaviour and a degree of social shaming around this behaviour that is really intense. But again I would just reiterate that I think that the harms that they are experiencing stem from much deeper problems with gendered peer relations rather than the technology itself, so that is why I am suggesting — —

Ms GARRETT — Through you, chair, I certainly agree with that, absolutely. I think the gendered nature of our society impacts girls in a completely disproportionate way to boys in a range of areas. I suppose the issue I have with this is that we want to confront it in a way that does not reinforce stereotypical views of girls and shame and all of those things which have dogged our gender since time immemorial, but also want to deal with some reality that we are not making young girls be the example to change all of that. It is the chicken and the egg, and all of it is critical. But at the moment I think it is fair to say that it does have a disproportionate impact on girls; girls are shamed.

Dr SHIELDS DOBSON — Yes, that's right. I can totally see why there is that impetus to focus on girls and the social consequences that they face, and to warn them about that, but I think the risk is — —

Ms GARRETT — You have to have a holistic approach.

Dr SHIELDS DOBSON — Well, I think the risk with that is in reproducing that that is a natural consequence, you know? What happens is the underlying kind of gender dynamics become more invisible when we show what happens to the girls — —

Ms GARRETT — To the young girls.

Dr RASMUSSEN — Which is what happens currently in those media campaigns, because clearly they see that there is — —

Ms GARRETT — It is all on the girl.

Dr RASMUSSEN — It is all on the girl. I think we have made that point though — —

Dr SHIELDS DOBSON — Yes. And I think there are ways of doing it that we can explore here — that you can consult with researchers and with gender researchers in particular. But there are ways to educate people about what it means to interact with digital spaces and that, like I said, needs to happen in a very holistic way. It needs to be something they hear from their librarians, from their sex education teachers, from their English teachers, across the board — what does it mean when you are using your phone or when you are talking online? It means that that can be very easily copied and pasted into other contexts. There is a way to do that without linking this directly to sexting and the deviance and risk involved in sexting.

The CHAIR — Just before you move on to that, just going back to the gender issue and the disproportionate shaming of girls, if the harm is greatest to girls in all this, why would we not be focusing on girls in our media campaigns to try to prevent them from engaging in that behaviour?

Dr RASMUSSEN — The issue is the way the focus is happening on girls. If you think about young girls, an analogy is pregnancy. Often the focus is on young girls getting pregnant, and still that is often the case, but actually young boys are involved as well in getting girls pregnant. What we are saying is that an education campaign has to focus on the boy and the girl, and currently what is happening in education campaigns is the focus is on the girl and her responsibility and not getting herself into the situation. Is that clear?

Dr SHIELDS DOBSON — And it is quite often focused three steps down the track, isn't it, of what has happened after she has often been pressured for an image, she has sent that image and someone else has taken it on? Wouldn't it be great if we could see some examples of where young people are making positive decisions in this regard, where a girl is getting pressured and she has to think about that and make a decision and she tells the boy to bugger off? We know that happens in young people's culture. Wouldn't it be great if we could sort of incorporate that moment of ethical decision making? Then for boys as well — what happens when he has received an image and he is getting pressured by his mates to show it and he has to decide what he is going to do.

Mrs PETROVICH — Is it as simple as that, though? We are looking at a highly sexualised community and we are looking at young people now viewing a lot of stuff that we would not have seen when we were growing up.

Dr SHIELDS DOBSON — Totally.

Mrs PETROVICH — Many of the young women I speak to say, and some of the evidence we have heard both here and internationally says, that young women are making these decisions. Surely some are being pressured — and I think the bugger off analogy is pretty great — but many of these women are making these decisions based on how they want to portray themselves in a cybersociety.

Dr SHIELDS DOBSON — Yes, because there is a lot of pressure on them to present a sexualised self-image.

Mrs PETROVICH — There is, and if they make that choice, I think they need to be supported in that choice.

Dr RASMUSSEN — We all agree with you on that point. We completely agree. I think that what Amy is focusing on here is non-consensual distribution.

Mrs PETROVICH — Sure.

Dr RASMUSSEN — We all agree with you that we need to distinguish between consensual and non-consensual distribution.

Mrs PETROVICH — Absolutely.

Dr RASMUSSEN — And to also have a starting point in education campaigns, which is recognition that consensual sexting is a part of young people's cultures.

Mrs PETROVICH — Communication and the way they express themselves.

Dr RASMUSSEN — And again ethical decision making is a part of that, in thinking about how they engage in ethical sexting practices and then how that might become non-consensual.

Mrs PETROVICH — So to lead on from that, the next step is again not to put it all on young women, but to say that this is a community issue and that as a society we all have responsibility for how young people are treated. From an educational point of view, I agree with you wholeheartedly that we cannot be punitive — and we cannot instruct, because they certainly do express themselves in this way. How do we get that message to young people, to say, 'This is acceptable if this is where you want to be, but understand that once that message is sent then you lose control.'?

Dr SHIELDS DOBSON — This is my point, okay? Once that message is sent and you lose control, my question about our whole approach to cyberbullying and sexting within that is why quite often in our approach to cybersafety campaigns are we implying a degree of self-blame, when what is actually going on there is that

that young person has put out an image and then they are experiencing harassment and abuse? Let us be clear about that: they have done something and they are experiencing harassment and abuse. It would seem pertinent in such cases not to blame victims. We need to make it clear, I think, to children and teens, as we do in other kinds of abusive situations, that they are not at fault, that even if they did engage in digital behaviour in ways that we see as risky, they did not invite harassment and abuse.

Ms GARRETT — Would that not be, then, where you would say that those who engaged in harassment and abuse should be subject to some form of offence?

Dr SHIELDS DOBSON — Yes.

Dr TYSON — In terms of the education campaigns, we have done a small amount of observing of the delivery of education in a school context. The way it is delivered is a very punitive approach, a kind of abstinence, ‘Don’t do it; don’t go there’, and a blurring of the boundaries between consensual behaviour. In fact nothing is discussed around what young people are doing with their digital communication and what is consensual and when it tips over. It is really just completely blurred. We were staggered at it. This is what is happening at the moment for schools, so no wonder they are not able to distinguish and work out: where is this ethical moment at which I could do something different?

For example, the other thing is that the threat that you will be charged with child pornography and end up on the sex offenders registry looms large when in fact we know from submissions here by Vic Police how many people actually are on the sex offenders registry as a result of a sexting scenario. I believe it is one to three. So what are the other laws that you could be charged with, or what about empowering those who feel victimised, boys as well as girls, to be educated about what the other charges could be or where could you seek redress within the law for the harms that you are experiencing? There are different types of harms and none of that is distinguished in the education that we are seeing when people go out and speak to 400 students.

Ms GARRETT — I certainly have concerns about the education campaign. I think we do not have a handle on it. Today we heard that some schools are opting in and some are not. There does not seem to be any real consistency. I do not know what research it is based on.

Dr RASMUSSEN — Sex education is my area of expertise, so I can tell you quite confidently that there is no consistency at all across Victoria in sexuality education at any level. There are lots of recommendations but none of them are enforceable because none of them are a compulsory part of the curriculum. Depending on what school you are at, you might get some or you might get none. Victoria is recognised as leading in Australia in sexuality education.

Ms GARRETT — I know. God knows what is happening in Queensland.

Dr RASMUSSEN — What I would like to see as a recommendation from the committee is some sort of compulsory element that says that we need to. If we are really serious about this and we really see it as an education issue, it actually needs to be mandated or else it will not happen. It is also about pressures. People talk about the overloaded curriculum. It is completely overloaded. Teachers are not just saying that; they are making difficult choices about what to include. But I think that we do need to see this as something which is a priority in the curriculum and therefore it needs to be made mandatory in some way.

Dr SHIELDS DOBSON — I think I have summed up most of the points I had about the education campaign.

Ms GARRETT — It has been very helpful.

Dr TYSON — To sum up our position, obviously we do not think the criminal offences and application of the sex offenders registry are appropriate when applied to children and young people. Obviously there is a disparity between media reporting and the sort of panicked responses by — —

The CHAIR — Just before you move on, do you think there should be some offence?

Dr TYSON — We see police and judicial discretion as key, but we do not really know what police are doing in terms of charging practices. Given that a range of civil and criminal laws as well as state and federal laws can apply in these situations, we do not know what police are doing. Obviously there are inconsistencies. Until we

have research about what police are doing, we do not know. They could be doing a whole range of things. There could be other offences that we could use. I believe that a gentleman spoke just this morning about different laws that could be used. We could be using the Commonwealth laws more for unauthorised dissemination of images.

The CHAIR — So you would be supportive of more charges being laid but of a less serious nature than child pornography, as a deterrent?

Dr TYSON — No, I would not. I think we would have to go back a bit.

Dr SHIELDS DOBSON — We have been talking about this for a long time.

Dr TYSON — Yes. What the police are doing at the moment obviously on the face of it is a good thing. I understand that there are concerns that the police are dealing with this issue by not charging but by cautioning and keeping young people out of the criminal justice system through diversion programs or whatever they are doing. I think that is great. I do not know much about that area; it is not my area of expertise.

Dr SHIELDS DOBSON — We are talking about non-consensual redistribution.

Dr TYSON — Yes.

The CHAIR — So you are happy for that to remain as it is?

Dr TYSON — Obviously one of the things we have done since we made our submission was read the rest of the submissions and what evidence the other parties have given to the committee. We think that so far the best list of recommendations would be those by the National Children's and Youth Law Centre. They make a number of recommendations, but in particular they make a number about dealing with the inconsistencies in the legislation around sexting, so recommendations 4, 5 and 6; and recommendations so that there are not overlapping and inconsistent laws, which would help with inconsistencies and that the Sex Offenders Registration Act should be amended to provide courts with discretionary powers to determine whether offenders over 18 should be registered. So police discretion is important, and they are obviously already exercising it. Judicial discretion is important but they only have it in the Children's Court for people under 18. We think they need it also for over-18s.

Dr RASMUSSEN — I suppose my concern with having a new offence for sexting is that inevitably certain groups of people get captured by the design of new offences. There are always certain populations that are more likely to be captured, and I think that who gets captured in that law is inevitably going to be problematic.

The CHAIR — Does that mean you are happy to put the power and the faith and the trust in the police to exercise discretion appropriately?

Dr RASMUSSEN — I think it depends on how we advise the police on what constitutes discretion, and if we were clearer about that, that might be a preferable state to having more legislation.

Ms GARRETT — That would then have child pornography remaining as the offence.

Dr TYSON — None of us is a lawyer — I am a criminologist; I do deal with the criminal law but I am not a lawyer — but there are defences that could be made more consistent, we believe, across child pornography possession and extending that to distribution as Victoria Police have recommended, and this submission has recommended here that sexting-related defences could be expanded, so there are a number of things that you can do so that it forecloses using child pornography legislation. We have a number of existing laws that could be used.

Mrs PETROVICH — Is this also about intent?

Dr SHIELDS DOBSON — Intent with redistribution.

Mrs PETROVICH — It is about the intent of actually forwarding images in a non-consensual way.

Dr TYSON — Yes. So the police are often talking about the violence done to the victim or their experience of victimisation, which we do not know much about. The Macedon Ranges group presented an incredible submission. They were talking about a young woman who had disseminated an image and a video of herself, and a number of young people who received that image without her consent were cautioned. A year later the young woman disseminates another video to somebody else. It does not necessarily work, but we do not have the research, we do not have the data to know what young people are actually doing and what the harms are.

It is just like with sexual assault. We did not know what it was like to go through a trial or for all those cases not to proceed to court because the police were saying there is not enough evidence to proceed or she is not a deserving victim. We did all that work in relation to sexual offences law. It is kind of like we have some of the same problems cropping up here, and I do not know that new laws are necessarily the answer. The Crimes Act is incredibly complicated already, and perhaps it is about looking at what — and I am not a lawyer so really you are reliant on other submissions here — but I think it is not necessarily a case of saying it is just a breach of privacy so we should use civil law. Clearly there are different experiences of victimisation here that need to be taken into account, along with sexual assault and dissemination of an image without someone's consent as an added charge — whether the police decide to drop that charge and only go with this one.

Ms GARRETT — If you leave it to the civil remedy — we have talked about this — it is up to the victim to pursue it, there are costs involved in that usually, and it takes time.

Dr TYSON — And by all accounts the police are really committed to working with the young people so that they do not end up in the court system, working with the school, and that is what I think the holistic approach also encompasses. It is about working with the schools and the communities, the local police, the safety officers, the council, having a coordinated policy and what the school will do about it. The other thing is we were at a school where they had certain concerns but God knows what the policy in place was. If you do report, what happens? Nothing.

Ms GARRETT — I think that has been a clear indication that there are not enough policy procedures.

Dr TYSON — And that is inconsistent. So some schools have got it right, some communities have got it right.

Dr SHIELDS DOBSON — But just to be clear about what we agree on in terms of what is a harm, we do think the non-consensual redistribution is a harm that should definitely involve some sort of punishment for adults. What we are debating I guess in a sense is whether that involves creation of a new offence or whether there is stuff already that we can use that should be putting policies in place to ensure that those laws are being used but, yes, we do see it as a harm when a consensual image is redistributed without consent either for an adult or a child. I guess what we are more advocating for when it comes to minors, though, is for that to be addressed in classrooms rather than in courtrooms where possible. Not necessarily in every case.

The CHAIR — Thank you very much for that. Does that cover everything you wanted to cover?

Dr SHIELDS DOBSON — I think so, yes.

Ms GARRETT — That was very helpful. Thank you.

The CHAIR — We really appreciate you coming in and all the thought you have put into it, and obviously a lot of effort has gone into reading all the other submissions as well. It was a lot of reading.

Dr SHIELDS DOBSON — It is a very important and interesting inquiry, so thank you for the work you are putting in as well.

The CHAIR — Thank you. We will provide you with a copy of our recommendations, probably in the first few months of next year.

Witnesses withdrew.