

# CORRECTED VERSION

## LAW REFORM COMMITTEE

### **Inquiry into sexting**

Melbourne — 8 October 2012

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Chair: Mr C. Newton-Brown

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#### Witnesses

Mr N. Pole, Deputy Secretary, Regional Support,

Ms K. Arcaro, Director, Student Wellbeing and Engagement Division, and

Ms P. Brophy, Manager, Student Critical Incident Advisory Unit, Department of Education and Early Childhood Development.

**The CHAIR** — Welcome, everybody. The Law Reform Committee is set up by Parliament to inquire into specific references, and this is the third reference that we are looking at. We call for submissions, and then we get people to come in to give evidence and allow us to ask some questions, so it is all pretty informal. We will probably butt in when we think of questions as you are going through your submissions. At the end we prepare a report that goes to government, which then responds by either accepting our recommendations or not. The information you give us is very important, so thank you very much for taking the time to prepare your submission and also for coming today.

Everything is recorded by Hansard, and you are protected by parliamentary privilege for anything you say today within the room but not outside the room. If you could start with each of your names and professional addresses for the purposes of Hansard and then talk us through your submission — not reading through your submission but just highlighting those areas that are most important — that would be great.

**Mr POLE** — I thank the committee for inviting us to come and present. I am Nicolas Pole, Deputy Secretary with responsibility for regional services for the Department of Education and Early Childhood Development.

**Ms BROPHY** — My name is Patricia Brophy. I am the Manager of the Student Critical Incident Advisory Unit, which is situated in the Emergency Management Division within the Department of Education and Early Childhood Development.

**Ms ARCARO** — I am Kris Arcaro. I am the Director of the Student Wellbeing and Engagement Division in the School Education Group, and I have responsibility for a variety of policies related to student wellbeing and engagement, including attendance, bullying, cyberbullying and sexting.

**The CHAIR** — Have you worked out how you are going to present to us?

**Mr POLE** — What I will do is quickly run through the six slides that I have distributed to the committee, and then we can do this two ways: I can run through at a rapid pace and then open it up for questions or we can do it as we go. We will see how the committee responds to that.

**The CHAIR** — Perhaps we will go through rapidly. We have about half an hour.

**Mr POLE** — The areas that we wanted to cover off in today's presentation included the role that the Department has in supporting the promotion of the safe use of digital technologies within schools but more broadly amongst children and young people in the community. Some of our strategies have involved supporting of informed consumer use of technology, supporting parents in their understanding of their children's use of technology and finally the interventions that we have, largely led by Pat and her team, in terms of responding to incidents of sexting or other aspects of cyberbullying.

In terms of the Department's policy settings, we require and expect all schools to be running education programs for children and young people around appropriate use of electronic media and to be supporting children and young people to know the consequences of malicious and non-malicious activities and the risks they are exposed to. I think we highlighted that in our letter to the committee. That role has us presenting and making available to schools and the community a range of resources, and those resources range from curriculum materials to guidelines for teachers in terms of their practices in the school environment to looking at how we might generate and stimulate ownership of these issues by young people themselves. We will touch on one example in that regard of some work that we are doing.

In terms of resources, there are a huge number of resources that the Department has created, and is creating, in order to ensure that schools can keep abreast of issues of cyberbullying and of the risks associated with new technologies. We provide information on how to embed these in curriculums specifically aimed at addressing issues of relationships and behaviour towards others, but equally at keeping yourself safe in a school and community setting. In saying that, we are very aware of the rapid changes in technology, the increasing levels of integration and the merging of technologies into single devices which allow new and innovative ways that those we call 'digital natives', who are very much more experienced, have been able to exploit and deploy.

In terms of the online resources, I will just circulate some material. Critical to thinking about those resources and to those curriculum programs is parental involvement and parents understanding what is being attempted to

be delivered through education. We have a range of resources online which are toolkits that support teachers and provide learning content. In particular recently there was the release of a year 9 module that includes information specifically about sexting. In September of this year was the release of the first of some work we are doing around cyberbullying and cybersafety, which we will share with the committee. That forms part of a wider package around cyberbullying, acknowledging that sexting may be innocent in its genesis or it may be malicious in terms of its use within schools.

**The CHAIR** — Regarding the term ‘sexting’, we have had evidence that kids do not use that term at all. Have you found that?

**Mr POLE** — We have taken different straw polls. Pat had a poll of relatives to whom the term ‘sexting’ was quite common. For my own kids, it was a foreign term to them.

**Ms GARRETT** — Did they have another term?

**Mr POLE** — I think it was ‘texting’ and ‘SMS’. In the information that we are collecting, and this depends on the vagaries of reporting, schools are required to report to the Department issues of concern to them. In the last two years we have had 18 reports of sexting incidents: 4 in the first year of those two years and 14 in the last 10 months. I think equally over time we are getting a heightened awareness of the issue and the differentiation.

In addition to a range of online resources, tools and policy settings about what we are asking schools to deliver, increasing availability is being made to schools of tools where students and staff in a school and everyone involved in the school community can assist their environment — so go on and do an online survey about how safe they feel and whether they are respected in their roles. At present the rollout of a program called eSmart is helping schools in the development of policies and practices around raising awareness and ensuring that schools have policies and practices that support safe and healthy environments for the children and young people who are at their schools.

In relation to interventions, through Pat’s team the Department provides a range of supports to schools, and essentially at the drop of a phone call we are available to support a school should they require support. That support can be in the way of advice on how to manage an incident — for instance, if it is an incident that we believe the police need to be involved in, maybe a police referral or a referral to another agency, through to advice on how to remove explicit material and unsafe material from a particular site.

**Mrs PETROVICH** — Nicholas, if I may interrupt, I am looking at your submission and I just want some clarification. It says that currently schools must contact Victoria Police. Are we talking about mandatory reporting there, or is there a code of conduct, because that seems to be slightly different to — —

**Mr POLE** — That would be our policy guide, unless there is — —

**Mrs PETROVICH** — We are not talking about mandatory reporting?

**Mr POLE** — If it was a situation of child abuse — —

**Ms BROPHY** — Can I answer that?

**Mr POLE** — Yes.

**Ms BROPHY** — It is not mandatory reporting. Mandatory reporting is around physical and sexual abuse, which would be within a familial context really. For anything other than that we would actually advocate that they call the police in terms of sexting because it is potentially an issue of child pornography. Schools rely on police to make a judgement about whether or not there has been any criminal intent. It is different to mandatory reporting, but if there are protective issues around the young people who are involved in these incidents then we would advocate a call to the Department of Human Services child protection.

**Mrs PETROVICH** — Thank you. That is an important clarification. Sorry, Nicholas; my apologies.

**Mr POLE** — We can share with you just some of our guidance in terms of removing inappropriate information. I would say that to the extent to which environments are automated and controllable in terms of

new technology and cyberspace the challenge is keeping up with how to get control of that environment, particularly if something goes viral.

In conclusion, a lot has been done, and I think Victoria should be proud of the work it has been doing in the cyberbullying area and in terms of the online resources it has created. That is not to say we have it covered by any stretch of the imagination, and more is continuing to be done by the Department in partnership with the sector. Thank you.

**The CHAIR** — When you say a lot has been done, a lot has been done, but as I understand it there has been no corresponding decrease in this type of activity. Are we effective in what is being done and are we being effective in what we are trying to achieve or not?

**Mr POLE** — I would say there is a heightened awareness amongst schools, amongst teachers and amongst principals of the concerns around cyberbullying and inappropriate use of technology. I do not think we have definitive measures on what the prevalence and incidence of these events is, even in our own system. In fact some of their knowledge and awareness may be increasing the numbers of incidents that we are aware of. I will put as an example the increase in the alerts department going from 4 last year to 14 this year.

**The CHAIR** — Has your focus been mainly on the cyberbullying aspect which may involve sexting, rather than the consensual sexting that seems to be quite prevalent?

**Ms ARCARO** — Within our work around cyberbullying and bullying we have looked at the issue you are talking about — apparently consensual messaging. Last year a resource was developed by the Commonwealth called *Tagged*, which really looked at this issue in particular, where you have got consensual relationships. Information was provided to schools around the DVD, which is supported by teaching and learning materials, so we advised schools that is something they should be using with their students. We are equally looking at the issues.

**Mr POLE** — I would say it may be consensual at one time and place and at a subsequent time it is less so. The whole issue with electronic media is the propensity to be replicated.

**Mr CARBINES** — Chair, I want to ask Nicholas about non-government schools and whether they are taking up the array of materials that you have taken us through. Is there much engagement around what they are doing in their systems?

**Mr POLE** — Kris and I will both run through it. The first thing I would say is the material that the Department is producing is available to all schools and in fact all jurisdictions around the world — it sits on our website, and I implore you as part of this inquiry to go and look at those resources. In some of the programs we have actively engaged non-government and Catholic schools in this work.

**Ms ARCARO** — The commitments around cyberbullying and bullying are for all schools. That is what this government made a commitment to, so we have been engaging with those sectors in the development and we are making them available. In terms of the levers and tools that we have got to ensure that independent and Catholic schools are utilising them, that is a little bit out of our control, but they are certainly available.

**Ms GARRETT** — I note the term ‘digital natives’. I think that is certainly a fundamental issue as this technology is so rapidly evolving. For parents who did not grow up with this — as we all did not — there is often that disconnect. A lot of this is happening outside school hours, and I understand that is not necessarily your responsibility, but part of getting the message through has to be through the schools. What is your sense about how parents are being educated through this or what could be done better?

**Ms ARCARO** — That little flyer is for parents. We recognise that obviously parents are key partners in this learning process. Resources have been developed at state level and national level, and all of those resources would have a focus on leadership within schools — teachers, young people and parents. As we progress the work around cyberbullying and bullying we have said that it needs to be a whole-of-community issue, therefore we have worked across government in terms of saying what are the different roles and responsibilities of other government departments and agencies in addressing this issue. We want to work in partnership with parent organisations and other organisations.

**Ms GARRETT** — Do you think it would be of benefit if there were organised — and are there organised — parent meetings through the schools or if it was part of the children's initiation into a school? I am noticing so often that people do not know the basics, such as do not let the kid have the iPhone next to the bed. We are learning these things, because we can see when tragedies have happened or people have suffered cyberbullying. Do you think there is a place for that in the way schools could approach it?

**Ms ARCARO** — I think schools already do that. A number of key experts go out and do regular talks and visits with schools and engage with parents. But there are always barriers to parents engaging with schools, so I do not think it is the lack of those opportunities but how parents avail themselves of those opportunities. I think we have got to use different mechanisms.

One thing that we have embarked on with our Department is a concerted communication and community awareness campaign, because we realise there are different ways you need to get messages across to those different groups of people. It is really challenging to get the messages to who you think need the messages — i.e., parents. Over the next three to four months this campaign is going to Cabinet for their awareness and approval, so over the next couple of months there will be more details about that.

Obviously engaging with parents in different ways is certainly what should be happening. Through the bullying initiatives that we are rolling out we are offering school communities grants. We are saying, 'We want you to partner with local government, with other community agencies, with parents. We want you to come up with ways that your community is addressing this issue that is area-based and suits your particular needs'. The grants are quite substantial, up to \$10 000, to create some innovative practices which we can then document and share across the system so more schools — Catholic, independent and government — are able to utilise that information to progress forums.

**Mr POLE** — These technologies have downsides but also upsides.

**Ms GARRETT** — Of course.

**Mr POLE** — A parent knowing their kid who is out visiting friends is only a phone call away gives them — —

**Mrs PETROVICH** — Regardless of whether they are good or bad, we cannot extricate the kids from these things and we cannot extricate ourselves.

**Ms GARRETT** — Exactly.

**Mr POLE** — I have a 17-year-old daughter who virtually sleeps with her iPad.

**Mrs PETROVICH** — Thank you very much for your presentation — interesting stats. I know it is very hard to quantify unreported cases, so it is really difficult to understand whether we have got an increase; you said 14 in the last — —

**Mr POLE** — Ten months.

**Mrs PETROVICH** — Previous to that it was 4. One of the things I have some concerns around is the issue of how we convey to young people that they do need to talk to someone if they have a case of bullying — I think it is mandatory that they should talk to someone if they have got a case of bullying — but if there is some issue around sexting or cyber issues the school counsellor is a person who in very many cases the kid would go to first. An instance that I have been made aware of is that once that had happened the counsellor then reported that issue to the police. The police then dealt with that in as sensitive a way as possible, but there was still the threat of those people involved being put on the sex offenders register. The net result of that now is there are things that do not get reported to the school counsellor. Has there been any thought on how we get that message around? And is the key issue a case of purveying child pornography, and should that be disentangled from the conversation?

**Mr POLE** — There is a lot in that question. I think the role as the Department has seen it is clearly making children and young people aware of the risks, and those risks are clearly legal ones — being identified and placed on the sex offenders register. Clearly young people do not necessarily think of the consequences of their actions when they use and employ these technologies and undertake them. However, I think our view has been

that it sits with the police in terms of their exploration or their investigation. They are taking the judgement — was this malicious, was there criminal intent and so on — when they pursue those cases or choose to divert.

**Ms BROPHY** — I actually think that in terms of the sexting it most likely does not occur on site in schools. It is an external school issue, and yet lots of young people do go and speak to a range of people in schools, not just school counsellors but their teachers and people they have connected with. It is an interesting phenomenon that they do not feel they can speak to their parents about it but bring in a third person. Ironically it would be great if they could go and talk to their parents about it, because there would probably be other ways they could deal with it. But the minute it comes into the school situation, it is critical that we have a process where essentially a crime may have been committed against a young person and that we follow the steps that we do in terms of calling the police.

One of the things schools do really well is have good relationships with their local police, and especially the youth advisory officers, and that they do use them to consult as well, to say, ‘This is what is going on’. I agree they do take a very careful and caring attitude towards it. But if there is some kind of criminal intent, you would anticipate and expect that other things would happen. We would also be very much in that first instance getting parents in as soon as it is known that something has gone on or something is out there in cyberspace that they do not want to share. That is important, too, because that actually does bring parents in to try to work with the school and the police and a whole range of others around it. Once those images are actually sent from one person to a range of people within a school setting it actually does not just become an issue between this person and that person. It actually becomes a whole school-based issue where there can be a lot of young people involved, and then you have a whole range of other things that are going to happen and impact on the one or two people involved.

It is really quite a complex situation within a school as a community, and I think that schools try really hard to try to work with the families and children to get the best outcome. But having worked in schools as a psychologist I think that kids will continue to keep coming and talking to people at school, because that is where they go every day, five days a week, and they have relationships that they have built up. Often, too, even if they do not go and speak to the school counsellor, their friend might on their behalf. So I think we have social workers, psychologists, student welfare coordinators, primary welfare coordinators, secondary school nurses and chaplains — we have a lot of people in there apart from teachers and educators — who are actually in the position to support that young person. We would continue to encourage that and encourage the school to be really up-front about what they are going to do once the child or young person has made a disclosure or shown them something on the camera, on the phone or whatever.

**Mrs PETROVICH** — That was the point of the question, really. Because young people often do not want to speak at home, they do rely on those networks through the school system, and it is very important that those avenues are open to them.

**Ms BROPHY** — I think in the main many young people feel really confident to go and speak to somebody in the school that they have built up a connection with. That is often the teacher, because they are the one they see most often.

**Mr CARBINES** — The committee has received a number of presentations around state schools not having an ability to enforce discipline on students who engage in sexting outside of school activities, and some of the submissions we have received talk about, potentially, modifying some of the ministerial orders so that schools take disciplinary action against students who are online — in regard to indiscretions that happen off-campus — to bring the school into disrepute; potentially, obviously, that would harm other students. Does the Department have examples of how it is grappling with that, and is that an area where there needs to be some further flexibility or change to try to deal with that? How do you do it now, and what do you think of some of those suggestions that we have been receiving?

**Ms ARCARO** — That is an issue that we have been grappling with over the last 12 months or so, and we have been seeking legal advice around that because we are currently amending or developing a new ministerial order around suspension and expulsion under a commitment by this government. We too have received many submissions via email and so forth from principals saying, ‘Do we have the power?’.

Under the current ministerial order they do not have the power to discipline when an incident happens away from the school, or going to and from the school, if that incident has no impact on the good order of the school or the people within it. So if something happened on a Saturday night involving people from a particular school and then there were further ramifications from that incident at the school that impacted on the students there, then potentially they could take some action; where there is something happening outside school that has no impact on the school or individuals associated with the school under the current order, they have no power.

It is something that we are continuing to talk to our legal people about in regard to how we can address that, but it is a really fine line around what does not impact and what does impact. We also do not want to place an undue burden on principals to be responding to every incident that young people get involved in outside school hours, but it is certainly being looked into.

**Mr CARBINES** — Would principals have a mechanism, potentially, to grapple with some of those issues in terms of looking for further support to do that? The other aspect that I would probably ask about then is that those changes potentially would not relate just to sexting issues. There might be a range of other disciplinary or other matters that principals would be grappling with. Is there a sense around what is more of a burden for school administrators who find themselves drawn into these things? What sort of support are people looking for? Or is it just more some clarity around where their responsibility starts and ends?

**Ms ARCARO** — I think there is clarity, but also we need to articulate what supports are available for principals. Through the review of the current student engagement guidelines and advice around challenging behaviour for schools and how to maintain safe and orderly environments we are looking at what advice we need to provide. There are resources sitting outside the education system through justice that in my view principals are not necessarily aware of in terms of how they might utilise those resources to resolve some significant conflict that might manifest in schools. So we are looking at the kind of advice we should provide. I do not know whether, Nick, you want to talk about it from a regional point of view or anything like that?

**Mr POLE** — No, that is all right.

**Ms ARCARO** — I think there are things, and we just need to be directing principals more to what sits outside the system as well as what we have got in the system to support them.

**Mr CARBINES** — Lastly, just on that, and potentially looking at what changes there might be around those sorts of orders and how you might address some of those issues, has that process got some way to go?

**Ms ARCARO** — We are working through that process at the moment in consultation with principal organisations and the AEU. We hope to finalise that by the end of the year for implementation next year.

**Mr CARBINES** — So they will have input into some thoughts about how you might do it?

**Ms ARCARO** — Absolutely. I have just met with VASSP and PASS this morning about that issue.

**Ms GARRETT** — Obviously as this issue evolves the responses evolve. Do you feel that the Department and the key partnerships you are in are grappling enough with the issue that effective responses are being developed to encourage this behaviour not to take place in the first instance? I understand kids will be kids, but given the lasting ramifications of this conduct for somebody's life, how effective do you think it is at making kids try to understand the consequences of their conduct, in terms of both the education and the potential criminal conduct et cetera? Do you think it is effective?

**Mr POLE** — There is clearly a strong platform there in terms of the expectations that schools will be focusing on this area. There is good strong material now to support schools in this. In terms of alluding to the rapid change in technology and trying to keep pace with that, some of their strength lies in using young people themselves to be part of their solution. We were going to share with the committee an example of one of those project initiatives. A girls school is developing an app that can be made available to all students across the state and across Australia so that when these issues occur it will tell them 'Here is where you go; here is what you need to respond to it'.

**Ms ARCARO** — That is right about young people taking part of the responsibility. There is an initiative at Canterbury Girls Secondary College in partnership with SECASA, which is a sexual assault agency. SECASA

has a game that talks about the consequences of sexting and associated behaviours. Canterbury Girls is working on that project to develop the game into an app in partnership with ACMI. That app would then be made widely available to the school community.

Picking up on your point too, eSmart is a major initiative funded by government where there is an evaluation. Whilst it is looking at that initiative in particular it will look at how that initiative is having an impact on the incidence of bullying and cyberbullying. We as a Department will also be looking at some of our new initiatives and how they are impacting on the problem, so we will have some data that potentially we did not have before.

**The CHAIR** — Just one final question: with all this material is your target the parents, teachers and schools or is it the kids?

**Mr POLE** — There are multiple layers in that. The sexting brochure is clearly for parents. There are resources that are focused specifically on teachers, from lesson plans and examples of how they might deliver that lesson through to principals thinking about how they can ensure a safe and healthy environment and ensure that their children are protected. There are quite clear messages in some of these resources for students, and the example of Canterbury Girls is clearly an example where getting young people involved in searching out the problems and how to solve the problems themselves is generating a momentum.

**Ms ARCARO** — We are developing a new online kit around bullying and cyberbullying, and that will have online modules for parents, students and teachers.

**The CHAIR** — Do you have something else for us?

**Ms BROPHY** — I was just going to say that the other arm we have not talked about but that is included in here is the whole issue around sexuality education, because part of what we can do to help keep young people safe is to use sexuality education to teach them about relationships within that and also about all the other aspects as well — the biology and all that sort of stuff within that sexuality education. It is a critical component. We can do all the stuff with cyberbullying and all that, which is fantastic, but that is the other side. I think that schools have to teach that; that is critical. We now have a sexuality education program that goes from prep so they can grow with it. A lot of that information will help to keep them safe, because they can see within that sexuality education context that there are a whole lot of dangers around what they do and do not know. It is about keeping them informed and making sure they understand their bodies and what happens. I think that is a critical factor.

**The CHAIR** — All right. Thank you very much for coming today. It was very helpful.

**Committee adjourned.**