



LAW REFORM COMMITTEE

Media Release

From Clem Newton-Brown, MP, Chair

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PARLIAMENTARY COMMITTEE RECOMMENDS NEW SEXTING LAW FOR VICTORIA

The Victorian Parliament's Law Reform Committee today tabled its final report on the Inquiry into Sexting.

The Committee's key recommendations are for the Victorian Government to introduce legislation to create an offence for the distribution of intimate images or video of a person without consent, and to introduce legislation so that minors who make or possess sexually explicit images or video of themselves or their peers cannot be charged with child pornography offences.

The Committee heard that sexting – creating, sending or posting sexually explicit images, video or messages via the internet or mobile phones – is now practised by a number of adults and minors. While in most circumstances little or no harm is done to willing participants in sexting, real and significant harm can occur when images are distributed to other people without consent.

The Committee recommends that legislation be introduced to make it an offence for any person to intentionally distribute an intimate image of another person without their consent. The Committee believes its recommendation for a non-consensual sexting offence that applies to adults and youth is a world first.

“Currently adults who send sexting pictures to others without the consent of the person in the picture are unlikely to have committed an offence. In stark contrast, however, minors who take or send sexting messages of themselves or their peers produce, possess, or transmit child pornography under the law, and may suffer serious and lasting legal, social, and employment repercussions if they are charged” said the Committee's Chair, Mr Clem Newton-Brown, MP.

The Committee also recommended that legislation be amended to ensure that, in most circumstances, minors who take or distribute intimate pictures of themselves or their peers cannot be charged with child pornography offences. The Committee intends that changes to child pornography laws affecting minors should accompany introduction of a sexting offence.

In making this recommendation, the Committee was careful to ensure genuine child abusers were not able to avoid prosecution for possession of child pornography.

“The Committee recommended that minors who can legally engage in sexual relations with one another should not be regarded as child pornographers if they take a photo or video of that activity. However, if there is more than a two year age difference between the minor depicted in an explicit image or recording and the person who possesses it, it should be treated as a child pornography offence”, said Mr Newton-Brown MP.

The Victorian Government has six months to respond to the Committee's report.

For further comment, contact Mr Clem Newton-Brown MP, Chair, Victorian Parliament Law Reform Committee: 0411 255 179.

Copies of the report are available from the Papers Office, Parliament House, or at www.parliament.vic.gov.au/lawreform

Inquiry into Sexting

Recommendations

Recommendation 1:

That the Victorian Government periodically commission research to examine qualitative and quantitative aspects of sexting practices by children and adults in Victoria.

Recommendation 2:

That the Victorian Government, through the Department of Education and Early Childhood Development, ensure all Victorian schools adopt holistic, integrated programs for internet and communications technologies awareness and safety into the school curriculum.

Recommendation 3:

That the Victorian Government, through the Department of Education and Early Childhood Development, continue to encourage current and pre-service teachers to take part in professional development programs focusing on cybersafety education.

Recommendation 4:

That the Victorian Government ensure that educational and media campaigns directed toward sexting focus on the appropriateness of the behaviour of people who distribute intimate images or media without consent, rather than on the person who initially creates the intimate images or media.

Recommendation 5:

That Victoria Police review its policies to ensure that opportunities are provided for adults charged with offences in relation to sexting-type behaviour, where there is no evidence of exploitative behaviour, to be offered diversion by Police prosecutors.

Recommendation 6:

That the Victorian Government introduce legislation to amend each of the child pornography offences in the *Crimes Act 1958* (Vic) and the *Classification (Publications, Films and Computer Games)(Enforcement) Act 1995* (Vic) to provide defences to the effect of the following:

It is a defence to a prosecution for an offence against subsection (1) to prove that:

- a) The film or photograph depicts only the accused person; or*
- b) That, at the time of making, taking or being given the film or photograph, the accused was not more than 2 years older than the minor was or appeared to be; and*
 - i. The film or photograph depicts the accused person engaged in lawful sexual activity; or*
 - ii. The film or photograph depicts the accused person and another person or persons with whom the accused could engage in lawful sexual activity; or*
 - iii. The film or photograph depicts a person with whom the accused could engage in lawful sexual activity, or more than one person, all of whom the accused could engage in lawful sexual activity with.*

Recommendation 7:

That at such time as the Victorian Parliament introduces legislation to give effect to Recommendation 6, the Victorian Government advocate to the Standing Council on Law and Justice that the Commonwealth, States and Territories amend their criminal legislation to provide defences to child pornography offences, consistent with the new Victorian defences.

Recommendation 8:

That following the coming into operation of legislation from Recommendation 6, Victoria Police and the Victorian Office of Public Prosecutions adopt an express policy that they will not prosecute Commonwealth child pornography offences where an accused person would have a valid defence to child pornography charges under Victorian legislation.

Recommendation 9:

That the Victorian Government introduce a specific offence for sexting to the *Summary Offences Act 1966* (Vic).

Recommendation 10:

That, if Recommendation 6 and Recommendation 9 are not accepted in full, the Victorian Government introduce legislation to amend the *Sex Offenders Registration Act 2004* (Vic) so that sentencing judges have discretion whether to order that an adult offender convicted of a sexting-related offence be listed on the Sex Offenders Register.

Recommendation 11:

That, following the coming into operation of legislation from Recommendation 6, the Victorian Government establish a mechanism to review the registration of any person currently listed on the Sex Offenders Register, where that person would have had a defence under legislation introduced in accordance with Recommendation 6.

Recommendation 12:

That the Victorian Government consider introducing legislation to create a statutory cause of action for invasion of privacy by the misuse of private information, following recommendations 23, 25, 27, and 29 to 33 of the Victorian Law Reform Commission's *Surveillance in Public Places: Final Report 18* (2010).

Recommendation 13:

That the Victorian Government consider creating a Digital Communications Tribunal, either as a stand-alone body or as a 'list' within the Victorian Civil and Administrative Tribunal, to deal with complaints about harmful digital communications. Development of the Digital Communications Tribunal should be informed by the New Zealand Law Commission's proposal for a Communications Tribunal.

Recommendation 14:

That the Victorian Government advocate that the Standing Council on Law and Justice consider issues surrounding the creation of a national Digital Communications Tribunal.