Submission to the Victorian State Government Law Reform Committee Inquiry into Sexting
This submission is made by the Royal Australian and New Zealand College of Psychiatrists (RANZCP) to the Victorian Law Reform Committee inquiry into sexting. The RANZCP has over 4,800 members and is the principal organisation representing the medical specialty of psychiatry in Australia and New Zealand and has responsibility for setting the training program, examining and providing access to Fellowship of the College to medical practitioners.

The RANZCP welcomes the opportunity to make a submission on the Victorian Law Reform Committee inquiry into sexting. The submission will include the mental health issues of victims, the need to review the Registered Sex Offenders Act (RSO Act) as it applies to [young] people prosecuted under the Act, and the role of education in protecting and preventing potential harm from [sexting].

Definition
The term sexting has recently come into use to define the "the sending of sexually explicit photographs or messages" [via mobile phone or email] (Victorian Law Reform Commission, 2012). This submission is primarily concerned with the [illegal] distribution of sexual images of and by young people who are, or have been, in a sexual relationship with a peer, photograph and transmit sexual images of themselves and/or their partner, either with or without their permission.

The issue arises that these images are deemed to be ‘child pornography’ under current law as defined in the RSO Act (2004). Victorian law states that the offences of producing and possessing child pornography are relevant to ‘sexting’: These images fall under the Crimes Act 1958 (Vic) s 68(1) (production of child pornography), s 70(1) (possession of child pornography) (Victorian Law Reform Commission, 2012). Victorian child pornography law states that it is illegal for any person to possess or transmit naked images of a person under [or who appears to be under] the age of 18 years (Victorian Law Reform Commission, 2011b). Any person sending such images is liable for prosecution under the law; no distinction is made for those who are, or have been, in a consensual sexual relationship (Victoria Legal Aid, 2011).

Such offending can result in the perpetrator being placed on the sex offender’s register, even if they are also under the age of 18. Several high profile cases illustrate the impact this can have on the [mostly male] offender; a recent Victorian Law Reform Commission report gives the example of a 17 year old male who was registered for life for taking and sending images of his 17 year old girlfriend (Victorian Law Reform Commission, 2012).

Rates of sexting among Victorian/Australian Teens
Technological advancements with cellphones mean that they commonly have cameras, built-in video capability and email facilities, allowing for easy transfer of images between friends. Teenagers are increasingly using cellphones to send sexually suggestive or explicit images of themselves to friends and (sexual) partners. A 2011 University of Melbourne study found that teenagers were under immense peer pressure to participate in sexting and would feel ostracised if they did not (Scott, 2011).

Both in Australia and overseas, there is a lack of research on the rates of sexting by young people. American studies report high rates of sexting, a study in 2006 found that the number of teenage or pre-teenage girls sending a text message with sexual content (including a nude photo of themselves) with rates between 20 and 30 per cent. The group AK Teens found that 30 percent of girls ages 9 to 15 have sent a sext (US Congress, 2010). Rates in Australia are not thought to be as prevalent; however, Victorian Legal Aid suggests that the majority of youth with phone cameras do send sext messages. There has been enough concern for Victoria Police to release guidelines for schools and parents. The RANZCP supports the need for more research on the impact on victims of sexting; there is deep concern over what may be an underestimated problem.
Paedophile versus sex offender

The current RSO legislation defines the distributing of an image (or images) of persons under the age of 18 to be child pornography, irrespective of the age of the victim or perpetrator. Sexting would fall under this definition if the ‘victim’ [or subject of a sexualised image] is under 18. For the purposes of this submission the definition of a registered sex offender is a person who has been convicted and sentenced for a registerable offence thus is recorded on the Sex Offenders Register (Victorian Law Reform Commission, 2011a). Most child sex offenders are also paedophiles with paedophilia being a mental disorder as one of the paraphilias. Conversely, most paedophiles are not sex offenders, though legislation regarding child pornography confuses paedophilia with child sex offending.

For a diagnosis of paedophilia there must be a minimum period of six continuous months of sexually arousing urges or behaviours with a prepubescent child (aged 13 or younger). If the individual has acted on these urges, the child or children must be at least five years younger than the offender, who must be at least 16 years of age. Such sexual activity must then cause the offender a marked level of distress or difficulty with interpersonal activity (Green, 2002). In Victoria, all adults who have been convicted of sexual offences against children are automatically placed on the Sex Offender Register (SOR); these offences may include rape, incest, sexual assault, or possession of child pornography. Likewise young people under the age of 18 who transmit sexts of individuals who are also under 18 years of age fall under the RSO Act (2004).

The recent Victorian Law Reform Commission report recommended that Category 3 offences under the RSO Act (2004), including the possessing or creating naked images of children, only be registerable if needed to protect a child from abuse (Victorian Law Reform Commission, 2012). The RANZCP agrees with this recommendation, precluding circumstances involving young people sexting their partners, unless there is any risk of sexual abuse. Likewise, Class 1 offences should be automatically included and Class 2, offences excluding sexting by consenting juveniles.

It is important to acknowledge that that young offenders who are classified as ‘sex offenders’ under the RSO Act are less likely to go on to commit [other] child pornography offences i.e. their offending may be limited to one instance with a [then] current partner. The RANZCP supports calls by the Victorian Law Reform Commission and Victorian Chief Magistrate Ian Gray for a more flexible approach to youth sentencing (Brady, 2011).

The impact of being placed on the Sex Offenders Register has immense psychological and social implications for the offender. Effects include depression, anxiety, suicidal thoughts and suicide in addition to relationship difficulties or breakdown, family breakdown, divorce, loss of employment and the need to relocate residence. The RANZCP agrees with a recent comment made by Victoria Police Commissioner Ken Lay that low-level offenders should be removed from the register, with individualistic responses being more appropriate for those deemed not at risk of re-offending (F. Farouque, 2012).

Potential for harm – mental health issues for victims

“Sexting” can be a particular form of cyber bullying which takes place around sexual themes. This can include the displaying of compromising images of children and young people. As sexting images can be shared with others, the sender has no control over what the recipient may do with the sext message. This is a particular area of concern. Young people who use sext images to engage in this kind of cyber bullying may be charged with criminal offences. Some will not be aware this is a potential outcome, and again this can lead to significant distress. Psychiatrists and other mental health professionals will have a role in working with young people and their families affected by these issues.

The developmental immaturity of some young people means they may engage in transmitting images of themselves of a sexual nature without due consideration about how widely that material may be disseminated. In other circumstances images of a sexual nature may be transmitted specifically to cause distress.

Those with identified mental health problems, especially if they have low self esteem and are seeking acceptance within a peer group may be particularly vulnerable in this regard, both in terms of engaging in sending images, and from the impact of distress where the images are then used inappropriately.
Education programs

Increasing [and pervasive] technology advances with cellphone cameras means current legislation has not kept up with the changes in technology. Young people’s familiarity with new technology plus the relative ease with which images can be taken and sent by one individual to another may see them having a more relaxed approach to distributing sext messages. Sexting could be considered a form of flirting and part of youth sexual exploration, however the future consequences of this behaviour is not usually considered by participants (Berry Street, 2012). Images could be circulated to more than the original recipient, with or without the subject or sender’s knowledge.

Teenagers particularly appear unaware of the possible legal consequences of transmitting sext messages, if convicted they risk being placed on the sex offenders register (Victorian Law Reform Commission, 2011b). This group would benefit from education on unwanted sexual contact, whether that is online or via cellphone. Schools, parents and community youth groups explain to teenagers the dangers of sharing sexual images with their friends. Teenagers need to understand the impact on them of relevant laws on child pornography, paedophilia with the possibility of a conviction resulting in registration on the sex offenders register.

Various government and youth oriented organisations, including Victoria Police, have cyber safety information that covers cyber bullying including sexting. Sites like Berry Street’s ‘Be Net Wise’ have youth friendly information explaining the law and being safe in the digital age (Berry Street, 2012). The RANZCP supports the need for increased education on the potential danger or misuse of sexting.

Recommendations

- A review the Registered Sex Offenders Act (RSO Act) as it applies to [young] people prosecuted under the Act to reduce the risk that young people are registered for (minor) first time offences.
- Category 3 offences under the RSO Act (2004) preclude circumstances than involve young people consensually sexting their partners unless there is any risk of sexual abuse.
- Amending the current legislation in the Crimes Act 1958 (Vic) s 68(1) (production of child pornography), and s 70(1) (possession of child pornography) to allow greater flexibility in sentencing of youth offenders.
- Recognition of the possible mental health impact for youth of registration on the Sex Offender Register.
- Greater education in schools and the community on the potential dangers of sexting and cyberbullying risks from sharing sexually suggestive or explicit images.
- More research on the impact on victims of sexting and the rates of sexting by young people.

References


The Healthy Media for Youth Act (2010).


