Law Reform Committee
By email: vplrc@parlament.vic.gov.au

14 June 2012

Dear Sir/Madam,

Inquiry Into Sexting

Gippsland Community Legal Service (GCLS) is a rural, regional and remote community legal service that provides free and confidential legal information, advice, and casework to members of the Gippsland community. We are also active in educating members of our community on their legal rights and responsibilities, and separately in advocating for law reform.

We envision a fair and just community that acknowledges and advances the dignity of all. We are particularly concerned about the increase in sexting activity by young people in our area and so we write to share our observations and to advocate for change.

Key Issues and Themes

The Incidence, Prevalence and Nature of Sexting in Victoria

It has come to our attention in recent months that sexting is an emerging issue in our local high schools. To try and address some of the issues around ignorance of the potential legal consequences surrounding sexting, we have partnered with the Latrobe Valley Magistrates Court, the Police and Victoria Legal Aid to provide information to high school students in Morwell and Traralgon about this issue. We have separately heard accounts of sexting being an issue in other more remote areas of Gippsland and are concerned to ensure young people are educated about the risks associated with such behaviour.

We do not see this as an issue that will fade away over time. With the increase in affordability and access to various technologies, both at home and in schools, young peoples use of technology will continue to increase. We believe a swift but considered approach is necessary regarding the serious consequences that could apply to children and young people who engage in sexting behaviour and whether these consequences are necessary or appropriate in all the circumstances.

The Extent and Effectiveness of Existing Awareness and Education About the Social and Legal Effects and Ramifications of Sexting

Sexting is an issue we have stumbled across through informal networking. We are advised by our local Latrobe Valley Magistrates Court that no sexting offences have been listed at the court to date and so we believe now is the time to educate. We are aware that schools are struggling with this issue, holding assemblies and trying to educate their students about the dangers of sexting behaviour.
To that end, we have established the partnership mentioned above and are piloting a program to deliver a mock court plea in the Magistrates Court. Our local Chief Magistrate is supportive of the idea and will preside over the mock hearing together with one of his registrars. The police will present the brief (the accused is a 16 year old boy who receives and forwards on naked photos of his then girlfriend) and a lawyer from Victoria Legal Aid will conduct the plea. The Magistrate will then hand down a sentence. Following the sentencing, our Service will lead a discussion about the ongoing, lifelong implications of having a criminal record or being listed on the Sex Offenders Register. We hope that this 'real life' experience in a real court will assist young people to understand the seriousness of sexting.

As this legal education session is still in the pilot stage, we are yet to evaluate its effectiveness. All four of the local high schools (in Traralgon and Morwell) have indicated an interest in their students attending and if successful, we will conduct these sessions on a regular basis. We are keen to partner with schools, teachers and parents to find ways to educate young people about this issue. We believe it is an issue that is yet to be fully understood by young people and their families.

**The appropriateness and adequacy of existing laws that may apply to the practice of sexting**

We believe the current laws around child pornography at both a Victorian and Federal level should not apply to sexting offences. We believe the intention of parliament in creating the existing laws that currently have the ability to apply to sexting were not created with sexting type behaviour in mind. We believe the consequences for young people who are convicted of such offences where they have engaged in sexting behaviour for personal enjoyment (rather than for purely exploitative purposes) far exceeds the ‘crime’ committed.

In addition, a young person who “naively” engages in sexting and is subsequently convicted of a relevant Federal or Victoria Crimes Act offence may also have committed a registrable offence as against the Sex Offenders Registration Act 2004 (Vic) and be placed on the register thus disqualifying them from engaging in particular types of employment and travel.

We understand that the distinction between personal enjoyment and exploitation is blurred when dealing with young people and sexting however we do believe the law should maintain a distinction and appropriately punish those who do deliberately exploit children, even if those people are children themselves.

We have read the report prepared for the NSPCC called “Children, Young People and ‘Sexting’, Summary of a qualitative study” (the “NSPCC Report”)¹. This is a summary report of a study conducted in London with young people and the key findings may assist the Committee in their further research.

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The summarised findings from the NSPCC Report are:

"1. Threat comes mostly from peers
2. Sexting is often coercive
3. Girls are the most adversely affected
4. Technology amplifies the problem
5. Sexting reveals wider sexual pressures
6. Ever younger children affected
7. Sexting practices are culturally specific"\(^2\)

Of most interest is the finding that the biggest threat for young people and sexting comes from their peers. They report that the issues of 'stranger danger' have been addressed such that young people are aware of ways to protect themselves from exploitation by strangers, but the emerging issue is the pressure to engage in sexting behaviour that they endure from their peers.

We commend the NSPCC Report to you and believe it would be of great benefit for a similar study to be conducted in Victoria. We believe that understanding sexting is the first step to addressing the serious legal implications and whether or not these are appropriate. This can also help address the issues of consent and intention when dealing with sexting behaviour and help create a distinction between the penalties for pure exploitation against the consequences for personal sexting.

Summary: Sexting and Child Pornography in the Same Melting Pot?

We believe it is inappropriate for sexting offences and child pornography offences to be dealt with in the same way. We believe education is key (as it was to combat 'stranger danger') and that further research needs to be undertaken. Such research should examine the successes and failures of other countries and jurisdictions in dealing with the issue of sexting (including in the various jurisdictions of the USA where different legal approaches have been taken). Such action must also balance the need to protect children from sexual exploitation against the changing environment while not condoning the behaviour of those young people who do engage in sexting behaviour entirely for the purpose of exploitation (rather than personal 'enjoyment'). We believe supporting parents and teachers to educate young people about these matters is crucial.

Thank you for taking the time to consider our submission. We look forward to reading your final report and working together with others to bring about change and education.

Yours faithfully

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\(^2\) As above, page 7.