Submission to the Law Reform Committee, Parliament of Victoria in response to its Inquiry into Sexting
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We welcome the Inquiry into Sexting. Our submission to the Victorian Parliament addresses section 3a and 3b of the Inquiry, in relation to the appropriateness and adequacy of existing laws that may apply to the practice of sexting.

Our research backgrounds span various studies on young people, mobile phones, social media, sexual ethics, pornography, and sexual health. We are currently undertaking a pilot research project on ‘Sexting, Young People, and the Law’. The project is based at Journalism and Media Research Centre at the University of New South Wales, and funded by the ARC Centre for Creative Industries and Innovation (CCI), and considers sexting in relation to young people’s understandings of intimacy, friendship, ethics and representation as well as bullying and harassment.

The pilot aims to inform Australian legal, educational and policy responses to sexting, as part of the CCI’s Risk and Representation project (http://cci.edu.au/projects/risk-and-representation). While the pilot is still in progress, we have undertaken a review of recent international literature on sexting, and conducted two focus groups with young men and women aged 16 and 17, which inform this submission. The focus group process has been approved by the Human Research Ethics Committee at the University of NSW, and was informed by consultation with the National Children’s and Youth Legal Centre, and the NSW Rape Crisis Centre.

The current criminalisation of young people’s consensual exchange of images and texts is of particular concern to our project. Intimate and/or sexual relationships between young people aged under 18 are not necessarily exploitative or dangerous, Any images produced by young people should also be understood according to the circumstances in which they are produced and circulated. In our preliminary focus groups, both young women and men drew a clear line between playful/intimate exchanges of sexual images and text messages, and non-consensual production and distribution of images. In both groups young people expressed understanding and concern regarding the ethical impact of their media and sexual practices. In all cases unwanted production and dissemination of sexual images was seen as a ‘breach of privacy’ that warranted
legal penalties. However, the focus group participants did not believe that child pornography laws were the best laws to apply in these circumstances.

Preliminary findings suggest a consensus amongst participants that the exchange of ‘sexy’ texts and self-portraits is a widespread (though far from universal) practice amongst peers, yet the term ‘sexting’ itself was believed to have been created journalists for the sake of sensationalism. Our participants suggested that ‘sexting’ was a concern for teachers and parents, not young people. Our participants spoke of using mobile phones for intimacy and sexual communication, in the context of friendships and other relationships. One group was particularly concerned by the ways that public discussions of sexting were expressed in gendered terms, arguing that young women were unfairly targeted as being both ‘at risk’ from sexting, and being responsible for resisting/preventing the practice.

Current terminology and definitions of sexting and child pornography were contested by focus group participants on the grounds that these are broad enough to incriminate most young people who self-publish images of themselves online, or disseminate these via mobile phones. Questions were raised about the difficulties in determining whether an image of a young person is ‘sexual’ or not, particularly when an image moves beyond the context in which it was taken and sent. For example, participants observed that photos of shirt-less (or even naked) young men, or photos of young women in bikinis were common on Facebook, and questioned whether these images could be considered child pornography.

In a conference paper delivered in 2010, Albury and colleagues observe that current Australian legislation puts 16 and 17 year olds in a peculiar situation in which they are unable to visually present their sexual selves, despite being lawfully able to engage in consensual sexual activity (Albury, Funnell & Noonan 2010). Therefore, current legislation ensures an ‘un-representability’ of young people’s sexualities, excluding them from an active sexual citizenship which is legally sanctioned elsewhere (i.e. the right to sexual self-efficacy).
In a recently published paper, Albury and Crawford also raise questions about the adequacy and appropriateness of current laws that criminalise young people’s sexual self-representation and communication (Albury & Crawford 2012). Such penalties fail to recognise that there is an emergent ethics being developed amongst young people regarding the sharing of sexual images. It is also argued here that the legal age of consent, and the legal age of consensually sending and receiving sexual images should be consistent, as this makes little sense to young people, or to most people who accept that sexting can be a consensual practice between sexually responsible people.

We argue that a careful consideration of the broader contexts in which sexting occurs is necessary, particularly in relation to media and school-based campaigns that seek to warn against the practice of sexting. Currently most media and educational warnings tell young people to simply ‘say no’. Such messages fail to consider the intricacies of sexting, and therefore such campaigns and contemporary policy cannot connect with young people’s ongoing cultural and sexual practices, nor ask how these might be more ethically managed. Instead, we argue that legal and policy frameworks need to respond to the realities of young people’s experiences.

In conclusion, we recommend that these frameworks include laws and procedures for responding to sexual bullying and coercion, including the non-consensual production and distribution of images online, and by mobile phone. While we are not legal scholars, we suggest that telecommunications laws regarding the misuse of a carrier may be amended to be more useful in the context of young people’s sexting. However, we do not believe that images consensually produced or circulated by young people under the age of 18 constitute child pornography, or that laws created to prosecute adult sex-offenders should be applied to young people under the age of 18.

Finally, we recommend that any educational responses to sexting supported by the Victorian Parliament take into account young people’s own understandings of the ethics of friendships and relationships, and acknowledge the various ways (both positive and negative) that young people use online and mobile media within these relationships.
References:

