Dear Mr Clem Newton-Brown

INQUIRY INTO SEXTING – SUBMISSION FROM WESTERN AUSTRALIA POLICE

Further to the invitation from the Parliament of Victoria Law Reform Committee to receive submissions, the Western Australia Police provides the following information in response to the stated Terms of Reference:

1. The incidence, prevalence and nature of sexting in Victoria;

Whilst sexting is a generic term to describe the act of sending sexually explicit messages or photographs, primarily via mobile phone between adults and teens, I am unable to comment specifically on the incidence, prevalence and nature of sexting in Victoria.

I can advise that, in Western Australia, sexting between adults is not a criminal offence and usually does not come to the attention of police, therefore, the prevalence of sexting between adults in Western Australia is unknown.

Chapter 24 of the Criminal Code (WA) does however, attract offences relating to the production, distribution and possession of child exploitation material involving sexting a child under 16 years. These offences are applicable to sexting between children or between an adult and a child. Additionally, electronic communications of a sexual nature including pictures and live streaming by an adult to a child, attach criminal sanctions under section 204B of the Criminal Code (WA).

Although the Western Australia Police record reported incidents in respect to child exploitation material, incidents of sexting are not isolated, hence reliable longitudinal statistical data on the prevalence of sexting involving children cannot be provided.

The true prevalence of this type of activity is unknown as the reporting of these incidents usually comes to light through adult intervention of a parent or teacher. Anecdotally, such incidents investigated by the Online Child Exploitation Squad surfaced and spiked in 2009, however, through public awareness via the media by police and efforts in educating young people by the Department of Education and independent schools in conjunction with the Australian Communication and Media Authority, the number of reported incidents is relatively low. For example, in the past four months since 30 January 2012, there were seven reported cases involving, predominantly, internet services, Facebook, Skype and Habbo.
2. The extent and effectiveness of existing awareness and education about the social and legal effect and ramifications of sexting;

Western Australia Police refer requests from schools for face-to-face presentations to the Australian Communication and Media Authority (ACMA) who facilitate the Cybersafety Outreach Programs. Requests for more police-focused face-to-face presentations are referred to the Australian Federal Police ThinkUKnow program.

ACMA's Cybersmart Outreach Programs provide a multitude of cyber-safety online resources for parents and teachers in respect to sexting, as well as advice and guidance to young children and teens. For example, one key resource is the short movie, "Tagged" which specifically addresses the topic of sexting in a realistic context to which young people can relate. The movie is supported by lesson plans, teacher and student resource books, and reflective interviews.

The Western Australia Police are actively involved in assisting ACMA with the Cyber-detectives program, which allows primary school children to engage with a police officer online in respect to cyber-safety. In addition, the Western Australia Police are actively engaged in raising public awareness through periodic media releases. However, the Western Australia Police have not conducted research on the effectiveness of these programs.

3. The appropriateness and adequacy of existing laws, especially criminal offences and the application of the sex offenders register, that may apply to the practice of sexting, particularly with regard to the creation, possession and transmission of sexually suggestive or explicit messages and images in circumstances where a person:

   a. creates, or consents to the creation of, the message or image for his or her own private use and/or the use of one or more other specific persons; or

   b. creates, or consents to the creation of, the message or image and without their knowledge and/or their consent the message or image is disseminated more broadly than the person intended.

Sexting between consenting adults seldom comes to the attention of police unless there are circumstances in which images or movies have been uploaded to the internet without consent or where the case involves threats or extortion. Due to the sheer volume of pornography available on the internet and other resource priorities, sexting images and movies involving consenting adults are not actively pursued under the Classification (Publications, Films and Computer Games) Enforcement Act 1996. In cases in which images or movies are uploaded to the internet without consent of the person depicted, then the person is referred to civil action.

In cases of sexting images or movies of private activity of an adult without that person's consent and then uploaded, the matter would be investigated pursuant to section 6 of the Surveillance Devices Act 1998 (WA). In cases involving the indecent recording of an adult in a public place ("upskirting"), then the matter will be investigated pursuant with section 203 of the Criminal Code.

In instances involving consensual sexting between children in an adolescent relationship, it is the policy of the Western Australia Police for these cases to be dealt with by way of education rather than prosecution, where there is no evidence that a child is exploited. In particular, the policy that was formulated in early 2009 in consultation with the Office of the Director of Public Prosecutions, provides that:

"...while technically an offence it is not in the public interest to charge and prosecute persons under the age of 18 years in respect to images of a child in an adolescent relationship, unless there is evidence to suggest that the child is being exploited."
In cases where there is evidence of a child in an adolescent relationship but the police case officer is of the view that criminal proceedings are warranted, then approval to charge is to be obtained from the officer-in-charge of the Online Child Exploitation Squad who will, in turn, consult with the Office of Director of Public Prosecutions to ensure that a prosecution is in the public interest.

The policy also prescribes considerations in determining whether a child has been exploited, to include:

"...the degree of malice involved in procuring the child to engage in sexting as well as disparity of power between the parties including development and maturity of the child, and whether the circumstances involve any bribery, coercion, threat, or violence."

In cases in which image(s) or movie(s) from consensual sexting between children are distributed by one party to one or a number of third parties then serious consideration is given to prosecuting the child distributing the image(s) or movie(s).

I trust the above information is of assistance to the Law Reform Committee. Should additional information be required, contact may be made direct to Detective Inspector Bob Kirby on telephone 08 9223 3003 or email bob.kirby@police.wa.gov.au

Yours sincerely

[KARL J O'CALLAGHAN APM
COMMISSIONER OF POLICE]

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