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Law Reform Committee  
Parliament of Victoria  
Spring Street  
EAST MELBOURNE VIC 3002

***Re: Sexting***

The Australian Christian Lobby welcomes this opportunity to make a submission to the Victorian Law Reform Committee on the issue of sexting.

**Nature of Sexting**

Sexting refers to the use of an electronic device, usually a mobile phone, to take naked or semi-naked photographs and transmit them to another.

The image may be a photograph or video and may be taken of the photographer as the subject or may be taken of another person.

The occurrence of sexting is considered prevalent among people under the age of 18.

While the original sexting may be voluntary and consensual, the transmitting of the image to others beyond the original intended recipient may be done without the knowledge or consent of the subject. Once taken and forwarded the subject of the image has no control of the use that the image will subsequently be put to.

The dangers of sexting include permanent damage to the subject's digital footprint, exploitation, and bullying. In a well known case, the circulation of a naked picture of Jessica Logan in her high school in Cincinnati, Ohio resulted in harassment, abuse, and eventually

her suicide in 2008.<sup>1</sup> There is concern that this phenomenon is also spreading to primary school children.<sup>2</sup>

The community is rightly concerned about the social and legal effects and ramifications of this practice.

### Current Legal Framework in Victoria

Anyone who takes an indecent picture of a person under 18, either nude or semi-nude, may be charged with producing child pornography.

Furthermore, a person who is involved in the posting or forwarding of this image may be charged with possessing or sending child pornography.<sup>3</sup>

An adult (18 years or over) who is found guilty of possessing or sending child pornography will be placed on the Victorian Sex Offenders Register for 8 years.<sup>4</sup> The reporting requirements can be onerous and the impact on employment and volunteer opportunities are significant.

### Victorian Government should actively discourage sexting

ACL recommends that the Victorian Government increase awareness and education about the social and legal effect and ramifications of sexting. To achieve this objective, and to reduce the incidence of sexting, it is recommended that it be required that Victorian schools each implement a Code of Conduct setting out appropriate standards, behaviours and disciplinary actions.

### Legislative amendment

The Victorian Law Reform Commission's *Sex Offenders Registration: Final Report* (tabled in Parliament on 18 April 2012) recommended individual assessment of offenders rather than automatic inclusion of offenders on the Sex Offenders Register for offences which currently require registration.

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<sup>1</sup> Huffington Post (March 18, 2010), 'Jessica Logan Suicide: Parents Of Dead Teen Sue School, Friends Over Sexting Harrassment', *The Huffington Post*, [http://www.huffingtonpost.com/2009/12/07/jessica-logan-suicide-par\\_n\\_382825.html](http://www.huffingtonpost.com/2009/12/07/jessica-logan-suicide-par_n_382825.html).

<sup>2</sup> Hannah Silverman (May 27, 2012), 'Now kids are sexting in primary school', *Adelaide Now*, <http://www.adelaidenow.com.au/news/south-australia/now-kids-are-sexting-in-primary-school/story-e6frea83-1226368744025>.

<sup>3</sup> See Crimes Act 1958 (Vic) ss.68 ,69 & 70

<sup>4</sup> Sex Offenders Registration Act 2004 (Vic) s.7

There have been legislative moves in overseas jurisdictions to lessen the offence of sexting when the offenders are minors. In several states in the USA, sexting has been considered a felony and regarded as producing or transmitting child pornography, and those convicted could be placed on a state sex-offender registry. Illinois, Connecticut, and some other states have moved to lessen the offence to a misdemeanour when consensual and done by a minor.<sup>5</sup>

ACL supports a legislative amendment which would ensure that the punishment matches the offence for minors.

ACL strongly opposes decriminalisation of sexting, but acknowledges that the penalties can be quite onerous and may be inappropriate and disproportionate for some minors. For this reason, ACL supports the application of judicial discretion, especially in relation to placing sexting offenders on the Sex Offenders Register. The issue of whether the creation and distribution of the image was consensual would be relevant to this decision. Also relevant would be a consideration of whether the offender poses a risk to the community.

ACL would support legislation which gave the courts discretion not to place a minor on the Sex Offenders Register. For instance, it may be appropriate to use discretion in the case of children and young adults involved in private and consensual sexting when the images are not transmitted to other parties. ACL notes that such legislation would have to be drafted with extreme caution to avoid the possibility of loopholes being exploited by genuine child abusers or by adolescents who are repeat offenders.

### Sexting and the culture of pornography

In relation to point (1) of the Terms of Reference for this inquiry, the “incidence, prevalence and nature of sexting in Victoria”, it is significant that the growing prevalence of sexting occurs against the background of easily accessible pornography on the internet and through mobile phones. In addition to this there is a growing sexualisation of other forms of media, including movies, TV, and advertising.

It is submitted that this exposure to sexualised media, and to explicit pornography online, serves to desensitise young people to the harms of sexting. In this context, young people may have even greater difficulty considering the potential long-term consequences of their actions, including of sexting.

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<sup>5</sup> See National Conference of State Legislatures (January 4, 2011), ‘2010 Legislation Related to “Sexting”, for an overview of state laws regarding the offence. For a brief summary, see AskTheJudge.com (February 2, 2011), ‘New Sexting Laws in 2011’, <http://www.askthejudge.info/new-sexting-laws-in-2011/8570/>.

## Sexualisation of culture

ACL has previously commented on the problem of sexualisation of children.<sup>6</sup>

Sexually charged advertising, for example, routinely appears on billboards in prominent locations visible to children. Highly sexualised television advertising and shows are becoming more common. Music videos have undergone a “slow but unmistakable descent into pornography”.<sup>7</sup> Rush and La Nauze comment that the

*pressure on children to adopt sexualised appearance and behaviour at an early age is greatly increased by the combination of the direct sexualisation of children with the increasingly sexualised representations of teenagers and adults in advertising and popular culture.*<sup>8</sup>

## Internet

This increasing sexualisation occurs despite clear guidelines that exist for television, film, radio, and print content. There are no such restrictions on access to pornographic material on the internet in Australia.

It is submitted that exposure to pornography is an incitement to sexting and desensitises young people to the harms of sexting.

The Australian Christian Lobby has made several submissions to the Federal Parliament in recent years addressing cyber safety and pornographic exposure among young people.<sup>9</sup>

The availability and accessibility of harmful pornographic, illegal pornographic and violent material to children has made it increasingly difficult for a safe online environment for children to exist. As wireless and mobile phone technologies rapidly improve and become more and more prevalent, children have unprecedented access to the internet without any adult supervision or other restriction. Boys as young as 11 are regularly accessing

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<sup>6</sup> See Australian Christian Lobby (April 2008), *Submission to the Senate Standing Committee on Environment, Communications and the Arts: Inquiry into the Sexualisation of Children in the Contemporary Media Environment*, <http://australianchristianlobby.org.au/wp-content/uploads/080418-ACL-submission-on-sexualisation.pdf>.

<sup>7</sup> Pop song-writer Mike Stock, commenting in Kate Goodacre (June 17, 2011), ‘Mike Stock: ‘Pop music is turning into porn’’, *Digital Spy*, <http://www.digitalspy.com.au/media/news/a325361/mike-stock-pop-music-is-turning-into-porn.html>.

<sup>8</sup> Emma Rush and Andrea La Nauze (2006), *Corporate Paedophilia: Sexualisation of Children in Australia*, The Australian Institute, [http://www.tai.org.au/documents/dp\\_fulltext/DP90.pdf](http://www.tai.org.au/documents/dp_fulltext/DP90.pdf), pp 1-2.

<sup>9</sup> See ACL (April 2011), *Submission to the Joint Select Committee on Cyber-Safety*, <http://australianchristianlobby.org.au/wp-content/uploads/110429-ACL-cyber-safety-submission.pdf>.

pornography on the internet,<sup>10</sup> with one UK study showing that a third of children in that country first viewed pornography at age 10 or younger.<sup>11</sup>

It is submitted that such an environment lowers the inhibition of a minor to take and transmit a sexually explicit image and normalises such behaviour. Accordingly, young people involved in sexting, often desensitised by exposure to pornographic material, participate without due regard to the legal, social, and reputational consequences of their behaviour.

ACL has supported an “opt-in” system of internet filtering at ISP for this reason. In this system, currently being explored in the UK,<sup>12</sup> pornography is blocked by ISPs and adults who wish to access such material may opt-in by contacting their ISPs.

Such a system would make the internet consistent with other forms of media, such as cinema, television, and magazines. Adults who want access to pornography must make the choice to physically go and buy that material and must prove their age – they must “opt-in” to access adult films or magazines.

There is strong support in the community for the government playing a more active role in internet regulation, including ISP filtering. 62 per cent of adults support government regulation of the internet in the same way as government regulation of other media, and 80 per cent support a mandatory government filter which would block all Refused Classification material.<sup>13</sup> Support goes up even higher among parents.<sup>14</sup>

ACL urges the Victorian Government not to consider the problem of sexting in isolation from broader cultural factors. Technological advances are not solely responsible for this new and growing problem. The Government must consider how to effectively regulate new technologies as they have older technologies such as television. Furthermore, widespread normalisation of pornography and the increasing sexualisation of children are closely connected to sexting and cannot be ignored.

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<sup>10</sup> ABC (May 9, 2012), ‘Children accessing porn younger: study’, ABC News, <http://www.abc.net.au/news/2012-05-09/porn-script/4001014>.

<sup>11</sup> Psychologies.co.uk, ‘Put Porn In Its Place’, *Psychologies.co.uk*, <http://www.psychologies.co.uk/put-porn-in-its-place/>, accessed June 21, 2012.

<sup>12</sup> See Independent Parliamentary Inquiry into Online Child Protection (April 2012), Report, <http://www.claireperry.org.uk/downloads/independent-parliamentary-inquiry-into-online-child-protection.pdf>.

<sup>13</sup> McNair Ingenuity Research (2010, February), *Internet Regulation Survey*, [http://hungrybeast.abc.net.au/sites/default/files/documents/Internet%20Regulation%20Survey%20-%20Report\\_FINAL.pdf](http://hungrybeast.abc.net.au/sites/default/files/documents/Internet%20Regulation%20Survey%20-%20Report_FINAL.pdf), pp 4-5.

<sup>14</sup> Respondents with “Children at home” or “Children left home” were consistently more in favour of filtering: McNair Ingenuity Research (2010), *Internet Regulation Survey*.

## **Recommendations**

- That sexting not be decriminalised. However, where sexting offenses occur involving minors, the court be allowed to exercise discretion about whether or not the offender is placed on the Sex Offender Register.
- When an adult is guilty of sexting, but the sexting is consensual and within a genuine relationship, the court should have discretion to determine whether the offender is placed on the Sex Offender Register on a case by case basis.
- Caution should be used in drafting legislation to ensure that there are no loopholes which allow genuinely predatory adults to avoid being placed on a Sex Offender Register when guilty of producing or transmitting child pornography.
- That Victorian schools be required to implement a Code of Conduct to reduce the incidence and effects of sexting.
- That the Committee recognises the increasing sexualisation of children in the contemporary media, including in advertising, television, music videos, and so on, when making its findings on the incidence, nature, and prevalence of sexting.
- That the findings of this Committee on the incidence, nature and prevalence of sexting consider the effect of the increased exposure of young people to sexually explicit material on the internet, including through mobile phones.
- That the Victorian Government request the Federal Government implement internet filtering technology to limit the exposure of children to pornography through computers and smart phones. In addition, that the Victorian Government request the Federal Government to implement its promised mandatory ISP filtering scheme to block all Refused Classification material.

Thank you for the opportunity to provide these submissions to the Law Reform Committee.

I would be pleased to give evidence in support of these submissions if the Committee proposes to take evidence as part of its deliberations.

Yours sincerely,

A handwritten signature in blue ink that reads "Daniel P. Flynn." The signature is written in a cursive style with a period at the end.

**Daniel Flynn B.A. LLB**  
**Victorian Director**  
**Australian Christian Lobby**