Submission to the Victorian Parliament Law Reform Committee’s Inquiry into Sexting

From the Office of the Victorian Privacy Commissioner’s Youth Advisory Group

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Introduction

1. Sexting is a broad concept, encompassing issues of creating, sharing, sending, or posting sexually explicit images or messages via electronic devices such as mobile phones or the Internet. As noted later, according to our survey results, the incidence of sexting actually increases with age. In Victoria, it has been reported that children as young as nine years of age have engaged in sexting. Sexting of minors (referred to in this submission as ‘sexting’) is illegal, and teenagers caught sexting are often prosecuted under child pornography legislation which can result in serious consequences, such as seeing them placed on the sex offenders register.

2. This submission is based on the opinions of members of the Office of the Victorian Privacy Commissioner’s Youth Advisory Group (YAG) and reports on a survey examining the opinions and experiences of sexting among Victorian youths conducted by the YAG. This submission to the Sexting Inquiry by the YAG is separate from the submission to the Inquiry by the Office of the Victorian Privacy Commissioner (Privacy Victoria).

3. Privacy Victoria’s YAG is a group of young Victorians working to increase awareness about privacy issues facing youth today by informing young people about the importance of protecting their personal information, advising and supporting Privacy Victoria’s strategic privacy awareness work, and assisting in the development of privacy material and campaigns. The group, established in October 2009, played a major role in Privacy Victoria’s May 2010 one day conference Watch this space: children, young people and privacy. In February 2011 the group launched the It’s your privacy. Don’t ignore it information campaign for young Victorians.

4. The YAG’s submission is a reflection of the aims of the group to increase privacy awareness and to report on the privacy-related experiences and attitudes of privacy held by young Victorians.

5. Broadly, the survey asked young Victorians whether they have engaged in the act of sexting (both sending and receiving sexts), and their opinions on the legal aspects of sexting, including whether sexting is against the law and what the penalty should be.

6. Using the survey responses, this submission addresses the agenda set out by the Victorian Parliament’s Law Reform Committee. The submission addresses each of the three inquiry items regarding the sexting experiences of Victorian youth, and emphasises the importance of awareness of existing sexting laws, including the awareness and perceived adequacy of the law by young Victorians.

7. The YAG has considered the questions raised by the Committee in light of the survey responses and has made the following three recommendations:

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2 See Crimes Act 1958 s 68, 69, 70
1. The current practice of mandatory registration on the Sex Offenders Register of young people who sext and are ultimately convicted (under current laws) of creating and/or disseminating child pornography, should be replaced with a discretionary registration model;
2. More research should be conducted in order to form an accurate picture of the nature, prevalence and incidence of sexting in Victoria and beyond; and
3. Education around sexting should be enhanced for children and young people of all ages in Victoria.

Survey design, constraints and responses

8. The group designed the online survey which used a free online survey tool. It ran from 15 November 2011 to 11 May 2012. A small licence fee was paid by Privacy Victoria to enable access to a complete set of data from the survey to enable analysis and reporting.

9. It is important to note that the survey instrument and process was not subject to rigorous testing and cannot be considered a scientific undertaking. The sample was self-selecting and voluntary and it was not possible to verify the ages of respondents. However, while strict conclusions can’t be drawn from the data, the survey nevertheless sought and received a wide range of views and provides the strong indicative data which has informed this submission.

10. The summary report from the survey is attached to this submission.

11. A total of 1,102 participants began the survey. The sample comprised 614 females (60.67%) and 398 males (39.33%). Participants ranged in age from under 10 years of age to over 26 years of age, with the majority (49.9%) of participants aged 10 to 15 years of age (n=506). This is comprised of 278 females and 217 males.

12. The remainder of the sample was aged as follows:

- 195 participants were aged 26 years and over, comprised of 113 females and 60 males;
- 184 participants were aged 16-20 years of age, comprised of 124 females and 54 males; and
- 129 participants were aged 21-25 years of age, comprised of 70 females and 48 males.

13. Participants reported predominantly residing in suburban Melbourne (n=386) and Rural or country Victoria (n=413). The remainder of participants reported living in Melbourne’s CBD or elsewhere in Australia, and 5 participants reported living outside Australia.
14. The results of the survey suggest that a significant number of young people have engaged in sexting and demonstrate the existence of a sexting subculture. Of some concern, the results reveal that almost half of 10 to 25 year olds are unsure about the legality of sexting, highlighting the need for more effective and widespread education and information initiatives. The results indicate that the majority of participants believe sexting should be illegal, but without the life-long implications of being registered as a sex offender. The survey results and their implications are discussed in more detail in this submission.

15. Sexting and its consequences is a complicated and multi-layered issue. The answers to the questions posed by the Committee will not be straightforward nor simple. The YAG has made conclusions based on the survey data and on group discussion.

16. Due to the lack of current scientific research data on this topic, the YAG believes that further research should be funded and carried out as soon as possible. Such research would provide solid data for policy and lawmakers, and other relevant bodies.

The incidence, prevalence and nature of sexting in Victoria

17. There has been significant coverage of sexting in the media in recent years. Despite all of this coverage, however, the exact nature of sexting (for example, its place in day-to-day interaction, who engages in it – if at all – on what devices, when, where and how often) still remains uncertain.

18. The results from the survey into sexting provide a first step in addressing some of these unknowns. A survey seeking information about sexting will naturally draw a far greater number of respondents who are at least aware of the practice: the fact that over 1,000 respondents completed the survey – and, in the case of nearly 200 of these respondents, added additional comments – demonstrates that the practice of sexting is relatively well known in Victoria.

19. With regard to the prevalence of sexting in Victoria, the YAG’s survey reveals that, as common sense would suggest, the older the respondent, the higher the prevalence of having received a sext: 21.43% of 10-15 year olds; 41.85% of 16-20 year olds; and 54.26% of 21-25 year olds have received a sext. The prevalence drops to 41.03% in the 26+ demographic. This may be due to a lower uptake of sexting with more mature young adults.

20. Across all age brackets, people are more likely to have received a sext than sent one. 48.84% of 21-25 year olds have sent at least one, while almost 20% of 10-15 year olds have as well (see Table 1).
Table 1

<table>
<thead>
<tr>
<th>Age</th>
<th>Sent a sext</th>
<th>Received a sext</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Under 10</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>10 to 15</td>
<td>93</td>
<td>412</td>
</tr>
<tr>
<td></td>
<td>18.42%</td>
<td>81.58%</td>
</tr>
<tr>
<td>16 to 20</td>
<td>62</td>
<td>122</td>
</tr>
<tr>
<td></td>
<td>33.70%</td>
<td>66.30%</td>
</tr>
<tr>
<td>21 to 25</td>
<td>63</td>
<td>66</td>
</tr>
<tr>
<td></td>
<td>48.84%</td>
<td>51.16%</td>
</tr>
<tr>
<td>26+</td>
<td>68</td>
<td>127</td>
</tr>
<tr>
<td></td>
<td>34.87%</td>
<td>65.13%</td>
</tr>
</tbody>
</table>

21. Although the prevalence of sexting discussed above clearly demonstrates that a significant portion of the young population engages in sexting, what is perhaps slightly harder to quantify is the nature of the sexting itself. Survey data reveals that there appear to be as many different opinions about sexting as there are people expressing them.

22. For example, there are those who see sexting as a negative practice – with opinions varying from viewing sexting as a simple waste of time, all the way through to viewing it as a destructive activity with potentially devastating consequences:

   It’s wrong, I feel violated even if it’s not me. Young girls are being pressured into this, it’s truth and dare games gone viral. There needs to be more advertising about it and how wrong it is. It makes the boys feel like they have power over us. It scares me. My friend who had the pictures taken laughed but she actually feels really scared and like someone has stolen something special to her. It’s so wrong. (Female, 16-20)

   I think you need to think of the teenagers’ perspective as some like me were peer pressured and influenced into doing such things. (Female, 16-20)

   I think it’s pretty lame. I would prefer to have an interesting conversation with someone and save the ‘naked’ pictures for real life when I actually know the person. (Female, 16-20)

   Sexting is gross. (Female, 10-15)

   I don’t think it’s taken seriously. It’s a stupid thing to do and offensive but it’s seen as part of flirting. It gets onto the net and then it’s out there forever. It can affect your job in later life and trash you at school. (Female, 26)
23. There are those, however, who see sexting in a more neutral way. This often appears to be the case when a respondent describes participating in sexting with a partner:

*It really is not a big deal.* (Female, 10-15)

*I share photos of myself with my boyfriend of a number of years, he sends me photos. I believe this is both appropriate and normal. I would however never send a picture like this to someone I did not trust. Please do not make generalised laws which do not apply to specific cases, there needs to be flexibility. This is not necessarily a wrong thing to do.* (Female, 21-25)

*The photos I have received and sent were between my partner and I and we were both over the age of 18. I felt comfortable with these photos as they were between us in our relationship and we were both old enough and mature enough to know what to do with the photos. Fortunately I have never had such photos sent to me or taken of me outside of my relationship with my partner.* (Female, 21-25)

24. Many respondents also commented on the difficulty of determining when the line is crossed between “photos of you and your friends” and child pornography. For many respondents the answer seems to be **intent** rather than **content**:

*Having a photo on your phone of a seventeen year old in bathers should not be against the law. This is a ridiculous suggestion. Educate; don’t legislate.* (Female, 21-25)

*I also think the idea of criminalising taking photos of people in swimwear is highly problematic - I and my child wear our swimwear at public pools and beaches - is it going to be criminal to take a photo of these happy family occasions and to share such photos with family and friends? I would hope that any reforms you make in relation to sexting focuses on the real issues here, which is the inability to control sexualised pictures of oneself, and the inability to control the distribution of sexualised images of children below the age of consent.* (Female, 26)

* [...] the law should apply to the cases of non-consensual sexting, and not those who participate under a mutual agreement. Should it ever cross the line, the police should be involved and it should be taken further.* (Female, 16-20)

*It would depend on the circumstances as to the penalty. Teenagers are warned of this all the time, but they act on impulse and so in that case perhaps a fine. But if the offence is repeated, make the penalty more harsh. It would also depend on the context of the photo. If it was swimwear and underwear it may not be purposely sexually explicit. If the image is clearly sexual, it needs harsher penalties. But where do you draw the line in the sand?* (Female, 26)

25. The survey responses demonstrate that there are a multitude of differing viewpoints when approaching the issue of sexting and its potential impacts, with people appearing to have had very different experiences of the practice. Given this wide variety of viewpoints, any proposed legislation – or changes to legislation – to address sexting
issues would have to be flexible and nuanced enough to encompass the complex and multilayered nature of this issue.

26. It is important to note too that the responses provided to the YAG’s survey only begin to scratch the surface in regard to the actual nature of sexting in Victoria and beyond. More targeted and systematic research by professionals would of course be needed in order to form an accurate understand of the nature of, and feelings towards, sexting in this jurisdiction. For example, more in depth research would be needed to determine whether it is an activity that happens predominantly in relationships, between friends, or with malicious intent.

27. Despite the limitations of the YAG’s results, the survey can demonstrate that a subculture of sexting exists.

28. The respondents to the survey predominantly fell into two groups – those had engaged in sexting and those who had not. 61.36% of respondents had not engaged in sexting at all.

29. Of those who had sent a sext, 80.07% had received one as well; of those who had received a sext, 68.56% had sent one as well.

30. While it would have been interesting to see which age groups are represented in the group that both send and receives sexts, the restrictions of our selected survey tool unfortunately did not permit such analysis. Nonetheless, the data does show that there is a significant group that both receives and sends sexts. This may suggest that for a majority of the people engaging in sexting, it is an interactive activity (see Table 2).

<table>
<thead>
<tr>
<th>sent sext</th>
<th>Received sext</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>229</td>
<td>57</td>
</tr>
<tr>
<td></td>
<td></td>
<td>80.07%</td>
<td>19.93%</td>
</tr>
<tr>
<td>No</td>
<td>Yes</td>
<td>105</td>
<td>621</td>
</tr>
<tr>
<td></td>
<td></td>
<td>14.46%</td>
<td>85.54%</td>
</tr>
</tbody>
</table>

31. Potentially the most damaging use of sexting is when an image goes ‘viral’ and is spread by a group of people beyond its originally intended recipient. This malicious example of sexting occurs when recipients choose to forward the image instead of saving or deleting it.

32. Many of the survey’s respondents were keen to note that there is an important difference between sending sexts back and forth with someone with consent, and forwarding such sexts on to a third party without the consent of those involved. Many
also felt that it is the forwarding of photos and videos to third parties that should be considered the illegal part of sexting and should be the action that attracts any potential penalties:

I believe that sexting is fine, as long as the two parties/people involved keep the pictures/videos to themselves, and not forward/share them with their friends, schoolmates or anyone else. I think the forwarding/sharing of sexting pictures should be illegal, not sexting itself. (Female, 10-15)

I don’t think that ‘sexting’ should be illegal. This is an activity that engages those two individuals. As long as the photo/document isn’t sent to other people, then I believe it is acceptable. If the photo is sent to another party, then that’s when I think a punishment should be enforced. (Female, 10-15)

Sending and saving photos should not be illegal – forwarding photos without permission, however, should be. (Male, 21-25)

I don’t see a problem if a person is sending pictures of themselves, the problem is when these pictures are forwarded on without the consent of the person in the picture. That is the part that should be illegal. (Male, 21-15)

I do not think that it should be illegal to take or save such photos, however I DO think that it should be illegal to forward them on to other people without the original sender’s explicit consent. (Female, 10-15)

33. Perhaps unsurprisingly, given the consistency with which this viewpoint was expressed, the YAG survey revealed that only 2.15%, or 21 respondents, have forwarded a sext of any nature.

The extent and effectiveness of existing awareness and education about the social and legal effect and ramifications of sexting

34. The YAG survey revealed that, with the exception of the 26+ demographic, about 50% of respondents believe that sexting images of persons under the age of 18 is illegal.

35. Somewhat disturbingly, almost half of 10 to 25 year old are unsure about the legality of sexting. This point is further emphasised in the suburbs of Melbourne. Where 52.35% of respondents did not know whether sexting was illegal. Although 55.94% of those who have sent a sext are aware that it is illegal to send a sext of a person under the age of 18, 38.70% of those who sent sexts are unaware that it is illegal to send a sext of a person under the age of 18 (see Table 3).
Table 3

<table>
<thead>
<tr>
<th>Age</th>
<th>Yes</th>
<th>No</th>
<th>Don't know</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 10</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>0%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10 to 15</td>
<td>240</td>
<td>19</td>
<td>203</td>
</tr>
<tr>
<td>51.95%</td>
<td></td>
<td>4.11%</td>
<td>43.94%</td>
</tr>
<tr>
<td>16 to 20</td>
<td>93</td>
<td>8</td>
<td>69</td>
</tr>
<tr>
<td>54.71%</td>
<td></td>
<td>4.71%</td>
<td>40.59%</td>
</tr>
<tr>
<td>21 to 25</td>
<td>55</td>
<td>7</td>
<td>54</td>
</tr>
<tr>
<td>47.41%</td>
<td></td>
<td>6.03%</td>
<td>46.55%</td>
</tr>
<tr>
<td>26+</td>
<td>111</td>
<td>8</td>
<td>52</td>
</tr>
<tr>
<td>64.91%</td>
<td></td>
<td>4.68%</td>
<td>30.41%</td>
</tr>
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</table>

36. These figures suggest that a large number of those engaging in sexting are unaware of the possible legal ramifications because they are unaware that sexting images of persons under the age of 18 is illegal. This is concerning not least because, as roughly 50% of our respondents were under the age of 15, and 68% were under the age of 20, our results suggest that of the respondents who are aware of the illegality and are sending sexts anyway, a significant portion will be under the age of 18.

37. This would in turn most likely suggest that if the subject of their sext, and/or receives sext, is one of their peers, they will also then be under the age of 18. This potentially leaves a significant number of this age demographic open to a nasty surprise if the laws remain unchanged. Education to inform this group of the legal ramifications of sexting may be beneficial in alleviating this potential for problems.

38. Indeed, many of the respondents to the survey – when discussing what potential penalty they would like to see in place if they believed that one should exist for sexting – emphasised the need for greater community understanding through targeted education programs in order to make people aware of the issues raised by sexting:

*I think it would be interesting and important for young ‘offenders’ to engage in an educational program to let them know what their rights/responsibility are regarding their sexual relationships.* (Female, 26)

*I think more people should be aware of the consequences of sharing such photos. An education campaign would help.* (Female, 26)

*It’s not about whether to make it a law or not but to teach younger people that such actions are not right. Teens under 18 should be taught properly by parents and teachers in regard to*
such topic. Community should all work together to create a suitable teaching environment. (Female, 21-25)

There should be more awareness of ‘Sexting’. Get together a group of people who were a victim to ‘Sexting’ that have been embarrassed or humiliated by it to go round to schools and share their stories to try and deter younger generations from doing it. (Female, 16-20)

There should be more information for young people in schools about the consequences and effects of sexting. (Female, 21-25)

I think that there needs to be more education in schools regarding the use of internet and mobile phones, about the long term ramifications of sexting (cannot remove it from the net/other peoples’ phones) once it is out there, the fact that they lose control of who sees what and the consequences could mean for the future – work, relationships etc. (Female, 26)

I learnt from others’ bad experiences. So I will never do such a thing again! EVER! (Female, 10-15)

[Suggestions for potential penalties:] Compulsory counselling, mandatory teaching that forwarding a photo to somebody else is an absolute invasion of privacy and can cause psychological damage. [...] Education to people in early high school to think – media, phones, Facebook are PERMANENT forms of communication (just like written language – they are not like spoken language). (Male, 21-25)

Because of the harm done to people when the image is forwarded to numerous others there has to be a deterrent but this should also involve support and education. (Male, 26)

39. It is also important to note that some respondents suggested that education programs would, in some circumstances, be a much more suitable outcome for those being penalised for sexting than the current system of mandatory registration on the Sex Offenders Register:

In relation to [what the potential penalty should be if sexting should be considered illegal], I do not think under age children should be put on the sex offender list, but be educated about the laws and have a less harsh penalty. (Female, 10-15)

The best way to handle these trends is through holistic education programs which teach both males and females to respect themselves and each other. Sexting between young people should definitely not result in individuals being placed on sex offenders lists – this is ridiculous as the individuals are from the same age group and it is perfectly natural for them to be attracted to each other and explore different ways of expressing sexuality. More comprehensive sexual education programs which are realistic about young people’s sexual exploration and which teach about respect for self and others would be a good place to start on this issue. (Female, 26)

40. The YAG believes strongly that effective education programs are one of the essential tools in both empowering children and young people to be aware of the issues that concern them, and inspiring them to be involved in the decision-making processes that control and/or regulate these issues. This would certainly apply to the issue of sexting,
which, as a complex and multifaceted issue, requires a significant amount of information to be exchanged between participants, law makers and other involved parties (such as parents, teachers etc.). As always, the YAG would like to underline the importance of involving young people in all stages of the development of such educational programs as young people are in the best possible position to advise what will appeal to their peers and be most effective in capturing their interest.

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.

41. Both the members of the YAG and what appears to be the vast majority of respondents to the YAG’s survey feel that current laws are much too black and white and do not adequately allow for the broad range of activities that fall under the umbrella of the term ‘sexting’. Consequently any amended or proposed laws should be flexible enough to deal with each instance of sexting on a case by case basis, and that any penalties handed down should be proportionate to the seriousness of any offence being committed and should take factors such as the content of images and the consent and age of participants into consideration:

*It would depend on the circumstances as to the penalty. Teenagers are warned of this all the time, but they act on impulse and so in that case perhaps a fine. But if the offence is repeated, make the penalty more harsh. It would also depend on the context of the photo. If it was swimwear and underwear it may not be purposefully sexually explicit. If the image is clearly sexual, it needs harsher penalties. But where do you draw the line in the sand?* (Female, 26)

*It depends if it’s a onetime thing or multiple offender. This should decide the severity of the punishment.* (Female, 10-15)

*I guess it depends how old you are. For example if my wife sent me photos when we were in high school am I allowed to still have those? The terrible thing is that once a photo is in cyberspace it’s there forever. But I don’t think it’s fair to give a jail term to some kind that had a fight with their boyfriend/girlfriend. Really, the only way to be 100% sure the photo doesn’t get out is not taking it in the first place.* (Male, 21-25)

*I think that the punishment should be depending on the photo, who it is from, how often it is and age!* (Female, 10-15)

*Penalties for [sexting] should be dependent on factors such as consent of the individuals and content. For example, a 15 year old girl sending a naked photo of herself to her 17 year old*
boyfriend is not the same as a 40 year old man sending naked photos of himself to someone under the age of consent. (Female, 26)

42. In addition to a variety of comments in the survey results concerning many different aspects of the legislation in this area, there was a substantial number expressing concern at the current practice of mandatory registration of those convicted of creating or transmitting material depicting under 18s on the Sex Offenders Register. Many respondents were keen to see a change in this particular area of legislation:

I think that this sort of thing shouldn’t get people under 18 put on the sex offenders’ registry, as this ruins their career prospects and also defeats the actual purpose of the registry, which is to monitor paedophiles and stop them interacting with children. The penalties for sexting are way too harsh and need to be changed. (Male, 16-20)

A fine should be placed BUT it is wrong to make a young kid like a 15 year old a ‘sex offender’. I find it very unfair for his/her future and it ruins lives, it is WRONG. (Female, 26)

Giving someone a criminal record or registration as a sex offender has a huge impact on their lives and future opportunities (including ability to gain employment) and is just not necessary for something as frivolous as this. (Female, 21-25)

I think that the laws currently in place do not adequately represent the change in technology. And, the law must change to facilitate this change – young people should not be seen as malicious criminals for this type of act. Young people who participate in sexting, in my experience, are not often aware they are breaking the law, it is simply a ‘fun’ and ‘thrilling’ thing to do – they, under no circumstances, should be seen in the same way paedophiles and such other criminals are seen. This is a loophole in the law and it needs fixing. (Male, 16-20)

Regardless of the moral or ethical persuasion of those attempting to enforce these laws, it does not change the fact that an irresponsible teenager not considering the consequences of their actions should not result in their name being added to the sex offenders’ register FOR PHOTOS OF THEMSELVES. It is also odd that the age of consent (in NSW) is 16, so you can have as much sex as you wish, but should you take a photo of the intimate event, you will end up on the sex offenders registry. It’s nonsensical. (Male, 16-20)

Quite often the ‘perpetrators’ are actually victims themselves. Registration as a sex offender is a penalty that will affect a person for the rest of their lives, and should most definitely not be posed merely because a young person is irresponsible, which is typical, and is sending nude/naked photos of themselves. [...] That said, child sexual offenders are [a] serious threat to our society, and the courts should be able to use their discretion to determine who is a genuine threat, and who is probably just a victim that could have benefitted from some community education!! (Female, 21-25)

Under 18s are often unaware of the law in regard to what is essentially private interaction between friends/acquaintances/girlfriends and boyfriends. To penalise them for such things is out of line. Certainly registration as a sex offender would be a gross overreaction and doesn’t fit the act of texting (generally). However, steps should be taken against those who circulate such photos to those it is not intended for. Fine line to determine, and I don’t believe sexting is a healthy or positive practice, but for young people in a consensual exchange it seems a ridiculous response to call it a criminal act. (Male, 21-25)
Having said this, however, there are those who would advocate for registration on the Sex Offenders Register in certain circumstances, such as for repeat offenders, older offenders or in situations where the severity of the act is such to warrant a more severe penalty:

I think that each circumstance needs to be dealt with on its own merit. Young kids sending photos need explanations about the seriousness of the act, however this doesn’t mean that they are sex offenders or need to go on sex offender registers. There will however be individuals who are using sexting inappropriately and need significant fines and if it is believed that the act is serious enough, (e.g. multiple underage photos then Court intervention and sexual offending programs might be appropriate. (Male, 26)

The issue of sexting is very complicated. I believe that if a person is under 18 and the person involved in the picture is under 18 but older than 14 it probably isn’t worthy of jail, but a fine to demonstrate that what they are doing is illegal. Registry on the sex offenders’ roll is not appropriate. [If t]he person is between 18 and 20 and the corresponding ‘victim’ is over 16 then leniency should apply as well. However, for those over 21 distributing pictures of under 18[s] then fine, jail and/or sex offenders register is appropriate. (Male, 26)

I feel that to be registered as a sex offender if you are under 18 is too harsh because people that young are not mature enough to comprehend the consequences of such actions. [...] The only time a person should be registered as a sex offender is if there is a significant age difference between the sender and person who has the photo on their phone or if the content of the photo poses any danger to the young person in the photo. (Female, 16-20)

If the offender is a teenager or younger, some education is needed regarding values, ethics, privileges and responsibilities. If the offender is older than a teenager registration as a sex offender is appropriate. (Female, 26)

[Suggesting potential penalties:] A rehabilitation program – 12-step program and counselling offered to those who are ‘under age’. Those who are 18 and above should be registered on [the] Sex Offenders[Register] if it is circulated and stored. (Female, 26)

Relative to severity of case. As I see it when private moments are kept private then that should really be no one else’s problem. It is the sharing of these photos that puts people at risk and should result in counselling/community service. Repeat offenders could perhaps be labelled as sex offenders, but for a one off offence that would be ridiculous. (Male, 16-20)

In addition to the views expressed above, there was also a selection of survey respondents who felt that the legislation of these issues was either not worthwhile or would most likely not be effective:

I think the attempt at enforcing such a law could not be done, and would be a waste of taxpayer money. (Male, 16-20)

How about parents do their job instead of expecting the government to babysit for them? Modern parents should be tech savvy enough to monitor and restrict their child’s usage of electronic media. If they CHOOSE not to be, they should be punished, not their children. (Male, 26)
I really think the law (and resources) are better applied elsewhere. If a young person takes a picture of themselves with full consent and sends it to someone willingly that shouldn’t be interfered with by the law. Sex with minors should still be illegal and inappropriate relations between teachers/students etc, but making this illegal is completely futile and difficult to monitor [...] Young people are beginning to explore the idea of sex and this action isn’t hurting anyone. It’s silly and they should be aware of the potential repercussions, but adults do it all the time... Making it illegal is just a farce. (Female, 21-25)

I believe that criminalising sexting is not the best way of dealing with the issue of the use of these kinds of images. Teenagers will naturally explore their sexualities through whichever means are available to them – text messages are one of the mediums of this time. Criminalising this (especially young girls who take photos of themselves and send them to others) sends the message that sexuality is bad and something to be ashamed of. (Female, 26)

You old people and law makers should stop being such prudes. The world has changed since the dinosaurs, you need to too. If we want to send photos of ourselves that’s our choice. Why don’t you deal with ‘real’ problems such as hoon driving or people carrying knives? (Female, 16-20)

I honestly don’t see why sending or receiving pictures is against the law. It’s your choice whether to send it or not. It’s your body. It’s bloody nature for god’s sake. (Female, 16-20)

A lot of teenagers send these images and texts. Making it illegal will not stop it. I can assure they will keep sending these regardless of any consequences. (Female, 16-20)

45. Also revealed from the survey data was that about 15% more females than males believe that sexting should be illegal, and also that, apart from 21-25 year olds, about half of the survey respondents believe that it should be illegal (although, as noted above, many added caveats to this viewpoint).

46. Interestingly, more than half of those who want the penalty to be registered as a sex offender are under the age of 15, which is most likely indicative of the fact that they do not appreciate the life-long implications of such a sentence. The older the respondent, the more likely they are to say that it depends on the age of the persons involved (with a maximum of roughly 50% of the 26+ age demographic adopting this position). Further, 20% of 16-25 year olds believe there should be no penalty, and only 4.81% of respondents believe in a prison term penalty (less than half the percentage of the group supporting sex offender registration).

**Conclusion and Recommendations**

47. As mentioned at the beginning of the submission, this issue is certainly a complex and multifaceted one with no easy answers or one-size-fits-all solution. In fact not only is it not a black and white issue, it could more accurately be described as occupying the entire spectrum of grey in between the two. It is important to note – and it is the opinion of the YAG – that some forms of sexting are not necessarily negative, especially where participants are taking part of their own free will and are of an age to make a
fully informed decision to participate. It is, however, equally important to recognise the potentially devastating and destructive impact that sexting can have, particularly when done without the subject(s) consent, given the speed and ease with which information can now be disseminated via a wide variety of new and existing technologies. With this in mind, the YAG would like to offer three main recommendations for consideration by the Victorian Parliament’s Law Reform Committee’s Inquiry into Sexting.

48. **Recommendation 1**: The first of these is that, if only one change could be made as a result of this Inquiry, we recommend replacing the current practice of mandatory registration on the Sex Offenders Register of young people who sext and are ultimately convicted (under current laws) of creating and/or disseminating child pornography, with a discretionary registration model. That is, allowing the judicial officer hearing each individual case to consider the particular circumstances of that case and decide whether or not that young person should be registered as a sex offender in that instance. The discretion of the judicial officer should also extend to being able to select from a sliding scale of penalties (say from no penalty at all, through to official warnings, community service, mandatory education programs, fines, prison terms and registration as a sex offender) depending upon the nature of each sexting case. We consider that the laws as they currently stand do not adequately address the complexity of the issue of sexting, are too black and white to be a fair and could actually cause irreparable damage to the futures of young people.

49. **Recommendation 2**: Our second recommendation is that more research should be conducted in order to form an accurate picture of the nature, prevalence and incidence of sexting in Victoria and beyond. The YAG’s survey results demonstrate that the community in general and young people in particular have much to say on the topic of sexting if given the opportunity to do so. While our survey is a useful first step in beginning to understand the nature of sexting, more systematic and thorough research is needed by those who are qualified and resourced to do so in order to better understand sexting and the best ways to address the issues that it presents to our community.

50. **Recommendation 3**: The third recommendation is that, regardless of any movements being made with regard to the laws in this area, it is critical that education around sexting is enhanced for children and young people of all ages in Victoria. This education needs to be age-specific, practical and presented in a format that will engage children and young people. Along with sexting itself, this education could cover related issues such as bullying, digital citizenship, respect for self and others and sexual education. As previously stated, children and young people should be involved in all stages of the development of any educational programs as they are the ones best placed to know what will and will not appeal to their peers.

51. The YAG would like to thank the Victorian Parliament’s Law Reform Committee for the opportunity to make a submission to this important Inquiry into Sexting and would be delighted to discuss our submission with the Committee if required.