Dear Committee members

The Children’s Court of Victoria thanks the Law Reform Committee for inviting the Court to make a submission on the current Inquiry into sexting. Please find attached the Court’s submission to the Inquiry.

The President of the Court would be happy to address the Committee on this issue should they feel it to be appropriate.

Yours sincerely

[Signature]

Judge Paul Grant
President
Children’s Court of Victoria
INQUIRY INTO SEXTING

SUBMISSION TO THE LAW REFORM COMMITTEE
FROM THE CHILDREN’S COURT OF VICTORIA

The Children's Court of Victoria provides the following submission to the Law Reform Committee's 'Inquiry into sexting':

1. Prosecutions in the Children’s Court of Victoria

There is no specific offence of ‘sexting' under Victorian law.

If a young person is charged by the police with an offence that alleges sexting behaviour, the charge (or charges) will be laid pursuant to the child pornography provisions contained in sections 68 to 70 of the Crimes Act 1958 (Vic).

It is the court’s submission that this is highly undesirable. Child pornography offences were developed to deal with a very different type of offending behaviour and the law should acknowledge this fact. This incompatibility between the practice of sexting and child pornography provisions of the Crimes Act 1958 – best described as using a sledge hammer to crack a nut – may explain why the court rarely hears a 'sexting' prosecution.

Even though sexting is alleged to be rife among young people, prosecutions relating to this behaviour are very rare in the Children’s Court. It seems that those matters reported to police do not necessarily result in criminal charges. Presumably, police are warning or cautioning alleged offenders and diverting them from the criminal system. The Children’s Court supports this approach in appropriate cases.

The Children’s Court would support a system that provides for graduated responses depending on the degree of ‘criminality' involved in the alleged misbehaviour. In most cases, the use of cautioning or diversion would be an effective and appropriate way to address such inappropriate behaviour. For matters that are sufficiently serious a specific sexting offence should be created.

1 A recent report in the Sunday Age – “Teen sexting: it’s illegal but it’s in every high school” by Nicole Brady, 10 July 2012 noted that schools are struggling to cope with a surge in teenage ‘sexting’. The report states, “many schools have chosen to handle the matter internally and have not notified police – despite child pornography laws being broken.”
2. Sex Offenders Registration Scheme

The judicial officers who work in the Children’s Court have discretion at law to decide whether it is appropriate to place a young person convicted of a sexual offence on the sex offender’s register.\(^2\) Judicial officers in adult courts do not have such discretion.

Very few matters in the Children’s Court have resulted in a Sex Offenders Registration order. In those cases where it has occurred, the offender has been found guilty of a serious sex crime (such as rape, incest or indecent assault) and found (beyond reasonable doubt) to pose a risk to the safety of the community. Registration of a young person under the Sex Offenders Scheme has not been found to be appropriate in any child pornography prosecutions in the Children’s Court.

The Children’s Court submits that the discretionary power currently granted to Children’s Court judicial officers should be extended to judicial officers in adult courts.

3. Sexting and intervention orders

Whilst the Court does not often confront sexting in the Criminal Division, it does hear applications in the Family Division where one party seeks an intervention order under the *Family Violence Protection Act 2008* or the *Personal Safety Intervention Orders Act 2010*. In such cases, person A usually seeks to restrain person B (often also a minor with whom they have had a previous relationship or sexual encounter) from retaining, distributing or posting images of person A.

The Court does not currently have the power, in the Family Division, to order the destruction of offending materials in the possession of person B. The Court submits that it should be given such a power.

\(^2\) *Sex Offenders Registration Act 2004*, s6