Parliament of Victoria

Law Reform Committee

Inquiry into Sexting

AFP Submission
June 2012
AUSTRALIAN FEDERAL POLICE
SUBMISSION TO THE INQUIRY INTO SEXTING

Introduction

The AFP welcomes the opportunity to make a submission to this inquiry into sexting.

The AFP’s High Tech Crime Operations (HTCO) function investigates, disrupts and supports the prosecution of offenders committing serious and complex technology crime, predominantly relating to offences in contravention of the Commonwealth Criminal Code Act (1995). As part of the Australian Federal Police’s (AFP) responsibility in protecting children and young people and making them aware of the potential misuses of technology, it established a dedicated Crime Prevention Team in March 2008 within the High Tech Crime Operations (HTCO) Portfolio. The main purpose of HTCO’s Crime Prevention Team is to develop and implement online crime prevention strategies (internal and external to the AFP) through education and awareness raising. The team’s approach is to raise the awareness of online risks and empower technology users to protect themselves. The team fosters relationships with government and non-government organisations, industry and community groups to target its awareness and education initiatives.

Term of reference: 1 The incidence, prevalence and nature of sexting in Victoria

The AFP is unable to comment specifically on the incidence, prevalence and nature of sexting in Victoria, however, the following general points may assist the Committee. Mandatory reporting requirements, enhanced community awareness of sexting and the continued penetration of technology within society has meant teenagers in Australia are increasingly being reported to police for “sexting”—the creating, sharing, sending or posting of sexually explicit messages or images via the internet, mobile phones or other electronic devices by people, especially young people.

Intimate pictures and videos can be distributed at a rapid rate and can be disseminated far and wide. The permanency of material posted online can continually impact on young people, and the legal consequences can be just as dramatic, inadvertently staining young lives, well into adulthood.

The distribution of a personal or sexual image can have immediate detrimental consequences for a young person when it is distributed to unintended recipients. However it can have longer term consequences if that image reappears later in the young person’s life as they attempt to enter the workforce, with many employers conducting meta data searches to examine a person’s digital footprint.

Sexting may also be considered a form of cyberbullying when nude images are uploaded and shared on the internet. The creation and dissemination of these images can trigger a school’s mandatory reporting obligations bringing the matter to the attention of Child Protection Services and potentially the police.

This type of behaviour is also comparable with what occurs in online grooming matters regarding the procurement of images. In these cases, an online sex offender ‘blackmails’ a young person into continuing to provide images of themselves under the threat of making public and/or further distributing their images.
Term of reference 2: The extent and effectiveness of existing awareness and education about the social and legal effect and ramifications of sexting

The challenge for anybody undertaking awareness and education work about sexting is that unfortunately for some young people, capturing the image, and pressing the ‘send’ button may at first seem like a bit of fun, but is often carried out with the absence of forethought of the consequences of their actions. The realisation that once an image enters cyber space and it cannot be deleted, instead it is likely to be further transmitted locally, nationally and even across the world, is not something some young people comprehend. Young people need to ask themselves the question: “If you would not be comfortable showing certain photos at the dinner table or to your grandparents, why would you be comfortable sharing them online, sometimes with people you don't even know?”

To counter the practice of sexting, the Australian Government is educating young people about its dangers as part of a $120 million cyber safety program.

The AFP HTCO Crime Prevention Team has always viewed the issue of posting inappropriate images amongst secondary school children as a key concern and anecdotal reports on the incidence of sexting continue to be received on a regular basis, (to be discussed later on).

In order to address the issue of sexting, a multi-faceted approach is required whereby young people are educated not only on the risks associated with sexting, but also on the immediate and longer term impacts. They need to be made aware and understand that in some instances, those images which have been created and shared on the internet, have actually ended up in the collections of online child sex offenders.

Youth need to understand that this activity may adversely impact on their reputations now and into the future. Most importantly, youth need to recognise that the creation and sending of inappropriate texts and images of a sexualised nature may constitute child pornography.

Education and awareness

AFP experience with education and awareness programs is that programs need to focus not only on those youth who are creating the inappropriate images/ texts and distributing them, but also on the responsibility of those who receive the texts/images, and who then decide to further distribute the inappropriate images. Those who receive the messages are contributing to the issue, and should therefore be part of any solution. The AFP has focussed on sexting through; its general cyber-safety work; the ThinkUKNow program; working with elite athletes and sporting bodies on social media and reputation management; a targeted cyber safety program for the Pacific; and in presentations to primary and secondary school students in the ACT community.

Cyber Safety

The AFP’s HTCO Crime Prevention Team plays a significant part in the education of youth on online risks including sexting. AFP cyber safety presentations are delivered to young people aged primarily between 11 and 18. These presentations seek to educate children on the risks they can encounter online, exploring issues such as sexting, cyber bullying, social networking, digital footprints and the importance of protecting their reputations. Importantly the
Team develops solutions for what children can do to protect themselves and what to do if things go wrong.

In addition to the social and legal ramifications of sexting, one of the key messages delivered to youth is “Think before you post”.

Members from the Crime Prevention Team have attended and presented to over 156 school and sporting groups in 2011 constituting 22,385 young people. In 2012, as at 5 June, the Team has delivered 97 presentations with an outreach of over 10,000 young people.

In some cases, the attendance of the Crime Prevention Team to present at a school has been a direct result of instances of sexting within the school. There have been about half a dozen instances whereby the Crime Prevention Team has presented at a school as a direct result of a sexting incident. In addition, ACT Policing members have recommended a cyber-safety presentation as a proactive response to address the issue to schools in the ACT. The school will then re-schedule these presentations on an annual basis.

Case Study:
A group of young male students coerced two young female students from a different school to send sexually explicit images of themselves via mobile phones to one of the boys in the group. The girls sent the images under the understanding they would receive similar images in return from the boys. The boys did not send any images in return. The boy then distributed the images of the young girls to the other boys and to boys from another school. The boys’ school became aware of the distribution of the images and contacted the Police. As part of the resolution of the matter, cyber-safety presentations have been delivered to most year levels at both schools and the students involved have been spoken to by Police. Although the matter has yet to be finalised, no charges are pending.

ThinkUKnow

The ThinkUKnow cyber-safety program is aimed at bridging the knowledge gap that exists between adults and young people when it comes to the internet and mobile technologies and to encourage a more open dialogue between them.

ThinkUKnow is a partnership between AFP and Microsoft, and is proudly supported by NINEMSN, and now DATACOM.

ThinkUKnow has used a trained network of volunteers from these partner organisations to deliver awareness-raising sessions to parents, carers and teachers across Australia to provide advice on helping their child avoid online risks and what to do if things go wrong.

The presentation covers cyber bullying, sexting, online grooming, scams, identity theft and other issues and is supported by online resources through our website www.ThinkUKnow.org.au
During 2011, 134 presentations were delivered to 4,383 parents, teachers and carers.

A specific awareness raising product created by the AFP to address the issue of sexting was an educational video as part of the ThinkUKnow cyber-safety program. The video was launched by the then Minister for Home Affairs and Justice, the Honourable Brendan O’Connor during National Child Protection Week in September 2010. The video is designed to raise awareness of the issue of creating and sending inappropriate images via mobile phones. The sexting video “Megan’s Story” is available for downloading from the ThinkUKnow website www.thinkuknow.org.au and the ThinkUKnow YouTube Channel www.youtube.com/user/ThinkUKnowAUS. The aim of the sexting video is to depict a teenager’s experience of sexting and to explore the ethical decisions her peers are presented with in response to receiving the image. It highlights that once something is created in a digital format and then shared, the person who created the image loses control over who sees it and what they do with it.

The awareness video targeting the issue of sexting is part of a suite of resources around sexting, targeting those more likely to be pressured into sending these images. The accompanying student and teacher lesson plans examine gender stereotypes and the role of the bystander in sexting activities in order to elicit students’ critical thinking of this behaviour (see Appendix A for a copy of the lesson plans).

As at 5 June 2012, this video has had over 590,500 views and the AFP has received interest from overseas organisations to use this video to educate young people.

**Social Media & Reputation Management**

AFP Social Media & Reputation Management presentations are delivered to elite athletes and professional sporting groups (athletes, training staff and their executive officers) highlighting the benefits and vulnerabilities of social networking, raising awareness of their own digital footprint and discussing mechanisms and methodologies to protect themselves and their identity online. The initiative follows a similar model as the Illicit Drugs in Sport framework encouraging sports men and women to become positive role models in the community and covers topics such as sexting, digital footprints and social networking.

During 2011 the AFP delivered 44 presentations to 1,713 athletes.
In 2012, as at 5 June, the AFP has delivered 20 presentations to 1,135 athletes.

**Cyber Safety Pasifika**

Use of the internet in the Pacific is growing, particularly among children and young people. While ICT skills are being taught in many schools, very little attention is given to safety and security online.

Cyber Safety Pasifika is a crime prevention initiative whose pilot program is being delivered to five countries through the Pacific Island nations, Tonga, Micronesia, Niue, Samoa and Cook Islands. Training of officers from those countries was held in early Feb 2012 and a Cybersafety Pasifika website established in May 2012.

The program seeks to educate at risk communities in the Pacific on cyber safety issues such as protecting your identity, sexting, cyber bullying, online grooming and e-crime; improving the digital literacy of communities new to social
networking and the internet. This program is an initiative of the Pacific Islands Chiefs of Police, of which the Commissioner of the Australian Federal Police is a member.

**ACT Policing initiatives**

The AFP’s ACT Policing Crime Prevention Team engages the Canberra Rape Crisis Centre (CRCC) to present to high school children in the ACT on respectful relationships. Over the last couple of years, these presentations have incorporated a Victorian performance called “No Means No Show”. The performance was written and developed by a team of writers and comedians in collaboration with health professionals at the Centre Against Sexual Assault (CASA) House at the Royal Women’s Hospital in Melbourne.

The “No Means No Show” is a comedy performance for teenagers about consensual and respectful relationships. Actors play out scenarios such as sexting, non-consensual sex etc and involve audience participation and discussion. There is a separate and dedicated show for girls and boys. It’s been quite successful in engaging children and youth in the ACT and has run for two years now. At the conclusion, a panel of ACT Policing, CRCC, and ACT Health members ask the audience to ask questions about sexual matters and protective behaviours.

**Term of reference 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.

Children who send explicit or nude images and those who receive the images may find themselves in contravention of various State, Territory and Commonwealth child pornography legislation.

Commonwealth online child sexual exploitation offences are contained in Part 10.6 of the *Commonwealth Criminal Code Act (1995)* (the Code), which makes it an offence to access, transmit, make available, publish, distribute, advertise, promote, solicit, possess, control, supply, or obtain child pornography through a carriage service (ie, the internet or mobile phone).

Penalties for these offences were increased in April 2010 by the passage of the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* (Cth). The Act increased maximum penalties for online child pornography offences to a maximum of 15 years imprisonment, with higher penalties of up to 25 years imprisonment applying to aggravated offences. The Act also introduced the offence of transmitting indecent communications to persons under 16 years of age where the offender is over 18 years of age. This offence carries a maximum penalty of seven years imprisonment.
The operation of Commonwealth online child sexual exploitation offences is explained in detail in the submission by the Commonwealth Attorney-General’s Department to the inquiry, dated 30 May 2012.

**Prosecution**

While Commonwealth laws are largely intended to target adult offenders engaged in the sexual exploitation of children, the laws technically apply to interactions between young people, such as sexting. This approach ensures that instances of young people involved in sending sexually explicit images of themselves or others can be dealt with if they are malicious or exploitative. There is also a community interest in preventing the circulation of explicit images of minors.

Although some offences could potentially apply to young people, there is scope for law enforcement and prosecution agencies to take the circumstances of the particular case into account before proceeding to investigate or prosecute.

As an additional safeguard, under section 474.24C of the Code, the consent of the Attorney-General is required prior to the commencement of proceedings for an offence against Part 10.6 of the Code if the person was under the age of 18 at the time he or she engaged in the conduct alleged to constitute the offence.

Prosecution information can be obtained from the Commonwealth Department of Public Prosecutions (CDPP). Whilst the AFP has not charged any person under 18 years of age with ‘sexting’ type offences under the Commonwealth Criminal Code Act (1995), since January 2008, there have however been two juvenile males charged under section 474.20: ‘using a carriage service to Possess, Control, Supply or obtain Child Pornography’ contrary to Commonwealth Criminal Code Act (1995). Both these cases involved the male juveniles accessing and distributing child pornography material.

Another four juveniles have been issued with Police Cautions and one juvenile has been issued with a caution by CDPP. All of these offenders have been male, and none of the images have been obtained as part of a relationship with another juvenile. (not sexting)

Registration of sex offenders on the Australian National Child Offender Register is a matter for each State and Territory. The Commonwealth does not have sex offender register legislation. Accordingly the AFP is unable to comment on whether these matters have been recorded on State or Territory sex offender registers.

The AFP, through its youth presentations and ThinkUKnow presentations highlights to young people that creating or accessing child pornography is an offence, even if you are a child yourself.

Of paramount importance is the prevention of the circulation of explicit images of minors, and the immediate and longer term consequences of actions associated with sexting. A multi-faceted response consisting of education, awareness raising and the application of either Commonwealth or State and Territory legislation are required to address the issue of sexting.