



Strengthening child sexual abuse laws in NSW

A submission to the:
The Department of Justice

Prepared by:
yourtown, October 2017

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Introduction

yourtown strongly welcomes the extensive work that the New South Wales (NSW) Government is undertaking to respond to both the recommendations of the 2013 Royal Commission into Institutional Responses to Child Sexual Abuse and issues raised by the 2017 Child Sexual Offences Review conducted by the NSW Department of Justice. This area of law in NSW and Australia more widely is complex and difficult to navigate. Efforts to streamline and simplify legislation are needed to enable all stakeholders, including children and young people, to understand the law and its application.

Given the range of services we deliver to children and young people (see 'About **yourtown**'), **yourtown** is directly aware of the effects of the issues covered in the discussion paper. Notably, information from our confidential, counselling Kids Helpline (KHL) service provides us with significant insight into the impact of sexting on children and young people. Subsequently, in our submission we focus solely on Chapter 12 *Decriminalising consensual 'sexting'*, and use data, analysis and case studies from contacts from Kids Helpline in 2016 to support our response.

Our submission is supportive of the introduction of a specific law to decriminalise sexting involving persons under 16 years. We, however, recommend further consideration of the age of decriminalisation to reflect the developmental maturity of persons under 18 years and to enable a nationally consistent legislative approach to a borderless issue. We also call for effective education and support services in the implementation of these reforms, critical components to the protection of our children in the digital age.

About yourtown

yourtown (formally BoysTown) is a national organisation and registered charity that aims to tackle the issues affecting the lives of young people. Established in 1961, **yourtown's** Mission is *to enable young people, especially those who are marginalised and without voice, to improve their quality of life.*

yourtown provides a range of face to face and virtual services to young people and families seeking support. These services include:

- *Kids Helpline, a national 24/7 telephone and on-line counselling and support service for 5 to 25 year olds with special capacity for young people with mental health issues*
- *Accommodation responses to families with children who experience homelessness and women and children seeking refuge from domestic and family violence*
- *Young Parent Programs offering case work, individual and group work support and child development programs for young parents and their children*
- *Parentline, a telephone counselling service for parents and carers'*
- *Expressive Therapy interventions for young children and infants who have experienced trauma and abuse or been exposed to violence*
- *Employment programs and social enterprises, which support young people to re-engage with education and/or employment, including Aboriginal and Torres Strait Islander specific services.*

Kids Helpline

Kids Helpline is Australia's only national 24/7, confidential support and counselling service specifically for children and young people aged 5 to 25 years. It offers counselling support via telephone, email and a real-time web platform. Kids Helpline is staffed by a professional workforce, with all counsellors holding a tertiary qualification. Since March 1991, young Australians have been contacting Kids Helpline about a diverse group of issues ranging from everyday topics such as family, friends and school to more serious issues of child abuse, bullying, mental health issues, drug and alcohol use, self-injury and suicide.

yourtown submission

We have responded to the Inquiry's call for submissions through the framework of the Department's discussion paper chapter 12, *Decriminalising consensual 'sexting'*, to bring further real life evidence about the issues discussed in the chapter, as well as our thoughts on reform and key considerations on how to better support children and young people to navigate the online environment more safely and respectfully.

KHL data and case studies

yourtown Kids Helpline data system hosts a wealth of data and information about the lived experiences of children and young people in Australia today. It provides invaluable insight on how our children and young people feel about, view and navigate the world and the range of issues and risks that confront them.

However, a few caveats or qualifiers must be considered when examining this data:

- *The data represents analysis of the number of contacts – and not necessarily individuals – made to KHL;*
- *The case notes that we have analysed are not complete pictures of the lives and experiences of the contacts but rather notes counsellors have felt important to record. This means that the prevalence of issues we present may not be fully reflective of all the complexities of each contact's story.*
- *More of KHL contacts are from females (73% of KHL contacts are from females, and 26% are from males).*

All case studies in our submission are based on the experiences of the children and young people who have contacted Kids Helpline and help to illustrate the diverse nature of sexting. The case studies we have selected are examples only of minors under 16 years of age from NSW who have contacted KHL, demonstrating the range of emotions and situations that this age group can experience in this context. All identifying information from case studies presented in this submission has been removed to protect client privacy.

'Sexting' in the current legal framework

Sexting is a relatively recent technological trend among children and young people in Australia and in other parts of the world. As the trend has grown, cyber safety and sexting have become increasingly notable issues to which **yourtown**, and in particular for our team of over 100 Kids Helpline counsellors who have had to respond and develop support resources. Indeed as a result of its rise, in 2016, we expanded our Kids Helpline data collection system to gather information specifically about the prevalence of cyber safety issues, with the aim of informing and improving our counselling practices and advocacy work in the area.

Children and young people who contact KHL about sexting often ask for advice about the possible implications of the law in relation to sexting and are, for example, concerned that they may get in trouble with the law due to their actions, or are keen to know how the law might help prevent their sexts from being shared. With states having different laws in this area, including different legal definitions of children in relation to age, some not having specific laws on sexting, and the range of different federal and state laws that may be applied when looking at prosecution or defence cases in relation to sexting, it is not only an extremely complex area for children and young people to understand (which causes and adds to their anxiety and stress) but also for our counsellors.

KHL insights – Case studies

Flynn, 14, phoned KHL as he was anxious about a recent sext (a nude image) he sent to a 14 year old girl overseas. She told him that she had taken a screen shot of the photo and his messages, and then she subsequently blocked him. Flynn was worried about any legal repercussions.

Jack, 14, sent nude photos of himself to two girls after they had asked him to, and they had sent him pictures of themselves. He was now regretting it as following a police officer's visit to his school he had found out about the legalities of sexting. He has now deleted the pictures, expressed regret and fear about what he had done, but was concerned he would get in trouble with the police.

The emerging new realities of childhood development framed by technology and the evolving dangers within it - including for example cyberbullying, blackmail, and widely accessible and increasingly aggressive and normalised pornography - are complex issues for adolescents to effectively navigate and contextualise. Indeed, they are issues that adults and society at large are often ill-equipped to deal with. Yet the current legal system has the potential to do long-lasting harm to children and young people through criminally prosecuting them as a result of developmental and explorative behaviour.

As there are currently no legislative provisions specifically on 'sexting' in NSW, under the current law it is possible to prosecute minors and even place them on the Child Protection Register if the sexually explicit image or text relates to a child less than 16 years. This means it is an offence for a child under 16 years to take or send a sexually explicit image of themselves and it is an offence for another person to be in possession of such an image. Sexting between children aged under 16 years, even when consensual, may constitute a sexual offence against children, and as a result it is possible that, under the current system, sexual offences can involve instances where the victim and the perpetrator is the same person.

The current legal framework also does not appropriately accommodate the fact that some minors are likely to make unwitting mistakes or not fully understand the repercussions of their actions in sexting situations, and thereby cause significant harm to themselves or others. The overwhelming majority of contacts that Kids Helpline receives about sexting are of this nature. KHL counsellors hear about the anxiety, stress and embarrassment that may result from both consensual and non-consensual sexting experiences for both young victims and young perpetrators.

KHL insights – Case study

Paul, 11, exchanged sexual images with a guy on the internet which he now regrets. He is confused about why he did it and not sure why he went along with it for as long as he did. Paul has now stopped sexting and has spoken to his parents about it but is still feeling very guilty about it. He wants help managing his feelings of shame, anger, guilt and disappointment and making sure he does not do it again.

Ella, 12, was emotionally distressed after sending an unknown male an explicit image of herself. She created a false, older female profile on Kik so she could meet new people. She engaged with several unknown men, and chatted to one particular male for longer. He asked her to send an explicit image of herself. She initially declined but eventually agreed and sent an image of herself topless. After the male received the image he stated that he planned to put the image of her online for everyone to see.

For this reason, **yourtown** does not believe that the current NSW legal framework appropriately considers or accommodates the realities of interactions between children and young people today. Current legislation is simply not suitable for managing sexting among minors as modern-day extensions of adolescent sexual experimentation and exploration of relationships.

yourtown therefore believes that the current NSW legal framework needs reform, and notably requires a specific law relating to sexting and minors – and which considers and appropriately deals with both young victims and perpetrators. We are also supportive of any moves to streamline laws covering sexting so that stakeholders, including children and young people, can more easily understand and/or navigate the legal system and support services, such as those we deliver, can provide optimum advice and support.

‘Sexting’ practices of young people and potential consequences

To help understand the practices and potential consequences of sexting on children and young people, we draw from our analysis of data on contacts made by children and young people to Kids Helpline in 2016 relating to sexting.

Given the nature of the work KHL delivers, **yourtown** most frequently hears from children and young people about the stress, anxiety, guilt, shame and humiliation that sexting interactions can cause. We also often hear about how sexting intersects with bullying, blackmail, harassment and threatening behaviour.

In this section, we provide an overview of the analysis of Kids Helpline data to give an idea of the range of real life scenarios and effects of sexting on adolescents in Australia.

KHL insights: Prevalence of sexting practices

Since the issue of sexting is a relatively new and growing trend, research about its prevalence among and effects on young people is sparse but growing. The findings of the Law Reform Committee of Victoria 2013, *Inquiry into sexting* provides a comprehensive review of the issues impacting children and young people in this specific area, whilst findings from more recent new studies into sexting or into related areas are beginning to emerge.¹

Kids Helpline can provide a limited and caveated view of prevalence and experiences of sexting among Australia’s children and young people. The overwhelming majority of contacts about sexting to Kids Helpline are from children and young people who are upset, confused and anxious about their sexting experiences. They contact us for reassurance, guidance on what to do next, or information about the law. In relation to the findings of the Australian Institute of Criminology in 2015 *Sexting among young people: Perceptions and practices*, KHL responds to the least common answers that were given by young people for motivations for sending an image of themselves such as “to fit in” or “pressure from friends”.²

Nonetheless, KHL information is invaluable to this discussion as it is a reminder that sexting and its potential repercussions on the health and wellbeing of children and young people should not be trivialised. It also sheds light on how children and young people can make mistakes, misjudge or not fully consider consequences of their actions given their developmental maturity, lack of experience, ability to contextualise and/or their evolving morals and ethical codes.

An overview of KHL contacts on sexting

In 2016, 294 contacts were made nation-wide to Kids Helpline by children and young people who were seeking counselling about issues relating to sexting. This figure had increased by a third since our

¹ E.g. Pron Harms Kids Ltd (2017) *The Porn Harms Kids Report, protecting our kids from online pornography harms is everyone’s business* and Henry, N, Powell, A and Flynn (2017) *A Not Just ‘Revenge Pornography’: Australians’ Experiences of Image-Based Abuse*
² Lee, M, Crofts, T, McGovern A, Milivojevic, S (2015) *Sexting among young people: Perceptions and practices*

submission to the Victorian Parliament on sexting in 2012.³ In addition, 14,784 people looked at KHL tip sheets on sexting in 2016, with 2,998 accessing parents tip sheets on the issue.

Of those contacts, 83% were made by females and 17% were made by males. These figures are in keeping with the fact that more females contact Kids Helpline each year. In 2016, 73% of contacts were female and 26% were male. Nonetheless, 10% more female than male contacts were made about this issue, which may reflect that this is an issue affecting females more notably and detrimentally, supporting findings from the Law Reform Committee's Report on the *Inquiry into Sexting* in Victoria and NSW's Committee on Children and Young People Report on *Sexualisation of Children and Young People* that this is a gendered issue.^{4 5}

To establish an idea of the scale of the effects of sexting on minors, according to the NSW definition of under 16s, the table below provides a breakdown of contacts by age groups.

KHL contact ages	Percent of total sexting contacts made in 2016
Under 16	52%
16 and over	39%
Age not specified	9%

The youngest contact to KHL about sexting was made by a 10 year old and the oldest contact was made by a 24 year old. The highest numbers of contacts were made by 14 year olds, and then both 13 and 15 year olds. Few contacts were made by contacts under 12 (14) and by contacts over 19 (30). This snapshot of KHL data clearly shows that this is an issue detrimentally affecting minors. In terms of the breakdown of ages by gender, 56% of all female contacts and 68% of all male contacts were made by under 16 year olds.

In the vast majority of cases, it was one of the children or young people who had been involved in sexting seeking help through KHL although in a few cases a friend or sibling who was concerned for someone who was/had engaged in sexting behaviour contacted our counsellors.

KHL insights: The nature of sexting

The nature of sexting reported to KHL counsellors reveals a number of different scenarios, including the transmission of still images, online video streaming and, less commonly, the sending of sexually-suggestive text messages. Sexting was reported to have occurred with a romantic partner, ex-partner or friend(s), but also to strangers or online partners they had met on the internet. In a few cases, friends transmitted sexts in the company of other friends, or took it in turns to sext online.

Reasons children and young people who contacted KHL reportedly sexted included:

- *Expression of affection/as part of an intimate relationship*

Kids Helpline counsellors most frequently hear about children and young people choosing to sext as an expression of affection or extension of their intimate relationship with their partner when the relationship has ended. Ex-partners may have non-consensually shared, have threatened to share, or in some cases, have sextorted (e.g. they have tried to coerce the individual to remain in the relationship) using intimate images that they were given during the relationship.

³ <https://www.parliament.vic.gov.au/57th-parliament/lawreform/article/946> (BoysTown submission)

⁴ Law Reform Committee's Report, Victoria (2013) *Inquiry into Sexting*

⁵ Committee on Children and Young People Report, Report 2/56, NSW (2016) *Sexualisation of Children and Young People*

A few contacts reported their partner had asked them for a nude photo of themselves and they felt very uncomfortable responding to this request and did not know what to do. Conversely, there were also examples of males who contacted KHL who had asked their partners for nude selfies and were worried that they sounded creepy or noted that their partner changed the subject or sounded resistant/hesitant. There were also a number of contacts who talked about having met their boyfriend or girlfriend online and so this was part of establishing or maintaining their relationship.

- *Response to a request to send explicit images from someone they know or a stranger online*

By far the most common reason for sexting was reportedly in response to a request from either someone they knew (a friend or someone they know at school) or a stranger they had met online (who could be a peer, an older person or someone posing as a younger person). Whether the request was welcome (at least initially) was not always mentioned/noted and hence this reason may include both welcome and unwelcome requests for nude images.

KHL insights – Case studies

Josh, 14, sent a nude photo of himself to a girl in response to her request for one. She then showed the photo to a friend, and now a few people at school know about it. He is worried that the girls at school will think he's a perv.

Michelle, 14, stated that she needed help with an addiction to online sexting. She said that boys asked her to watch them do "stuff with their thingys" online. Although she initially said no, she felt dragged into doing it, and has had requests and threats from a boy to show him 'stuff' since he showed her. She felt scared about saying no to him. Her boyfriend has found out and is upset about it, and has helped block the boys online.

- *Pressure from peers, partners or strangers met online*

A large number of contacts to KHL reported having been pressured into providing naked images or videos online in response to repeated requests and harassment, blackmail, sextortion and threats from their friends and peers, their partners and strangers (again who could be a peer, an older person or someone posing as a younger person). In some cases, requests were made following sending of a sexual message often deemed 'inappropriate' by the child or young person. A few cases involved male contacts being asked for significant amounts of money, in a few other cases, females had been told they would receive large sums of money in exchange for having shared their nude images or videos.

KHL insights – Case studies

Emily, 13, was distressed and did not know what to do as she had received a message on Facebook asking her to send a nude photo of herself. She ignored the message and the person pasted a nude photo-shopped photo of her and said he would send it to everyone on Facebook if she did not send one of herself.

Claire, 14, feels threatened by an 18 year old male she knows in her town. He contacted her on Instagram and they started talking online. The conversation got sexual and he asked her to send him naked photos of herself. Claire declined but the male then got threatening. After taking some screen shots, she has now blocked him on social media but she is worried she will see him around and that he knows where she lives.

- *Seeking acceptance from a partner, friends, people more widely (wanting people to like them)*

A significant number of contacts reported that they felt they were seeking validation (re. their body image) or just wanted people to like them and accept them and had hence sent or shared sexts of themselves more widely. In a few cases, this included callers with intellectual disabilities demonstrating the vulnerability of this group.

KHL insights – Case study

Jessie, 13, said she went into an online chat room one day because she was bored and decided she would voluntarily show her naked body online. She explained she did not show her face and is not concerned about the pictures being distributed, however, she is confused and sick at her actions and needed to talk to someone to help herself make peace with why she did what she did. She wondered why she wanted to get validation from complete strangers but it was nice to hear from them that they thought she was beautiful.

- *Pranks or game-playing*

Very few contacts reported that they sexted someone as a prank or as game-playing (e.g. truth or dare).

KHL insights – Case study

Isabella, 13, shared that she had sent a nude photo to a boy she knows as part of a truth or dare game, but now feels uncomfortable about him having it. She is now unsure about what to do.

Harmful consequences of 'sexting'

As mentioned above, KHL overwhelmingly supports children and young people who have had negative experiences of sexting. The consequences of these experiences range in their degree of severity – including those consequences actually experienced by those who contacted KHL and also levels of anxiety or fear experienced about these consequences eventuating. Harmful consequences reported to or noted by KHL counsellors that resulted from their sexting (and others finding out about it) included:

Concern about:

- *their photos being shared*
- *what their friends will think of them*
- *what their parents will say if they find out*
- *having their access to their phone or internet stopped*
- *legal repercussions and getting in trouble with the police, and a long lasting criminal record/being put on the Child Protection Register*
- *their future careers*

Experience of:

- *being ostracised or bullied at school as a result of sexting*
- *being expelled from school*
- *being cautioned by the police*
- *parents physically or verbally abusing them, being ashamed of them*
- *their current partner being upset or abusing them*
- *thoughts of suicide*
- *considering or carried out non suicidal self injury*
- *feeling shame, guilt, humiliation, regret – including for the few examples of contacts made to KHL by perpetrators of bullying, harassment or 'revenge porn'.*

KHL insights – Case Studies

Charlotte, 13, sent a boy at school naked photos of her after he blackmailed her saying she had to give him nude pictures of her or he would spread rumours about her. She told her parents, and the police have been

involved, but even though it was nine months ago and the photos have been deleted she still struggles with it. Charlotte said people at school still talk about it, that she has lost all of her friends because of it and that sometimes she feels suicidal.

Other jurisdictions

As discussed above in *'Sexting' in the current legal framework*, the complexity of the legal frameworks that currently relate to sexting practices of minors in both NSW and Australia-wide presents a challenge for children and young people and stakeholders more widely to understand.

Every jurisdiction in the country has legislation criminalising the production, dissemination and possession of child pornography but definitions of child pornography vary across states. NSW, Queensland and Western Australia laws states that the pornographic material must relate to a child who is, or appears to be, under 16 years. In South Australia, the material must relate to a child who is, or appears to be, under 17 years. Under Federal, ACT, Northern Territory, Tasmania and Victoria, the material must relate to a child who is, or appears to be under 18 years.

By its nature, the internet does not recognise boundaries, rather we find that it acts as a facilitator or platform for children and young people to engage in relationships with strangers they meet online – a number of KHL contacts talked about their online boyfriends and girlfriends they had met as strangers online (and may have never met in person). This reality means that differences between state laws governing internet use, cyber safety and sexting make protecting Australia's children and young people unnecessarily complex, with decisions arising about which state laws to apply in specific cases. This cannot be a sustainable, appropriate or fair system for Australia's minors.

For these reasons, **yourtown** strongly recommends that legal jurisdictions adopt nationally agreed consistent definitions regarding the definition of 'child'. We would also urge state and territory governments to come together to arrive at a consistent response to consensual sexting and related laws so that legislation is clear and unambiguous across the nation, and Australia's children and young people are treated consistently and have access to the same protection from and defence of the law.

Options for reform

yourtown does not believe that the current legislation in NSW, which currently provides for the potential prosecution of and/or listing of a child under 16 years on the Child Protection Register as a result of consensual sexting is an appropriate or fair way to treat children. Moves to ensure that minors in this scenario cannot both be the victim and perpetrator of the Child Sexual offence are sensible and welcome. We also support the creation of a new law relating to sexting specifically in NSW.

The Victorian Government was the first to develop specific exceptions to child pornography offences in relation to sexting. We support applying principles based on the Victorian experience to a defence to decriminalise consensual sexting for a person under 16 in NSW. We, however, would like the NSW Government to go further in its reform and extend the decriminalisation of sexting to persons under 18 given they are still developing, that laws recognise them as children in other regards and to enable a consistent approach to this issue interstate. Given this, we support the use of all of the following defences to sexting in NSW:

- *the person is a child and the image is of themselves alone or the image depicts a criminal offence where they are the victim (e.g. the image depicts a criminal offence where the child is both the victim and the perpetrator);*

- *the image does not depict a crime and the accused is less than two years older than the youngest minor depicted in the image (the importance here is on the sexting partners being assessed as being of equal developmental stages);*
- *the image is of themselves as a child, it does not depict a criminal offence and they did not distribute the image to any other person; and*
- *the image is of a child aged 16 or 17 years who is not under the care, supervision or authority where the age difference is less than two years, it does not depict a criminal offence and the image was not distributed to any person other than the accused.*

In the following section, we set out broad recommendations for consideration by the NSW government when developing the new framework, including considerations to support the implementation of new laws:

- Work towards adopting nationally consistent definitions regarding the definition of 'child', and nationally consistent responses to consensual sexting and related issues so that legislation is clear and unambiguous across the nation, and Australia's children and young people are treated consistently and have access to the same protection from and defence of the law.
- Apply discretion and preferably a case-by-case approach to legislation involving young people. **yourtown** supports the approach being taken under the new Crimes Amendment (Intimate Images) Act 2017 approach whereby the Director of Public Prosecutions will be required to approve any prosecution of a child under 16 years for one of the new offences to ensure they do not over-criminalise activity between children.
- Ensure that the legal framework is underpinned by joined-up thinking, with consideration of, for example, how failure to report child sexual offences may relate to sexting.
- Take a proactive approach to protecting children and young people from the harms of sexting. This will involve ensuring that there are appropriate and widely accessible education and support services in place to help children and young people navigate the digital world and understand and contextualise widely accessible and increasingly aggressive pornography. **yourtown** is working with the E-Safety Commission to deliver a range of early education programs to this end, but we know given the potential scale and impact of the problem that more must be done.

Gendered stereotypes are being perpetuated by sexting and prolific pornography and we must ensure that our children and young people are equipped to develop healthy and respectful relations with each other, and to reject the normalisation of harmful behaviours spread by the digital world. Long-lasting impacts of sexting and pornography such as body image, mental health and domestic violence must be tackled head-on.

- Ensure education and support services are available to child and young person perpetrators of non-consensual sexting. Currently, very few services support children who find themselves subject to the present legislative framework and prosecutions. If they are prosecuted at a young age, services are needed to help them reform and positively learn from their error. If they are not prosecuted – often the case if they are very young today (10 or 11 years old) – then appropriate referral support services need to be in place to minimise their risk of repeat offending.
- Learn from and apply the findings from the NSW Government's trial of special children champions who help children and young people understand the questions of police and lawyers and specialist judges to support appropriate legal management of consensual and non-consensual sexting cases involving child victims and perpetrators.