

# Family Planning Victoria's submission to the Law Reform Committee regarding 'Sexting'

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**family  
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Sexual & Reproductive Health  
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## About Family Planning Victoria

Family Planning Victoria is a not-for-profit, leading provider of sexual and reproductive health care, education and advocacy. As part of our work in education and training, we deliver sexuality education sessions to primary and secondary school students, and run professional development sessions for teachers and school nurses across the state.

We thank the Victorian Parliament and the Law Reform Committee and welcome the opportunity for comment.

This submission will only focus on Sections 2 and 3 of the Terms of Reference:

2. the extent and effectiveness of existing awareness and education about the social and legal effect and ramifications of sexting;
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.

## SECTION 2 OF THE TERMS OF REFERENCE

### **What we know about existing awareness and education about the social and legal effect and ramifications of sexting**

When Family Planning Victoria's sexuality educators receive requests to conduct school-based sessions in secondary settings, we often get asked to include the topic of sexting. Anecdotally, during these sessions students often appear shocked to discover the severity of existing laws, and often at times will seek clarification of them by our educators. This demonstrates a level of concern felt by these young people who may not be aware of how their actions and those of their friends will affect them from a legal viewpoint.

### **Our role in providing sexuality education and training about sexting**

Family Planning Victoria is committed to educating young Victorians and their teachers about the impact of sexting as it falls within our role of providing comprehensive sexuality education to improve the sexual health of young Victorians. Sexting can have serious legal ramifications for young people especially, and even without legal intervention, sexting can lead to negative repercussions socially in terms of a young person's reputation and 'digital footprint.' For this reason, we welcome the review of current legislation surrounding this issue and believe it is timely.



For the current financial year, Family Planning Victoria's sexuality educators have delivered 165 sessions in government and private secondary schools across Victoria, reaching almost 7,000 students. Cyber safety has been incorporated in most secondary school sessions since 2009 as part of our lessons about safer sex/social safety for students. Sexting specifically has been addressed over the past two years in both secondary school sessions and professional development sessions for secondary school teachers and school nurses.

In August 2012, Family Planning Victoria is running a new professional development course called 'Sexuality and Technology' for sexuality educators (for VELS level 5-6 or Years 7-10) which explores the impact of technology on the relationships and sexuality of young people. The course addresses topics including sexting, the impact of pornography, body image, gender and power, technology and the law and the impact of technology on sexual practice.

## **SECTION 3 OF THE TERMS OF REFERENCE**

### **Section 3b.**

#### **Family Planning Victoria's professional opinion on the appropriateness and adequacy of existing laws where sexting is a private act and consent is established**

Family Planning Victoria believes that current legislation in relation to the creation, possession and transmission of sexually suggestive or explicit messages and images in circumstances where a person consents to the creation of the message/image for his or her own private use is inappropriate when sexting involves young people. We recommend the decriminalisation of sexting between young people in some circumstances. For instance, if a 16 year old girl creates a 'sext' and sends it to her 17 year old boyfriend without coercion and with consent from both parties, then no charges should be applied assuming he does not then disseminate the message or image more broadly (as is the case currently between consenting adults). In all cases, the age and intent of the parties involved should be taken into consideration.

However, we do believe that a minimum difference in age should be acknowledged in legislation. For example, as is the case for consensual sex in Victoria, the two (or more) young people involved in creating and sending a sext should be no more than two years apart in age if under the age of 16. If a creator or receiver of a sext is aged between 16-17, the receiver or the creator should not be in a position of power or authority over the other party. In this instance, a law would be broken and the legal consequence should be an official warning in the first offence, which may include an 'undertaking' (previously called a good behaviour bond) signed by the person/s who committed a crime under the new legislation (see Legal Aid Victoria, 2011). Of course, provisions need to be made for people with a developmental disability whose age does not reflect their developmental abilities.

Family Planning Victoria also recommends that the Law Reform Committee considers a minimum age where a child cannot legally give consent to send or receive a sext message or image to another person, regardless of the age of the other party/parties involved.



In any case involving young people under the age of 18 years that is presented to court, Family Planning Victoria strongly advocates that the law stipulates a minimum mandatory education requirement for the creator/receiver of the sext at the discretion of the magistrate. This should occur whether the sexting is deemed consensual and free from coercion or otherwise. This could be performed by the Police or an external educational body within a specified timeline as directed. Educating young people about the law in relation to sexting and the impact that this could have on the people involved may act as an effective deterrent.

## Section 3b.

### **Family Planning Victoria's professional opinion on the appropriateness and adequacy of existing laws where dissemination of a message or image extends beyond the person intended without the creator's knowledge and/or consent**

If messages or images are disseminated more broadly than the person intended without knowledge and/or consent from the person who created the sext, Family Planning Victoria recommends that laws be in place to charge the person/s who distributed the message/image.

However, we believe that for young people in particular, the current laws regarding "transmitting child pornography" (Legal Aid, 2012) are too severe. Young people should not, for instance, be listed on the sex offenders register for 'possessing' or 'distributing' a sexually explicit message or image unless this is deemed appropriate in a court of law where predatory intent is established beyond a reasonable doubt. Each case should be treated individually and intent needs to be taken into consideration.

## References

Victoria Legal Aid, 2012, *Sex and the Law*, viewed July 2012, <<http://www.legalaid.vic.gov.au/745.htm>>.

Lawyers and Legal Services, Victoria Legal Aid, 2011, *Your Day in Court: A Guide for People who are Representing Themselves in the Magistrate's Court*, viewed July 2012, <[http://www.legalaid.vic.gov.au/cle.your\\_day\\_in\\_court.pdf](http://www.legalaid.vic.gov.au/cle.your_day_in_court.pdf)>.

## Contact

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