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5 July 2013

The Hon. John-Paul Langbroek, MP
Minister for Education, Training and Employment
PO Box 15033
City East QLD 4002

Dear Minister,

Re. *Young People and Sexting in Australia: Ethics, Representation and the Law*

Please find enclosed a copy of our recent report on young people and sexting in Australia

This report presents findings of a qualitative study of young people's understandings of, and responses to, current Australian laws, media and educational resources that address sexting (electronic sending and receiving of sexual images)

In addition to young people's concerns, findings and recommendations are informed by experts working across fields including law enforcement, youth and children's legal support, education, criminology, media and communications, youth work, youth health care, counseling and youth health promotion.

The study was funded by The Australian Research Council's Centre of Excellence for Creative Industries and Innovation.

The report has been sent to all State and Federal Attorney Generals and all Ministers for Education and Police.

Please contact me if you have any questions.

Regards,

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YOUNG PEOPLE AND SEXTING IN AUSTRALIA:

ETHICS, REPRESENTATION AND THE LAW



UNSW
THE UNIVERSITY OF NEW SOUTH WALES

CC BY

Kath Albury (UNSW)

Kate Crawford (Microsoft Research/MIT Center for Civic Media/UNSW)

Paul Byron (UNSW) and Ben Mathews (QUT)

This project is funded by the ARC Centre of Excellence in Creative Industries and Innovation at the University of New South Wales, Australia

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Finally, and most importantly, we are grateful to all the young people and adults who generously contributed to focus groups and stakeholder consultations.

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1. Executive Summary

The *Young People and Sexting in Australia* report presents the findings of a qualitative study of young people's understandings of, and responses to, current Australian laws, media and educational resources that address sexting. While there are many definitions of sexting, for the purposes of this report we are referring to the production and distribution of naked or semi-naked photographs via mobile phones and social media.

The project involved a review of both international local and academic research as well as popular media addressing sexting, and a review of educational resources for young people. Three focus groups were conducted with young people aged 16 and 17 in 2012, and a working paper based on those findings was then distributed to adult stakeholders in the fields of law enforcement, youth and children's legal support, education, criminology, media and communications, youth work, youth health care, counseling and youth health promotion. This report therefore draws on both the focus group discussions, and a workshop consultation with the adult stakeholder group.

Key Findings:

- While focus group participants were familiar with the practice of sending naked or semi-naked pictures, the term sexting was understood as an adult or media-generated concept that did not adequately reflect young people's everyday practices and experiences of creating and sharing digital images.
- Young people observed that gendered double-standards were applied to discussions of sexting, and digital self-representation in general. For example one group of young women were particularly offended that their self-portraits or selfies were viewed by both peers and adults as 'provocative' while young men's naked or semi-naked pictures were understood as 'jokes'.
- Sample media campaigns and public education materials viewed by focus groups were rejected by some participants for failing to acknowledge young women's capacity for consensual production and exchange of images. These participants also felt that current sexting education fails to emphasise young people's responsibility to not share images without consent.
- Both young people and adult stakeholders agreed that current legal frameworks relating to sexting (particularly those that conflate sexting with child pornography) are not widely understood by either young people or adults, and that this lack of education and awareness places young people at risk of unreasonable criminal charges.

The *Young People and Sexting in Australia* report recommendations follow. These recommendations are presented in two major categories, (1) strategies and (2) new approaches to understanding sexting:

Strategies:

- 1.1 We recommend that educators, policy makers and legislators consider context-specific and age-appropriate legal/educational approaches for young people in different age-groups. Educators and legislators should particularly address the specific needs of those under 18, yet over the age of consent (i.e. young people aged 16-17).
- 1.2 We recommend the inclusion of young people on committees, review boards and other policy-making groups, so that their experiences can inform future frameworks for understanding and responding to sexting.

- 1.3 We recommend that both educational and legal responses to sexting reflect 'harm reduction' principles rather than promoting abstinence from the production and exchange of digital photos between peers or from using social media.
- 1.4 We recommend that sexting education be more focused on fostering ethical, respectful practices between intimate partners and within friendship networks.
- 1.5 We recommend legislative reform to clarify the application of existing laws relating to child pornography and child exploitation material (as they are applied to sexting), and to clarify the parameters of lawful conduct by and between consenting children and young people.

New Approaches:

- 1.6 We recommend that educational strategies that address sexting, including information resources for adults, seek to problematise and challenge gendered double-standards in relation to concepts such as 'provocativeness', 'self-confidence', 'responsibility', 'consequences' and 'reputation'.
- 1.7 We recommend that educational strategies that address sexting, including information resources for adults, acknowledge young people's rights and responsibilities with regard to self-representation and sexual expression.
- 1.8 We recommend that educational strategies that address sexting, including information resources for adults, distinguish between non-consensual production and distribution of sexting images and consensual image sharing.
- 1.9 These educational strategies should emphasise ethical frameworks, and recognise that sexting can be an expression of intimacy, rather than shaming young people for sexting. Framing sexual expression only as a risk does little to alleviate anxieties or feelings of shame that young people may experience in relation to their sexualities.

2. Background

Though there are many definitions, sexting can be generally described as “the practice of using a camera cell phone to take and send nude (including semi-nude) photographs to other cell phones or Internet sites” (Chalfen 2009, 258). In recent media coverage, policy development, legal discussion, and academic research, sexting is predominantly considered to be a young people’s problem (Mitchell et al. 2012, Ringrose et al. 2012, Walker et al. 2011), although it is also an adult practice, as seen through the 2011 sexting scandal of Anthony Weiner (Brooks 2011) and other public figures and celebrities (Curnutt 2012, Watson 2010). Sexting now also features in sexual self-help narratives for adults (Ellwood-Clayton 2012, Kitt 2012, Sweet 2012), where it is not typically framed as a risky practice. But through publicised legal cases where young people who are caught sexting face criminal charges for the possession and distribution of child pornography, much attention has focused on sexting as involving a serious risk of criminalisation, as well as a risk of exploitation.

Having established comprehensive databases of international sexting literature and Australian media coverage, we found that few discussions on sexting adequately engage with young people’s concerns around this practice. It is rare for young people’s opinions to be voiced in media coverage. Nor is there much said about where sexting fits into ongoing, everyday media practices. Dominant media and educational debates often conflate sexting with cyberbullying (see for e.g. Hinduja and Patchin 2011, Cox Communications 2009). This project offers an understanding of the contexts of sexting, which is often outside the context of abuse, victimisation and harassment, and one which reflects young people’s perspectives on their everyday practices and cultures.

This report is designed to inform Australian legal, educational and policy responses to sexting. We approach sexting from a media and cultural research perspective, extending upon formative work into young people’s use and production of media via mobile phones and other digital media. Further discussion on young people’s reflections on legal aspects of sexting can be found in the *New Voices / New Laws* report, released in November 2012 by the National Children’s and Youth Law Centre in partnership with the Children’s Legal Service, Legal Aid NSW (Tallon et al. 2012).

3. Methodology and Context

We catalogued an archive of Australian news media relating to sexting since 2008, when the term first developed a public currency. Key media themes were noted and compared to our literature database of published research on sexting. Empirical research took place in two settings; the first involved three focus groups with young people aged 16-17 years, and the second involved a workshop with relevant adult stakeholders.

To date, over 400 news stories about sexting have been published in Australian newspapers. These predominantly focus on sexting as a crime, or an aspect of cyberbullying, often suggesting that young people are unable to safely navigate sex and technology. Most reports of sexting rely on statements from experts including legal commentators, child psychologists, educators and police, and sexting is deemed a matter for parents, schools, and police to manage. Scant attention is given to young people's concerns on the matter, or why they choose to engage in sexting.

The term 'consequences' features in almost one third of print media stories, referring to legal and social consequences of sexting. Although it could be argued that 'consequences' is a neutral term, the potential consequences of sexting are never represented as neutral or positive – particularly for young women. Instead, the term seems to stand in as a euphemism for 'punishment', and it is strongly implied that young people are naïve, unaware of the impact of their actions, and that this ignorance must be corrected by adults who know better. Our project takes a different approach.

This research is informed by several sexting studies such as the recently published National Society for the Protection of Cruelty to Children (NSPCC) report on sexting (Ringrose et al. 2012), the *AU Kids Online* project (Green et al. 2011), and the Australian *Young, Mobile, Networked* study (Goggin and Crawford 2011). This project differs from these studies in its attention to young people aged 16-17 years, that is, people who are over the age of sexual consent, but not considered legal adults. The NSPCC report focuses on a younger group for whom the repercussions of sexting are quite different, and the *Young, Mobile, Networked* study interviewed young adults (aged 18-30), who do not face legal penalties for sexting with other adults. The *AU Kids Online* study addresses online sexting, but not sexting via mobile phones.

Australians aged 16 and 17 are permitted to have consensual sex, but not to make any photographic or video recordings in ways considered to be pornographic by law (see 'Legal Context of Sexting' section on page 6 for more detail). As a result, 16-17 year olds must navigate sexual practices that can be both consensual and legal, but illegal to visually record. In this context, educational and media messages suggest that the legal responses override one's ethical engagements, and thus young people are not asked to reflect on the ethics of sexual conduct as much as they are asked to obey current laws. We recognise that young people are consequently vulnerable when they discuss sexting with adults. For this reason, we are especially grateful for the support of the National Children's and Youth Law Centre, and the NSW Rape Crisis Centre, who assisted us in developing a Confidentiality Statement, and a protocol for responding to any young person who might be distressed as a result of participation in our research.

Recruitment and data collection processes for the focus groups with young people, the adult stakeholder workshop, were approved by the Human Research Ethics Committee at The University of New South Wales (Reference: JC12050).

3.1 Focus Groups

Data on young people's attitudes and concerns about sexting were collected from three focus groups held in Sydney in June 2012. These involved a total of 16 young people aged 16-17 years from three geographical areas in Sydney. Participant recruitment took place through an arms-length approach, with a notice sent via email through peer and professional networks, as well as to youth services (government and non-government), and independent schools. Information was also posted to various Facebook pages including pages for youth centres, sporting groups, and entertainment venues. Consent was obtained from all participants and their guardians, and participants were given \$50 shopping vouchers for their input.

The first focus group (G1) featured self-nominated participants responding to our callout (Eastern and Western suburbs); the second (G2) was made up of peers involved in a youth group (South-East suburbs); and the third (G3) took place at an independent school for 'at risk' young people (Western suburbs). Participants in G1 and G2 attended both government and independent schools.

Focus groups were semi-structured as per a schedule approved by the Human Research Ethics Committee (see Appendix). During discussion, each participant was given a sheet of paper with the following definition of sexting, taken from the National Children's and Youth Law Centre's *LawStuff* website:

Sexting usually refers to:

- Taking naked or partly naked photos or videos of yourself (posing in a sexual way) and sending the photos either via the internet or mobile phones; and
- Receiving or forwarding such photos or videos through mobile phones, internet and social networking sites such as Facebook or MySpace.

Several videos on sexting were shown to participants to generate discussion, including public service films and excerpts from a sexting-related subplot in the TV show *Neighbours* (see Appendix for full details of materials shown).

3.2 Adult Stakeholder Workshop

In December 2012, a workshop was conducted at UNSW involving 17 adult stakeholders from various organisations that engage with young people and the legal structures around sexting. These include police, criminologists, youth workers, health workers, researchers, and young people's advocates (see Appendix for a full list of organisations involved). Consent was confirmed with all participants, and for confidentiality reasons we requested permission to name organisations rather than participants involved. All participants consented to this.

Participants were invited from either existing professional networks, or by approaching other key organisations that have been involved in national discussions around sexting, including many who made submissions to the Victorian Law Reform Committee Inquiry into Sexting in 2012. As there are overlapping concerns among stakeholders from different domains, we sought to assemble a range of expertise in which sexting could be discussed in a holistic sense, beyond the roles of each individual present. This provided an opportunity to workshop potential legal, educational, and policy responses to sexting, and for many participants was the first time they had the opportunity to discuss the responses across sectors and institutions.

Prior to the workshop, participants were sent a working paper that reported on findings from the focus groups with young people. The 3-hour workshop involved a brief introduction and analysis of focus group findings, an overview and discussion of the findings of *New Voices / New Laws* report (Tallon et al. 2012), and workshop discussions on the draft recommendations included in the working paper (see Appendix for workshop agenda).

The workshop discussion involved participants assembling into four groups to discuss one of the following: sexting and the law; sexting education and harm reduction; sexting and ethics; and new approaches to sexting (see Appendix for the issues discussed in each group).

Workshop participants were invited to send further comments on the working paper and workshop discussion in the month following the workshop. Interested parties unable to attend the workshop were also emailed the working paper and invited to comment. This report includes revised discussion and recommendations informed by the stakeholder discussion.

3.3 Legal Context of Sexting

In Australia, Commonwealth and State laws regulate and respond to child pornography and child exploitation material, and the use of new technological means to store, create and distribute it. These laws have enabled responses to a growing and egregious phenomenon. In 2005, federal legislation commenced which made illegal the use of mobile phones to create, transmit, or possess material defined as 'child pornography material' or 'child abuse material'.¹ The provisions make it an offence to:

- Use a carriage service for child pornography material (s 474.19) or for child abuse material (474.22);
- Possess, control, produce, supply or obtain child pornography material (s 474.20) or child abuse material (474.23) for use through a carriage service;

Section 474.19 states, for example, that a person is guilty of an offence if the person accesses 'child pornography material' using a carriage service. Section 474.22 is identical and applies to 'child abuse material'.

However, these laws were created to respond to child pornography. They were not developed to regulate consensual behaviour between children (or adults), including sexting. The extrinsic materials (explanatory memorandum) to the Act which inserted these provisions in 2004 demonstrate that these laws were not intended to apply to children and adolescents engaging in self-regarding sexual activity or genuinely consensual peer-to-peer sexual activity.

One difficulty that has become apparent in the sexting context is that laws created to prohibit and respond to 'genuine' child pornography have not been updated to clearly exclude consensual sexting behaviour. This type of behaviour, which was not a part of mobile phone culture at the time the laws were created, has since become far more common as mobile phone technology has developed. The law does not clearly accommodate what many people would justifiably feel is either merely self-regarding material created by young people (e.g. taking a photo/video of yourself and not distributing it) or is consensual private material created by and for young people involved in romantic relationships (e.g. images of yourself and a genuinely consenting partner). There are not good grounds for criminalising these behaviours, although it is a separate question whether unauthorised dealings with such images without consent should be regulated (e.g. forwarding an image or posting it on social media services).

Alongside the federal child pornography laws, there are provisions in State and Territory criminal laws which, if they are interpreted broadly, apply to sexting activity. These laws, depending on the jurisdiction, prohibit the possession, making of, and distribution of, 'child exploitation material', or 'child pornography', or 'child abuse material'.² There are reports of prosecutions for sexting having been brought under these provisions. However, if by 'sexting' we mean consensual sexual activity between youth, these provisions were clearly not intended by Parliament to apply to these situations. This is again demonstrated by the extrinsic materials which accompany the introduction of the legislation (speeches in Parliamentary debates, and the statements by relevant Ministers in the explanatory memoranda to the bills).³

Prosecutions brought under these provisions for sexting, at least in most cases where the activity is clearly innocuous, are therefore an unsound response. Police have extensive powers and discretion about methods of proceeding in response to a complaint. Factors relevant to prosecution decisions include the availability of evidence, the public interest, and the fact that the person is under 18 years old will weigh against a prosecution and will favour less intrusive responses such as warnings and cautions.

¹ Criminal Code Act 1995 (Cth) Chapter 10—National infrastructure; Part 10.6 Telecommunications Services; Division 474—Telecommunications offences - Subdivision D—Offences relating to use of carriage service for child pornography material or child abuse material.

² Crimes Act 1900 (ACT) ss 64-65; Crimes Act 1900 (NSW) s 91H, 91FA-FB; Criminal Code (NT) s 125B; Criminal Code 1899 (Qld) ss228A-E; Criminal Law Consolidation Act 1935 (SA) ss 62-63; Criminal Code 1924 (Tas) s 1A; ss130-130G; Crimes Act 1958 (Vic) ss 67A, 68-70; Criminal Code Act 1913 (WA) ss 217-221A.

³ In Qld, the relevant provisions regarding child exploitation material were inserted into the Criminal Code by the Criminal Code (Child Pornography and Abuse) Amendment Act 2005, which commenced on 4 April 2005. In the explanatory notes to the bill, Rod Welford stated clearly that the policy objective of the bill was 'to respond to the growing incidence of child pornography': <http://www.legislation.qld.gov.au/Bills/51/PDF/2004/CrimCdCPAAmb04Exp.pdf>. This policy objective was also the impetus behind the amendments to Victoria's Crimes Act 1958 which inserted ss67A-70, via the Classification (Publications, Films and Computer Games) (Enforcement) Act 1995, No. 90/1995.

Responses by law enforcement agencies should emphasise education and awareness, and should be undertaken in cooperation with educational and health institutions. If complaints are made about sexting activity, in many cases the most reasonable response from police should be simply to caution the person involved about what kind of conduct is unlawful. Prosecutions should not be commenced without adequate grounds, especially given the potentially severe consequences for breaches of the law, which often include placement on a sex offender register.

The National Children's and Youth Law Centre's *New Voices / New Laws* report (Tallon et al 2012) offers an extensive children's rights-based review and analysis of the Australian State and Federal laws that currently apply to sexting, and compares these laws and law reform proposals in other jurisdictions, such as the United States of America. The authors make a range of detailed recommendations with respect to law, law enforcement, education and policy reforms, including recommendations to "continue to consult with and listen to children and young people in the development of laws, policies, best practices and resources on sexting and cyberbullying" and "initiate a national conversation about amending Commonwealth child pornography laws as they apply to sexting" (Tallon et al 2012, 8.)

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4. Findings

This study deliberately engages a specific age group of young people – those who are over age of consent, but are still children according to Australian law. All focus group participants were aged 16-17 years, and all but one were senior high school students, in years 10, 11 or 12.

While this project relied on a small sample set, it raises some questions in relation to some of the implied assumptions in current sexting education. The educational videos surveyed for this project (*Megan's Story*, *Tagged*, and *Photograph*) all depict school as the primary site where sexting may have 'consequences' for young people. The primary consequence for young women in these films is represented as sexual shaming by peers, and subsequent damage to 'reputation'. However, the young people in our groups seemed dismissive of shaming by their fellow students. It was agreed that the exposure of naked or semi-naked photos among classmates would be embarrassing, but potential exposure of these images to teachers or parents was of much greater concern.

Group participants perceived younger people (particularly 12 and 13 year olds) to be more 'at risk' than 16 and 17 year olds. The age of consent was mentioned in all three focus groups, and the implication was that 'consent' should apply to all sexual acts, including the exchange of naked pictures.

4.1 Focus Groups With Young People

4.1.1 Sexting Definitions

Interviewees in all groups were familiar with the concept of sending semi-clothed, naked or sexually suggestive images and text messages and there was agreement that the term 'sexting' was not part of their everyday lexicon. While all participants were familiar with the term, it was seen as having been generated by adults and/or journalists. Some participants used humour or sarcasm when discussing adults' use of term.

Focus group participants did not use a specific term to define the practices known as sexting, preferring general terms like 'pictures'. This suggests that education or awareness campaigns focused on sexting are inherently read by young people as 'adult-generated' or 'media-generated', and may be implicitly associated with adult anxieties, rather than their own experiences and practices.

Well, I find with older generations, they want to name it, want to find out what it is and determine what it is and giving it the brand name, 'sexting'... I don't know - they just made a name for it.

(G1, F)

Facilitator: Where have you heard people using the term sexting?

Male 1: The news. That's about it.

Facilitator: Would people your age use the word?

Male 2: I've never used it in - apart from when I'm saying oh, did you watch that article on sexting on the news?

(G3)

The term sexting was viewed as inherently negative and even sinister, in contrast to the more neutral terminology of 'pictures'. Some participants suggested that 'pictures' only become 'sexting' "when a person gets offended" by an image.

4.1.2 Nudity: A Matter of Context and Confidence

Participants were both puzzled and offended by the tendency for adults in general (and educators in particular) to bundle all naked or partially naked user-generated pictures into the category of sexting. Participants used terms like “taboo”, “dirty”, “wrong” and “disgusting” to describe adult reactions to young people’s practices of producing and sharing images.

Facilitator: How do you think adults would define the term sexting; whether that’s teachers or journalists or someone else?

Male 1: They would think it’s irresponsible because people could send it around.

Facilitator: Anything else?

Male 1: They’d probably - even the slightest thing sexual - even like teenagers joke around a lot; but the moment you mention anything sexual they’ll probably be like - jump on it straight away and say sexting.

Male 2: Yes, overreact.
(G3)

Both young men and young women challenged this one-size-fits-all definition, emphasising the variety of cultural contexts that define ‘decency’ in dress and undress. Additionally, they argued that there are many contexts where these pictures are not intended as a sexual communication. Participants offered a number of examples of semi-clothed images, including pictures of people on the beach in swimwear, and people in their underwear in a non-sexual context.

Going back to the definition, ‘taking naked or partly naked photos’, how does a girl or boy being in their underwear have any difference to their being in their swimwear? How is that any different? ... I know there is obviously a difference, but...

(G1, F)

I think everybody has a very different perspective over what’s decent, what’s indecent and usually it’s a moral sort of thing, because, obviously you can’t please everybody. But who determines what is decent and what is indecent?

(G1, F)

The majority of participants did not seem to view naked or semi-naked pictures as inherently shameful or shaming for their subject (though they were considered embarrassing, particularly if viewed by parents or teachers). Only one participant (a 16 year old female) used moral frameworks to discuss ‘sexters’. For some others the choice to participate (or not participate) in taking or distributing naked or semi-naked self-portraits was primarily seen as an outcome of bodily autonomy and ‘self-confidence’ rather than sexual shamelessness.

I think it also raises issues about... are you allowed to do what you want with your body? I mean, if you are that confident that you want to post a naked picture on Facebook, should you be allowed to do that? I mean, if it’s yours, if you’re autonomous.

(G1, F)

Consequently, gendered differences in self-representation were seen by some participants as reflecting different levels of body confidence:

Female 1: Guys go do nudey runs and all stupid type of things.

Female 2: Yeah, they do all stupid things.

Female 1: Where[as] a girl's more - there's more problems with girls' self confidence than there is [with] boys' self confidence.

(G2)

Participants described different genres of semi-naked or naked pictures that they did not define as sexting. These included 'selfies', or digital self-portraits (which might be intended for private self-regard, or for sharing among friends); and 'sneaky hat' images, which were primarily produced by boys as comedy/prank pictures. (The subjects of sneaky hat pictures are naked or semi-naked, but cover their genitals or breasts with a baseball cap or hat).

4.1.3 Gender

Despite the framing of gendered approaches to nudity as primarily informed by individual self-confidence, a number of young women emphasised what they saw as a gendered double-standard in relation to self-representation. They claimed that adults were overly focused on young women's appearance, which resulted in an uncomfortable sense that they were constantly being monitored for signs of sexualisation or 'provocativeness', even in the playground of their single-sex school.

All groups noted broader double-standards in relation to male and female self-representation, with one group describing an event where a mutual friend posted naked pictures on Facebook and "no one cared", because it was interpreted as humorous rather than sexual.

Female 1: That's the whole thing with the gender...

Female 2: Yes, definitely

Female 1: ...it's like if a girl does anything in her underwear, it's immediately she's trying to get someone. She's trying to look provocative and sexy and stuff.

Female 2: That's a gender equality issue.

Female 1: Yeah. But if a guy does it it's hilarious and it's so funny.

Male 1: Yeah, I'm sure if there was a girl in that photo, people [i.e. parents and teachers] would have been called up and stuff, but because it's just a guy...

Male 2: A guy, like no one cares, they're just...

Male 1: No one cared.

(G1)

Gender also impacted on participants' accounts of the ways that sexual images were produced and shared. One group discussed the ways that male and females might interpret shared images differently:

Male 1: This isn't my personal view, but it's - the moment a female sends - some guys see it as the moment she's - they send her - him a text - it's theirs. It's their photo. They can do what they want with it. She voided all rights to that photo, so - and they can - yes, they do whatever they want with it.

Male 2: It could be their photo, but it still counts as - they only gave them their photo as trust. That's why they did it.

Male 1: Yes, but that's not a lawful, binding agreement.

Male 2: Yes, not lawful, but...

Male 1: Yes, so it's based on morals.

(G3)

Another group of young people debated the likelihood of young men sharing images that had been sent to them in the context of an intimate friendship, flirtation or romantic relationship:

Male 1: There's no guy who's been sent a naked photo of a girl who's, like, not shown their mates...

Male 2: They're not... no one's gonna ask... Unless it's like, just - no, but if you ask for it - if someone asks you for it, they're definitely going to show their friends.

Male 1: They might not send to anyone, but it's... they definitely would show...

Female 1: I think that's a bit of a generalisation though.
(G1)

The young men in this group began with a universal statement about their peers' behaviour, but following a heated challenge from the young women in the group, sought to distinguish between young men who 'asked' for pictures (who were presumably more likely to share them without permission) and those who did not. In the context of this conversation, it was not clear whether the young men were clarifying their statement, or changing it in response to the young women's strong negative reaction. This suggests that future research of this kind should involve both mixed and same-sex groups, in order to learn more about young people's gendered responses to sexting.

4.1.4 Consent and Intention

Participants in all three focus groups explored the context of intention and consent in relation to sexting. For one group, it was "offensiveness" that defined sexting in relation to ordinary digital pictures. In this discussion, it was not nudity in a picture that made it offensive, but the absence of consent in its production or distribution.

Male: ...no one's going to really mind unless it's offensive, right?

Facilitator: Yeah. So what contexts would sexting be offensive in, do you think?

Female: Like, photos and then they're getting shared...

Multiple Participants: Yeah.

Female: ...and they're not kept between, like when they're shared for everyone.
(G1)

In another discussion, images were only considered sexting if they were produced with mutual consent:

Male: Sexting's more of a willing action. If someone - if you don't know that someone's taken a picture of you in that way, would that still be classified as sexting?

Female: No, it's invasion of privacy.

Male: Exactly.
(G2)

The majority of participants considered the exchange of user-generated sexual images to be acceptable in the context of a relationship, however some were very wary of the potential for images to be shared non-consensually following the breakdown of a romantic relationship or friendship.

When asked to describe circumstances where sexting was or was not okay, consent was a deciding factor for all groups:

Facilitator: When is sexting not ok?

During school [*Laughter*]. To family members [*Much laughter*]. I think just any time when there's not consent.

(G1, F)

I think sending explicit text or photos to someone who doesn't want them sent to them is probably a problem, because usually, when I think about it, I think of both parties being consensual and both taking part in it.

(G1, F)

If it stays between the two consensual partners, yes, it's fine, because they both - they can trust each other. That's fine because it's their choice.

(G3, M)

4.1.5 Sexting and The Law

Participants were uniformly surprised by the legal penalties applied to sexting, and used terms like 'excessive', 'hype' and 'overdone' to describe the application of child pornography laws to young people who produce or share naked pictures.

Female 1: They're technically saying, if you're under 18.

Female 2: I really do not get it.

Female 1: Because it's child pornography.

Male 1: So...

Female 2: Yeah, but then why are you allowed to have sex at 16?

Male 1: I thought it was 18.

Male 2: Sixteen.

Female 2: Because the difference is...

Female 1: Sixteen's the legal age.

Female 2: ...at 16 you can consent to sex but not until 18 you can consent to sharing your frigging photo to the world.

(G2)

All groups referred to discrepancies between the age of consent for sexual activity, and the legal impossibility of consent when producing and sharing images. Participants were very familiar with the concept of consent, and used the term in a nuanced manner, providing a range of examples of consensual and non-consensual scenarios for sexting. As the following quote indicates, some participants were also aware that the law frames them as 'children'.

Male: Yes, because they're both over the age of consent, so it shouldn't be as much of a problem compared to the...

Female: But they're still children.

Male: Yes, I know that, but it's still, they consent. It's like, why can you see it in your own eyes but not send it in a photo - if you're still of the age of consent - because it's not like you're looking at other people or something. It's between two consenting parties.

(G3)

All participants stated that child pornography laws should be applied differently to those under and over the age of 18:

I think there's a difference between a 17-year-old male having a photo of his girlfriend or something naked than a 40-year-old man having a photo of a young kid. Yeah. There's quite a big difference. I don't think it should be the same sort of punishment.

(G1, M)

Participants were unsure as to whether consensual production and sharing of images by those over the age of 18 also counted as pornography, and were unclear of its legality. There was also some confusion regarding the correct action to take if a young person received an unsolicited sexual image from a peer:

Male: What if you delete it straight away? Would you still get charged?

Male: What about if it's not your choice of receiving it?

(G3)

4.1.6 Privacy, Law Enforcement and Police Powers of Search

The theme of 'privacy' emerged in all three groups, in different ways. Focus group participants discussed privacy in relation to their own images, and those shared by peers. There was an extended discussion of the extent of police powers, and the tension between 'private' and 'public' images within police investigations:

Female: Why are police going to look through someone's phone or computer?

Male: They've done it before.

Female: But that's the law. That's what [the facilitator] just said.

Male: Yeah, if we take - yeah, they go through our phones?

Female: Are they allowed to touch us?

Male: Yes, they are allowed to, if they've got the right permission for it.

Female: They need a warrant don't they?

Male: Yeah, basically, yeah.

Male: No, if they suspect you they can do whatever they want. They see you [unclear]...

Female: Not really.

Male: ...check your undies, man.

Male: They can't go that far.

Female: No.

Male: But they can do the basics. They can ask if they can check over your text messages and things like that. But they can't go straight out, give me your phone now. We're taking you to the station. You have to sit there while we go through all your stuff.

(G2)

4.1.7 Responses To Existing Educational Material

When asked, most participants could not recall any school-based education on sexting, though one group from a state girls' school specifically recalled watching a short film on sexting as part of the *Crossroads* Personal Development, Health, and Physical Education (PDHPE) program in Year 10. These young women were offended by what they saw as sexist assumptions in the film, which they believed depicted girls as inherently unwilling

participants in sexual interactions. This group was also skeptical of what might be termed 'abstinence' messages around sexting:

Female: That's the message that got conveyed to us is 'Don't do it', you know, 'you're going to get yourself into trouble'. Everything like that. But I think at the end of the day, people are going to do it anyway. Like, it's going to happen.

Female: Tell teenagers not to do something...

Female: Yeah, exactly. They're just going to do it even more.
(G1)

Focus group participants were then invited to comment on existing Australian educational material. Media and educational content screened for each group included *Megan's Story* (in full), and extracts from *Tagged*, *Photograph* and the sexting subplot from *Neighbours*. Two out of three groups were extremely skeptical of these clips. The following discussion took place after screening *Megan's Story*:

Male: It's just an example really. It's not really teaching you... It's just saying what could happen. I think anything - anyone would still laugh. A group of us would still laugh at that if we were made to watch it at school.

Female: Well, we all just laughed at it then.

Female: It's a generic educational tool that teachers think [will] affect us.

Male: Yeah, I don't think videos would ever work.
(G1)

Discussions of the media clips seemed to favour a 'harm reduction' approach to sexting:

It's just such a hard topic to sort of - because there's always going to be those few unfortunate instances. It's like teen sex, or something. A lot of the time it's okay. There's consent, protection, all that, but then you get those cases - unwanted child teenage pregnancy, date rape and all that. So it's just - you're never going to be able to define it and you're never going to be able to completely police it and I think people need to accept that and they just need to work more on prevention and protection.

(G1, F)

There was some debate about the best approach to sexting education. Some participants favoured 'scare campaigns', while others called for a nuanced unpacking of legal penalties and possible consequences post school:

Facilitator: ...what do you think would be an appropriate message for people your age? How would you talk about it?

Female: It's mainly about it getting out of the intended audience. Instead of saying "don't do it", because obviously, we're going to do it anyway - not personally, but you tell someone not to do something, they're so much more inclined to do it then. I - with an example at our school - I don't know - I'd use the whole of [a boys' school] finding out about this one photo. That'd kill someone. But - and also trust issues and you need to know the boundaries of your trust issues and the person that you're sending these photos to.

Male: I'll also say that - yeah, just that I sort of - you have to sort of show how if it gets into the wrong hands, you know, you wouldn't want your parents to find it, you wouldn't want your sister or someone seeing it.

Female: I think, even then, how likely the consequences are, because I'm sure that everybody is aware of the consequences, but they do it anyway, because they think, "oh they'll never send it. No. They love me". No.

Female: No.

Female: Not in two weeks. [Laughter]
(G1)

4.2 Adult Stakeholder Workshop

This workshop invited adult stakeholders to reflect on draft project findings and recommendations in an interdisciplinary context. Participants, including representatives from law enforcement agencies; youth medical and health promotion services and youth support agencies; sexual assault services; and researchers in the areas of criminology, media and communication, and education, received a draft research report one week prior to the workshop. The half-day consultation involved short presentations by the Lead Researchers on the *Young People and Sexting in Australia*, and the *New Voices / New Laws* projects. Following a whole-of-group discussion, breakaway groups focused on specific draft recommendations.

Topics addressed included: adults' and young people's awareness of current laws relating to sexting, and proposals for law reform. There was also an extended discussion of the different needs of adults and young people for age-appropriate educational resources and support in relation to sexting, and other forms of mediated intimacy. While diverse views were presented in the group discussion, there was a broad consensus regarding the need for sexting to be approached via an ethical framework (drawing on Carmody 2009) that allowed for a consideration of the context in which images were produced and circulated. The majority of adult participants were strongly opposed to an abstinence model for sexting education, with one clear dissenter from this position.

4.1.8 The Relationship Between The Age of Consent and Sexting

Given that the 16 and 17 year-old focus group participants expressed confusion and surprise at the difference between the age of consent for sexual activity (16), and that age at which young people can consent to sexting (18), one draft recommendation to the adult participants suggested that legal, educational and policy responses to sexting should take the age of consent into account. We proposed that any response targeting young people aged 16 and 17 should acknowledge that non-abusive sexual interaction between peers was legal in Australia.

One adult participant suggested that as sexting was not usually the depiction of an actual sex act, but more often involved a depiction of a naked or semi-clothed body, sexual consent laws may not be relevant. Several adult participants suggested that future research and legal, educational and policy responses should consequently allow more recognition of individual and cultural context in which the production and distribution of images occurred. Some of these participants suggested that given that young people in NSW are able to legally seek independent medical treatment (without parental consent) from the age of 14, this might be an appropriate age at which to introduce a more 'adult' framework for responding to sexting:

While we see the point of making it 16-18, we'd like to see the study go younger.

We need to be including youth under the age of consent in these types of studies and in material for parents, teachers and so on.

There was also a caution against assuming that all sexting activity between young people who are close in age is intrinsically unproblematic. As one participant observed:

[In] the work we do with juvenile sex offenders, [we find relationships where] age congruence can [still] be very abusive – it's something to keep in mind.

One small group discussion specifically considered sexting as part of a process of sexual learning. This group observed that the process of learning to trust, and learning how to be sexual, are part of a trajectory of learning experiences, and do not necessarily correspond with a single event. Consequently, young people should not be

understood as 'becoming sexual' at age of first intercourse, as implied by the concept of 'age of consent'. This group noted that first experiences of oral sex or intercourse often follow a number of cautious attempts at sexual experimentation in younger teen years, and that sexting could be understood by young people as a lesser risk in this context. This reflects Wolak and Finkelhor's typology of sexting, which broadly categorises sexting scenarios as either 'aggravated' or 'experimental' (2011).

4.1.9 Education and Resources

Adult participants were very engaged with the question of how best to provide both young people and adults with relevant education and resources in relation to sexting. The breakaway discussion focused on the topic of education attracted the greatest number of workshop participants, and also attracted follow-up comments via email from an interested organisation that was unable to send a representative.

Participants in this discussion observed that adults, as much as young people, were under-resourced by current education and policy responses to sexting. For example:

The Commonwealth Safe Schools framework has great concepts, but there is not enough focus on the 'how'. A lot of it seems focused on prevention, rather than treating what has already happened.

One participant observed that adults in the law enforcement field were better resourced than other adults likely to be impacted by sexting:

Police who don't know how to deal with this do have a space to go and find out. Parents need it too. There needs to be well developed online resources that are made available to teachers too.

This group also argued that a 'risk' model was not appropriate when addressing sexting:

There needs to be a focus on language – risk is an insufficient term.

The group also considered whether current school sex education provided adequate frameworks for understanding sexting, arguing that sexting was about technologies, relationships and bodies:

...a holistic view of healthy relationships and sexual diversity is needed, and [a picture of] where sexting ties into that. In the UK this has gone too far the other way, and education is all about relationships and not about the body.

The workshop participants favoured harm reduction as a strategy for addressing sexting. However the stakeholder who was unable to attend the workshop, but responded via email, was strongly opposed to this approach, arguing that the potential harms of sexting were too great. This stakeholder argued that "the impacts of sexting are multifaceted, and in some cases extreme". The stakeholder's submission concluded that 'risk' was indeed an appropriate framework from which to approach sexting, and educational strategies should focus on prevention and abstinence.

5. Discussion

As indicated previously in the focus group findings, a small but vocal group of young women drew pointed attention to the gendered nature of current Australian sexting education. These young women noted that the educational material they had viewed framed sexting as a 'problem' for girls, and de-emphasised young men's responsibility. They also criticised what they perceived as an excessive attention by teachers and parents to young women's bodies and choices in relation to sexual expression and self-representation. This group of young women was also critical of 'abstinence' approaches to sexting education.

As Dobson, Rasmussen and Tyson (2012) and Albury and Crawford (2012) observe, the Australian educational response to sexting has tended to reinscribe individualised notions of 'risk' and 'shame' and reinforce dominant gendered assumptions about sexual behaviour, without being responsive to the social values within young people's peer groups. As Dobson and colleagues put it,

if government and educational campaigns continue to frame the issue for youth as one of personal responsibility and awareness of the 'risks' involved in sexting, *without making explicit the gendered and socially-constructed nature of such risks*, they risk intensifying the harms experienced by young people who engage in sexting practices. (2012, 4; original emphasis)

This issue is not unique to young people. The mediated circulation of celebrity sex tapes, and the recent debates around the publication of paparazzi 'creep shots' of Kate Middleton indicate that adult culture also supports sexual shaming, and the non-consensual production and circulation of images.

We suggest that the challenge for future education regarding sexting issues is to resist the association of images of female nudity, in particular, with inevitable 'shaming' and 'loss of reputation'. Education addressing sexting also needs to question the assumption that sexual pressure or manipulation (in respect to both 'real life' and digital sexual activities) is a 'normal' part of adolescent male sexuality. Sexting is not a purely technological event, and is not simply an outcome of 'bad choices' made by individuals. The production and sharing of sexual images takes place in relationships, among intimates, friends and strangers, and needs to be understood in a broader cultural context. When images are shared without consent, it is a very significant breach of trust, and should be considered as a serious invasion of privacy rather than an inevitable outcome of recording a sexually suggestive image.

All focus group participants opposed non-consensual production and sharing of sexual images, and indicated a general acceptance of legal penalties in these circumstances. While consensual production and exchange of pictures between young people of the same age was generally agreed to be unproblematic, there was agreement among participants that relationships between peers of the same age could be abusive, violent or exploitative; and that those under-18s who shared photographs (or threatened to share them) in this context should face penalties. It was agreed that strong legal protection should be maintained for young victims of abuse, violence or exploitation, whether it was perpetrated by adults or by peers. However, the application of 'child pornography' laws to under 18s was strongly rejected and considered unreasonable and unfair.

The 16 and 17 year old focus group participants were unclear about laws relating to the digital production and consumption of images in general. All groups used terms like 'privacy' and 'consent', and engaged in discussions around the meaning of these terms. Young people expressed a strong desire for factual information on relevant laws, including clear guidelines regarding both their *rights* – e.g. opportunities for redress in exploitative/non-consensual circumstances - and their *responsibilities* – e.g. behaving ethically and legally with regard to digital images. Participants in the adult workshop expressed concern that many professionals working with young people were themselves uncertain of the laws pertaining to young people's use of online and mobile media, and did not know where they could find appropriate information and advice. Some were also uncertain of their obligations under mandatory reporting laws.