



**Parliament of New South Wales
Joint Committee on Children and Young People**

**Report 2/56:
Sexualisation of Children and Young People
November 2016**

**New South Wales
Government Response**

May 2017

RECOMMENDATION ONE

The Committee recommends that the Advocate for Children and Young People monitor research into young people's use of and attitudes towards pornography.

The NSW Advocate for Children and Young People (ACYP) has a statutory function to monitor research into issues affecting children and young people. ACYP commissioned a literature review into the impact of pornography on the sexualisation of children, which found that there was a need for further research, including further local qualitative research to explore the views of children and adolescents. ACYP is actively monitoring developments in this area and will continue to scope opportunities for further research, including the commissioning of research subject to the availability of resources.

RECOMMENDATION TWO

The Committee recommends that the Advocate for Children and Young People continue to work with the Office of the Children's e-Safety Commissioner and industry stakeholders to explore opportunities to reduce children and young people's exposure to pornography.

The Advocate for Children and Young People welcomes Julie Inman Grant who commenced her appointment as the new eSafety Commissioner earlier in the year. ACYP has an established working relationship with the Office of the eSafety Commissioner. ACYP is working with the Office of the eSafety Commissioner to improve the online safety of children and young people in NSW on a range of matters, which includes but is not limited to cyber bullying and reducing children and young people's exposure to pornography. ACYP will bring together stakeholders to discuss the next stages of its work with the Office of the eSafety Commissioner.

RECOMMENDATION THREE

The Committee recommends that the Attorney-General advocate for the adoption of opt-in internet filtering through the Council of Australian Governments Law, Crime and Community Safety Council

Legislation relating to the internet and internet filtering is the responsibility of the Australian Government. The NSW Government supports the current focus on providing education, information and tools for parents, children and the community to improve the safety of internet use.

The Office of the Children's eSafety Commissioner provides a variety of resources for online safeguards and parental controls. Many internet service providers (ISPs) and electronic devices, such as computers, tablets, mobiles and routers, already provide optional parental control tools. Filtering software products are also available for consumers to purchase.

The Australian Department of Communications and the Arts together with the Internet Industry Association developed a voluntary cyber security code of practice for ISPs known as the icode. The icode was implemented on 1 December 2010 and provides a consistent approach for Australian ISPs to help inform and protect their clients in relation to cyber security issues. More than 30 ISPs, representing up to 90% of the Australian home internet market, have signed up to the icode.

RECOMMENDATION FOUR

The Committee recommends that, as part of the review and amendment of the criminal law, the Attorney General introduce legislation to create specific offences of distributing or threatening to distribute an intimate image.

On 5 September 2016, the then Attorney General announced that the NSW Government intends to criminalise the non-consensual distribution of intimate images. The announcement was made as part of the Government's response to the Legislative Council Standing Committee on Law and Justice's inquiry into remedies for the serious invasion of privacy in NSW.

The NSW Department of Justice released a discussion paper on 15 September 2016 on the form and scope of a new offence (or offences) specifically directed at the non-consensual sharing of intimate images. The discussion paper sought stakeholder and community feedback on a range of issues, including how such an offence should apply to children and young people.

The NSW Department of Justice is currently considering the submissions made in response to the discussion paper in the context of work with other States and Territories to develop nationally consistent principles for offences in this area (as announced by the Council of Australian Governments in December 2016).

RECOMMENDATION FIVE

The Committee recommends that the Attorney-General introduce legislation to make appropriate exceptions to the *Child Protection (Offenders Registration) Act 2000*.

The *Child Protection (Offenders Registration) Act 2000* is the responsibility of the Minister for Police.

There are currently no legislative provisions specifically referring to 'sexting' in NSW. Sexual activity (whether consensual or not) with children aged under 16 years is prohibited, including 'sexting'.

Under the current law, the practice of 'sexting' may constitute an offence of producing, possessing or disseminating child abuse material where images of persons aged under 16 years have been shared. Consensual 'sexting' with a child under the age of 16 years may also constitute the offence of committing an act of indecency with or towards another person, or inciting someone else to engage in an indecent act. If found guilty of such an offence, it may result in registration on the Child Protection Register. Commonwealth law also provides for offences that would apply to 'sexting' behaviour by young people. In particular it is an offence to possess, control, produce, supply or obtain child pornography material or child abuse material by using a carriage or postal service. A child is defined as a person under 18 years. Accordingly, 'sexting' between children is a criminal offence under the Commonwealth law, even if the behaviour is engaged in consensually. This offence may also result in registration on the Child Protection Register.

The NSW Police Force uses discretion when determining whether to prosecute an alleged offender. This involves consideration of public interest, age of the alleged perpetrator and any available alternatives to prosecution.

The issue of 'sexting' by children and young people is complex and of concern to many stakeholders. It is being considered in detail in the Child Sexual Offences Review, being conducted by the NSW Department of Justice in response to recommendations made by the Joint Select Committee on Sentencing Child Sexual Assault Offenders. Any potential changes in this area of the law will be looked at in the context of this review.

RECOMMENDATION SIX

The Committee recommends that the Department of Education require schools under the Controversial Issues in Schools policy to consult with parents prior to any implementation of the Safe Schools program, and require that parents choose whether to opt in to this program. At any time parents may elect to have their child opt out of the program.

The Safe Schools program is an Australian Government initiative. Safe Schools resources are one of many external resources NSW schools may carefully select to complement their teaching and learning programs aligned with the NSW Education Standards Authority (formerly the Board of Studies, Teaching and Education Standards NSW). The use of external resources including Safe Schools resources is determined at the local level to meet the needs of students and complement teaching and learning.

The NSW Department of Education does not support that parents choose whether to 'opt in' to this program. In line with the Australian Government requirements introduced in early 2016, NSW public schools are required to consult with parents prior to using Safe Schools resources with students in class. Parents are able to 'opt out' and decline their child's participation in any lesson that includes Safe Schools resources.

The Australian Government, which funds and oversees the Safe Schools program, will cease funding the program by mid this year.

The NSW Department of Education is developing an updated anti-bullying strategy for release to schools in Term 3, 2017. It will build on existing national and local resources and provide a new website which can be accessed by government and non government schools. An expert advisory group will be established to peer review any newly developed resources.

RECOMMENDATION SEVEN

The Committee recommends that the NSW Advocate for Children and Young People research and promote credible, age-appropriate, evidence-based websites and other materials in relation to children and young people.

The Advocate for Children and Young People has a statutory function to promote the provision of information and advice to assist children and young people. ACYP will work with key stakeholders in this area such as the NSW Department of Education and the NSW Department of Family and Community Services to draw on their collective knowledge and experience to identify credible, age-appropriate, evidence-based websites and other materials for children and young people. ACYP will do this in a number of ways that may include, but is not limited to, holding a roundtable discussion

for the purposes of identifying appropriate resources and the best methods for its promotion.

RECOMMENDATION EIGHT

The Committee recommends that the Advocate for Children and Young People, the Department of Family and Community Services and the Department of Education promote the Office of the Children’s e-Safety Commissioner on their websites.

The NSW Department of Education is committed to assisting schools in supporting online safety for all students, including social networking, responding to cyber bullying and protecting privacy online. The Department will investigate how best to promote the Office of the Children’s e-Safety Commissioner.

The Advocate for Children and Young People will work with the Office of the eSafety Commissioner to determine the best ways to support and promote their work to children and young people in NSW, including through all the digital and social media assets of ACYP and its partners.

The NSW Department of Family and Community Services (FACS) will work with the Office of the eSafety Commissioner to promote the Office of the Children’s e-Safety Commissioner on the FACS website.

RECOMMENDATION NINE

Given the concerns regarding revenge porn and the exchange of Child Exploitation Material online – which may include images of revenge porn – the Committee recommends that the Advocate for Children and Young People monitor research concerning the creation and distribution of sexts and pornography by minors.

As part of its submission, the Advocate for Children and Young People referred to a recent study, *Sexting and Children and Young People* (2015) involving over 2,200 young people aged 13 years and over, to which the former Commission for Children and Young People contributed funds. This is a significant Australian study that provides a valuable contribution to this evidence base and the research has been featured in a publication by the Australian Institute of Criminology. ACYP will continue to monitor research in this area and scope out key areas of inquiry with stakeholders.

The term ‘revenge porn’ is victim blaming language and should not be encouraged. Preferable terms include image-based abuse or non-consensual sharing of intimate images.

RECOMMENDATION TEN

The Committee recommends that the Advocate for Children and Young People work with the Children’s e-Safety Commissioner to investigate the processes currently available on online social media platforms for adults to review content flagged as harmful to children. The Advocate should work in conjunction with the Children’s e-Safety Commissioner to establish a mechanism for adults to report inappropriate content exchanged on social media platforms.

The Office of the Children’s eSafety Commissioner already possesses the powers to investigate complaints about offensive and illegal content online. This includes content containing: child sexual abuse material, material that advocates the doing of a terrorist

act, detailed instruction or promotion in crime or violence, instruction in paedophilic activity, and gratuitous, exploitative and offensive depictions of violence or sexual violence.

Reports of offensive or illegal content can be made anonymously to the Office of the Children's eSafety Commissioner on its website.

The Advocate for Children and Young People will continue to work with the Office of the eSafety Commissioner to promote the mechanisms for the reporting of inappropriate content. ACYP will also work with relevant NSW Departments and Agencies, including the NSW Department of Education and the NSW Department of Family and Community Services to reinforce the powers and mandate of the Office of the eSafety Commissioner.