



6 October 2017

Strengthening child sexual abuse laws
Submissions
Justice Strategy and Policy Department of Justice
GPO Box 31
Sydney NSW 2001

Email: policy@justice.nsw.gov.au

RE: Strengthening child sexual abuse laws – Submission

Thank you for the opportunity to respond to the discussion paper, *Strengthening Child Sexual Abuse Laws*. As the NSW peak body for young people and the services that support them, our response largely concerns the impacts of possible legislative measures for this cohort – young people aged 12 to 25.

Currently, sexting laws are disproportionately impacting young people. These laws make sexting, which forms part of the healthy sexual development of young people, a criminal behaviour. As such, our specific responses are to questions 28 and 29 of the discussion paper.

Our response is drawn from Youth Action's March 2016 submission to the NSW Parliament Joint Committee on Children and Young People's *Inquiry Into the Sexualisation of Children and Young People*. For further detail and clarification of our points, the full submission can be found online at http://www.youthaction.org.au/inquiry_into_the_sexualisation_of_children_and_young_people

We would also refer you to response to our October 2016 *Sharing Intimate Images Without Consent Discussion Paper* for further context of our position and clarification of our points which can also be found online at http://www.youthaction.org.au/sharing_intimate_images_without_consent_discussion



Sexting and Young People

The ability to develop a healthy sexuality is an essential component of an individual's mental and physical wellbeing. Young people should have the freedom to experience their individual sexual development at their own pace and in a way that is clearly led by independent and informed thinking.

While actual rates of sexting amongst young people vary, we know from several studies and consultations with young people that it is a common act. However, it is part of young people's normal and healthy sexual development.

Q28. Should a statutory defense of similar age be enacted in NSW? If yes, how should it be framed?

Yes. The application of child pornography laws to sexting is excessive and inappropriate because it fails to recognise the reality of developing sexual agency and ethics of young people.

Child protection and pornography laws exist to prevent the exploitation of children and young people, largely caused by differences in power and capacity between two parties. Young people generally have the ability and right to establish their own consent under law, excluding instances of decreased capacity which remove the ability to establish informed consent. As such, the rights of young people to engage in consensual, similar-aged sexting should be accounted for in law.

The 2006 Child Protection Interagency Guidelines established the helpful framing of "consensual peer sexual activity". It outlines that:

"Physical and psychological coercion of children is intrinsic to child sexual assault and differentiates such assault from consensual peer sexual activity. Adults, young people and children who perpetrate child sexual abuse exploit the dependency and immaturity of children by misusing their power and encouraging children to be secretive."

Similarly, the intent behind sexting behaviour (as a consensual peer sexual activity) is



extremely important. If there is a significant age difference present in a relationship where intimate images are shared, it is possible that one party is exploiting the other.

The withdrawal of consent is also closely linked to harmful incidences of 'revenge porn', when an intimate picture is shared without the consent of the other party.

The presence or absence of coercion and/or consent, as outlined in the 2006 Interagency Guidelines, provides useful framing for exploring the nuance of each instance of sexting, and is well-established in other areas of law.

Q29. Should NSW introduce a defence to decriminalise consensual 'sexting' involving persons under 16 years? If yes, how should the defence work?

Yes. In line with our response to Question 28, young people under 16 can establish consent, and the context surrounding the peer sexual activity has large implications for its potential harm and levels of exploitation.

As such, a defense of "consensual peer sexual activity" would be appropriate for avoiding criminalising non-exploitative, consenting sexting behaviours between young people under 16.

We look forward to continuing to work with the Department on these matters. Should you have any concerns or further questions, please contact Katie Acheson, Chief Executive Officer, on (02) 8354 3702.

Sincerely,

A handwritten signature in black ink, appearing to read "Katie Acheson".

Katie Acheson
CEO
Youth Action