

CYBERBULLYING, SEXTING, & THE LAW

*“The law is really struggling to try and keep up with these new phenomena.
... There is often a misfit in-between the new emerging phenomena in relation
to technology and the law as it exists right now”.*

This report presents an evidence-base derived from the views of students, key stakeholders and the literature in relation to understandings of cyberbullying, sexting and the law.

A Report for the South Australian Minister for Education and Child Development

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This research was supported by the Department for Education and Child Development and commissioned by the Minister of Education. The views expressed herein are those of the authors and are not necessarily those of the Department for Education and Child Development.

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Acknowledgements

The Cyberbullying, Sexting and the Law study has relied on the generous commitment of time and support from many people. The authors wish to thank and acknowledge:

- The Department for Education and Child Development (DECD)
- The students, pre-service teachers, educators, school staff and key stakeholders who generously participated and gave of their valuable time and expertise in this project.
- The Wellbeing Research Group (WRG), Centre for Research in Education (CREd), University of South Australia
- The Student Wellbeing and Prevention of Violence (SWAPv) Research Centre, Flinders University
- The Coalition to Decrease Bullying, Harassment and Violence in SA Schools (DECD)
- The Advisory Committee on Sexting (DECD)

ISBN 978-1-922046-15-4

Suggested citation:

Spears, B.A., Slee, P.T., & Huntley, J. (2015). *Cyberbullying, Sexting and the Law: A Report for the South Australian Minister for Education and Child Development*. University of South Australia, Adelaide

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November, 2015

*In responding to children who are experiencing harm...
There's no room for failure...
You've got to get it right ...
And it follows that the evidence-based, best-practice approaches ... [and] an investment of
resources ...is [sic] really needed in this [cyberbullying/sexting] space".*
(Key Stakeholder: Lawyer 1)

This report is a response to rising national and international concern which has arisen about risks and potential harms of cyberbullying and sexting and the inadequacy of existing laws to deal with these behaviours. State and Commonwealth laws have not kept up with technological advances and the ways in which young people now operate and socialise online, leading to the possibility that some behaviours, such as sexting, can now result in young people being criminalised under legislation not originally designed for this behaviour.

This report is prepared for the South Australian Minister for Education and Child Development, and aligns with South Australia's Strategic Priorities: "*Every Chance for Every Child*" and the DECD Strategic Plan (2012-2016) which has a focus on *the particular needs of identified groups, ... and social inclusion for all South Australians*.

To our knowledge, this is the first independent study undertaken in Australia specifically to advise a Minister of Education in these areas of children's safety: *cyberbullying, sexting and the law*. Previous reports (e.g. Albury et al, 2013; Tallon et al., 2012) have been to raise awareness of the issue, and were from the media, criminal justice and/or legal domains.

Culturally and linguistically diverse (CALD) students, an identified group as noted in the *SA Strategic Priorities*; together with legal, and educational experts and stakeholders; as well as pre-service teachers were invited to share their understanding and knowledge of cyberbullying, sexting and the law with a view to informing policy and practices in South Australia.

To date, *culturally and linguistically diverse* young people have not participated in any of the previous studies about sexting or cyberbullying nationally or internationally, making their contribution in this study highly significant and unique, and building upon what is already known.

This study aims to inform legal, educational and socio-cultural aspects of keeping young people safe in SA schools and relates to the following State and National policies, frameworks and responsibilities of the sector: The

- Enhancing Online Safety for Children Bill, 2014: (currently before the House of Representatives)
- Keeping Them Safe: Child Protection Curriculum (SA);
- National Curriculum and General Capabilities (ACARA)
 - e.g. Personal and Social Capability; Ethical Understanding;
- National Safe Schools Framework (NSSF);

The findings of this study are triangulated with adjunct national and international studies through a brief review of literature (see Appendix A).

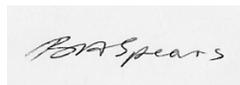
This report thus presents a broad evidence-base from which key recommendations for the South Australian community are made.

We welcome the opportunity to meet with the Minister of Education at her earliest convenience to discuss these important findings and recommendations, and the implications for the education sector overall: its students, teachers and pre-service teachers, Principals, and policy-makers.

“Well... these laws are really problematic because they fail to differentiate between behaviours which are relatively harmless, at least in the current moment, and those which cause significant harm, such as the distribution of explicit images without consent”.

(Key Stakeholder: Lawyer 2)

Yours sincerely



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2 EXECUTIVE SUMMARY

“The laws are not nuanced enough to differentiate cases of childish playfulness and sexual experimentation from cases of exploitation”.

Crofts and Lee (2013, p 106)

This study was commissioned to meet the following aims and objectives:

- To bring together legal, educational and socio-cultural stakeholders and students
- To inform consideration of the issues, actions, challenges and gaps in knowledge associated with cyberbullying, sexting and the law;
- To inform policy, curriculum and leadership practices; and
- To link with any previous studies.

To that end: key stakeholders and students were invited to participate in interviews, focus groups, or online surveys.

Whilst other studies on sexting have been undertaken interstate (e.g. Albury et al, 2013; Svantesson, 2010; Tallon et al., 2012; Walker et al., 2013;) none to our knowledge have been directly to advise a Minister of Education, and none have explicitly engaged with culturally and linguistically diverse young people.

This then, is a landmark study in the national and South Australian context and has provided an evidence-base from which to make recommendations about cyberbullying, sexting and the law.

It will strongly position the Department for Education and Child Development to support the safety and wellbeing of young people in its care.

This report builds upon an established record of successful collaboration with academics and key stakeholders through such initiatives as the *Coalition to Decrease Bullying, Harassment and Violence in SA Schools*, and the *Advisory Committee on Sexting*.

The problem itself is multifaceted: with legal, social, cultural and gendered practices and consequences, but as one counsellor describes:

‘The real issue is trying to undo the never-ending desire youth have to share all about themselves to a large group of peers. Privacy and the need for it seems to be something that is neither understood nor desired by this generation’

(School Counsellor, Female).

2.1 OVERVIEW OF FINDINGS

Many young people are not aware that sexting could result in criminal prosecution.

Law Reform Committee Parliament of Victoria; Inquiry into sexting

Young people and stakeholders have articulated four main themes relating to cyberbullying, sexting and the law:

That

- 1) The law is confusing
- 2) Cyberbullying and sexting are intertwined
- 3) There is a significant role for parents
- 4) It is a community responsibility

In addition, whilst a proportion of ***pre-service teachers*** indicated that they felt confident in their assessment of their ability to deal with bullying, research would suggest however, that some of this confidence could be misplaced.

Greater emphasis is needed on them understanding the constructs of bullying, and related notions of cyberbullying and sexting more clearly, to ensure that they do not confuse rough and tumble play or displays of aggression *as* bullying.

There is a clear role for pre-service teacher education programs and employer induction sessions to be addressing this more explicitly.

Together these findings suggest that **an omnibus approach is required**: where each component/theme above contributes uniquely to improving the safety and wellbeing of young people in South Australian schools through actions which can be taken, but when combined, all four components offer a powerful approach and strategy.

Actions

Clarifying the law in terms of what is legal or illegal for minors involved in bullying, cyberbullying and consensual and non-consensual digital image sharing is paramount.

This needs to operate across State and Commonwealth law, and the current Commonwealth policy: *Enhancing the online safety of children* must be watched closely as it unfolds.

The appointment of the Commonwealth e-Safety Commissioner for Children, and the roll-out of the *Office for the Children's e-Safety Commissioner* (<https://www.esafety.gov.au/>), and any subsequent changes to criminal and civil enforcement regimes to deal with cyberbullying and sexual bullying must be taken into account.

Recognising the relationship between sexting and cyberbullying behaviours. Whilst sexting is not a cyberbullying act when it occurs between two consenting individuals, when those images are shared and re-shared with and by others for the express purpose of harm, then it enters the cyberbullying/sexual bullying domain, with all the associated social, emotional, psychological and mental health and wellbeing impacts currently recognised.

It also enters a legal domain, when images are used to blackmail, stalk or ruin others' reputations. The issue of the duty of care for the school is also raised for consideration here.

Recognising the role for parents and teachers and their limitations in supporting young people with technology is obvious, but culturally diverse young people in this study have highlighted the particular difficulties that they have in particular in terms of:

(1) technology itself, due to their *parents' lack of knowledge or experience of it in their home country*, and

(2) particularly in relation to sexting and their *parents' strict modesty and gendered behavioural expectations*.

This study also highlights that teachers are an important conduit for these young people, bridging the culture of the school and peers, with home.

Mobilising the community to help deal with cyberbullying and sexting and making the laws more readily accessible and comprehensible to all, means that the sole responsibility does not rest with schools alone.

Schools are community settings, and therefore there is great importance in harnessing the knowledge, skills and understanding of technology-aware and proficient, pre-service teachers and the wider community.

The balance required however, is that they must be well educated about what bullying, cyberbullying and sexting is; how they impact on young people, and how the law intersects with these forms of behaviour.

Each key finding offers opportunities to develop individual strategies, but combined, they offer an holistic approach which covers the legal, socio-cultural, educational and parental perspectives.

2.2 OVERARCHING RECOMMENDATIONS:

“Social media holds their attention... they lose track of time... they lose track of self and before you know it, they have done something – and when they come out of that state, ... there is the fallout from it...”
(Social worker)

Taking account of the present study’s findings and subject to the set of specific recommendations that are presented with each theme (see 7.0 Conclusions and Recommendations), the overarching recommendations are as follows:

That the Department for Education and Child Development:

1. **Convene a working group of key stakeholders**, as a matter of urgency, including students/young people, to further refine the specific recommendations that relate to each main theme
2. **Urgently review** child pornography legislation; indecent filming and misuse of telecommunications laws , so as to not criminalise South Australian children and young people for consensual sexting
3. **Develop an action plan** to address the policy, curriculum and practice issues related to cyberbullying, sexting & the law with a view to providing practical guidelines for the schooling sector in addressing sexting and cyberbullying incidents
4. **Develop a social media campaign** In association with the National Children’s and Youth Law Centre and the Law Society of South Australia, to educate young people and their parents of their legal rights and responsibilities in relation to State and Commonwealth laws relating to cyberbullying, sexting and the law

2.3 SPECIFIC RECOMMENDATIONS RELATED TO KEY THEMES

The Law is Confusing

Recommendation 5:1

That explicit education and information concerning current State and Commonwealth Laws relevant to cyberbullying and sexting, be made available immediately to young people, teachers, school leadership and parents.

Recommendation 5:2

That this information be presented in youth friendly, developmentally and culturally appropriate language for students, and be made available in different languages to the school communities.

Recommendation 5:3

That consideration be given to modifying the existing laws, similar to those in Victoria, so that young people of similar ages, who are in a relationship, are not criminalized for consensual sharing of intimate digital images.

Recommendation 5:4

That school communities are informed of the developments at the Commonwealth policy level relating to the appointment of the E-Safety Commissioner, and the powers of that office regarding take-down orders and large social media providers.

Recommendation 5:5

That a South Australian branch of the National Children's and Youth Law Centre be funded to support young people in understanding their rights and responsibilities under South Australian Law

Recommendation 5:6

That particular consideration is given to identifying sub-groups of young people and parent/caregivers for whom language and other barriers may impede their understanding of legal issues associated with on-line activities such as 'sexting', with a view to providing them with relevant information/resources

Cyberbullying and Sexting are Intertwined

Recommendation 5:7

That regular and ongoing education campaigns/interventions consider the cultural/gendered contexts of students and families and the sensitivities involved

Recommendation 5:8

That sexting and cyberbullying education be considered as part of the *Sexual Health curriculum*, to contextualize conducting relationships in a 24/7 environment, including how to safeguard themselves socially and legally

Recommendation 5:9

That help-seeking behaviours be emphasized and de-stigmatized, so youth know how, and when, and to whom to reach out to for support

Recommendation 5:10

That sexting and cyberbullying be considered *child protection issues*: in terms of what they are potentially being exposed to and how they are being supported.

Recommendation 5:11

That the Department for Education & Child Development (DECD) consider how the role of the proposed South Australian Children’s Commissioner might intersect with the findings of this report.

*The Role for Parents and the Community***Recommendation 5:12**

That an inclusive reference group of parents, including those of students from culturally diverse, indigenous and other minority groups, is formed to advise Government, SAPOL and the legal fraternity on the issues facing parents, with a view to developing a focussed campaign strategy.

Recommendation 5:13

That Principals Australia Institute (PAI) is consulted to help develop a plan in conjunction with the DECD; the Law Society of SA and the National Children’s and Youth Law Centre regarding how best to advise the school community of their rights and responsibilities in relation to these issues

Recommendation 5:14

That Parent Organisations and relevant Elders be consulted to help develop and deliver culturally relevant information regarding cyberbullying, sexting and the law, and particularly for those outside of the metropolitan area: parents of rural, remote and home-schooled students

Recommendation 5:15

That an audit is made of all pre-service teacher training courses in South Australia to determine to what extent their pre-service training of teachers addresses the on-line issues facing young people in educational settings, and how that could inform the induction requirements for employers with regard to risk management regarding staff capacity to deal with on and offline bullying issues

Recommendation 5.16

That as an outcome of the audit, pre-service teacher education is required to be more closely attuned to the Keeping Them Safe: Child Protection Curriculum

3 INTRODUCTION AND SCOPE

3.1 BACKGROUND: CYBERBULLYING, SEXTING AND THE LAW

Bullying

Bullying is an international problem for schools, students, teachers and parents, but the advent of technology and new behavioural configurations such as cyberbullying and sexting, have exacerbated that issue, by increasing the demands on schools to be able to act in a timely, professional, and legally informed manner to ensure the safety and wellbeing of its students.

Many national and international studies are clear that bullying and cyberbullying impact on mental health (See Appendix A: Review of Literature), and whilst less is currently known about sexting, the relationship between the two is important for policymakers to understand. How these intersect with existing law is a significant contemporary challenge for communities.

Face to Face or Offline bullying is generally thought of as any deliberate behaviour that repeatedly threatens or hurts someone less powerful and can involve physical, verbal or indirect bullying, such as social exclusion or rumour spreading.

Recently, an Australian working party has agreed on the following research definition of bullying (Hemphill, Heerde & Gomo, 2014, p 5): *Bullying is a systematic abuse of power in a relationship formed at school characterised by:*

1. **aggressive acts** directed (by one or more individuals) toward victims that a reasonable person would avoid;
2. acts which usually occur **repeatedly** over a period of time; and
3. acts in which there **is an actual or perceived power imbalance** between perpetrators and victims, with victims often being unable to defend themselves effectively from perpetrators

(See Appendix A for Review of Literature)

Cyberbullying

Cyberbullying or online bullying has been defined in concert with advances in technology, demonstrating the changing nature of the phenomenon: from its use of emails and text, to image sharing and social networking platforms (Spears et al., 2014, pp 5-6).

The following research and policy definitions reflect this diversity in terms of the setting (Internet/online); use of technology (electronic/mobile phone) to bully others. None, however, capture the specific notions as required by the law.

Defining cyberbullying for legal circumstances requires considerations other than the simple transference of offline bullying behaviours, to an online setting (See 8.1.4 The Law). According to Langos (2012, p 288) the “reasonable person approach is an objective test that measures the conduct of the perpetrator against conduct of a hypothetical reasonable person placed in a similar position as the victim” and is widely adopted in both criminal law and law of torts (civil wrongs).

It is noted that the most recent definition of *bullying* above (Hemphill et al, 2014) has been informed by this approach, yet cyberbullying definitions, as illustrated below, remain without this consideration.

Some Current Definitions:

- Aggressive, intentional acts carried out by a group or individual, using electronic forms of contact, repeatedly and over time against a victim who cannot easily defend him or herself (Smith et al., 2008; Smith & Slonje, 2010, p. 249).
- Any behaviour performed through electronic or digital media by individuals or groups that repeatedly communicates hostile or aggressive messages intended to inflict harm or discomfort on others. In cyberbullying experiences, the identity of the bully may or may not be known. Cyberbullying can occur through electronically mediated communication at school; however, cyberbullying behaviours commonly occur outside of school as well (Tokunaga, 2010, p 278)
- Any communication, with the intent to coerce, intimidate, harass or cause substantial emotional distress to a person, using electronic means to support severe, repeated and hostile behaviour (Department of Communications, 2014, p 3).
- When one person or a group of people repeatedly try to hurt or embarrass another person, using their computer or mobile phone, to use power over them. With cyberbullying, the person bullying usually has some advantage over the person targeted, and it is done on purpose to hurt them, not like an accident or when friends tease each other (Campbell et al, 2012, p 7)
- When someone repeatedly uses the internet or a mobile phone to deliberately upset or embarrass somebody else. It is intended to harm others and can include sending mean or nasty words or pictures to someone over the internet or by mobile phone (ACMA: Like, Post Share, 2013)
- Bullying carried out on the Internet, through messages, chats or online posts, or on mobiles and smart phones. It includes things like teasing, spreading rumours, ignoring or excluding people, and sending or posting threatening or unpleasant comments and images about someone (Young and Well National Survey, 2014).

(See Appendix A for Review of Literature)

Sexting

According to the *National Survey of Australian Secondary Students and Sexual Health* (Mitchell et al., 2014) more than 50 per cent of sexually active secondary students have sent a sexually explicit nude or nearly nude photo or video of themselves using new technologies.

Sexting according to the Senate Select Committee on Cybersafety, (Commonwealth, 2013, pp 2- 3)

“refers to a range of behaviours involving the creation and transmission of sexual content through electronic media”. They noted that there was no single accepted definition of sexting, and that various definitions have been proposed in recent times: viz

- the creating, sharing, sending or posting of sexually explicit messages or images via the internet, mobile phones or other electronic devices by people, especially young people. (The Attorney-General's Department (AGD); the Department of Broadband, Communications and the Digital Economy (DBCDE).
- the sending of sexual messages, photos or videos, online or using a mobile phone (The Australia Communications and Media Authority (ACMA).

(See Appendix A for Review of Literature)

Sexual Bullying, Sexting and Cyberbullying

In considering the relationship between bullying/cyberbullying and sexting, Spears et al (2014, p 17) have noted that with the exception of a few earlier studies (e.g. Owens, Shute & Slee, 2007; Shute, Owens & Slee, 2008; Spears, Jennifer & Williams, 2008) **'sexual bullying' is not explicitly considered in studies currently trying to determine prevalence of bullying or online/cyber bullying in Australia.**

Rarely do questions make clear whether they are including 'sexually-charged cyberbullying', or whether this form of behaviour is placed under the topic of sexting/inappropriate material.

This new complexity, involving crossover between bullying/cyberbullying and sexting has implications for how education and interventions might be undertaken, and how the law might be employed.

Spears et al. (2014) particularly reported (p 17)

'Sexting of itself is not cyberbullying, but when consensual images shared under the context of a private relationship are subsequently used to publically humiliate, and denigrate reputations, with clear intent to harm, then cyberbullying may be said to have occurred. It will be important to examine the prevalence of sexting in this broader continuum of sexual bullying and sexual cyberbullying, particularly where the law and legal consequences are involved'.

Taken together, these phenomena present significant challenges for schooling sectors and communities in terms of Duty of Care, policies and practices in managing student behaviour, protecting against impacts on mental health and supporting wellbeing.

These challenges are particularly relevant, as laws which govern production and dissemination/distribution of child pornography; age of consent; and misuse of telecommunications services fall under both the State and Commonwealth remits.

It is also relevant to note that with the increasing use of mobile technologies by young people, and the continuous, rapid development of such technologies, that education and safeguarding youth will necessarily be an ongoing commitment from education, policing and legal sectors, as well as families: i.e. a community response.

Simultaneously, whilst sexual bullying, sexting and cyberbullying behaviours present risks which must be mitigated, these phenomena also present opportunities for schools to play a critical role in educating the community about 21st century citizenry, particularly concerning legal rights and responsibilities, and the norms, social and sexual relationship development of young people in a technology enhanced social and teaching and learning setting.

(See Appendix A for Review of Literature)

Law

With the advent and rapid uptake of readily available information and communications/leisure technologies, coupled with the increasing use of social media by young people in recent years, and the shift towards convergence and mobilisation of these technologies, it has been widely recognised that the law may not have kept up with some of the current practices.

The notions of cyberbullying, cyber-aggression and sexting are relatively recent, and were virtually unheard of a decade ago, yet behaviours such as stalking, blackmail, and the misuse of telecommunication services are well understood, and have been articulated throughout State and Commonwealth legal systems.

The speed of cultural and communication change in societies across the world, however, has seen countries grappling with how to safeguard the rights of individuals, and particularly children, in the face of new and emerging technologies .

How the legal system takes account of the relationship between bullying, cyberbullying, sexual bullying and sexting is therefore important and Langos (2014a) indeed calls for some changes to the law be considered.

In South Australia, s63 (the production and dissemination of child pornography) and s63A (possession of child pornography) of the Criminal Law Consolidation Act 1935 (SA) can potentially apply to regulate sexting between young people.

The recent amendments to State and Commonwealth Law (See 3.3 below) highlight that sexting is front of mind for some of the legal community, but currently the consideration is piecemeal and has yet to flow through to the whole Australian community.

(See Appendix A for Review of Literature)

3.2 THE CHALLENGE

To date, only Victoria has pursued legislative changes in relation to sexting.

What is unclear, is how key stakeholders and students in South Australia, understand these phenomena and the role the law might play in prevention and intervention, and consequently, for policy and practice.

Whilst shifts in technology such as the rise of social media and digital image transfer mean that individuals communicate immediately and differently to even a few years ago, what the preceding definitions of cyberbullying and sexting do *not* highlight, for example are such issues as:

- The consensual and non-consensual aspects of sharing of digital images, intimate or otherwise
- The complexity of age of consent as it varies by State, and the online behaviours of young people
- How existing State and Commonwealth law might operate in conjunction with these issues in a contemporary, technologically driven society.
- The duty of care for schools in a technologically enhanced environment
- The privacy and confidentiality of individuals in increasingly 'bring your own devices' (BYOD) school settings
- The technology context of a multi-cultural community setting with diverse values and belief systems
- Ownership of the content or data

Sexting in particular, raises many social, educational, cultural, moral and legal concerns, but particularly in terms of how the law operates in relation to the consensual and non-consensual sharing of sexually explicit or provocative images of children and young people.

Various Australian State and Commonwealth laws which were initially created to protect children and young people from exploitation and paedophile behaviours relating to child pornography offences, have recently been applied to young people when they take sexually revealing or provocative images of themselves or others, as part of their adolescent relationships, and circulate them online or via texting.

The questions remain as to whether this legal response is appropriate for children/young people, and what the long term impacts are of such use of existing legislation.

The adequacy of Australian Commonwealth and State laws associated with: appropriate use of telecommunications; the creation and dissemination of child pornography; child protection; child exploitation; and other offences relating to grooming, stalking or blackmail, need consideration in terms of current social media usage and youth social norms in online settings, alongside community standards of acceptable behaviour.

Recently, there have been several State and Commonwealth inquiries which have focussed attention on online behaviours and legal issues: in particular, cyberbullying and sexting, with a view to considering the educational and legal responses and interventions which might be required to keep young people safe in an online environment:

- *High-Wire Act: Cyber-safety and the Young*: (Joint Select Committee on Cyber-safety, Parliament of Australia, 2011)
- *New Voices: New Laws*: School-Age young people in NSW speak out about the criminal laws that apply to their online behaviour (Tallon, Choi, Keeley et al., 2012)
- *Inquiry into Sexting*: Victorian Law Reform Commission (Parliament of Victoria, (2013)
- *Bullying, Young People and the Law Symposium* (The National Centre Against Bullying, July, 2013)
- *Report on Young People and Sexting in Australia* (University of New South Wales, 2013)
- *Youth Exposure to, and Management of Cyberbullying in Australia* (Katz, Keeley, Spears et al, 2014)

3.3 RECENT LEGISLATIVE AMENDMENTS

As a result of the above mentioned inquiries, it is important and relevant to note subsequent legislative amendments, which indicate that the Law, in certain circumstances, has demonstrated recognition of the need to change in light of the influence of technology on the everyday lives of individuals.

Crofts and Lee (2013, p 86) argued that:

“When laws were being strengthened to deal with the increased threats that new technologies pose in relation to the possession, creation and distribution of child pornography, little attention was initially given to the possibility that children could be caught up in these laws. Moreover, there is currently little to prevent children from being prosecuted and facing severe sanctions, including placement on sex offender registers with all the flow-on negative consequences”.

As is evident below, only Victoria has proceeded to legislate so as to protect children and young people from being criminalised by involvement in consensual sexting with a similar-aged peer.

To date, South Australia has enacted some filming offences, but is yet to deal with consensual and non-consensual sexting amongst children, young people and adults, differently.

Victoria

Following an inquiry by the Victorian Parliamentary Law reform Committee (REF) the Victorian Government introduced the *Crimes Amendment Bill* in 2014, in order to update the existing *Summary Offences Act* and bring it in line with modern technology. This Bill was passed in November, 2014.

The laws apply to images of **adults** who have not consented to pictures being shared, and *to the distribution of images of anyone under the age of 18*.

Two new summary offences were created for:

- *distribution of an intimate image* (Penalty: up to 2 years in prison)
- *threat to distribute an intimate image* (Penalty: Up to 1 year in prison)

if deemed to be “against community standards of acceptable conduct”.

The intent of this legislation is to send a clear message to adults: that the malicious use of intimate images to embarrass and denigrate a victim is unacceptable *and is a criminal offence*.

The new legislation also has protection for young people under the age of 18, and is designed to protect teenagers engaged in ‘non-exploitative sexting’.

This recognises that young people should not be placed on the sex offenders register for sharing intimate images ***within a consensual relationship, provided there is only a two year age difference***.

The Victorian Legal Aid website outlines the new exceptions to child pornography offences for teenagers in that State:

- *From 2 November 2014 you cannot be prosecuted for child pornography offences if you take, store or send indecent images of yourself.*
- *It is also not a child pornography offence if you are under 18 years old and*
 - (a) *no person in the photo is more than two years younger than you*
 - (b) *the photo does not show an act that is a serious criminal offence.*

(See <http://www.legalaid.vic.gov.au/find-legal-answers/sex-and-law/sexting-and-child-pornography>)

The caveat to this amendment however, is that *if the image depicts a criminal offence, such as a sexual assault, these exceptions will not apply*. In addition, two other elements apply which are designed to protect minors from malicious sharing of images:

- *From 2 November 2014*
 - (a) *It is also an offence to send a sext message of an adult (18 or over) to others if they do not agree to the image being distributed.*
 - (b) *You may be charged with an offence if you threaten to send an intimate image of a person to others if the person believes that you will carry out the threat*

South Australia

Following school assaults which were filmed and put online, the *Summary Offences (Filming Offences) Amendment Act 2013* was passed [see [Summary Offences Act 1953](#) (SA) s 26B(1)].

This relates to humiliating or degrading filming offences:

(1) A person who engages in humiliating or degrading **filming** is guilty of an offence.
Maximum penalty: Imprisonment for 1 year.

(2) A person who **distributes** a moving or still image obtained by humiliating or degrading filming knowing or having reason to believe that the victim—

- a) does not consent to that particular distribution of the image; or
- b) does not consent to that particular distribution of the image and does not consent to distribution of the image generally, is guilty of an offence.

Maximum penalty: Imprisonment for 1 year.

(3) A person who—

- a) **takes part** in a humiliating or degrading act; and
 - b) in relation to that humiliating or degrading act, engages in conduct
 - c) constituting an offence against subsection (1) or subsection (2),
- is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

(See <http://www.lawhandbook.sa.gov.au/ch12s05s01s06.php>)

Commonwealth of Australia

Following the release of the Australian Government's *Policy to Enhance Online Safety for Children*,

- A public consultation process was undertaken, with the release of a Discussion Paper: *Enhancing Online Safety for Children* (January 2014).
http://www.communications.gov.au/_data/assets/pdf_file/0016/204064/Discussion_Paper_-_Enhancing_Online_Safety_for_Children.pdf

Views were specifically sought on:

- the establishment of a Children's e-Safety Commissioner;
- developing an effective complaints system, backed by legislation, to get harmful material down fast from large social media sites; and
- examining existing Commonwealth legislation to determine whether to create a new, simplified cyber-bullying offence.

Simultaneously, the following commissioned research was undertaken:

- *Youth Exposure to and Management of Cyberbullying in Australia* (Katz et al, 2014)
- *Youth Awareness of Cyberbullying as a Criminal Offence* (GFK Australia, 2014)
- *Estimates of Cyberbullying Incidents Dealt with by Australian Schools* (Iris Research, 2014)
(See <https://www.communications.gov.au/publications/publications/research-youth-exposure-and-management-cyber-bullying-incidents-australia-synthesis-report-june-2014>)

In December, 2014, the *Enhancing Online Safety for Children Bill 2014* was introduced and was passed by the Senate in March 2015.

- March 19: leading online safety expert Alastair MacGibbon was appointed as the Children's eSafety Commissioner
- March 24: the *Enhancing Online Safety for Children's Act, 2015* was passed providing a "safety net for Australian children who have been a victim of cyberbullying and who are not satisfied with how a social media service has dealt with their complaint"
<https://www.esafety.gov.au/about-the-office/legislation>
- New legislation to enhance the online safety of children took effect from July 1st, 2015, establishing the Office of the Children's eSafety Commissioner <https://www.esafety.gov.au/>.

The Commissioner has the power to investigate complaints about serious cyberbullying material targeted at an Australian child. The Act establishes a two-tiered scheme for the removal of cyberbullying material from participating social media service.

The two Tiers of the scheme are subject to different levels of regulatory oversight:

- Tier 1 social media services participate in the scheme on a co-operative basis; and
- Large social media services that are declared Tier 2 services by the Minister for Communications may be subject to legally binding notices and civil penalties for non-compliance with requests from the Commissioner.

This Act deals with *cyberbullying* and not sexting per se.

However, once material employed for sexting is used to cyberbully, harass, or denigrate online, then sexting could potentially be considered within this Bill.

3.4 SCOPE OF THE PROJECT:

In light of the background provided above, this study was commissioned by the Minister for Education & Child Development (DECD) and conducted late 2014. It was established to gather the voices of stakeholders and students, to inform South Australian educational and legal sector leadership, policy development and practices.

Existing studies of bullying, cyberbullying and sexting from other relevant Australian and International studies are employed as adjunct material, to triangulate key messages arising from the findings from this study, and to inform overall conclusions and recommendations (See Appendix A: Review of Literature).

Aims and Objectives

Aim One

To bring together legal, educational and socio-cultural spheres, via stakeholder and student voice to inform consideration of the issues, actions, challenges and gaps in our knowledge associated with cyberbullying, sexting and the law, with a view to providing a safe learning environment.

Aim Two

To inform policy, curriculum and leadership practices across the education sector

Aim Three

To link with previous studies, accessing quantitative data on cyberbullying, understanding of the law and sexting, where applicable

Objectives

1. To convene key South Australian/Australian stakeholders to identify issues associated with cyberbullying, sexting and the law (State and Federal)
2. To run focus group and/or individual interviews with identified stakeholders to further clarify the issues
3. To engage young people as co-researchers in the research process
4. To engage national and international leaders regarding such industry specific issues as take-down orders and related processes
5. To link with and build capacity through the following existing partnerships and research networks:
 - Australian Research Council Grant (ARC) currently underway across 3 Australian states
 - Bullying, Young People and the Law, Symposium recommendations (July , 2013, See Appendix 9)
 - Coalition to Decrease Bullying, Harassment and Violence in SA Schools
 - Wellbeing Research Group, Centre for Research In Education (UniSA)
 - Student Wellbeing & Prevention of Violence (SWAPv) (Flinders University)
 - Safe and Well Online: Young and Well Cooperative Research Centre (UniSA)
6. To provide a written report as an outcome, with conclusions and specific recommendations

4 THE STUDY

4.1 BACKGROUND

Following a meeting with the *Coalition to Decrease Bullying, Harassment and Violence in South Australian Schools*, and in response to the following initiatives:

- the report on *Young People and Sexting in Australia* (Albury, Crawford, Byron & Mathews 2013);
- the *Victorian Law Reform Commission* amendments to the Crimes Act 2011 (Bullying) and
- the National Centre Against Bullying (NCAB) Symposium: *Bullying, Young People and the Law*, and the set of recommendations arising from that forum
<http://www.ncab.org.au/bullyingandthelaw/>

it was deemed important for South Australian school settings to be more informed of cyberbullying, sexting and the legal issues associated with these behaviours, along with the consequent implications for our schools and communities.

To that end, researchers from:

- the *Coalition to Decrease Bullying, Harassment and Violence in SA Schools*;
- the University of SA *Wellbeing Research Group* in the Centre of Research in Education/Hawke Research Institute <http://www.unisa.edu.au/Research/Centre-for-Research-in-Education/research-groups/Wellbeing-Research-Group/> and
- the Flinders University *Centre for Student Wellbeing & Prevention of Violence*,
http://www.flinders.edu.au/ehl/educationalfutures/groups-and-centres/swapv/swapv_home.cfm

undertook the following study to provide an evidence-base to inform leadership, policy and practice, so that SA schools continue to deliver on the duty of care to the community.

Leaders and stakeholders from legal/justice; educational and socio-cultural spheres, along with young people from culturally and linguistically diverse (CALD) backgrounds, and pre-service teachers, were invited to respond to a series of questions concerning their knowledge and understanding of cyberbullying, sexting and the law to develop recommendations to inform the safety and wellbeing of young people in SA schools.

Cyberbullying, sexting and the law are complex phenomena individually, but when considered together, require a balanced approach which takes into account youth voice and adult wisdom in order to reach shared understanding.

Young people and their voice are at the centre of this project, as it is their understandings which provide the social and cultural contexts, and the wisdom of leaders and key stakeholders from various communities, informs the conclusions drawn and recommendations made.

4.2 METHOD

A mixed method consultation approach (interviews, focus groups and surveys) was employed to capture key stakeholders' and young people's understandings and knowledge of cyberbullying, sexting and the law. Participants were intentionally sought so that the phenomenon under investigation could be explored in depth. The intent was to choose participants who were "information rich" and this was best achieved by using purposeful sampling strategies (See 4.2.1 Participants) (Creswell, 2008, p 214). In addition, a short online survey was completed by 3rd year university students at one University, and questions relating to knowledge about the law and training were included in another larger study from a second University.

Once ethical approvals were given:

- **Key stakeholders** from various educational, legal and counselling networks
 - were invited to participate in semi-structured, discursive interviews (see Appendix B)
- **Leading experts** from a *national roundtable* concerned with technology and wellbeing: comprised of government departments, NGOs and Not for Profit Organisations,
 - were invited to participate in a short qualitative, online (anonymous) questionnaire (see Appendix B).
- **A focus group comprised of senior educators** from government and non-government school settings was also conducted during a regular meeting time.
 - Three age-dependent, sexting scenarios were presented as stimulus material for discussion: prepared from real-life examples from the National Children's and Youth Law Centre (Keeley, 2014). (See Appendix C).
 - A process premised upon participatory-design was employed (Hagen et al., 2012, See Appendix C), to explore the following in relation to these sexting scenarios:

Identify:

- The problem from their perspective

Define the problem and consider:

- Who does it effect
- Why does it occur
- What is the magnitude of the problem

The final aspects of this process would be to consider possible interventions but due to the focus of this study, these were not explored in any depth:

Design

- the intervention, planning and evaluation framework
- What works and for whom

- **Three culturally diverse student focus groups** were recruited through ESL classes from one secondary school in Adelaide (See Appendix B).
- **A questionnaire was distributed to pre-service teachers** in one South Australian university (See Appendix B).

During the process, participants were given the opportunity to clarify their responses and all interviews and focus-groups were audio-recorded.

Active parental consent was received for students under 18; and active student assent was sought prior to actually commencing the focus groups.

The semi-structured nature of the interviews and focus groups allowed narratives to develop and gave participants the opportunity to construct the content and direction of the interview.

Each interview and focus group was approximately 30 - 50 minutes in duration.

Analysis and Trustworthiness of the Data

An independent transcription service was employed and transcriptions were de-identified prior to analysis. The Interviews and focus groups were analysed by researchers Spears and Huntley, using open, axial and selective coding processes (Creswell, 2008, p 434). A third, independent, Post-Doctoral Research Fellow not involved with the study, reviewed the analysis procedure and provided inter-rater reliability checks, by reviewing the coding of the data and subsequent emergent themes. Open coding ensured that the text was reviewed initially for a-priori and emergent concepts and sub-categories, resulting in master themes and second-level categories.

Axial coding explored the links between these concepts and categories; and selective coding ensured that exemplars were noted which represented the key themes, and/or specific cases.

Quotes used throughout this report are chosen to represent common, core themes. Where an individual response is used as an exemplar, it is identified as such. Student focus group responses are noted only as M (male) or F (female) with Year level. Quantitative survey data were analysed using SPSS.

Participants

Adult participants were purposively recruited through extensive networks (snowballing) and relevant legal, educational and technological experts were identified and invited to participate.

A school with a large population of culturally and linguistically diverse students was approached and researchers subsequently interviewed young people in focus groups at the school in three age groupings: Year 8; 10 & 12.

Adults: Key Stakeholders (N=21): Pre-service Teachers: (N=76, 2014; N=164, 2015) (See Table 1)

Individual legal, educational, technological and socio-cultural stakeholders, who worked with, supported and advocated for young people through their organizations, and who were available at the time participated in one-on-one discursive interviews, either face-to-face, or by phone.

Individual interviews were subsequently conducted with: police, counsellors (community and school based), lawyers, teachers and parents (See Table 1).

A group of technology and wellbeing stakeholders from a regular national roundtable, involving Not for Profit Organisations, Government Departments and academics participated voluntarily in an online qualitative survey.

A group of stakeholders from different schooling and university sectors participated during a meeting, in a focus group.

Third year pre-service teachers (n=75, 2014) and first year Masters' students (n=164, 2015) from one South Australian University voluntarily completed surveys. Overall, 86 % were aged between 20 and 29 years, and 66% were female. These data are compared with previously published and unpublished findings.

Culturally and Linguistically Diverse Students: (N=21)

Culturally and linguistically diverse young people were purposefully invited to participate, as studies on sexting to date have not specifically explored socially and culturally diverse views of young people in relation to these issues.

The collective 'voice' of these youth is an important one which has been missing in the literature to date, and this report complements those studies which have already been undertaken with youth in general about sexting and cyberbullying (e.g. Albury et al, 2013; Tallon et al., 2012).

The cultural backgrounds of students who participated included: Indian, Chinese, Filipino, Afghani, African, Vietnamese, Indonesian, Iranian, Jordanian, Persian, Bosnian and Serbian.

This diversity reflects the State demographics for recent arrivals and the main countries of birth for those born outside of Australia (See State Demographics, <http://www.dhi.health.nsw.gov.au/default.aspx?ArticleID=477#Demographic%20Data%20for%20SA>)

Table 1: Adult and Student Participants

<i>Interviews</i>	Senior Police officer: Expertise in electronic crime	N=1
	Lawyers	N=2
	Parents (1 Male, 1 Female)	N=2
	School Counsellor - Non- Government	N=1
	Social Worker – Not For Profit	N=1
<i>Stakeholder Focus Group</i>	Education sector stakeholders	N=7
<i>Online Survey</i>	Technology/Wellbeing Experts (National)	N=6
<i>Student Focus Groups</i>	Year 8 Focus Group – Government Secondary School	N=9
	Year 10 Focus Group – Government Secondary School	N=3
	Year 12 Focus Group – Government Secondary school	N=9
<i>Surveys -Online</i>	Pre-Service teachers (1 st Yr Masters; 3 rd year Undergrad)	N=76; N=164

5 FINDINGS

This study aimed to elicit stakeholders' and culturally diverse youth perspectives of cyberbullying, sexting, and the law, to add to understanding, inform policy and curriculum development and educative practices for schools in South Australia.

It raises key issues for further consideration and points to the complexities of the intersection between cyberbullying behaviours, sexting practices and the legal consequences for young people and adults.

In particular, it makes a significant contribution through the explicit inclusion of culturally and linguistically diverse youth, as their voice has been lacking in other national studies (See Appendix A: Review of Literature)

The major findings are outlined below.

5.1 THE LAW IS CONFUSING

“Laws are inconsistent. Laws are outdated. They were designed to protect young people, not criminalise them. Young people are being made out to be perpetrators in a system/law that is actually designed to protect them” (Online Stakeholder)

Adult Stakeholders

Commonly held views by the adults who participated in this study were that current laws were created in a different time and for different purposes: for example; to respond to adult use of child pornography, and therefore they do not adequately reflect the ways in which technology is being employed by young people in their daily social relationships and peer groups, or their consensual peer-to-peer sexual activity. Importantly, adults noted that instead of protecting them, the laws now operated in ways which potentially criminalise them instead.

“Information about the laws around these issues would be helpful along with any information regarding successful efforts to deal with them in the school and workplace” (School Counsellor)

The following themes emerged from discussions with stakeholders.

- *Understanding:*
 - There is a lack of adult understanding regarding the law in relation to cyberbullying and/or sexting.
- *Existing laws are considered to be problematic:*
 - Complexities exist between different State and Federal laws: for example, how they are policed and by whom;
 - There are perceived shortcomings in the way the law is enacted e.g. criminalising young people;
 - Placing young people on the sex offenders register was highly contentious;
- *Laws should be educative and protective:*
 - for the whole community (schools, teachers, young people, leadership) and
 - not only be considered as a first or last resort or a punitive purpose.

“The law needs to catch up and get it right. The current laws need some adjustment in relation to sexting. It is a complex area, but we need to keep what is happening with young people in context – below the age of 18 we need to be reanalyzing the law.”

(Male Parent)

Culturally and Linguistically Diverse Students

There was a general consensus from students that while they thought some people might know the law, **they believed that the majority of young people do not.**

This corroborates most studies to date, and reflects the findings from the Law reform Committee of the Victorian Inquiry into Sexting: that many young people are not aware that sexting could result in criminal prosecution.

They also felt that young people should know right from wrong but that without rules and laws young people would not learn what was appropriate and what was not.

“Young people definitely were not aware of the lawespecially [concerning] what you see on Facebook ... there are a lot of nude photos...people make fun of the images and videos.”

(Year 12 student)

Central to these culturally diverse young people’s understandings about cyberbullying, sexting and the law were the following themes:

- *The Law*
 - Laws are necessary to make young people feel safe, protected and to ensure privacy
- *Awareness:*
 - Lack of awareness of the laws in relation to cyberbullying, sexting,
 - If they were aware, there was confusion about them,
- *Moral and ethical understanding of online behaviour:*
 - They expressed that young people do know right from wrong; and
 - Perceived they do have a moral compass which directs their behaviour;
 - But peer pressure, the need to fit in and belong was powerful
- *Fear of telling parents*
 - Unwilling and scared to tell parents what is going on around them online,
 - They are frightened of/worried about the outcome
 - They would talk to siblings but
 - *Teachers were highlighted as very important confidantes for culturally diverse youth*

*“It’s easier to speak in English [to teachers] ...
compared to translating it into a different language to tell your parents.”
(Year 8 girl)*

Online Activity and Culturally Diverse Students

This quote (above) highlights the role of the teacher as a reliable contact for culturally diverse young people who require support outside of the familial and cultural environment.

A reason students interviewed gave for not telling their parents was due to ***the fear of their parent’s reaction and fears of punishment from their parents or their culture*** thereby further strengthening students resolve not to tell their parents.

Most students from non-western cultures reported that within their family context, they would be held responsible or accountable for any difficulties that occurred to them on the internet.

The importance of the young person’s cultural and familial context in relation to online behaviours suggests that strict discipline and authority mechanisms within culturally diverse communities may offer a form of protection for these young people in terms of them *not* participating in cyberbullying or sexting activities: albeit through fear of the consequences for inappropriate behaviour.

At the same time, they are vulnerable when online, due to what they might be exposed to by others, and how their families might subsequently react.

This was particularly evident for the girls in these communities, where brothers may have to safeguard their reputation.

Year 10 students in particular, were of the opinion and strongly agreed, that there should be rules and laws around sexting and cyberbullying, but could not articulate what sort of rules and laws were needed.

They (Year 10 students) did however, offer suggestions for what they thought needed to occur:

- Students need to know cyberbullying and sexting can be harmful and dangerous
- Students need to know they are breaking the law
- Schools need to educate young people and their families on cyberbullying, sexting and the law

Recommendation 5:1

That explicit education and information concerning current State and Commonwealth Laws relevant to cyberbullying and sexting, be made available immediately to young people, teachers, school leadership and parents.

Recommendation 5:2

That this information be presented in youth friendly, developmentally and culturally appropriate language for students, and be made available in different languages to the school communities.

Recommendation 5:3

That consideration be given to modifying the existing laws, similar to those in Victoria, so that young people of similar ages, who are in a relationship, are not criminalized for consensual sharing of intimate digital images.

Recommendation 5:4

That school communities are informed of the developments at the Commonwealth policy level relating to the appointment of the E-Safety Commissioner, and the powers of that office regarding take-down orders and large social media providers.

Recommendation 5:5

That a South Australian branch of the National Children's and Youth Law Centre be funded to support young people in understanding their rights and responsibilities under South Australian Law

Recommendation 5:6

That particular consideration is given to identifying sub-groups of young people and parent/caregivers for whom language and other barriers may impede their understanding of legal issues associated with on-line activities such as 'sexting', with a view to providing them with relevant information/resources

5.2 CYBERBULLYING & SEXTING ARE INTERTWINED

'It's when sexting goes wrong – the distribution of images – that it becomes cyberbullying'
(Male Parent)

Sexting opens the gate for cyberbullying, in that young people expose themselves to comments/actions which could be hurtful or harmful to them
(School Counsellor, Female)

Adult Stakeholders

Central to stakeholder's views about cyberbullying and sexting was the *vulnerability of young people online*.

"The feeling of being under pressure... I want someone to like me so I will send nude photos that might do it. Same with a 16 year old ...there's an element of pressure in relationships, trying to manage those new romantic relationships. That's a real vulnerability for kids feeling that level of pressure."
(Social Worker).

We need to consider the complexities of the social, emotional and psychological space young people enter when they are involved in cyberbullying and sexting."
(Lawyer 1)

The following key themes emerged from adults in relation to the intersection between cyberbullying and sexting: *Adolescence and risk-taking; developmentally appropriate education; mental health and online activity; child protection in the online environment; naivety and wisdom*.

For culturally diverse young people, the key themes related to the *intersection of their cultural context with language and understanding, education and vulnerability online*

Adult Stakeholders' Themes in brief:

Adolescence & Risk-taking

- There is a 'storm' of emerging independence, sexual development, peer pressure and influence and relationship development
- Risk-taking and photo sharing becomes part of their normal development

"I am told by many young people that sharing naked or intimate photos of themselves is a "normal" thing to do amongst their peers – sexting is common and young people are unaware of the repercussions until someone is caught out by parents or adults for this."

(School Counsellor)

Developmentally Appropriate Education

- Must be developmentally, gendered and culturally relevant

"We have seen a growth in relation to issues with cyberbullying and sexting with victims being mostly young women – extreme cases of sexual bullying including blackmail and grooming."

(Lawyer 2)

Mental Health & on-line Activity

- Impacts on the whole family: anxiety, depression and mental health

"At school, we have seen mothers, fathers breaking down emotionally, thinking what their child has done without knowing – the family being totally destroyed and gutted. It's a long way to try to get yourself out of that – your self-confidence, your self-belief ... it takes a strong young person to move forward from that."

For a lot of them, the anxiety that goes with that – the idea that everyone knows, everyone is talking because they don't know who has seen it (the images) and the fear of that unknown is constantly playing in their minds. There is no easy way to calculate the huge amount of damage this can do to a young person already vulnerable through those teen years. Once information is out there, you can't get it back."

(Teacher)

Child Protection & the On-line environment

- There is pressure from emerging sexual relationships which is exacerbated by the online context and readily available pornography

"We need to be having a whole range of conversations with young people educating them about sexuality – not only because of sexting; young people are exposed to offensive and indecent material at a very early age. There are concerns that young people will mirror sexual behaviour they see on the internet."

(Police officer)

Naivety and Wisdom

- Young people are relationally naïve online and need support/wisdom from adults

They see this [sexting] as a private matter between them and their boyfriend and they don't see it as a community issue... Like most other illegal activities... they don't think about the consequences
(Educator, Male)

- Young people are: “lost in space”; “in the moment”; have “tunnel vision” and “forget who else is online”

“Social media holds their attention... they lose track of time ... they lose track of self and before you know it, they have done something – and when they come out of that state, ... there is the fallout from it...”
(Social worker)

Culturally and Linguistically Diverse Students Themes in brief

Q: When does sexting become cyberbullying?
F: When it gets abusive.
F: Or when they use abusive language... like forcing them into doing something that they don't want to do
(Year 12 Girls)

All students interviewed owned mobile phones and had Facebook accounts.

While all knew and understood the meaning of cyberbullying, most of the younger students in this study were unfamiliar with the terminology ‘sexting’: stating that it was not a word they used: although they understood the concept once it was explained – that it was the transmission of “*inappropriate things*” (Year 8, girl) which included sending naked photos.

The older students had a greater understanding overall than the younger ones.

Regarding why they thought young people engaged in these behaviours, responses indicated that their sense of invulnerability, peer pressure, and social norms played a part:

“Young people don't worry about the consequences. They are at the age where they don't care and they think they can do anything they want.”
(Student, Year 8)

F: Because when you see your friends do it you want to blend in with them as well.
F: ...And you kind of think that it's okay to do it because everyone's doing it.
(Year 12 girls)

Central to these culturally diverse youth's understandings were the following emerging themes:

"In many migrant communities the cultural backgrounds of the students have a sense of personal modesty and respect which is so integral to the sense of family and pride.

(Teacher, Female)

Education and Cultural Context

- Culturally and linguistically diverse young people navigate their social spaces and relationships in an Australian setting, whilst simultaneously adhering to their own cultural parameters, and they do this on and offline.
- Many have clear gendered/behavioural expectations; which operate under strong parental influences, and high levels of discipline within the family
 - Their cultural contexts inhibit their involvement online, and there are severe consequences/ramifications for them if they were found to be engaged or involved in culturally/gender inappropriate behaviours, such as sexting.
 - Sexting is something that the culturally diverse students expressed they would be unlikely to engage in, but there was peer pressure to engage with it and to fit in; to be cool

Modesty is the key word because some may never go down the sexting track because they know they would cop [sic] the wrath of the family and the shame associated with that. For young people, there would be a real sense of fear to even go there.... (Teacher, Female)

Vulnerability & Cultural Understanding

- Images created by others and posted to Newsfeeds, created an added level of anxiety in that while they were not engaged in these activities, students said it would be difficult to explain to their parents where the images came from: saying that parental responses would be harsh if these images were discovered and that they would be blamed and held responsible for the images.
- There are limited language skills (expression, understanding, articulation) to enable discussion with others and/or parents about cyberbullying /sexting, *hence teachers have an important role to play for them*

F: Yeah there – there's a lot of... Photos.

M: Nude photos.

F: Nude photos on Facebook like newsfeeds and stuff ...it just pops up all the time.

M: And shared around.

F: They share it around and you – people just like to get likes and comments and comment on it and it gets abusive sometimes as well.

M: And they even save it and then they spread it around to other people and it just keeps expanding and expanding.

F: I actually see some cyberbullying comments on Facebook as well.

(Year 12 Focus Group)

Recommendation 5:7

That regular and ongoing education campaigns/interventions consider the cultural/gendered contexts of students and families and the sensitivities involved

Recommendation 5:8

That sexting and cyberbullying education be considered as part of the *Sexual Health curriculum*, to contextualize conducting relationships in a 24/7 environment, including how to safeguard themselves socially and legally

Recommendation 5:9

That help-seeking behaviours be emphasized and de-stigmatized, so youth know how, and when, and to whom to reach out to for support

Recommendation 5:10

That sexting and cyberbullying be considered *child protection issues*: in terms of what they are potentially being exposed to and how they are being supported.

Recommendation 5:11

That the Department for Education & Child Development (DECD) consider how the role of the proposed South Australian Children's Commissioner might intersect with the findings of this report.

5.3 THE ROLE OF PARENTS

*The aim is to let our kids grow within boundaries in a safe environment
(Parent, Female)*

*“We have to be able to give parents and care-givers information ... they are integral to understanding what is happening with their children.”
(Police officer)*

Adult Stakeholders

There were many concerns from adult stakeholders that a significant number of parents were not aware of what is happening online with social media/cyberbullying/sexting and with their children’s access to these sites, and felt they were particularly unaware of how the law might relate.

They perceived that it was easy for parents to feel lost and out of the loop if they were not up with new technology and yet many parents had expressed little interest in knowing about new technologies.

The challenges for parents are the accessibility and the ease of use of mobile phones, computers, laptops and social media.

Parents noted that it was important to monitor what young people are doing without being a ‘helicopter parent.’

The importance of having open lines of communication, having a relationship of trust with your adolescent so that if something happens they know they can come to you, was emphasised.

It was deemed much more difficult for busy parents who are working all the time however, to monitor appropriately and the shift from the desktop to mobilisation of devices creates new challenges for monitoring behaviour.

But educating parents about how to have a conversation with their children is one thing. Educating parents and children about what to do and who to go to when there’s trouble is another, and I think we have to be better at doing that.

*We have to give young people the tools to respond quickly when there’s an issue and to get the resources that can help them with that issue, and it doesn’t seem that we do that as a nation or at a state or territory level, very well
(Lawyer 2)*

Central to stakeholder's views was the *importance of the role of parents in terms of the problem and the solution*.

The following were the key emerging themes (in brief) :

Education, capacity building, & confidence building

- Is ongoing and critical for parents as they navigate each new phase of their child's development in relation to technology;
- Need to start with young parents of new students in early childhood centres
- Parents need to change their approach to technology from protection and safety, to supporting emerging digital citizenships in synch with their children as they grow and develop around technology:
- The combination of new technologies and new developmental phases requires new knowledge, and
- an understanding of how the law relates to each

Cultural Context Divide

- Exists between the school, technology and culturally and linguistically diverse families and is exacerbated by language barriers,
- Exists where parents may not understand what is happening online, and where what young people may do at school online with friends (coerced or otherwise), may be culturally inappropriate for their family situation, and potentially unsafe for the student.
- There is an increased burden for teachers who need to work with culturally and linguistically diverse young people and their families if they get caught up in sexting and cyberbullying,
 - qualified and experienced counsellors, social workers and psychologists are required

*The isolation of migrant families and the vulnerability of their children [is a concern] – their online life may be very different to their family life
(Teacher, Female)*

Moral and Values Education & Engagement

- Concern regarding how is this imparted to young people in the online/offline setting
- How do culturally diverse parents take responsibility for family values, sexuality development and moral compass in the face of diverse online behavior and exposure to inappropriate material

Being E-Accessible

- Parents needing to be and become *e-accessible*: and be part of the help-seeking strategies for young people

Culturally and Linguistically Diverse Students

Q: ... so do you think they [parents] understand this world of young people and what's happening with sexting and cyberbullying?

*M: Well most parents wouldn't understand because of – it depends on the country that they're from ... and if they had the technology of these days ... and if they understand it.
(Year 8, male)*

Culturally and linguistically diverse students were in agreement that their parents did not know what was happening for them in relation to social media, cyberbullying and sexting and that programs by professionals for parents would assist them to have an understanding of what they are dealing with.

Different cultural backgrounds, languages other than English and parents' lack of understanding of social media meant that **students either spoke to an older sibling about any difficulties they encountered or spoke to their teacher.**

This highlights the important role teachers have when working with students from non-English speaking backgrounds, as students are relying on teachers to help them understand and manage problems with social media.

Central to these culturally diverse young people's understandings about the role of parents in understanding cyberbullying, sexting and the law, were the following key themes:

Language concerns regarding on-line activities:

- there may be no word to describe the behaviours (sexting/cyberbullying) in their cultural context,

Limited technology experience of the parents,

- making it extremely difficult for parents to comprehend what may be occurring to their young person

Reliance on Teachers by Students

- There was increased emphasis on the role of the teacher for them, for safety and support,
 - in the absence of their parents' understanding, language barriers, and capacity to engage with the issue

Cultural context for Understanding On-Line Activities

- was significant in terms of gender appropriate online behaviours
- family and cultural ramifications could be severe, putting the young person at increased risk

Recommendation 5:12

That an inclusive reference group of parents, including those of students from culturally diverse, indigenous and other minority groups, is formed to advise Government, SAPOL and the legal fraternity on the issues facing parents, with a view to developing a focussed campaign strategy.

5.4 IT IS A COMMUNITY RESPONSIBILITY

“It is a whole of community responsibility to educate young people about sexting and the law.

Schools play an important part and it needs to be incorporated more formally into the national curriculum.

Government can play an important role in ensuring high quality educational materials that have consistent messaging are provided to schools.”

(Online technology stakeholder)

Schools are essential to the educative process in the use of technology for parents and students alike.

Education is the key to addressing many of the issues that young people are now facing on social media.

However, stakeholders in this study reported that cyberbullying, sexting and the Law are complex issues which are too big for individuals to tackle: it needs partnering with government input and support through adequate resourcing: both materials and human.

Adult Stakeholders

Central to stakeholder’s views were the following key themes:

Sexting and cyberbullying are everyone’s responsibility

- Schools are essential in the educative process: but cannot do it alone

Multi-Disciplinary Responses are needed

- Five Responses to consider in relation to cyberbullying and sexting are:
 - legal, disciplinary, pastoral, wellbeing, educative

“School principals need to know there is some discretion by police (relating to sexting) because ... here is what’s alleged to have happened, ...well ...that child is going to end up on the sex offender’s register.

And so they are not clear that there is some discretion that can be used in those very impulsive scenarios between children of the same age ...because that is their biggest worry ... that they will be helping that to happen and that’s what they don’t want.

[And]... if we go back to the laws around marijuana and children in school, that was where the change was helpful...that there was some discretion that young stupid kids who made silly mistakes didn’t end up in the criminal justice system. So their worry is really that this can get out of hand.”

(Coalition stakeholders)

Schools have a significant role to play in the community in educating and taking action

- They have more 'clout' than individuals/parents to get material taken down
- Schools have an 'action role' regarding getting inappropriate material taken down from social networking and websites
- Schools can provide an avenue for legal knowledge for students *and parents* through education about rights and responsibilities regarding cyberbullying, sexting, age of consent, and privacy
- A system-based approach is suggested: where Education works closely with NGOs, other government departments (Department of Health), Community services to provide education and support

Genuine youth engagement

- is needed to promote and support young people's wellbeing generally and specifically when cyberbullying and sexting are involved.
- Youth led, youth driven campaigns and resources are important to educate parents and youth

Students

The community for these culturally and linguistically diverse young people, comprised their parents and immediate families, their teachers and the police.

Young people in this study spoke of the importance of:

Family:

- being able to go to family; and
- the importance of their siblings to help them when something needs to be explained that they can't

*I think it's important that your parents guide you through that process.
I know it either can be awkward or uncomfortable... but it's better to – if you cover the topic
...then you won't have to regret in the future...
so I think it's very important – for parents-[to be involved]
(Year 12, Male)*

Parental Support:

- Early education and community support to help parents to understand:

F: I think we should have professionals to help them [parents] to understand.

M: ...some Programs.

F: Yeah programs.

Q: Programs. Well that's probably a good idea too. - Special programs for parents to help them understand?

F: Maybe at school they should do one something like that.

Q: Run it for parents?

F: Yeah run it for parents.

F: Not only kids.

(Year 12 Focus Group)

The role of the teachers and police in the education process.

F: I think the police should come-

Q: ..Because they [the police] have a community services program where they do come out and talk to schools?

...so you'd like to the police come out and talk to schools?

F: No to our home.

Q: Oh to your home.

F: Like once a month.

Q: To your home once a month?

F: Yeah.

F: I think – teach them this and that – I think you should educate parents more than us because it starts from parents.

They're the ones who brought us up - they're the ones who teach us life skills.

F: They have to be - good models.

(Year 12 Focus Group)

Issues and concerns around cyberbullying, sexting and the law, as identified by students and adults in this study, are complex, intertwined and require interventions which take account of the skills and knowledge of all members of the community.

As noted previously, five multi-disciplinary responses are suggested which clearly argue for a community response

- legal,
- disciplinary,
- pastoral,
- wellbeing and
- educational

Again, the CALD students' responses, highlight the difficulties for these students in terms of their parents' cultural understanding generally, and a community response presents a significant opportunity for cross-generational and inter/multi-disciplinary work in this area.

Recommendation 5:13

That Principals Australia Institute (PAI) is consulted to help develop a plan in conjunction with the DECD; the Law Society of SA and the National Children's and Youth Law Centre regarding how best to advise the school community of their rights and responsibilities in relation to these issues

Recommendation 5:14

That Parent Organisations and relevant Elders be consulted to help develop and deliver culturally relevant information regarding cyberbullying, sexting and the law, and particularly for those outside of the metropolitan area: parents of rural, remote and home-schooled students

5.5 PRE SERVICE TEACHERS

Over the past two years pre-service teachers from one South Australian University (n=76 (2014); n=164 (2015)), have responded to questions in a larger on-line survey regarding their understanding of aggression and bullying, including their views regarding the law (See Appendix B).

They were also asked to rate their current level of understanding regarding the Department for Education and Child Development policy/grievance procedures on bullying: with over ¾ in 2015 (76%, n=124) and almost 95% in 2014 (n=69) indicating their level of understanding was "somewhat satisfactory" or "unsatisfactory".

From a content analysis of pre-service teachers' descriptions of what constituted bullying behavior, the main finding was that that **they largely failed to distinguish between bullying and aggression** and typically omitted two of the three critical components which distinguish it from aggression per se: the *power imbalance and repetition components* of bullying behaviour.

Furthermore, **only 21% in 2015 (n=35) and 16% in 2014 (n=12) reported that they had a satisfactory level of understanding regarding strategies for dealing with bullying.**

This suggests that they do not currently have the knowledge or skills at this stage of their pre-service teacher education, to readily or clearly determine which behaviours could be bullying in schools and which strategies might be available to them for dealing with it.

It is therefore imperative that ongoing education be provided, both during their teacher education preparation, their placements and during any induction into the teaching profession as graduates.

Of concern, over half reported that they had either not received training/information on bullying at this point in time in their program (55.49% in 2015, n=91; 58.11% in 2014, n=43) or were unsure if they had (17.68% in 2015, n=29; 17.57% in 2014, n=13).

Unsurprisingly then, 36% in 2015 (n=59) and 46% in 2014 (n=34) did not feel capable of dealing with the issue of school bullying. However, it must be noted that *the majority did report feeling either capable* (55%, 2015, n= 90; 50%, 2014, n= 37) or *very capable* (9.15% in 2015, n=15; 4% in 2014, n=4) when it comes to dealing with this behaviour reflecting the views reported by Spears et al (2015).

In all, 99.4% (2015, n=163) and 97.3% (2014, n=72) believed that information on school bullying should be part of their teacher training: but only 25.0% (2015, n=41) and 23% (2014, n=29) reported having received any such information in their pre-service training to date.

When further asked: '*Should there be a law against bullying (including cyberbullying)*', nearly half agreed (51% 2015, n=83; 47.4% in 2014), however, some 43% in 2015, (n=70; 46.1% 2014) were 'unsure': highlighting the dilemmas accompanying these responses. Only 4% answered 'no' (2015; 2014).

Of those in favour of having a 'law', most also wanted *a more appropriate range of responses and penalties* suggesting that there are some real issues and concerns with a solely legal response to this behaviour.

As one respondent noted

*"If there was a law... how could it be enforced?
Is it right to criminalise young children's behaviour?"*

In another current cross-cultural study (Spears et al., paper in preparation) comparing pre-service teachers' knowledge of bullying in two contexts: India and Australia, similar findings to above are evident: the majority of Australian pre-service teachers again reported that they felt *Informed* (57.8%), *Capable* (59.2%) and *Confident* (51%) in their ability to deal with bullying, however the pertinent data here relate to those who do *not* feel very informed, capable or confident

- 36.7% (n=54) reported feeling "Not very informed"
- 36.1% (n=53) reported feeling "Not very capable".
- 44.2% (n=65) reported feeling "Not very confident".

This could reflect individual over/confidence or reliance on prior knowledge gained from when they attended school as students, or gleaned from their placements, but may not necessarily translate into informed practice as beginning teachers. This raises a risk management issue for the employing bodies, and suggests the need for greater input during induction phases to work settings.

Somewhat concerning, 93.2% (n=109) of the Australian pre-service teachers in this current study indicated that they perceived that over the past school term, **bullying was likely to be occurring regularly in schools: "at least once a week"**, with **65% of respondents indicating that bullying was probably occurring "almost every day"**. The overwhelming majority of these Australian pre-service teachers (90.7%, n = 137) subsequently felt that **bullying behaviour was a problem in Australian schools**.

When asked *about a law against bullying*, and if they were aware of any laws or Acts which may govern bullying, **72.2% (n=78) reported they were not aware of any, however the majority (68.9%, n=73) thought that there should be a specific criminal law that regulates bullying.**

Spears et al. (2015) have previously examined the role of pre-service teachers' knowledge of bullying and cyberbullying across three states: as contributors to school climate when they enter the profession, with a view to sustaining and maintaining anti-bullying interventions already in place.

Findings from this larger study of 717 Australian pre-service teachers from 3 states, reported similar findings to these (above): that Australian pre-service teachers largely understand the constructs of bullying and cyberbullying; largely feel informed and capable to act; and can discern bullying and cyberbullying behaviours from other, non-bullying and non-cyberbullying behaviors, but that this may not translate to the workplace, and may represent a level of overconfidence on their part. *In all whilst 66% felt 'informed', 25% did not feel informed regarding bullying. Whilst overall 62% felt 'capable', 30% felt 'not capable of dealing with bullying.*

This 'glass half full/empty' view means that whichever way the data is considered: there is clearly not a consistent understanding and knowledge about bullying and cyberbullying amongst pre-service teachers.

Little is known however, about their views or understandings of sexting, or the law and should form part of any ongoing work in this area.

Given the significant role of schools and teachers in helping young people understand and manage their on-line world it is essential that teachers receive as part of their pre-service training significant input regarding the potential and the risks of the on-line world for young people.

Authors Spears and Slee also participated in the 2014 review of the South Australian Child Protection curriculum and argued for significant changes in the content of the curriculum for teachers from early child-care to secondary school in relation to protecting children online.

In today's environment, it is not enough to only have an offline-focused child protection curriculum. It must acknowledge the potential for harm to be incurred online.

Similarly, international studies which surveyed pre-service teachers (PSTs) about school violence training reported that PSTs did not believe they had the knowledge or skills to deal with *misbehaviour in the classroom* and that their university education programs had not addressed effective classroom management techniques (Kandakai and King, 2002). The distinction must be drawn however, between misbehavior and bullying, but what it alludes to, is a general lack of confidence amongst pre-service teachers in dealing with student management generally, which is hardly surprising given their novice status. Pre-service teachers in the United Kingdom also reported similar feelings of inadequacy, although virtually all participants considered school bullying to be an important or very important topic in their teacher preparation (Nicolaidis et al., 2002).

Bauman & Del Rio (2005) also suggest that pre-service teachers in the United States and the United Kingdom do not have a clear understanding of the nature and definition of bullying. Although 76

percent recognized that bullying can be physical or psychological and 39 percent commented on the intentional aspect of the harm, only 6 percent mentioned that bullying involves a repetitive behaviour and only 28 percent included the power imbalance in their definitions. These are the two elements that are unique to bullying, and the small sample reported in this study, continue to demonstrate that they fail to understand the importance of these two differentiating features of bullying, meaning that they would likely confuse other rough and tumble play or aggression as bullying. We can conclude that education and training of pre-service teachers should begin with a clear definition of bullying that incorporates all elements of the definition and clearly distinguishes bullying from other forms of violence and aggression.

The same authors simultaneously found that pre-service teachers reported relatively high levels of confidence in their ability to respond to bullying situations. This is not necessarily a comforting finding; there is ample evidence that teachers tend to overestimate their effectiveness in dealing with bullying (Holt & Keyes, 2004; Viadero, 1997), and the confidence found in this study may in fact be over-confidence that keeps teachers and future teachers from seeking further training in this area. They also noted that preservice teachers in both countries were strongly interested in further training on a variety of aspects of bullying. They conclude that teacher preparation programs should respond to that interest and need by designing and implementing effective training that all teacher trainees receive as a part of their preparation programs.

Clearly, pre-service teachers have a role to play in the overall strategy to bring about reduced bullying in schools, including cyberbullying and sexting. To date, however, they appear to have not been a priority. But as these are predominantly young adults, who are themselves technologically engaged, high users of social media and quick to embrace new developments, we must be ensuring that they fully understand the concept of bullying, and how it now plays out not only in a face-to-face setting, such as schools, but also digitally through technology.

Furthermore, they need to understand how bullying and cyberbullying have the potential to intersect with adolescents' sexual health and identity development through sexting and how this sits alongside current law.

This then becomes a shared role: between the training providers/accreditation organisations, and the induction processes of the employing establishments. The gap which is evident between graduating as a beginning teacher, and what is required to fulfil the workplace requirements of duty of care as a practitioner in those settings, needs greater consideration in terms of risk management.

Recommendation 5:15

That an audit is made of all pre-service teacher training courses in South Australia to determine to what extent their pre-service training of teachers addresses the on-line issues facing young people in educational settings, and how that could inform the induction requirements for employers with regard to risk management regarding staff capacity to deal with on and offline bullying issues

Recommendation 5.16

That as an outcome of the audit, pre-service teacher education is required to be more closely attuned to the Keeping Them Safe: Child Protection Curriculum

5.6 SUMMARY OF FINDINGS

5.6.1 Issues

Young people and stakeholders have articulated four main themes relating to cyberbullying, sexting and the law: That

- 1) The law is confusing
- 2) Cyberbullying and sexting are intertwined
- 3) There is a role for parents
- 4) It is a community responsibility

In addition, whilst a proportion of pre-service teachers have indicated that they felt confident in their assessment of their ability to deal with bullying, research would suggest that some of this confidence could be misplaced.

Greater emphasis is needed on them understanding the constructs of bullying, and related notions of cyberbullying and sexting more clearly, to ensure that they do not confuse rough and tumble play or displays of aggression *as* bullying.

Together these findings suggest that an omnibus approach is required:

- where each component/theme contributes uniquely to improving the safety and wellbeing of young people in South Australian schools, and
- when combined, offer a powerful approach and strategy.

Clarifying the law in terms of what is legal or illegal for minors involved in bullying, cyberbullying and consensual and non-consensual digital image sharing is paramount.

This needs to operate across State and Commonwealth law, and the current Commonwealth *Enhancing the Online Safety for Children Act 2015*, must be watched closely as it unfolds.

The power of the Commonwealth e-Safety Commissioner for Children to act to remove offensive material, and the resources offered by the *Office for the Children's e-Safety Commissioner* (<https://www.esafety.gov.au/>), must be taken into account along with any subsequent changes to criminal and civil enforcement regimes to deal with cyberbullying and sexual bullying.

The relationship between sexting, cyberbullying and sexual bullying behaviours needs recognition.

Whilst sexting is not a cyberbullying act when it occurs between two consenting individuals, when those images are shared and re-shared with and by others for the express purpose of harm, then it enters the cyberbullying/sexual bullying domain, with all the associated social, emotional, psychological and mental health and wellbeing impacts currently recognised.

It also enters a legal domain, when images are used to blackmail, stalk or ruin others' reputations. The issue of the duty of care for the school is also raised.

The role of parents is obvious as the prime educators of their children, but young people in this study have highlighted the particular difficulties that culturally diverse youth in particular may have:

(1) in terms of technology itself, due to their parents' lack of knowledge or experience of it in their home country, and particularly

(2) in relation to sexting and their parents' strict modesty and gendered behavioural expectations.

This study highlights that teachers are an important conduit for these young people that bridges the culture of the school and peers, and home.

Mobilising the community to help deal with cyberbullying and sexting and making the laws more readily accessible and comprehensible to all, means that the sole responsibility does not rest with schools alone.

Schools are community settings, and therefore there is great importance in harnessing the knowledge, skills and understanding of technology-aware and proficient, pre-service teachers.

The balance required however, is that they must be well educated about what bullying, cyberbullying and sexting is; how they impact on young people, and how the law intersects with these forms of behaviour.

5.6.2 Actions, Key Gaps and Challenges

There are many actions arising from this study, and specific recommendations have been made throughout this report (See 7.0 Conclusions and Recommendations).

Insofar as the issues outlined above, we make the following observations:

The Law is Confusing

There is a real need for a change to the current law in South Australia to bring it into line with the view that children should not be criminalised for consensual sexting with a similar aged peer.

There is an urgent need for clear, plain-speaking statements for parents, students, school leadership and staff regarding current State and Commonwealth law as it relates to bullying, cyberbullying, sexual bullying and sexting: and in relation to children and young people, as distinct from adults.

The recent phone app by the Law Society of South Australia: *The Naked Truth* is an innovative, engaging way to ensure that all can have access to current, accurate legal information about sexting, age of consent and real life stories for illustration.

http://www.lawsocietysa.asn.au/LSSA/newsfeeds/New_App_-_The_Naked_Truth.aspx

It contains plain English explanations of laws relating to unlawful sexual intercourse, child pornography, and indecent filming, and also features quizzes, case studies, and a guide to what can be done if unwanted images go viral, as well as a number of other interactive features. All schools should support the dissemination of this educative resource to its communities.

The *National Children's and Youth Law Centre*, located in NSW, but with an online presence, <http://www.ncylc.org.au/> is the only community legal centre of its kind in Australia, and *is dedicated to addressing human rights issues for children and young people in Australia through legal change.*

In recent years, it has taken interest in bullying, cyberbullying and sexting issues for young people, and provides active legal support for those in need.

Engaging this centre to advise and inform South Australian school communities would be a powerful recognition that young people's and adults' knowledge and understanding of their legal rights and responsibilities is limited and that the Education system has a significant role to play in educating its community.

The *Office of the Children's eSafety Commissioner* has incorporated the previous Cybersmart web-resources and forms the most comprehensive one-stop-shop for the community to enhance online safety <https://www.esafety.gov.au/>.

Significant awareness raising is required, however, to ensure the SA DECD community can and does access the opportunities available through this site to support young people, teachers and schools.

At this site they can report serious cases of bullying and cyberbullying to the eSafety Commissioner and a direct link needs to be present on the DECD home website, along with links to the Safe Schools Hub and the National Safe Schools Framework.

The *Australian Cybercrime Online Reporting Network (ACORN)* is another recent innovation which must be considered. This is a national policing initiative of the Commonwealth, State and Territory governments. It is a national online system that will allow the public to **securely report instances of cybercrime**. It will also provide advice to help people recognise and avoid common types of cybercrime.

Cyberbullying and online child abuse/exploitation are included for individuals to report victimization, and information concerning staying safe is provided <http://www.acorn.gov.au/protection-prevention/social-media/>.

They particularly note:

You can also report serious cyber-bullying or stalking behaviour to the ACORN if the conduct is intended to make you (or the victim you are reporting on behalf of) feel fearful, uncomfortable, offended or harassed.

Cyberbullying and Sexting are Intertwined

These two behaviours are closely linked, especially when explicit or suggestive digital images are shared, and they are used for blackmailing, humiliation and degradation of a young person's reputation and identity.

It is important to be working with young people and their parents through an understanding of:

- (1) **The sexual health curriculum**, so that the exchange of suggestive or explicit images is understood within the realm of normative adolescent sexual experimentation and identity development.
- (2) **A combination of cybersafety/National Safe Schools Framework/Keeping Them Safe: Child Protection Curriculum**, so that the overarching framework of keeping young people safe, respected and respectful is employed.

As the criminal and civil enforcement regimes are considered at State and Federal level,

- (3) **working closely with relevant child-centred and aware organisations** such as the *National Children's and Youth Law Centre*, which provides legal advice to young people, the *Law Society of South Australia*, the *National Centre Against Bullying* and local community law enforcement to provide relevant and up to date information would be important.

There is a Pivotal Role for Parents

There is always a role for parents, however this study has highlighted that:

- (1) **Culturally and linguistically diverse students may be more vulnerable through parents' lack of knowledge or different cultural understandings** required to support their young people with bullying, cyberbullying and sexting.
- (2) At the same time, **young women who might be exposed to inappropriate images, through no fault of their own, might be held accountable by their siblings and families**, highlighting a need for raising cultural awareness and recognising cultural sensitivities around gendered behaviours in families in relation to cyberbullying and sexting in particular.
- (3) **The role of the teacher** for this group of students therefore assumes greater importance as a person to go to for support and help.

It is a Community Responsibility

Sexting is a 21st century social media problem, but not necessarily a 21st century behavioural one.

Sexual experimentation has always occurred amongst youth.

To this end, sexting forms part of the continuum of social practices by contemporary youth as they grow towards adulthood.

To place it, and bullying and cyberbullying solely within a legal context, with a view to criminalising the behaviour, is to miss the opportunities for the education and health sectors to contribute to contemporary understanding of what it means to be an adolescent in a technologically enhanced setting.

To this end, the challenge is to make the community responsible: legally, socially, morally and educationally *for its behaviour in relation to youth practices*.

Exploiting children and youth through the production and dissemination of child pornography is an adult problem, which requires adult legal responses.

Sharing suggestive or explicit images consensually whilst in an adolescent relationship, is a developmental and sexual health issue, and therefore requires different social, moral and educative approaches.

Getting caught up in the criminal justice system because of the law, which was designed to protect children and young people from predatory adults, is not a useful outcome: especially teenagers who are embarking on emerging romantic relationships, and who may have fallen under the influence of thinking they need to do “what everyone else is doing” .

6 STRENGTHS AND LIMITATIONS

This commissioned study has provided unique insights into the views of a significant group of culturally and linguistically diverse young people, key education, legal and policy advisors/stakeholders and pre-service teachers about cyberbullying, sexting and the law.

Most participants were from South Australia, however some were from a national group which meets regularly to discuss technology and wellbeing issues.

The strengths of this study lie in its use of a mixed method approach collecting and collating quantitative and qualitative data. The approach helps us understand the phenomenon from the perspectives of those involved, and to enable findings to be triangulated with extant studies in the review of literature.

In addition to employing interviews, online surveys and focus groups, it has employed a participatory design approach, to (1) identify the problem; (2) examine why it occurs, who it effects and the magnitude of the problem.

Participatory design approaches ensure that the user is at the centre of the design/intervention/planned change.

Limitations include those normally associated with qualitative methods: limited generalizability to other populations, and small sample size. It is however, in line with previous studies which have employed qualitative methods to understand the phenomenon. The representativeness of the sampling, whilst purposive to give culturally and linguistically diverse youth a voice, requires that further investigations should give consideration to utilising a broader more representative sample of stakeholders.

7 CONCLUSIONS AND RECOMMENDATIONS

This study was commissioned by the Minister for Education and Child Development in 2014 to explore the understandings and knowledge of South Australian students and adult stakeholders, about cyberbullying, sexting and the law. The authors of this study are highly experienced teachers, educators, counsellors and researchers who have provided significant leadership at a national and international level to understand the issue.

It is a pioneering study breaking new ground in relation to the topic with its perspective from **culturally and linguistically diverse youth**. It is a significant study in the national and international context regarding the challenging issue of how young people navigate, negotiate and benefit from their engagement with the on-line world.

The findings from this study provide a bench mark for informing policy, curriculum and practices in South Australia.

Culturally and linguistically diverse youth were specifically engaged to participate in this study, as their voice has been missing from previous investigations undertaken interstate, nationally and internationally. In doing so, **it has highlighted that minority groups in general have been missing from this dialogue about sexting and cyberbullying**.

We conclude that:

There is a lot to learn from young people in general, and from specific young people with cross cultural insights: in positioning them as central to our research to identify the problem and its magnitude, and in defining whom it effects.

The last aspect for consideration, is the role young people can play in designing interventions alongside adults, as co-researchers and co-creators.

Shifting from a sole legalistic approach towards one which is multi-disciplinary and collaborative, and which places sexting within the spectrum of sexual health and child protection education, is a more responsible action than employing existing hard and fast laws which are unclear, and potentially criminalise children and young people, for behaviours which are seemingly normative extensions of sexual relationship development, but enacted within a technologically enhanced setting.

Reforming the law to so as not to criminalise young people for consensual sexting with a same age peer is a matter of urgency.

There are significant legal, familial, cultural and community issues related to cyberbullying, sexting and the law, with corresponding gaps in our knowledge, which therefore present concurrent challenges and opportunities for all sectors of the community.

In presenting this report and its Recommendations to the Minister for the Department for Child Development and Education we do so on behalf of the participants who gave so freely and generously of their time, knowledge and expertise.

Our report is presented in the knowledge that the on-line environment is now part of the fabric of our lives.

It offers significant benefits in terms of enriching our lives but there are also accompanying risks particularly for a small group of young people who are 'at-risk' in the on-line environment.

7.1 OVERARCHING RECOMMENDATIONS

"Young people should be at the forefront of global change and innovation. Empowered, they can be key agents for development and peace. If, however, they are left on society's margins, all of us will be impoverished. Let us ensure that all young people have every opportunity to participate fully in the lives of their societies."

Kofi Annan

The recommendations which follow, reflect the important ways forwards in this area that can be made through collaborative and inclusive multi-disciplinary approaches. Taking account of the present study's findings and subject to the set of specific recommendations that are presented with each theme, the overarching recommendations are as follows.

That the Department of Education and Child Development (DECD):

1. Convene, as a matter of urgency, a working group of key stakeholders, including young people, to further refine the specific recommendations that relate to each main theme
2. Urgently review child pornography legislation; indecent filming and misuse of telecommunications laws, so as to not criminalise South Australian children and young people for consensual sexting
3. Develop an action plan to address the policy, curriculum and practice issues related to cyberbullying, sexting & the law with a view to providing practical guidelines for the schooling sector in addressing sexting and cyberbullying incidents
4. In association with the *National Children's and Youth Law Centre* and the *Law Society of South Australia*, develop a social media campaign to educate young people and their parents of their legal rights and responsibilities in relation to State and Commonwealth laws relating to cyberbullying, sexting and the law

7.2 SPECIFIC RECOMMENDATIONS

These recommendations relate to the key findings reported in Part 5.0

The Law is Confusing

Recommendation 5:1

That explicit education and information concerning current State and Commonwealth Laws relevant to cyberbullying and sexting, be made available immediately to young people, teachers, school leadership and parents.

Recommendation 5:2

That this information be presented in youth friendly, developmentally and culturally appropriate language for students, and be made available in different languages to the school communities.

Recommendation 5:3

That consideration be given to modifying the existing laws, similar to those in Victoria, so that young people of similar ages, who are in a relationship, are not criminalized for consensual sharing of intimate digital images.

Recommendation 5:4

That school communities are informed of the developments at the Commonwealth policy level relating to the appointment of the E-Safety Commissioner, and the powers of that office regarding take-down orders and large social media providers.

Recommendation 5:5

That a South Australian branch of the National Children's and Youth Law Centre be funded to support young people in understanding their rights and responsibilities under South Australian Law

Recommendation 5:6

That particular consideration is given to identifying sub-groups of young people and parent/caregivers for whom language and other barriers may impede their understanding of legal issues associated with on-line activities such as 'sexting', with a view to providing them with relevant information/resources

*Cyberbullying and Sexting are Intertwined***Recommendation 5:7**

That regular and ongoing education campaigns/interventions consider the cultural/gendered contexts of students and families and the sensitivities involved

Recommendation 5:8

That sexting and cyberbullying education be considered as part of the *Sexual Health curriculum*, to contextualize conducting relationships in a 24/7 environment, including how to safeguard themselves socially and legally

Recommendation 5:9

That help-seeking behaviours be emphasized and de-stigmatized, so youth know how, and when, and to whom to reach out to for support

Recommendation 5:10

That sexting and cyberbullying be considered *child protection issues*: in terms of what they are potentially being exposed to and how they are being supported.

Recommendation 5:11

That the Department for Education & Child Development (DECD) consider how the role of the proposed South Australian Children's Commissioner might intersect with the findings of this report.

*The Role of Parents and the Community Issue***Recommendation 5:12**

That an inclusive reference group of parents, including those of students from culturally diverse, indigenous and other minority groups, is formed to advise Government, SAPOL and the legal fraternity on the issues facing parents, with a view to developing a focussed campaign strategy.

Recommendation 5:13

That Principals Australia Institute (PAI) is consulted to help develop a plan in conjunction with the DECD; the Law Society of SA and the National Children's and Youth Law Centre regarding how best to advise the school community of their rights and responsibilities in relation to these issues

Recommendation 5:14

That Parent Organisations and relevant Elders be consulted to help develop and deliver culturally relevant information regarding cyberbullying, sexting and the law, and particularly for those outside of the metropolitan area: parents of rural, remote and home-schooled students

Recommendation 5:15

That an audit is made of all pre-service teacher training courses in South Australia to determine to what extent their pre-service training of teachers addresses the on-line issues facing young people in educational settings, and how that could inform the induction requirements for employers with regard to risk management regarding staff capacity to deal with on and offline bullying issues

Recommendation 5.16

That as an outcome of the audit, pre-service teacher education is required to be more closely attuned to the Keeping Them Safe: Child Protection Curriculum

8 APPENDICES

8.1 APPENDIX A: REVIEW OF THE LITERATURE

Cyberbullying, Sexting and the Law

The purpose of this brief review of literature, is to highlight current research in relation to cyberbullying, sexting and the law, including the impact of these online behaviours on young people and their schooling. As such, this forms part of the evidence-base presented for this study, and triangulates the findings from the stakeholders and youth presented in the main report to other published studies and reports nationally and internationally.

Cyberbullying

Cyberbullying, while difficult to measure and define (Smith, 2014; Spears et al. 2014), is considered to be bullying inflicted through the use of electronic technology such as mobile phones, computers and tablets and involves, but is not limited to: abusive texts and email, hurtful and denigrating messages; inappropriate videos or images and spiteful and malicious online gossip (Cyber(smart:) 2014). The rapid shift to mobile technologies in recent years, and the increasing hours spent online in social networking sites, are in contrast to early conceptualisations of cyberbullying, when only text message and email bullying were employed. In recent times, online gaming must also be considered as contexts for cyberbullying. These changes highlight that this form of bullying is likely to be constantly changing as new technologies emerge (Spears et al., 2009).

Smith et al. (2008) initially described seven main media through which cyberbullying was enacted; Rivers and Noret (2010) subsequently identified 10 main categories in text and email bullying, and Pyzalski (2012) listed 20 categories of 'electronic aggression' in Poland.

In spite of some similarities with traditional, face-to-face and indirect forms of bullying, cyberbullying is perceived to have certain distinctive features which include (See Smith, 2014, p 81):

- Some level of technological expertise required on the part of the cyberbully
- It can be both direct and indirect in nature (Spears et al., 2009), though most often the target does not know who the perpetrator is (Vanderbosch & Van Cleemput, 2008)
- The victim's reaction is often not seen
- The bystander roles are more complex than for traditional bullying: depending on who the bystander is with (bully or victim) and /or whether they are on the receipt of messages or independently visits online sites
- Status gained by the cyberbully is difficult to determine, unless material is shared publically and attributed to him/her.
- The breadth of the potential audience is conceivably greater

There is also no safe haven for the victim, as it is a 24/7 context and material can be continuously sent or viewed.

Willard's (2006) early conceptualization of cyberbullying behaviours, whilst not having been empirically assessed as to whether they *actually* comprise cyberbullying behaviours, or if they are the more general behavior: *cyberaggression*, do represent a way of categorizing negative online behaviours, and have been employed by many researchers in their quest to learn more about cyberaggression and cyberbullying (Smith, 2014). Indeed Langos (2014) in her paper, *Regulating Cyberbullying: A South Australian Perspective*, specifically employed these for the purposes of considering the legal ramifications of the behaviours in a South Australian context.

- *Cyberstalking*: intense harassment and denigration that includes threats or creates significant fear in the victim to the point where they fear for their personal safety.
- *Denigration*: derogatory and damaging comments or the distribution of an offensive sexual or non-sexual image to denigrate the victim
- *Happy slapping*: involves the distribution of a film to publically humiliate the victim who has been the target of a fight
- *Exclusion*: the purposeful exclusion of a person who is not allowed to take part in a chat room or has been excluded from a discussion group
- *Outing and trickery*: involves a victim being tricked or manipulated into a situation whereby private information is disclosed to the perpetrator who then publishes the information to embarrass and humiliate the victim.
- *Impersonation or Masquerading*: involves the perpetrator pretending to be the victim and sending an offensive message that appears to come from the victim.
- *Indirect threat*: A form of cyberbullying, which relates more to cyberstalking in that a victim can be threatened of impending physical harm in the online public domain.

With increased use of technology by adolescents and easy access to social media sites, Dwyer and Eastaugh (2013) have raised concerns regarding the rates of all forms of bullying in Australian schools stating that it is amongst the highest in the world with half of all students being affected. Spears et al.'s (2008) research into the human cost of covert and cyberbullying noted that the impact of covert bullying (that which occurs behind the scenes) and cyberbullying (that which occurs behind the screens) are a concern. Victims of both covert and cyberbullying reported feelings of isolation, exclusion, vulnerability, loneliness, powerlessness, depression, anxiety along with public humiliation, fear of going to school, fear of leaving home, avoidance of others, damaged reputations, increased aggression or having to leave or change schools.

Campbell et al. (2012; 2013) reported that there were significant mental health impacts for those who cyberbullied others, as well as for those who were victims of cyberbullying, compared with those who were not engaged in these behaviours, highlighting the importance of recognising the impact of these behaviours on individuals. Spears et al. (2015) further noted that cyberbullying could be considered a public health problem, given the social and economic costs to the community of poor mental health and suicidal ideation attributed to engagement in cyberbullying. They found that those who had no experience of cyberbullying had better wellbeing profiles and mental health overall, but that cyber bully-victims, those who both were targeted by others, and who targeted others: had the poorest wellbeing and mental health.

Hemphill et al (2015) examined the longitudinal associations between cyberbullying and later problem behaviours, including mental health for young Australians, finding that: *cyberbullying* others in Year 10 was associated with *theft* in Year 11; *cybervictimisation* in Year 10 was linked with *depressive symptoms* in Year 11, and *engaging in both (cyber bully-victims) in Year 10, predicted year 11 school suspensions and binge drinking*.

Additionally, recent findings of a longitudinal study conducted by Bartlett (2015), show that attitudes towards cyberbullying and previous experiences with cyberbullying behaviour, which included experiences of 'success' while remaining anonymous, increased the likelihood of engaging in these behaviours in the future.

Whilst cyberbullying is one of the foci of this report, it must not be forgotten however, that traditional bullying still affects more children overall (Smith, 2014). However, with the recognised overlap between traditional and cyber- bullying occurring, where those offline go online and vice versa, cyberbullying is closely linked with traditional bullying and its effects, and those who are targeted through both settings, potentially suffer a multiplier effect, exacerbating any bullying they experience. Cross et al. (2015) reported support for this from a longitudinal study into the social and emotional predictors and consequences of cyberbullying and traditional bullying: those targeted in both ways (traditional and cyber), experienced more harm and stayed away from school more often than those bullied in traditional ways only.

Schneider, O'Donnell and Smith (2015) conducted longitudinal analyses of 16,000 student self-report surveys relating to cyberbullying in U.S schools over a six year period. They found that while traditional bullying behaviours were seen to decline in that time, cyberbullying behaviours rose from 15% to 21%. The most notable increases were amongst girls. While cyberbullying did increase, traditional forms of bullying still occurred at higher levels, but when contrasted from 2006 (26% to 15%) to 2012 (23% to 21%) it could be seen that incidents of cyberbullying were increasing in schools.

Supporting the concerns of the impact of cyberbullying on adolescent mental health, Hinduja and Patchin (2010) offered five major reasons why they believe this would occur:

1. the permanence of computer-based messages (as compared to verbal statements) as they are preserved in Web sites, Internet archives, search engine caches, log files, user software applications, and user devices;
2. the ease and freedom with which hurtful, embarrassing, or threatening statements can be made;
3. the comparative difficulty of detecting the misbehavior, identifying the offending party, proving or verifying the wrongdoing, and imposing a meaningful sanction;
4. the fact that victimization extends beyond the school, playground, bus stop, or neighborhood due to the ubiquity of computers and cell phones and the "always-connected" lives that adolescents lead
5. the growing number of potential victims and offenders as youth increasingly embrace new communications technologies, devices, and mediums to interact with each other.

However, one of the difficulties for containing cyberbullying is that it is not just confined to the school environment (Hinduja and Patchin, 2010; Spears et al, 2008). Cyberbullies can target their victims at any time regardless of whether or not they are at school. What happens in relationships at school can be continued at home online, after hours or on the weekend. Any problems within the relationship occurring during the online time can transfer over to the school environment thereby blurring the boundaries between the two environments (Spears et al., 2008).

The recent *Youth Exposure to Cyberbullying and Its Management in Australia* reports for the Commonwealth government (Katz et al, 2014, p 2. See <http://www.communications.gov.au/publications/publications/cyber-bullying>) found that recent Australian studies provide victimisation rates for cyberbullying ranging from around 6 per cent to over 40 per cent of young people. However, when ‘taking into account the methodology and timing of the various studies, the best estimate of the prevalence for being cyberbullied ‘over a 12 month period’ would be in the vicinity of 20 per cent of young Australians aged 8–17’ (p2).

What is apparent however, is that when asking about cyberbullying, or indeed traditional bullying, little emphasis is given to determining whether any sexual or sexualized bullying has occurred. In the current climate where sexting has emerged through the advent of readily available, increasingly mobile, image-sharing social network platforms, this would seem to be a pertinent observation and one for future research to explore.

Sexting

Overlapping the concerns of cyberbullying are the issues surrounding sexting (sex-texting) - the trading of personal images (nudity or sexually explicit and suggestive messages) within a private relationship or the unlawful dissemination of those same images to others without the consent of the person involved. The issue of consensual and non-consensual sharing is an important one, especially for minors.

There are several issues raised among the media, parents, law enforcement, and educators in relation to sexting, but the main ones relate to:

- (1) youth may be inadvertently creating illegal child pornography, which exposes them to being criminalized through our legal system; and
- (2) having potentially compromising and ineradicable images online, that employers, family and others can access, and which might impact on the individual’s self-esteem, and social and emotional health.

Albury et al. (2013) noted that while all groups of young people in that study were familiar with the notion of sending images that were inappropriate or sexually suggestive, including text messaging, ‘sexting’ was not a word that was part of their everyday language: rather it was viewed as an adult or media-generated word. Instead they spoke of sending ‘pictures.’ Albury et al. (2013) subsequently suggested that young people may view education or awareness-raising campaigns focused on sexting, as associated with adult anxieties, rather than their own experiences and practices.

Whilst this reluctance to use the word per se may still be the case, given the amount of media coverage in recent times, it is highly likely that young people in 2014/15 would be more familiar with, and use the term than those even a year earlier. A Google search on “sexting” in February 2015 revealed 12,600,000 hits; with “sexting reports in the media” revealing 445,000 hits in first 30 seconds; and “sexting Australia statistics” having 112,000 hits, suggesting that this is indeed a commonly utilized term, at least in the media, with transference to common parlance amongst the general public expected. This is further borne out by websites, such as the *Office of the Children’s eSafety Commissioner* which have information about sexting readily available through web links and downloadable factsheets: <https://www.esafety.gov.au/esafety-information/esafety-issues/sexting>

In the USA, an early study undertaken by the National Campaign to Prevent Teen and Unplanned Pregnancy (2008) found that 20% of teens had sent or posted nude or semi-nude pictures of themselves (so-called “selfies”), but Mitchell et al (2014) in a review of current trends, noted that it was not always clear whether sexting was defined to include images or only text, or if the images created, were no more or less revealing than what would be at the beach or swimming pool. Indeed, in Mitchell’s study (p19), 149 youth (9.6%) reported appearing in or creating “nude or nearly nude” images or receiving such images in the past year. For 46% of those youth appearing in or creating images and 16% of those receiving images, “nude or nearly nude” *included youth wearing underwear or bathing suits, sexy poses with clothes on, and pictures focused on clothed genitals*. However, twenty-one percent (21%) of respondents appearing in or creating images reported feeling very or extremely upset, embarrassed or afraid as a result, as did 25% of youth receiving images. The most commonly reported reasons in this study for incidents were: “romance as part of an existing relationship;” pranks and jokes or trying to start a relationship.

According to Mitchell et al. (2014, p24) “the percentage of youth who have, in the past year, appeared in or created *sexually explicit sexual images that potentially violate child pornography laws was small (1%)*”. They also noted that if sexting was defined as appearing in, creating or receiving sexually *suggestive* rather than *explicit* images, then 9.6% of youth who used the Internet in the past year were involved in this way.

This distinction is an important one when considering how we should be educating young people about the impact of taking and distributing images, as it would seem that many are not engaging in the high risk behaviours of sharing sexually explicit images, but are sharing suggestive images, which can still make others feel uncomfortable, upset or embarrassed.

Baumgartner, et al. (2014), as part of the EU Kids Online Project, examined individual and country characteristics to explain sexting behaviours across 20 European countries (N = 14, 946 adolescents aged 11-16) and found that at the individual level: age, sensation seeking and frequency of internet use predicted sexting across all countries, and that gender differences in sexting varied across countries. Country characteristics had no direct effect on adolescent sexting (e.g. GDP; broadband penetration; traditional values) however traditionalism significantly predicted gender differences in sexting: in more traditional countries, the gender difference were more pronounced than in less traditional countries; and more boys than girls engaged in sexting.

For those newly arrived from other cultures, the term “sexting” may be unfamiliar, and the behavior itself may be anathema to their cultural context, particularly if it is more traditional in context, as indicated from the EU Kids Online Project. For this reason, it is important to explore culturally and linguistically diverse youths’ knowledge and understanding in the Australian context, as the current study has done.

The Australian Communication and Media Authority (ACMA, 2013) report “Like, Post, Share” (p 87) found that:

- Thirteen per cent of 16-17 year olds reported that within their group of friends, either they or someone else has sent sexually suggestive nude or nearly nude photos or videos of themselves to someone else.
- Eighteen per cent of 16-17 year olds reported that they or someone within their group of friends had received sexually suggestive nude or nearly nude photos or videos of someone else.
- Parents underestimated the extent to which their children were exposed to sexting.

Studies reported by the South Eastern Centre Against Sexual Assault in Monash, Victoria (SECASA 2013) found that:

- 48% of teens have received sexually explicit messages.
- One in five Australian girls aged 18 has sent nude or semi-nude pictures of themselves over the internet.
- 17% of males under 18 have sent sexual pictures of themselves to other people.
- From 2008 - 2011 more than 450 child pornography charges have been laid in Australia against youths between the ages of 10 and 17, including 113 charges of "making child exploitation material"

Mitchell et al., (2014), reported that more than 50 per cent of sexually active secondary students from a national study into sexual health, have sent a sexually explicit nude or nearly nude photo or video of themselves using new technologies.

Yeung et al., (2014) reported similar findings from a cross-sectional study of 16-29 yr olds attending a music festival: Forty percent of survey participants reported that they had ever sent or received a sext (48% of males, 36% of females), most commonly with a regular partner.

Hertlein, Shadid and Steelman (2015) explored the prevalence of sexting and technology use amongst college students, specifically in relation to same-sex, bisexual and heterosexual relationships. Their survey found that sexting was seen to be more acceptable amongst same-sex relationships. For college students amongst both groups, sexting was seen to be part of flirting with sexual intention, however there were notable differences between those of same-sex and heterosexual relationships.

Clearly, the sending and receipt of intimate images, be they suggestive or explicit, is occurring amongst young people and young adults, and having an understanding why is important.

SECASA (2013) offered a list of reasons as to why young might people engage in sexting. For girls it appears that she may:

- want to be liked or noticed
- be feeling pressured
- think this is what is expected of her
- think it is a way she can show a boy how much she likes him
- believe it is normal or that 'everyone is doing it' if the pictures of other girls she knows or celebrities who have done the same thing
- like to feel sexy and flirty
- get a 'rush' from thinking she is doing something risky or dangerous
- feel closer to the recipient through sharing
- be proud of her body and want others to see it

For boys, he may:

- be copying a football or celebrity role model
- find it fun, flirtatious, exciting and sexual
- be part of dating
- want to be cool or be seen as being cool
- forward a sext for fun or as a joke
- feel that he needs to have sexting images on his phone to show his mates if they ask, even if his girlfriend has asked him not to

Just as difficult for young people, and also noted in the study by NSPCC (2012), is the option to say “no” to sexting, as this comes with the possibility of being excluded from the group. SECASA (2013) reports some possible outcomes for saying “no” for girls: she might

- be afraid that everyone will find out she said no and tease her
- think this will damage her relationship with her boyfriend
- be afraid of what her friends might think of her if she says no
- feel proud of herself for saying no and keeping herself safe
- feel a great sense of relief that she does not have to worry about what might happen

For boys some possible outcomes to saying “no” may be:

- If he doesn’t ask for a photo he might be afraid his girlfriend might think he doesn’t like the way she looks
- He might be labelled as gay and have his masculinity questioned
- Boys feel pressured to either have sexy photos on their phones or to look at photos on other people’s phones whether they want to or not
- He could be ostracised by his peer group.

Studies conducted by Ringrose and Harvey (2012; 2015) explored the young people’s notions of gender representation mediated through images and the behaviour of sexting amongst adolescents in the UK. Through a digital ethnographic approach that included interviews and focus groups with young people, it was found that images of females and males were taken and shared online for a number of purposes, which included sexual attention, value and reputational reward. However, female images were highly regulated when compared to those of boys. Girls who uploaded suggestive images were often perceived as ‘lacking in self-respect’, while the suggestive images of boys were often rewarded as being ‘masculine’ and having a good body’ (p.214).

While sexting has become a concerning form of communication amongst young people, for the two main reasons noted above (legal and reputation), it must also be recognised that this operates in a context of widespread, and readily available, easily accessible sexually explicit material depicting sexual activity (Peter and Valkenburg, 2006). An implication is that there is concern at the way that pornography might be impacting young adolescents’ sexual scripts and the demands they might make of their partners in their emerging sexual relationships. It is important therefore, that any intervention aimed at reducing sexting, takes into account, the broader context.

In other words: sexting may not be an issue of technology, but instead, may be part of the continuum of young people’s sexual practices in the 21st Century, and therefore, approaching it might be best centred on sexual health education, rather than legal sanctions and responses.

Indeed, according to the South Eastern Centre Against Sexual Assault (SECASA, 2013) some aspects of sexting behaviour between adolescents can be construed to be “developmentally normative” in that, young people have always engaged in sexualized behaviour and flirting as part of their development. Sexting in this context is regarded as a way of flirting and the ‘first rung’ into sexual behaviours thus extending the opportunities for adolescents to investigate their sexuality and emerging sexual relationships.

How it impacts on their emerging sexual behaviours however, is largely unknown, but recent studies are beginning to explore this notion. Temple and Choi (2014) for example examined the sequencing of sexting and sexual behaviours in a longitudinal study: whether sexting at baseline (Wave 1) predicted sexual behavior at a one year follow-up, and whether active sexting mediated the relationship between passive sexting and sexual behavior. They reported that the odds of being sexually active at Wave 3, were 1.32 times larger for those youth who sexted at Wave 2, relative to their counterparts. However, sexting was not associated with *risky* sexual behaviours, but did mediate the relationship between passive sexting and sexual behavior as predicted.

A recent study by Walrave et al., (2015) investigated adolescent motivations for engaging in sexting, which included peer perceptions, subjective norms, behavioural willingness and attitudes. Using a prototype willingness model to assess predictors of sexting behaviours among 217 adolescents, it was found that young people involved in a relationship were more likely to engage in sexting as compared to singles, particularly if this was part of the norm of the peer group and their attitude towards sexting was positive. Thus, it could be considered that sexting is a behaviour adolescents engage in to explore and express intimacy and their sexuality. However, an important issue raised by this study is the legal ramifications of the spreading of images by bystanders. Notifying both bystanders and those engaging in consensual sexting behaviours is considered to be a crucial area for educational communities, sensitizing young people to the roles they play, their responsibilities when producing and disseminating sexual images in intimate relationships and how to deal with the consequences of such actions.

Klette, Hallford and Mellor (2013) completed a systematic literature review in an attempt to integrate and analyse empirical literature related to this topic and found 31 studies reporting prevalence. They noted that determining prevalence was problematic, however, due to variations in definitions and sampling. A key finding, from these mostly American studies, however, was that trends indicated that sexting (receiving and sending) was *more prevalent amongst adults than teens*, but that older age was a significant predictor in adolescent sexting (p 51).

In Australia, in a 2014 study of over 1,000 parents, 63% of children aged between 8-11 and 73% of those between 12-15, either have their own mobile device or use their parent's mobile devices (<http://www.trendmicro.com.about-us/newsroom/releases/articles/20140707024506.html>).

Coupled with the smartphone revolution of the past few years, this means that younger children have increasing access to technology which can support the sophisticated transmission of images, along with social networking platforms which support wider, anonymous sharing. Thus, whilst studies prior to 2013 may have reflected older adolescent and adult engagement in sexting, pre-adolescents now have the capacity simply by dint of access: just as they are developing their own sexual identities and sexual curiosity. This area of vulnerability is where intervention is needed, not only in the safe use of the technology, but also in understanding their own developmental needs.

Klette et al (2013) further found that sexting may also be a 'behavioural marker' for sexual risk-taking. This may be more relevant to adults as it was found that there was an association with being sexually active, and engaging in a range of sexual risk behaviours such as having unprotected sex, and the consumption of alcohol and drugs prior to sexual activity (p52). Sexting however, was found to also be associated with being in a romantic relationship, which emerges quite naturally in pre-adolescent development, flagging another potential area for early intervention.

Also raising concerns in relation to the safety of online behaviour for young people is *Insafe* (2014), an organization that operates under the framework of the European Commission's Safer Internet Program. In relation to sexting, they have highlighted similar concerns to the two mentioned at the beginning of this section:

- The speed at which images can be circulated without ever being able to gain control of them again.
- Cyberbullying/sexting – apart from embarrassment and humiliation of inappropriate images being displayed is the damage to reputations and the ongoing denigration and abuse which can follow.
- The Legal concerns of underage adolescents distributing images which are regarded as child pornography.
- The potential for grooming by paedophiles to occur.

Unsafe (2014) raises the concern that paedophiles can use sexting images which are sometimes available on social networking profiles, in order to blackmail victims in to revealing more harmful images/messages of themselves and others.

In a qualitative study conducted by The (UK) National Society for the Prevention of Cruelty to Children (NSPCC, 2012) a great variety of experiences were found in relation to young people's engagement with sexual messages and images challenging the view that sexting is likely to be a single phenomenon.

The report stated

"Few teenagers wish to be excluded from the sexual banter, gossip, discussion or, indeed, from the flirtatious and dating activity endemic to youth culture.

But to take part is to be under pressure – to look right, perform, compete, judge and be judged. Much of young people's talk, therefore, reflects an experience that is pressurized, yet voluntary – they choose to participate but they cannot choose to say 'no'."

One of the complexities of this situation is that sexting is not just an individual activity, it is group-networked, so the consequences are not exclusive to those involved in some particular practice. The report found that the effects and the impact of sexting with young people "permeates and influences the entire teen network in multiple ways" thus creating not only concerns for schools but also a need for ways of addressing the probability that a class could simultaneously contain victims, abusers/perpetrators and bystanders. In addition, the ever expanding circles of peers, via social networking platforms means that those in neighbouring schools and the wider social network would likely to be aware.

Klettke et al. (2013) noted that individuals were aware of the risk for adverse outcomes which accompany sexting behaviours, but that the motivations for engaging in sexting, seemed to be largely ignored under the pressure exerted by others. They suggested that clarifying the circumstances and rationale related to the behaviour, and whether or not the outcome was positive or negative, is important to contextualize the behaviour, particularly in terms of factors which could moderate wellbeing or expectations as a result of the activity.

Karaian and Van Meyl (2015), reinforce this view, arguing for the need to 'rethink the risk/safety binary' and the role it plays in impeding adolescent rights to expression and subjecting them to possible prosecution.

Lee and Crofts (2015) support this in their critical review of the literature, which considers that the elements of pressure and coercion are a complex and gendered issue. This often results in harsher judgement for girls than boys amongst the peer group and a greater focus on moral values than the actual experiences of young people who engage in sexting. They advocate a 'harm reduction' approach to sexting grounded in appreciative research (Lee & Crofts, 2015).

As noted earlier in this document, delineating sexting behaviours as either suggestive or explicit, consensual or non-consensual would go partway to clarifying the behaviours most likely to put young people at risk of coming to the attention of the police under existing child pornography and telecommunications laws. Determining actual sent/received sexts and actual impacts would also contribute to greater understanding of what is occurring, rather than any perceived risk.

It is clear that sexting amongst young people is occurring, seems to be supported by peer culture as part of normative dating/relationship behaviours, and appears to be part of the larger contemporary

sexual repertoire, with findings suggesting that it could be a behavioural marker for later sexual risk-taking. For these reasons, sexting should be considered within the sexual health education sphere. However, it currently exposes most young people to risks of legal sanction and electronic reputation damage.

The Law

Concern about new technologies in relation to child pornography, is leading to existing kinds of behaviours, e.g. experimentation with sexuality and identity, being labelled and criminalised in dramatically new ways. Little thought was given to children being creators of sexualised digital media/images, and the implications this might have for the law and for society.

According to Crofts and Lee, (2013) the main protections against prosecution for children over the age of criminal responsibility, rest on how the term 'child pornography' is interpreted, and whether discretion is used to not pursue prosecution.

Svantesson (2010 p 42) stated that "sexting is regulated by a complex matrix of partially overlapping state and federal, civil and criminal, laws" however, much of the law regarding sexting focuses on Criminal Law, particularly in relation to child pornography offences. Child Pornography Laws, put in place to protect children from paedophiles and predators, are the very laws now being used to charge adolescents who have freely distributed sexually explicit videos or images of themselves or others on social media. Svantesson (2010) highlights the legal and social complexities of such a situation, particularly in relation to the impact this will have on an adolescent's life if they are convicted and charged. He further states that the cost to communities of charging adolescents who engage in sexting as child sex offenders, 'severely dilutes the importance and utility of the sex offender's register' (p44).

Sharriff (2014) offers an important point to consider in that (Canadian) laws surrounding Child Pornography, actually in place for protecting children, can be used to criminalise behaviours 'actually protected under the right to privacy'. An essential part of determining criminal behaviours could be deliberation on young people's capacity to form intent to harm. Moreover, in contexts where messages about sex and sexuality are increasingly confusing for adolescents, they may be unable to differentiate between what is a joke and what is potentially a criminal offence.

Matthew Keeley, Director of National Children's and Youth Law Centre (NYCLC) commented in the New Voices/New Laws Law Reform Report (2012):

"Through our research and provision of information and advice to young people on these issues, (sexting), we have realized that there is a disconnect between the existing legal framework and the new reality to which it now applies.

For instance a teenage girl recently asked us "why is sexting illegal?" There is no simple answer to that question. Merely responding because it is harmful does not begin to cover how and why child pornography laws targeting the sexual abuse of children came to be applied to photos texted among young people, especially those produced in the context of an ongoing relationship."

The New Voices/New Laws Law Reform Research Report (2012) was prompted by a concern for young people and their use of the internet, mobile phones and social media and their lack of awareness regarding the misuse of these facilities and the way in which they could end up facing serious and “disproportionate criminal penalties.” The aim of the project was to inform and educate young people in relation to sexting, cyberbullying and the criminal laws which apply, along with supporting young people to have a voice and an opinion and to speak out about the laws. The project also aimed to “facilitate advocacy for reform of inappropriate criminal laws and penalties.”

Data collected from over a 1000 students, most of whom were in their mid-teens, from 7 different schools, shared their views on the laws and penalties that applied to cyberbullying and sexting. The survey revealed the following responses from young people (NYCLC 2012):

Young people:

- Want and need education regarding the laws that apply to the internet and mobile phones
- Agree that sexting and cyberbullying should be against the law but with a more appropriate range of responses and penalties available
- Agreed that the penalty should suit the offence and should take into account the offender’s awareness of the law, offending history and level of harm caused to the victim
- Feel that sharing nude or sexy photos of a person without their permission is much worse than exchanging those photos where there is consent, and that the law should treat those situations differently
- Believe that people under the age of 18 should never be charged with sex offences or placed on the sex offender register for age appropriate (peer-to-peer) sexting

From this report a number of recommendations were made in relation to Police and Criminal Law Reforms and Education and other Reforms.

Of particular relevance to this report was *the recommendation to provide education through more comprehensive resources pertaining to the legal consequences of sexting and cyberbullying focusing particularly on practical solutions such as early intervention, harm minimization and the informed participation of young people involved.*

In particular, guidance needs to be offered to schools to enable them to respond to these issues to ensure the best outcome for students (NYCLC 2012).

Albury et al (2013) in their report: *Young People and Sexting in Australia: ethics, representation and the Law* explicitly examined young people’s responses to Australian laws, media and educational resources related to sexting (p1). Three focus groups of young people aged 16-17 (n=16) were conducted.

This age group was purposefully chosen, as they reflected the specific complexity for this age group in regard to sexting, the law and sexual development: *people who are over the age of sexual consent, but not considered legal adults.*

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. As a result, 16-17 year olds must navigate sexual practices that can be both consensual and legal, but illegal to visually record

(Albury et al, 2013, p4)

Importantly, young people of this age, are also likely to still be at school. School settings then, need to be considered as having different developmental “sets” of children/young people, rather than comprising one homogenous cohort which needs education about sexting and the law.

Clearly, age matters: what 12 -14yr olds need to know as they cross the pubescent markers, is different to what 16-17 year olds, who meet the age of consent requirements need, and certainly different to those 18 year olds who are still at school but who are considered legal adults.

Findings from the focus groups highlighted several key issues. The word sexting and its definition were deemed to be adult oriented, and thus viewed as inherently negative, in contrast to their preferred term (pictures) which was considered more neutral terminology (p 8). Nudity was deemed to be a matter of confidence and context, but was not thought to be shameful. Not having consent to produce or share was deemed to be the most “offensive” behaviour, not the nudity. Gendered double standards were evident in the way digital images were discussed: girls were deemed provocative, whereas males were thought of as being jokey. Legal frameworks were thought to be out of touch with current practices, and generally not well understood, but the participants held views that they were all heavy-handed and excessive.

Crofts and Lee (2013) in writing for the Sydney Law review reviewed current State and Commonwealth laws relating to child pornography, and argued that:

“the existing legislation lacks the capacity to discriminate properly between a range of activities with divergent motivations, the presence or absence of consent, and differing levels of potential harm”(p 85).

They concluded that the legislative framework as it is, could potentially “cause more harm than many of the practices it seeks to regulate”.

They particularly noted that Victoria was the only State at that time which had provided a specific defense for children, and only in relation to the possession of child pornography: and that this “predates concern over prosecution of children in relation to sexting” (p 92). Referring to the Crimes Act 1958 (Vic) s 70 (2) (e) the defense applied to: “prevent a minor who appears in the material deemed to be pornographic, from being charged with possessing child pornography” (p 92). In addition, section 70 (2) (d) states that it is also a defense to a charge of possessing child pornography that the accused who made or was given material by a minor, was not more than two years older than the minor appeared to be.

These defenses for children, seemingly underpin the latest Victorian reforms (*Crimes Amendment Bill: Summary Offences Act*, passed in 2014: See 3.3 Victoria)

None of the other State jurisdictions at that time provided any specific defense to prevent a child from being prosecuted for a child pornography/child abuse offence in relation to sexting.

The Commonwealth, however, has amended child pornography laws in response to concerns over the prosecution of children for sexting. **The ability to prosecute children rests with the discretion and permission of the Attorney-General: where prosecution is allowed to deter the behaviours, where the sexting “was malicious or exploitative”** (p 101).

Crofts and Lee (2013, p 106) conclude, that

the laws are not nuanced enough to differentiate cases of childish playfulness and sexual experimentation from cases of exploitation

Langos (2014a p 3) noted a recent case heard in the District Court of South Australia, which she argues illustrates the 'misfit between sexting and the inflexibility of child pornography law as it exists and applies currently to sexting' [in SA]. Consensual sexting had occurred between the accused and his romantic partner who was under 17 (by two months) at the time. He pleaded guilty to charges relating to possession and distribution of child pornography and will be placed on the Child Sex Offenders Register. No conviction was recorded however, and he was placed on a 12 month good behaviour bond.

In sentencing Rice J stated:

If I had the power to direct that your name not appear on the Child Sex Offenders Register on the information before me, I would do so without hesitation. The courts should have some discretion in this case and others like it.

In a media report of this case, it was acknowledged that in legal circles, these are known as "Romeo and Juliet cases": where young people are prosecuted for having a relationship with a younger partner. (<http://www.adelaidenow.com.au/news/south-australia/sa-lawyers-call-for-teens-involved-in-genuine-relationships-to-be-exempt-from-sex-offenders-register/story-fni6uo1m-1226930936816>)

Parents

Current research highlights a myriad of concerns for young people in relation to their fascination with and their connection to social media which can be devastating for those who fall victim to cyberbullying or sexting. The impact can not only affect their mental health, but also affects their physical environment including their ability to attend school and engage in their learning and ongoing education.

Lack of clarity around the law further exacerbates problems for young people when they are unclear or have no knowledge of current laws pertaining to these issues. However, a positive connection and relationship with their parents continues to be one of the most significant and influential factors in relation to the mental health and wellbeing of young people (SECASA 2013).

Similarly, concerns have been raised in relation to the level of understanding parents and caregivers have of the world young people inhabit – social media. While some parents are au fait with social media and have an understanding of technology, other parents not only don't understand, they have no interest whatsoever in social media thus leaving their children unsupported and vulnerable in the online world.

However, data from a recent study (Palfrey et al., 2010) indicated that the children of parents who monitored their children's internet usage, were likely to see it as invading their privacy and that they were "more resistant to protective strategies involving parental monitoring and co-viewing than they were to user empowerment strategies, or even some forms of government or industry protection."

For parents who are connected to social media, The American Academy of Pediatrics (AAP 2011) suggests that while many are aware that the minimum age for most social media sites for their children is 13 years old, they do not understand the reasons why.

The Australian Law Reform Commission (ARLC Report 2014) summarizes the US Children's Online Privacy Protection Act (COPPA 2000) which seeks to give parents control over what information can be collected about their children online. However, as noted by the AAP (2011) falsifying the age of young people to have access to sites such as Facebook (users must be 13 and over) has become common practice with preadolescents and some of their parents who are sending mixed messages about being untruthful online when, for parents, the overriding focus should be the safety of young people online.

The South Eastern Centre Against Sexual Assault and Family Violence (SECASA 2013) have suggested a number of strategies for parents to consider to deter their children from being involved in sexting. Aside from understanding the law and the consequences of sending inappropriate images, SECASA (2013) advises of the importance of having a quality relationship where parents are able to assist and nurture the self-esteem and confidence of their child/adolescents by helping them develop a positive self-image so that they are less likely to succumb to peer pressure.

What is of importance, however, is that when young people are involved in sexual cyberbullying, such as non-consensual sexting, they are highly reluctant to disclose what is happening to an adult. The national Children's and Youth Law Centre report (New Voices, 2012, p74) reported that 70% of victims who indicated that they wanted to keep what was happening to them a secret from their parents/family, *were involved in sexually charged cyberbullying*.

Literature Review Conclusion

This is a brief, narrative review of literature, and as such cannot claim to have reviewed every published work relative to this discussion. However, as is evidenced by this review, the key messages resonate and triangulate closely with those established in the current study:

Viz: the law is confusing; cyberbullying and sexting are intertwined, culminating in sexually charged cyberbullying, parents have a role to play and it is a community issue.

However, with each study undertaken and subsequently reported, technology has rapidly moved forwards, presently new challenges to be faced and solved. Burns et al (2013) note that technology should be able to be harnessed for use by young people: for accurate, accessible information and help seeking opportunities.

Online behaviours then, is an area of constant review, for any policy which is enacted, any legislation which is changed, must do so with the knowledge that the next cohort of young people will bring new challenges, as their technologically enhanced social environments shift in concert with the tide of new devices, and new ways of thinking and doing in response.

The current study has contributed to this evidence-base through its explicit involvement of culturally and linguistically diverse young people, highlighting that there are many gaps in our knowledge about sexting, cyberbullying and the law, particularly for different groups of young people. Our most vulnerable young people, those on the margins of society and from the many minority groups, have yet to be represented in the literature, and yet have much to contribute.

8.2 APPENDIX B: QUESTIONNAIRES & INTERVIEW QUESTIONS

Questionnaires

Two questionnaires were developed:

Online Experts: Qualitative

Screenshot of the online questionnaire: TellUs2 is a proprietary online survey platform of the University of South Australia

TellUs2 Sexting, Cyberbullying and the Law 

The aim of this research is to gather the insights of key stakeholders into the issue of Sexting, Cyberbullying and the Law. In particular to bring together the legal, educational and socio-cultural spheres to inform the consideration of the issues associated with sexting, cyberbullying and the law, with a view to ensuring a safe learning environment for all students through informing policy, curriculum and leadership practices across the education sector. The following sixteen open-ended questions relate to the above project currently being undertaken for the Minister of Education by Dr. Barbara Spears and Professor Phillip Slee. This survey has been approved by the Human Research Ethics Committee of the University of South Australia. We value and appreciate your time in responding to this survey.

1. Gender

Male

Female

2. How would you describe your organization?

University Sector

Not for Profit

Education Sector

Private Sector

Legal Sector

Community Sector

Government (not described above)

Other

3. In terms of your organization, what are the top three issues you are seeing in relation to cyberbullying, sexting and the law?

(Enter text into this box, maximum 2000 characters)

4. How are you and/or your organization responding to these issues? Consider policy, practice or program responses.

(Enter text into this box, maximum 2000 characters)

5. What is your opinion in relation to current laws which say sexting is a crime if you make, send out, or have an 'offensive' picture of someone under the age of 18?

(Enter text into this box, maximum 2000 characters)

Pre-Service Teachers

The following questions were included in a larger online survey for Pre-service teachers at one South Australian University.

1. Please rate your current level of understanding regarding the Department of Education & Child Development (DECD) Education Department policy/grievance procedures on bullying.
(Not selected; Satisfactory; Somewhat Satisfactory; Unsatisfactory)
2. Please rate your current level of understanding regarding strategies for dealing with bullying.
(Scale as above)
3. How capable do you feel regarding dealing with the issue of school bullying? (Not Selected; Very Capable; Capable; Not very capable)
4. Do you think information on school bullying should be part of your pre-service teacher training? (Not Selected; Yes; No; Unsure)
5. Do you think information on school bullying should be part of your in-service training? (Not selected; Yes; No)
6. Have you received any training/information on bullying in your teacher training to this point?
(Not selected; Yes; No; Unsure)
7. Do you believe there should be a law against bullying? (Not Selected; Yes; No; Unsure)
Could you explain your answer please?

Adult Interview Questions

The following questions were intended to generate an in-depth discussion relating to cyberbullying, sexting and the law and the impact on young people:

1. In terms of your organization, what are the top 3 things you are seeing in relation to cyberbullying, sexting and the law?
2. How are you and/or your organization responding to these issues? Consider policy, practice or program response.
3. What is your opinion in relation to current laws which say sexting is a crime if you make, send out, or have an 'offensive' picture of someone under the age of 18?
4. How do you think young people are in relation to the laws that apply to sexting? Please elaborate.
5. How are do you think young people are in relation to sexting and the social, emotional and psychological consequences of their actions? Please elaborate.
6. Are you aware of any programs or strategies that have been implemented and have been effective in addressing these issues with young people? Please elaborate.
7. What are the challenges in relation to educating young people about sexting and the law as you understand it?
8. Whose responsibility is it to educate young people about sexting and the law? What roles do schools play and how could/does your organization intersect/communicate/collaborate or co-operate with them?
9. While there is some inconsistency in the law across State and Federal jurisdictions there are also serious implications for young people if they end up on the Australia National Child Offender Register (ANCOR) for being involved in sexting activities. What is your view regarding this situation?
10. How would explain/describe the relationship between sexting and cyberbullying?
11. Could you comment on the age issues and prevalence regarding young people, sexting and the law in relation to the age of consent, private relationships and public distribution of images?
12. Do you perceive the need for a specific law in South Australia relating to sexting? Please elaborate.
13. How relevant are existing laws in relation to cyberbullying and sexting? Please elaborate.
14. What is the significance and relevance for your organization of having 'take-down orders' and fast removal actions?
15. What are the key gaps or challenges in preventing or responding to Cyberbullying and Sexting? Please elaborate.
16. What information would assist you in the work that you do?

Student Focus Group Questions

The following questions were designed to capture and elicit the knowledge and understanding of the issues surrounding cyberbullying, sexting and the law for young people:

1. What does the term cyberbullying mean?
2. What does the term sexting mean?
3. Do you think there are similarities between cyberbullying and sexting? When does sexting become cyberbullying? Please explain.
4. Currently the law says that sexting is a crime if you make, send out, or have an 'offensive' picture of someone under the age of 18. What is your opinion about this law? (Do you agree or disagree with it? If you agree why do you agree and if you disagree why do you disagree?)
5. Do you think young people are aware of this law and the problems that can occur for them if they are involved in sexting?
6. Do you think young people take these laws seriously or do they not think about the consequences of being involved in sexting?
7. Do you know of any situations where young people have been seriously affected as a result of sexting/cyberbullying?
8. Why do young people engage in sexting?
9. What would you say to an adult to help them understand what sexting is about for young people?
10. How can young people be educated about sexting? What do they need to know?
11. Should young people be 'criminalized' for being involved in such behavior? (Should there be rules and laws and if so what sort?)

8.3 APPENDIX C: SEXTING SCENARIOS & PARTICIPANT DESIGN

Sexting Scenarios

The sexting scenarios presented to the group of educators were compiled from young people's real life experiences. They were provided by: Keeley, M. (2014) National Children's and Youth Law Centre: <http://www.ncylc.org.au/>

13yo

Alison is 13 years old. A boy her age from school, Patrick, sent her some naked pictures of himself which she kept. She wanted him to like her so she sent him a photo of her breasts in response. Alison's mum found the photos on her phone and is very concerned. She is now considering taking them to the police. Alison wants to know if she or Patrick could get in trouble because of the photos.

15/16yo

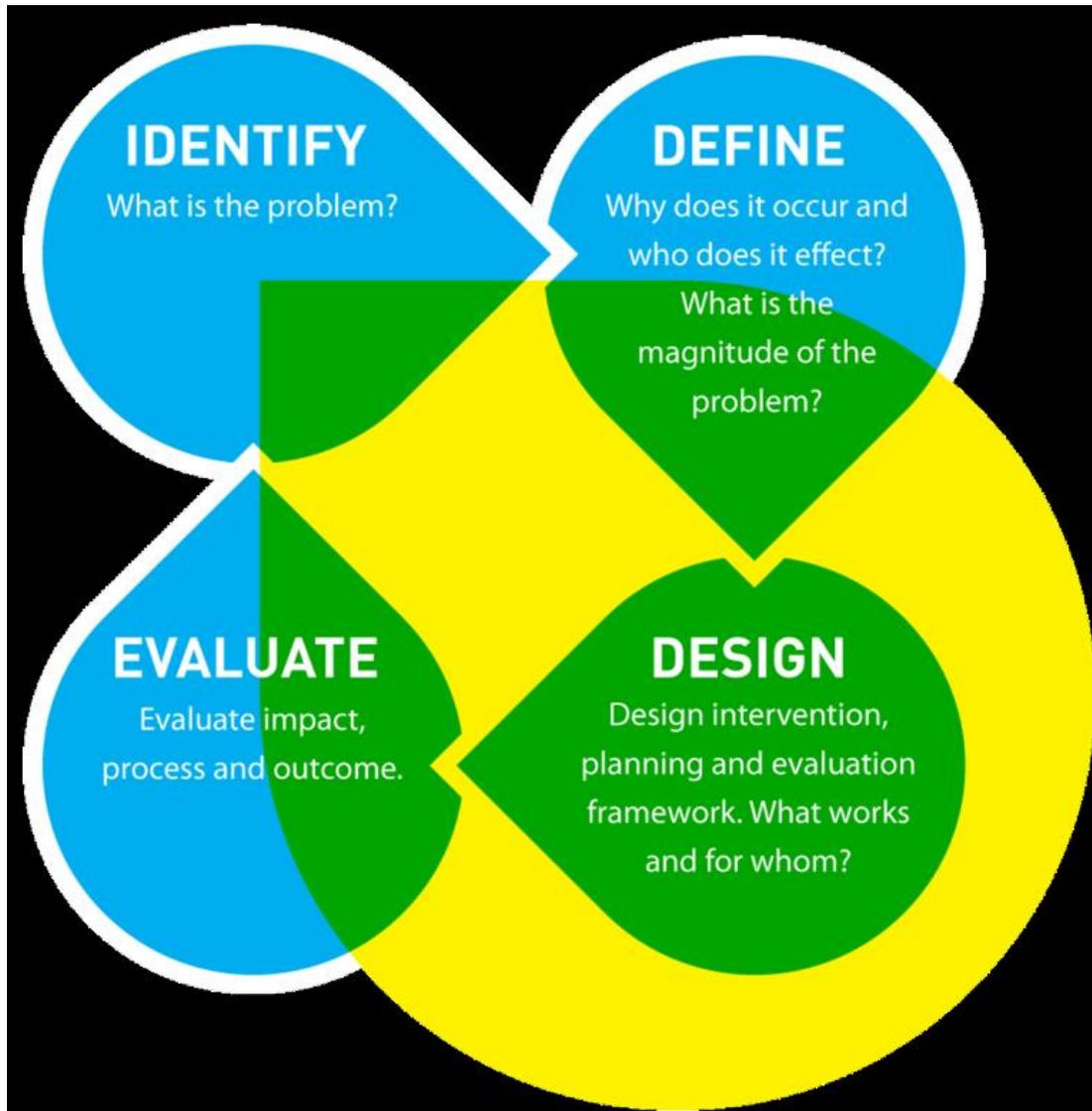
Max is 16 years old. After meeting Leanne online, she asked him to send some nude photos of himself on Snapchat. Max didn't really want to do it but he felt pressured so he sent her a photo of his genitals. Leanne is now threatening to post these photos on pornographic websites along with Max's personal details. Max wants to know if there is anything he can do to stop this from happening.

17yo

Natasha is 17 years old. She sent nude photos to a guy from her school, Robert. She has recently discovered that Robert sent these photos to Alice, another girl in her grade at school. Alice has shown the photos to a couple of girls in her year. Natasha is concerned that Robert and Alice will show the photos to more people or post them online. Natasha wants to know if there is anything she can do to prevent this and whether the police could help.

The Participatory Design Process Overview

Figure 1: Participatory Design Process Overview



Hagen, P, Collin, P, Metcalf, A, Nicholas, M, Rahilly, K, & Swainston, N (2012), Participatory Design of evidence-based online youth mental health promotion, prevention, early intervention and treatment, Young and Well Cooperative Research Centre, Melbourne. ISBN: 978-0-9871179-1-5

9 BULLYING, YOUNG PEOPLE & LAW SYMPOSIUM (NCAB, 2013)

The first national Bullying, Young People and the Law Symposium (18-19 July) has recommended the nation adopt a four-tier approach to addressing bullying, including cyberbullying.

The symposium, attended by preeminent legal, law enforcement and educational experts from throughout Australia and New Zealand, recommended that the approach involve:

- a) Education
- b) Appropriate responses by organisations to incidences of bullying and cyberbullying
- c) The establishment of a national digital communication tribunal, and
- d) An appropriate legal framework to address bullying and cyberbullying

The symposium recommended:

- All governments to consider the introduction of a specific, and readily understandable, criminal offence of bullying, including cyberbullying, involving a comparatively minor penalty to supplement existing laws which are designed to deal with more serious forms of conduct. In developing the above approaches, it is necessary to take into account:

i. *the voices of children and human rights*

ii. *Summary offences that do not require proof of specific intent to cause harm*

iii. *Appropriate penalties that in the case of children do not include incarceration*

- The Federal Government to establish a national digital communication tribunal with the power to act, speedily and in an informal manner, to direct the immediate removal of offensive material from the internet.
- The adoption of the recommendation of the Victorian Law Reform Committee Report on Sexting in all states and territories.
- The Federal Government be requested to support the convening of a young people and the law symposium in two years.

The symposium was a joint initiative between The Alannah and Madeline Foundation's National Centre Against Bullying (NCAB), the Australian Federal Police and the Sir Zelman Cowen Centre, part of the Victoria University.

10 COMPOSITE CASE STUDIES: EXAMPLES

The following three examples are compilations/composite case studies provided by the National Children's and Youth Law Centre (NCYLC) to the *Youth Exposure to Cyberbullying and its Management in Australia* (2014) studies (Keeley et al 2014) to provide a clearer understanding of the types of cyberbullying incidents being dealt with. They contain de-identified scenarios and fictional names have been used.

10.1 MOST COMMON CYBERBULLYING SCENARIO

My name's Larissa and I am 14 years old. I have been having some trouble with this girl Georgia. She goes to my school and I thought we were friends until she started saying hurtful and mean things about me.

It started on Monday when I was on Facebook, Georgia inboxed me and said 'you're an attention seeker that needs to stay out of my relationship with Robbie'.

I replied saying 'I don't know what you're talking about. Me and Robbie are only friends. I wouldn't do that to you cause you're my friend'.

The conversation went back and forward for a couple messages, her pretty much saying that I was trying to break them up. I know for a fact that I haven't done anything like that. I think people have told her things which made her go off at me. When I got to school on Tuesday I find out that Georgia has started spreading rumours about me, telling people at school that I'm a slut and I shouldn't be trusted. I tried to talk to Georgia at school but she turned away from me and won't listen.

That night I went on Facebook to find many hurtful and abusive messages in my inbox and on my wall, all from Georgia and her friends. They are calling me a 'slut', 'ugly', 'low life piece of shit' or telling me to 'do the world a favour and kill yourself'. I had enough, so I inboxed Georgia telling her to stop and leave me alone because I hadn't done anything. She replies 'do you think I will give up? Sorry but I won't'. I want this all to stop. What can I do? There's not much more I can handle.

National Children's and Youth Law Centre response

The Centre provided Larissa with both practical and legal advice.

The practical measures included:

- telling a trusted adult about the situation,
- keeping a record of the messages she received,
- deleting/blocking Georgia and her friends from her Facebook account, and
- not replying to any bullying messages.

The Centre advised Larissa to report this behaviour to Facebook (noting that the Centre could do this on her behalf) as well as to her school, which may be able to facilitate reconciliation between the two students.

The Centre also provided Larissa with legal advice about certain laws that had been broken and offered Larissa the option of drafting a Notice to Georgia which outlines the laws that Georgia may have broken and tells Georgia to stop this behaviour.

The Centre also advised Larissa to notify the police if she felt threatened, and if Georgia's behaviour continued and made Larissa feel scared.

To help support Larissa during this time and help her cope, the Centre also provided Larissa with contact details for the Kids Helpline.

*Note this advice was given prior to the establishment of the Office of the Children's e-Safety Commissioner

10.2 MOST SERIOUS VICTIM SCENARIO (NON-SEXUAL)

I'm 17 years old and for the last few months I have been constantly bullied by multiple students at school. Jessica has bullied me through Facebook, posting status updates and sending me abusing messages. She would call me ugly, tell me she hates me, I don't deserve to live, and I should exterminate myself before she does. She also posted a photo of me compared to a pig. People at school started calling me pig and making oinking noises when I walked past. The stupid nicknames seem like nothing but actually hurt me a lot. I felt horrible about myself and my self-esteem lowered by every single insult.

Eric repeatedly called and harassed me over the phone. He would call me at all times of the day on a private number and leave nasty messages, calling me names and threatening to 'punch my face in'. I got a new number but he found it out. I was worried every time my phone would ring.

The school hasn't done anything to stop this. When I told them about what's been happening at school they suspended some of the students, but the day they come back the bullying starts again. I have also been to the police about the Facebook stuff and they tried to sort it out but they said they can't do anything.

Over the past week a Facebook page has been made with my photo on it. Most of the people on this page are writing hate messages about me, making comments about how I look and calling me names. I have already left the school, but the bullying keeps following me. I know that something needs to be done but I don't know what. Most days I come home, lock myself up in my room and self-harm for hours on end.

NCYLC Response

In this case, the Centre identified many risk-factors to the victim, including:

- a persistent pattern of victimisation which subsequently affected his day-to-day life,
- incidents of self-harm, and
- a reported inability of the school or police to adequately resolve the issue.

Due to these identified harms, the Centre sent a preliminary email to the victim with contact numbers for Lifeline, Kids Helpline and 000.

Following this, the Centre issued advice to the victim outlining both practical and legal measures that could be implemented to address the cyberbullying.

Some practical measures were:

- tell a trusted adult,
- delete/block these people from Facebook, and
- keep screen shots and records of any messages or telephone calls received.

The Centre also advised him to report this behaviour to the phone company and to Facebook (with an option of the Centre contacting either on his behalf), as well as making a formal written complaint to the school and the Department of Education if the school was unsafe or unwilling to keep him safe.

The Centre provided legal advice on the types of laws that had been broken and recommended he take all evidence of messages, conversations and telephone calls to the police station so that the police would be able to engage with the situation.

Other legal measures advised were:

- to seek a protection order against certain individuals,
- seek victim's compensation and services to pay for counselling and other services in aid of recovery and, as a last resort,
- to sue the school and other people involved.

The victim told the Centre that he had reported the hate page to Facebook, but Facebook had not removed the page.

The Centre, on behalf of the victim, reported this hate page through Facebook's online reporting system.

The Centre received the same result as the victim.

However, once a representative from Facebook Australia was contacted directly, they removed the hate page.

*Note this advice was given prior to the establishment of the Office of the Children's e-Safety Commissioner

10.3 MOST SERIOUS VICTIM SCENARIO (SEXUAL)

About two months ago I met this boy on a site called Omegle. We started talking and he told me he was 16 years old. We became Facebook friends and chatted a bit on there.

Then he asked me to go on Skype so I did, I couldn't see his face but he asked me to take my top off. I didn't want to do this but he kept flirting with me and persisting, so I gave in and flashed him.

I knew it was a mistake as soon as I did it. He told me he took a screenshot of my naked chest. I was really upset he did this. Then he started asking me to do more stuff and show more of my body. I told him I didn't want to do anything else because I was uncomfortable. But then he started threatening me to send the photo to all my Facebook friends if I didn't do what he was saying. I was embarrassed and afraid so I just did as he said.

Now he keeps messaging me every night and making me do stuff on Skype or he says he will publish everything he made me do the first time. Once it's over I cry myself to sleep purely because I know this is wrong and that I never wanted to do it.

He won't stop. I don't want to keep playing his game, but I don't want to tell anyone because I am so ashamed and embarrassed. I am on the border of depression and hate coming home to this. I don't know his real name. I don't know what to do.

NCYLC Response

The seriousness of this situation is compounded by the fact that the victim feels isolated and is afraid to tell her parents about what is happening.

The Centre recommended that the victim speak to a trusted adult, someone like a parent, teacher or relative who can help her report this to the police and provide her with ongoing support.

If she felt uncomfortable with this, the Centre also provided her with a warm referral to a local counselling/sexual assault service where she would be able to talk to someone in confidence and obtain help in dealing with the trauma. This service had connections to the police, so they were able to assist in this way as well.

The Centre also provided her with the details for Kids Helpline and 1800RESPECT.

The Centre provided the victim with legal advice about certain laws that have been broken and provided her with the option of sending the perpetrator a 'Notice of Criminal Behaviour'.

This notice would outline the laws that had been broken and ask the other person to stop and delete the content. The Centre recommended she talk with the counsellor about sending this Notice to the perpetrator.

The Centre provided the victim with practical advice such as not to respond to his messages, unfriend/block and to keep any evidence of conversations they had to take to the police.

The Centre also reassured her that it would be there for her if she needed help in the future.

The Centre advised her about reporting the incident to the police and gave the victim a warm referral to her local police station and provided a contact for a police officer that deals with these matters.

The Centre also recommended that she attend the station with an adult for support. This station would be able to report to the Australian Federal Police (AFP), but the Centre also provided her with a link where she can report this behaviour directly to the AFP.

*Note this advice was given prior to the establishment of the Office of the Children's e-Safety Commissioner

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