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There has been much discussion of late around the laws applicable to sexting between young people. In this issue of the ThinkUKnow e-newsletter, we will look at the Commonwealth laws that may be applied in these situations and how they are dealt with in practice.

The history of child pornography legislation

Legislation was introduced in the mid-2000's to make it a punishable offence to produce, supply and obtain child pornography and child abuse material. These laws were designed to address those who trade in the exploitative material of children and young people for either financial or personal reasons. Under these laws, child pornography refers to material related to someone who is, or appears to be, under the age of 18, which the reasonable person would find offensive.

A few years later, the maximum penalties for these offences were increased from ten to fifteen years' imprisonment in recognition of the harm caused by the creation and trading of this material.

Safeguards for children and young people

Whilst these laws appear to make all incidences of sexting a criminal offence, there are a number of safeguards to ensure that the wellbeing of children and young people is paramount. In order to prosecute a young person for sexting (i.e. they were under the age of 18 at the time of the offence), approval must be obtained from the Commonwealth

Time2Talk

In this section we look at ways to start talking with children and young people about their use of technology.

When do you think sexting between young people should be an offence?

Is there a lot of pressure on young people to engage in this sort of activity?

What does 'making ethical choices' mean to you?

How can I help you to make wise decisions?

Harms caused by unauthorised distribution

Globally, there are great efforts to deter and disrupt the unauthorised distribution of explicit material of children and young people because of the harms it causes not only to those in the images, but the broader society as well. Unfortunately, there have been too many instances where a young person has taken their life after having these intimate images exposed to the world. Whilst this is the most extreme consequence, it highlights that there needs to be a strong deterrent to those who might engage in this malicious distribution.

Child exploitation material can be used for a

Attorney-General.

To date, the AFP has not charged someone under the age of 18 in relation to sexting-type activity with child pornography offences. Other state and territory police may have utilised these offences in their own investigations.

Police are also able to utilise their discretionary powers in dealing with criminal offences and it is apparent that these powers are being exercised across the country in relation to teenage sexting.

Other relevant laws

Where people distribute explicit content of other people maliciously or to cause harm, there are other laws which may more appropriately apply to this type of behaviour. Most notably is s.474.17 of the Commonwealth Criminal Code, "Using a carriage service to menace, harass and cause offence". This offence carries a maximum penalty of three years' imprisonment.

variety of purposes but it is well-documented as being used as part of the grooming process by child sex offenders, to exploit vulnerable minors. Reducing their access to child exploitation material could be useful in limiting the harm they could cause to other children and young people.

The law is just one element

Legislation does not and should not work alone in combatting harmful behaviour, there needs to be a comprehensive and collaborative effort to promote ethical behaviour. Education and awareness still needs to occur around being respectful in relationships, showing sexual and digital literacy, and the impact of pornography on children and young people.

Our messages to children and young people always revolve on them considering the ethical and legal implications of their behaviour. In a digital environment, making ethical decisions is even more important because once something is shared, it is incredibly difficult to take it back.

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