

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

5 Sep 2017

To whom it may concern

I am writing this submission anonymously **as a parent**.

Why anonymous? Because if I identify myself then I will be theoretically incriminating a 14 year old boy and girl who are known to me.

Your paper seeks to strengthen laws around child sexual abuse but does not address the fact that the current laws (and potentially strengthened ones) result in **the criminalisation of what is a norm in sexual behaviour between minors of the same age, specifically 14-15 year olds**.

It is a well established fact that puberty occurs from around 13 onwards and no surprise to anyone that young teens begin to experiment sexually. Regardless of the concept of 'consent' under law, teenagers do engage in sexual conduct on a willing basis. This is becoming more and more common in a society where sexuality is on wide display and where young people are exposed to social media in a way that skews the norms of previous generations.

To confuse 'normal sexual behaviour' between teens of the same age, with child sexual abuse is a gross abuse in itself of our young people as it exposes them to the possibility of being criminalised for something that is in fact not a criminal act by any logical definition.

Here is a case study:

A 14 year old girl sent a 14 year old boy a 'sext' of herself and he replied by sending one back. Neither of the two sent these pictures to anyone else. They were private between the two of them. Neither knew that under the law they have engaged in the exchange of something illegal.

They then agreed to meet the following day in a private place and engaged in activity of a sexual nature. They were discovered but due to the good sense of Police and the fact that both young people confirmed full willingness, no further action was taken. However, meanwhile the two were exposed to the potential of legal action which caused both of them and their parents trauma given that their intent was borne of innocence and friendship only. Both set

sets of parents, through fear of legal repercussions for their children, banned the two from any further contact forever more.

Both boy and girl made a conscious and willing decision to do what they did, neither used coercion, neither was physically or intellectually more capable than the other. On the contrary, they had been good mates for a while and simply decided to act upon sexual feelings.

While morally / ethically, most people would agree that sexual activity at 14 is too young, most people would also agree that criminalising this type of interaction is not worth the time of Police and the Justice system and not worth ruining these 14 year olds' lives forever by either subjecting them to a sentence or to a life time on the child sex offenders register. What does this achieve?

Do you really want to treat normal 14-15 year old sexual behaviour between peers in the same manner as that of paedophiles who exploit /abuse children?

The Mandatory Reporter Guide clearly delineates 'sexual behaviour' from 'abusive sexual behaviour'

While under law NSW criminalises teens who engage in age appropriate sexual contact, the current Mandatory Reporter Guide (MRG) is very clear on the distinction between sexual behaviour and abusive sexual behaviour.

The Guide States: Refer to the following table as a guide only to age appropriate sexual behaviours and those sexual behaviours that may be indicative of exposure to sexual abuse.

An extract of the Guide is provided: As you can see below it indicates that consensual sexual activity amongst peers is 'age appropriate'

Sexual Behaviours	Abusive Sexual Behaviour
Children aged 11-12	
<ul style="list-style-type: none"> • The continuation of masturbation • A focus on establishing relationships with peers • Sexual behaviour with peers, eg kissing and fondling • Primarily heterosexual activity but not exclusively • An interest in other's bodies particularly the opposite sex that may take the form of looking at photos or others published material 	<ul style="list-style-type: none"> • Sexual play with younger children • Any sexual activity between children of any age that involves coercion, bribery, aggression or secrecy or involves a substantial peer or age difference
Adolescents aged 13-17	
<ul style="list-style-type: none"> • Masturbation in private • Mutual kissing 	<ul style="list-style-type: none"> • Masturbation causing physical harm or distress to self and others

<ul style="list-style-type: none"> • Sexual arousal • Sexual attraction to others • Consensual sexual activity amongst peers • Behaviour that contributes to positive relationships 	<ul style="list-style-type: none"> • Public masturbation • Unwanted kissing • Voyeurism, stalking, sadism (gaining sexual pleasure from others' suffering) • Non-consensual groping or touching of others' genitals • Coercive sexual intercourse/sexual assault • Coercive oral sex • Behaviour that isolates the young person who displays the sexually abusive behaviour and destructive of their relationships with peers and family
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Furthermore, the MRG asks these questions:

Question: Was the victim substantially younger, smaller, weaker, less mature or intellectually or psychologically/physically less capable?

ANSWER YES IF:

The child/young person initiating the sexual activity is more powerful than the other child/young person in at least one of the following ways:

- Two or more years older;
- Taller/heavier to the extent of having a clear physical advantage;
- More mature/emotionally sophisticated, so that the initiating child/young person consistently functions as a leader in the relationship and the other child/young person consistently functions as a follower;
- More intellectually advanced to the extent of being able to persuade the other child/young person through conversation to do things the other child/young person would not have thought of on his/her own, and would have refused to do had the initiating child/young person not talked him/her into it;
- The victim child/young person has a physical disability or mental health issue that results in him/her being unable to move in ways that could be self-protective.

The sexual action was abusive sexual behaviour, based on the above table.

Question: Did the initiating child/young person use pressure, coercion, aggression, bribery, secrecy or other grooming behaviours?

ANSWER YES IF:

One or more of the children/young people forced the other(s) to participate by physically hurting them or threatening to hurt them, or by telling the child/young person that if he/she does not cooperate something bad will happen (e.g. I will tell on you, you will get in trouble, I will take your favourite toy), bribing him/her (e.g. if you do this I will buy you an ice cream); or creating secrecy (e.g. this will be our

secret).

You are concerned that the child/young person has been exhibiting grooming behaviour, a pattern of behaviour aimed at engaging a child as a precursor to sexual abuse (See Glossary for examples of 'grooming behaviour')

ANSWER NO IF:

Participation was mutual. One child/young person may have been more of an instigator, but no force, coercion, bribes or secrecy were used and there was no indication of grooming behaviour.

Hence my submission is that the principles of the law should mirror the principles of the MRG which is that age appropriate sexual behaviour that has no element of coercion or inequity in size or intellect should not be treated as abusive.

Well obviously this provides a loop hole for potentially abusive behaviour, it is far more important to not criminalise innocent teenagers than to potentially treat them all as guilty.

Please let common sense prevail and do not criminalise these young people. Rather focus on educating them about respectful and self respecting sexual behaviour and the need to make decisions in their own and others' best interests.

And focus Police attention on the real criminals – those people who do indeed abuse children.