Adolescent sexting in schools: Criminalisation, policy imperatives, and duty of care

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Federal and State Government policies and curricula mandate the uptake of emergent digital technologies within schools. Recent research focusing on the propagation of adolescent-produced sexual images via digital technologies, more commonly known as sexting, highlights the need for an examination of the risks associated with the use of digital technologies in schools. Such a need is particularly pertinent because of recent amendments to statute law which has criminalised aspects of this behaviour. The current study utilised document analysis methods to identify directive statements and themes in relevant, lower secondary school ICT policy and curricular documents. It is argued that the identities of 'professional teacher' and 'problematised adolescent' that these documents create, place teachers in a position of inequitable risk. A notion of 'reasonability' furthers unrealistic accountabilities in the existing standards. Teachers are positioned as having professional knowledge about student behaviour, adolescent development, legislative provisions, and the safe use and application of technologies. In addition, duty of care imposes a legal responsibility upon teachers and school bodies to protect the safety and well-being of their students. Implications of the findings are discussed and a need for improved legal literacy amongst classroom teachers and legislative change is highlighted.

Introduction

The implicit, and in terms of policy and curriculum; explicit, digital imperatives placed upon schools have created if not an educational revolution then certainly an evolution (Clark, 2010; Hinduja & Patchin, 2012; Schuck, Aubusson & Kearney, 2010). Ranging from pedagogy to policy, practice to productivity, and law to liability, there is hardly an aspect of education that has not been affected by the application of emergent communication technologies. Imposed in a large part by political, industrial, economic and social discourses favouring innovation, portable digital devices and Web 2 platforms have been increasingly used to engage and reshape learning.

A substantial body of research has already investigated the uptake of newer digital mediums in schools. Topics such as infrastructure, access, professional development and curricula have been critically explored. Research has also focused upon the responsibility and liability, both legal and professional, of school authorities for the inappropriate use of technologies by students and teachers. In particular, cyber bullying has provided a focus for research into the criminal liabilities imposed upon students and school authorities (Conn, 2010; English, 2011; Hinduja & Patchin, 2011; Livingstone & Bober, 2005; Shariff & Hoff, 2007). However, little academic research into the prevalence, practice and associated risks of the production and dissemination of youth-produced sexual images has been reported.

'Sexting', as a term, was first coined by the UK press (Gillespie, 2013). The term incorporates the production, possession and dissemination of usually, though not always, self-exploitative, sexual materials in both visual and written form (Chalfen, 2009; Gillespie, 2011; Powell, 2010). Though commonly associated with mobile phones, sexting occurs not only via text or a Multimedia Messaging Service (MMS), but also through emailing, posting to user-generated sites such as *YouTube* or *Flickr*, uploading to social networking sites, and streaming footage live via webcam (Gillespie, 2010a; Leary, 2007; Zhang, 2010).

As behaviour, sexting has been interpreted in multiple ways. Broadly the behaviour can be placed on a continuum that ranges from mutually-consensual, romantic exchanges, to attention-seeking behaviour, to exploitation, sexual harassment and to sexual coercion. Despite such interpretations, adolescent expressions of sexual exploration and/or deviance, using text/MMS messages or posts on social networking walls, have significant repercussions because of their public accessibility, replication, misrepresentation, and digital longevity (Gillespie, 2011; Henderson, de Zwart, Lindsay & Phillips, 2010; Powell, 2010; Zhang, 2010). Adolescent sexting can be viewed as part of a normative developmental process related to an increased interest in sexuality. Karaian (2008), for example, conceptualised the behaviour as an example of teenage curiosity empowered by the individual's right, if aged 16 or older, to represent their sexual citizenship. An alternative view, and one consistent with much of the research and public response regarding adult conceptualisations of the practice, tends to characterise the behaviour as inherently risky, morally deviant, and socially unacceptable.

Sexting is a global phenomenon with the extant research identifying incidence rates from the US, UK, Canada, Mexico, Spain, New Zealand and Australia (Chalfen, 2009). A variety of surveys conducted in the United States suggest that one in five American teenagers have admitted to taking either half or fully naked pictures of themselves and sending them to others (Gillespie, 2011). Survey results reported in the popular press indicate even higher incidence rates with up to 40 percent of respondents reporting they had been asked for naked or semi-naked images of themselves by people they knew (Chalfen, 2009). Collated results of similar studies from New Zealand, Canada and the UK suggest that between 1 in 4 and 1 in 5 teenagers, aged between 13 and 16, have admitted to producing, possessing and posting explicit, self-exploitative material (Chalfen, 2009; Gillespie, 2011; Powell, 2010; Zhang, 2010). Despite these often quoted incidence rates, Mitchell et al. (2012) have conducted one of the most methodologically rigorous studies published. Mitchell and her colleagues defined sexting as appearing in or creating nude or nearly nude images or having received such images in the past year. Using this definition, they concluded that 9.6 percent of their representative, US adolescent sample had participated in sexting.

In Australia, one of the most authoritative surveys of Australian youth and their sexual habits is *The National Survey of Australian Secondary Students and Sexual Health* (Mitchell, Patrick, Heywood, Blackman & Pitts, 2014). Data is routinely obtained from a representative sample of more than 2,000 Year 10, 11 and 12 students. The most recent results show that over half of the students surveyed reported receiving a sexually explicit message. One-quarter of the sample reported they had sent a sexually explicit photo of

themselves. As would be predicted by normative developmental models of sexual behaviour, amongst students who were most sexually active, the highest rates of sexting were reported. Half of the most sexually active group sent an explicit photo or video and 70 percent reported receiving such material.

Whilst concerning, incidence statistics often focus upon consensual behaviour and implicit social or cultural pressures aside, they may not account for explicit images of adolescents created, possessed or disseminated without consent. Further, major concerns about the reliability of much of the published self-report incidence data have been raised (Lounsbury, Mitchell & Finkelhor, 2011). Comparing reported incidence rates is problematic because different definitions of sexting have been used, samples are often not representative, participants' ages vary and the response bias that may occur when disclosing illegal activities is rarely addressed. In light of Gillespie's categorisations (2011), the non-consensual sharing of such images is considered, at minimum, under criminal and civil laws in Australia, New Zealand, Canada, the United Kingdom and United States to be harassment. Amongst adolescents, such behaviour commonly results from the consensual creation of explicit material followed by the non-consensual dissemination, and subsequent possession of the material by a third party (Gillespie, 2011; Powell, 2010; Zhang, 2010). Such behaviour also reflects how emergent communication technologies have been used to "facilitate pre-existing problematic behaviours, such as bullying" (Gillespie, 2011, p. 223).

Further to this notion of bullying, and significantly more serious, are findings that indicate a link between emergent communication technologies, sexting behaviour, and opportunities for sexual violence amongst adolescents. In one Australian Institute of Family Studies (AIFS) report, emergent communication technologies were found to help facilitate sexually violent acts. The report suggested that emergent technologies contributed to increased accessibility, a false sense of security, and a misrepresentation of relationships (Bluett-Boyd, Fileborn, Quadara & Moore, 2013). In addition, a recent UK study found that children as young as 12 years have been pressured by their peers into recording and subsequently performing sexual acts. Ringrose, Gill, Livingstone & Harvey (2012, p. 7) reported that "two thirds (65.9 per cent) of sexual abuse experienced by children aged up to 17 was perpetrated by someone aged under 18". Disturbingly, the report concluded that the most common form of reported sexual abuse by adolescents is technology-mediated sexual pressure from peers.

In considering the phenomenon of sexting, it is broadly accepted that diverse circumstances and motives lead to the creation and dissemination of youth-produced sexual images. What appears to be consistent, according to two studies undertaken by the National Society for the Prevention of Cruelty to Children (NSPCC) (Phippen, 2012; Ringrose et al., 2012), is that the prevalence of threats involved with sexting characterise the behaviour as a coercive act. Sexual coercion can be the result of explicit pressure from peers, or arise as a result of implicit pressures related to the wider sexualisation of children via both media representations and legislative and political responses to such representations. It has been argued that access to, and the consistent evolution of, technology amplifies this problem.

The criminalisation of sexting

In terms of societal response, consequences for such behaviours have often been a combination of moral outrage, prevalent in much of the media discussion of sexting, and legal intervention. Crofts and Lee (2013, p. 105) stated that, "Concern about child pornography and new technologies is leading to existing kinds of behaviours being labelled and criminalised in dramatically new ways". Such technological and behavioural developments have resulted in the updated *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No 2) 2004* (Cth) to deal with child sexual abuse and to modernise existing laws. In addition, the introduction of specific voyeurism offences under statutory legislation in Australia (2009), the United Kingdom (2004), Canada (2005), New Zealand (2006) and the United States (2003) are in part a direct response to the production and proliferation of 'sexually explicit' material by willing minors, and make activities involving 'self-exploitation', including sexting, indictable actions (Gillespie, 2011). This has led to adolescents being charged with child pornography offences.

The legal implications of the use of the word 'person' rather than 'adult' in the *Crimes Act 1900*, arguably extends the application of the subject provisions, and in doing so criminal liability, to any adolescent and/or minor in New South Wales (Gillespie, 2011). Given this, the standard definition of person under Section 4 of the *Crimes Act 1900* [NSW], which provides no separation between adult and child, applies. For adolescents in New South Wales, particularly those aged between 15 and 17 years old without the defence of *doli incapax*, any individual act or combination of creation, possession or dissemination of material defined as either 'child pornography' or falling within the provisions relating to 'voyeurism', can be prosecuted as a criminal offence regardless of motive, understanding or circumstance (Bluett-Boyd et al., 2013; Gillespie, 2010b; 2011; Zhang, 2010).

Adler (2011) comments that such legislative action, created to solve the problem of child sexual abuse and representation, has grown dramatically in the past two decades. Yet paradoxically, as Adler notes, the legal and political response to the 'cultural crisis' of sexting, rather than solving or even reducing the proliferation of such behaviour, has coincided with its escalation.

A review of Australian legal databases from 2009-2012 resulted in the identification of one case of sexting that was prosecuted in New South Wales (*Eades v Director of Public Prosecutions* [2010] NSWCA 241). The matter concerned an 18 year old male, and his 13 year old girlfriend. In summary, nude pictures were requested by the 18 year-old male and were subsequently sent by the 13 year-old female. The girl's father became aware, approached the police, and Eades was charged with 'inciting a person under 16 to commit an act of indecency' and 'possession of child pornography', under Sections 61N(1) and s91H of the *Crimes Act 1900* (NSW). Though the offence was proven, the magistrate, on appeal, did not record a conviction. Whilst this case establishes the legal risks associated with consensual sexting, non-consensual acts present an even greater risk to the perpetrator, and subsequently the victim, regardless of intent.

In the case of adolescents harassing one another via the non-consensual recording of a peer in a change room, with the intention of socially belittling them, legal intervention may be appropriate, particularly when one considers the associated emotional and psychological damage that may result from such actions (Li, 2007). However, a self-created photograph taken in one's underwear without duress, would arguably fall within the ambit of both child pornography and voyeurism offenses under *Crimes Act 1900* [NSW], s91H; s91I. The intended prank recording, and potential later uploading to *YouTube*, of peer 'pantsing' at the end of a physical education lesson would also meet the definition of a crime under section 91L; filming a person's private parts. This is irrespective of the fact that the person's underwear, rather than their naked form, is recorded (*Crimes Act 1900* [NSW], s91L; s91D; Gillespie, 2010b, 2011).

Schools and duty of care

The lack of predictability surrounding the application of section 91H and Division 15B *Crimes Act 1900 [NSW]* to offences committed by adolescents, contributes to confusion surrounding the likelihood, if not the literal capacity, for offences taking place within secondary schools to directly and vicariously involve school authorities. Whilst the incidence of sexting at school is likely to be lower than activity outside school, available data shows that sexting is conducted during school hours at schools (Livingstone, 2008; Powell, 2010; Rice et al., 2012; Zhang, 2010). In the United Kingdom, Wolak and Finkelhor (2011, p. 2) pointed out that "more than 1 in 5 (22 per cent) of reports received by the Child Exploitation and Online Protection Centre (CEOP) from the education sector in 2011/12 related to the distribution of self-generated indecent images". In the United States, Zhang (2010) has highlighted cases of middle school students being charged for sending pictures of their private parts via MMS during a lesson and for possessing nude photographs of themselves and each other on their mobile phones whilst at school. Litigation is particularly likely if professional negligence, in terms of a breach of duty of care, is considered a contributing factor to committing the offence.

Duty of care, as it operates to regulate the behaviour of those individuals who perform work in the provision of educational services, imposes a legal responsibility upon both teachers and school bodies to protect the safety and well-being of students in their care (McDonald, 2001; Saligari, 2014). This legal obligation requires educators to avoid conduct that is associated with an unreasonable risk of danger to others (Saligari, 2014). Legal concepts of foreseeability and proximity *Donaghue v Stevenson* ([1932] AC 562 are objectively applied in each case alleging negligence on behalf of a teacher and/or the school body. These two concepts are used to determine whether the implicated teacher/school body should have known that their acts or omissions could have caused injury or harm to those in their care. Such harm is not exclusively physical, and also refers to emotional and mental injuries; injuries that could be considered consistent with being exposed to, or being the subject of, sexual material (Bluett-Boyd et al., 2013; Gillespie, 2010b, 2011; McDonald, 2001).

A rationale for research

Adolescent sexting at school presents unique challenges given the push for the increased adaptation of, and innovation with, digital technologies in classroom environments (Dobozy & Hellstén, 2011; MCEETYA, 2008b), the duty of care responsibilities of school authorities, and the legal framework for addressing explicit digital material. Although it is often recommended as a significant area for further exploration and discussion in much of the growing body of literature, the phenomenon has not been adequately explored (Bluett-Boyd et al. 2013; Livingstone, 2008; Ringrose et al. 2013).

Teachers work with adolescent students who may be technologically capable and also culturally 'comfortable' with the production, possession and dissemination of explicit imagery of themselves and others within digital contexts. In addition, educators are challenged by an adolescent subculture that considers there to be little overt risk in sharing or posting digital material, and that defines broader boundaries between 'private' and 'public' material (Gillespie, 2011; Henderson et al., 2010; Powell, 2010). Given the paucity of research in schools, the aim of the current study is to explore how ICT policy and curricula, as determinants of required behaviour and pedagogical practice, interact with the legal obligations of teachers and schools.

Method

Design

The current study was situated within the paradigm of critical theory. Critical theory, according to Guba and Lincoln (1994, p. 115), aims to facilitate change "as individuals develop greater insight into the existing state of affairs (the nature and extent of their exploitation) and are stimulated to act on it". Consistent with the paradigm of critical theory, critical discourse analysts recognise the explicit role scholarly discourse inherently plays in terms of being determined by, and in turn determining, social structures and interaction. Van Dijk (2003, p. 352) commented that critical discourse analysis "primarily studies the way social power abuse, dominance, and inequality are enacted, reproduced, and resisted by text and talk in the social and political context".

In this study the discourse examined was limited to that contained in publically accessible, written documents. Documents, as a form of discourse, are static representations of more than explicit facts. In considering documents as historical, social and cultural artefacts the researcher is able to gain insight into contextually specific practices, beliefs, ideologies and 'ways of being' that are not always immediately obvious in terms of the explicit content (Corbin & Strauss, 2008; Rapley, 2007).

Document selection: First iteration

An exhaustive review of 139 documents, across five broad fields of technology, education, policy, developmental psychology, and the law, took place over 12 months. A combination of peer-reviewed studies, Federal and State (NSW) government policy and

reports, Federal and State Legislation, case law; and grey literature from the popular media was considered. Figure 1 depicts the research narrative, and interrelationships between categories in the selected literature.
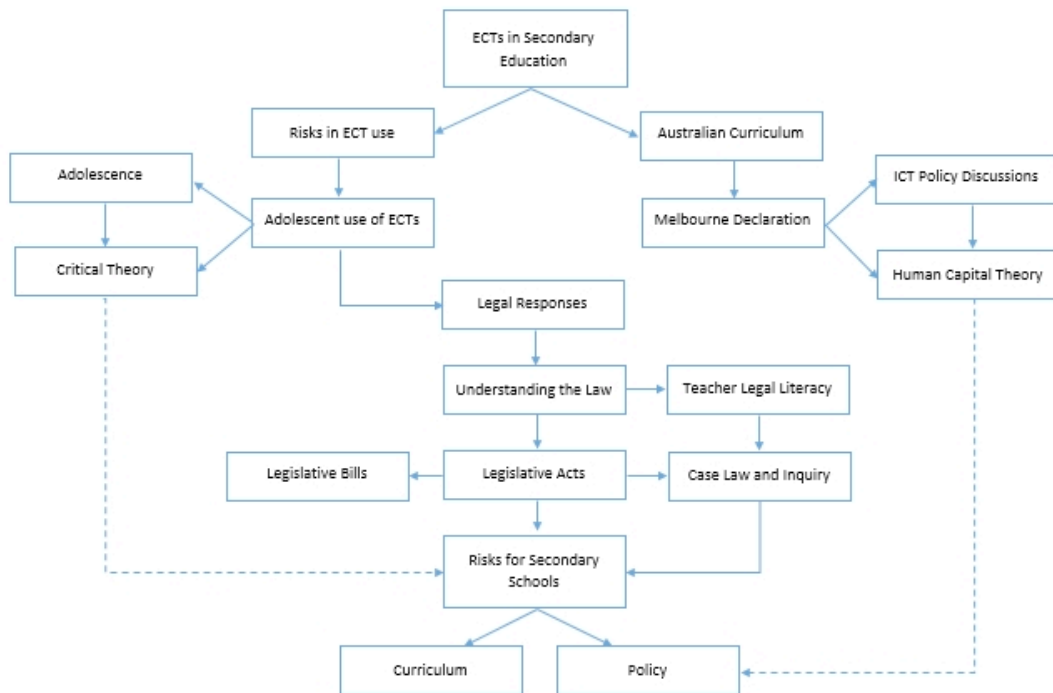

Figure 1: Delineation of the research field

Document selection: Second iteration

Policies act as a determinant of teaching practice in terms of associated curricula, and educator behaviour in terms of codes of conduct. Education policies also act as measures of expected educative quality by articulating professional standards. In addition, policies act as indicators of the expressed intentions of governments, and the implicit expectations of school communities. Consequently, in the second iteration, only documents that were directly related to sexting in secondary schools were chosen for analysis.

In particular, policies and curricula currently enacted, or scheduled for enactment within the next 12 months, that focused on secondary student safety, the ethical use of technologies, and teacher responsibilities were identified. Finally, only policies and curricula produced and enforced by the NSW Board of Studies, Teaching and Educational Standards (BOSTES) or the NSW Department of Education and Communities (DEC) were included. Figure 2 provides an operational model of the documents selected, defining the degrees of distance between the selected documents and the classroom teachers within NSW DEC secondary schools.
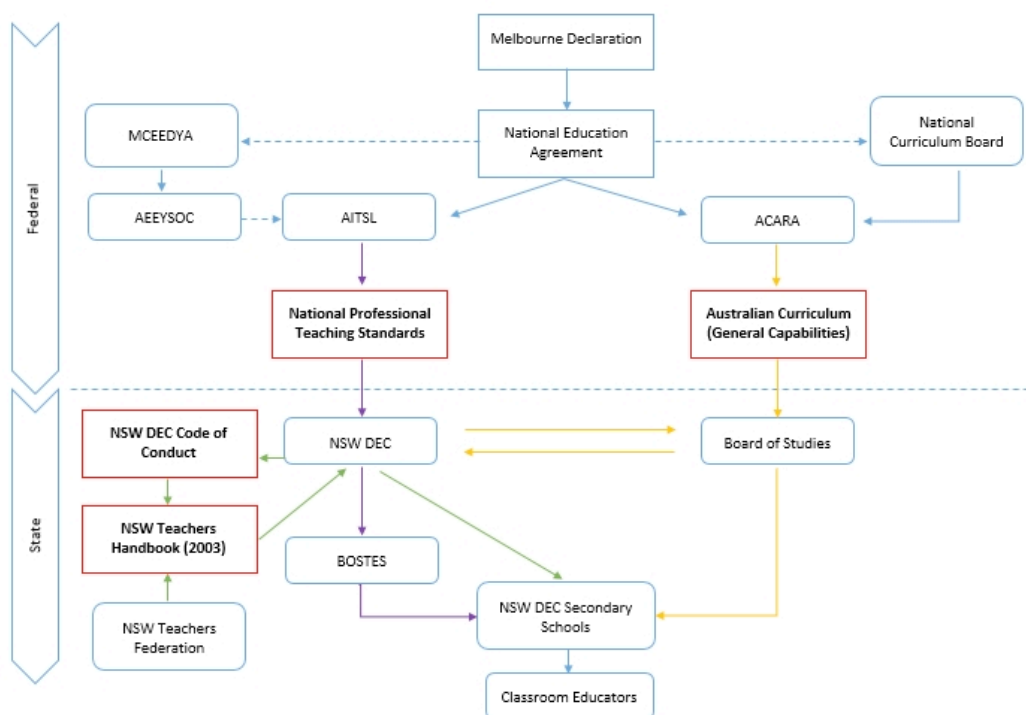
Figure 2: Operational model for second iteration documents

Document selection: Third iteration

Application of the above criteria resulted in the selection of four policies, and one curriculum. Table 1 lists the selected document type, title and responsible organisation.

Table 1: Documents for analysis

Type	Title	Responsible organisation
Policy	Code of Conduct Policy (2010a)	New South Wales Department of Education and Communities (NSW DEC)
	Code of Conduct Procedures (2010b)	New South Wales Department of Education and Communities (NSW DEC)
	NSW Teachers Handbook (2003)	New South Wales Department of Education and Communities (NSW DEC) New South Wales Teachers Federation (NSWTF)
	National Professional Standards for Teachers (2012)	Australian Institute for Teaching and School Leadership (AITSL) New South Wales Department of Education and Communities (NSW DEC)
Curriculum	The Australian Curriculum v5.1 General Capabilities (2013)	Australian Curriculum, Assessment and Reporting Authority (ACARA)

Policies such as the *Code of Conduct* (NSW DEC, 2010a), and its associated procedures (NSW DEC, 2010b; 2003), and the *National Professional Standards for Teachers* (AITSL, 2012) impose direct obligations upon teachers and are applicable at the level of the secondary classroom. Only two curricula that were most relevant were selected for analysis. These were the *Australian Curriculum: Information and Communication Technologies (Revised Draft)* and *The Australian Curriculum v5.1: General Capabilities*. Both documents represent the latest versions (September, 2013) with their content, focusing on the application, use and management of digital technologies within lower secondary years. Students in the lower secondary years have been found to report the highest rates of sexting (Bluett-Boyd et al., 2013; Lenhart, 2009; Livingstone, 2008; Phippen, 2012; Ringrose et al., 2012; Victorian Law Reform Commission, 2011).

The selection of the General Capabilities curriculum was motivated primarily by the need to consider the potential for sexting to occur in classes where technologies are required. The General Capabilities curriculum is intended for cross-curricular use by *all* secondary teachers. Unlike the Information and Communication Technologies Curriculum, which is delivered as a specialist course, the content within the General Capabilities curriculum is more likely to be delivered by non-technology specialists. Arguably, these teachers may be less digitally proficient and this could result in increased risk (Cramer & Hayes, 2010; Cuban, Kirkpatrick & Peck, 2001; Eberwein, 2008). Finally, the General Capabilities Curriculum includes lessons focusing on the ethical use of technology, social responsibility, multimedia creation, and file sharing. Such experiences provide direct opportunities, via registrable outcomes, for students to interact with emergent communication technologies.

Document analysis phase 1: Coding for directive statements

Saldana (2009, p. 4) argues that, "Coding is not a precise science; it's primarily an interpretive act". To increase the validity of the coding a two phase process was used. Phase 1 involved the identification of 'directive' statements. Such statements were defined as explicitly imposing behavioural or pedagogical directions, related to the use, management or facilitation of emergent communication technologies, upon classroom teachers. Document overviews, scopes, aims topics, and registrable student and teacher outcomes were reviewed line by line. A process of repeated coding involving both manual coding and computer-supported searches was used. Repetition (Bogdan & Taylor, 1975), word collocation and concordance (Ryan & Bernard, 2003) via the use of the *Key Word in Concordance* tool (KWIC), and constant comparison (Glasser & Strauss, 1967) were used to identify, confirm and summarise explicit directives.

An *a priori* understanding of grammar regarding sentence structure was used to define predicates, and the verbs contained therein. Searches focused on action verbs (both transitive and intransitive), as indicators of described/prescribed behaviour and modal auxiliary verbs which were used to express obligation. Finally adjectives, where relevant, were used to support and increase confidence regarding the explicit nature of a selected directive. Applying such an approach, statements within the data corpus were characterised as imposed obligations asserting agreed propositions, most commonly upon

one of two identified subjects; being either the classroom teacher, or an implicit educational outcome; for example student achievement.

Document analysis phase 2: Coding for themes and dichotomies

Ryan and Bernard highlighted four considerations when coding for themes: how often the theme appears, its frequency in terms of cultural ideas and practices, how people react if it is violated, and finally the degree to which the variety and force of a themes expression is controlled by specific contexts. Organisation of the identified themes was undertaken using versus coding (Saldana, 2013). This technique is used to highlight dualities of purpose within the data. At an implicit level the technique allows for the "discernment of conflicting power issues amongst constituents and stakeholders" (2013, p. 115). Subsequently, inequalities between individuals, organisations, and social systems can then be identified.

Findings

Phase 1: Identifying the directive statements in curricula documents

The *Australian Curriculum v5.1: General Capabilities* document contains the history, purpose, and associated learning continuum of four key learning areas: English, Mathematics, Science and History. General Capabilities, as described by the Australian Curriculum, Assessment and Reporting Authority, "encompass the knowledge, skills, behaviours and dispositions that, together with curriculum content in each learning area… will assist students to live and work successfully in the twenty-first century" (ACARA, 2013d, p. 2). The general capability isolated for analysis was information and communication technology (ICT).

The analysis was limited to Levels 4 and 5, representing required student achievements at the close of Years 6 and 8, when students are typically aged between 11 and 15. Thus, a total of five topics, 14 associated sub-topics, and 28 learning outcomes were analysed.

Five broad findings emerged from the curricula data corpus.

1. *ICTs are a priority teaching requirement*
    Of the seven capabilities, four are defined as being "fundamental in students becoming successful learners" (ACARA, 2013, p. 6); literacy, numeracy, ICT capability and creative thinking. Of those four, three capabilities are further isolated as being 'essential to effective teaching and learning' (2013, p. 6); literacy, numeracy and ICT capability. Whilst historically the curricular primacy of literacy and numeracy skills is well established, the elevation of skills in ICT, as learning priorities outside of their subject-specific curriculum, places ICT capabilities at a premium equal to that of literacy and numeracy. Finally, the statement, "Teachers are expected to teach and assess general capabilities" (ACARA, 2013, p. 4) formalises the requirement that the General Capabilities curriculum is a mandatory and integrated component of subject-specific curricular material.

2. *ICTs are a core cross-curricular teaching and learning requirement*
   It was noted that of the seven General Capabilities listed, ICT had the highest rate of cross-curricular relevance in terms of its scope for application. Five out of five (100%) topics, 11 out of 14 sub-topics (78%), and 21 out of 28 (75%) learning outcomes provided direct cross-curricular links to an identified key learning area. Of those outcomes, and associated learning experiences, 17 of the 21 (81%) were relevant to at least two or more of the four identified learning areas.

3. *The General Capabilities curriculum provides opportunities for students to engage visual media technologies*
   An examination of the learning outcomes relevant to Levels 4 and 5 of ICT General Capabilities curriculum revealed that four of four topics (100%), 5 of 9 sub-topics (56%), and 10 of 18 outcomes (56%) provided explicit learning opportunities for students to engage with visual elements of emergent communication technologies within secondary learning spaces. Broadly, reference was made to the design, creation and modification of both static and moving imagery, through the manipulation of both software and hardware, via the provision of a variety of school-based emergent communication technologies.

4. *The General Capabilities curriculum provides opportunities for students to engage file sharing technologies*
   Three of four topics (75%), four of nine sub-topics (44%), and eight of 18 outcomes (44%) provided explicit opportunities for students to engage with file sharing technologies in secondary learning environments. Synchronous, asynchronous, online, offline, collaborative and individual sharing practices were outlined for implementation within secondary learning spaces. Suggestions provided included the use of *Skype*, wikis, blogs, and file sharing servers.

5. *The General Capabilities curriculum acknowledges there are risks associated with emergent communication technologies*
   Of the content selected three of four topics (75%), six of nine sub-topics (67%), and 11 of 18 outcomes (61%) implicitly highlighted risk management as a core feature of the directed learning. Such recognition of risk was characterised by statements referring to operational and personal safety, legal and ethical obligations, and online and offline social protocols.

Phase 1: Identifying the directive statements in policy documents

Two policies, comprising four documents, were selected for analysis. The first policy, the *Code of Conduct* "clarifies the standards of behaviour that are expected of DEC staff in the performance of their duties" (NSW DEC, 2010a, p.1). Two supporting documents, the *Code of Conduct Procedures* (2010b) and the *NSW Teachers Handbook* (2003), further inform the *Code of Conduct* policy. The second policy, the *National Professional Standards for Teachers* defines seven standards, contains 37 focus areas and 148 directly registrable, professional teaching statements. The statements are divided across four 'career stages'; being

Graduate, Proficient, Highly Accomplished, and Lead (p. 6-7). In an effort to consider the most relevant directives, based on risk and exposure, only two of the four identified career stages were considered: Graduate and Proficient. Accordingly 74 registrable directives were examined in detail.

In terms of the *Code of Conduct* (NSW DEC 2010a; 2010b; 2003), nine of 24 chapters (33%) covering 16 of 33 pages (48%), were considered relevant for detailed examination. Such relevance was determined by a first-pass exhaustive scanning of the document, which took place during the data collection phase. The selected chapters broadly focused upon four categories: expectations of knowledge, expectations of behaviour, ethical responsibilities, and finally legal responsibilities.

From the policy data corpus, a total of 54 directive statements were identified and coded. Three types of statement represented the data coded: Professional Knowledge Statements, Professional Practice Statements and Professional Conduct Statements. Eleven of the 54 statements (22%), or just over one in five, were categorised under 'Professional Conduct'; being how a teacher should act. Seventeen of the 54 statements (31%), nearly one-third, were categorised under 'Professional Knowledge'; being what a teacher should know. Finally, 26 of the 54 statements, just under one-half, were categorised as statements of 'Professional Practice'; being what teachers do.

In re-examining the initial 54 statements, five broad categories of directive statement were identified.

1. *Teachers are policy compliant*

   Ten of the identified 54 policy directives (18%), stated that classroom educators would adhere to, meet, apply, accept, and comply with the key principles, legislative and industrial requirements, and administrative and organisational policies and processes defined and enforced by the *Code of Conduct* (NSW DEC, 2010a; 2010b; 2003) and *National Professional Standards for Teachers* (AITSL, 2012). Such compliance was underpinned implicitly by an equating of compliance with the demonstration of ethical behaviour and professional responsibility.

2. *Teachers are legally literate*

   Teachers were consistently characterised as being legally literate regarding extant legislative, industrial and organisational provisions. Twelve of 54 policy directives (22%), just over one in five statements, explicitly described classroom educators as understanding, being familiar with, or being aware of legal provisions relating to their pedagogical practice and professional conduct. Further, statements defined teachers as being able to describe, apply and subsequently ensure practices responsive to the provisions of extant legislation.

3. *Teachers are content-proficient*

   Twenty of the 54 identified policy directives (37%) explicitly described classroom educators as understanding, selecting, incorporating, and demonstrating effective teaching and learning practices. Eight of 20 statements (40%) provide that classroom educators acknowledge, participate in and evaluate professional learning practices,

subsequently demonstrating curricular, cultural, developmental and pedagogical knowledge and practices. Nine of 20 statements (45%) explicitly refer to teachers' effective understanding, use, and integration of ICTs, or emergent communication technologies, highlighting the premium placed on ICT-related proficiencies.

4. *Teachers are developmentally aware*
   Of the 54 policy directives, eight (13%) refer explicitly and implicitly to a classroom educators understanding, acknowledgement, familiarity and professional knowledge of the impact of developmental processes within secondary learning spaces. Physical, social and intellectual characteristics are explicitly defined and these portray teachers as being able to consider, ensure and use developmentally appropriate teaching strategies.

5. *Teachers are risk-responsive*
   Fourteen of the 54 policy directives (26%) explicitly characterise classroom educators as being capable of managing risk-responsive behaviours. Teachers are expected to create, maintain, manage and negotiate safe learning environments based on legislative, organisational, and developmental requirements. This capability is drawn from both professional experience and formal training. Words such as 'reasonable', 'responsible', and 'ethical' outline the standard expected of teachers in foreseeing, assessing, protecting and promoting safe learning environments and experiences for students. In addition, teachers are expected to be aware that risk management entails the psychological as well as the physical well-being of students.

Phase 2: Identifying broad themes and dichotomies

In considering the above directive statements four overarching, dichotomous themes were identified.

1. *Curriculum and policy create risks and responsibilities*
   The curricula documents were broadly characterised as providing 'opportunities for risk', whereas the policy documents were broadly characterised as providing 'responses to risk'. This theme represented: teacher knowledge, student safety, staff welfare, risk management, technical and digital proficiency, and behavioural compliance.

2. *Curriculum and policy create identities*
   Two identities are constructed in the textual discourse both explicitly; in terms of the described responsibilities and behaviours, and implicitly in terms of the prescribed ethical and social responsibilities. These identities are the 'Professional Teacher' and the 'Problematised Adolescent'. The directives identified in Phase 1, propagate the construction of a policy-driven professional identity for teachers. The subsequent responsibilities associated with the five directive categories identified position teachers as being professionally knowledgeable regarding student behaviour, adolescent development, legislative provision, and proficient in the safe use and application of technologies.
   Less explicit, is the construction of the problematised adolescent. Twenty-four of the 54 statements (44%), and two of the directive findings, define the behaviour, maturity,

social and intellectual development of students through predicates of safety and foreseeability.

3. *Curriculum and policy create 'reasonability'*
Explicit statements within the analysed policies, and implicit in the curricula content, impose a concept of 'reasonability' regarding knowledge, practice, and conduct. A recursive examination of the data corpus implicitly identified reasonability as actions that are acceptable and expected. Accordingly, the *National Professional Standards for Teachers* (AITSL, 2012) and the *Code of Conduct* (NSW DEC, 2010a; 2010b; 2003) systematise what is considered 'reasonable' and what is not. For example, the stated purpose of the *National Professional Standards for Teachers* is to identify, "What a teacher should know and be able to do" (AITSL, 2012, p. 4).

4. *Policy and curriculum frame technology as both asset and liability*
Finally, this overarching dichotomy of emergent technology as both an asset and a liability characterised a central conflict present in the directives analysed.

Discussion

Policy operates as both a text and a discourse (Weaver-Hightower, 2008). At the level of text, policy often articulates rational, concrete instructions that are designed to improve efficiency. These instructions then can be applied objectively and can be used to increase certainty in achieving specified outcomes. Within a framework of policy as discourse, school policies operate as active agents of experience, understanding, indoctrination and control (Powell, 2010). Policies become representations of accepted truths regarding knowledge and values, enforced by external political, cultural and social agencies (Ahn, Bivona & DiScala, 2011; Cuban, Kirkpatrick & Peck; 2001.

For example, statements identified and coded within the National Professional Standards for Teachers (AITSL, 2011) preamble, state:

> The Standards and their descriptors represent an analysis of effective, contemporary practice by teachers throughout Australia (p. 2)
>
> They articulate what teachers are expected to know and be able to do (p. 2)
>
> They do this by providing a framework which makes clear the knowledge, practice and professional engagement required across teachers' careers (p. 2).

The curricula and policy documents selected for analysis understate the cultural and social complexities of adolescent classroom behaviour. Digital adaptation is seen as a normative ideal. Teachers are made responsible for students' use of digital technologies through accountability. In doing so risk is redefined and, as Connell (2009) has argued, the professional identity of teachers becomes codified by external standards. These identities serve to reinforce narratives of 'reasonability'. Bloomfield (2006) has also concluded that policies are often positioned as frameworks for professional guidance and statements of expertise. Standards are simultaneously constructed as neutral, value-free, rational

propositions. Presenting standards as such, promotes approved behaviours as reasonable requirements, justified generally through predicates of safety and courtesy.

It is argued that policies promoting professional standards "contribute positively to the public standing of the profession" (AITSL, 2012, p. 5). With regard to the current findings five categories, identified out of the 54 directive statements, positioned teachers as possessing and enacting knowledge from fields as disparate as the law, psychology, anthropology, and digital technology. Such statements were expressed in the present tense, suggesting knowledge teachers *have*, and were relevant to Graduate (entry level) and Proficient teachers.

Teachers are positioned as being able to foster an environment that encourages innovation and creativity. Paradoxically, it is also acknowledged that teachers work within a risk-averse, litigious context and standards require that teachers maintain a safe, predictable learning environment. Noting a similar phenomenon, Bloomfield (2006) has juxtaposed innovative, context-responsive teachers capable of functioning as knowledge producers with a political and policy climate that favours consistency, effectiveness and accountability.

At the level of directive statements, five statements identified technology as an educational imperative. The capacity to digitally create, innovate and investigate was equated with the capacity to read, write and count. The curricular imposition upon teachers to adapt is not only implicitly propagated by societal, commercial and cultural shifts in the use of emergent communication technologies, but is further enforced by policies of productivity. These require, via access and innovation, the proficiencies and productivities of 'tomorrow' within the classroom of 'today' (ACARA, 2013a; 2013b; 2013c; 2013d; MCEETYA, 2008a; 2008b). The policies reviewed implicitly require teachers to rapidly utilise technological innovations in order for their students to develop future employment skills (Ahn, Bivona & DiScala, 2011; Cramer & Hayes, 2010).

The problematised adolescent

As technologies have provided new forums and cultural fields for adolescents to express and explore their sexuality, adolescents are redefining the habitus of acceptable expressions of sexual exploration and communication. Widespread access to digital technologies in their personal lives has normalised digital methods of communication, entertainment and self-expression. Rice et al. (2012) suggested this has resulted in an attitudinal shift towards voyeuristic behaviours and that such behaviours are becoming routine. The current findings show that teachers are positioned not only as curriculum experts but also that they understand the social, cultural and developmental needs of their students. Such assertions can be said to explicitly establish an expectation that the 'professional teacher' will be both aware of, and able to manage sexting behaviour in school contexts. They also ignore findings that suggest low rates of legal literacy amongst principals and teachers (Militello, Schimmel & Eberwein, 2009; Stewart, 1996).

In policing boundaries for sexual behaviour and acceptable actions, schools have historically played a role in problematising adolescent sexual behaviour. The identification of the 'problematised adolescent' in the data corpus; through predicates of safety, challenge and ethics, attests as much. Different perceptions of digital technologies by both adolescents and teachers have dramatically shifted the extent to which previously identifiable risk behaviours are now mutually acknowledged. A further challenge for teachers is the disparity between policy and curricula imposed responsibilities for student safety, creative opportunity, developmental understanding and teacher digital proficiency. In defining teacher identity as the 'Professional Teacher' the documents analysed assert that technology as a liability is balanced with technology as an asset.

Technology as liability

Injury is likely to be caused by an adolescent who creates, intentionally or otherwise, pornographic material using a school digital camera and then posts the material onto a school-hosted site. Similarly, a student who uses his/her mobile phone whilst in class to 'up-skirt' a female peer and then share it is criminally liable under section 91J and 91L of the *Crimes Act 1900 (NSW)*. In such a case a subsequent negligence claim against the teacher and/or school could occur if a breach of duty of care is alleged.

Given the challenges that many legal systems currently face in determining the appropriate course of action for developmentally normative, yet socially reprehensible behaviours, it is little wonder that many school authorities are in a position of frustrated ignorance about legal and moral obligations that surround the use of technology by adolescents (Ahn, Bivona & DiScala, 2011; Conn, 2010; Eberwein, 2008). The extant research suggests that often little thought is given to the legal literacy of teachers (Militello, Schimmel & Eberwein 2009; Stewart, 1996). A search of 640 professional development courses endorsed by the New South Wales Institute of Teachers since 2010, identified only eight courses by two providers that addressed the legal literacy of teachers. All eight courses were aimed solely at executive teaching staff, and focused on corporate law.

Implications, limitations and future directions for research

There are several important implications that arise from these findings. Firstly, teacher professional development aimed at providing practical understandings of classroom-relevant legislation is likely to reduce both student injury and teacher liability. A second implication is that the law does not adequately recognise the delineations between developmentally appropriate and consensual adolescent sexual behaviours. As Dobson, Rasmussen and Tyson (2012) concluded, concern about adolescents as sexual subjects has led to criminalisation of their engagement in normative sexual activities. The Victorian Law Reform Commission (2011) has recommended that a new defence be created for adolescents in relation to child pornography and voyeurism offences; under current legislation a defence based upon recognition of 'developmentally appropriate and consensual adolescent sexual behaviours' is not available. Thirdly, although it is acknowledged that teachers cannot be responsible for every negative incident that occurs

between students (English, 2011), initial teacher education programs tend to provide little training on potential criminal behaviours other than mandatory child protection training.

Mandatory training typically addresses inappropriate sexual activity between teachers and students (Eberwein, 2008; Gillespie, 2011; Powell, 2010). It is suggested that pre-service teacher education programs include information on Australian tort law, particularly as it relates to teacher negligence. A fourth implication involves the roles of specialist teachers and school counsellors in promoting online ethical behaviour. Addressing technologically-mediated undesirable behaviour (e.g. cyberbullying, hacking, identity theft, fraud, plagiarism and chat room exploitation) is recognised as essential for responsible adolescent digital citizenship (Hollandsworth, Dowdy & Donovan, 2011). Specialist teachers/counsellors are well placed to lead these initiatives.

A fifth implication relates to schools that permit 'bring your own device/bring your own technology' (BYOD/BYOT). Perceptions that this approach diminishes the school's responsibility for behaviours such as sexting are concerning. Duty of care, under Australian criminal and tort law, does not rely on a diminishing scale of responsibility. A school that encourages a BYOD approach incurs the same responsibility for students using their own devices, whilst under the instruction of the 'child care professional', as they would if the devices were provided by the school. Finally, Australian reviews of sexting urge comprehensive, mandatory relationship/sexuality education in all schools. The focus of such programs should include harm reduction and creating conversations with young people about relationships (Albury, Crawford, Byron & Mathews, 2013; Walker, Sanci & Temple-Smith, 2011). Promoting safe sex and challenging discourses that lead to sexual inequality and violence are seen as crucial elements in relationship education (Döring, 2014).

The current findings are limited by the fact that a single methodology (document analysis) was used to identify teachers' responsibilities and practices. The findings need to be interpreted with some caution given that the extent to which teachers are actually policy compliant was not investigated. Actual digital practices in classrooms may differ in subtle and significant ways from the practices prescribed by laws and curriculum documents. It is suggested that further research use a wider range of data collection techniques. Designs that allow for either data triangulation or mixed-methods, particularly designs that include student and teacher perspectives, will strengthen the ecological validity of future findings.

Sexting raises social, moral and ethical concerns as well as significant questions related to privacy and protection. When considered in light of emergent communication technologies, sexting is no longer limited simply to the mobile phone but, in terms of its compatibility with Web 2 platforms, it will continue to be redefined. Policies of productivity that define teachers as a type of digital cognoscenti, replete with skills in developmental psychology, and legislation paint a misleading picture. The picture of the teacher propagated by the policies and curricula that were examined is of an 'expert' even at the entry (new graduate) level. Whilst such notions of 'expert' can be said to privilege teachers in terms of public perceptions, they compromise their professional autonomy. In accepting and operating under the agreed 'truths' proposed within the analysed policy and

curricular frameworks, teachers implicitly accept the accountabilities explicit in the discourse. Such discourse places classroom educators in a position of inequitable risk, particularly when compared to other school professionals.

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