



# Safe on Social

## Youth & Online Pornography Cheat Sheet

### **Young people and accessing online pornography ( with the unavoidable inclusion of sexting )**

Let's start with a disturbing piece of information.

The age that children are being exposed to pornographic material has dropped to as young as four years old in Australia since the advent of social media (AFP).

It is a problem being debated at a State and Federal level across the country. There are legal ramifications for teens in some circumstances, and parents need a stern warning – that they cannot simply plead ignorance about both the social media their children use, and their own abilities to navigate and understand the content their children are accessing. It is shockingly easy for children to come across pornography online which means parents simply must take an interest in their child's life online.

These are the legal positions in Australia to date.

There are two facets of this issue to address and they cross over considerably for the under 18's - Viewing online pornography and the content produced by sexting.

### **Viewing pornography when under 18**

It is evident that a number of young people are both accessing porn, and in the eyes of the law self-producing and distributing what is in essence child pornography (sexting).

### **The legalities in general.**

#### **Viewing pornography**

Generally speaking, in the eyes of Australian law, it is not illegal for someone under the age of 18 to view pornography personally and in private.

(Such videos found online maybe restricted by ACMA (Australian Communication and Media authority). This body focuses around requesting content be removed that breaches ratings legalities, but does not regulate viewers itself.)

In certain circumstances there are, however, exceptions and this is where some teens can be in breach of the law.

1. When the material is classified as child abuse/pornography – nude and sexual images of an individual under the age of 18.
2. When pornographic material is sent to other people who are under 18.
3. When pornographic material is shown to others under 18 . This applies to your home as well.
4. When pornography is sold to someone under 18.
5. When an individual attends a showing of an 18+ film when they are under 18+ .
6. When a schools enrollment policy, ICT use policy, Wi-Fi or free server has specific rules about content that can be accessed and pornography is accessed against these standards.
7. Various pornographic sites such as Porn Hub etc have the age requirements specifically listed. By answering the initial question that will appear on the sites around age restrictions with a lie, an individual is breaching the Terms and Conditions of the website. The UK has recently introduced a required credit card age verification system for those accessing porn sites with 18+ content. The Australia eSafety Commissioner is tracking the progress of this new law.

[www.abc.net.au/news/2017-07-18/calls-to-block-online-porn-for-under-18s/8720330](http://www.abc.net.au/news/2017-07-18/calls-to-block-online-porn-for-under-18s/8720330)

When images viewed cross the line into child pornography **the rules change.**

**Child pornography** is defined as a photo, video or image that shows a person under 18 engaging in sexual activity or being depicted in a sexual manner or context (showing private parts included). This includes cartoons, and individuals masquerading as under 18's. Nudity and suggestive photos and videos are included, and the burden of proof must be to what a reasonable person finds offensive.

Making, sending, asking for, sharing and possessing child pornography are all offences under the law – including pictures of someone you know, or making pictures of yourself to send to another person.

## Federal Law

Currently Federal Child pornography laws found in the *Criminal Code 1995 (Cth)* state that it is illegal to take, share, keep and distribute images of a sexual nature (AND this includes the individual if they are sending images of themselves) if the person involved is under 18, by phone or online.

The most relevant section is s474.19 – *Using a carriage service for child pornography material.*

The offence lists the following criteria to prove guilt in an individual.

An offence is recorded if a person:

- Accesses material or causes material to be transmitted to himself/herself
- Transmits, makes available, publishes, distributes, advertises or promotes said material
- Asks for material.

The above behaviours fit into this crime definition when the person performs any of these above behaviours using a carriage service (phone , internet) and when the material is classified as child pornography.

The charge for any of the listed offenses can be up to 15 years jail.

It is theoretically possible for a child or a young adult to be charged under this Commonwealth offence, as it applies to children under the age of 18 years or those who appear to be under 18 years of age.

The welcome qualifier is that the Attorney General must first consent for the prosecution to continue against someone under the age of 18.

This is the Federal position. Using the internet and a mobile phone for pornography can make things a Federal jurisdictional matter.

Across Australian States and Territories, there have been variances to their Criminal Codes to reflect the sexting behaviour of teens. This has been done in an effort not to criminalise the more benign incidents.

It is always a criminal act across the country to record or photograph any individual without their consent whilst performing private actions (sex, undressing, going to the bathroom, bathing). The police consistently take a very dim view of individuals possessing underage images who try to use these for the purposes of harassment, or as a threat – this includes those that stem from teens sexting.

## State Law

**NSW** - While the age of consent in NSW is 16+ - for both sex and sexting, sexting is still classified as a crime when it involves individuals under the age of 18. If sexting is used to harass an individual in any way, it is also considered a crime. A similar position to the Federal law applies.

Charges may be laid under the *committing an indecent act* facet of the law, especially if the persons involved have a disparity in age greater than 2 years.

In many cases the police, who may act without the permission of the Attorney General, charge younger offenders with less serious offences than child pornography ones. Warnings, cautions, youth justice conferencing, deferring to your school and your parents are often solutions provided.

But be warned. Should the sexting cross the line into harassment, include threats to distribute or have any element of exploitation, image-based abuse. It is highly likely the police will choose to pursue a more serious course of action.

**VIC** - The *Crimes Act 1958* was amended in 2014 to deal with sexting. If a person is under 18 they will not be guilty of child pornography if the picture :

- Shows them by themselves or with an adult ( in this instance the adult will attract the penalty generally)
- Is taken with a person who is not more than 2 years younger (unless the image shows a crime – like underage sex or drug use)
- If the image shows a crime being committed against the person

*The Summary Offences Act 1966 (Vic)*, was amended to curtail those who threaten people with sending images to others, and distribute them without consent. It is now illegal to do this and since this law's inception over 50 teens have been charged. The bulk of these children have been provided with police warnings but there have been charges laid in a number of incidents.

The police do not need the Attorney General's permission under Victorian State law to proceed with child pornography offences.

If you are under 18 when charged with a child pornography offence you will not be placed on the sex offender's registry in Victoria.

If you are 18 and older, the above protections do not apply.

**WA** - The laws pertaining to consent in WA also sit at age 16. Federal law still applies taking the age limit of consent for sexting to 18. Sexting and viewing related images can attract charges including – child pornography, possessing an indecent image or recording.

Police proceed in a similar manner to those in NSW and press charges when the sexting is considered harassment or threats are made to distribute images.

Repeated offences of this nature can lead to charges being filed, and the offender placed on the Sex Offenders Registry.

**SA** - The law pertaining to consent advises that an individual can consent to both sex and sexting at 17.

Again, the state laws run up against the federal ones which prohibits sexting till 18.

The *Criminal Law Consolidation Act 1935 (SA)* covers sexting, the possession of child exploitation material, distribution of invasive images (revenge porn - considered an offense for both adults and those under 17).

All offences listed can result in imprisonment and large fines.

Under 17's have been charged with sexting offences in the state.

**NT** - Follows the Federal standard indicating that the age to consent to sexting is 18.

Crimes are committed when images of a person under 18 are sent, possessed, published or made. Such images are viewed as child pornography.

An image taken of oneself and sent to another when you are under 18 is also considered an offense.

Children aged 10-14 maybe shown to be guilty if they have an awareness that what they were doing was wrong.

At 14 the state views an individual old enough to be charged with a criminal offence.

**QLD** - In QLD consent to most forms of sexting and sex is at the age of 16.

In this state, Federal law also supersedes the state taking the age of consent for sexting to 18.

The standard of proof for state based offences is to the standard that an average person would find the image or film offensive.

It is possible for those aged 10 and over to be charged with a criminal offence for possessing child exploitation/ pornographic material.

Making or possessing illegal sexting material and sending this to other people is considered a criminal offence, punishable by up to 7 years in jail if the individual charged is under 16, or 14 years in jail if the individual charged is over 16.

**TAS** - This state considers that sexting can be a crime for those under the age of 18, but young persons in a consensual relationship are unlikely to be charged with a crime when they sext each other. The police have a general policy against laying charges in these circumstances.

Charges are more likely in circumstances that involve harassment, or where images are taken without consent from the other party.

Additionally, Tasmania differs from other states by allowing age based defences where an individual of the age of 15 may have a consensual relationship with an individual not more than 5 years older, and individual of 12 - 15 years may have a relationship with an individual up to three years older. This state law is a variation to all other states and federal law. *Criminal Code Act 1924 (Tas) s 130E(2)*.

**ACT** - The ACT follows the Federal legal standards and considers sexting a crime when it involves individuals under the age of 18.

Charges available to the police include child pornography, a pornographic performance, and act of depravity and an indecent act.

## **Sexting and child pornography**

### **Some general advice for teens:**

- Get rid of underage sexting images ASAP that you have made or been sent- especially if you are not sure they break a law. This can reduce and negate any charges that may be laid against an individual.
- Do not ask for images from anyone that could constitute child pornography.
- Do not share with others, any indecent images sent to you featuring an individual under 18.
- Do not bully, harass or threaten any person under the age of 18 or at any age with an indecent image. The police view this offense particularly harshly.
- Be aware of the age difference between both parties if an individual must be engaged in sexting. Any more than two years, or when one party is 18 and over will attract charges from the police. This specifically applies to individuals under 16 with a partner who has recently turned 18.

### **For parents**

- Don't allow phones, other mobile devices and computers in your child's bedroom.
- Set up your computer systems in a family area.
- Educate yourself on the social media platforms and technology your children use.
- Instigate a digital curfew, where all devices – including your own, are switched off for the night.
- Familiarise yourself with the relevant legislations and material that could qualify as child pornography – discuss this with your child.
- Speak to your child about pornography and the effects it may have on themselves, and towards their views on sex and women.
- Discuss sexting, what is acceptable and what is not.



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