



Safe on Social

Sexting & Child Pornography

Cheat Sheet

Sexting and Child Pornography - A Fact Sheet for Young People

When we speak in schools there is always a lot of confusion about the laws around sexting and child pornography. We have put together this quick guide of facts on what it is, what is the law and where to go for help.

Sexting is using the internet or your phone to share nude/sexy pictures. It is a crime when it involves people under the age of 18 or harassment in any way.

In NSW people can consent to both sex and sexting at 16yrs (please see below for details of all Australian state laws). However, state law is not the only law that applies. When you use a carriage service (internet or mobile phone) to transmit an image sections of the Australian Criminal Code may apply.

- Section 474.19 Using a carriage service for child pornography material.
- And section 474.20 Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service.

With the inclusion of these Federal laws, sexting is illegal under the age of 18.

When sexting involves someone under 18, it can be 'child pornography' or an 'indecent act'.

An image is considered to be child pornography when it is a picture of a young person who is:

Showing their private parts (genitals, anus or breasts) Posing in a sexual way (in underwear or less) Doing a sexual act; or In the presence of someone who is doing a sexual act or poses. Child pornography can include real pictures, photo-shopped pictures, videos and cartoons. But a picture is only child pornography if it is offensive to the average person. That's why a picture of a naked baby in a bath generally isn't child pornography, but a picture of a naked teenager in a bed or posing in the bathroom mirror could be in some circumstances.

What is illegal?

Child pornography images are illegal if they are;

Asked for; taken; received and kept; or sent, posted or passed around. These actions are crimes even if the picture is only of you, your boyfriend/girlfriend or someone else who says it's ok.

Remember, the national law says a person under 18 can't agree to sexting.

It can also be a crime to share a nude/sexy picture of someone who looks like they are under 18, even if they were actually over 18 when the photo was taken.

Even if a picture is not child pornography, asking for or sending a nude/sexy photo can be an indecent act, and this is a crime. An indecent act is usually a sexual act that the average person finds offensive. You do not get to decide what someone else finds offensive; therefore you run the risk of being reported.

What are the penalties?

The maximum penalties for child pornography can be up to 15yrs in jail and placed on the sexual offender's register. The maximum sentence for an act of indecency is two years in prison if the person in the picture is under 16. If the person is over 16, the maximum penalty is 18 months in jail.

These penalties are high because the laws were meant to stop adults from sexually abusing children. When the laws were passed, nobody realised that they might also be used against young people who took pictures of themselves or other people of their age.

In some sexting cases, instead of using child pornography laws, the police might decide to:

- charge you with a less serious crime (like posting an indecent picture, which has a maximum penalty of 12 months in jail);
- send you to youth justice conferencing;
- give you a warning or caution; or
- let your parents or school decide your punishment.

When sexting involves harassment and threats, it's likely that police will press charges that could lead to sex offender registration.

If the person is under 18 when they commit the child pornography crime, the police must get the Attorney General's permission before they can make child pornography charges under the national law. The police do not need to get this permission before making charges under the State law.

What is the child sex offender register?

You may be placed on the sex offender register if you are found guilty of child pornography or indecency crime. People on this register have to give their contact details to the police and inform them of any changes (like moving houses or switching jobs). They are not allowed to work or volunteer in places involving children like schools, sports clubs, Surf Life savings clubs etc.

If you are under 18, you can't be placed on the register for committing just one child pornography or indecency crime. But when sexted pictures show more than one person or are sent on multiple days, this can be more than one crime. This means if you are under 18 but are involved in sexting with more than one person or on more than one day, you could still be placed on the register.

What should you do?

If you receive an inappropriate nude/sexy image or video on your device, you can avoid trouble by:

Deleting the image/video immediately Letting the sender know that you do not want to receive any more of these images/videos You should never forward any photos of this nature that you receive to anyone as it is a criminal offence. Sexting can also be a form of harassment. For example, someone might keep bothering you with requests for a naked picture. Or they might send you a nude photo that you don't want. Or they might threaten to send a nude photo of you to other people without your permission.

Sexting that involves harassment can be an indecent act or stalking, even if everyone is over 18. It can also be considered a menacing, harassing or offensive use of the internet or a mobile phone.

Section 474.17 of the Australian Criminal Code states that it is a crime to use your mobile phone or the internet in an offensive way or to harass somebody. Something could be offensive or harassing if it makes a person feel disgusted, humiliated or threatened. When sexting is used to threaten or bother someone, it is against the law. The maximum penalty is three years in jail.

What if you didn't agree to be photographed or filmed?

It is a crime for someone to take a picture or video of your private parts or private actions if you didn't know or didn't agree.

Private parts include a person's genitals or anus, even when they are covered by underwear.

Private actions include:

Undressing; Using the toilet; Taking a shower or a bath, or Having sex or doing a sexual act. The maximum penalty is five years in jail if the person being filmed is under 16. If the person being filmed is over 16, the maximum sentence is two years in prison or a fine. Remember, it is still a crime if the person being filmed is over 18. Other laws that can apply When sexting involves a person who is under 16 and a person who is over 18, the person who is over 18 could be committing some other very serious crimes.

When sexting is unwanted and happens at work or school, it could also be a form of sexual harassment.

What is Revenge Porn/Image-Based Abuse?

Image-based abuse occurs when intimate, nude or sexual images are shared without the consent of those pictured. This includes real, altered (i.e. Photoshopped) and drawn pictures and videos.

While most image-based abuse is about the sharing of images without consent, it can also include the threat of an image being shared.

Examples of image-based abuse include:

- Your current or ex-partner sharing an intimate image on social media without your consent.
- Someone Photoshopping an image of you with an explicit image and sharing it broadly via email.
- A stranger taking an intimate image without your consent, also known as 'up-skirting', or 'down-blousing' or 'creepshots', and sharing it on a website or porn site.

For more information and to report image based abuse go to <https://www.esafety.gov.au/image-based-abuse>

What is sextortion?

Sextortion is a form of blackmail where a perpetrator tries to get sexual favours, money or some other demand, by threatening to reveal intimate images of someone. They may also request money, additional photos, or sexual favours for removing the images online. This is a form of image-based abuse.

For more information about sextortion see The Office of the eSafety Commissioners page on how to deal with sextortion.

<https://www.esafety.gov.au/image-based-abuse/action/remove-images-video/deal-with-sextortion>

State Laws

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) s130E(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.

More information can be found at:

www.lawstuff.org.au

www.esafety.gov.au

http://www5.austlii.edu.au/au/legis/cth/consol_act/cca1995115/sch1.html



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