



Information sheet 16

Sexting, Adolescents and the Law

Using a mobile phone or the internet to take, send or receive a sexually explicit image is known as 'sexting'. This Information Sheet covers 'sexting' by adolescents and provides information on sexting and the law.

What is 'sexting'?

- **Taking** a sexually explicit image or video of a child or adolescent and the sending of the image or video to others via mobile phones or online, and
- **Receiving**, forwarding or posting these photos or videos through mobile phones or online.

Is sexting a crime?

Sexting can be a crime, depending on the age of the people sexting and if the content is considered to be child exploitation material or child pornography. It is a crime under the Western Australia *Criminal Code* to **take** a sexually explicit photograph or image of a person under 16 years of age. It is also an offence under the *Commonwealth Criminal Code* to **send** a sexually explicit photograph or image of a person under the age of 18 years over a 'carriage service'. This includes mobile phones and internet services.

The law calls these images 'child exploitation material', or 'child pornography'. Such material can include:

- Films, photographs, digital images
- Videos sent by SMS, email, in chat rooms or published on blogs
- Pictures that have been photo-shopped to make a young person look naked.

It is also an offence under the *Commonwealth Criminal Code* if an older person's image has been altered to make them appear younger than 18 years.

This means that even when two young people who are in a consensual sexual relationship willingly engage in the taking and sharing of sexually explicit images of themselves to each other via their phones or the internet they can be committing an offence in the following ways:

- When a 16 year old girl takes a sexually explicit photograph of herself, she may technically be committing an offence under the WA Criminal Code of 'producing child exploitation material'
- If she transmits that image to her 16 year old boyfriend she may technically be committing an offence under the same Code of 'distributing child exploitation material'
- If the boyfriend receives the image via his phone or the internet he, along with his girlfriend, may then technically be committing an offence under the same Code of 'possessing child exploitation material'.

Example 1

A 15 year old boy takes a photograph of his genitals and emails it to some friends for a joke. He may technically be committing an offence under the WA Criminal Code of producing child exploitation material.

It doesn't matter whether his face or any other identifying feature can be seen. It also doesn't matter whether or not the person receiving the image asked for, or is happy to receive the image.

Example 2

A 14 year old girl takes a video of herself performing a striptease and sends it to a group of girlfriends. She may technically be committing an offence for distributing child exploitation material. Any of the girlfriends who open and view the video are also committing a crime. It doesn't matter if it is a mutually acceptable 'joke' or if she is fully, or partly naked.

Example 3

A 17 year old couple take photos of themselves engaging in consensual sexual intercourse and then email the photos to themselves are technically committing a crime. It doesn't matter that they are old enough to have sex and that they only intend the images to be for each other, the sexting is still illegal.

What if the adolescent gives their permission to have a sexually explicit or naked photo taken of themselves?

The law says that while anyone is under 18 years of age they aren't allowed to consent to sexting; even though they are legally able to start having sex at 16 years of age. The reason the laws on sexting are so confusing is that they were designed to protect children from adults who wish to sexually exploit or sexually abuse a child. They did not consider that adolescents might willingly record, send and receive sexual images of their own. As a result, even if the young person in the image says it is OK to be filmed or photographed by themselves or another young person, it's still a crime.

Can young people receive a criminal record for sexting?

In theory this is possible, as the taking, sending and receiving of sexually explicit material of young people is technically a crime. There is a risk that a young person could receive a criminal conviction, and also be placed on the Australian National Child Offender Register. However, when there is no evidence that a child is being exploited, it is the policy of the Western Australian Police in cases of sexting involving children in adolescent relationships to respond by way of education, rather than by prosecution.

Scenario

A 15 year old boy asks his 15 year old girlfriend to send him a photo of herself 'topless'. She willingly takes the photo on her phone and sends it to him. Her mum then finds this picture on her daughter's phone, along with some other 'sexy pictures' of each other they have shared. Her parents are now threatening to report the boyfriend to the police and the boyfriend is really worried about what might happen, even though the photos were only for each other and they have not shared them with anyone else. The young girl is also worried that the police might see her as a 'criminal' as well.

Young people engaging in 'sexting' can sometimes be unprepared for the extent to which sexual images of themselves may end up being viewed by others whom they would never willingly or knowingly wish to have such private images. The police are more likely to prosecute if they believe a child has been exploited. This can include instances where the image was initially taken, sent or received voluntarily but then was distributed electronically in ways which caused a young person to feel threatened, coerced or vulnerable to bribery or other unwanted outcomes.

What should an adolescent do if they receive a sexually explicit image of another adolescent?

It is important that the adolescent protects themselves from any possible, unforeseen repercussions. *It is recommended that any such images are deleted* straight away. Any image that is intended to be offensive, abusive or hurtful should be reported to an adult.

Adolescents are sometimes not as aware as they need to be that it is really difficult to ensure that images will always remain private. Also, that if they do become shared, the capacity to be able to stop the spread of those images or to control who receives them and what they use them for, is lost forever.

Useful links:

<http://keepittame.youngandwellcrc.org.au/>

<http://www.thinkuknow.org.au/>

<http://www.bullyingnoway.gov.au>

<https://www.esafety.gov.au/>

<http://www.lawstuff.org.au>