

Sexting

Year 7-8

NSW

Module [1/1]

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If you have questions about TeachLaw, or this module, you can contact Youth Law Australia.

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What is consent to sexting?

- Consenting means freely and voluntary **agreeing** to something
- There are lots of factors that might stop someone from being able to give consent.

NO MATTER YOUR AGE, IT IS ALWAYS ILLEGAL FOR SOMEONE TO TRY AND FORCE YOU TO ENGAGE IN ANY KIND OF SEXUAL ACTIVITY WITHOUT YOUR FULL CONSENT (FREE AND VOLUNTARY AGREEMENT).

Source: section s 61HD, s 61HE Crimes, s 61I Act 1900 (NSW)

What is sexting?

Sexting is the sharing of intimate or sexual communications (e.g. sending nudes). It includes photos, videos or texts (even if they are drawn or photoshopped). Sexting generally refers to behaviour where both people have agreed to send or receive the communications. In other words, sexting refers to ***consensual*** behavior.

What is image based abuse?

Image based abuse is the unwanted sharing, requesting or taking of sexual communications. It includes threats to share or take an intimate image or video. In cases of image-based abuse, the person who is the subject of the communications, or who has received the communications has not given permission for this. In other words, it is *non-consensual*.

What is child pornography?

Technically, underage sexting could be considered child pornography or child abuse material. Child pornography includes sexual photos/videos or texts of a child:

- posing sexually; or
- participating in a sexual act; or
- being in the presence of someone posing sexually or participating in a sexual act).

It also includes photos, videos or text that describes a child's private parts (e.g. genitals or breasts).

Source: section s 91FB Crimes Act 1900 (NSW), s 473.1 Criminal Code Act 1995 (Cth)

What the law says

There are two laws that can apply in NSW:

1. In NSW it is illegal to make, share, request or possess material that could be considered “child abuse material”. A child is considered to be anyone **under the age of 16**, or someone that **appears to be under 16** due to the circumstances (e.g. if they are wearing a school uniform).
2. Throughout Australia, it is illegal to make, share, request or possess material that could be considered “child pornography material”. A child is considered to be anyone **under the age of 18**, or someone that **appears to be under 18** due to the circumstances.

Because both NSW and national laws apply, it is still risky to send a nude when you are under 18 because the second law applies in all states and territories including NSW.

Source: s 91H Crimes Act 1900 (NSW) , s 473.1 Criminal Code Act 1995 (Cth)

Similar to the age of consent laws, there are exceptions that apply in NSW if:

1. You take a photo of yourself alone and you are under 18. You won't get into trouble for making, sharing or keeping this photo; OR
2. You receive a sext from someone under 18 without asking for it and you immediately delete it.

Because both NSW and national laws apply, it is still risky to send a nude when you are under 18 because the second law still applies in NSW AND the exception on this slide DOES NOT apply to the national law.

Source: s 91HA Crimes Act 1900 (NSW) , s 473.1 Criminal Code Act 1995 (Cth)

Further support

Kids Helpline

You can call the Kids Helpline on 1800 55 1800 for free and private counselling (available 24 hours a day, but there can be a wait to get through). They are happy to talk to young people ages 5-25 about anything that's troubling them. You can also email them or chat online at: <http://kidshelpline.com.au>.

Headspace

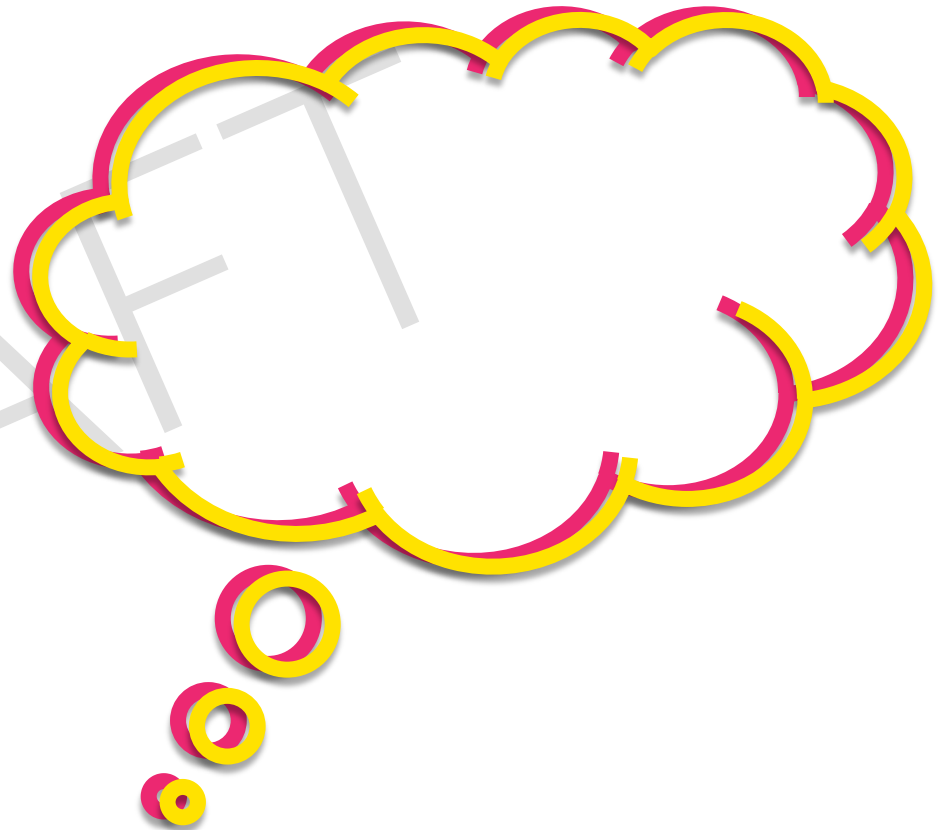
eHeadspace provides counselling to young people ages 12-25 who are worried about their mental health or are feeling alone. You can call them on 1800 650 890 from 9am to 1am. You can also email them or chat online at: <https://www.eheadspace.org.au>.

Youth Law Australia

YLA an online legal service that provides 24/7 legal assistance to children and young people aged under 25 and their supporters throughout all of Australia. You can access free legal information at yla.org.au through their factsheets or access personalised legal advice at lawmail.org.au.

Scenarios

What laws
apply in the
following
scenarios?



Scenarios

18 year old James has been seeing 15 year old Maddie for a while now. He is unsure of the laws around sexting – someone once told him that all sexting is illegal. Will James get into trouble if he sends a nude photo of himself to Maddie? What could happen to Maddie and James if Maddie sent him a nude photo of herself?

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Summary

- Consent means free and voluntary agreement
- Sexting refers to the consensual sharing of nude or intimate images
- Image based abuse refers to the non-consensual sharing, taking, or requesting of nude or intimate images
- In NSW and throughout Australia, underage sexting could fall into the category of “child pornography” if the person in the image is under 16 in NSW, or under 18 throughout Australia
- There are some legal defences that might be available but this will depend on your age, the reasons for the sext, and what is contained in it.

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