

TEACHERS MATERIALS

MODULE: SEXTING – NSW – YEARS 7-8

Thank you for your interest in TeachLaw! We hope that these materials are relevant and helpful to your students in educating them on their legal rights. For any correction or questions, please e-mail Youth Law Australia at admin@yla.org.au and include the word “TeachLaw” and the name of the module in the subject line.

TeachLaw Modules contain 3 parts – Teacher materials, Student materials and a PowerPoint presentation. Please note the PowerPoint is provided in PDF to preserve formatting. To present, please open using a PDF viewer, go to View > Enter Full Screen and use the arrow buttons to navigate.

This document is divided into 3 parts

Part 1: Background information – this section contains briefing notes to provide you with information on what the law says.

Part 2: Lesson notes – this section contains suggested speaking points, timings and important notes about the presentation.

Part 3: Student activities – this section contains the suggested class activities and answers to any student handouts.

Curriculum links

- PDHPE (Year 11 & 12) – Module 1: Growth and Development – “1.11 Demonstrates understanding of possible consequences of a range of sexual activities and knows how to seek advice or assistance if necessary”
- Legal Studies (Year 11) – Part II: The Individual and the Law – “3. Contemporary issue: The individual and Technology”

Learning Objectives

- 1.1 Students explain the laws that apply to underage sexting
- 1.2 Students define the terms “sexting” and “image based abuse”
- 1.3 Students apply relevant laws to factual scenarios to identify possible outcomes
- 1.4 Students identify where to turn for help
- 1.5 Students understand their rights and responsibilities when engaging in sexting

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Part 1 – Background information

1. INTRODUCTION

Young people may find navigating laws on sexting confusing – this is because there are both state and national laws that may apply to sexting. This module is designed to explain the different laws on sexting and how they apply to young people so that they can make informed decisions about engaging in online sexual activity. It is noted that this module is not designed to replace seeking professional advice. Young people who are considering engaging in sexting should speak to a professional, such as a lawyer or a counsellor to understand both the health and legal consequences.

In NSW, there are no laws that specifically mention sexting. However, due to the nature of the material that is created or distributed, child pornography laws can apply to sexting that occurs between two underage people. Whilst these child pornography laws were designed to protect young people from the harm that they may experience from being taken advantage of by adults, they may now be used to penalise young people who engage in consensual sexting *in very limited situations*.

Young people are encouraged to understand the consequences of engaging in sexting at different ages, and know where to turn for help if they are unsure if something is safe, or legal.

2. DEFINITIONS

A. SEXTING

Sexting is using a mobile phone or the internet to send, receive or share nude or sexual pictures or videos, or sexually explicit texts. The term “sexting” is used to refer to consensual behaviour, meaning that both parties have *freely* agreed to send, receive or share the material.

B. IMAGE BASED ABUSE

Image based abuse on the other hand refers to non-consensual sexting. It is sometimes referred to as revenge porn or non-consensual sexting. Examples of image based abuse include sharing or threatening to share someone’s sexts, or filming or threatening to film someone engaging in a sexual activity without their permission.

This module does not cover the law on image based abuse. More information can be found on the YLA website, or through our TeachLaw module on image based abuse.

3. WHAT THE LAW SAYS

While consensual sexting between two adults is not considered illegal, for children and young people who engage in consensual sexting, it may be considered child pornography or child abuse material. In this case, a child or young person *might* find themselves in trouble with the law depending on the content of the material and if the police become involved. Also, there are both state and national laws that apply to underage consensual sexting.

A. NSW LAWS

In NSW, it is a crime to produce, share or possess child abuse material.¹ Child abuse material refers to pictures, videos or texts² that depict someone *under 16*³ who:

- is, or appears to be a victim of torture, cruelty or physical abuse⁴;
- is or appears to be engaged in a sexual act, is posing sexually⁵ or is showing their private parts⁶ (genitals, anus or breasts of a female)⁷; or
- is in the presence of someone of any age who is or appears to be engaged in a sexual act or is posing sexually⁸.

The circumstances in which the material was taken will be used to work out if it is offensive enough to be considered child abuse material. These circumstances may include what the reasonable person considers immoral or indecent, if it was created for artistic, educational, literary or journalistic reasons or if it was created for medical, legal or scientific reasons.⁹

Also, it may be considered child abuse material if the person appears to be under 16 even if they aren't. Child abuse material also includes cartoons, photoshopped images or anything that has been altered in some way.¹⁰

¹ s 91G, s 91H Crimes Act 1900 (NSW)

² s 91FA Crimes Act 1900 (NSW)

³ s 91FA Crimes Act 1900 (NSW)

⁴ s 91FB (1)(a) Crimes Act 1900 (NSW)

⁵ s 91FB (1)(b) Crimes Act 1900 (NSW)

⁶ s 91FB (1)(d) Crimes Act 1900 (NSW)

⁷ s 91FB (4) Crimes Act 1900 (NSW)

⁸ s 91FB (c) Crimes Act 1900 (NSW)

⁹ s 91FB(2) Crimes Act 1900 (NSW)

¹⁰ s 91FB(3) Crimes Act 1900 (NSW)

Technically this means that if a person ***under the age of 16 consensually*** sexts another person under the age of 16, they may have broken child abuse material laws. **However**, there are some exceptions to this law. A person will not break the laws around making, sharing or possession of child abuse material if they are ***under*** the age of 18 ***and*** a reasonable person would consider the possession to be ***reasonable*** considering the circumstances. For example, the content of the material, how it was made and shared, the age and capacity of the people involved and the relationship between the person who possesses the material and the child depicted in the material.¹¹

There are also some legal defences that may apply. This means that if someone is charged with a child abuse material offence, and they go to court, they could use one of these legal defences so that they will not be found guilty of the offence. It is a defence to argue that:

- the person did not know and could not reasonably have been expected to know they had made, shared or possessed child abuse material¹²;
- the person did not request the material and took reasonable steps to get rid of it once they realised it was in their possession¹³;
- it was made, shared or possessed for public benefit (e.g. to enforce the law or administer justice)¹⁴;
- the person making, sharing or possessing the material was a police or law enforcement officer and it was reasonably necessary for their job¹⁵;
- the material was classified under the Classification system¹⁶; or
- it was necessary for research purposes¹⁷.

The following defences are also available to people under the age of 18:

- the person possessed material depicting themselves alone¹⁸; or
- the person was under the age of 18 ***at the time*** of making or sharing the material ***and*** they are the only person depicted in the material.¹⁹

Essentially, these laws criminalise the making, sharing or possession of sexts for people under the age of 16, **however**, a child under the age of 18 will not get into trouble if they are the only person contained in the sext.

¹¹ s 91HAA Crimes Act 1900 (NSW)

¹² s 91HA(1) Crimes Act 1900 (NSW)

¹³ s 91HA(2) Crimes Act 1900 (NSW)

¹⁴ s 91HA(3), (4), (5) Crimes Act 1900 (NSW)

¹⁵ s 91HA(6) Crimes Act 1900 (NSW)

¹⁶ s 91HA(7) Crimes Act 1900 (NSW)

¹⁷ s 91HA(8) Crimes Act 1900 (NSW)

¹⁸ s 91HA(9) Crimes Act 1900 (NSW)

¹⁹ s 91HA(10) Crimes Act 1900 (NSW)

B. NATIONAL LAWS

Under national law it is a crime to use a phone or the internet to send, post, share or ask for child pornography material.²⁰ Child pornography material refers to ‘offensive’ pictures or videos or text describing, someone *under 18* who is:

- posing in a sexual way;
- involved in a sexual act;
- with someone else who is posing in a sexual way or involved in a sexual act; or
- showing their genital area, anal area or their breasts for a sexual purpose.²¹

It includes photos, videos, drawings and even cartoons, as well as pictures that have been photoshopped or digitally altered to make the person look young or naked.²²

Because the image has to be ‘offensive’ to the average person,²³ family photos of naked kids having a bath probably wouldn’t be child pornography, but a naked teenager in a bed could be in some circumstances.²⁴

It’s also a crime to have any child pornography made or saved, or if you are planning to send or post it later using your phone or the internet.²⁵

It is a crime under these laws even if:

- the picture is of someone who has consented (including a girlfriend/boyfriend);
- the young person takes a picture of themselves; or
- the person in the picture only looks under 18.

There are also some legal defences that may apply. This means that if someone is charged with a child abuse material offence, and they go to court, they could use one of these legal defences so that they will not be found guilty of the offence. It is a defence to argue that:

²⁰ s 474.19(1) Criminal Code 1995 (Cth)

²¹ s 473.1, definition of ‘child pornography material’, Criminal Code 1995 (Cth) Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill (No. 2) 2004 [Explanatory Memorandum](#), 6 -7

²² s 473.1, definition of ‘child pornography material’, definition of ‘material’ Criminal Code 1995 (Cth)

²³ s 473.4 Criminal Code 1995 (Cth)

²⁴ Note in the the words ‘for a sexual purpose’ in paragraph (b) of the definition of ‘child pornography material’ are also designed to exclude things like innocent family photos - see Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill (No. 2) 2004 [Explanatory Memorandum](#), 6

²⁵ s 474.20(1) Criminal Code 1995(Cth)

- it was made, shared or possessed for public benefit (e.g. to enforce the law or administer justice);
- the person making, sharing or possessing the material was a police or law enforcement officer and it was reasonably necessary for their job;
- it was necessary for research purposes²⁶.

Please note that before a person under the age of 18 can go before the court for a child pornography offence, the police must obtain permission from the Attorney-General. However, the child can be arrested, charged, or detained without permission.²⁷

4. OTHER LAWS

There are also laws that govern the age of consent and when young people can have sex. For more information, check out YLA's pages on sex [here](#) (you can also check out our TeachLaw module on age of consent).

In addition to the criminal laws on sexting, there are additional laws that may apply in the workplace or at school that make it illegal to sexually harass another person. These laws fall outside the scope of this module.

For more information, check out YLA's page on sexual harassment [here](#).

5. LEGAL CONSEQUENCES

It is important to understand the legal consequences of breaking such laws. As there are both State and National laws dealing with this area, the consequences vary depending on which jurisdiction it is dealt with.

A. STATE LAWS

- Any person who uses a child under 14 for the production of child abuse material faces a maximum penalty of 14 years imprisonment.²⁸
- If the child is of or above 14 years, the maximum penalty is 10 years imprisonment.²⁹
- A person who produces, shares, or possesses child abuse material is liable for a maximum penalty of 10 years imprisonment.³⁰

²⁶ s 474.21 Criminal Code Act 1995 (Cth)

²⁷ s 474.24C Criminal Code 1995 (Cth)

²⁸ s 91G Crimes Act 1900 (NSW)

²⁹ s 91G Crimes Act 1900 (NSW)

³⁰ s 91H Crimes Act 1900 (NSW)

- A person who intentionally distributes an intimate image of another person without their consent is liable to 100 penalty units, 3 years imprisonment, or both (1 penalty unit is \$110).³¹
- A person that is involved in the production, dissemination, or distribution of child abuse materials becomes at risk of registration on the Child Protection Registry NSW (registered as a sex offender). Whilst there is discretion allowed for juvenile offenders to be non-registerable in the case that they are first time offenders, not the subject of full time detention or control order, and do not pose a risk to children, this is not guaranteed.³²

B. NATIONAL LAWS

- A person who accesses, shares, publishes, or solicits child pornography material using the internet or technology faces a maximum penalty of 15 years imprisonment.³³
- A person who possesses, controls, produces, or obtains child pornography material for use through the internet or technology faces a maximum penalty of 15 years imprisonment.³⁴
- A person placed on the state sex offenders registry (Child Protection Registry in NSW) may find themselves on the Australian National Child Offender Registry, which allows police to record and share information about offenders between the states and territories.

6. SUPPORT SERVICES

Young people are encouraged to contact the following services for health-related support if they have been the victim of unwanted sexual contact, or if they are considering engaging in sexual activity:

- [Kids Helpline](#) provides free and private counselling to young people up to age 25. They can be contacted at any time, day or night on 1800 55 1800.
- [1800Respect](#) is a national helpline, providing counselling, information and support. They can be contacted on 1800 737 732, 24 hours a day, 7 days a week.
- [1800MYLINE](#) is a national helpline for people needing counselling advice or referrals to helpful services. They can be contacted on 1800 695 463, 24 hours a day, 7 days a week.

³¹ s 91Q Crimes Act 1900 (NSW)

³² S 3C Child Protection (Offenders Registration) Act 2000 (NSW)

³³ s 474.22 Criminal Code Act 1995 (Cth)

³⁴ s 474.23 Criminal Code Act 1995 (Cth)

- [Family Planning NSW](#) runs a hotline to provide information, advice and options for issues including contraception, pregnancy, sexual health and health relationships. They can be contacted on 1300 658 886, Monday to Friday, 8.30am-5pm.

For information on their legal rights and responsibilities, a young person can contact [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. Young people can access free legal information through their factsheets or access personalised legal advice and more specific help by pressing the pink "get help now" button located in the top right hand corner of the website

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Part 2 – Lesson notes

Lesson details	
Duration	45 minutes – 1 hour
Classroom set up	Computer and Project Students should have their own devices (if this is not possible, please e-mail YLA at admin@yla.org.au for alternate lesson materials)
Materials	1 x Presentation (PDF) 1 x Teacher's materials – 1 copy for the teacher 1 x Student worksheet – 1 copy per student
Presentation details	There will be 16 slides in the presentation slide deck to support the delivery of this module. Slides may be printed and provided to students should they request supplementary information.

Slide and Timing	Speaking notes	Other notes
1 0.5 minutes	Today we will be completing a module developed by Youth Law Australia through their TeachLaw initiative on the topic of image based abuse. Youth Law Australia provides free legal information and help to children and young people under the age of 25. They do this through providing information factsheets on their website and specific legal advice through their e-mail service. All of the information in this presentation was developed and checked by lawyers to explain what the law says and should not be taken as legal advice. If you want to know how the law might apply to a specific situation in your life, you can contact Youth Law Australia for more help.	Student will need to complete the survey on slide 3 - the survey is designed to be two-part with the first part being completed at the start of the lesson, and the second part being completed and submitted at the end of the lesson. Please emphasise to students that they should complete page 1 and then minimise their screen - <i>they should not exit the survey nor should they complete page 2 at the start of the lesson</i> . This survey is important in assessing students' preliminary knowledge, and could be used as a starting discussion question/diagnostic assessment. We require the survey to be completed so that we can assess the effectiveness of TeachLaw materials and make modifications as necessary. If you are unable to complete the survey online, please visit this page to download the paper survey.
2 0.5 minutes	You can find out more about Youth Law Australia's services through their website www.yla.org.au or through their social media.	
3 1.5 minutes	To begin this lesson, please go to the URL on the screen and complete the first page of the survey. Do not go to the second page as we will do that at the end of class. Once you have completed the survey, please minimise the browser but don't close the survey!	
4 0.5 minutes	The lesson today will cover the topics listed on the screen. I want to acknowledge that some of the content we cover in this lesson might be awkward, uncomfortable, hurtful or might remind you of something that you or someone you know has experienced and which could be upsetting to you. If, at any point in time, this content becomes too	

	overwhelming, we can take a short break or you can put your hand up and ask to step out for a moment. This is a safe place and we should all agree not to talk about the issues that come up here with people outside of this classroom in a way that could make other people feel bad e.g. gossiping.	
5 3 minutes	Before we get to what the law says, there are a few different definitions that we need to understand. The first one is consent. [read slide] Can anyone think of an example of something that might mean you haven't consented? We are now going to go to our worksheets and try and come up with some definitions for the next two terms we will look at, being sexting and image based abuse.	There are lots of factors that might prevent someone from giving consent including: <ul style="list-style-type: none"> • age • mental or physical impairment • being asleep or unconscious • being threatened, forced, trapped, or afraid • being tricked • being severely intoxicated or drugged • Being forced through a person's position of power
6 3 minutes	[read slide]. Turn to the person next to you and compare the definition on the screen to the one you wrote down in your notes. Do you think your definition matches what is on the screen? Is there anything you missed?	We encourage teachers to create a Venn diagram on the board to compare sexting and image based abuse and the kinds of words/behaviours which might be associated with each or with both if students are having difficulty understanding the difference.
7 7 minutes	[read slide]. Does your definition matches what is on the screen? Is there anything you missed? Even though this module is not about image based abuse, and deals only with the laws around sexting, it is important to understand that there are different laws that apply to image based abuse. Image based abuse is illegal. We are now going to complete part 2 of our worksheets.	
8 2 minutes	[read slide].	For deeper discussion during longer lessons, teachers may wish to use this slide to initiate discussion about whether child pornography laws <i>should</i> apply to sexting or not. This is a good opportunity to encourage students to think analytically about the nature of legal rights/responsibilities. NB: To clarify, sexting here refers only to consensual behaviour – if someone uses a nude in a way that you have not consented to, for example they share it with their friends, this is considered



		revenge porn and there are other laws that can apply which you may wish to visit other modules / YLA pages to find out more about.
9 3 minutes	[read slide]	<p>Given the legal complexity of these laws, please avoid all scenario-based questions and encourage young people to check out yla.org.au or e-mail Youth Law Australia at lawmail.org.au.</p> <p>Whilst this concept might be difficult to wrap their heads around, the main take home for students here is that there are two sets of laws which might apply and it is important to understand that the way that a “child” is defined, and the defences available might vary and so its important to consider the consequences of their actions.</p>
10 2 minutes	[read slide] The best rule to go by is to understand that it is risky to ever share, request or possess nudes when you’re under 18 because of the different laws that could apply.	Note “alone” here means the only person depicted in the image.
11 2 minutes	Before we move to the final activity, it’s important to recognise that as with any kind of decisions you might make in a relationship, or with another person, it’s important to do so safely and to remain healthy. These organisations can be contacted if you need support because you are thinking about sexting, or have sexted someone.	
12 2 minutes	These laws might be a bit confusing so we are now going to work through some examples to work out what laws might apply in each of the scenarios. We will do the first scenario together, and then the other 3 in small groups.	As students complete this section, it is anticipated that there will be an ample “side discussion” on whether or not it is “fair” that underage sexting should be considered child pornography. If this occurs, students should be encouraged to think analytically about the reasons behind these laws, what they would do instead, and even to challenge them on the idea of introducing an “age of consent” for sexting and if that would be appropriate. If possible, you may be able to conduct an all in class-discussion/debate on this issue to engage more gifted students.



13 15 minutes	[read slide]	The material that James has sent to Maddie is not considered child pornography as he is over 18 and it is unlikely that he or Maddie would get into trouble for possessing it or sharing it (as long as they both agreed to send/receive/keep the sext). However, if Maddie sent James a nude photo of herself, he could be found guilty of possession of child pornography. Maddie would not be found guilty under NSW laws for possessing a photo of herself, however she could be charged under National laws. The court would need permission from the Government to start a trial.
14 1.5 minutes	To conclude please go back to the survey you minimised at the start of class and complete page 2 before hitting submit. Please then turn to the person next to you and share one thing you have learnt from today's lesson.	
15 0.5 minutes		This slide can be left on the screen whilst students complete their survey and discuss one thing they have learnt.
16		Please leave this slide on the screen during question and answer time.

Part 3 – Student activities

The answers to the worksheet are as follows:

Part 1

For more advanced students, you might encourage them to discuss why the terms are different, or to talk about different scenarios that might constitute sexting or image based abuse. It's also a good idea to flag with students that these terms might mean lots of different things, and there might be lots of different words that get used e.g. revenge porn and you may ask students if they are familiar with these terms.

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.

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*.

Part 2

The answers to the questions are as follows:

1. A child is anyone under 16
2. A child is anyone under 18
3. True
4. True
5. Yes under national law, but not necessarily under NSW law
6. Yes under both laws
7. Jail time
8. True in NSW but not nationally
9. Delete the images – although other protective measures will depend on what laws were broken
10. False – age difference, defences etc

Part 3

It is important to stress in this activity that the scenarios should not take the place of actual legal advice. The answers to the scenarios are as follows:

1. The material that James has sent to Maddie is not considered child pornography as he is over 18 and it is unlikely that he or Maddie would get into trouble for possessing it or sharing it (as long as they both agreed to send/receive/keep the sext). However, if Maddie sent James a nude photo of herself, he could be found guilty of possession of child pornography. Maddie would not be found guilty under NSW laws for possessing a photo of herself, however she could be charged under National laws. The court would need permission from the Government to start a trial.
2. When Maddie sent the image, it was sexting since she agreed to send the image. However the other person has broken the law and this is considered image based abuse since Maddie didn't give permission for it to be kept.
3. Even if the person in the photo was over 18, it is arguable that this could be child pornography since the person in the photo "appeared" to be under 18 since Alicia claimed it was a photo of her. However, this would depend on the circumstances.
4. Under NSW law, Alicia has a legal defence available to her since she is the only person in the photo. However, she could still be charged under national law, and if the court receives permission from the Government, they could start a trial against her.