TeachLaw
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YOUTH LAW AUSTRALIA

Youth Law Australia

TEACHERS MATERIALS

MODULE: SEX AND SEXTING – NSW – YEARS 9-12

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 and sex and the defences available
1.2 Students define the terms consent, sexting, sex and age of consent
1.3 Students identify where to turn for help
1.4 Students understand rights and responsibilities when engaging in sex or sexting

Last updated: March 2019

Part 1 – Background information

1. INTRODUCTION

As students develop, they will continue to explore their sexual identity and sexual expression. Given there are a range of laws that can apply to young people engaging in various kinds of sexual behaviour, it is essential that young people understand the legal and health risks attached with various kinds of sexual behaviour.

This module explains the laws as it applies to two *consensual* sexual behaviours (having oral sex or sexting i.e. sending nudes). Young people who are considering engaging in sexual intercourse, oral sex or sexting should speak to a professional as this module is not intended to replace speaking to a health professional and should not be taken as legal advice.

2. DEFINITIONS

A. CONSENT

Consent is defined as "full and voluntary agreement".[1] It is against the law for a person to engage in sexual activity with another person if they do not give their consent. To understand when and how consent must be obtained, the following scenarios have been constructed. In each scenario, Person A is considered to be the person trying to engage in sexual activity, and Person B is considered to be the person who Person A is intending to engage in sexual activity with. The following laws of consent also apply to a situation where Person A tries to make Person B have sex with a third party.

Scenario 1: Actual knowledge[2]

It is unlawful for Person A to engage in sexual activity with Person B knowing that they have not given consent.

Scenario 2: Reckless knowledge[3]

It is unlawful for Person A to engage in sexual activity with Person B in a way that is reckless to the possibility that they have not consented.

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[1] s 61HE(2) Crimes Act 1900 (NSW)
[2] s 61HE(3)(a) Crimes Act 1900 (NSW)
[3] s 61HE(3)(b) Crimes Act 1900 (NSW)

Scenario 3: Reasonable basis[4]

It is unlawful for Person A to engage in sexual activity with Person B if they have no reason to believe Person B has given consent.

Scenario 4: Mistaken belief[5]

It is unlawful for Person A to engage in sexual activity with Person B, knowing they have only given consent due to a mistaken belief.

In deciding whether or not consent has been obtained, the Court will consider what steps Person A took to determine if Person B gave consent.[6] Person A cannot use self-induced intoxication as an excuse for not taking reasonable steps to obtain consent.[7] Also, Person A cannot use a lack of physical resistance by Person B as proof of consent.[8]

In addition to the above, consent cannot be given in the following circumstances:

- If Person B does not have the capacity to consent due to age;[9]
- If Person B does not have the capacity to consent due to cognitive understanding[10] e.g. if they have an intellectual disability, developmental disorder, neurological disorder, dementia, severe mental illness, or a brain injury that causes them to require supervision or access to services to enable independence (known as "social habilitation");[11]
- If Person B is asleep or unconscious;[12]
- If Person B is forced to have sex with Person A due to a threat of force, fear[13] or because they are being kept against their will;[14]
- If Person B has a mistaken belief about the identify of Person A,[15] mistakenly believes they are married to Person A,[16] or mistakenly believes that the sexual activity is necessary for health or hygiene reasons;[17] or
- If Person B is tricked into engaging in sexual activity through a mistaken belief about the nature of the sexual activity.[18]

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[4] s 61HE(3)(c) Crimes Act 1900 (NSW)
[5] s61HE(7) Crimes Act 1900 (NSW)
[6] s 61HE(4)(a) Crimes Act 1900 (NSåW)
[7] s 61HE(4)(b) Crimes Act 1900 (NSW)
[8] s 61HE(9) Crimes Act 1900 (NSW)
[9] s 61HE(5)(a) Crimes Act 1900 (NSW)
[10] s 61HE(5)(a) Crimes Act 1900 (NSW)
[11] s 61HD Crimes Act 1900 (NSW)
[12] s 61HE(5)(b) Crimes Act 1900 (NSW)
[13] s 61HE(5)(c) Crimes Act 1900 (NSW)
[14] s 61HE(5)(d) Crimes Act 1900 (NSW)
[15] s 61HE(6)(a) Crimes Act 1900 (NSW)
[16] s 61HE(6)(b) Crimes Act 1900 (NSW)
[17] s 61HE(6)(c) Crimes Act 1900 (NSW)

Finally, Person B might use one of the following reasons to demonstrate that they did not give consent:

- they were substantially intoxicated by drugs and/or alcohol;[19]
- they were intimidated, coerced or threatened in some other way than by force;[20] or
- Person A used their position of power or trust to force Person B to engage in sexual activity.[21]

These three reasons are different to the scenarios listed above as, in these cases, it is up to Person B to *prove* that they did not give consent for one of these reasons, whereas in the above scenarios, consent is *automatically assumed* to be negated[22].

B. SEX

In NSW, different laws apply to different kinds of sexual activity. This means that what a young person might not consider to be "sex" might be classified as sex according to the law. For this reason, it is important to understand the different terminology in use.

"Sexual intercourse" is defined as the penetration of any part of a body of one person (known as Person A), or an object manipulated by Person A into another person's vagina (including a surgically constructed vagina) or anus (known as Person B). Sexual intercourse also includes oral sex e.g. if any part of the penis of one person (known as Person A) is introduced into the mouth of another person (known as Person B), or performing oral sex on a female's genitalia.[23] **This module deals only with this kind of sexual activity.**

"Sexual touching" is when one person (known as Person A) touches another person (known as Person B) in a way that would be considered sexual. It includes when Person A touches Person B with any part of their body, or anything else, including if Person A or B are wearing something over the top of where they are being touched.[24] To determine if something is sexual, the following things must be considered:

- if the touching involved a person's genitals, anal area or breasts;
- if the touching was done to obtain sexual arousal or gratification; and
- the circumstances of the touching.[25]

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[18] s 61HE(6)(d) Crimes Act 1900 (NSW)
[19] s 61HE(8)(a) Crimes Act 1900 (NSW)
[20] s 61HE(8)(b) Crimes Act 1900 (NSW)
[21] s 61HE(8)(c) Crimes Act 1900 (NSW)
[22] s 61HE(5),(6),(8) Crimes Act 1900 (NSW)
[23] s 61HA Crimes Act 1900 (NSW)
[24] s 61HB(1) Crimes Act 1900 (NSW)
[25] s 61HB(2) Crimes Act 1900 (NSW)

A "sexual act" refers to an act other than touching, but may be considered sexual due to the area involved in the act (i.e. genitalia, anal area, breasts,), the reason for the act (i.e. sexual arousal or gratification) or the circumstances of the act.[26]

It will not be considered sexual intercourse, sexual touching or a sexual act if it was carried out for proper medical purposes.[27]

C. POSITION OF CARE OR AUTHORITY

Person A is in a position of care or authority over Person B if situations where there is a power or trust imbalance. Examples of care or authority relationships include if Person A is:

- a parent, guardian, step-parent or authorised carer to Person B or is the de facto partner of Person B's parent/guardian/authorised carer;[28]
- a teacher or staff member at the school where Person B is attending school;[29]
- a religious leader, sporting coach, musical tutor or other kind of coach, tutor, leader or instructor to Person B;[30]
- a custodial officer and Person B is an inmate;[31]
- a health professional and Person B is their patient.[32]

D. 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.

E. 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.

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[26] s 61HD Crimes Act 1900 (NSW)
[27] s 61HA(a), s 61HB(3), s 61HC(3) Crimes Act 1900 (NSW)
[28] s 73(3)(a) Crimes Act 1900 (NSW)
[29] s 73(3)(b) Crimes Act 1900 (NSW)
[30] s 73(3)(c) Crimes Act 1900 (NSW)
[31] s 73(3)(d) Crimes Act 1900 (NSW)
[32] s 73(3)(e) Crimes Act 1900 (NSW)

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

A. SEX AND AGE OF CONSENT

The age of consent is the age at which the law says a person can legally agree to engage in sexual intercourse. If an adult tries to engage in sexual intercourse with someone under the age of consent, they have broken the law.[33]

In NSW, the age of consent is 16 years old.[34] There are a few exceptions to this rule, and defences are available to two young people under the age of 16 who freely agree to engage in sexual intercourse with each other.

Whilst the age of consent is 16 years old, this will change if one of the two people have a position of care or authority over the other. If Person A is in a position of care or authority over Person B, it is illegal for Person A to engage in sexual intercourse with Person B until they are 18 years old[35].

Even though the age of consent is technically 16 in NSW, if two young people are aged above 14 years old and less than two years apart in age, they can agree to engage in sexual intercourse with each other and will not be found guilty of breaking age of consent laws.[36] This also applies to situations where one person is in a position of care or authority over another person.[37]

(I) PENALTIES

There are legal outcomes for people who break the existing laws. These can include a criminal record and going to jail, as well as risk of registration on the NSW Child Protection Register (registration as a sex offender).

Some of the penalties for the relevant offences are listed below. Note that each case will have mitigating and aggravating factors specific to them that influence the penalties, as well as being influenced by relevant defences- such as the defence of similar age.

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[33] s 66A- s 66DE Crimes Act 1900 (NSW)
[34] s 66A- s 66DE Crimes Act 1900 (NSW)
[35] s 73, s 73A Crimes Act 1900 (NSW)
[36] s 80AG(1) Crimes Act 1900 (NSW)
[37] s 80AG(1) Crimes Act 1900 (NSW)

Any person who has sexual intercourse with a child under 10 faces a maximum penalty of imprisonment for life. Any person who attempts to have sexual intercourse with a child who is under the age of 10 years or assaults them with the intent of having sexual intercourse faces a penalty of 25 years. If the child is aged 10 and under 14, the person is liable to 16 years imprisonment. This penalty is 20 years in circumstances of aggravation. (e.g. inflicted actual bodily harm, offence committed in company, offender is in a position of authority, victim is physically or cognitively disabled or impaired etc.). If the child is aged 14 and under 16, the person is liable to 10 years imprisonment. This penalty is 12 years in aggravated circumstances.

Any person who assaults a child who is 10 years and above, and under the age of 16, with intent to have sexual intercourse is liable to the relevant penalties above.

A person who sexually touches, incites sexual touching towards, or incites sexual touching from a child under the age of 10 years is liable to a maximum penalty of 16 years imprisonment. If the child is aged 10 or over, and under 16, the maximum penalty is 10 years imprisonment.

A person who commits a sexual act, incites a sexual act towards, or incites a sexual act from a child under the age of 10 is liable to a maximum penalty of 7 years imprisonment. If the child is aged 10 or over, and is under 16, the penalty is 2 years imprisonment. In circumstances of aggravation, this penalty becomes imprisonment for 5 years.

A person who has sexual intercourse with a young person who is under their special care and is aged 16 or above, but under the age of 17, is liable for imprisonment for 8 years. If the young person is or above the age of 17, but under the age of 18, the offender is liable for imprisonment for 4 years.

A person who sexually touches, incites sexual touching towards, or incites sexual touching from a young person under their special care that is of or above 16, and under 17, is liable to 4 years imprisonment. If the young person is of or above 17, and under 18, the offender is liable to 2 years imprisonment.

By committing registrable offences, such as the above, a person opens themselves up to becoming a registered person on the NSW Child Protection Register. The consequences of this include being bound by reporting obligations, and many other restrictions on travel and other activities.[38] There is legislation that allows for the discretion to treat child offenders as non-registrable if the person was under 18 at the time of the offence, is not a prior offender, is not subject to full-time detention or control order because of the offence, and does not pose

[38] Child Protection (Offenders Registration) Act 2000 (NSW)

a risk to children.[39] However, it is important to note that while there is discretion to make juvenile offenders non-registrable in some cases, this is not guaranteed.

B. SEXTING LAWS

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.

(I) NSW LAWS

In NSW, it is a crime to produce, share, request or possess child abuse material.[40] Child abuse material refers to pictures, videos or texts[41] that depict someone *under* 16[42] who:

- is, or appears to be a victim of torture, cruelty or physical abuse[43];
- is or appears to be engaged in a sexual act, is posing sexually[44] or is showing their private parts[45] (genitals, anus or breasts of a female) [46]; or
- is in the presence of someone of any age who is or appears to be engaged in a sexual act or is posing sexually[47].

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.[48]

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.[49]

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[39] Child Protection (Offenders Registration) Act 2000 (NSW) s 3C
[40] S 91G, s 91H Crimes Act 1900 (NSW)
[41] s 91FA Crimes Act 1900 (NSW)
[42] s 91FA Crimes Act 1900 (NSW)
[43] s 91FB (1)(a) Crimes Act 1900 (NSW)
[44] s 91FB (1)(b) Crimes Act 1900 (NSW)
[45] s 91FB (1)(d) Crimes Act 1900 (NSW)
[46] s 91FB (4) Crimes Act 1900 (NSW)
[47] s 91FB (c) Crimes Act 1900 (NSW)
[48] s 91FB(2) Crimes Act 1900 (NSW)
[49] 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.[50]

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 material[51];
- the person did not request the material and took reasonable steps to get rid of it once they realised it was in their possession[52];
- it was made, shared or possessed for public benefit (e.g.to enforce the law or administer justice)[53];
- the person making, sharing or possessing the material was a police or law enforcement officer and it was reasonably necessary for their job[54];
- the material was classified under the Classification system[55]; or
- it was necessary for research purposes[56].

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

- the person possessed material depicting themselves alone[57]; 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.[58]

[50] s 91HAA Crimes Act 1900 (NSW)
[51] s 91HA(1) Crimes Act 1900 (NSW)
[52] s 91HA(2) Crimes Act 1900 (NSW)
[53] s 91HA(3), (4), (5) Crimes Act 1900 (NSW)
[54] s 91HA(6) Crimes Act 1900 (NSW)
[55] s 91HA(7) Crimes Act 1900 (NSW)
[56] s 91HA(8) Crimes Act 1900 (NSW)
[57] s 91HA(9) Crimes Act 1900 (NSW)
[58] s 91HA(10) Crimes Act 1900 (NSW)

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.

(II) 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.[59] 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.[60]

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.[61]

Because the image has to be 'offensive' to the average person,[62] 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.[63]

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.[64]

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.

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[59] s 474.19(1) Criminal Code 1995 (Cth)

[60] 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

[61] s 473.1, definition of 'child pornography material', definition of 'material' Criminal Code 1995 (Cth)

[62] s 473.4 Criminal Code 1995 (Cth)

[63] 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

[64] s 474.20(1) Criminal Code 1995(Cth)

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:

- 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 purposes[65].

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.[66]

(II) PENALTIES

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.

The following penalties apply for breaking NSW laws:

- Any person who uses a child under 14 for the production of child abuse material faces a maximum penalty of 14 years imprisonment.[67]
- If the child is of or above 14 years, the maximum penalty is 10 years imprisonment.[68]
- A person who produces, shares, or possesses child abuse material is liable for a maximum penalty of 10 years imprisonment.[69]
- 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).[70]

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-

[65] s 474.21 Criminal Code Act 1995 (Cth)
[66] S 474.24C Criminal Code 1995 (Cth)
[67] S 91G Crimes Act 1900 (NSW)
[68] s 91G Crimes Act 1900 (NSW)
[69] s 91H Crimes Act 1900 (NSW)
[70] s 91Q Crimes Act 1900 (NSW)

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.[71]

The following penalties apply for breaking 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.[72]
- 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.[73]
- 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.

C. OTHER LAWS

Below are some of the common laws governing sexual activity which young people should be aware of. This list is by no means exhaustive and if a young person is ever concerned they have broken the law they should speak to a lawyer immediately.

In NSW it is illegal to:

- have sexual intercourse with another person without their consent (including if a third party is involved);[74]
- have sexual intercourse with a person under the age of consent[75] (unless a defence applies);[76]
- sexually touch another person without their consent (including if a third party is involved);[77]
- sexually touch a person under the age of consent[78] (unless a defence applies)[79];
- perform a sexual act on another person without their consent (including if a third party is involved);[80] or

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[71] S 3C Child Protection (Offenders Registration) Act 2000 (NSW)

[72] s 474.22 Criminal Code Act 1995 (Cth)

[73] s 474.23 Criminal Code Act 1995 (Cth)

[74] S 61I Crimes Act 1900 (NSW)
[75] s 66C Crimes Act 1900 (NSW)
[76] s 80AG Crimes Act 1900 (NSW)
[77] ss 61KC-61KD Crimes Act 1900 (NSW)
[78] s 66DB Crimes Act 1900 (NSW)
[79] s 80AG Crimes Act 1900 (NSW)
[80] S 61KE Crimes Act 1900 (NSW)

- perform a sexual act on a person under the age of consent[81] (unless a defence applies).[82]

More serious penalties may apply if the sexual activity is done in a way that inflicts harm on someone else.[83]

In addition to the criminal laws on sexual activity, 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. SEXUAL HEALTH

Deciding to engage in sexual intercourse with someone is a big step. If a young person decides at any time that they do not want to continue, they have the right to say no and the other person **must** respect their choice. There are both physical and emotional risks in engaging in sexual intercourse. If a young person makes the decision to engage in sexual intercourse, it is important that they speak to a counsellor if they are concerned or they aren't sure if what is going on is healthy, or if it is impacting their emotional or mental wellbeing. Also, young people should be aware of the risks that are involved with unsafe or unprotected sex. These risks include:

- getting a sexually transmissible infection (STI) like chlamydia;
- getting a blood borne virus like HIV; or
- unplanned pregnancy.

6. SUPPORT SERVICES

Some of the reasons why young people might not speak to a lawyer include concerns about cost, the "seriousness" of the situation, the stigma of seeking legal help or because they don't realise their problems are legal. A lawyer can help a person to understand what the law says on a particular issue, and what the best course of action is to resolve the problem. For example, a lawyer could provide general information or advice, write a letter or other document, contact someone, start court proceedings, help talk to the police or interpret something. They can also help work out what option to fix a problem might be best based on money, time, effort and what the law says.

Fortunately there are many services available to young people for free. These services may offer specific help in a way that is convenient for young people including operating outside

[81] s 66DD Crimes Act 1900 (NSW)
[82] s 80AG Crimes Act 1900 (NSW)
[83] Pt 3, Division 10, Subdivision 2-7 (see aggravated) Crimes Act 1900 (NSW)

of traditional hours, offering online services, and allowing them to contact a lawyer without parental permission.

In addition, lawyers have a responsibility to keep client data and information confidential, so children can be assured that their parents/guardians/other people won't be informed about their issues.

Legal For free and confidential legal help, you can contact **Youth Law Australia.** They have free legal information at yla.org.au through their factsheets and personalised legal advice at lawmail.org.au. The LegalAid **Youth Hotline** provides legal advice and information to people under the age of 18. Its business hours are 9:00 am - 12:00 am weekdays, with a 24 - hour service from Friday 9:00 am to Sunday 12:00 am. Call them on 1800 10 18 10. Children can seek help from a **community legal centre** that helps adults. You can search for your local community legal centre from this website: www.naclc.org.au **LawAccess** provides free information, advice and referrals on 1300 888 529, Monday to Friday from 9am to 5pm.	***Counselling*** For counselling support 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 aged 5-25 about anything that's troubling them or email them or chat online at http://kidshelpline.com.au. **eHeadspace** provides counselling to young people aged 12-25 who are worried about their mental health or are feeling alone. Call them on 1800 650 890 from 9am to 1am or email them or chat online at: https://www.eheadspace.org.au. **Lifeline** offers 24-hour crisis support and suicide prevention counselling on 13 11 14 to speak to a counsellor online from 7pm to 4am at: https://www.lifeline.org.au/Get-Help/Online-Services/Online-Services.
Relationship support For family counselling support you can contact **Relationships Australia** for family counselling and mediation on 1300 364 277 or visit them at https://www.relationships.org.au. Family Planning clinics provide sexual healthcare (safe sex) services and advice. Call **Family Planning NSW** on 1300 658 886 or visit them online at www.fpnsw.org.au For relationship support contact **1800RESPECT** on 1800 737 732 or visit them at https://www.1800respect.org.au. To speak to someone about relationship issues and what is or isn't ok, call **1800 MYLINE** (1800 695 463).	***Other*** The Office of the **eSafety Commissioner** is committed to increasing online safety and supporting people to feel protected online. As part of this, they can hear reports on cyber-bullying and help to get the offensive material taken down. They also have helpful resources and guides on what you can do to remain safe online. Visit them online at https://www.esafety.gov.au/ The **FairWork Ombudsman** can provide information and help on anything to do with employment e.g. working hours or pay rates. Call them Monday-Friday from 8am to 5.30pm on 13 13 94.

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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 sex and sexting. 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 - *they should not exit the survey nor should they complete page 2 at the start of the lesson.* 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	

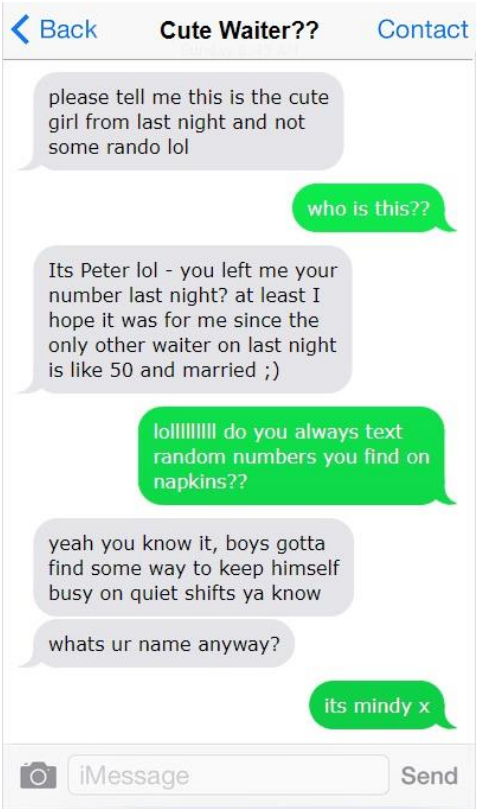
	might be awkward, uncomfortable, hurtful or might remind you of something that you or someone you know has experienced and which could be upsetting to you. If, at any point in time, this content becomes too overwhelming, we can take a short break or you can put your hand up and ask to step out for a 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 5 minutes	[read out slide]. Can anyone think an example of the factors that might stop someone from being able to give consent or might indicate that consent has not been given? This might be from the video or from your general knowledge. [unconscious, later says no etc] Is there anything about consenting to sex that is still unclear?	Please begin by playing the "Tea Consent (Clean)" video: https://www.youtube.com/watch?v=fGoWLWS4-kU
6 2 minutes	[read slide] This definition means that the laws we are about to look at don't apply to kissing, dating, holding hands or other kinds of romantic behaviour. If you have questions about other kinds of sexual behaviour, there are other laws that may apply and its always a good idea to speak to a lawyer or to have a look at the Youth Law Australia website if there is anything you want to know more about.	
7 2 minutes	[read slide] Examples of care or authority include if they are a teacher, sports coach, tutor, music tutor, youth group leader, and the list can go on.	You may also draw the students attention to the sections of legislation here to indicate that these are criminal laws and criminal penalties may apply.
8 2 minutes	[read slide].	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
9 3 minutes	[read slide].	For deeper discussion during longer lessons, teachers may wish to use this slide to initiate discussion about whether child pornography laws *should* 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.
10 2 minutes	[read slide]	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
11 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.
12 2 minutes	There are lots of different aspects of a relationship that you might need to discuss with someone if you decide to have sex or send nudes. For example, understanding the risks attached to having unprotected sex including unwanted pregnancy, or the risk of disease, or the risks of sending nudes that might be considered child pornography, or that someone might use your nudes in a way that you have not consented to.	The thing from this slide we want to emphasise the most is having the ability to have an open discussion – students should be encouraged to discuss what this might mean and what it might look like i.e. if you don't feel comfortable talking to your potential partner about the risks involved in having sex, what to do you keep yourselves protected or how far you are both ready to take things, it would be a good idea to wait until you are able to have that conversation.
13 20 minutes	We are going to work in small groups now to go through a scenario. In this scenario we are going stop at various points and answer questions about what the law says and apply the laws from the lesson to the scenario. We will then come back together as a big class to discuss our answers.	Please see below 3. Student activities for guidance on completing this activity. If possible, it would be good to let students break into small groups to read through the scenario and complete the activity before coming together to discuss as a class. Since this is the most important aspect of the lesson, it would be wise to cut out other parts to maximise time to complete the activity.
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 following scenario is based on the experiences of a young person that Youth Law Australia advised. The names, ages and some of the facts have been changed to protect the young person's privacy.

Mindy met Peter while she was out to lunch on 30/3/2019 for her birthday with her parents. He was the waiter at the restaurant she went to with her friends. Mindy's date of birth is 29/3/2005 (making her 14 at the time of the dinner) and Peter's date of birth is 31/7/2002 (making him 16 at the time of the dinner). Mindy thinks that Peter is really cute and she sets up the following message chain with her friends – Aimee, Katherine and Jayne.

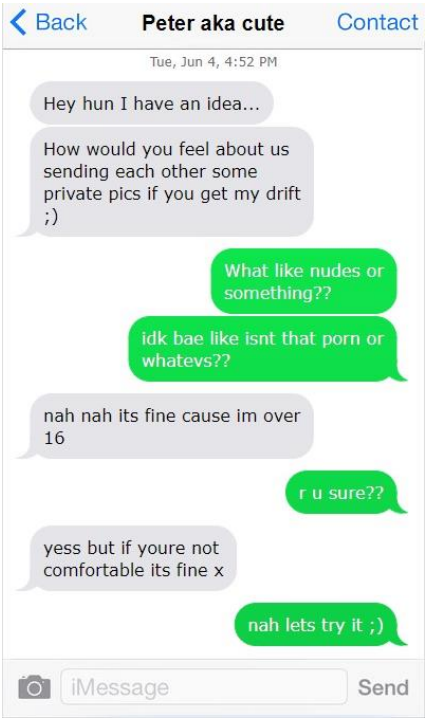


Aimee dares Mindy to leave her phone number on a napkin for the "cute waiter" who they later found out was called Peter. Mindy leaves her number and the next day she gets a series of messages from a new number.

Peter and Mindy start chatting and eventually they decide to meet up. Peter knows Mindy is 14 years old, and Mindy knows Peter is 16 years old. When they meet up, they go out for dinner and end up holding hands and at the end of the date, Peter kisses Mindy on the cheek. *Has Peter broken any age of consent laws? Why/why not?*

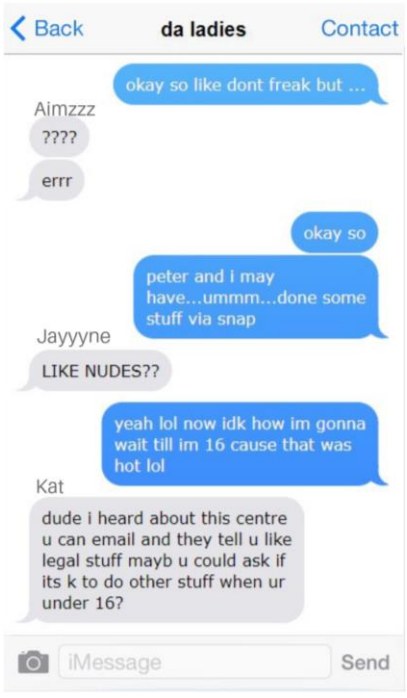
Answer: kissing and holding hands do not fall under the definition of "sex" for the purposes of age of consent laws and therefore they do not apply and Peter has not broken the law.

As Peter and Mindy's relationship gets more and more serious, they start to talk about other ways to express their feelings for each other. They're pretty sure they can't have sex but then one day Peter sends Mindy this text.



After this exchange, Mindy sends Peter a snapchat of herself topless. Her face is visible in the photo. It has the caption "feeling cute might delete later xx". You can assume that neither Mindy nor Peter saved the snapchat of Mindy.

Have Peter and Mindy broken any laws here? What laws have they broken?



Answer:
Mindy – in NSW Mindy has *NOT* broken the law as the legal exception will apply given she was under 18 at the time and the only person in the image. NATIONALLY, Mindy has broken the law by sharing a nude photo of herself while she is under 18.
Peter – yes, he has broken the law by requesting that Mindy send him a nude photo as she is under 18.

Mindy and her friends then have the following conversation and Mindy decides to e-mail Youth Law Australia to find out how far she can legally go with Peter. Pretend you are a lawyer from Youth Law Australia. How would you respond? **Hint: remember Mindy and Peter's dates of birth**

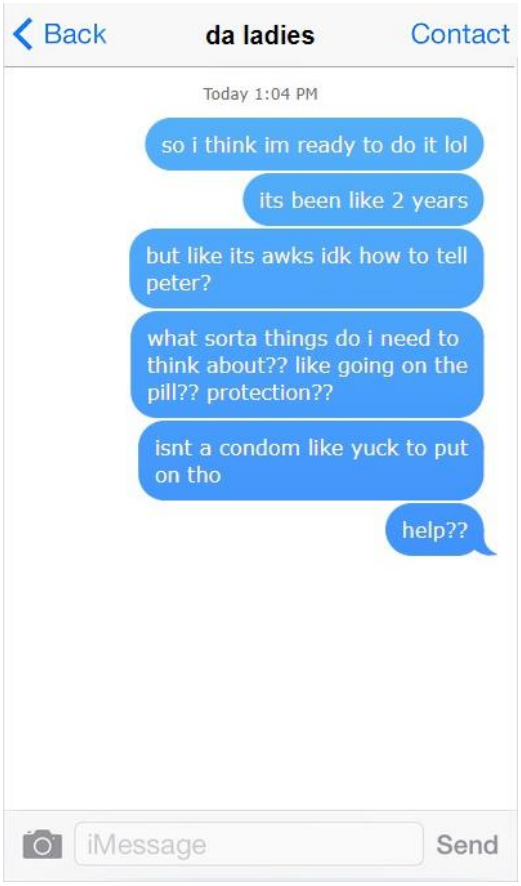
Answer: given Mindy is under the age of 16 years old, it is illegal for Peter to have sex with her without breaking any age of consent laws. Technically there is a

legal defence available to people over the age of 14 who want to have sex with someone else who is less than 2 years older than them. Even though Peter is 16, he is more than 2 years older than Mindy as his date of birth is in 2002 and he will turn 17 shortly. Therefore it is illegal for Peter to have sex with Mindy. Sex in this case includes intercourse, and oral sex.

Mindy is disappointed but she and Peter agree to wait until she is 16.

Pretend it is two years later, Mindy is now 16. She and Peter have been together for 2 years and have waited to have sex.

Mindy is now thinking about losing her virginity to Peter on her 16th birthday. Mindy sends the following texts to her friends for support.

Pretend you are one of Mindy's friends What types of support services, and other information would you think she needs to know?

Answer: Answers here may vary but students should identify the importance of having an open conversation, fully consenting to behaviour, talking to a counselling/support service e.g. family planning or Kids Helpline and to use protection to reduce risks such as unwanted pregnancy or STIs. Also, students should recognise that they should not film the sexual act as they're still under 18 and it could still be considered child pornography under national laws.