



# Safe on Social

## Youth & Online Pornography

### Cheat Sheet

#### Young people and online pornography

This section refers specifically to pornography and youth. It outlines the law around viewing, producing and sending pornography and the relationship to sexting.

This section cannot be summarised. It is essential that parents and school read the relevant state and gain an understanding of the extent of the law that a sexting teen may get themselves into. Most states rely on the discretion of police for single incidents, but any hint of a threat or element of intimidation will bring down the full weight of the law on your teen. These incidents are the ones police will and do prosecute under.

A position on the sex offender's registry is not something any community would wish upon their teen, yet many are unaware of the legal charges available to victims of this kind of harassment.

#### Introduction

It has become increasingly simple for Australian children to access pornographic material online. So easy, that recent figures show that the age a child is exposed to porn in Australia has dropped to four years old. It is a problem being debated at a State and Federal level across the country.

There are legal ramifications for teens in some circumstances, and parents need a stern warning – they cannot simply plead ignorance about both the social media their children use, and their own abilities to navigate and understand the content their children are accessing. It is shockingly easy for children to come across pornography online which means parents must take an interest in their child's life online.

Of additional concern is that a number of teenagers are, under law – creating and distributing material that can be classified as child pornography on a regular basis. Sexting has some unexpected legal consequences that parents and many teens are simply not aware of, and this is aside from the fact that over 90% of all sexting images will end up on other social media sites.

Compounding the problem in Australia is the disparity between Federal and State laws. This makes it all the more important that an awareness of what our laws are, and when they apply is taught to both parents and their children.

Outlined below are the current national and state positions on these matters. It can be confusing when determining which law applies in which circumstances.

Federal law may apply with the permission of the Attorney General in most states, or depending on the exact nature of the incident that occurred, it must be remembered that this law takes precedent over the law in each state.

## Viewing Pornography

Generally speaking, in the eyes of Australian law, it is not illegal for someone under the age of 18 to view pornography personally and in private.

*(Such videos found online maybe restricted by ACMA (Australian Communication and Media authority). This body focuses around requesting content be removed that breaches ratings legalities, but does not regulate viewers itself.)*

In certain circumstances there are exceptions ,and this is where some teens can be in breach of the law.

1. When the material is classified as child exploitation/abuse/pornography – nude and sexual images of an individual under the age of 18.
2. When pornographic material is sent to other people who are under 18.
3. When pornographic material is shown to others under 18. This applies to your home as well.
4. When pornography is sold to someone under 18.
5. When an individual attends a showing of an 18+ film when they are under 18+.
6. When a school's enrolment policy, ICT use policy, Wi-Fi or free server has specific rules about content that can be accessed and pornography is accessed against these standards.
7. Various pornographic sites such as Porn Hub etc have the age requirements specifically listed. By answering the initial question that will appear on the sites around age restrictions with a lie, an individual is breaching the Terms and Conditions of the website. The UK has recently introduced a required credit card age verification system for those accessing porn sites with 18+ content. The Australian eSafety Commissioner is tracking the progress of this new law.

[www.abc.net.au/news/2017-07-18/calls-to-block-online-porn-for-under-18s/8720330](http://www.abc.net.au/news/2017-07-18/calls-to-block-online-porn-for-under-18s/8720330)

When images viewed cross the line into child exploitation material pornography **the rules change**.

**Child pornography** is defined as a photo, video or image that shows a person under 18 engaging in sexual activity or being depicted in a sexual manner or context (showing private parts included). This includes cartoons, and individuals masquerading as under 18's. Nudity and suggestive photos and videos are included, and the burden of proof must be to what a reasonable person finds offensive.

Making, sending, asking for, sharing and possessing child pornography are all offences under the law – including pictures of someone you know, or making pictures of yourself to send to another person.

## Federal Law

Currently Federal Child pornography laws found in the Criminal Code 1995 (Cth) state that it is illegal to take, share, keep and distribute images of a sexual nature (AND this includes the individual if they are sending images of themselves) if the person involved is under 18, by phone or online.

The most relevant section is s474.19 – Using a carriage service for child pornography material. The offence lists the following criteria to prove guilt in an individual.

An offence is recorded if a person:

- Accesses material or causes material to be transmitted to himself/herself
- Transmits, makes available, publishes, distributes, advertises or promotes said material
- Asks for material.

The above behaviours fit into this crime definition when the person performs any of these above behaviours using a carriage service (phone, internet) and when the material is classified as child pornography.

The charge for any of the listed offenses can be up to 15 years jail, and a listing on the sex offenders register or NCOS - National Child Offender System.

It is theoretically possible for a child or a young adult to be charged under this Commonwealth offence, as it applies to children under the age of 18 years or those who appear to be under 18 years of age.

The welcome qualifier is that the Attorney General must first consent for the prosecution to continue against someone under the age of 18 at the request of the police in each state.

This is the Federal position. Using the internet and a mobile phone for pornography can make things a Federal jurisdictional matter.

Across Australian States and Territories, there have been variances to their Criminal Codes to reflect the sexting behaviour of teens. This has been done in an effort not to criminalise the more benign incidents.

It is always a criminal act across the country to record or photograph any individual without their consent whilst performing private actions (sex, undressing, going to the bathroom, bathing). The police consistently take a very dim view of individuals possessing underage images who try to use these for the purposes of harassment, or as a threat – this includes those that stem from teens sexting.

## State Law

**Each state has varied laws. They are not consistent across the country. Depending on which state you are in, a different set of laws will apply with different consequences. But in all circumstances, Federal law is applicable – this makes sexting for all individuals under 18 a crime, and they cannot consent legally to this activity.**

**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.

**Unless** the parties involved are of a similar age. This recent change to the law offers a defence for teens charged in NSW – called the 'similar age defence'.

It is important to note that should sexting be used to harass an individual in any way, it will be 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 changes made to child pornography laws in December 2018, there are two new things to consider-*

The law, which came into effect in New South Wales in December 2018 — provide a legal exception for children under 18 taking, sharing or keeping nude photographs of themselves and others, particularly if the sexting is consensual and parties are within a similar age of each other.

The changes will reduce the risk that children engaging in “normal sexual development and experimentation among teenagers” becoming criminalised, the Government said.

The laws also provide a “similar age” defence for consensual sex between children where both are at least 14 years old, and when the age gap between them is less than two years.

The new laws are among a raft of changes introduced across the state in the wake of the Royal Commission into Institutional Responses to Child Sexual Abuse.

Attorney-General Mark Speakman said the reforms were “putting the safety of children front and centre and fixing shortcomings in the law” identified by the royal commission.

Mr Speakman said from 1st December 2018, it would be an offence to groom the parent or carer of a child for sexual purposes.

*“The changes recognise sexual predators sometimes provide adults with gifts, money and other benefits as a way of cultivating their trust and gaining access to their children,” Mr Speakman said.*

In many cases the police, who may act without the permission of the Attorney General, can charge younger offenders with less serious offences than child pornography. Warnings, cautions, youth justice conferencing, deferring to a school and parents are often solutions provided.

Should the sexting cross the line into harassment, include threats to distribute or have any element of exploitation, it is deemed image-based abuse. It is highly likely the police will choose to pursue a more serious course of action.

**NB - if sexting occurs between a teen in NSW and a teens in QLD ( or any other interstate conversations) – federal laws will apply and these currently lack the similar age defence.**

For further information

[www.justice.nsw.gov.au/Documents/Media%20Releases/2018/new-legislation-strengthen-child-sexual-abuse-laws-factheet-service-providers.pdf](http://www.justice.nsw.gov.au/Documents/Media%20Releases/2018/new-legislation-strengthen-child-sexual-abuse-laws-factheet-service-providers.pdf)

Relevant legislation

- Anti-Discrimination Act 1997 (NSW)
- Child Protection (Offenders Registration) Act 2000 (NSW)
- Crimes Act 1900 (NSW)
- Criminal Code 1995 (Cth)
- Sex Discrimination Act 1984 (Cth)

## VICTORIA

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)
- 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 laws 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 Generals 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.

The penalties in Victoria can extend to up to 15 years in jail, and a listing on NCOS.

For individuals under 16 years, the maximum penalty is 10 years in jail. For those cases involving a 16/17-year-old the penalty is up to 5 years in jail.

The sentences were envisaged to prevent adults abusing children – hence the length of time available to sentencing judiciary. There was no consideration given at the formation of these laws that theses would eventually be used against young person's taking images of themselves or others of a similar age.

Police do have the discretion in sexting case to avoid the child pornography legislation and can;

- Charge with a less serious crime
- Send an individual to youth justice conferencing
- Provide a warning or a caution
- Let the individual's parents or school determine a punishment.

Any involvement of harassment or a threat in the sexting incident is likely to attract more serious charges.

If an individual under 18 is not on the sex offenders register in another state, they will not be placed on the register.

If an individual is 18 and has committed a sexting offence with another who is under 18, they will be placed on the register.

If you were unaware that you were filmed, and someone has taken an image of you

- Undressing
- On the toilet
- Taking a shower or bath
- Performing a sexual act

These circumstances will see the person who took the image, and then forwarded it on be liable for up to years in jail with a fine.

### *Relevant legislation*

- Classification (Publications, Films and Computer Games) Enforcement Act 1995 (Vic)
- Crimes Act 1958 (Vic)
- Criminal Code Act 1995 (Cth)
- Equal Opportunity Act 2010 (Vic)
- Sexual Discrimination Act 1984 (Cth)
- Sex Offenders Registration Act 2004 (Vic)
- Summary Offences Act 1966 (Vic)
- Surveillance Devices Act 1999 (Vic)

## **TASMANIA**

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, secret recordings 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) s 130E(2)*.

In Tasmania, the reasons individuals may not be charged with sexting are because

- Federal child pornography laws cannot be used against individuals under 18 without the permission of the Attorney General
- Lawful sexual acts or consensual sexual acts between individuals of a similar age do not attract child pornography and indecency laws
- The police have a general policy against laying charges in these circumstances

A big age difference between the parties is more likely to attract a charge.

Again, any threats or harassment involved in the sexting incident will attract harsher penalties. Under Tasmanian law penalties for child pornography can exceed the 15 years given under Federal law.

Any individual who will be considered by the court as unlikely to pose a risk of committing a similar crime will not be placed on the sex offenders register. More than one charge, will however result in the guilty party being placed on NCOS.

### *Relevant legislation*

- Anti-Discrimination Act 1998 (Tas)
- Classification (Publications, Films and Computer Games) Enforcement Act 1995 (Tas)
- Community Protection (Offender Reporting) Act 2005 (Tas)
- Criminal Code Act 1995 (Cth)
- Criminal Code Act 1924 (Tas)
- Police Offences Act 1935 (Tas)

## WESTERN AUSTRALIA

Western Australian law states that an individual may consent to both sex and sexting at the age of 16. This clash with Federal law sees the need for the permission of the Attorney General before proceeding with charges under Federal child pornography laws. This is not necessary under relevant state law.

The police have not yet provided a series of guideline to instruct the public how they will deal with sexting and child pornography. They may choose to use discretion, mediation and warnings in lieu of actual charges, but without a statement to that intent care should be used by individuals involved in sexting.

Harassment and threats are again likely to attract more serious charges.

In a rare occurrence a teenager male in WA has been placed on the sex offender's registry for filming a friend having sex with a girl, and forwarding it to another individual. Such happenstance is unusual, but teens should be aware this has happened in WA and charges are laid when police view it as necessary.

### *Relevant legislation*

- Classification (Publications, Films and Computer Games) Enforcement Act 1996 (WA)
- Community Protection (Offender Reporting) Act 2004 (WA)
- Criminal Code Act 1995 (Cth)
- Criminal Code Act Compilation Act 1913 (WA)
- Equal Opportunity Act 1984 (WA)
- Surveillance Device Act 1998 (WA)
- Working with Children (Criminal Record Checking) Act 2004 (WA)

## QUEENSLAND

Queensland law states that an individual may consent to most forms of sexting at the age of 16. As with all other states the Federal law overrides that of the state, and makes sexting for those under the age of 18 an illegal act.

As in Western Australia, the police have not released a summary of intent stating how they will proceed with sexting offences for teenagers but their position seems to have a focus on educating individuals rather than penalising them.

However, there have been 1500 individuals under 18 who have been caught with material that can be classified as child exploitation in recent, but only 28 have been sentenced in court. The remainder have been warned, cautioned or addressed by schools and parents.

Queensland is active in pursuing sexting offenses.

When harassment and threats are involved the more serious penalties under the law are incurred.

Penalties in QLD include up to 14 years in jail for an indecent picture of a person under 16, and over 20 years if the person involved is under 12 years old.

Individuals charged with only one child pornography offense will not be placed on the sex offender's registry.

When the sexting takes place over several days or involves more than one person – there is a strong likelihood that if convicted, an individual will be placed on the register.

### *Relevant legislation*

- Anti-Discrimination Act 1991 (Qld)
- Child Protection (Offender Reporting) Act 2004 (Qld)
- Commission for Children and Young People and Child Guardian Act 2001 (Qld)
- Criminal Code Act 1995 (Cth)
- Criminal Code Act 1899 (Qld)

## **NORTHERN TERRITORY**

Sexting is viewed as a crime in the NT if anyone under 18 is involved. This applies even if there is consent, and even if they are over the age of consent (16 years)

The Northern Territory follows the Federal standard arguing that an individual under the age of 18 is unable to consent to sexting, making all kinds of interaction illegal even if both parties agree.

While the police, as with other states have not made it formally clear how they aim to proceed in these matters, the involvement of harassment or threats ratchet up the likelihood of charges and a placement on the sexual offenders registry.

For person under 18, permission from the Attorney General must be sought before child pornography charges are laid.

### *Relevant legislation*

- Anti-Discrimination Act 1996 (NT)
- Child Protection (Offender Reporting and Registration Act)
- Criminal Code Act 1995 (Cth)
- Criminal Code Act 1983 (NT)
- Sexual Discrimination Act 1984 (Cth)
- Surveillance Devices Act 2007 (NT)

## **SOUTH AUSTRALIA**

The South Australia law allows that an individual may both consent to sex and to sexting at the age of 17. Like all other states though, Federal law sits above the laws legislated within the state – making all sexting activity illegal for those under 18 years old.

In SA asking for a nude or sending one to an individual under 17 is considered an indecent act and therefore crime. Younger teens engaging in sexting need to be aware that they leave themselves open to other legal charges under South Australian law aside from those which pertain to sexting specifically.

In a variation to other states, South Australia has legislated changes to 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). This means the police have additional scope to charge individuals under state law.

Persons who threaten to use a naked image with the intention to cause fear, or choose to ignore the fact they may have caused fear in the individual threatened can attract a 2 year jail term and a fine of up to \$10,000 if the other person involved is under 17 years old.



All offences listed can result in imprisonment and large fines. Under 17's have been and are continuing to be charged with sexting offences in the state.

As with other states, the permission of the Attorney General must be sought before pursuing child pornography and indecency charges for individuals under 18.

#### *Relevant legislation*

- Child Sex Offenders Registration Act 2006 (SA)
- Criminal Code Act 1995 (Cth)
- Criminal Law Consolidation Act 1935 (SA)
- Equal Opportunity Act 1984 (SA)
- Sexual Discrimination Act 1984 (Cth)
- Summary Offences Act 1953 (SA)

## **ACT**

Sexting is viewed under Federal law in the ACT making it a crime for individuals under the age of 18.

For individuals under 18 involved in sexting, it is considered child pornography, an indecent act, an act of depravity or a pornography performance for those persons filming themselves.

If you are under 18 you cannot agree to sexting. End of story.

In the ACT even simply asking/sharing/taking or sending a nude picture can be viewed as an act of depravity if any one of the parties involved is under 16 years old . A first offence can result in up to 7 years in jail.

If those involved are over two years apart in age – the indecent act charge can be added, which equates to a two-year jail sentence.

Fortunately, as with other states, police tend to use discretion in their charges though any hint of threats or coercion or harassment will result in heavy charges being laid.

Specific to the ACT – if an individual is filmed in a manner that could be considered an invasion of privacy – this filming will also be considered an indecent act. The parameters for this charge specify that the video must be of an indecent matter (showing genitalia or breasts) and that a reasonable person would determine this to be an invasion of privacy. If an individual under 18 years old is the subject of the clip and child pornography charges will also be added.

Before laying charges under Federal child pornography law, the permission of the Attorney General must be sought by police.

#### Relevant legislation

- Crimes Act 1900 (ACT)
- Crimes (Child Sex Offender) Act 2005 (ACT)
- Criminal Code Act 1995 (Cth)
- Discrimination Act 1991 (ACT)
- Sex Discrimination Act 1984 (Cth)

## NEW ZEALAND

The percentages of New Zealand teens sexting is fairly low, with only 4% of teenagers surveyed admitting to participation in the practice. Like Australia, the law regarding sexting still needs to adapt.

### **Sexting**

Teens can run into problems sexting.

Some people may send sexually explicit texts or images to someone else. It might be to a partner as something sexy or intimate between two people or it might be to someone else as a joke or prank but it's currently not legal for any of these activities.

New Zealand has no "Juliette law" or an of similar age defence yet, so in theory two teenagers both under 16 could see charges laid against them.

If you are under 16 and taking lewd images you are producing an indecent image of a child. This is against the law, and an individual could be prosecuted under the Films, Video and Publications Classification Act 1993 (NZ)

If you are under 18, it is illegal to send anyone naked or sexual images of yourself.

It is also illegal to forward sexual images of other people under 18 or post them on social media sites.

And no matter how old you are it's illegal to VIEW anything considered 'objectionable'.

*(which may make matters difficult for educators when parents bring a sexting issue to them. A check with the local police station could serve to clarify a teachers position in the law here)*

### **Child Pornography NZ**

Child pornography is considered objectionable and restricted material.

Matters are dealt with under the Films, Video and Publications Classification Act 1993

### **Objectionable**

Objectionable is defined under the [Films, Videos and Publications Classification Act 1993](#) as:

"a publication...(that) describes, depicts or expresses, or otherwise deals with matters such as sex, horror, crime, cruelty or violence in such a manner that the availability of the publication is likely to be injurious to the public good."

All objectionable material is banned.

In deciding whether a publication is objectionable, or should instead be given an unrestricted or restricted classification, consideration is given to the extent, degree and manner in which the publication describes, depicts, or deals with:

- acts of torture, the infliction of serious physical harm or acts of significant cruelty
- sexual violence or sexual coercion, or violence or coercion in association with sexual conduct
- sexual or physical conduct of a degrading or dehumanising or demeaning nature
- sexual conduct with or by children, or young persons, or both
- physical conduct in which sexual satisfaction is derived from inflicting or suffering cruelty or pain
- exploits the nudity of children, young persons, or both

- degrades or dehumanises or demeans any person
- promotes or encourages criminal acts or acts of terrorism
- represents that members of any particular class of the public are inherently inferior to other members of the public by reason of any characteristic of members of that class being a characteristic that is a prohibited ground of discrimination specified in the Human Rights Act 1993

## **Restricted**

Restricted material is material which is only made available to people who are over a certain age.

Typically, this is R18 or Adult material similar to that which can be legally purchased from video or magazine outlets. This material is available on the Internet providing the person accessing it can prove they meet the age required.

Anybody who knowingly supplies, distributes, exhibits or displays a restricted publication to any person who does not meet the age criteria is committing an offence.

A restricted publication is objectionable if made available to a person underage, and an individual can receive up to three months imprisonment or a fine not exceeding \$10,000.

Examples of offences that could occur - This would include (but is not restricted to):

- a video outlet renting a restricted DVD to an underage youth; or
- a parent supplying an R18 computer game to underage children; or
- an adult sending sexually explicit text or images to a person under 18.

## **Penalties**

What are the penalties for possession or trading in objectionable material?

- Anybody found "knowingly" in possession of objectionable material can receive a maximum of 10 years imprisonment.
- Every time a person downloads objectionable material onto their screen, there is the potential for a possession offence having been committed.
- Anybody who knowingly makes or knowingly trades, distributes, or displays an objectionable publication via the Internet can receive a maximum of 14 years imprisonment.
- A body corporate can be fined up to \$200,000.

## **Other necessary information.**

### **Sexual harassment**

If a young person is continually bothered for naked pictures, or is repeatedly sent naked images that they did not request, or is threatened with the distribution of a naked image of themselves the sexual harassment laws can come into play.

If harassment is involved sexting can become an indecent act or stalking.

This crime also attracts Federal charges – constituting a menacing, harassing or offensive use of the internet.

If an individual feel disgusted, humiliated or threatened, this form of use of an internet services becomes harassment which is punishable by up to three years in jail.

Young people have been charged with this crime across Australia and sent to prison as a result. Several are listed on the sexual offenders registry.

Any hint of threatening behaviour should be avoided. This is the area police can and will be heavy handed in their application of the law.

### **Filming without the awareness of the victim.**

Any private act that is recorded without the consent of the individual is a crime.

Private actions included – getting dressed/undressing, using the loo, performing a sexual act or taking a shower or a bath.

This crime attracts the maximum penalty of 2 years, and is a crime regardless of the age of the victim.

Individuals who film sexual acts where a participant is both unaware and under 16 should be advised that the penalty increases to 10 years in prison. Sending this type of film on to any other individuals can add another 2 years to a prison sentence.

### **If you are 18.**

Some teens will see their 18th birthday while they are still at school.

Should any of these individuals be involved in a relationship with a person under 18, and especially if there is more than a two year age difference between them ( and their partner is younger and under 16) they should be especially careful. The 18-year-old is legally considered an adult, and police discretion may not apply given the law takes relationships between adults and children very seriously.

### **What does it mean to be on the sex offenders registry and what is it?**

NCOS -National Child Offender System is the Australia wide list of individuals who have been found guilty of child pornography or an indecency crime. It consists of the Australian national Child offender Register ( ANCOR) and the Managed Person System ( MPS).

ANCOR – allows authorised police to register, manage and share information about registered individuals. It aids the police in upholding child protection law across each state or territory.

MPS – applies to offenders who were charged but not convicted, or after reporting requirements have been completed.

In addition to the National listing, each state also has a Child protection offender reporting scheme.

This requires child sex offenders and other serious offenders against children to keep police informed of their whereabouts and personal details while they live in the community.

Not publicly available, it is designed to protect the community by allowing police to manage the offenders, reducing the likelihood that they will reoffend. It is useful for tracking repeat offenders and in their future prosecution.

All email addresses and social media contacts must be provided to the police, this includes Instagram, Facebook and Tumblr. Radical haircuts or changes to appearance must also be reported to police.

A listing on the register may affect an individual's employment i.e. they may no longer be eligible to work with children, and their ability to travel overseas, or move interstate.

This is a life changing experience.

Teens must be aware that a sexting offense, multiple sexting offenses and any hint of threatening behaviour can affect the rest of their lives.

With increased awareness and publicity surrounding these offenses there is a real and present risk, that your teens behaviour can result in serious legal charges.



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