

# SEXTING

**Using the internet or your mobile to take, send or even receive a 'sexy text' or a 'sexy pic' of yourself is known as 'sexting'. In this fact sheet, we're talking about how sexting can get young people into trouble with the law.**

If you're concerned about a nude or 'sexy' picture of yourself that might be on someone's phone, computer or online, or if you're worried that you have a picture like that on your phone, computer or online, you can send a Lawmail to get free confidential legal advice from [www.lawstuff.org.au](http://www.lawstuff.org.au) or call the Youth Hotline on 1800 10 18 10.

## What is 'sexting'?

- Taking naked or partly naked photos or videos of yourself (posing in a sexual way) and sharing the photos or videos with others online or through your mobile phones; and
- Receiving, forwarding or posting these photos or videos online or through mobile phones.

## Is sexting a crime?

Sexting can be a crime, depending on the age of the people sexting and whether the pictures would be considered 'offensive' or 'indecent' by a court.

It is a crime if you make, send out, or have an 'offensive' picture of someone **under the age of 18** (including yourself) who is:

- showing their private parts, which includes a person's genital area, anal area or female breasts;
- posing or acting in a sexual way;
- in the presence of another person involved in a sexual activity or pose; or
- involved in a sexual activity.

For example:

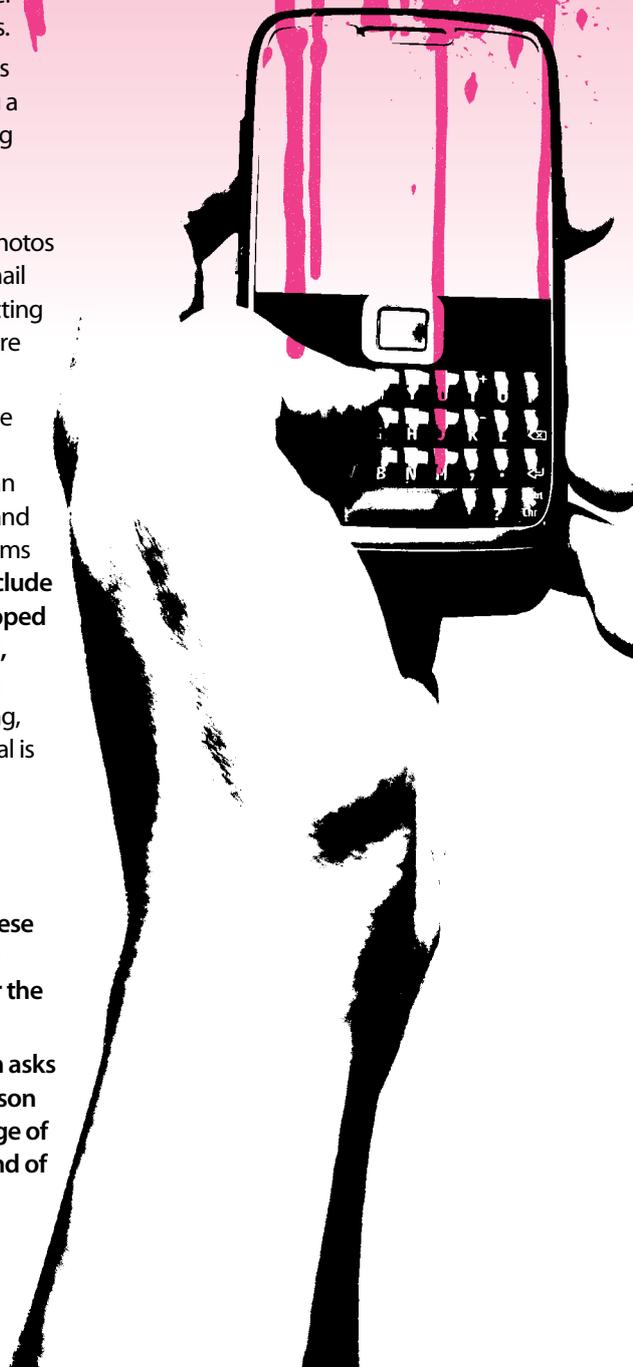
- A 16 year old boy who takes a photo of his private parts and sends it to someone on his mobile phone is committing a crime. It does not matter whether you can see his face or any other identifying feature.

- A 15 year old girl who takes a video of herself doing a 'sexy' dance in her bra and underwear and posts it online may be committing a crime. It does not matter whether you can see her private parts.
- A 14 year old boy who takes and posts a video of himself at a party watching a girl do a striptease may be committing a crime. It does not matter how old the girl is.
- A 17 year old boy and girl who take photos of themselves having oral sex and email the photos to themselves are committing a crime. It does not matter that they are old enough to have sex.

The law calls these images 'child abuse material', or more commonly, child pornography. Child abuse material can include films, photos, digital images and videos sent by SMS, email, in chat rooms or published on blogs. **It can even include pictures that have been photo-shopped to make a young person look naked, or cartoons of young people having sex!** The maximum penalty for making, sending or having child abuse material is 15 years in gaol!

New South Wales child pornography laws only apply to images of young people under the age of 16, but the Commonwealth laws are broader. **These laws even apply to images of young people who look like they are under the age of 18.**

**Anyone who sends, receives or even asks for a naked or sexual image of a person who is or appears to be under the age of 18 is at risk of committing a crime and of being charged.**



## What if the young person gives their permission to take the photo?

The law says that while you are under 18, you aren't allowed to consent (say yes) to sexting – even though you are able to legally start having sex at 16 years of age. The reason the laws on sexting are so confusing is that they were made to protect children from adult offenders, and didn't consider that teenagers might record their own sexual activity. As a result, even if the young person in the image says it's okay to be filmed or photographed, it's still a crime.

## If there is no permission, it's never okay—no matter how old they are!

It is a crime to take a sexual, nude or partly nude picture or video of anyone—regardless of their age—without their permission. However, it is a more serious crime if the person is under the age of 16. The maximum penalty for this is prison for up to 5 years. In the case of 'sexting', this 5 years is on top of the ten years maximum discussed above!

## If you ask someone else to send you a sexual photo/video...

Asking a person of any age to send you a sexual image in a harassing or offensive way is a crime. It does not matter how old you and the other person are.

Asking a person under the age of 16 to send you a sexual photo or video is a crime. You could be charged with:

1. soliciting child pornography (penalty includes up to 15 years gaol);
2. causing a child to be used for child pornography (penalty includes up to 14 years gaol); or

3. inciting a child to an act of indecency (penalty includes up to 2 years gaol).  
It is a crime to use the internet or a mobile phone to ask anyone who is or appears to be under the age of 18 to send you a sexual image. This is called soliciting child pornography material and carries a maximum penalty of up to 15 years in gaol.

You could also be charged with committing an act of indecency towards a child or transmitting an indecent communication to a child.

### Example

Ted is 15 and his 15 year old girlfriend sent him a text with a photo of herself in her bra and underwear. Her dad found the picture on her phone as well as other photos she sent Ted of herself posing in a sexual way. Her dad is now saying he will report Ted to the police. Ted is worried about what might happen, even though the photos were only for him and no one else saw them.

Ted has committed a crime because it is against the law to have a photo of someone under the age of 16 posing in a sexual way. The law says these photos are child pornography. Having these photos on his phone is a crime. Ted's girlfriend has also committed a crime by taking photos of herself, keeping them and sending them to other people.

## Can I be forced to register as a sex offender for a sexting crime?

The Australian National Child Offender Register (ANCOR) is an online registration system designed to help the police manage and share information about people charged with sex crimes in relation to children. If you are found guilty of a sexting crime, you may be placed on the register. Some of the restrictions for people on the register include telling the police every time you move houses or change jobs. If registered, you will not be able work or volunteer in a job where you are likely to have contact with children and young people such as coaching a junior

sporting team or becoming a surf lifesaver.

## What should I do if I have a picture or text I am unsure about?

It is important to protect yourself by deleting any pictures you are unsure or uncomfortable about straightaway. It is really difficult to keep images private and once they are shared, you will never be able to delete those pictures forever. Never share it online or through SMS, and only show it to a trusted adult.

If you are questioned or arrested by the police in relation to sexting, you should give your correct name, age and address, but you have the right to remain silent for any other questions. Try to remain calm, and politely ask to get legal advice by calling the [Youth Hotline on 1800 10 18 10](tel:1800101810) before you give them any other information.

## Useful links and contacts

Lawmail is a FREE legal advice and information service. If you have a question or need legal advice you can send a [Lawmail](mailto:lawmail@lawstuff.org.au) at [http://www.lawstuff.org.au/nsw\\_law/lawmail](http://www.lawstuff.org.au/nsw_law/lawmail).

Call the [Youth Hotline on 1800 10 18 10](tel:1800101810). The Youth Hotline gives legal advice and information to young people under 18. You can call the Hotline from 9am to midnight on weekdays, with a 24-hour service from Friday 9am to Sunday midnight and also on public holidays.

If you want to talk to someone, you can call the [Kids Helpline on 1800 55 1800](tel:1800551800) or visit their website at <http://www.kidshelp.com.au>.

**This information was last reviewed on 10 April 2012. This factsheet provides information about the law in NSW. It does not provide legal advice. If you need advice, or if you would like information about the law in a state or territory other than NSW, please send us a Lawmail at <http://www.lawstuff.org.au>.**