



### What is 'Sexting'?

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

### Is Sexting a crime?

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.

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. The maximum penalty for making, sending or having child abuse material is 15 years in jail.

### Can a person 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 someone is found guilty of a sexting crime, they 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. It is possible to remain on the register for life.

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

The law says that while a person is under 18, they aren't allowed to consent to sexting – even though they 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.

### What if someone asks to be sent a sexual photo or video?

Asking a person of any age to send a sexual image in a harassing or offensive way is a crime. It does not matter how old the people involved are. Asking a person under the age of 16 to send a sexual photo or video is a crime.

Charges could include:

1. Soliciting child pornography (penalty includes up to 15 years jail);
2. Causing a child to be used for child pornography (penalty includes up to 14 years jail); or
3. Inciting a child to an act of indecency (penalty includes up to 2 years jail).

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 a sexual image. This is called soliciting child pornography material and carries a maximum penalty of up to 15 years in jail. A person could also be charged with committing an act of indecency towards a child or transmitting an indecent communication to a child.

Source: National Children's and Youth Law Centre, and the Children's Legal Service of Legal Aid NSW, 2010

“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.”

“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.”