

Image based sexual abuse

<http://youthlaw.asn.au/learn-about-the-law/sexting/>

This page provides information about sexting, such as when sending or posting an image becomes illegal.

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Disclaimer: The material in this fact sheet is intended as a general guide only. You should not act on the basis of this information in this fact sheet without first getting legal advice about your own particular situation.

This information sheet details laws in Victoria as at July 2023.

This fact sheet deals with sending messages and taking, keeping or sharing sexual images by phone, email or online. If those messages or images involve child abuse material or cyberbullying there can be serious legal consequences.

Included in this fact sheet are:

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Where to get help and support

- POSTER link: <https://youthlaw.asn.au/file-download/12140>

What is sexting

Sexting is when someone sends a photo or video of themselves or someone else naked or posing in a sexual way using a computer, mobile phone or other mobile advice.

What is image-based sexual abuse

Image-based sexual abuse (IBSA) involves the non-consensual creation and/or sharing of intimate images or threats to do so.

When is it illegal to take, keep or share sexual images

It is against the law to take, keep or share sexual images by phone, email or online if:

- the image shows child abuse material (child pornography) unless you are under 18 and an exception applies (see below);
- you are 18 or over and you are “grooming” (encouraging) someone who is under 16 to engage in an illegal sex act with you; or
- the image is of someone else that you’ve taken without their permission (new law effective from **30 July 2023**);
- you share the image or threaten to share it in a way most people would find unacceptable, unless the person in the image is 18 or over and they consent to it being shared in that way.

What does ‘intimate image’ mean

Intimate image means and image showing:

- a person engaged in sexual activity
- a person in a manner or context that is sexual
- the genital or anal region of a person
- if a person is female, transgender or intersex person identifying as female, the breasts of the person

An ‘image’ includes still, moving, recorded or unrecorded and digitally created images by generating the image or manipulating or altering another image.

The meaning of ‘image’ will also be expanded to be able to capture ‘deepfake porn’ where an image is changed to make it look like the victim (new law effective from **30 July 2023**).

What makes something child abuse material?

Child abuse material includes any photo, video, film, publication or computer game that shows a person who is under 18 or who looks under 18 performing a sexual act or posing in an indecent sexual way.

What is ‘indecent’ depends on what most people would find indecent, so that could even include posing in underwear, for example.

What if I am under 18 and I take or keep sexual images of myself or someone else who is under 18?

If you are under 18, it is no longer illegal under Victorian child abuse material laws for you to take or keep sexual photos or videos of yourself or someone else who is under 18, as long as:

- nobody in the photo or video is more than 2 years younger than you;
- the photo or video does not show a crime being committed against someone else; and
- you do not share or distribute the photo or video of someone else who is under 18 or threaten to do so (even if they consent).

However, under federal child abuse material laws it is still illegal for under 18s to take, keep, share or send sexual images of someone under 18, including images of themselves, by phone or online.

What are the penalties?

If you break the law you can end up with a criminal record. The penalties for child abuse material offences, in particular, can be very serious if you are 18 or over. Besides a possible jail term, you must be registered as a sex offender.

What should I do if someone sends me an illegal photo or video?

- DO NOT keep it, forward it on or upload it
- DELETE it immediately, if you can
- BLOCK the person who sent it to you

Getting Legal Help

Youthlaw

If you are under 25, you can get free and confidential legal advice.

03 9113 9500

For details of services see: www.youthlaw.asn.au

Victoria Legal Aid – Legal Help

For legal information, referrals or appointments.

1300 792 387

www.legalaid.vic.gov.au

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