Key messages

- Sexting has become common in a lot of relationships.
- Young people need to be aware of potential legal and social ramifications when sexting to help make informed choices.

The term sexting (a combination of the words “sex” and “texting”) refers to the **taking, sending, sharing, receiving, and posting** of sexually suggestive and sexually explicit images. More commonly young people will refer to sexting as ‘**sending nudes**’ or ‘**dick pics**’.

‘*Sexually explicit*’ or ‘*sexually suggestive*’ can mean different things to different people, but an image of this nature generally will include someone who is naked, partially naked, performing a sexual act, or posing in a sexual way. Generally, an image that is considered sexually explicit has the purpose of initiating sexual excitement for the receiver. ‘Sexts’ or ‘nudes’ could also include written messages, as well as videos, that are sexually explicit.

Fifty per cent of Australian 13-18 year old’s have engaged in sending nudes, however the vast majority of those who reported sending or receiving sexually suggestive images did so with only a small number of people and most commonly only with those they already had a romantic attachment.[1] In WA,

- 45% of teens in years 10-12 reported having sent a sexy written text whilst 58% reported having received a sexy written text.
- 36% of teens in years 10-12 reported having sent a nude/nearly nude pic of themselves, whilst 50% reported having received a nude/nearly nude pic.[2]

Sending nudes is often a way for young people to explore and express their sexuality, and it is becoming a common way for people in relationships to express their feelings and desires. However, sexting can raise issues of consent, privacy, harassment and legality and it is important for young people to realise the potential negative consequences of sexting. Providing support and effective strategies to this age group is essential for minimising any harm that may result from sending nudes.

Legal issues

Sexting with someone under 18

Sexting can be illegal when anyone involved is under 18, even if everyone has given consent. Taking, sending, sharing and storing sexually explicit images of yourself (if you are under 18), or of someone else who is under 18, is a crime. Existing laws are not designed to ‘catch out’ young people sharing consensual sexts with their partners; they are designed to protect children from exploitation. Even if a person under the age of 18 sends their own picture to their partner or someone else who says it’s OK, they can still be charged under current Australian Commonwealth law.

Sexting without consent (image-based abuse)

Sexting without consent is against the law, regardless of age. Taking, sharing, and posting sexually explicit images without consent is called image-based abuse, and it is illegal. Threatening to share intimate images of someone is also considered image-based abuse. Sometimes image-based abuse is referred to as sextortion or revenge porn.

Laws involving technology can change quite rapidly, and these laws are moving towards stronger consequences for non-consensual image sharing.

Sexting that involves harassment

Sexting can become a legal issue when it involves harassment, for people of all ages. For example, if someone is sending nudes or other sexually explicit material that is unwanted or without consent, this is considered harassment. It is also considered harassment when someone makes continuous attempts to coerce, pester, or convince others to take and send sexually explicit material. If someone continuously threatens to share/post another person's nudes, it is considered harassment, as well as image-based abuse, and can have serious legal consequences.

It is important to note that laws can differ from state to state, and state laws can be different to Commonwealth laws. Where there are differences in state and Commonwealth laws, the Commonwealth laws override.

Western Australian laws

It is an offence under the Western Australia Criminal Code to take a sexually explicit photograph or image of a person under the age of 16 years. It is also an offence to encourage persons under the age of 16 to take sexually explicit photos of themselves.

The penalty for these types of child pornography offences is up to a maximum of 10 years imprisonment.

Commonwealth laws

It is also an offence under the Commonwealth Criminal Code to possess or send a sexually explicit photograph/image of a person under the age of 18 years.

Young people (under 18 years) could be charged for taking or sending a photo or video of someone under 18 years, even if all people involved provide consent. Penalties can be severe, with up to 15 years in jail and placement on the sex offenders register.
Under these laws for image-based abuse, some of the penalties may include:

- Fines
- Criminal charges
- Jail time
- Placed on the WA Sex Offenders Register. This can make it difficult to work jobs where you have contact with children. It can also impact on where you can live, and travel.

Tips for young people

- It is important to know the legality behind sending nudes. Ensure you are aware of and fully understand the laws around sending nudes, and the consequences that may apply.
- Consent is vital! Before sending any form of sexually explicit material, ensure the person you intend to send it to has consented to receiving it. If they have not consented to seeing these images, this can be considered harassment.

    - It is also important to understand that just because someone has sent you their nudes, they have not consented to you sharing them with others. You should not share or post someone else's nudes without the persons consent.
- You should only send nudes to people you can fully trust.
- If you choose to send nudes, there are things you can do to minimise your risks of being exposed/identified if they end up being shared online. Make sure there is nothing in the image that makes you identifiable (e.g. your face, birthmarks, jewelry, tattoos etc.). It is also important to ensure your background is free of any identifiable features (e.g. photos, posters, mail etc.).
- Know what to do and who you can ask for help if you are concerned about a nude, or if someone has shared or is threatening to share images of you

Things to consider

As well as the legal implications, sexting can also come with other potential consequences, including psychological, emotional, and social consequences.

Nudes can be leaked, either by the person who received them, or by mistake. For example, via the cloud, shared devices, lost phones, hacking, or accidental uploads. Sometimes, people who have been trusted with someone's nudes decide to re-send or share these images online and with others via private messages.

When something is posted online it is often difficult to have it completely removed. It is also difficult to have control over who sees it, who has access to it, and who can keep it. Others may screen-shot and save these images without permission, and it can then be impossible to know who has the images, and for what purpose. It is also possible for these images to re-surface later. It is important that young people are aware of the possible outcomes before choosing to send any kind of sexually explicit pictures.

Teaching tips

- Be cautious not to gender stereotype.
    - All genders can be victims of image-based abuse.
    - Wanting to engage in sexting, pressuring and non-consensual sharing of images can happen by and to any gender.
- Just like in other aspects of sexual health education, an abstinence-only approach will not be an effective strategy for everyone. Make sure you teach decision making skills so that students can assess potential risks and make informed decisions for themselves.
- Ensure students understand that the key message is there is always something that can be done to help, if they have been involved in image-based abuse.
    - show students eSafety web page, and how to report image-based abuse
    - show students the youth law Australia web page, where they can access free legal assistance
- Develop a school policy on how to respond to non-consensual image-sharing. Collaborating with parents and wide-school community can ensure the policy is best-practice.

Parents can play a vital role in educating young people on this topic. Some strategies may include running parent workshops, including links to resources and services in school communications, and offering take-home activities

Relevant resources

Fact sheets/booklets/videos

Sending nudes and sexting, *Your digital reputation*, *Image-based abuse* - Office of the Children's eSafety Commissioner

Includes the e-book for teenagers So you got naked online.

ThinkuKnow - Being Share A.W.A.R.E, on sharing personal sexual content

Tagged

Videos which encourages young people to reflect on the real life consequences of cyberbullying, sexting and a negative digital reputation.

Sexting, Get the Facts

Respect Me. Don't Sext Me, SECASA

Teacher resources for use with secondary students about issues related to sexting.

Selfies and Sexting, Legal Aid WA

Sexting, Youth Law Australia

References

1. Lee, M. T. Crofts, A. McGovern and S. Milivojevic. Sexting among young people: Perceptions and practices. Australian Institute of Criminology, 2015.
2. Fishcer, CM, Kauer, S, Waling, A, BEllamy, R, Ezer, P, Kerr, L, Brown, G & Lucke, J. Western Australian Survey of Secondary Students and Sexual Health 2018. ARCSHS Monograph Series No. 115. Bundoora: Australian Research Centre in Sex, Health and Society, La Trobe University; 2019.

This Background Note relates to the following Learning Activities

- Sexting: To send or not to send

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