Young People Speak Out:

Developing a rights-based Legal Response to Sexting & Cyber Bullying Incidents

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Looking for legal information?
The law is different in each state and territory.
Select your state or territory to find out how the law applies to you:

ACT  NSW  NT  QLD
SA  TAS  VIC  WA
Welcome to Lawmail!

What is Lawmail?
Lawmail is a FREE legal service for Australians UNDER 18 and their advocates. We DO NOT assist adults with adult queries.

Do I have to give my name?
Yes, we need a first name and a surname. We also need names of other people involved.

What if I don't give you names?
If you don't give us a name or the names of others involved, we can only give you legal information (rather than specific advice). This is because without your full name and the names of everyone involved, we cannot guarantee that we have not already assisted someone else involved in your query.

Will you tell anyone about what I write, like the police or my parents?
No. We are NOT allowed to tell anyone. Lawmail is confidential!

Can I use Lawmail for help with school assignments or projects?
No! Lawmail is for young people who need legal advice or information about something that is happening to them.

IF YOU WOULD LIKE MORE INFORMATION BEFORE YOU ASK YOUR QUESTION SEND US A LAWMAIL OR CALL US (DURING OFFICE HOURS) ON 02 9385 9588.
“I got an inbox saying that someone was sending nudes of me around...I'm not sure what to do like should I take it to the police and if I do will I be pressed with charges?”

If you encounter a young client with a sexting or cyber bullying issue, please feel free to refer them to Lawmail for written advice, or to contact us directly for a chat.
What are the issues?

**SEXTING**

is a term coined by the media to describe the practice of sharing nude or sexual images through mobile phones or the internet.

**CYBER BULLYING**

is bullying carried out online or through mobile phones. Bullying, in turn, generally refers to a campaign of intentional harassment or abuse aimed at embarrassing, intimidating or otherwise hurting a particular person or group of people.
Example  s

SEXTING

1

2

3

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@Lawstuff_Aus
“I recently had sex . . . with someone who . . . filmed it on his phone. . . . he kept saying ‘nobody will see it, just you and me’. . .”
“[My friend] texted nude photos of herself to her ex-boyfriend . . .

Now that things have ended with him, she is worried that he will send these to people . . ."
“I have recently exposed myself over webcam . . . The person I did it to is sending it to other people around the school . . . what kind of criminal offences will I get if I go to the police about the video?”
Example

CYBER BULLYING

• nastiness or cruelty

“I have had a phone call calling me horrible names”
Example

C YBER BULLYING

• nastiness or cruelty
• damage to reputation

“I have been . . . referred to in a really offensive way on the internet”
Example

CYBER BULLYING

• nastiness or cruelty
• damage to reputation
• identity theft

“I've recently been alerted to a Facebook page that has been made about me”
Example questions

CYBER BULLYING

- nastiness or cruelty
- damage to reputation
- identity theft
- invasion of privacy

“Someone has taken a video of me... without my permission. If he posts that, would that be counted as cyber bullying? And what is the penalty?”
There is a guy who follows me everywhere. Recently, he took pictures of me and he uploaded them on Facebook. Lots of people are now making comments . . . Is it legal for someone to do this?
Example of Cyber Bullying

- nastiness or cruelty
- damage to reputation
- identity theft
- invasion of privacy
- harassing or stalking
- threats

“I had a guy threaten to kill my family over msn . . . I was wondering if there was any legal action I can take”
Example cases of cyber bullying:

- Nastiness or cruelty
- Damage to reputation
- Identity theft
- Invasion of privacy
- Harassing or stalking
- Threats
- Incitement of self-harm

“I wanted to know what my legal rights are when it comes to cyber bullying . . . they told me to go kill myself”
our goal is to ensure that all victims and alleged offenders are afforded safety, support, age-appropriate treatment and a voice in the matter.
Legal Framework

- Using a phone or internet service?
  - State/Territory & Cth laws + service contracts
- Using an app or website?
  - Terms of use
- Young offenders?
  - Juvenile justice
- Young victims?
  - Child care and protection
- Connection to school?
  - School policy
- Alternative dispute resolution?
- Discrimination?
  - Administrative complaints
- Harm to reputation or breach of confidence?
  - Civil cause of action
Example Responses

- Terms of Use/Service Contracts

Facebook has a statement of rights and responsibilities that every user has to follow...The statement says that users are not to post content that is hate speech or threatening...If you believe this guy has broken these rules, you could report this to Facebook...

Call your phone company or visit their website to report the prank calls...They may be able to trace the calls and send a warning letter to the caller...
The "Bullying: Preventing and Responding to Student Bullying in Schools Policy" sets out the requirements for preventing and responding to student bullying in NSW government schools...We suggest you remind the school of their responsibilities under the Department's policy. It might also be a good idea to print out the policy and take it to your meeting.
Example Responses

• Terms of Use/Service Contracts
• School Policy
• Admin Law

If the students who have called you a "slut" or spread rumours about you sleeping with people are over 16, then this behaviour could be illegal sexual harassment. This means you could complain to the NSW Anti-Discrimination Board about it...

You can also contact the NSW Information and Privacy Commission to make a complaint about your school’s actions or to request to see what information the school has kept about the matter...
When a person sues somebody else, they are accusing them of breaking the non-criminal law. In your case, X’s actions could be considered defamation or breach of confidence.

A person can sue for defamation when someone publishes something that harms their reputation or humiliates them... A person can sue for breach of confidence when someone breaks their trust and shares something secret...
Example Responses

- Terms of Use/Service Contracts
- School Policy
- Admin Law
- Civil Law
- Criminal Law

You could send him a message letting him know that he could be involved in child pornography crime just for having the pictures... If you want to make your message more official, you can fill out and attach the “Notice to Delete Child Pornography Material”...

If you fear for your safety, we urge you to tell the police. You can also apply for an Apprehended Personal Violence Order (APVO). An APVO would ban this person from contacting or harassing you...
Legal Framework

Criminal Law

Cyber Bullying

- nastiness or cruelty
- damage to reputation
- identity theft
- invasion of privacy
- harassing or stalking
- threats
- incitement of self-harm

- using a carriage service to menace, harass or cause offence (Cth)
- defamation (state)
- serious vilification (state)
- misuse of identification information (Cth and state)
- unauthorised access (Cth and state)
- stalking (state)
- threats and intimidation (Cth and state)
- incitement of suicide (Cth and state)
• solicitation of child pornography (Cth and state)
• incitement of indecency (state)
• using a carriage service to harass or offend (Cth)

  • production and possession of child pornography
    (Cth and state)
  • indecency (state)
  • distribution and possession of child pornography
    (Cth and state)
  • indecency (state)
  • using a carriage service to harass or offend (Cth)
young people’s use of mobile phones and the internet can lead to serious and disproportionate criminal penalties that may actually exacerbate the harm to young people, particularly in the context of sexting.
Between June & October 2012, we spoke to over 1,000 young people at 8 schools in 7 regions of NSW to

• educate them about the criminal laws that can apply to cyber bullying & sexting and

• encourage them to voice their opinions about these laws.

See www.lawstuff.org.au/nsw_law/topics/article7 for the report and prezis
key findings:

🌟 Consistent with the JMRC’s recent report, *Young People and Sexting in Australia*
key findings:

young people want and need education about the laws that apply to these behaviours

I would like it to be compulsory for students to be aware that their situations could lead them to gaol, this will help students to understand and less likely to do something that’s reckless

14-15 y/o girl, NSW
New Voices / New Laws

key findings:

young people say that cyber bullying and sexting should be against the law, but there should be a more appropriate range of responses available to address these offences.

The most important thing that I would like to see made would be that we do not get a ‘harsh’ penalty if we do break any of these laws and that we get a caution or a warning when it is our first offence... I believe if you are under the age of 18 you should not be on the sex offender registry or gaol for that matter. Maybe just being banned from social media and mobile phones etc.

16-17 y/o girl, NSW
New Voices / New Laws

key findings:

young people believe that the penalties should be more flexible and based on factors like awareness of the law, offending history and the level of harm caused to the victim.

To consider other aspects such as age and whether they will repeat the crime if they more formally warned.

Anonymous, NSW

The laws to be less serious and take into account the relationship between the people sexting.

Anonymous, NSW
New Voices / New Laws

key findings:

young people feel that sharing nude or sexy photos of a person without their permission is much worse than exchanging photos consensually, and that the law should treat these situations differently

If two people in a relationship under the age of 18, share sexy/naked pictures ONLY with each other, then it should not be considered a crime. If there is full consent from both of them then they should not be charged with anything as they have not shared the photos with anyone else.

14-15 y/o girl, NSW
key findings:

young people feel strongly that no one should ever be charged with sex offences or placed on the sex offender register for age-appropriate (peer-to-peer) sexting

Don’t ruin a young person’s life by putting them on a sex offender’s registry when making mistakes due to immaturity and peer pressure is so common in young people

14-15 y/o girl, NSW
key findings:

young people say that the age difference in the Commonwealth and NSW child pornography laws is confusing, with some saying that the applicable age should be 16

If your 16 and want to sext you should be legally able to as it legal for 16 y/o to have sex
16-17 y/o girl, NSW
key recommendations:

many of which have been taken up by the Victorian Parliament’s LRC
New Voices / New Laws

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• Provide education and resources with a focus on practical and fast solutions, harm minimisation and youth participation.
New Voices / New Laws

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• Support record-keeping and research.
New Voices / New Laws

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• Ensure that the law differentiates between consensual and non-consensual behaviours.
• Create transparent police guidelines.
• Provide education and resources with a focus on practical and fast solutions, harm minimisation and youth participation.
• Support record-keeping and research.
• Encourage the development of innovative, non-criminal responses to sexting and cyber bullying.
Thank you!

• Please feel free to contact me at kelly.tallon@ncylc.org.au or 02 9385 9588
• You can find the New Voices / New Laws report and prezis at www.lawstuff.org.au/nsw_law/topics/article7
• Our Telstra-funded OMG: Online Media Guidance factsheets for all states and territories are coming soon to www.lawstuff.org.au
• Send us a Lawmail at www.lawstuff.org.au/lawmail