

# Sexting, adolescents and the criminal law

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Act 2004

# Introduction

The focus of this seminar is on the consequences under the criminal law for young people who engage in sexting behaviour:

- prosecution for an offence
- sex offender registration

# What is sexting?



# Definition of sexting

- ◉ Sex + text = sext: sending sexually explicit or sexually suggestive images or video via a **mobile phone**
- ◉ the practice among some young women and men of creating, sharing, sending or posting sexually suggestive or explicit messages or images via the Internet or mobile phones  
*(Commonwealth Joint Select Committee on cyber-safety, June 2011)*
- ◉ The term sexting applies to various electronic communications (eg, emails; posting images on YouTube, Facebook; iPads, iPods etc)

# Wide range of behaviour

Sexting may involve

- consensual or non-consensual recording or production of images
- consensual sharing or non-consensual sharing or dissemination of images
- varying motivations (eg, flirting, revenge, harassment, threats, prank, bullying, or sexual deviancy)

# Extent of sexting in Australia

- No clear evidence of how frequently adolescents engage in sexting in Australia
- Large proportion of children have access to mobile devices and the internet
- Different studies have found varying rates of young people sending or received nude photos

**Is sexting a criminal  
offence?**

**There is no specific sexting  
offence**

# Sexting and child pornography offences

## Key offences

- Western Australia (child under 16)
  - Involving child in child exploitation
  - Production, distribution and possession of child exploitation material
- Commonwealth (child under 18)
  - Using a carriage service for child pornography material

# Other offences

- Stalking
- Threatening behaviour
- Use of a carriage service to menace, harass
- Possible new offence of cyber-bullying for WA

# Prosecution of sexting related behaviour

- For 'consensual sexting' the approach appears to be to educate, divert, caution etc
- For distribution of images, prosecution is seriously considered
- Some evidence of children in WA being cautioned or charged for sexting
- Two cases in Victoria where 18-year-olds convicted of child pornography offences as a result of sexting behaviour (and placed on sex offender register)

# Sex offender registration

- Sex offender registration laws exist in all Australian jurisdictions and many overseas jurisdictions (eg, US, UK)
- Rationale is that child sex offenders are likely to reoffend and very dangerous ('stranger danger') and therefore need to be monitored



# Sex offender registration in Western Australia

- *Community Protection (Offender Reporting) Act 2004 (WA)* commenced February 2005
- Purpose is to enhance community protection by facilitating the investigation of future offences and reducing reoffending
- End of 2009 there were 1704 registered offenders in WA
- June 2011 there were 2500 registered offenders in WA

# How does it work?

- **Mandatory** registration if sentenced for reportable offence
- Limited exception for juveniles (may apply to some sexting related offences)
- Commissioner of Police can waive reporting obligations for some juveniles
- More flexibility in other jurisdictions
- Reporting obligations include initial report of personal details, reporting of changes to personal details and travel plans and periodic reporting
- Reporting period for juveniles is 4 or 7 ½ years (for adults it is 8 or 15 years or life)

# Public register in WA

- Expected to be operational in October  
*(Community Protection (Offender Reporting) Amendment Act 2012)*
- Three tiers
  - › Tier 1 (whereabouts unknown)
  - › Tier 2 (dangerous offenders)
  - › Tier 3 (parental inquiry)
- Could apply to juvenile reportable offenders after they turn 18 years

# Sexting and the sex offender register

- ◉ Don't know how many children and young adults are on register as a consequence of sexting behaviour
- ◉ LRCWA is aware of cases where juveniles and young adults are subject to reporting obligations and included on the register for 'consensual underage sexual activity'

# Consequences of registration

- Ongoing obligations
- Liable to criminal prosecution and punishment if non-compliant
- Lack of understanding about registration
- Failure to access health services
- Stigmatisation/labelling

But WWCC is not linked to register in Western Australia

# The Way Forward

What is the solution?

# Different options

- New specific offence for sexting-related behaviour
  - To capture serious behaviour involving dissemination of images without the need to classify the behaviour as child pornography
- No children on register
  - But there are some juveniles who arguably should be on the register and required to report to police on an ongoing basis
- Court discretion re registration

# Conclusion

- LRCWA recommended court discretion for juveniles and a limited degree of discretion for adults
- Discretion enables the individual circumstances to be taken into account and the risk posed by the offender to be assessed.
- End result is that the register is not watered down by having low-risk offenders included and that young people are not unfairly targeted (and further stigmatised) by registration
- Irrespective of the legal consequences for adolescents, appropriate education strategies are important

Thank you