

Changes to Victorian Legislation about Sexting

In September 2014 the Victorian Parliament passed amendments to the Crimes Act 1958 and the Summary Offences Act 1966 that change how the law applies to sexting.

Changes to the Crimes Act 1958

Clause 70AAA has been added to the Crimes Act 1958 which provides an exception to child pornography offences. The amendment states that a minor will not be guilty of child pornography offences (sections 68, 69 and 70) provided that the child pornography is an image, the image depicts the minor alone or with an adult and the image is child pornography because of its depiction of the minor.

Example: If a person under 15 has an intimate image of themselves with a person over 18 years of age, the minor is not guilty of child pornography offences.

Additionally, a minor (A) will not be guilty of child pornography offences (sections 68, 69 and 70) provided that the following conditions are met;

- (a) the child pornography is an image; and
- (b) the image depicts A with another minor; and
- (c) the image is child pornography because of its depiction of A or another minor; and
- (d) where the image is child pornography because of its depiction of a minor other than A, at the time at which the offence is alleged to have been committed—
 - (i) A is not more than 2 years older than the youngest minor whose depiction in the image makes it child pornography; or
 - (ii) A believes on reasonable grounds that they are not more than 2 years older than the youngest minor whose depiction in the image makes it child pornography; and
- (e) the image does not depict an act that is a criminal offence punishable by imprisonment.

Example: If an image depicts a minor (taking part in an act of sexual penetration with another minor who is not more than 2 years younger) and both are consenting to the act; neither minor is guilty of an offence.

Changes to the Summary Offences Act 1966

The Summary Offences Act 1966 has been amended to include standards of acceptable conduct regarding the distribution of or threat to distribute intimate images. A person commits an offence if they intentionally distribute an intimate image of another person to a third party and the distribution of the image is contrary to community standards of acceptable conduct.

The law does not apply if the victim is not a minor and had or could reasonably be considered to have consented to the distribution of the intimate image and the manner in which the image was distributed.

It is also an offence to threaten to distribute intimate image if the distribution of the image would be contrary to community standards of acceptable conduct and the victim believes that the offender will carry out the threat. The threat may be made by any conduct and may be explicit or implicit.

Example: A person posts a photograph of another person on a social media website without their express or implied consent and the photograph depicts the victim engaged in sexual activity. This is illegal.

Definitions

1. Community standards of acceptable conduct, in relation to the distribution of an intimate image, includes standards of conduct regarding;

- (a) the nature and content of the image;
- (b) the circumstances in which the image was captured;
- (c) the circumstances in which the image was distributed;
- (d) the age, intellectual capacity, vulnerability or other relevant circumstances of a person depicted in the image;
- (e) the degree to which the distribution of the image affects the privacy of a person depicted in the image;

2. Consent means free agreement;

3. Intimate image means a moving or still image that depicts—

(a) a person engaged in sexual activity; or

(b) a person in a manner or context that is sexual; or

(c) the genital or anal region of a person or, in the case of a female, the breasts.