

CYBER STALKING AND CYBER HARASSMENT: Potential legal responses to abuse via technology



A resource for domestic violence workers. This factsheet is intended for information only and is not a substitute for legal advice. Contact the [Legal Helpline on 1300 366 424](tel:1300366424) www.lsc.sa.gov.au www.lawhandbook.sa.gov.au

Cyber stalking and cyber harassment have become serious issues in the domestic violence context. Increasingly, domestic violence clients report receiving abuse and threats by phone and web technology. It is not uncommon for perpetrators to threaten to distribute or upload intimate photos or videos to social media networks or internet sites, including what are known as “revenge porn” sites.

This factsheet is intended to give a brief overview of some legal options for prevention and protection. For some clients, just one avenue will be sufficient, in other cases, a combination of different approaches is required. The key is identifying the client’s priorities and how to get them the help they need as quickly as possible.

For preliminary legal advice, clients and caseworkers should call the Legal Helpline on 1300 366 424.

The Legal Services Commission also has specialist staff for providing face to face appointments for domestic violence clients.

Some community legal centres may also provide assistance in these areas.

APPLY FOR AN INTERVENTION ORDER TO STOP CYBER ABUSE

It may be possible to obtain orders under the *Intervention Orders (Prevention of Abuse) Act 2009 (SA)* that deal specifically with uploading and distributing intimate or graphic material. In addition to ‘no violence’ and ‘no contact’ clauses, a court can make orders that impose both restraints and obligations. For example:

1. The defendant is restrained from publishing on the internet, by E-mail, SMS or other electronic means any offensive material about the protected person/s.
2. Within 24 hours of service of this Order, the defendant is to permanently delete and destroy any indecent or invasive images or video of the protected person that are in the possession of the defendant or to which the defendant has access.

The Legal Services Commission can provide advice to clients about options for getting the material removed. Assistance may be available if their own request to the publisher of the material, or the person providing the images, has proved futile or if they are unable to make such a request themselves.

CRIMINAL CHARGES

Under the *Criminal Law Consolidation Act 1935 (SA)* it is a criminal offence to make an “unlawful threat” to kill or harm a person. The unlawful threat could be made using phone and web technology.

UNLAWFUL THREATS

Threat to kill

- S 19 (1) A person is guilty of an offence if that person -
- (a) threatens, without lawful excuse, to kill or endanger the life of another; and
 - (b) intends to arouse a fear that the threat will be, or is likely to be, carried out, or is recklessly indifferent as to whether such a fear is aroused.

Threat to cause harm

- S 19 (2) A person is guilty of an offence if that person:
- (a) threatens, without lawful excuse, to cause harm to another; and
 - (b) intends to arouse a fear that the threat will be, or is likely to be, carried out, or is recklessly indifferent as to whether such a fear is aroused.

It is also an offence to “stalk” a person. The physical act in stalking can include the **giving, sending, transmitting or publishing of offensive material via phone and web technology**, or any other acts that could reasonably be expected to arouse the other person’s apprehension or fear. In some instances the police may informally ‘caution’ a person against stalking another even if there is not enough evidence to lay a charge.

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Under the *Summary Offences Act 1953* (SA) it is an offence to **distribute or publish an 'invasive image' of someone without their consent**, even if the image was initially taken with the consent of the person depicted. An invasive image is a moving or still image of a person over the age of 16 who is engaged in a private act or in a state of undress such that the person's bare genital or anal region is visible. Depending on the circumstances, it may be that other offences such as 'humiliating or degrading filming', 'indecent filming', 'blackmail' or child pornography offences are relevant.

DISTRIBUTION OF INVASIVE IMAGE

- 26C (1) A person is guilty of an offence if that person distributes an invasive image of another person, knowing or having reason to believe that the other person
- does not consent to that particular distribution of the image; or
 - does not consent to that particular distribution of the image and does not consent to distribution of the image generally.

In order for the police to consider laying a criminal charge the victims must attend a police station to make a complaint.

It is important that victims get a report number and make a written statement so that the complaint is properly recorded. Where possible, request that the complaint is taken by a member of the SAPOL Family Violence team.

Texts, voicemails, screenshots of web pages and other forms of electronic evidence should be carefully saved and backed up. Printouts should also be made wherever possible and shown to the police. The correct contact details of the alleged offender will also be helpful.

Contact: POLICE 131 444

REPORT THE WEBSITE

The Australian Communications and Media Authority (ACMA) provides a hotline where Australian residents can make a complaint about online content that may be prohibited, offensive or illegal.

The ACMA has the power to shut down websites or issue fines if the offending content is not removed as directed.

However, the ACMA can only take action about online content that is considered 'prohibited' or 'potentially prohibited'. It may be possible to argue that the publication of the sexually explicit material could be classed as 'category 1 restricted' under s2 of The National Classification Code and therefore would be considered as 'potentially prohibited'.

Publications will be considered 'category 1 restricted' (except 'Refused Classification' publications and Category 2 restricted publications) if they:

- explicitly depict nudity, or describe or impliedly depict sexual or sexually related activity between consenting adults, in a way that is likely to cause offence to a reasonable adult; or
- describe or express in detail violence or sexual activity between consenting adults in a way that is likely to cause offence to a reasonable adult; or
- are unsuitable for a minor to see or read.

Offensive or illegal online content can be reported to the ACMA Hotline via an online complaint form or by email.

Contact:

Australian Communication and Media Authority (ACMA)

1300 850 115 or visit www.acma.gov.au

Complaint forms and fact sheets are available from the ACMA website.

domestic violence
LEGAL SERVICE

This overview is intended for information only and is not a substitute for individual legal advice.

This resource was originally developed by Domestic Violence Legal Service in Darwin and adapted with permission by the Legal Services Commission. The Legal Services Commission acknowledges DVLS for its commitment and service to people at risk of domestic or family violence.

For free and confidential legal advice over the phone or by appointment call 1300 366 424 www.lsc.sa.gov.au