

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 sometimes 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, or threaten to distribute an invasive image**, even if the image was initially taken with the agreement of the person depicted. An invasive image is a moving or still image of a person who is engaged in a private act (for example, a sexual 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 victim 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

OFFICE OF THE ESafety COMMISSIONER

Aside from pursuing criminal charges, a victim of cyberbullying or harassment may make a report to, or seek support from, the Office of the eSafety Commissioner.

The Commissioner can investigate complaints about online content that may be prohibited, offensive or illegal. The Commissioner can take action where the content is prohibited or potentially prohibited, such as where content is sexually explicit and is likely to cause offence to a reasonable adult.

The Office of the eSafety Commissioner also has an image-based abuse online portal which provides reporting options, resources and support to victims of image-based abuse. Image-based abuse can be, for example, where someone such as an ex-partner shares private or intimate images or videos of a person without their consent.

The Commissioner has the power to remove or require the removal of image-based abuse material from social media and other websites. Fines can be issued for failure to remove material when requested, and for other actions including where a person has posted or threatened to post an intimate image online without the other person's consent.

For the Commissioner to assist with complaints about image-based abuse or online content, there usually has to be a connection to Australia. This could be, for example, where a person lodging a complaint about online content lives in Australia, or a person depicted in an intimate image lives in Australia.

Complaint forms, the online image-based abuse reporting portal, and other resources are available from the eSafety Commissioner website.

Contact:

Office of the eSafety Commissioner

1800 880 176 or visit www.esafety.gov.au

online@esafety.com.au

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

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