

# Legal responses to abuse via technology

Abuse and threats by phone and via the internet are becoming more common in domestic violence contexts, and more generally. It is not uncommon for perpetrators to threaten to upload or distribute intimate or sexual photos or videos to social media networks or internet sites without consent. This is image-based abuse.

This fact sheet gives a brief overview of some legal options for prevention and protection. For some, one avenue will be sufficient. In other cases, a combination of different approaches may be needed. The key is for you to identify your needs and priorities and access the right support services as quickly as possible.

**For preliminary legal advice, call our Legal Helpline on 1300 366 424.** We also have a range of domestic violence services where we may refer you as appropriate.

## Apply for an intervention order

One option is to seek orders under the [Intervention Orders \(Prevention of Abuse\) Act 2009 \(SA\)](#) to prohibit the uploading and distributing of intimate images or videos. In addition to 'no violence' and 'no contact' type conditions, a court can make other orders that impose both restraints and obligations. For example:

- restraining the perpetrator from publishing on the internet, by email, SMS or other electronic means, any offensive material about you.
- directing the perpetrator to permanently delete and destroy any indecent or invasive images or videos of you in their possession within 24 hours.

The police can issue an intervention order in some circumstances or apply to the Magistrates Court for an order on your behalf.

**Legal Help** for all South Australians

Alternatively, you can make your own private application to the court. If you are a woman experiencing domestic violence in South Australia, the **Women's Domestic Violence Court Assistance Service** may be able to help you apply for an order. For more information and assistance, call **1800 246 642** or visit [wdvcas.lsc.sa.gov.au](http://wdvcas.lsc.sa.gov.au)

## Criminal charges

Generally the police will not consider charging someone with a criminal offence unless you attend a police station to make a formal complaint.

If you are experiencing domestic violence, request that your complaint be taken by a member of the SAPOL Family Violence Investigation Section.

You should give a written statement and ask for a report number so your complaint is properly recorded and you can refer back to it later if necessary.

You should save and/or print texts, voicemails, screenshots and other forms of electronic evidence to show to the police. Be ready to provide the contact details of the perpetrator to the police as well.

Depending on the nature of the abuse, the police may consider charging a perpetrator with any of the following criminal offences.

## Unlawful threats

Under section 19 of the [Criminal Law Consolidation Act 1935 \(SA\)](#), it is an offence to make an **unlawful threat** to kill or harm a person. This includes threats made over the phone or via the internet.

Harm can include physical or mental harm.

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A person may be found guilty if it can be proved that they threatened, without lawful excuse, to kill, endanger the life of, or harm, another person, intending to arouse a fear that the threat would be carried out (or with reckless indifference as to whether such a fear would be aroused).

## Stalking

It is also an offence, under section 19AA, to **stalk** a person. This can include **giving, sending, transmitting or publishing offensive material** via a phone or the internet, or any other acts that could reasonably be expected to cause the other person apprehension or fear. In some instances the police may informally caution a person against stalking even if there is not enough evidence to charge them.

## Distribution of invasive image

Under section 26C of the [Summary Offences Act 1953 \(SA\)](#), it is an offence to **distribute an invasive image** of someone **without their consent**, 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 breasts or bare genital or anal region is visible. It can include an image that has been **digitally altered**.

A person may be found guilty of an offence against section 26C if they distribute 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. Under section 26DA, it is also an offence to threaten to distribute an invasive image.

Depending on the circumstances, other offences, such as humiliating or degrading filming, indecent filming, blackmail, or child exploitation material offences, may also be relevant and open to consideration by police.

**Call SA Police on 131 444 for non-urgent assistance.**

## Office of the eSafety Commissioner

Aside from pursuing criminal charges, an adult or child who lives in Australia and is the victim of cyberbullying or image-based abuse may make a report to, or seek support from, the Office of the eSafety Commissioner.

The Commissioner administers four online protection schemes under the [Online Safety Act 2021 \(Cth\)](#).

The **Image-Based Abuse Scheme** provides reporting options, resources and support to victims of image-based abuse in Australia. Image-based abuse can include an ex-partner sharing intimate or sexual images or videos of you without your consent. If you complain, the Commissioner has the power to require that they or the service provider **remove image-based abuse material within 24 hours**. The Commissioner can also issue fines where someone has posted or threatened to post an intimate image online without your consent, and where they fail to remove the material when requested.

There are also separate **child and adult Cyber Abuse Schemes** under which online material may be considered "cyberbullying" and be subject to removal. Before asking for a **removal notice** from the Commissioner under one of these Cyber Abuse Schemes, you should first **complain to the online service provider**. The Commissioner cannot issue a removal notice to a service provider until 48 hours after you have made a complaint to the provider. The Commissioner can issue fines where material is not removed as requested.

The Commissioner can also investigate complaints about online content that may be illegal or restricted. The Commissioner can issue a removal notice under the Online Content Scheme even if the content is hosted outside of Australia.

Complaint forms and other resources are available from the eSafety Commissioner's website.

Contact:

**Office of the eSafety Commissioner**

Call 1800 880 176 or visit [www.esafety.gov.au](http://www.esafety.gov.au)