

LEGAL GUIDE TO RELEVANT CRIMINAL OFFENCES IN SOUTH AUSTRALIA

Introduction

Technology-facilitated stalking and abuse is the use of technology (such as the internet, social media, mobile phones, computers, and surveillance devices) to stalk and perpetrate abuse on a person.

Such behaviour includes:

- Making numerous and unwanted calls to a person's mobile phone
- Sending threatening and/or abusive messages (text messaging, Whatsapp, Snapchat, Facebook messaging, Twitter)
- Hacking into a person's email or social media account to discover information about them
- Hacking into a person's email or social media account to impersonate them and send abusive messages to family/friends of that person
- Using surveillance devices to spy on a person
- Using tracking devices to follow a person
- Sharing, or threatening to share, intimate pictures of a person

This legal guide is one of a set of three guides that looks at areas of law relevant to people experiencing technology-facilitated stalking and abuse.

Legal Guide to Relevant Criminal Offences in South Australia

This guide looks at the various **criminal offences** that may apply to a person who is perpetrating technology-facilitated stalking and abuse.

For information on other areas of law see:

Legal Guide to Surveillance Legislation in South Australia

This guide looks at what the law says about **surveillance devices** – when it is an offence to use them and what the restrictions are on sharing information/videos/pictures obtained through the use of surveillance devices.

Legal Guide to Intervention Orders

This guide looks at how people can obtain protection orders from the court to protect them from technology-facilitated stalking and abuse. In South Australia these protection orders are called **Intervention Orders (IOs)**.

DISCLAIMER: The use of technology-facilitated violence is a developing area of the law. The legal information, examples and scenarios contained in the guide are intended to explain the law in general terms only and are not legal advice. They cannot be relied upon or applied by readers in their own cases. Each set of circumstances needs to be looked at individually. You should seek legal advice about your own particular circumstances.

Terminology

Language of 'Victim' vs 'Survivor'

Some women who are experiencing, or who have experienced, domestic violence use the term 'victim' of domestic violence to describe themselves. Others believe the term 'survivor' of domestic violence more accurately reflects their experience.

Whilst acknowledging that each woman's experience is unique and individual to her circumstances, for consistency, these guides will refer to women who are experiencing, or who have experienced, domestic violence as 'victims' of domestic violence.

Gender and Language

While domestic violence can happen in many circumstances (including in non-heterosexual relationships), in the vast majority of reported domestic violence cases men are the perpetrators and women the victims.

For this reason these guides use 'he' to refer to perpetrators and 'she' to refer to victims. This is not intended to exclude other situations.

Criminal Offence (or offence)

A criminal offence is an offence against the State. It is commonly referred to as 'breaking the law'.

Summary offence

Less serious offences (such as disorderly conduct), are known as summary offences. Summary offences are defined by the Summary Procedure Act 1921 (SA) and have a maximum penalty of no more than two years imprisonment or are not punishable but imprisonment at all.

Indictable offence

More serious offences are known as indictable offences. Indictable offences are divided into minor and major indictable offences.

- Minor indictable offences are less serious (such as stalking) and are usually dealt with in the Magistrates Court
- Major indictable offences are the most serious (such as murder, manslaughter, sexual assault) and are dealt with by the District or Supreme Court

Charge

When a person is charged with an offence, it means that the police have formally accused that person of committing an offence.

Conviction

When a person is convicted of an offence, it means that person has either pleaded guilty to committing the offence, or a court has found that person guilty of committing the offence.

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Relevant Criminal Offences

Some forms of technology-facilitated stalking and abuse are against the law. If it is unlawful, then the person responsible can be charged with a criminal offence.

This guide will look at the offences under **South Australian** and **Commonwealth** laws that are relevant to technology-facilitated stalking and abuse.

Note: The Listening And Surveillance Devices Act 1972 (SA) and Intervention Orders (Prevention of Abuse) Act 2009 (SA) also contain relevant offences – these offences are covered in the Legal Guide to Surveillance Legislation and the Legal Guide to Intervention Orders.

This guide covers the following legislation:

Summary Offences Act 1953 (SA)

- Humiliating or degrading filming (s 26B)
- Distribution of invasive image (26C)
- Indecent filming (s 26D)
- Indecent or offensive material (s 33)

Criminal Law Consolidation Act 1935 (SA)

- Unlawful threats (s 19)
- Unlawful stalking (s 19AA)
- Assault (s 20)
- Unauthorised modification of computer data (s 86G)
- Unauthorised impairment of electronic communication (s 86H)
- Misuse of personal identification information (s 144C)
- Prohibited material (s 144D)
- Blackmail (s 172)
- Criminal defamation (s 257)

Classification (Publications, Films and Computer Games) Act 1995 (SA)

- Leaving films in certain places (s 44)
- Possession or copying of film for purpose of sale or exhibition (s 45)
- Sale of unclassified RC publications (s 46)
- Leaving or displaying publications in certain places (s 52)
- Making available or supplying objectionable matter on on-line service (s 75C)

Criminal Code 1995 (Cth)

- Dealing in identification information (s 372.1)
- Interception devices (s 474.4)
- Offences using a carriage service
- To make a threat (s 474.15)
- To menace, harass or cause offence (s 474.17)

Telecommunications (Interception and Access) Act 1979 (Cth)

- Telecommunication not to be intercepted (s 7)
- No dealing in intercepted information or interception warrant information (s 63)
- Civil remedies unlawful interception or communication (s 107A)

LEGAL ADVICE – At any stage, it is important for a person to obtain legal advice about their situation and the options available to them. Please see the legal services directory on the support page of www.smartsafe.org.au for referrals to the nearest legal service

*Summary Offences Act 1953 (SA)***1. Humiliating or degrading filming (section 26B)****Engaging in filming (s 26B(1))**

It is an offence to engage in humiliating or degrading filming.

Humiliating or degrading filming includes where a person is being filmed while being subjected to or compelled to engage in either:

- An assault or act of violence; or
- An act that a reasonable adult member of the community would consider to be humiliating or degrading to such a person (must cause more than minor or moderate embarrassment)

It does **not** include if a person **consented** to the filming at the time, for example, if a sexual video was consensually filmed by a couple while they were together.

Note: there can be no consent where:

- A person is under 16 year old; or
- A person is mentally incapacitated; or
- Consent was obtained through duress or deception
- For example, filming a woman who has passed out at a party being subjected to non-consensual sexual conduct.

Maximum penalty: Imprisonment for 1 year.

The court may also order that the records of the moving or still images be forfeited (s 26E(3)).

However, it is a **defence** if the defendant can prove one or more of the following:

- The defendant did not knowingly film the images
- For example— The filming took place accidentally or the filming took place in circumstances where the defendant did not know what images were being filmed
- The defendant reasonably believed that the victim consented to the filming
- However, there can be no apparent consent if the person was under 16 year old or mentally incapacitated or if duress or deception was used
- The conduct was for a legitimate public purpose
- For example, it would be a defence if a person had a security camera in their house and at a party at the

house, a woman passed out was sexually assaulted by a guest. The act was caught on camera. The person who owns the cameras only had them set up for security in their home and would have a defence as they did not knowingly film the images.

Distributing images from filming (s 26B(2))

It is an offence to **distribute a moving or still image** obtained by *humiliating or degrading filming* **knowing or having reason to believe** that the victim does not consent to that particular distribution. This includes if the victim does not consent to distribution of the image generally in addition to that particular distribution.

Maximum penalty: Imprisonment for 1 year.

The court may also order that the records of the moving or still images be forfeited (s 26E(3)).

- For example, sending on to others a video of a woman who has passed out at a party being subjected to non-consensual sexual conduct
- This would not cover where a sexual activity is filmed consensually but then shared without consent because of the limited definition of humiliating or degrading filming (however, see s 26C)

However, it is a **defence** if the defendant can prove one or more of the following:

- The defendant's distribution of the image was neither intentional nor reckless
- The conduct constituting the offence was for a legitimate public purpose in the public interest
- In deciding whether it was in the public interest, the court considers if it was for educating/informing the public, or connected to law enforcement/public safety or for a medical/legal/scientific purpose or any another factor considered relevant

Engaging in a humiliating or degrading act while filming (s 26B(3))

It is an offence if the person who took part in the humiliating or degrading act also filmed that act (without consent)

- For example, a man films himself sexually assaulting a woman who has passed out at a party. He has committed offences against both ss 26B(1) and 26B(3) as well as sexual assault.

Maximum penalty: Imprisonment for 2 years.

The court may also order that the records of the moving or still images be forfeited (s 26E(3)).

However, it is a **defence** if the defendant can prove one or more of the following:

- The defendant did not knowingly film the images
- Example provided in the Act: the filming took place accidentally or the filming took place in circumstances where the defendant did not know what images were being filmed
- The defendant reasonably believed that the victim consented to the filming
- However, there can be no apparent consent if the person was under 16 year old or mentally incapacitated or if duress or deception was used
- The conduct was for a legitimate public purpose in the public interest
- In deciding whether it was in the public interest, the court considers if it was for educating/informing the public, or connected to law enforcement/public safety or for a medical/legal/scientific purpose or any another factor considered relevant
- For example, if a man reasonably believed his wife was consenting to the filming of them having sex and set up the camera in their bedroom so she could plainly see, he may have a defence. However, if he told her that if she did not allow him to film them, he would hurt her, there is no apparent consent as it is under duress.

Engaging in a humiliating or degrading act and distributing (s 26B(3))

It is an offence if the person who took part in the humiliating or degrading act also distributed a moving or still image from the filming (without consent)

Maximum penalty: Imprisonment for 2 years.

The court may also order that the records of the moving or still images be forfeited (s 26E(3)).

- For example, a man's friend films him sexually assaulting a woman who has passed out at a party. He then gets a copy of the film and uploads it onto social media. He has committed offences against both ss 26B(1) and 26B(3)

However, it is a **defence** if the defendant can prove one or more of the following:

- The defendant's distribution of the image was neither intentional nor reckless
- The conduct constituting the offence was for a legitimate public purpose in the public interest
- In deciding whether it was in the public interest, the court considers if it was for educating/informing the public, or connected to law enforcement/public safety or for a medical/legal/scientific purpose or any other factor considered relevant

2. Distribution of invasive image (section 26C)

It is an offence to **distribute** an invasive image of another person, **knowing or having reason to believe** that the other person **does not consent** to that particular distribution. This includes if the other person does not consent to distribution of the image generally in addition to that particular distribution.

An invasive image is a moving or still image of a person:

- Engaged in a sexual act of a kind not ordinarily done in public; or
- Using a toilet; or
- In a state of undress so their bare genital or anal region is visible

It does not include an image of a person who is or looks under the age of 16 years or an image of a person who is in a public place.

Maximum penalty: \$10 000 or imprisonment for 2 years.

The court may also order that the records of the moving or still images be forfeited (s 26E(3)).

- This would cover where a sexual activity is filmed consensually within a relationship but then shared without consent when that relationship ends

It is a **defence** if the defendant can prove that the conduct was done:

- For a purpose connected to law enforcement; or
- For a medical, legal or scientific purpose; or
- By a licensed investigation agent in the course of obtaining evidence for a legal claim

3. Indecent filming (section 26D)

Engaging in indecent filming (s 26D(1))

It is an offence to engage in indecent filming.

Indecent filming means:

- Filming another person in a state of undress in circumstances in which a reasonable person would expect to be afforded privacy; or
- Filming another person in circumstances in which a reasonable person would expect to be afforded privacy while that person is either:
 - Engaged in a sexual act of a kind not ordinarily done in public; or
 - Using a toilet
- Filming another person's genital or anal region (either covered by underwear or bare) in circumstances in which a reasonable person would not expect that the person's private region might be filmed

Maximum penalty:

- If the person filmed was a minor—\$20 000 or imprisonment for 4 years
- In any other case—\$10 000 or imprisonment for 2 years.

The court may also order that the records of the moving or still images be forfeited (s 26E(3)).

- For example, it would be an offence to set up a covert camera in a bathroom and use it to secretly film a person getting naked

It is a **defence** if the defendant can prove—

- The indecent filming occurred with the consent of the person filmed
- However, there can be no apparent consent if the person was under 16 year old or mentally incapacitated or if duress or deception was used
- The image was filmed by a licensed investigation agent in the course of obtaining evidence for a legal claim

Distributing indecent filming (s 26D(3))

It is an offence to **distribute** a moving or still image obtained by **indecent filming**.

Maximum penalty:

- If the person filmed was a minor—\$20 000 or imprisonment for 4 years
- In any other case—\$10 000 or imprisonment for 2 years

The court may also order that the records of the moving or still images be forfeited (s 26E(3)).

It is a **defence** if the defendant can prove one or more of the following —

- The person filmed **consented** to that particular distribution or to distribution of the image generally
 - However, there can be no apparent consent if the person was under 16 year old or mentally incapacitated or if duress or deception was used
- The defendant **did not know**, and could not reasonably be expected to have known, that the indecent filming was **without the person's consent**
- The indecent filming was undertaken by a licensed investigation agent in the course of obtaining evidence for a legal claim

4. Indecent or offensive material (section 33)

In relation to **indecent or offensive material**, it is an offence to:

- Produce it for sale; or
- Sell it; or
- Exhibit it in a public place; or
- Exhibit it to a person to offend or insult them; or
- Deliver or exhibit it involving a minor; or
- Cause or permit someone else to do one of the above actions

However, it does not involve, for example where there is artistic merit or where the material was for legal, medical or scientific knowledge.

There must be consent of the Minister to prosecute a charge under this section.

Indecent material refers to material that is wholly or partly indecent, immoral or obscene.

Offensive material includes where the subject matter involves violence, cruelty, drugs, crime or revolting or abhorrent phenomena that would cause serious and general offence amongst reasonable adult members of the community.

Maximum penalty: \$20 000 or imprisonment for 6 months

The court can also order for the indecent or offensive material to be forfeited.

- For example, a woman's ex-partner sells naked photos of her with a sex toy to a revenge porn website.

Criminal Law Consolidation Act 1935 (SA)

5. Unlawful threats (section 19)

It is an offence to make threats to:

- Kill or endanger another's life; or
- To cause harm to another

Intending to arouse fear that the threat will be or is likely to be carried out, or is recklessly indifferent as to whether such fear is aroused.

Maximum penalty 19(1): 10 years imprisonment or 12 years for an aggravated offence

Maximum penalty 19(2): 5 years imprisonment or 7 years for an aggravated offence

Note: if the victim was in a domestic relationship with the offender (e.g., was or is in an intimate or family relationship with them), the matter is aggravated (see s 5AA)

- For example, a man sends his ex-partner a text message saying he will kill her and then comes to her house and aggressively knocks on her door.

6. Unlawful stalking (section 19AA)

It is an offence for a person to stalk a person where on **at least two** separate occasions a person:

- **Gives or sends offensive material** to the other person, or leaves offensive material where it will be found by, given to or brought to the attention of the other person; or
- **Publishes or transmits offensive material** by means of the internet or some other form of electronic communication in such a way that the offensive material will be found by, or brought to the attention of, the other person; or
- **Communicates with the other person, or to others** about the other person, by way of mail, telephone (including associated technology), facsimile transmission or the internet or some other form of electronic communication in a manner that could reasonably be expected to **arouse apprehension or fear** in the other person; or
- Keeps the other person under **surveillance**

intending to cause serious physical or mental harm to a person or intending to cause a serious apprehension of fear. This fear can extend to a fear of being embarrassed and does not have to be fear for personal safety (*Police v Gabrielsen* [2011] SASC 39).

Note: This section covers a broad range of conduct that can be considered as stalking, above is only those most relevant to technology-facilitated stalking and abuse.

Maximum penalty: 3 years imprisonment or 5 years for an aggravated offence

Note: if the victim was in a domestic relationship with the offender (e.g., was or is in an intimate or family relationship with them), the matter is aggravated (see s 5AA)

- For example, where a woman's ex-partner sends her numerous emails or text messages containing crude insults and accusations (as in *Police v Gabrielsen* [2011] SASC 39).

7. Assault (section 20)

An offence is committed where a person threatens to apply force (directly or indirectly) to the victim and there are reasonable grounds for the victim to believe that person making the threat can carry it and intends to or there is a real possibility they will carry it out.

Maximum penalty: 2 years imprisonment or 3 years for an aggravated offence

- For example, a man sends his ex-partner a text message with a photo of his gun and the words "I'm going to get you."

8. Unauthorised modification of computer data (section 86G)

It is an offence for a person to knowingly cause an unauthorised *modification* (deletion, alteration or addition) of computer data (including things stored on a computer), intending to or recklessly causing harm or inconvenience by impairing access, reliability, security or operation of computer data.

Maximum penalty: Imprisonment for 10 years.

- For example, a man infects his ex-partner's computer with spyware software (an addition to computer data) so he can monitor her movements, emails, see her keystrokes and access information stored on her computer

9. Unauthorised impairment of electronic communication (section 86H)

It is an offence to knowingly cause an unauthorised *impairment* of electronic communication and intends by doing so to cause harm or inconvenience.

Impairment includes the prevention or delay of electronic communications. It only includes interception of communication if it impairs its arrival at an intended destination.

Maximum penalty: Imprisonment for 10 years.

- For example, a man infects his ex-partner's computer with a computer virus which means her emails will no longer send

10. Misuse of personal identification information (section 144C)

It is an offence for a person to use another person's *personal identification information* intending to commit or facilitate the commission of a serious criminal offence (includes indictable offences).

Personal identification information includes a person's name, address, date or place of birth, marital status, relatives, their driver's licence details, passport details, voiceprint, credit card details or digital signature (s 144A).

Maximum penalty: the penalty appropriate to an attempt to commit the serious criminal offence.

- For example, a man posts his ex-partner's name, photo and address on a forum instructing other people on the forum to go to her house and rape her
- When someone posts a person's personal identification information online in this manner, it is sometimes referred to as 'doxing'

11. Prohibited material (section 144D)

It is an offence for a person to produce *prohibited material* or be in possession of it with the intention of using it for a criminal purpose.

Prohibited material is defined widely to mean anything (including personal identification information) that enables a person to assume a false identity or to exercise a right of ownership that belong to someone else (s 144A).

- For example, if a man is in possession of naked photos of his ex-partner and has threatened to post them online along with her name and personal details without her consent.

12. Blackmail (section 172)

It is an offence for a person to *menace* another person intending to get the other to submit to a demand.

Menace means making an unwarranted threat to harm the person or a third person. Harm includes physical, mental, economic harm, harming property or humiliation or serious embarrassment. For the behaviour to be *menacing* it must be a threat that would have been taken seriously by a reasonable person of normal stability and courage, or the victim took the threat seriously because of a particular vulnerability known to the person making the threat.

Maximum penalty: 15 years imprisonment or 20 years for an aggravated offence

Note: if the victim was in a domestic relationship with the offender (e.g., was or is in an intimate or family relationship with them), the matter is aggravated (see s 5AA)

- For example, a person demands to see his children or will post a sex tape of the victim on the Internet.

13. Criminal defamation (section 257)

It is an offence for a person to publish defamatory material about another living person without *lawful excuse* and:

- Knowing the matter to be **false** or being recklessly indifferent as to whether it is true or false; and
- Intending to cause **serious harm** or being recklessly indifferent as to whether it will cause harm

A person has *lawful excuse* if they can prove they would have a defence to civil law defamation. Some defences include proving the defamatory allegations are substantially true or are a fair report of proceedings (e.g., a court matter) or that it was an honest opinion with a proper basis or that the matter is trivial and it is unlikely the defamed person suffered any harm.

Maximum penalty: Imprisonment for 3 years.

Classification (Publications, Films and Computer Games) Act 1995 (SA)

Refused classification (RC) includes, for example, films that deal with sex, crime, cruelty or violence in way that offends the standards of morality, decency and propriety generally accepted by reasonable adults (*National Classification Code (May 2005)*).

X 18+ includes, for example, films (that are not RC) that contain real depictions of actual sexual activity between consenting adults that would be unsuitable for a minor to see (*National Classification Code (May 2005)*).

R 18+ includes, films (that are not RC or X 18+) that are unsuitable for a minor to see (*National Classification Code (May 2005)*).

MA 15+ includes, films (that are not RC, X 18+ or R 18+) that deal with sex, violence or coarse language in such a manner as to be unsuitable for viewing by persons under 15 (*National Classification Code (May 2005)*).

14. Leaving films in certain places (section 44)

It is an offence for a person to leave a film in a public place or on a private premises (without the occupier's permission), where it if ever put before a classification board, that film would be:

- Refused classification or rated X 18+

Maximum penalty: \$10,000

- Or, Rated R 18+ or MA 15+

Maximum penalty: \$1,250

- For example, a person leaves a sex tape of his ex-partner on her parent's doorstep

15. Possessing or copying film (section 45)

It is an offence for a person to **possess** or **copy** a film with the intention of exhibiting it or selling it, where that film would be *refused classification* or rated *X 18+* if it were ever put before a classification board.

If the person was in possession of, or made 3 or more copies of the film, that is sufficient to prove the person had the intention of exhibiting or selling the film.

Maximum penalty: \$10 000

16. Sale of unclassified RC publications (section 46)

It is an offence for a person to intentionally **sell** or **deliver** a publication (can be written or pictorial), where:

- If it if ever put before a classification board, it would be likely to be refused classification; or
- Where it would cause offence to a reasonable adult; or
- Where it would be unsuitable for a minor to see

Maximum penalty: \$5 000

17. Leaving or displaying publications in certain places (section 52)

It is an offence for a person to leave a **publication** (can be written or pictorial) in a public place, or so it is visible in a public place or on a private premises (without the occupier's permission), where:

- If it if ever put before a classification board, it would be likely to be refused classification; or
- Where it would cause offence to a reasonable adult; or
- Where it would be unsuitable for a minor to see
- For example, a person prints out naked photos of his ex-partner and plasters them on street poles around her neighbourhood

Maximum penalty: \$5 000

18. Making available or supplying objectionable matter on on-line service (section 75C)

It is an offence for a person, by means of an on-line service, to make available or supply to another person *objectionable matter*, knowing it was *objectionable matter* or being reckless to it being *objectionable matter*.

Objectionable matter includes a film that would be *refused classification* or rated *X 18+* if it were ever put before a classification board (s 75A).

Maximum penalty: \$10 000

- For example, a person posts onto social media a film of his ex-partner having sex with someone

Criminal Code 1995 (Cth)

19. Dealing in identification information (section 372.1)

It is an offence to **make, supply** or **use** the identification information of another person to pretend to be, or to pass oneself off as another person for the purpose of committing or facilitating a Commonwealth indictable offence (meaning, a crime under a Commonwealth Act that is punishable by imprisonment for more than 12 months).

Maximum penalty: Imprisonment for 5 years.

- For example, a person makes a social media account in his ex-partner's name, pretending to be her. He posts her personal details and tries to add her friends so they see the account, If this is done for the purpose of harassing the ex-partner, for example, he starts posting offensive comments while pretending to be her (see s 474.17)
- This is commonly referred to as 'identity fraud'

20. Interceptions devices (section 474.4)

It is an offence to **manufacture, advertise, sell,** or **possess** an *interception device*.

Interception device includes an apparatus or device that is capable of intercepting a communication passing over a telecommunication system that could reasonably be regarded as having been designed for that purpose (see s 473.1).

Maximum penalty: Imprisonment for 5 years.

- For example, it is an offence for a person to have in their possession an audio bug device used to intercept phone calls covertly

21. Offences relating to the use of a carriage service (sections 474.15 and 474.17)

A 'carriage service' means a service for carrying communications by means of guided and/or unguided electromagnetic energy (s 7 *Telecommunications Act 1997* (Cth)). Examples include:

- Telephone services
- Internet access services
- Voice over Internet Protocol (VoIP) services (eg, Skype)

Using a carriage service to make a threat to kill (s 474.15)

It is an offence for a person to use a carriage service to make a **threat** to a person that they will **kill** them or a third person, intending them to fear the threat will be carried out. It is not necessary to prove that the person receiving the threat actually feared that the threat would be carried out.

Maximum penalty: Imprisonment for 10 years.

- For example, sending a person a text message, email or instant message or a telephone or videoconference call where they threaten to kill their ex-partner or her child

Using a carriage service to make a threat to cause serious harm (s 474.15)

It is also an offence for a person to use a carriage service to make a threat to a person that they will cause them or a third person **serious harm**, intending them to fear the threat will be carried out. It is not necessary to prove that the person receiving the threat actually feared that the threat would be carried out.

Maximum penalty: Imprisonment for 7 years.

- For example, sending a person a text message, email or instant message or a telephone or videoconference call where they threaten to break the limbs of their ex-partner or her child

Using a carriage service to menace, harass or cause offence (s 474.17)

It is an offence for a person to use a carriage service in a way that reasonable persons would regard as being menacing, harassing or offensive.

Maximum penalty: Imprisonment for 3 years.

- For example, sending a person a large volume of offensive text messages, emails or instant messages or a telephone or videoconference calls

Telecommunications (Interception and Access) Act 1979 (Cth)

22. Interception of telecommunications (section 7)

It is an offence for a person to intercept or do any act or thing that will enable that person or another person to *intercept a communication passing over a telecommunications system*.

Interception of a communication passing over a telecommunications system means listening or recording the communication without the knowledge of the person making the communication.

There are limited exceptions, for example, where there was a warrant issued.

Maximum penalty: Imprisonment for 2 years (see s 105).

- For example someone pays a person to set up a phone bug on their ex-partners phone without their knowledge, to listen in on their calls
- Due to the definition of passing over (s 5F) it would not be an offence to read a person's inbox of emails or SMS messages without their consent because the messages have already been received and are not in transit

23. Dealing with intercepted information (section 63)

A person must not communicate to another person, make use of, or make a record of, or give evidence in a proceeding any information that has been intercepted (subject to the other provisions of Part 2-6).

Maximum penalty: Imprisonment for 2 years (see section 105).

24. Civil remedies relating to unlawful interception and communication (section 107A)

The legislation provides for civil remedies for the unlawful interception of a communication passing over a telecommunications system, and the unlawful communication of such information.

Some orders the court can make are:

- An order declaring the interception or communication was unlawful
- An order that the defendant pay to the protected person damages
- An injunction