

LEGAL GUIDE TO RELEVANT CRIMINAL OFFENCES IN THE NORTHERN TERRITORY

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 four guides that looks at areas of law relevant to people experiencing technology-facilitated stalking and abuse.

Legal Guide to Relevant Criminal Offences in the NT

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 the NT

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 Domestic Violence Orders in the NT

This guide looks at how people can obtain protection orders from the court to protect them from technology-facilitated stalking and abuse. In the Northern Territory these protection orders are called **Domestic Violence Orders (DVOs)**.

Legal Guide to Image-Based Abuse Legislation in the NT

This guide looks at what the law says about image-based abuse – when it is an offence to record or distribute intimate images and what legal options exist for victims of image-based abuse.

Language

‘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

While domestic violence can happen in many circumstances, 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.

Terminology

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 obscenity or threatening violence), are known as summary offences. Summary offences are dealt with by the Court of Summary Jurisdiction.

Indictable offence

More serious offences (such as murder, manslaughter, sexual assault) are known as indictable offences and are usually dealt with by the 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.

Penalty unit

Criminal legislation usually describes the amount payable for a fine in a “penalty unit”. Penalty units are used instead of dollar amounts because the rate for penalty units is indexed for inflation and may change from time to time. The Department of the Attorney-General and Justice sets the amount for one penalty unit for each year in accordance with the Penalty Units Act. For 2018 to 2019 a single unit = \$155.

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 some of the offences under **Northern Territory** and **Commonwealth** laws that are relevant to technology-facilitated stalking and abuse.

Note: The *Surveillance Devices Act* (NT) and *Domestic and Family Violence Act 2007* (NT) also contain relevant offences – these offences are covered in the **Legal Guide to Surveillance Legislation in the NT** and the **Legal Guide to Domestic Violence Orders in the NT**. The intimate image offences contained in the *Criminal Code Act* (NT) are covered in greater detail in the **Legal Guide to Image-Based Abuse in the NT**.

This guide covers the following legislation:

Criminal Code Act (NT)

1. Publishing indecent articles (s 125C)
2. Threats to kill (s 166)
3. Unlawful stalking (s 189)
4. Unlawful publication of defamatory matter (s 204)
5. Publishing or threatening to publish defamatory matter with intent to extort money (s 205)
6. Unlawfully obtaining confidential information (s 222)
7. Criminal deception (s 227)
8. Blackmail and extortion (s 228)
9. Dealing in identification information (s 228C)
10. Unlawful access to data (s 276B)
11. Unlawful modification of data (s 276C)
12. Unlawful impairment of electronic communication (s 276D)

Summary Offences Act (NT)

13. Offensive conduct (s 47)
14. Threatening violence (s 47AB)
15. Inciting the commission of offences (s 69B)

Classification of Publications, Films and Computer Games Act 1985 (NT)

16. Sale of films (s 45)
17. Leaving films in certain places (s 52)
18. Possession of films with intention to publish (s 53)
19. Sale of submittable or RC publications (s 54)
20. Leaving or display publications in certain places (s 61)
21. Possession or copying of publications with intention to sell (s 62)

Criminal Code 1995 (Cth)

22. Dealing in identification information (s 372.1)
23. Interception devices (s 474.4)
24. 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)

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

Criminal Code Act (NT)

1. Publishing Indecent Articles (section 125C)

It is an offence for a person to publish an indecent article.

Publish is defined widely and includes, for example, to distribute, disseminate, circulate, deliver, exhibit, exchange, sell, offer for sale or to have in one's possession or control for the purpose of doing one of these things.

However, *indecent article* is defined narrowly and will not capture most intimate or sexual images or films. The film or image needs to also involve for example, the use of violence or coercion in the sexual conduct, the use of urine or excrement in the sexual conduct or generally promote crime or violence (see s 125A).

Maximum penalty: imprisonment for two years.

- **For example:** a person emails a video he recorded of himself sexually assaulting his partner to her family.

2. Threats to kill (section 166)

It is an offence to make a threat to kill any person, or to cause a threat to kill to be received, with intent to cause fear. The threat must be one that would cause a person of reasonable firmness and courage to be fearful.

It is a defence if the defendant can prove making the threat or causing it to be received was reasonable in the circumstances.

Maximum penalty: imprisonment for seven years.

- **For example:** a man sends his ex-partner a text message saying he will kill her, and due to his previous abuse, she is fearful.

3. Unlawful Stalking (section 189)

It is an offence for a person to stalk another person.

Stalking involves repeated instances or a combination of the following:

- Following the victim or any other person
- Telephoning, sending electronic messages to, or otherwise contacting, the victim or another person
- Entering or loitering outside or near their home, work or any other place they frequent
- Interfering with property in the victim's or another person's possession
- Giving offensive material to the victim or another person or leaving it where it will be found, given to or brought to the attention of the victim or other person
- Keeping the victim or another person under surveillance
- Acting in any other way that could reasonably be expected to arouse apprehension or fear in the victim for her safety or that of another person

And with the intention of causing and actually causing physical harm, mental harm, apprehension or fear for their or another person's safety.

Intention can be proven by showing a reasonable person in the circumstances would have been aware the conduct would be likely to cause the harm, apprehension or fear.

Maximum penalty: imprisonment for two years. If the offence involved a contravention of bail, an injunction or other court order (such as a DVO) or if the offender was in possession of an offensive weapon, then imprisonment for five years.

- **For example:** an ex-partner installs cameras in and around the victim's home and uses them to keep her under surveillance.

4. Unlawful publication of defamatory matter (section 204)

It is an offence for a person to publish defamatory material without lawful excuse with the intent:

- To cause a breach of the peace, or
- To cause loss, or
- To prevent or deter a person from doing an act they lawfully can do, or
- To compel a person to do an act they can lawfully abstain from doing.

Note: there are other circumstances where publishing defamatory material is prohibited that are less relevant, see s 204 for the full list.

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.

- **For example:** a person posts on the Facebook page of a school where his ex-partner works as a teacher. He makes up false accusations that his ex-partner is having sex with students at the school. As a consequence, her reputation is damaged.

5. Publishing or threatening to publish defamatory matter with intent to extort money (section 205)

It is an offence for a person to publish or threaten to publish any defamatory material with intent to extort property or benefit of some kind.

Maximum penalty: Imprisonment for 3 years.

- **For example:** an ex-boyfriend threatens to publish a sex tape and make it look like the victim self-published it, unless the victim pays him \$500.

6. Unlawfully obtaining confidential information (section 222)

It is an offence for a person to abstract any confidential information from any register, document, computer or similar with intent to cause loss or obtain a benefit.

Maximum penalty: Imprisonment for 3 years.

- **For example:** a person sets up spyware on his ex-partner's computer so he can access her personal emails and diary records which he then tries to use to discredit her in family law proceedings

7. Criminal deception (section 227)

It is an offence to use deception to:

- Obtain property of another; or
- Obtain a benefit (includes any advantage, right or entitlement)

Maximum penalty: the same punishment as if they had stolen the property or property of equivalent value to the benefit fraudulently obtained.

- **For example:** a person asks to borrow his ex-partner's computer to work on his resume. Instead he downloads naked photos his ex-partner took of herself that were stored on her computer.

8. Blackmail and extortion (section 228)

It is an offence for any person to make demands with menace and intent to obtain some benefit or cause some detriment or injury to another.

It is a defence if the defendant can show the demand was reasonable in the circumstances.

Maximum penalty: imprisonment for 14 years.

- **For example:** a person sends text messages to his ex-partner saying, "If you don't get back with me I will send all of the naked photos I have of you to your family".

9. Dealing in identification information (section 228C)

It is an offence for a person to make, copy, store, supply, transmit or use another person's identification information intending to commit or facilitate the commission of a crime.

Personal identification information means information that can be used to identify a person such as their name, address, date or place of birth, marital status, relatives, their driver's licence details, passport details, voiceprint, credit card or bank details or digital signature (s 144A).

Maximum penalty: imprisonment for 7 years.

- **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'.

10. Unlawful access to data (section 276B)

It is an offence for a person to unlawfully access data held in a computer to cause loss or harm to another person or gain a benefit or advantage. It is also an offence to use the data that was accessed unlawfully, whether or not the person using the data is the same person who gained access to the data.

Maximum penalty: imprisonment for 10 years.

- **For example:** a person pays an expert hacker to hack into his ex-partner's computer to get access to naked photos she has of herself stored on the computer.

11. Unlawful modification of data (section 276C)

It is an offence for a person to unlawfully modify data on a computer to impede access or adversely affect use.

Maximum penalty: imprisonment for 10 years.

- **For example:** an ex-partner modifies the passwords on the victim's computer to prevent her from accessing her computer or email accounts.

12. Unlawful impairment of electronic communication (section 276D)

It is an offence for a person to unlawfully and intentionally cause impairment of electronic communication to or from a computer.

Maximum penalty: Imprisonment for 10 years.

- **For example:** a man infects his ex-partner's computer with a computer virus which means she can no longer send emails.

Summary Offences Act (NT)

13. Offensive conduct (section 47)

It is an offence to unreasonably cause substantial annoyance to another person or to unreasonably disrupt the privacy of another person.

Maximum penalty: \$2,000 or imprisonment for 6 months, or both.

- **For example:** a person posts a large volume of public posts on his ex-partners social media page, detailing his ex-partner's secrets and writing crude comments about her so her friends and family see them.

14. Threatening violence (section 47AB)

It is an offence for a person to intentionally intimidate or annoy another person by threatening to damage their house.

Maximum penalty: Imprisonment for 12 months or, where the offence is committed at night-time, 2 years.

- **For example:** a person sends his ex-partner a text message saying he is going to kick down the door of her house.

15. Inciting the commission of offences (section 69B)

It is an offence for a person to print or publish any writing which incites, urges, aids or encourages the commission of an offence.

Maximum penalty: \$2,000 or imprisonment for 12 months

- **For example:** a person writes on his Facebook page, “*my ex-partner is a good for nothing slut who deserves what’s coming to her – if you see her, punch her in the face for me, or at the very least, take her wallet, she owes me. Anyone who does this for me will be rewarded.*”

Classification of Publications, Films and Computer Games Act (NT)

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)*).

16. Sale of films (s 45)

A person must not sell an unclassified film knowing or being reckless as to whether the film is unclassified.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

17. Leaving films in certain places (s 52)

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

- *Refused Classification, X 18+ or R 18+*
 - **Maximum penalty:** 200 penalty units or imprisonment for 2 years.
- *MA 15+*
 - **Maximum penalty:** 50 penalty units.

- **For example:** a person leaves a sex tape of his ex-partner on her parent’s doorstep.

18. Possession of films with intention to publish (s 53)

It is an offence for a person to possess a film with the intention of publishing it, where if that film were put before a classification board, it would be classified *Refused Classification or X 18+*

If the person was in possession of 10 or more copies of the film, it is presumed that the person had the intention to publish the film.

Maximum penalty: 200 penalty units or imprisonment for 2 years

19. Sale of submittable or RC publications (s 54)

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

- If it were 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: 200 penalty units or imprisonment for 2 years

20. Leaving or display publications in certain places (s 61)

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, 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: \$10 000.

- **For example:** a person prints out photos of his ex-partner using a sex toy and plasters them on street poles around her neighbourhood.

21. Possession or copying of publications with intention to sell (s 62)

It is an offence for a person to **possess** or **copy** a **publication** (can be written or pictorial) with the intention of selling it, 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

If the person made 10 or more copies of the publication, that is sufficient to prove they intended on selling the publication, absent evidence to the contrary.

Maximum penalty: 200 penalty units or imprisonment for 2 years

- **For example:** a person has in his possession 50 prints of naked photos of his ex-partner using a sex toy.

Criminal Code 1995 (Cth)

22. 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).

This is commonly referred to as 'identity fraud'.

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. In order to harass her, he starts posting offensive comments from this account (see also s 474.17).

23. 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 bugging device used to intercept and listen to phone calls.

24. 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 (section 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 (section 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 (section 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)

25. 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

26. Dealing in 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).

27. 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 or another amount representing the income derived by the defendant from the interception
- An injunction

Gathering evidence to prove technology-facilitated stalking or abuse

Sometimes it can be difficult to prove technology-facilitated stalking or abuse. Some tips for gathering evidence to show that technology-facilitated stalking or abuse has occurred are:

- Do not delete text messages, voicemail messages, photos
- Try and save any evidence to a computer/USB flash drive
- Use screenshots and save the image as the date & time it was taken. If taking screenshots of websites, always include the URL in the screenshot
- Keep a diary or voice notes of incidents including dates and times
- Consider giving police written permission to access your phone, computer, Facebook, email account etc. if a matter is being investigated