

SEXTING AND CYBER-BULLYING

This fact sheet deals with sharing information online or on mobile phones and how the law can protect you if you are bullied or feel unsafe.

This information sheet details laws in Victoria as at **November 2012**.

SEXTING OR POSTING SEXUAL IMAGES ONLINE

What is sexting?

Sexting is when someone sends a text message with an image or video of themselves or someone else naked or posing in a sexual way .

When is it illegal to sext or post sexual images online?

If you take, keep, text, email, post or share sexual images of someone under 18 you could be charged with child pornography offences.

What makes something child pornography?

Child pornography includes any film, photograph, publication or computer game that shows a person who is under 18 or who looks under 18 performing a sexual act or posing in an indecent sexual manner.

What is 'indecent' depends on what most people would find indecent, so that could even include posing in underwear, for example.

What are the penalties?

The penalties for sexting child pornography images or videos are very serious and can affect the rest of your life.

Besides a possible jail term, you must be registered as a sex offender if you were 18 or over at the time of the offence.

Even if you were under 18, the court can order that you be registered as a sex offender if they think it necessary.

What should I do if someone sends me an illegal sext or other child pornography?

- DON'T keep, forward or upload the photo
- delete the photo immediately
- tell the person to stop sending you images or block the person.

CYBER BULLYING

Cyber bullying is harmful and in extreme cases can lead to suicide. If you are experiencing bullying, speak to a parent, someone you trust, or contact one of the services listed below.

What is cyber bullying?

Cyber bullying is when a person uses mobile phones, Facebook or other internet sites to send messages or post photos to humiliate you or make you feel afraid.

What can I do if I am being cyber- bullied?

- block the person
- keep a copy of texts, emails or posts
- report it to your school, education provider or workplace (if relevant)
- report it to your ISP and/or phone provider or website administrator
- report any sexts or sexual images of under 18s or threats to your safety to the police

GOING TO THE POLICE

Police can investigate someone if they are sexting or cyber-bullying in ways that involve criminal activity, such as:

- stalking
- threats to kill or harm someone
- breach of an intervention order
- child pornography

If you are the victim of a sexting or cyber-bullying crime, or you want to help someone who is, you can make a report to your local police station.

Depending on how much evidence they find, police may then charge the person responsible and you may have to give evidence against them in court.

GETTING AN INTERVENTION ORDER

If someone is making you feel threatened, harassed or unsafe, you can apply for a personal safety intervention order in the Magistrates Court to protect you.

Police may also make an application on your behalf but most often people apply for their own intervention order.

How can I prove that I need an order?

The court will make an intervention order against someone if it finds they have:

- harassed you (including taunts or insults)
- stalked you
- threatened to kill or seriously injure you
- damaged or interfered with your property
- threatened to damage or interfere with your property
- assaulted or sexually assaulted you

AND they are likely to do so again.

The court must also find that a reasonable person would feel scared by that behaviour.

How can an intervention order protect me?

If the court makes a personal safety intervention order against someone, that person has to follow the conditions of the order or else face criminal charges.

The court can include a number of different conditions in an order, such as:

- stopping someone from writing anything about you or posting images of you online
- stopping someone from contacting you by phone, email or any other way
- stopping someone from coming near you, your home, your school or your workplace
- stopping someone from getting others to

stalk, threaten, harass or hurt you

How do I apply for an intervention order?

Before you make your application, you should:

- know the full name of the person you are applying for an order against
- try to find out an address for them or where police can find them to deliver a court notice
- print out or save copies of any texts, emails, web pages or online posts as evidence
- note down important dates or times
- note down the details of any witnesses

You can apply at your local Magistrates Court by either dropping in or ringing ahead to make an appointment. To contact your local Magistrates Court or Children's Court, go to www.magistratescourt.vic.gov.au/contact-us

When you make your application at court, a clerk will ask you to fill out a statement explaining what happened and why you are afraid.

The clerk will then list your application on a later date to allow time for the person you are applying against to be given notice.

If you have serious fears for your safety, the clerk may direct you to go before a Magistrate to get an interim order on the same day to protect you until the later court date.

What if I am under 18?

If you are under 18, you usually need a parent or guardian to make an application on your behalf if you are under 18.

If your parent or guardian is unable or unwilling to apply on your behalf, the court may give permission for you to apply but you should seek legal advice before going to court.

What if the other person is under 18?

If the person who is cyber-bullying you or making you feel unsafe is under 18 but over 10 years old, you can still make an application but it will be to the Children's Court. You can still lodge the application at the counter at most Magistrates Courts outside of the CBD.

If the other person is under 10, the court does not have the power to make an intervention order against them.

What happens at court?

The court will set a date for both you and the person you have applied for the order against to attend court.

There will be a duty lawyer at court to advise you and court staff and security will make sure you feel safe.

If the other person does not agree to an order being made then your application will have to come back to court for a full hearing before a Magistrate. Usually this takes place on a later date to give you time to gather evidence and for your witnesses to get to court and give evidence.

If you are under 18, you may be able to get a grant of assistance from Victoria Legal Aid to cover your legal fees so you are represented at a hearing.

If you are over 18, you should seek legal advice and contact Victoria Legal Aid to find out how they can help you.

Is an intervention order the best way of dealing with the problem?

If you fear for your life or your safety, you should call police before applying for an intervention order.

If the behaviour is less serious, the courts encourage people to try mediation first. If you feel safe talking to the other person about the problem and they agree to try mediation, you can contact a mediation service to organise a session. A court may also direct you to try mediation before they make a final decision about your intervention order application.

To find out more about mediation, contact the Dispute Settlement Centre of Victoria on 1800 658 528 or go to www.disputes.vic.gov.au

INFORMATION AND SUPPORT

For more information about cyber-bullying or how to get help dealing with the problem, go to:

Kids Helpline

A free, private and confidential counselling service for young people age 5-25

: 1800 551 800

: www.kidshelp.com.au

Cybersmart

Information about how to stay safe online for children, teens and parents

: www.cybersmart.gov.au

Bullying. No way!

A website created by Australia's school community to address bullying for students, parents and teachers

: www.bullyingnoway.com.au

GETTING LEGAL HELP

Youthlaw

If you are under 25, you can get free and confidential legal advice.

For more information or to speak to a lawyer:

: (03) 9611 2412 (9am-5pm, Mon-Fri)

: www.youthlaw.asn.au

Victoria Legal Aid - Legal Help

For legal information, referrals or appointments.

: (03) 9269 0120

1800 677 402 (country callers)

: www.legalaid.vic.gov.au