

IS it legal?

What you need to know about
using your phone and social media





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Acknowledgements

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Disclaimer

This guide is intended to provide you with information only. If you have a legal problem, you should get legal advice from a lawyer. Legal Aid Queensland believes the information provided is accurate as at June 2022 and does not accept responsibility for any errors or omissions.

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Got a phone, laptop, computer or tablet? Read this

Did you know there are laws about cyberbullying, taking and sending nude pics (some people call this ‘sexting’), and image-based abuse—where someone threatens to send a nude or intimate pic of you to other people? If you’ve got a phone, laptop, computer or tablet think carefully about how you use it. It might seem like harmless fun to send a nude pic of you or someone else, but it could land you in a lot of trouble with your school, parents, the police, and even future employers.

This booklet explains:

- cyberbullying, sexting and image-based abuse
- what the law says
- what can happen to you if you break these laws.

It’s important you know about these laws when using social media as you could find yourself serving jail time if you get it wrong.



Do you need help?



If you're being bullied online or someone has shared nude pics or videos of you without your consent (permission), you can report them.

These organisations will help you report this behaviour to the police or refer you to someone for support.

Contact:

- **Youth Advocacy Centre** 07 3356 1002 or yac.net.au
- **YFS** 07 3826 1500 or yfs.org.au
- **Youth Law Australia** 02 9385 9588 or yla.org.au
- **eSafety Commissioner** esafety.gov.au
- **Queensland Police** 131 444
- **Australian Cyber Security Centre** cyber.gov.au
- **If you or someone you know is in immediate danger, call the police on 000.**



If someone has reported you, or you're worried about something you've done online, you should get legal advice from a lawyer.

These organisations will help you get legal advice and representation if you need it.

Contact:

- **If you are under 18:**
 - Youth Legal Advice Hotline, Legal Aid Queensland
1800 LAQ LAQ (1800 527 527)
legalaid.qld.gov.au
- **If you are 18 or older:**
 - Legal Aid Queensland
1300 65 11 88
legalaid.qld.gov.au
- **To find a private lawyer**
 - Queensland Law Society
1300 367 757
qls.com.au

Social media Q&A

Q: Are cyberbullying, sexting and image-based abuse illegal?

A: Potentially, yes—if you get involved in this stuff, you could be committing a crime. We'll explain what the law says in the Cyberbullying, Sexting, and Image-based abuse sections of this booklet.

Q: I'm under 18, does the law still affect me?

A: Potentially, yes—your age, and the ages of anyone else involved in cyberbullying, sexting or image-based abuse affects how the law treats you.

If you're over 10 but not yet 18, you can be investigated by the eSafety Commissioner, get into trouble with the police and be sent to court for what you post online or share with others. This can include pics, videos and posts about yourself or another person.

Q: I'm over 18, how does the law affect me?

A: If you're 18 or older, you can also get into trouble for what you post online or share with others. If you post or share something illegal, you can be investigated and charged by the police.

If you're 18 or older, you can legally share nudes of yourself or someone else over 18 if you have their consent. You must not share any nude images of someone under 18—it's illegal.

Q: But isn't it legal to have sex once you turn 16?

A: Yes, the age of consent for having sex is 16 in Queensland, but different laws apply to what you do online.

Q: How do I know if something is indecent?

A: Any words, pics, chats, or comments you wouldn't be comfortable with your parents, family, carers, teachers, other adults or strangers seeing could be considered indecent.

- If images or words you see or send could be described as: filthy, lewd, improper, wrong, tasteless, obscene, dirty, rude, gross, undignified, vulgar, tasteless, naughty or suggestive, these images or words could be considered 'indecent' in the eyes of the law.
- Plenty of pics or words posted by celebrities on socials could be regarded as 'indecent', but because they're over 18, they won't get in trouble.
- Stick to the simple rule... If in doubt, leave it out.

Q: Why is it a big deal if I post something indecent online?

A: You lose control of your pics and words when you post online... once it's out there, it's out of your hands. Have a think about:

- Your personal reputation and people's opinions of you—especially employers. This is the first thing they check when you apply for a job.
- Photos never time-out, someone will always be able to find them, but who and when could be a big problem for you.
- Anything you post could potentially be used as evidence in court.
- If you've posted something that's illegal, you could be investigated and charged by the police.
- Do you really know all your online 'friends' and 'followers'? Are they real people or are they pretending to be someone else? We've seen so many cases where random people get hold of personal pics shared online and then share them all over the web.

Q: How can I prevent people getting access to my pics and videos?

A: Protect your phone number and social media account details—never post them online.

Think about who can physically access your phone or your social accounts. Don't let anyone (even your friends) use your phone unless you're watching what they're doing closely.

Use passcodes to protect yourself.

Think before you take that photo or video. Would you want it getting out? If you would be embarrassed if the photo or video went public, don't take it!

What is cyberbullying?

Cyberbullying is when someone bullies another person online (like on a social networking site) or by sending emails or messages. Bullying is repeated behaviour which is done on purpose to make someone feel hurt, upset, scared or embarrassed.

Cyberbullying examples

- Sending abusive texts and emails
- Posting mean messages, images or videos
- Encouraging people to treat someone badly
- Imitating other people online (also known as 'catfishing')
- Excluding others online
- Embarrassing others online
- Spreading nasty online gossip and chat
- Creating fake accounts to trick someone, harass or humiliate them.



Flaming is a type of cyberbullying. Flaming is an intense argument using swearing, offensive words, hate-speak and often hurtful insults publicly online, on socials or in a forum. When two or more users start insulting each other, it's known as a 'flame war'.

Trolling is when someone posts a deliberately insulting or rude comment or pic and waits for people to take the bait. (Not all trolls are bad—they can be mischievous and just want people's reactions). But trolling can be hate-based and can cause people to feel upset, anxious, hurt or bullied.

Cyberbullying, flaming and trolling behaviour is wrong because:

- it's often hate-based and done to make people feel upset, hurt, anxious or intimidated
- it's faceless and encourages others to also be cruel
- it can also be illegal.



Case study

Alison started receiving threatening messages and videos on her phone from another girl in her area. The girl repeatedly threatened to punch and choke her. Alison felt scared and began to worry about her safety. She reported the girl to the police and reported the cyberbullying on the eSafety Commissioner's website. The police charged the other girl with a number of offences.



Cyberbullying laws

What are the laws and what can happen if you break them?

There are Queensland and national laws that deal with cyberbullying. The laws are complex so here is a summary.

It's very serious if you break these laws. You could get a criminal record and you may go to jail.

Using a phone, smart device or the internet to menace, harass or cause offence

It's a crime to use a 'carriage service' (like a phone or the internet) to harass or menace (scare or threaten) someone or be offensive. To be a crime, the behaviour must be likely to have a serious effect on the person targeted. For example, cyberbullying may be a crime if it involves frightening someone by threatening to harm them, bothering someone repeatedly so they feel afraid, or if messages, emails or posts make someone feel seriously angry or upset.

Making threats to kill

Cyberbullying may be a crime if you:

- use a phone or the internet to scare someone by threatening to kill or seriously harm them
- send emails, messages or posts which threaten to kill someone
- intimidate someone by threatening to enter or damage their home or other premises
- publicly encourage hatred, serious contempt (dislike), or severe ridicule (put downs) towards someone because of their race, religion, sexuality or gender identity in any way, including threatening to hurt them or damage their property.

Encouraging suicide

Cyberbullying may be a crime if you try to persuade someone to die by suicide. It's a crime to use a phone or the internet to send or post anything that encourages or helps someone to die by suicide. It's also a crime to cause or help someone die by suicide, or to encourage someone to die by suicide.

Unlawful stalking

Cyberbullying may be a crime if you unlawfully stalk someone. ‘Unlawful stalking’ is when you purposely do things to another person which:

- makes them feel scared
- causes them serious emotional or mental harm
- stops them doing something they would otherwise do
- makes them do something they wouldn’t normally do.

It includes contacting or approaching someone using the internet or other technology.

Under the law, it must involve more than one act, or one act which lasts for a long time.

The court can also make restraining orders to stop all contact with the person being stalked.

Fraud

Fraud is where someone tricks you into giving your personal information (like your banking details) or property to them, and they use it for their own gain (benefit). For example, if someone gets hold of your personal information, they might use it to create fake online shopping accounts to buy things.

Using other people’s identification information online

Cyberbullying may be a crime if it involves using other people’s identification (ID) information to pretend to be them on the internet, like creating a false social media account in someone else’s name.



The law treats you differently based on your age. The law says an adult is 18 or over and a child is under 18.

If you’re charged with an offence, your age will affect the type of sentence you could get if you’re found guilty.

What is sexting?

Sexting is when someone sends, receives, forwards or posts sexually explicit messages, photos (nudes), videos or images online. It's not just about nudes—it can also be words, images, emojis, gifs, memes and videos.

Sexting examples

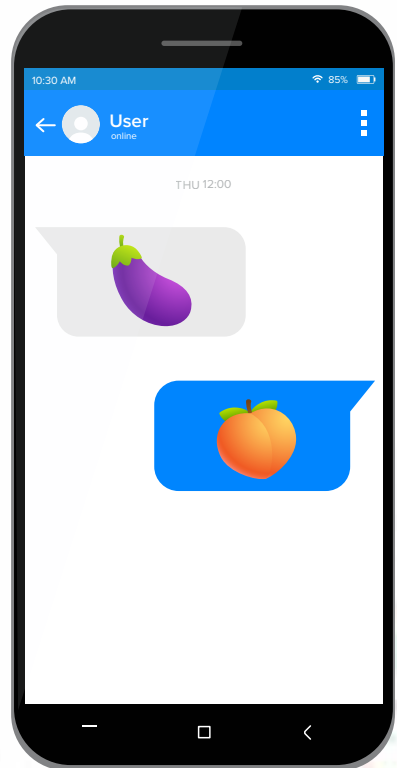
- Sending nude pics of your partner or a friend to other people
- Forwarding videos of someone having a shower or getting undressed
- Posting photos of people having sex.

What's wrong with this behaviour?

- If you're doing the sending, forwarding, or posting, this is against the law.
- If you're receiving or asking for sexts, this is also against the law.

It can go viral quickly—you may think your pic will be kept private but then discover it has been shared widely, even by people you don't know.

There are similar laws for sexting and image-based abuse. Go to the Sexting and image-based abuse laws section on page 14 to find out how the law treats sexting.



Case study

Sophie and James used to be a couple and had shared a few nude pics with each other. When they broke up, James posted these pics to Instagram and called Sophie a slut. Sophie was devastated and angry that James betrayed her trust. She reported James to the police and to the eSafety Commissioner's website to try and get the pics taken down. The police charged James with a number of offences.

The eSafety Commissioner got Instagram to remove the nude pics.

What is image-based abuse?

Image-based abuse happens when an intimate image or video is shared without the consent of the person pictured. An intimate image or video shows:

- a person's genital area or anal area (whether bare or covered by underwear)
- a person's breasts (if the person identifies as female, transgender or intersex)
- private activity (for example a person undressing, using the bathroom, showering, bathing or engaged in sexual activity)
- a person without attire of religious or cultural significance that they would normally wear in public (for example a head covering or scarf).

Image-based abuse examples

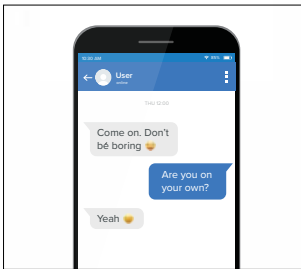
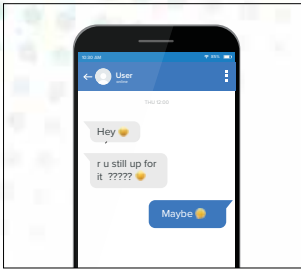
- Your current or ex-partner shares an intimate image on social media without your consent. This is often called ‘revenge porn.’
- A work colleague edits an image of you with an explicit image and shares it with other people via email. These types of altered images are known as ‘deep fakes’.
- A person threatens to post your intimate video on social media and send it to your family and friends.
- A person anonymously posts an intimate image of you on a porn website.

What’s wrong with this behaviour?

It’s illegal! In Queensland, revenge porn or sending intimate images without consent is against the law.

Case study

Some of the guys in Alex’s grade bullied him for being gay. They made a deep fake photo of him using a photo editor to add his face onto an explicit image. They shared the pic with other people in his grade but soon the whole school had seen it. Alex felt humiliated and embarrassed. He contacted the eSafety Commissioner and the police. The boys who made the photo were charged with a number of offences.



Sexting and image-based abuse laws

What are the laws and what can happen if you break them?

There are Queensland and national laws that deal with sexting and image-based abuse. The laws are complex so here is a summary.

It's very serious if you break these laws. You could get a criminal record and you may go to jail.

Using a phone, smart device or the internet to menace, harass or cause offence involving private sexual material

It's a crime to use a 'carriage service' (like a phone or the internet) to harass or menace (scare or threaten) someone or be offensive. To be a crime, the behaviour must be likely to have a serious effect on the person targeted. For example, sexting and image-based abuse may be a crime if someone threatens to post your naked pics online.

Distributing intimate images

It's illegal to distribute (share or publish) intimate images of another person without their consent in a way that would cause them distress. Under the law, someone under 16 cannot consent to their intimate image being shared, so if you share intimate images of them, you are committing a crime.

Involving children in making child exploitation material

It's against the law to get, or try to get, a child involved in making child exploitation material. Naked photos or videos of young people under 18 are some examples of child exploitation material.

Making child exploitation material

It's a crime to make, or try to make, child exploitation material. Using your phone to take nude pics of your boyfriend who is 16 is considered making child exploitation material, because he is under 18.

Distributing child exploitation material

Under the law, 'distributing' means communicating, exhibiting (showing), sending, supplying, transmitting or making child exploitation material accessible to someone. For example, if you send a nude pic of your 17-year-old girlfriend to your friends, you could be charged with distributing child exploitation material.

Possessing child exploitation material

'Possession' means you know you had indecent photos, images or videos etc of someone under 18 on your phone, laptop, tablet or other device.

Indecent treatment of children under 16

The law says it's illegal to:

- get a child to do something indecent
- show them something indecent (like a pornographic film, picture, video, photo, audio, written material or object)
- show them an indecent act (like exposing your private parts to a child)
- take indecent photos of them.

Using the internet etc to procure (get) children under 16 to engage in a sexual act

It's illegal to go online to try and get children to do something sexual, like getting a child to take off their clothes in front of their web cam.

Grooming children under 16

Examples of grooming are when someone starts talking about sexual topics with you, or undresses in front of you. They may try to become friends with you first and gain your trust, but their real goal is to get you to do something indecent or sexual.



'Indecent' means filthy, lewd, improper, wrong, tasteless, obscene, dirty, rude, gross, undignified, vulgar, tasteless, naughty or suggestive.

Has this happened to you? Help is available

Social media can be fun, but unfortunately many young people and adults have been cyberbullied, have had intimate photos of themselves shared online without their consent, or have even been threatened or blackmailed over their private photos.

If you've experienced any of these problems, it's important to know:

- it's not your fault
- support is available
- you can report it
- you can get the pics or videos removed to stop the cyberbullying.

Visit the eSafety Commissioner's website to report cyberbullying, sexting, image-based abuse, or any other online activity you think is indecent or offensive. You can report content that directly affects you or that you've seen online. The eSafety Commissioner can also help you to get offensive or indecent content removed from the web. Visit **esafety.gov.au/report**

You can also visit the Australian Cyber Security Centre's website to report cyber abuse, online image abuse, online fraud and identity theft. Visit **cyber.gov.au/report**

To speak to a lawyer or to get other help, see the Do you need help? section on page 3 of this booklet.

Have fun online but stay safe and follow the law!

Your notes



Your notes





Need to talk to a lawyer?

Call our Youth Legal Advice Hotline on 1800 527 527.

Your local Legal Aid Queensland office:

Brisbane

44 Herschel St, 4000

Bundaberg

3rd Floor, WIN Tower,
Cnr Quay & Barolin Sts, 4670

Caboolture

Ground Floor, Kingsgate
42 King St, 4510

Cairns

Level 2, Cairns Square
42–52 Abbott St, 4870

Inala

Level 1, Inala
Commonwealth Offices,
20 Wirraway Pde, 4077

Ipswich

Level 7, 117 Brisbane St, 4305

Mackay

Ground Floor,
17 Brisbane St, 4740

Maroochydore

Ground Floor, M1 Building
1 Duporth Ave, 4558

Mount Isa

6 Miles St, 4825

Rockhampton

Ground Floor,
35 Fitzroy St, 4700

Southport

Level 2, 7 Bay St, 4215

Toowoomba

1st Floor, 154 Hume St, 4350

Townsville

3rd Floor, Northtown
280 Flinders St, 4810

Woodridge

1st Floor,
Woodridge Place,
Cnr Ewing Rd &
Carmody St, 4114



1300 65 11 88 legalaid.qld.gov.au

