

Technology-facilitated stalking and criminal offences

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



When is technology-facilitated stalking a criminal offence?

A person may break the law by engaging in technology-facilitated stalking if they:

- Breach a condition of a Family Violence or a Personal Safety Intervention Order
- Make a threat to kill or cause serious injury to a person or damage a person's property
- Use a telecommunications or internet service to make a threat or menace/harass/offend
- Make a demand with a threat to kill, cause injury or damage property (extortion)
- Stalk a person
- Put a person under unlawful surveillance
- Observe, capture or distribute images of someone's genital or anal region without their consent ('upskirting')
- Make, publish or distribute child pornography

If you know or suspect a person has committed a criminal offence, you can contact police and police may then investigate and interview a person as a suspect. If police believe there is enough evidence they will charge the person in court.

Breaking an Intervention Order (IO)

It is a criminal offence for a person who has had an Intervention Order (either a Family Violence IO or a Personal Safety IO) made against them and they break a condition of the IO. If a person breaks a condition of an IO made against them while the IO is still in place, they can be charged by police and prosecuted in court.

*Family Violence Protection Act 2008 (Victoria)
Personal Safety Intervention Order Act 2010 (Victoria)*

Making a threat to kill, cause serious injury or damage property

It is a criminal offence to make a threat to kill or seriously injure a person or damage property belonging to that person with the intention of making that person fear the threat will be carried out.

It is also a criminal offence to make a demand of a person with a threat to kill or inflict injury on that person or another or a threat to damage property if they do not comply with the demand (otherwise known as extortion).

Crimes Act 1958 (Victoria)

Using a telecommunications or internet service to make a threat or menace, harass or offend

It is a criminal offence to use a 'carriage service' (such as a telecommunications or internet service) to commit a serious offence or to make a threat to kill or seriously injure a person. It may also be a criminal offence to use a telecommunications or internet service in a way that a reasonable person would find menacing, harassing or offensive.

Criminal Code Act 1995 (Commonwealth)

Stalking or bullying as a criminal offence

Technology-facilitated stalking can be a criminal offence if it is a 'course of conduct' intended to cause physical or mental harm (including self-harm) to a person or make them fear for their safety or the safety of another by:

- contacting a person by telephone, text, e-mail, social media or other electronic means
- publishing something about a person on the internet or via email
- pretending to be another person when publishing something on the internet or using email
- tampering with a person's computer
- tracing a person's emails, internet use or other electronic communications or otherwise keeping them under surveillance
- making threats or using abusive or offensive words at or in the presence of a person
- directing abusive or offensive acts towards a person
- giving offensive material to a person or leaving it where it will be found by a person
- intentionally or recklessly doing something that would physically or mentally harm a person or make them fear for their safety or the safety of another

To find a person guilty of stalking, the court must find they have engaged in a 'course of conduct' that amounts to stalking. For example, a course of conduct may be repeated behaviour or a pattern of behaviour intended to cause physical or mental harm or make a person fear for their safety.

Crimes Act 1958 (Victoria)

Unlawful surveillance

There are some laws that make it a criminal offence to put another person under surveillance using listening or optical surveillance devices. In some circumstances, it can be an offence to make an audio or video recording of a private conversation or a private activity without the consent of a person who is recorded or to communicate a recording to another person.

Surveillance Devices Act 1999 (Victoria)

'Upskirting' offences

It is a criminal offence to use a device to observe a person's genital or anal region in circumstances where that person would not expect their genital or anal region to be observed. It is also a criminal offence to capture and distribute images (eg photographs or videos) of a person's genital or anal region and without their consent.

Summary Offences Act 1999 (Victoria)

Child pornography offences

It is a criminal offence to make, possess, access or distribute child pornography and this includes via text, email or the internet. Victorian law defines child pornography as a film, photograph, publication or computer game that describes or depicts a person who is under 18 (or appears to be) and who is engaging in sexual activity or depicted in an indecent sexual manner.

Crimes Act 1958 (Victoria)
Criminal Code Act 1995 (Commonwealth)