

Will Your Child be Held Legally Responsible?

THIS RESOURCE IS IN GENERAL TERMS ONLY AND RELATES SPECIFICALLY TO LAWS APPLICABLE TO THE COMMONWEALTH OF AUSTRALIA. FOR INFORMATION RELEVANT TO INDIVIDUAL CIRCUMSTANCE IT IS ADVISED TO SEEK QUALIFIED LOCAL LEGAL ADVICE.

As adults, we can use our experience/intuition to tell us that if something seems wrong, it is wrong. This is a great guide when deciding what should and shouldn't be allowed when it comes to your child's online behaviour.

This internal motivation to behave appropriately can't always be relied upon in younger people. Teenagers can find themselves in compromising situations based on poor judgement or other pressures.

It is important that you and your teen are aware of the legal implications of their actions, as the **law allows your child to be held accountable**.

Illegal actions online are just as serious as those in the physical world and come with very real consequences.

Ignorance is not a defence.

Nor is 'everyone else is doing it'.

Criminal/Civil

CRIMINAL – An unlawful act punishable by the state or the commonwealth. Offences that are recorded as legislation and often involve police involvement and maybe some form of judicial (court) process. For example, stealing, fraud, assault and drug related offences.

CIVIL – For the purpose of this tool and in general terms, a civil matter is where one party feels to have been aggrieved, whether directly or indirectly by another person or persons. A person has the option to proceed legally in order to have the conduct stopped or to seek compensation. This is commonly referred to as "suing". Police are generally not involved in this process and if court proceedings are undertaken, a criminal court is not involved. This form of action usually result in a cash settlement.

Different jurisdictions – laws and requirements, both civil and criminal, vary depending on where you live. Even though legal requirements vary, most

regions have laws in place that are similar in a number of ways because laws are there to protect us and our family and human nature is basically the same.

There are many laws that surround the use of technology, not only the technology itself but also when it comes to user's actions and choices.

Some common areas of activity that youth may become involved in through the use of technology is listed below with a brief outline. This list is not exhaustive however these are the most common issues faced by children and families online.

Children become criminally responsible for their actions
at age 10.

- [CYBERBULLYING](#)
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See the case studies in the last module for further examples of these issues, as experienced by Brett Lee.

CYBERBULLYING

The use of information communication technology by a person to bully another person or persons whether directly or indirectly.

CRIMINAL

Federal Offence – Criminal Code

States and Territories can investigate cyberbullying instances under local criminal legislation. To view specific laws relating to each state of territory visit lawstuff.org.au and choose the state you live in.

CIVIL

Every individual in our community has a right to pursue in court (sue) another or others who they feel have aggrieved them. Cyberbullying falls into a category where civil action can be considered.

As an example an Australian teacher was successful in a District Court civil suit against a former student who defamed her through social media.

Examples of cyberbullying:

Cyberbullying can be done directly or indirectly, here are some examples:

- Sending or exposing to another user bullying information directly through the use of social media, texts, phone calls, email or messaging programs or applications
- Uploading bullying material to the internet for others to see that causes the subject person to feel bullied which includes embarrassment, whether the user actually sees the information or whether they are just been made aware of it
- Expose another user to information that is not about them personally but the material causes that user to feel bullied
- Spread lies and rumours online about another user and that causes the subject user to feel bullied
- Creation of an unauthorised account in a person's name to which the person becomes aware. It is immaterial how the creator uses the account
- Pressuring another for control or to gain a benefit
- Fraudulently obtaining personal or private information from another

The methods and scenarios are limitless. Each instance must result in the victim feeling bullied as a result of the other person's actions.

It is not necessary for the bully to personally name the subject person in order to be held accountable, if it can be inferred who they are referring to.

ILLEGAL IMAGES/SEXTING

PRODUCE/POSSESS/DISTRIBUTE CHILD EXPLOITATION MATERIAL

CRIMINAL

- It is illegal
- to produce, possess or distribute
- material (image, video or description)
- of what is or appears to be a person under the age of 18 years
- in a state of undress in a sexual context
- or
- engaged in sexual activity
- or
- in the presence of someone engaged in sexual activity

Example 1

- A 13 year old takes a naked photograph of him/herself in a sexual context or performing a sexual act. That 12 year old has **produced** child exploitation material. It is immaterial whether the face of the child is part of the image.
- That 13 year old is then in **possession** of child exploitation material
- If that 13 year old then forwards that image to another (any age) they have **distributed** child exploitation material.

Example 2

- A 17 year old boy requests (or pressures) his 16 year old girlfriend to take a photo of her breasts and forward it to him via their smart phone. He has **counselled the commission of a criminal offence**.
- If the girl takes the photo, she has **produced child exploitation material** (CEM), she then **possesses** CEM and when she forwards the image to her boyfriend she has **distributed** CEM and her boyfriend now **possesses** CEM.

EXPOSE CHILD TO MATERIAL

A child is a person under the age of 18.

CRIMINAL

It is illegal for an adult person to expose a child to indecent material be it words, images or videos.

Example

- An adult forwards a child a picture or video that is pornography
- An adult directs a child to a site that contains pornography
- An adult talks to a child about topics of an inappropriate nature (this could be the commencement of the grooming process which involves desensitization)

NOTE - Predators expose children to pornography or talk about topics relating to sex to;

1. Excite and satisfy themselves
2. To desensitise the child to that type of behaviour and
3. To normalise what is talked about or depicted.

(Refer to Sexting fact sheet for further information)

GROOM/PROCURE A CHILD

CRIMINAL

It is illegal for an adult person (18 years or older) to procure or groom a child under age 16 for sexual purposes.

The relationship between the parties is immaterial (e.g. boyfriend/girlfriend)

Grooming – develop a relationship or prepare a person with the intent of committing illegal sexual acts. This is generally done by developing trust or exploiting a need or vulnerability.

Example

An adult person uses the internet to secure access, anonymity, privacy and control to become a trusted online friend. This can easily be achieved by employing tactics such as;

- Friendship - a good listener and appears to really understand and empathise with the child
- Takes an interest in what the child has to say
- Pretends to be a younger person to lower the threat factor (sometimes)
- Promises to or does provide gifts or money
- Is accepting and nice, compliments the child
- Similar interests to the child (eg. Games, sports or hobbies)

Grooming can happen anywhere online. Inside games, chat rooms, messaging, Facebook etc.

COPYRIGHT INFRINGEMENTS

Downloading or streaming copyrighted material (movies, TV shows and music)

The *Copyright Act 1968* of Australia makes it illegal to download or stream an audio-visual item without proper authority.

Audio-visual item means a sound recording, a cinematograph film, a sound broadcast or a television broadcast.

CIVIL

It is a civil matter to infringe copyright /download or stream pirated material. You can be pursued for civil damages by the copyright owner. These damages would more often than not be in monetary form.

CRIMINAL

It is a criminal offense to distribute and profit from such material – for example, copying and selling DVD's or getting subscription fees from a website containing infringing content.

(Refer to Downloading tool for further information)

Example

A child is using a phone, iPod, tablet or computer to watch movies or television shows for free using a program they found online to stream the material. The child may not realise it is an illegal download however they can still be held responsible. If it is available elsewhere for purchase, anywhere you get it for free, is likely to be illegal.

THREATS TO ASSAULT

Threatening to kill or seriously injure another person is considered a **serious assault** in Australia. All States and Territories have differing laws but basically address these threats in the same way, as a **criminal offence**. Generally the person affected needed to believe there was a real possibility that the threats were real and could be carried out.

Other offences exist that include instilling fear in another and certainly can come under the umbrella of the Commonwealth offence of using a telecommunication device to menace, harass or cause offence.

Examples

1. Sending a message directly to a child via a messaging program that says "We are going to get you tomorrow, all of us. We are going to bash you so bad".
 2. Not sending to our child directly yet posting or sending on the internet a message "Hey lets smash that kid that was talking to Jessie at the shops today. Let's make him bleed". The child may not be named specifically, yet it can be inferred.
 3. Sending or posting a photo on the internet of your child or leaving a comment under an image of your child saying "We are going to kill this scum tomorrow."
 4. Sending or posting an image or video that depicts any person being or having been seriously assaulted and maybe commenting "This is going to be you."
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HACKING

Hacking - The accessing of a password on a device, account or program to alter, view, copy or distribute data contained therein. When done without permission or authority this can become a criminal offence.

There are laws in Australia that class hacking as a federal offence when certain circumstances exist. For further information regarding the legalities of hacking, and like offences, and what action to take if it occurs visit -

<https://www.afp.gov.au/what-we-do/crime-types/cyber-crime>

Examples

1. A student hacks into the school network security settings and bypasses the controls or restrictions.
2. A student gains access to another student's device by guessing the password, knowing the password or using a program to bypass the password

CONSIDERATIONS

- The legal requirements apply to everybody, including your child
- Even if your child's online choices are made through curiosity, immaturity, peer group pressure, fear or to just mucking around they may be subject to **criminal action**.
- **Illegal actions online are just as serious as those in the physical world**
- We trust our instincts and use discretion. Not all instances will require legal intervention. Involve police where necessary.

ACTIONS

- Talk to our children about their responsibilities online – PREVENTION IS ALWAYS BETTER THAN CLEANING UP THE MESS
- Insist they do not get involved if they observe others engaging in illegal activity online
- Encourage your children to report to you any serious issues they observe or are exposed to online
- If unsure, seek legal advice



- Also take into account Social/Family implications – these situations affect others. Your child’s actions may have broader affects.
 - For example, they can help someone who doesn’t have involved and supportive parents.
 - Or alternatively, their poor decisions and actions may have negative consequences for the family. Civil litigation can be extraordinarily expensive. Your teen is unlikely to be able to pay the awarded amount.