

Cyberbullying

Aotearoa New Zealand has a law called the Harmful Digital Communications Act 2015, also known as the HDCA. This law aims to stop people using digital communications technology to cause harm. It also makes it easier to get help if you are being bullied or harassed online.

What does the HDCA apply to?

Communication happens when a message is sent between people. Digital communication refers to any message that is sent using electronic communications technology. Some of the types of communication covered by the HDCA are:

- Emails
- Text messages
- Voicemail messages
- Social media content (e.g., blogs, posts, comments, images, videos)
- Messaging apps (e.g., WhatsApp, Facebook Messenger)
- Content on image and video sharing apps (e.g., SnapChat, YouTube, TikTok)
- Posts to community online forums and chatrooms (e.g., Reddit)

Telephone calls that are not recorded, letters sent by post and speaking to someone are not digital communications, so are not covered by the HDCA. If you use electronic technology to say something harmful, but do not share this with anyone, this would also not be considered communication, as a message has not been sent between people. So, for example, you cannot get in trouble for writing something harmful in a Word document or in the Notes app on your phone, as long as you don't share what you have written with anyone.

What counts as 'harm'?

The HDCA says that you have been harmed if you experience 'serious emotional distress' because of a digital communication. It also contains 10 communication principles, which can be used to help decide whether a digital communication is harmful. The communication principles say that digital communications should not:

- Disclose sensitive personal information
- Be threatening, intimidating or menacing
- Be grossly offensive
- Be indecent or obscene
- Harass someone
- Make a false allegation
- Share information in breach of confidence
- Encourage someone else to send a message to a person, with the intention of causing harm to that person
- Encourage someone to commit suicide
- Denigrate someone on the basis of their colour, race, ethnic or national origins, religion, gender, sexual orientation or disability
- If a digital communication does one of the things in the above list and the victim experiences serious emotional distress, the HDCA can be used to fix the problem.

What is the difference between criminal and civil complaints?

The HDCA sets up both criminal and civil (non-criminal) pathways for getting help if you are the victim of a harmful digital communication. Criminal cases can be brought against people who use digital communications technology to cause especially serious harm. The police will decide if the harm caused is serious enough to warrant prosecution.

The civil pathway involves going to Netsafe for help. Netsafe is the 'Approved Agency' under the Act; it has the power to deal with digital communications that cause harm, but which are not serious enough to warrant criminal prosecution.

What counts as a crime under the HDCA?

It is a criminal offence under the HDCA to post a digital communication:

- With the intention that it cause harm to a victim;

OR

- That is an intimate visual recording of a victim – Knowing that the victim has not consented to the posting;

OR

- Being reckless as to whether the victim has consented to the posting.

Penalties include:

- Imprisonment for up to 2 years or a fine of up to \$50 000 (Sections 22 and 22A of the HDCA)
- A fine of up to \$200 000, if the offender was a body corporate (Sections 22 and 22A of the HDCA)
- Up to 14 years imprisonment for being involved with someone else committing suicide (Section 179 of the Crimes Act)

How can Netsafe help?

Netsafe deals with harmful digital communications that are not serious enough to warrant criminal prosecution. They can handle complaints confidentially.

They can:

- Investigate complaints
- Talk to the website where the message(s) appeared to try to resolve the issue
- Arrange mediation (this is when an independent person helps you talk to the person who harmed you, with the aim of agreeing on a solution together)
- Get a court order

If Netsafe cannot resolve a complaint, you can seek an order in the District Court. You cannot go straight to the District Court – you must go through Netsafe first.

The Court can order someone to:

- Take down a post
- Stop engaging in the harmful conduct
- Not encourage anyone else to engage in harmful communications towards the affected individual
- Publish a correction
- Give a right of reply to the affected individual
- Publish an apology

The Court can also order that the identity of an anonymous communicator be released to the Court.

If someone fails to comply with a court order under the HDCA, they could face the following penalties:

- Imprisonment for up to 6 months or a fine of up to \$5000 (Section 21 of the HDCA)
- A fine of up to \$20 000, if the offender was a body corporate (Section 21 of the HDCA)

What should I do if I am the victim of cyberbullying or another form of harmful digital communication?

At Aotearoa Disability Law, we recommend the ‘stop, block and tell’ approach to help you keep safe from cyberbullying and other forms of harmful digital communication.

STOP

It is a good idea to take a break and take some deep breaths, so you can work out how to respond rationally. Being cyberbullied does not feel nice, and you might be tempted to say something mean back to the person who is cyberbullying you – this is a bad idea, as you could get in trouble too! If the person cyberbullying you is a friend, you might want to talk to them about how their messages make you feel – they might not have intended to hurt you. Even if the person cyberbullying you is a friend, you can move on to the ‘block’ step if you do not feel like talking to them about it, or if talking to them does not make the cyberbullying stop.

BLOCK

Blocking the person will mean they cannot contact you again. How you block them will depend on how they are messaging you – for example, each social media platform has a different way of blocking people, and you can also block phone numbers from being able to text or call you. You can Google how to block someone if you do not know how to do it.

Before you block someone, it is really important to save evidence of the messages they have been sending you – for example, take screenshots of messages or save copies of voicemails. If you end up complaining to Netsafe or the Police, having evidence will help them to resolve your complaint more easily.

TELL

If you want to, you can start by complaining to the website where the harmful communication happened – some websites will respond by taking harmful posts down. If that doesn't solve the problem, or if you cannot contact the website, contact Netsafe – they will be able to help you with what to do next. If the harmful digital communication you have been sent is especially serious, you can contact the Police.

How do I know if I should contact Netsafe or the Police?

The Police only deal with the most serious complaints under the HDCA – all other complaints go through Netsafe. It can be hard to know if your complaint is serious enough to go to the Police with or not. However, if you contact Netsafe and they think your complaint needs to go to the Police, they will help you pass it on. Likewise, if the Police cannot help you because your complaint is not serious enough, they will tell you to go to Netsafe. So, you do not need to worry too much about complaining to the right people straight away – if you go to the wrong place, they will help you get your complaint to where it needs to go.

Netsafe Contact Details

[Netsafe website](#) (includes an online complaint form and a chatbot)

Phone: 0508 638 723

Text: Text 'Netsafe' to 4282

Police Contact Details

Call 105 if it is not an emergency. In an emergency, call 111

You can find more information about contacting the Police in the 'Your Rights with the Police and Courts' resource on this website.

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