**9 b) Cyber-flashing**

**Video overview of** [**cyber-flashing**](https://youtu.be/FGEf4AZeiss) **by Kaito Suzuki**

**What is cyber-flashing?**

“Cyber-flashing” is a term referred to when someone sends or shares unsolicited nude, semi-nude, or sexually explicit photos or videos to another person without their consent, commonly referred to as “dick pics”. Flashing, also known in Australian law as “indecent acts” or “obscene exposure”, involves exposing one’s genitals in a public place, and was one of the earliest forms of sexual harassment which has been addressed in Australian legislation. With advancements in technology, this common form of harassment has evolved into a new digital form of sexual harassment. It has been facilitated by features such as AirDrop and Bluetooth, and become commonplace on social media platforms like Snapchat and dating applications such as Tinder and Bumble.

**What is the problem with cyber-flashing?**

The concerns surrounding cyber-flashing was highlighted internationally in the context of apps such as Bumble, where research revealed that 41% of women have been sent an unsolicited photo of male genitals without their consent. Consequently, Bumble have been advocating for strengthening protections for women online (this form of sexual harassment is disproportionately experienced by women).

Domestically, the 2023 [Online Safety Issues Survey](https://www.infrastructure.gov.au/department/media/publications/2023-online-safety-issues-survey-summary-report) found that nearly 8% of those surveyed had experienced cyber-flashing in the last 12 months. Similarly, this survey found experiences of cyber-flashing were predominately women and people who identify as LGBTQIA+.

**Cyber-flashing: international approaches**

The United Kingdom’s *Online Safety Act 2023* created a criminal offence for a person sending photographs or films of their genitals to intend to cause alarm, distress or humiliation. It carries a prison sentence of up to 2 years.

In Ireland, the *Online Safety and Media Regulation Act 2022* criminalises the act of exposing one’s genitals online with the intent to cause fear, distress, or alarm to others.

Other countries such as Singapore, Scotland and some parts of the United States have also developed law reforms in response to the issue of cyber-flashing. Information on each country’s response to cyber-flashing can be found [here](https://journals.sagepub.com/doi/10.1177/0022018320972306).

**Australia’s approach**

In Australia, cyber-flashing is not specifically addressed or regulated in any legislation, including the *Online Safety Act 2021* (Cth). A single instance of cyber-flashing is not explicitly criminalised unless the victim is under 18, in which case it may be considered as sending child exploitation material.

“Indecent or obscene exposure” is addressed under section 5 of the *Summary Offences Act 1988* (NSW) which carries a maximum of 10 units (fine) or six months’ imprisonment. However, cyber-flashing does not fall under this category as a summary offence. The offence of indecent exposure is specifically for public places, and while an unsolicited “dick pic” would constitute indecent exposure, the definition of public place under the Act does not extend to online communication.

The most relevant Commonwealth legal provision that applies to cyber-flashing in Australia is found in section 474.14 of the *Criminal Code Act 1995* (Cth). This provision criminalises the use of carriage services (such as the internet) to menace, harass, or cause offence, carrying a maximum penalty of three years’ imprisonment. The offence applies if a reasonable person would consider the conduct as menacing, harassing, or offensive. However, this offence usually applies where someone uses equipment connected to a telecommunications network in the commission of, or to facilitate the commission of, a serious offence.[[1]](#footnote-1)

The states also have criminal law provisions that may capture cyber-flashing.

* In Victoria, section 48 of the *Crimes Act 1958* (Vic) imposes an offence if a person engages in sexual activity directed to another person intending for that person to experience fear or distress from seeing the activity. However, the legality of this section in applying to cyber-flashing would depend on the context of the image and how courts interpret the specifics of an activity.
* In South Australia, section 53 of the *Summary Offences Act* 1953 (SA) creates a summary offence to behave in an indecent manner in a public place or in a place visible from a public place, or in any place with the intent to offend or insult another person. Whilst this does open the interpretation more than that of the Commonwealth law, the application of this in the digital space is still limiting. As cyber-flashing does not occur in a public place, the application of this offence to cases of unsolicited explicit images is unclear.

1. *R v TB (No 5)* [2023] SASC 118. [↑](#footnote-ref-1)