**Image-based abuse**

**5.1.1 Introduction**

Image-based abuse (also known as “revenge porn”) refers to the distribution of intimate materials without a person’s consent. This can occur in both image and video formats. An intimate image is ‘an image showing someone's private parts, or a person involved in a private activity, in situations where a reasonable individual would expect privacy’ (s 15, *Online Safety Act 2021* (Cth)). Image-based abuse can be distributed to public sites such as social media platforms or private sites such as image boards, deep web sites or closed community pages. Due to the digital footprint left behind, the internet not only facilitates quick distribution and sharing but also establishes an unchangeable and permanent record of every action made behind a screen.

**5.1.2 Legal context**

*5.1.2.1 Regulation for individuals*

In 2016, there was a [senate inquiry](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Revenge_porn) that called for image-based abuse to be criminalised at federal level. This was shortly followed with the passing of *Criminal Code Amendment (Protecting Minors Online) Bill 2017* (Cth) and the *Enhancing Online Safety (Non-Consensual Sharing of Intimate Images) Act* 2018 (Cth) which amended the *Criminal Code Act 1995* (Cth), making it an offence for an adult to use a device to *"*prepare or plan to cause harm to, procure, or engage in sexual activity with, a person under the age of 16 (a child)".

In 2017, the Australian Government released the [National Statement of Principles relating to the criminalisation of the non-consensual sharing of intimate images](https://www.ag.gov.au/crime/publications/national-statement-principles-relating-criminalisation-non-consensual-sharing-intimate-images). It called on each state and territory to consider the existing legal scheme (law and policy), and to develop and review it in accordance with the principles such as;

* The threat to and/or distribution of images without consent is a breach of community standards;
* The prioritisation of the safety of victims is paramount;
* The response to image-based abuse may include criminal charges, civil penalties, education and awareness; and
* Responding to image abuse needs to account for all methods and circumstances in how it may be distributed.

See the full list of principles [here](https://www.ag.gov.au/crime/publications/national-statement-principles-relatingcriminalisation-).

Since then, Australia has seen the introduction of the *Online Safety Act 2021* (Cth) which makes it an offence to threaten and/or distribute intimate images without a person’s consent. A summary of the charges applicable to image-based abuse both at the federal level and in New South Wales are depicted in the table below (not exhaustive):

|  |  |
| --- | --- |
| **Source** | **Description** |
| **Commonwealth level** |  |
| Section 474.17, *Criminal Code Act 1995* (Cth) | * Use of a carriage service to menace, harass or cause offence. * Under section 474.17A, this offence becomes aggravated if it involves the transmission, making available, publication, distribution, advertisement or promotion of private sexual material. |
| Section 75, *Online*  *Safety Act 2021* (Cth) | * Prohibits the threatening to and/or posting of an intimate image without a person’s consent. |
| **State Level – *Crimes***  ***Act 1900* (NSW)** |  |
| Section 91P | * Recording an intimate image without consent. |
| Section 91Q | * Intentionally distributing an intimate image of another person without consent or being reckless in ascertaining consent. |
| Section 91R | * Threating to record or distribute intimate image without consent knowing that the other person would fear the threat would be carried out. |

Section 474.17 of the *Criminal Code Act 1995* (Cth) has seen multiple perpetrators convicted of using the internet to harass individuals.[[1]](#footnote-1)

*5.1.2.2 Regulation for social media platforms*

*The Online Safety Act 2021* (Cth) has introduced basic online safety expectations (**‘BOSE’**) for online service providers requiring them to take reasonable steps to minimise the risk of harm. These include:

• Technological precautions are in place to ensure access to age-appropriate material;

• Ensuring that there is a sufficient reports and complaints process for material that breaches the OSP’s terms and conditions as well as the act; and

• Complaints and removal notices issued by the eSafety Commissioner are removed within 30 days (s 46, Online Safety Act 2021 (Cth)).

In 2021, the High Court found that the moderators of public social media pages may be found liable for defamatory content that is published by users.[[2]](#footnote-2) Additionally, if this is reported to the eSafety commissioner, the commissioner can issue a breach notice where a social media platform has 24 hours to remove the content, or they may be penalised up to $550,000 (s 77, Online Safety Act 2021 (Cth)).

**5.1.3 Social context**

*5.1.3.1 Key statistics*

The prevalence of image-based abuse was highlighted in a study conducted by the eSafety commissioner in 2017 that found that 1 in 10 individuals experienced image-based abuse, with females aged between 15 to 17 years being most at risk. The report also found the following:

• 6 in 10 victims knew the perpetrator;

• The perpetrator was a friend that they knew offline (29%), an ex-partner (13%), a current partner (12%) or a family member (10%); and

• Image-based abuse is more likely to occur on Facebook (53%).[[3]](#footnote-3)

*5.1.3.2 Factors affecting image-based abuse*

The eSafety commissioner is empowered to investigate and make decisions regarding image-based abuse but this requires victims to report it. Studies have estimated that only 35% of cases of image-based abuse are reported.[[4]](#footnote-4) The factors influencing a victim not reporting can include;

• Negative stigma;

• Psychological barriers including victim blaming, humiliation and embarrassment;

• An unawareness of the severity of the incident;

• A fear of exacerbating or making it worse including attention to image-based abuse;

• Lack of confidence in law enforcement; and

• Unaware of the support services available.

*5.1.3.3 Social prevention and response from key stakeholders*

Considering the social context of image-based abuse, there have been several actions taken by the Australian Government and other bodies to raise awareness and better educate individuals to make more appropriate choices online. These are summarised below;

1. The Office of the eSafety Commissioner has developed a professional learning program for teachers and facilitators titled *‘*Online Harmful Sexual Behaviours, Misinformation and Emerging Technology*’.* Its goal is to equip individuals with the necessary skills to identify and respond to incidences of image-based abuse and the role that coercion plays.

More information about the program can be accessed [here](https://www.nsw.gov.au/education-and-training/cybermarvel/professional-learning/cyber-security-secondary).

1. In 2020, the NSW Government launched a campaign to help prevent image-based abuse and educate individuals on the topic including information on where to seek help. This was largely due to the number of reports between 2019 to 2020, namely a 172% increase. [[5]](#footnote-5) The campaign also offered counselling to individuals and the removal of the content.
2. In 2022, the Australian Government responded to the report from the Senate titled ‘*Phenomenon colloquially referred to as ‘revenge porn’’.* The statement supported most of the recommendations proposed including that all police officers undertake mandatory training around image-based abuse.

The responses from online service providers to the issue of image-based abuse are highlighted below;

1. In February 2015, Reddit updated its private policy to prohibit the publication of image-based abuse;[[6]](#footnote-6)
2. In March 2015, Twitter (now known as ‘X’) announced that they would immediately remove any link image-based abuse upon request;[[7]](#footnote-7) and
3. In June/July 2015, Google and Microsoft announced they would remove links upon request.[[8]](#footnote-8)

1. R v Simonetti [2018] ACTSC 31; R v Cartwright [2018] ACTSC 132; Dever v The Commissioner of Police [2017] QDC 65. [↑](#footnote-ref-1)
2. *Fairfax Media Publications; Nationwide News Pty Ltd; Australian News Channel v Dylan Voller* [2021] HCA 27. [↑](#footnote-ref-2)
3. Australian Government, Office of the eSafety Commissioner, *Image-Based Abuse National Survey* (Report, October 2017) 4. [↑](#footnote-ref-3)
4. Australian Government, Office of the eSafety Commissioner, *Image-Based Abuse National Survey* (Report, October 2017), 10. [↑](#footnote-ref-4)
5. NSW Government, ‘NSW Government launches campaign to help stop image-based abuse’ (Media Release, 8 December 2020) 1. [↑](#footnote-ref-5)
6. Rhett Pardon, ‘Reddit to Ban Sexually Explicit Content Posted Without Consent’ (Media Release, 24 February 2015). [↑](#footnote-ref-6)
7. Tom Hymes, ‘Twitter Targets Revenge Porn with New Abusive Behavior Policies’ (Media Release, 11 March 2015). [↑](#footnote-ref-7)
8. Ronald Chavez, ‘Microsoft joins Google in removing links to revenge porn’ (Media Release, 27 July 2015). [↑](#footnote-ref-8)