



Victims Of Crime Assistance League Inc NSW

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Consultation on new offence for the non-consensual sharing of intimate images ('revenge porn')

Thank you for the opportunity to provide a submission and for taking into account how victims, particularly, but not only girls and young women, may be deeply affected by revenge porn, and for this discussion of suitable legal responses. The Victims of Crime Assistance League Inc NSW (VOCAL) through its Victim Support Services, works with male and female victims of all types of crimes and social disadvantage crimes. VOCAL advocates for people who are often already vulnerable before they are perpetrated against, and even more so once victimised and for long afterwards.

The dissemination of photographs (mainly of girls and women), without their consent, is regarded by too many as "just a fact of life" and thus, not an activity that should be criminalised. It is another example of where the violation of women is treated as different – a lesser issue, and therefore needing a different response than in 'real crime'. We use the Apprehended Violence Order strategy as an example of managing crimes against many women in relationships as 'a less serious' strategy. We must be careful not to 'downplay' this type of new offence as less important because of alleged relationship issues.

Fraud- If someone passes money to another for a specific purpose, such as a second mortgage, and that second party misappropriates such funds, then an indictable offence has been committed and legal sanctions may be imposed. In the case of Fraud, there is generally an explicit instruction as to what is intended to be done with either the property, funds or chattels, there is provision where a breach of an implied instruction can be taken as fraud.

So too should the principal be when a third party, to whom no permission has been expressly or implicitly given to share images, decides to disseminate photographs, especially if those photographs could reasonably be likely to cause embarrassment, humiliation and harm to the reputation or well-being of the person in the photograph. Sort of like defamation, libel or slander against a person using words, - the saying is 'a picture paints a thousand words' and must be at least as potentially harmful, particularly when one takes into consideration the immaturity, vulnerability and exposure potential in social media, and the longevity and easy access that remains.

It is clear that the manner in which people communicate has changed and regrettably the law has failed to keep pace which the advancements in electronic communication. For whatever reason there has also been a reluctance by gateway service providers to take responsibility for the "postings" on the various Applications which have proliferated in the last ten years. Organisations such as Facebook, Instagram, Twitter and the like often refuse to take responsibility for what is tantamount to posting irresponsible, often hate-inciting billboard-type information by way of an electronic pathway. They must be legislated to remove offensive material that risks causing harm, or face sanctions.

It has become a regrettable common practice, especially but not only within the younger community to use the posting of (intended) private images as a form of "courting." Such practices, sometimes referred to as "sexting" are utilised, with an



implied condition that such images are solely provided for the first recipient. It should also be stressed that this is not a situation restricted to women and that anyone can be the Victim of unapproved publication. Under the current law, only children, under the age of majority are protected by legislation. (Crimes Amendment (Child Pornography) Act, 2004 see S91H.

-It is our view therefore that specific legislation should be enacted to provide protection to the Victims of what is now widely known as Revenge Porn. The fact that civil remedies are available in the law of defamation is unrealistic, as the cost of such action is beyond the financial capacity of the majority of affected people.

-Any law relating to revenge porn should also shift the burden of responsibility FROM the Crown to the accused, to prove that they did, implicitly have permission to "publish". As the majority of these offences occur either in misogynistic denigration, at point of rejection, as a way of 'bonding' with peers, and particularly with spite and intent to harm public perceptions following the breakdown of a relationship, that by its very nature, implies that permission to publish terminates, at the time of the termination of the relationship. There should also be no capacity for implied consent when the "publication" is effected to or by a third party, as, the first recipient, has no implied consent to disseminate.

-Provision should also be made to prosecute the "hosts" of such publications, with the proviso that they would only be prosecuted, should they fail to "take down" the posts, once notified. There should be time constraints relating to such notifications, such as 21 days to remove, if notified by an "affected person" and 7 days if notified by a prosecuting authority, such authority to include, the Crown, Police and Federal Communication Authorities.

-Some consideration should also be given in assessing the objective seriousness of the offence as in *R v Mears* 199153 A crim R 141 @145, such that the objective seriousness is seen to be at the High Level when the offence is committed for the purposes of humiliation, intimidation or revenge.

Society's role

We observe that from a very young age, children are groomed and easily influenced by glamour, celebrity, films, marketing, television, magazines, advertisements and other aspects of popular culture. Apparently you can't sell cars in Australia unless a flirty, beautiful model's semi-naked body adorns it, and that's obviously quite OK because it happens every day, in every home with a TV. Easy access to pornography on hand-held and PC's has proliferated. This constant exposure in the public eye leads immature, vulnerable or trusting youth, particularly but by no means only, girls and women to believe that their value is held within their bodies, and that there's nothing wrong with using their bodies for attention. But there is. Little boys also see this sexual exposure of women's bodies, so surely they develop a sense that it's perfectly normal too. If powerful advertising companies can do it in public, their 'harmless' activities seem perfectly reasonable. Until there's a victim.

The societal and often legal subplot of 'right thinking, acceptable behaviour of girls and women', demands, despite the sexualisation of almost everything, women and girls they must expect to be judged, usually in hind-sight, on their modesty, self respect, unimpeachable behaviour, subdued or dumbed-down intelligence, be trusting and kind, and have modest future aspirations, and whether same-sex or heterosexual, always being not-too-much-of-a challenge to men. This 'modelling'

begins in childhood when one sees the way toys and DVD's are marketed. Girls have pink, pretty, sparkly, soft, plus the essentials of good housekeeping like kitchens, dolls and even babies are adorned with attention-grabbing clothes and accessories. Dress-up and imagination is fairies and princesses. Boys have blue, black and silver, bikes. Trampolines, medicine sets, clothes to be a super hero, action men, firemen, policemen cowboys, builders, astronauts, adventurers. Their aberrant behaviour is repeatedly excused with 'boys will be boys'. Their subplot is "it's OK for us to break rules. – otherwise we'd be, well, like girls!"

Perhaps the interest in the availability and access to girls and women's bodies by boys begins with watching their older male and adults' behaviour, and girls see what men seem to like. Girls are groomed to be attractive to males, or to their sexual partners. The issue is not restricted to heterosexual identity. As they say 'sex sells'. Young men may be misled into believing that as many beautiful young people expose their bodies for the world to see in magazines, calendars, movies, porn, then the photos they get hold of are similarly available for distribution, as it can't be that bad. The difference of course is enormous, so how can the rights and wrongs of that scenario be better promulgated?

-A significant education package needs to accompany any legal changes. Conversely, the more education about the topic, the more the revenge-focused distributors will potentially find power in it and opportunity to offend and be offensive.

Part of this problem of creating material that becomes Revenge Porn harks back to trust and naivety, in a competitive world where modern courting rituals and social media make taking, or permitting photographic images seem like fun. It may seem like a thing one had better do to 'keep someone interested or risk losing to a less inhibited other', or to win a competition for attention, inclusion and affection. It may be immature narcissistic exhibitionism. It may be agreed behaviour between consenting adults. It becomes a problem when the relationship breaks down – a potent weapon in Domestic Violence where behaviour between consenting adults becomes a weapon of destruction. At VOCAL, we can absolutely guarantee that few victims ever comprehend what the actual law is, or about consequences that may flow – so it's great to see and participate in sexting and the law-type lectures at school. There must be much more education about 'the law' and consequences in school, as a prevention strategy.

'It is somewhat gratifying to see the young 'studs' shrink into their chairs in horror, in a lecture when they realise 'harmless fun' hurt someone, and they could be on a sex offenders register.'

The fact is, without constant media attention and education programs, people who want to be in relationships fail to see the roadblocks ahead. That's why we have such a huge problem with Domestic and Family Violence, especially where legal strategies and solutions are experienced as mere speed bumps by perpetrators and as ineffectual by so many victims.

We also live in a country – as in most other 'Adversarial Law' countries - where the rights of the accused are paramount and victims have no legally enforceable rights. Habit makes Australia a victim blaming country. 'What did she do to cause this?' "Why did she do that?" 'If she hadn't permitted or taken the image, there wouldn't be a problem!' The actions of the person who violated their private agreement by sending images that the target never intended others to see becomes less important, less blameworthy. The violation is downplayed. Just as in cases of

those accused of murder, rape and assaults of their intimate partners, the accused's actions become secondary. The actions of the life and behaviour of the victim are scrutinised, the wrongdoing by the perpetrator is limited, bargained, and excused. The impact on the victim, especially any ongoing impact or damage, is generally almost irrelevant.

-Our focus here, is to hold offenders accountable, in a meaningful way.

Like the impact on victims of most crimes – especially those where their love interest or former partner had betrayed them – the additional damage by unauthorised sharing of private material can damage, and last, forever. Victims' impact is not restricted to the court process, or the outcome for the accused. The actual 'sentence' suffered by the victim is not relevant – yet in Revenge Porn, the ongoing embarrassment, shame, lack of respect from peers, family and even difficulty finding employment are very much an ongoing consequence, within an everlasting fear-frame of re-exposure at any time. Given that an image may be forwarded, copied and "shared" countless times with modern technology without the knowledge of the victim, and the exposure process can continue even once the issue is discovered, victims not only feel helpless and exploited but are also aware that this process may be never ending.

'Having that fear of re-exposure, helplessness, lack of societal support and inadequate sanctions against the offender, will lead some to suicide.'

-While sentences for perpetrators can hardly be "ongoing," unless registered as a sex offender (which may be appropriate in some or repeat cases), the long term effects on immature youth must be respected. This takes us back to education and prevention, with clear understanding of consequences being the safer approach for those who may otherwise and in ignorance, find themselves and their actions, in courts over stupid, thoughtless childish indiscretions that harm others.

-Training Police from the trauma-informed, non-blaming point of view of a victim while paying special attention to age and gender bias that may exist against either or both the victim and offender to assist in compassionate investigation of complaints would be useful.

-Training judges and magistrates, who may be unfamiliar with the multiple forms of social media available to youth, about the swift and seemingly infinite amount of "shares" that an image can have and ongoing consequences is important. Otherwise one can foresee the blaming and denigration of the victim being permitted to continue as part of the adversarial defence bag of tricks.

-Developing a legislative framework for sentencing that adequately holds offenders accountable and provides logical consequences for their actions. An example of this would be including offenders on a sex offender social media register which monitors offenders' social media and other accounts. Offenders who feel entitled to exploit another's naked body may not discriminate, may be repeat offenders and may be deterred if they know that their accounts are monitored and bond-breaches will get higher penalties.

-Financial compensation needs to be available to victims for mental, psychological and social consequences.

-In line with recent policy to engage with Perpetrator programs around Domestic Violence offending, specific to male entitlement, objectification/exploitation of others, empathy and misogyny is required for offenders in order to avoid recidivism and potential escalation of more serious and "hands on" sex offences.

-Increasing penalties from bonds, fines to harsher sanctions for recidivist offenders.

-Call out to parents and community to educate for empathy, and supply strategies for parents, schools.

Please contact VOCAL with any questions or requests for expansion on the above consideration. Please keep past, present and future victims as the focus when developing this, or any, legislation.

Sincerely,

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