



RULE OF LAW INSTITUTE OF AUSTRALIA

Technology and the Law - Law Reform

Trigger for Law Reform - Case

In 2011, *s578C - Publishing indecent articles, Crimes Act 1900* was used in a decision regarding so called 'revenge porn'. This was first case of its kind to come before the NSW courts.

- The accused and the victim had been in a relationship for three years.
- They lived together and had on occasions been intimate.
- In July 2011 they separated and the victim moved out.
- The accused wanted revenge and decided to post six images of the victim on his Facebook page.
- The images posted showed the private parts of the victim.
- The victim had not consented to those intimate images being shared on the web.

The accused was sentenced in the Local Court to 6 months imprisonment to be served by way of home detention. The decision was appealed. The District Court confirmed the defendant's sentence of imprisonment but ordered a s12 suspended sentence.

The courts sent a strong warning that taking and/or sharing intimate images without consent could result in the Court imposing custodial sentences.

Trigger for Law Reform - Community

Research found that 1 in 5 people, mostly women, had images of their 'private parts' or images of themselves doing something not usually done in public, eg: having a shower, taken without consent. Sometimes intimate images were taken with consent. However, even if the intimate images were taken with consent, victims usually did not consent to having the intimate images shared with other people, or uploaded onto a website.

Research also found that often the reason that a person had taken and/or uploaded an intimate image of another person without consent was to control, humiliate and degrade them or simply to brag. Although not created for such a purpose, technology had created a tool to make it very simple to cause hurt, distress and shame to others. For instance the reason a lot of intimate images that have been taken and uploaded onto websites were the result of a relationship that had ended badly. This was termed 'revenge porn'.

After a lot of research, a lot of debate and parliamentary enquiries both at the State and Federal level it was decided that new legislation was required to protect people from having intimate images of themselves taken and shared without consent.

1 Revenge Porn - First Case in NSW

<https://www.turnbullhill.com.au/articles/revenge-porn-the-law-in-nsw/>

2 Ex-Lover Punished for Revenge Porn

<https://www.smh.com.au/technology/exlover-punished-for-facebook-revenge-20120421-1xdpy.html>

3 Revenge porn legislation introduced in NSW so 'sleazebags' risk jail time: Attorney General

<http://www.abc.net.au/news/2017-05-21/revenge-porn-may-be-criminalised-in-nsw/8545068>

4 Revenge Porn Spreading Like Wildfire - The Australian

<https://www.theaustralian.com.au/news/latest-news/revenge-porn-spreading-like-wildfire/news-story/105ed50a264d7d79bf435039237d7a67?sv=8fcf3fc27fbc863f858933519b094a75>

Crimes Amendment (Intimate Images) Act 2017

The Act commences with a definition of private parts and private actions. The Act also states that an 'intimate image' includes a still, moving or altered image of a person's private parts or private actions. The Act also sets out the difference between consent and non consent and the exceptions to consent when taking and use of intimate images ie for medical or scientific reasons. The Act sets out 5 main offences:

- intentionally take an intimate image of another person without consent
- Intentionally distributing that intimate image of a person without consent
- Threatening to take an image without consent
- Threaten to share an image without consent

- Disobeying an order by the court such as such as failing to take reasonable steps to take down or destroy an intimate image recorded or distributed without consent

The penalties for doing any of the above offences can include fines up to \$11,000.00 and/or imprisonment for some of the offences. The Act also includes that a person who is under 16 years of age who commits a crime under the Act cannot be prosecuted without the permission of the Director of Public Prosecutions.

1 Intimate Image Abuse now a Crime

<https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/intimate-image-abuse-now-a-crime.aspx>

2 Recording and sharing intimate images without consent - Criminal Law Journal

<http://www.wlsnsw.org.au/wp-content/uploads/Image-based-abuse-LSJ-Aug-17.pdf>

3 National revenge porn legislation to impose fines for abusers slated for this year

<http://www.abc.net.au/news/2017-11-10/new-revenge-porn-legislation-to-impose-civil-penalties/9138040>

Questions

1. Can you explain in your own words what you think this Act is about?
2. Would filming a friend drunk at a party come under this legislation?
3. Do you think 'sexting' comes under this Act or does it come under child pornography laws?
4. If a 15 year old boy sends an intimate image of his girlfriend is he covered by this this Act? If not, which Act is he covered by and why?
5. Is it good or bad that children are not really regulated by this Act? Why?
6. Does the sharing of intimate images matter now and in the future?
7. Is uploading intimate images just a change in society and should not be considered offensive?