



New Offences to address the non-consensual sharing of intimate images

The sharing of intimate images without consent (often referred to as 'revenge porn') is now a crime in NSW. Revenge porn typically involves a photograph or video depicting the victim naked or engaged in a sexual act which is distributed broadly using social media (such as Facebook), or targeted to the victim's family or employer, either by email, text, or in hard copy.

The Crimes Act was amended in June 2017 to create 4 new offences. Those offences are:

1. Intentionally recording an intimate image of another person without consent;
2. Intentionally distributing an intimate image of another person without consent;
3. Threatening to record and/or distribute an intimate image of another person without consent
4. Contravening an Order such as failing to take reasonable steps to take down or destroy an intimate image recorded or distributed without consent.

The first 3 offences, listed earlier, are each punishable by a fine of up to \$11,000.00 and/or by three years imprisonment. The 4th offence is punishable by a fine of up to \$5,500.00 and/or by 2 years imprisonment.

An 'intimate image' is a still or moving image, (including an altered image) of a person's private parts, or which is altered to appear to show a person's private parts, or a person engaged in an private act in circumstances in which a reasonable person would reasonably expect to be afforded privacy.

'Private parts' means a person's genital area or anal area, whether bare or covered by underwear. It also includes the breasts of a female person or transgender or intersex person identifying as female.

'Engaged in a private act' means:

- in a state of undress; or,
- using the toilet, showering or bathing; or,
- engaged in a sexual act not ordinarily done in public; or,
- engaged in any like activity.

The absence of consent is a vital element of the offences. For there to be consent it must be freely and voluntarily given. Just because a person consents to the recording or distribution of an image on a particular occasion or distribution to a particular person, that fact alone is not the giving of consent to recording or distributing that image or any other image on another occasion or to another person or in any other way. Similarly, a person who distributes an image of himself or herself is not by that fact consenting to any other distribution of the image.



A person cannot consent if they:

- are under 16 years of age; or,
- or do not have capacity (including cognitive capacity) to consent; or,
- do not have the opportunity to consent because they are unconscious or asleep; or,
- consent because of threats of force of terror or unlawfully detained.

A threat to record or distribute an intimate image without consent requires an intention to cause the victim to fear that the threat will be carried out, but there is no requirement that an image actually exists.

Does the victim have any other rights?

The new offences have been included as Personal Violence Offences in the Crimes (Domestic and Personal Violence) Act, which means victims are eligible for assistance under the New Victims Support Scheme.

A victim may also have civil rights for a breach of confidence. For there to be a breach of confidence the information (the intimate images) must be of a confidential nature, must be obtained in circumstances imparting an obligation of confidence, and there must be unauthorised use. If this is established, the victim may be able to obtain an injunction to prevent any further publication of the images and may be entitled to monetary compensation for the significant embarrassment, anxiety and distress suffered.

If you or someone you know has been involved in the sharing of intimate images without consent and would like more information or assistance, please contact [Oliver Hagen](#) or [Ken Gray](#) on (02) 4731 5899 or email us at litigation@batemanbattersby.com.au.