



# Senate Inquiry into the phenomenon colloquially referred to as 'revenge porn'

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Senate Legal and Constitutional Affairs Committee  
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## Executive summary

Women's Health West welcomes the opportunity to provide feedback to the Senate Inquiry into the phenomenon colloquially referred to as 'revenge porn'. We deem the Australian Labor Party's intent to amend the *Criminal Code Act 1995* (Cth) (Criminal Code) to criminalise 'revenge porn' under federal law by introducing the *Criminal Code Amendment (Private Sexual Material) Bill 2015* to be highly important in creating a gender equitable, safe, inclusive and fair Australia for women and girls.

Women's Health West provide the following recommendations:

- **Recommendation 1:** Include in the definition of 'revenge porn', the production of private sexual images or film recordings without consent and with the intention of, or where there is the risk of causing that person harm or distress, as a criminal offence.
- **Recommendation 2:** Substitute the term 'sexual violence perpetrated on information and communication technologies' and the acronym 'ICT sexual violence' instead of 'revenge porn' as the latter infers that the victim/survivor has engaged in pornography.
- **Recommendation 3:** Respond to ICT sexual violence within the broader framework and gendered phenomenon of men's violence against women.
- **Recommendation 4:** Criminalise ICT sexual violence as a form of men's violence against women in accordance with the *National Plan to Reduce Violence against Women and their Children 2010- 2022*.
- **Recommendation 5:** Fund further research into the way in which new technologies are used to facilitate and/or perpetrate ICT sexual violence or harassment against adult women, young women and girls.
- **Recommendation 6:** Embed the theoretical framework outlined in *Change the story: A shared framework for the primary prevention of violence*, in national policy and practice in order to ensure a consistent approach to prevent ICT sexual violence and men's violence against women.
- **Recommendation 7:** Implement national educational initiatives that seek to redress the harm associated with ICT sexual violence and adopt a primary prevention approach to violence against women, alongside risk reduction educational strategies.
- **Recommendation 8:** Embed education for young people about the social and legal effects of ICT sexual violence and sexting into the school curriculum using a whole-of-school approach.
- **Recommendation 10:** Conduct public awareness campaigns that specifically educate young people about their legal rights and responsibilities associated with ICT sexual violence.

- **Recommendation 11:** Recognise ICT sexual violence in the federal *Criminal Code Act 1995* as a criminal offence, as is the precedence in Victoria.
- **Recommendation 12:** Facilitate community engagement and participation with young people in the process of developing this legislation to ensure all facets of ICT sexual violence are covered.
- **Recommendation 13:** Legislate as a criminal offence the threat to distribute a sexually explicit image without consent, as well as the actual distribution.

## **Introduction**

Since 1988, Women's Health West has actively contributed to the health, safety and wellbeing of women in the western region of Melbourne through a combination of direct service delivery, research, health promotion, community development, capacity building, group work and advocacy. Our health promotion, research and development unit offers a range of programs and projects targeted to prevention and early intervention strategies to improve outcomes for women's health, safety and wellbeing. We are leaders in the development of regional strategies to further our work, seeing partnership within and outside the sectors in which we work as crucial for bringing about effective and sustainable outcomes for women and children.

In 1994, we expanded our organisation to encompass delivery of family violence services for women and children ranging from crisis outreach and court support, to housing establishment and crisis accommodation options, to counselling and group work programs. WHW has been an active and strong supporter of family violence reform at a regional and state-wide level, integrating and coordinating family violence services in our region, and ensuring the integration of those services with a range of related sectors, including the housing sector.

As a feminist organisation we focus on redressing the gender and structural inequalities that limit the lives of women and girls. Women's Health West's work is underpinned by a social model of health, recognising the important influence of, and aiming to improve, the social, economic and political factors that determine the health, safety and wellbeing of women and their children in our region. By incorporating a gendered approach to health promotion work that focuses on women, interventions to reduce inequality and improve health outcomes will be more effective and equitable.

Informed by our vision of equity and justice for women in the west, Women's Health West's work is guided by the following five strategic goals:

- Deliver and advocate for accessible, culturally appropriate services for women and children in the west who experience family violence
- Undertake health promotion and primary prevention actions to redress gender inequity and improve the health, safety and wellbeing of women, young people and children
- Collaborate with others to achieve our goals
- Promote good health, safety and wellbeing in our workplace
- Enhance the long term sustainability of our work

## **Women's Health West's service provision experience and expertise in working to prevent men's violence against women**

### Preventing Violence Together partnership

Women's Health West is the lead agency of Preventing Violence Together, which is a regional partnership and action plan that guides primary prevention of men's violence against women in Melbourne's west. Launched in 2010, Preventing Violence Together is a coordinated, action-based collaboration between Women's Health West and 18 local government, community health, and other organisations such as Victoria Police, primary care partnerships

in the region. It is designed to build sustainable gender equitable environments at the organisational and community levels, through primary prevention initiatives that the partnership and partners implemented regionally and within their individual organisations. The action plan was the first of its kind in Victoria, and since its launch other Victorian regions have adopted a similar women's health service-led approach to primary prevention as best practice.

### You, Me and Us

You, Me and Us responds to the determinants of men's violence against women by promoting equal and respectful relationships between young women and men, advancing women's leadership and equal social status in our community, and by working to redress gender stereotypes. The program engages a peer education model to train and support young women aged between 18 and 24 years to become youth ambassadors in the primary prevention of men's violence against women and to deliver respectful relationships education in targeted settings including youth organisations, TAFEs and universities, sporting clubs and primary schools in Melbourne's West.

### Girls Talk, Guys Talk

Girls Talk Guys Talk is a whole-of-school healthy relationships and sexuality education program for young people. The program goal is to foster a sustainable school environment in which young people have opportunities to gain the knowledge, skills and resources they need for healthy relationships and sexual choices – now and into the future. This is achieved by improving the knowledge and skills of students in relation to sexual health and healthy sexual decision-making; by maximising the leadership potential of empowered young people involved in the student working group; and by building the capacity of the whole school's staff, students, parents and carers to promote healthy relationships and sexual health – through its curriculum, community and culture.

## **Definitions**

### Revenge porn

Women's Health West uses the following definition for 'revenge porn' in this submission as per the discussion paper submitted to the Australian Labor Party by MP Tim Watts:

*To target individuals who share, or threaten to share, private sexual images or film recordings of others without consent and with the intention of, or where there is the risk, causing that person harm or distress, as well as those who operate "revenge porn" websites. These offences should capture sharing via all forms of telecommunications including SMS, email, websites and social media.*

In addition, Women's Health West also strongly advocates that this definition include individuals who produce private sexual images or film recordings of others, as well as those who share or threaten to share such material. The above definition does not currently capture the production of this content as harmful. We assert the process of non-consensually producing this content can cause harm or distress to the victim/survivor, and in addition enables others to subsequently share the content without consent.

Women's Health West would also like to highlight the increasing popularity of mobile applications to access social media such as Instagram and snapchat (Apple Inc. Apple Press

Info, 2013), and the particular risks that these forms of user generated smartphone driven applications pose in sharing non-consensual sexually explicit content.

Women's Health West agrees that the behaviours outlined above must be criminalised. However, we would recommend that the government reconsider the use of the colloquial term 'revenge porn' to describe the behaviour of sharing sexually explicit images without a person or persons' consent. We assert that the non-consensual creation and/or distribution of sexual images has largely been framed in public discourse as a problem of naïve users, rather than one of gender-based harassment and violence. This is in part due to the term 'revenge porn' further supporting this dialogue by placing the onus of responsibility on the individual in the image (e.g. that the victim/survivor is to blame for taking a 'pornographic' image in the first place), rather than placing responsibility with the perpetrator of this form of cyber exploitation.

The use of the term 'revenge porn' also infers that the person in the image has actively engaged in its making, which is often not the case. Regardless of the circumstances, Women's Health West deems it important to position this offence within a framework of gender-based violence, and therefore name the offense accordingly. We therefore recommend that the offence be termed 'sexual violence perpetrated on information and communication technologies' and the subsequent acronym of 'ICT sexual violence'. For the purpose of this submission we will hereafter use the term ICT sexual violence.

- **Recommendation:** Include in the definition of 'revenge porn', the production of private sexual images or film recordings without consent and with the intention of, or where there is the risk of causing that person harm or distress, as a criminal offence.
- **Recommendation:** Substitute the term 'sexual violence perpetrated on information and communication technologies' and the acronym 'ICT sexual violence' instead of 'revenge porn' as the latter infers that the victim/survivor has engaged in pornography.

### Sexual assault

Women's Health West uses the following definition for 'sexual assault':

*Any sexual behaviour that makes a person feel uncomfortable, frightened or threatened. It is sexual activity to which a person does not consent. The use of emotional or physical violence to force another person to engage in sexual activity also constitutes sexual assault (CASA, 2006).*

### **Response to the terms of reference**

- (1) *The phenomenon colloquially referred to as 'revenge porn', which involves sharing private sexual images and recordings of a person without their consent, with the intention to cause that person harm.*

Women's Health West deems the Australian Labor Party's intent to amend the *Criminal Code Act 1995* (Cth) (Criminal Code) to criminalise ICT sexual violence under federal law by introducing the *Criminal Code Amendment (Private Sexual Material) Bill 2015* to be highly important in creating a gender equitable, inclusive and fair Australia for women and girls.

Increasingly, the lives of young people are permeated by information and communication technologies (ICTs), including mobile phones and social media, enabling them to generate and share images and content instantaneously and perpetually (Lim, 2014). According to the Australian Bureau of Statistics, 98 per cent of young people own and use a mobile phone and 73 per cent of the adult population own a smartphone (2010). In addition, there are over 13 million Australians on Facebook and approximately half of these users are aged between 18 and 34 years old (Socialbaker, 2013). Reportedly, 79 per cent of Australians access the internet daily, and 52 per cent access the internet more than five times in a day (Sensis, 2015).

For young people, ICTs are a forum for communication, as well as a space for exploration and expression of sexuality and sexual identities (Powell 2010). Some forms of sharing sexually explicit images, otherwise known as 'sexting', are consensual and can be considered an expression of young people's sexuality and sexual agency. However, sharing sexually explicit images without a person or persons' consent is harmful and reinforces gender stereotypes, inequitable gendered power relations, and violence and coercion (Ringrose et al 2012). Women's Health West asserts that the harmful non-consensual practice of 'revenge porn' or ICT sexual violence is a gendered phenomenon and constitutes a form of violence against women and girls.

ICT sexual violence objectifies women, and in some instances men, as sexual objects that exist only in relation to men's desire. The sexual objectification of women and girls through ICT sexual violence dehumanises women and girls as commodities that can be 'shared around' by men through the use of information communication technology without the individual's consent. The practice also perpetuates gendered stereotypes and negative social norms that position women and girls, and the images of their bodies, as a social commodity and the property of men.

It is well established that gender norms have a powerful influence on people's sexual identity, practices and behaviour, and the way in which they enact their sexuality. Gender-based power inequities between women and men serve to create and maintain social pressures and constraints through which women, particularly young women, negotiate sexual encounters. Social pressures and constraints placed on young women have a direct impact on their ability to negotiate and make decisions about safe sexual practices, including their participation in sexting behaviour and sharing private sexual images online (Rosenthal and Browning, 2005). It is increasingly expected among young people that young women will share sexual images of themselves, as part of what is deemed 'normal' sexual behaviour and relationships (Powell, 2010).

Preliminary findings from Victorian research conducted with young people also highlighted the gendered expectations in relation to sexting and ICT sexual violence. Young men and boys are under increasing pressure to have sexually explicit images of girls in order not to be ostracized by their peers, while there is immense peer pressure placed on girls from boyfriends and strangers to send sexual images of themselves (Education Review 2011). American research conducted with teenage boys and girls found that 51 per cent of teenage girls report engaging in sexting because of pressure from boys, whereas only 18 per cent of young boys reported pressure from their female counterparts as the reason for sending sexually explicit

images of themselves (The National Campaign to Prevent Teen and Unplanned Pregnancy 2008).

In addition, research indicates that young women are more likely than young men to suffer negative social consequences from the redistribution of their sexual images to third parties without their consent (Bailey & Hanna 2011). Women's Health West deems the federal government recognition that the sharing of non-consensual sexual images is a criminal offence, as an important step forward in criminalising all forms of men's violence against women.

- **Recommendation:** Respond to ICT sexual violence within the broader framework and gendered phenomenon of men's violence against women.

(2) *The impact this has on the targets of revenge porn, and in the Australian community more broadly.*

As mentioned previously, ICT sexual violence is a gendered phenomenon, and as such the vast majority of victim/survivors are adult women, young women and girls (Citron & Franks, 2014). Research has indicated that the impact of ICT sexual violence on victim/survivors is varied, and leads to severe psychological distress, including increased anxiety, panic attacks, anorexia nervosa and depression, as well as decreased occupational and educational opportunities (Citron & Franks, 2014). According to a study conducted by the Cyber Civil Rights Initiative, over 80 per cent of ICT sexual violence victim/survivors experience severe emotional distress and anxiety (Citron & Franks, 2014).

It is widely recognised that sexual violence perpetrated through information and communication technologies is often used to 'shame and humiliate the subject, or punish them for discontinuing the relationship' (Butler & Watts, 2015, p5). In addition, it is becoming increasingly apparent that ICT sexual violence is used to coerce women and girls from leaving violent relationships and further perpetuates power imbalances within intimate partner relationships. This motive for engaging in ICT sexual violence is clearly articulated in the following excerpt from Australian researchers Henry and Powell (2015):

*It is not only in the context of relationship breakdown that intimate images – originally taken with the subject's consent – are being distributed to humiliate an ex-partner or friend. Rather, perpetrators of domestic and family violence are increasingly using sexual imagery as a tool to threaten, harass and/or control both current and former partners. For example, in interviews, domestic violence support workers have described cases where: perpetrators recorded intimate partner sexual assaults; where women 'agreed' to intimate images being taken, in the context of an already violent relationship where saying 'no' may not have been the safe option; as well as cases where a violent partner threatened to show sexual images or footage (whether originally taken with consent or not) to the couple's children or extended family if the woman pursued legal action regarding the relationship abuse (Henry and Powell, 2015, p 113).*

Women's Health West asserts that a failure to criminalise ICT sexual violence is counter-productive if the Australian government is committed to the 12-year *National Plan to Reduce*

*Violence against Women and their Children 2010-2022* (Department of Social Services, 2011). Not providing adequate federal legislation to criminalise such behaviour sends the message to the Australian community, to women, men, girls and boys, that the public objectification of women as sexual objects against their will is socially acceptable. This reinforces that women exist only in relation to men's desires and that violence and harassment that predominantly affect women and girls is to be trivialised and dismissed in our community (Citron & Franks, 2014). Failure to redress this form of violence against women and girls reinforces patriarchal gender norms of male dominance over females, which is known to be a driver of men's violence against women (VicHealth, 2007).

Women's Health West recommends that the government take a strong stand against ICT sexual violence, in support of women and girls and their basic human rights to be free from mental, emotional and physical violence, the right to privacy and bodily integrity. Criminalising this form of harassment and violence against women demonstrates social condemnation for this behaviour, which will benefit our society at large. It is also likely to support a reduction in peer pressure and the expectation on men and boys to acquire and distribute sexually explicit images.

In addition, more research is needed to ascertain how new technologies are used to facilitate violence, the prevalence of ICT sexual violence, the discourse within which people engage in this form of violence, and the impact of this violence on women's health, safety and wellbeing. Women's Health West recommends the government utilise existing surveys such as the Australian Longitudinal Study on Women's Health and the Australian Bureau of Statistics Personal Safety Survey for further research in these emerging areas to ensure law, social policy and practice reform are evidence-based.

- **Recommendation:** Criminalise ICT sexual violence as a form of violence against women in accordance with the *National Plan to Reduce Violence against Women and their Children 2010- 2022*.
- **Recommendation:** Fund further research into the way in which new technologies are used to facilitate and/or perpetrate ICT sexual violence or harassment against adult women, young women and girls.

(3) *Potential policy responses to this emerging problem, including civil and criminal remedies.*

#### Civil remedies

Women's Health West strongly supports a focus on prevention of ICT sexual violence within a broader framework of primary prevention of men's violence against women as mentioned previously. To ensure long-term, sustainable change, we recommend that national educational initiatives are implemented in schools that seek to prevent ICT sexual violence and reduce its associated harm. Best practice shows that this needs to occur within a primary prevention approach to violence against women that focuses on respectful gender equitable relationships between girls and boys.

A primary prevention approach will ensure efforts redress the gendered drivers of violence against women, that include unequal power and resources between women and men, men's

control of decision-making and limits to women's independence in public and private life, rigid gender roles and stereotyped constructions of masculinity and femininity and male peer relations that emphasise aggression and disrespect towards women (Our Watch, 2015). Such an approach will work to prevent ICT sexual violence, and other forms of violence against women and would include:

- Healthy and respectful relationships education, including challenging harmful gendered roles, norms and stereotypes for young women and men
- A focus on the legal and ethical rights and responsibilities of young people in regards to sexually explicit images online and distribution of these images
- Informed decision-making around distributing sexually explicit images and its social ramifications
- Healthy sexuality, sexual identity and sexuality expression education to counteract the sexualisation of young women
- An approach that positions responsibility for harmful, non-consensual and violent revenge porn behaviour with the perpetrator, and not the victim/survivor.

Women's Health West also strongly recommends that education for young people around the social and legal effects of ICT sexual violence and sexting be embedded within school curriculum and a whole-school approach. A whole-school approach incorporates three interconnected fields:

1. Curriculum, teaching and learning
  2. Community links, partnerships and services: recognising the central roles of parents and families as well as local communities in supporting learning
  3. School organisation, ethos and environment: the culture of the school and its social environment (attitudes, values) as well as its physical environment (buildings, grounds and equipment). A school's practices, policies, procedures and codes of conduct (or lack thereof) often have the strongest influence on its organisation, ethos and environment.
- **Recommendation:** Embed the theoretical framework outlined in *Change the story: A shared framework for the primary prevention of violence*, in national policy and practice in order to ensure a consistent approach to prevent ICT sexual violence and men's violence against women.
  - **Recommendation:** Implement national educational initiatives that seek to redress the harm associated with ICT sexual violence and adopt a primary prevention approach to violence against women, alongside risk reduction educational strategies.
  - **Recommendation:** Embed education for young people about the social and legal effects of ICT sexual violence and sexting into the school curriculum using a whole-of-school approach.

## Criminal remedies

Women's Health West encourages the government to join with other comparable countries and take action against ICT sexual violence as a violation of an individual's right to live free from violence, the right to privacy and the right to bodily integrity.

The current legislation pertaining to ICT sexual violence presents significant challenges in raising awareness among young people about the legal ramifications of ICT sexual violence. Australian research suggests that young people are not aware of the legal parameters and penalties associated with sexting, particularly in relation to the production and distribution of sexually explicit images (Albury & Crawford, 2012).

It is our view that existing laws and protections available to victim/survivors of ICT sexual violence are inadequate. Essentially, ICT sexual violence falls within and across a range of disparate criminal laws and civil remedies. These include federal criminal laws relating to telecommunication services with intent to menace, harass or cause offence and a range of civil laws that govern privacy, defamation, confidentiality, surveillance, and copyright (Svantesson, 2010). Women's Health West asserts that there is a need for protection and justice for victim/survivors that is not dependent on an individual's ability to bring about civil proceedings nor relies upon their own financial and emotional resources (Salter, 2015).

Women's Health West asserts that the purpose of developing specific federal criminal law against ICT sexual violence creates greater visibility for this offence and as such enables victim/survivors to have their individual rights and dignity protected. A law of this nature also has a symbolic function in condemning men's violence against women. By labelling this behaviour as criminal explicitly within the law, this provides the public with a clear indication of what the offender has done and a moral compass of the values of our society (Salter, 2015). This is the opportunity for the law to acknowledge the severity and unacceptability of this form of harassment and humiliation, which is predominantly targeted at women and girls.

Furthermore, recognising the educational function of law, this will communicate society's values and confirm to the public the harms associated with such behaviour and act as a deterrent. Failure to do so, will undermine the impact of such behaviour on victim/survivors as indicated by Salter and Crofts:

*The creation of offences that specifically target revenge porn may both deter perpetrators and operate symbolically to restore and affirm the dignity of victims (Salter & Croft, 2015, p11)*

In addition, inconsistent laws between Australian jurisdictions around ICT sexual violence prevents the roll out of national educational and awareness campaigns to young people about the legality and risks of distributing sexually explicit images online.

- **Recommendation:** Conduct public awareness campaigns that specifically educate young people about their legal rights and responsibilities associated with ICT sexual violence.

(4) *The response to revenge porn taken by Parliaments in other Australian jurisdictions and comparable overseas jurisdictions.*

Although there are a number of laws that can apply to ICT sexual violence, in Australia there is no federal criminal offence specific to situations where an image is created or distributed non-consensually through information and communication technologies. Adults who engage in these behaviours 'are not generally subject to criminal charges for that behaviour' (Victorian Parliamentary Law Reform Committee, 2013: p. 140). In relation to such offence, we currently rely heavily on civil law, meaning that victim/survivors need to have the resources, both financial and emotional, to advocate for their rights, and often this is without punishment for the defendant nor deters such behaviour in the future (Salter, 2015). The limited scope of current legislative frameworks, the uncertainty around whether federal or state/territory law should apply, and the lack of specific legislation to tackle ICT sexual violence and harassment, means that Australian law currently 'does not sufficiently accommodate the intent, magnitude, and range of harms' that are committed through offensive behaviours involving technology' (Victorian Parliamentary Law Reform Committee, 2013, p. 140).

In 2013, Women's Health West provided feedback to the Victorian Law Reform Committee Inquiry into Sexting. This Inquiry resulted in determining the misuse of sexting to be a crime, and much of the subsequent changes in Victorian legislation Women's Health West recommends for ICT sexual violence legislative changes at the federal level. The Inquiry into Sexting (VPLRC, 2013) summarised the following non-consensual practices to be a crime:

- (a) Sharing an intimate image with others without consent;
- (b) Using the image for a purpose other than that consented to by the subject;
- (c) Refusing to delete the image when asked to do so;
- (d) Making threats to 'do something' with the image (such as sending it on to others and/or posting it to a particular website etc.) and
- (f) Using a sexual and/or pornographic image to degrade or harass another person.

Women's Health West urges the federal government to adopt a comparable law to align federal and current state legislation and unify the Australian community in the harms associated with this form of men's violence against women.

Criminalising the practice of ICT sexual violence in Australia is in keeping with legislation from other comparable countries such as the United Kingdom, Canada, Israel, Brazil, the Philippines and states of the United States of America. For example, in the United Kingdom, perpetrators of this form of violence now face two years of incarceration.

Engaging young people in the process of developing these legislative changes is important to ensure the new legislation covers all facets of ICT sexual violence and is effective and relevant. The importance of this step was indicated in California where an 'anti-revenge porn' bill to criminalise the posting of sexually explicit images of another person with intent to cause serious emotional distress has been passed. The new legislation is limited in scope and as such does not currently cover situations where the image is taken by the person in the image, (e.g. those photos taken as a 'selfie') and subsequently distributed by another person without the person's consent. This has provided serious limitations to the legislative changes given that a survey conducted by the Cyber Civil Rights Initiative, found that 80 per cent of photos that have been used as revenge porn are taken by the victim as a 'selfies' (2013).

We also recommend that the law focus on the impact of ICT sexual violence on the person who has not given consent, as opposed to the motivation of the perpetrator (as this may vary)

and/or the origin of the image. Women's Health West urges the government to consider the threat of distribution of an image as illegal, as well as the actual distribution of an image given the psychological impacts this conduct is likely to have on the person who has not given consent.

- **Recommendation:** Recognise ICT sexual violence in the federal *Criminal Code Act 1995* as a criminal offence, as is the precedence in Victoria.
- **Recommendation:** Facilitate community engagement and participation with young people in the process of developing this legislation to ensure all facets of ICT sexual violence are covered.
- **Recommendation:** Legislate as a criminal offence the threat to distribute a sexually explicit image without consent, as well as the actual distribution.

We congratulate the Australian government on conducting this Senate Inquiry and giving Women's Health West the opportunity to provide feedback on this important matter. We deem the proposed legislation as significant in strengthening Australia's response to harmful, non-consensual sharing of sexual images that is a form of men's violence against women.

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