



Research has shown that 23% of young Australians have been subjected to image-based abuse. Shutterstock

Australia is moving quickly towards creating laws to deal with the perceived menace of revenge porn. Both the [Australian Capital Territory](#) and [New South Wales](#) have recently introduced specific laws, bringing them into line with Victoria, South Australia and Western Australia.

But the creation of new offences may not be the panacea it is intended to be. Instead, we should focus our efforts on overcoming investigative challenges and implementing crime prevention strategies in a more practical approach.

What do we mean by revenge porn?

When it first became an issue, “revenge porn” referred to the unauthorised public release of intimate images that arose from a relationship.

However, the term is now used to capture the illegal distribution of intimate images, regardless of the relationship status between offender and victim. It also includes the use of faked nude images. Recent revenge porn offences have featured the anonymous [dumping of mass images of multiple victims](#) on the internet.

It has been argued that the act of revenge porn should be considered an extension of sexual assault, given the potential impact on victims. Indeed, the [eSafety Commissioner’s office](#) identified that:

... non-consensual sharing of private sexual images can be a form of family violence or sexual abuse.

Revenge porn laws may not be capturing the right people

Written by Terry Goldsworthy, Assistant Professor in Criminology, Bond University

In 2014, [Israel](#) made revenge porn a crime by drafting a new law stipulating that those found guilty of posting such content will be prosecuted as sexual offenders.

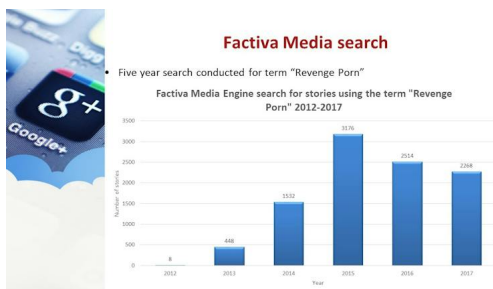
However, there are differences between those victimised by physical sexual assault and revenge porn.

[ABS data from 2016](#) show that one in five victims of sexual assault are male. Yet [recent Australian research](#)

has shown that men and women are equally likely to report being a victim of image-based abuse. The US research showed 3% of male and 5% of female internet users has suffered non-consensual image sharing.

The extent of revenge porn

A search of the Factiva media search engine using the term “revenge porn” shows that in 2012 there were eight stories in the international media. Just three years later, there were 3,176.



Search results for the term ‘revenge porn’ using Factiva. Author/Factiva

The rise of revenge porn has been facilitated by our ability to create content and distribute it. This ability has been multiplied by professional facilitators and technology, such as porn sites hosting, which can reach much larger audiences. In 2014, at least [3,000 porn websites](#) around the world featured the revenge genre.

A 2016 study by the [US Data and Research Institute](#) showed one in 25 online Americans has been a victim of someone posting, or threatening to post, nearly nude or nude images of them without their permission. In Australia, research has shown

[23% of those](#) aged 16 to 45 have been subjected to image-based abuse.

The new laws

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Australia now has more states and territories with specific revenge porn laws than those without. Queensland, Tasmania and the NT remain without such laws.

State	Act	Type of image	Penalty
Federal	Using a carriage service to menace, harass or cause offence Section 474.17, Criminal Code Act 1995 (Cth) .	N/A	Maximum of 3 years imprisonment.
ACT	Non-consensual distribution of intimate images, Section 72C, Crimes Act 1900 .	intimate image of a person: (a) means a still or moving image, in any form— (i) of the person's genital or anal region; or (ii) for a female or a transgender or intersex person who identifies as a female—of the person's breasts; or (iii) of the person engaged in a private act; or (iv) that depicts the person in a sexual manner or context; and (b) includes an image, in any form that has been altered to appear to show any of the things mentioned in paragraph (a).	Maximum of 3 years imprisonment. 5 years if the image is of a person under the age of 16 years.
NT	No-but previous government considered drafting new laws.		
NSW	Distribute intimate image without consent, Section 91Q, Crimes Act 1900 .	intimate image means: (a) an image of a person's private parts, or of a person engaged in a private act, in circumstances in which a reasonable person would reasonably expect to be afforded privacy; or (b) an image that has been altered to appear to show a person's private parts, or a person engaged in a private act, in circumstances in which a reasonable person would reasonably expect to be afforded privacy.	Maximum of 3 years imprisonment.
QLD	No.		
SA	Distribution of invasive image/humiliating or degrading film Section 26B C, Summary Offences Act 1953 (SA) .	Invasive image of the person if it depicts the person in a place other than a public place: (a) engaged in a private act; or (b) in a state of undress such that— (i) in the case of a female—the bare breasts are visible; or (ii) in any case—the bare genital or anal region is visible.	If the image is of a person under the age of 17 years a maximum of 4 years imprisonment. Any other case maximum of 2 years imprisonment.
TAS	No.		
VIC	Section 41DA – Distribution of intimate image, Summary Offences Act 1956 .	Image is contrary to community standards of acceptable conduct.	Maximum of 2 years imprisonment.
WA	Restraints on respondents, section 106/61, Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016 .	Not defined talks about intimate personal images.	Maximum of 2 years imprisonment.

Current status of specific and non-specific revenge porn laws in Australian states.Author

This move to specific laws reflects overseas trends. In the US, [38 states \(plus Washington DC\)](#) have criminal laws against revenge porn, with legislation pending in additional states. The [UK, Canada, New Zealand and Japan](#) are just some of the countries to adopt specific revenge porn laws. Many of these laws extend revenge porn from distribution of an intimate image to include the creation of, and threats to distribute, those images.

In 2016, 206 people were [prosecuted under UK laws](#) for revenge porn.

Data obtained from the Victorian Crime Statistics Agency shows that since the implementation of revenge porn laws in 2015, until July 2017, there have been 415 reports of offences of threatening to or intentionally distributing an intimate image. Some 13% of those cases remain unsolved and 117 people have been charged under those laws.

Are existing laws sufficient?

In Australia, the current [Commonwealth law](#) to deal with revenge porn covers using a carriage service to menace, harass or cause offence. It relies on the prosecution showing that the effect

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of releasing the image is that a reasonable person would regard it as being menacing, harassing or offensive.

Women's Minister [Michaelia Cash](#) has noted:

Under this offence, there have been a number of successful prosecutions for revenge porn.

One example is the Queensland woman who was in a relationship with a married man. The relationship ended and the man returned to his wife, after which he was instructed to destroy intimate images of the victim. The man did not, and his wife posted them on Facebook. The wife was charged under the Commonwealth legislation [and convicted](#) .

WA has limited revenge porn laws [for domestic relationships](#) , using them as part of family violence restraining orders.

The WA attorney-general, Michael Mischin, argued the Victorian laws were targeting the wrong offenders:

So it's stupidity, naivety and immaturity rather than criminality and that's not quite what we're driving at.

The Victorian Crime Statistics Agency data show that between June 2015 and June 2017, 23% of male offenders were aged between 10-19 years of age. Females made up 13% of offenders.

But not all states are rushing to implement specific laws, given that existing laws are adequate and those being targeted by the laws may not be those intended.

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Queensland Attorney-General [Yvette D’Souza](#) is still examining whether existing laws needed to be strengthened.

Where to from here?

There is insufficient evidence from the current laws’ success rates to justify a move to specific laws. There has also been a failure to show how these new offences are effective in tackling other deficiencies identified in responses to revenge porn offences.

These issues include [ensuring we have](#) effective victim responses to revenge porn, such as strategies to increase ease of reporting and reduce under-reporting.

A lack of specialisation in policing responses has also been identified in various government inquiries. Additional training for police is needed to deal with complex investigations that can involve cross-jurisdictional and transnational issues.

The role of social media platforms will also be crucial to an effective response. We must differentiate between [legitimate crime prevention strategies](#) and victim-blaming in what can be a highly emotive area.

So, the upshot is that we need to give existing laws more time to see if they are effective before we implement new ones, and we must ensure any new laws are targeting the intended offenders.

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Read more <http://theconversation.com/revenge-porn-laws-may-not-be-capturing-the-right-people-84061>