CASE STUDY

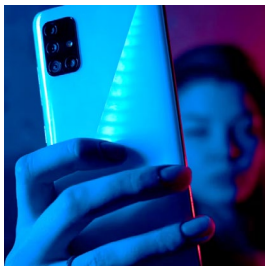
Adapting laws to technological developments

Crimes (Intimate Image Abuse) Amendment Act 2017

Content Warning: This explainer talks about image-based abuse, including the sharing of intimate images without consent and the violation of sexual privacy. Some readers may find this upsetting. Support services are listed at the end of the document.

In 2017, the ACT Legislative Assembly passed a law that criminalised non-consensually sharing photos or videos of someone who was undressed, nude, or doing something intimate in private. The law's development is a great example of how parliaments review and adapt laws to developments in our society, and how elected representatives from across the political spectrum can work together to achieve high quality legislative outcomes.

Background



Unsplash/Jonah Pettrich

Image-based abuse is not a new phenomenon. The non-consensual act of taking or sharing (or threatening to share) images of someone undressed, nude, or doing certain things in private has been around since the invention of personal cameras and portable video recorders.

In the past, technology limited how easy it was to commit such abuse and how widely images could be shared. But the rise of the internet, social media, and camera smartphones with web access has made it easier to take and share intimate images with huge audiences instantly. As a result, the occurrence of intimate image-based abuse has escalated. A 2020 study found that 35% of Australians had been victims of such abuse, up from the 2015 rate of 1 in 5.

While aspects of ACT law could be used to prosecute certain kinds of image-based abuse (for example, in relation to certain computer offences under the *Criminal Code 2002* or offences relating to 'intimate observations' under the *Crimes Act 1900*), the problem was that the act of non-consensually distributing intimate images of a person was not a crime in and of itself. As technological developments made imaged-based abuse easier to commit and with greater impacts on victims, this legal gap could make criminal prosecution difficult to pursue.

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What's in a name?

'Revenge porn' is a term commonly used to describe image-based abuse, but it is misleading because it suggests the abuse is only about getting revenge and treats it like pornography. 'Intimate image-based abuse' is a better term because it focuses on the act's lack of consent and the harm of invading someone's of personal privacy.

Adapting the law

Proposing two solutions

On 7 June 2017, two separate proposals were raised in the Assembly to update ACT law to address this legal gap. Jeremy Hanson MLA (Liberal) presented the Crimes (Intimate Image Abuse) Amendment Bill as a private member's bill. The bill had previously been released in an exposure draft form and was modified following community consultation. Among other things, the bill sought to amend the *Crimes Act 1900* to:

- Create two new offences being the non-consensual distribution and the threat of distribution of intimate images with a maximum penalty for each offence of 3 years imprisonment, a fine of 300 penalty units, or both
- Introduce protections/exceptions for young people who send consensual intimate images in certain circumstances, and
- Give ACT courts the power to order copies of intimate images be removed or deleted.

On the same day, Caroline Le Couter MLA (Greens) presented an exposure draft of the Crimes (Invasion of Privacy) Amendment Bill. Like Mr Hanson's bill, the exposure draft bill also sought to create offences in relation to non-consensual distribution of intimate images and to address several other matters. Among other things, it sought to:

- Create a new Part of the *Crimes Act 1900* to directly address invasions of privacy
- Move and amend section 61B of the Crimes Act (that was originally inserted to address certain 'voyeuristic behaviours' including the phenomenon known as 'upskirting')
- Create two new offences being the non-consensual distribution and the threat of distribution of intimate documents (including images) with a maximum penalty for each offence of 2 years imprisonment, a fine of 200 penalty units, or both, and
- Clarify and expand the definition of consent for both invasions of privacy and sexual offences.

Cross-party collaboration

When talking about their bills, both members noted that all three parties in the Assembly wanted to address the issue of intimate image-based abuse and had expressed interest in collaborating:



If we can work on this together to get a result in August, that would be a good thing. I am very happy to sit down with the Greens and Labor Party to discuss any views they have and suggested amendments, if they think there are enhancements or improvements that can be made… I am greatly encouraged that the three parties in this place have a unity of purpose…

Jeremy Hanson MLA 7 June 2017 (page 1942)



I welcome the impending outbreak of tri-partisan agreement in this. I am very hopeful that the legislation that will be passed by the Assembly will be good legislation that will act on this technologically facilitated abuse, this scourge.

Caroline Le Couteur MLA 7 June 2017 (page 1947)

Between June and August 2017, Mr Hanson, Ms Le Couteur, and Attorney-General Gordon Ramsay MLA (Labor) worked together to refine aspects of Mr Hanson's bill to address different technical and policy requirements. They also spoke with officials from government agencies, outside organisations and experts that had offered suggestions about the earlier drafts of the two bills.

On 16 August 2017, the bill came back before the Assembly and amendments were proposed to reflect previous discussions between Mr Hanson, Ms LeCouter and Mr Ramsay (see schedule 1 of the *Minutes of Proceedings*). These included the following proposed changes:

- Adopting more inclusive language used elsewhere in the Crimes Act.
- Revising the definition of intimate image.
- Add a clause to lower the age of the existing crime of sharing intimate images of a young person from 18 to 16.
- Change the proposed exception for consensual intimate image sharing by 14-to-17-year-olds from prosecution into a defence that required certain conditions to be proven in court.

Passing the bill

On 17 August 2017, the Assembly resumed debate on the Crimes (Intimate Image Abuse) Amendment Bill. During the debate, many MLAs acknowledged the importance of collaborating and reaching consensus on finding the best way forward:



Today's debate on Mr Hanson's bill shows this community that, when it comes to this behaviour [intimate image-based abuse], we are unanimous in our condemnation, and it shows that in order to achieve effective changes to the law we can rise above partisan politics and work together

Mick Gentleman MLA 16 August 2017 (page 2757)



It is good to see that the new offences set out in this bill address this gap in the law. The new intimate images offences cover scenarios that have largely emerged due to advances in technology… The fact that the three parties are working together to achieve the best outcomes for the community is something that we should not overlook here today.

Yvette Berry MLA 16 August 2017 (page 2764)



> I would like to thank the government and the Greens for their support of this important piece of legislation. It genuinely is a team effort… There has been lots of toing and froing. Again, because it is quite unusual for this place, can I say what a good process it was… The contributions from each of the parties have meant that we have a bill that is optimal, that is the best that we can achieve to deal with this offence.
>
> **Jeremy Hanson MLA** 16 August 2017 (pages 2766 & 2771)

The 29 amendments developed collaboratively were proposed and passed unanimously by the Assembly. The bill, with its changes, was then passed by the Assembly on the same day. It was enacted on 30 August 2017, becoming the *Crimes (Intimate Image Abuse) Amendment Act 2017*.

Because the Act was an amending law (a law that makes changes to an existing law), rather than a standalone law, it was automatically repealed after its changes had come into effect in the *Crimes Act*.

The substantive changes that the Act made can be found at Part 3A of the *Crimes Act 1900*.

Outcomes

The ACT became the fourth Australian jurisdiction to create specific crimes for intimate image-based abuse (SA in 2013, Victoria in 2014, and New South Wales two months earlier in June 2017).

The *Canberra Times* reported that by March 2018 – seven months after the law was enacted – three people had been charged with the new image-based abuse crimes. In July, a University of Canberra exchange student became the first person to be sentenced under the law for non-consensually sending an intimate image of someone else over Snapchat.

Reports of image-based abuse to police are underreported. ACT Policing and academics have attributed this to the embarrassment victims felt from their trust being betrayed, the stigma of the crime, the fear of retribution, and a misunderstanding that the crime only applied when revenge was the motive. Victim-blaming also remains a significant barrier to reporting.



> The main thing is betrayal of trust. They've trusted someone, if it was consensual to take these images, to keep those images within the four walls that they were taken…
>
> I just don't want people to think that what has happened to them is [okay] because it wasn't motivated by revenge. And I don't want people to capture images thinking [that] provided they don't have this revenge motivation they will get away with it.
>
> **Detective Sergeant Tony Crocker** *Sydney Morning Herald,* 4 August 2018 (online)

It is important that victim-survivors have accurate information and are appropriately supported.



> The most vital need is to give victim-survivors information, support and advice about what they can do if that's happened to them — and that support needs to be non-judgemental.
>
> **Dr Nicola Henry**, *ABC News,* 5 July 2022 (online)

Where to get more information

If you think that you or someone you know has experienced image-based abuse, read the advice from Youth Law Australia about seeking legal advice, getting images removed, and reporting abuse.

Legal Aid ACT runs a free, confidential Youth Law Centre you can talk to over the phone, visit by appointment, or can come to your school (public colleges only):

- Website: legalaidact.org.au/what-we-do/youth-law-centre
- Phone: (02) 6173 5410 (direct) or 1300 654 314 (free call, ask for the Youth Law Centre)
- Email: ylc@legalaidact.org.au

If you or someone you know need to talk to someone, you can free call the numbers below:

- Kids Helpline: 1800 551 800 (24/7, for young people ages 5 to 25)
- Headspace: 1800 650 890 (9am-1am daily, for young people ages 12 to 25)
- QLife: 1300 184 527 (3pm-midnight daily, for LGBTQIA+ people of all ages)
- 1800RESPECT: 1800 737 732 (24/7, for all ages)
- Lifeline: 131 114 (24/7, for all ages)

Glossary

Attorney-General	The minister responsible for the justice system and rule of law.
Bill	A draft law for consideration by the Assembly.
Enacted	The process of a bill coming into force as a law.
Explanatory statement	An accompanying document that explains the purpose of a bill and the proposed effect of each clause in plain English.
Exposure draft bill	A draft bill that is published on the Legislation Register to facilitate public consultation prior to being formally proposed in the Assembly as a bill.
Penalty units	A standard unit used to calculate the monetary value of a fine (In 2025, a penalty unit was $160, so a 300-penalty unit fine would be $48,000).
Private member's bill	A bill (draft law) that is introduced and sponsored by a member of parliament who is not also a minister.

TEACHERS NOTES

Adapting laws to technological developments

Learning intentions

By the end of this case study, students will be able to:

- **Understand** how laws can be adapted in response to technological developments and the social problems that emerge and evolve from them.
- **Explain** the legislative process, including how bills are proposed, refined, amended, and passed by the ACT Legislative Assembly.
- **Evaluate** the role of cross-party collaboration and community consultation in achieving effective law reform.
- **Identify** the legal and social challenges involved in regulating intimate image-based abuse.
- **Reflect** on the effectiveness of legal responses to social issues.

Reflection questions

Understanding the issue

- What is image-based abuse, and how have technological changes altered the nature and impact of this kind of abuse?
- Why is the term ‘revenge porn’ considered misleading and ‘intimate image-based abuse’ considered a more accurate term?
- What legal gap existed in the ACT before the *Crimes (Intimate Image Abuse) Amendment Act 2017* was passed?

Parliamentary process

- What were the key differences between the two proposals by Jeremy Hanson MLA and Caroline Le Couteur MLA? Why did the Assembly decide to work together instead of passing one of their original proposals?
- How does this case study demonstrate effective cross-party collaboration? Why is that important in a parliamentary democracy?
- What role did public consultation and expert advice play in shaping the final law?

Evaluating the outcomes

- What are some of the challenges that remain even after the law was passed (e.g., underreporting, stigma)?
- Why might victim-survivors be reluctant to report image-based abuse, even when laws exist to protect them?

Broader questions

- How can law reform keep up with rapid technological change? Whose voices should be heard in that process?
- Do you think this law alone is enough to address image-based abuse? What else – socially, culturally, educationally – might help?

Curriculum links

Curriculum	Subject

ACT Legal Studies	• **Crime and Justice**
	  ◦ Analyse/evaluate existing criminal law-making, legal, and judicial procedures and structures (A/T)
	  ◦ Analyse/evaluate preventative measures and punishment procedures for effectiveness (A/T)
	  ◦ (Critically) analyse the regulation and punishment of crime and regression in a range of social, historical, and political contexts (A/T)
	  ◦ Apply reflexivity, social conscience, empath, and care to considering problems in crime and justice (A/T/M)
	  ◦ Describe a range of crimes and criminal laws (M)
	  ◦ Describe how laws are made (M)
	  ◦ Describe types of punishment (M)
	• **Contemporary Issues and the Law**
	  ◦ Analyse/evaluate existing contentions, structures, and processes for change and reform in society (A/T)
	  ◦ (Critically) analyse case studies of the intersection of law and reform and change to propose fair, ethical, and creative solutions to problems (A/T)
	  ◦ (Critically) analyse the engagement of the legal system in bringing about social change and betterment in a range of social, historical ,and political contexts (A/T)
	  ◦ Apply reflexivity, social conscience, empathy, and care to considering problems in contemporary issues and the law (A/T)
	  ◦ Describe how laws change (M)
	  ◦ Identify rights and responsibilities of people (M)
	  ◦ Reflect on the impact of their learning on their attitudes (M)