

Chapter 1

Introduction and background

Referral

1.1 On 12 November 2015, the following matter was referred to the Senate Legal and Constitutional Affairs References Committee (the committee) for inquiry and report by 25 February 2016:

- a. 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;
- b. the impact this has on the targets of revenge porn, and in the Australian community more broadly;
- c. potential policy responses to this emerging problem, including civil and criminal remedies;
- d. the response to revenge porn taken by Parliaments in other Australian jurisdictions and comparable overseas jurisdictions; and
- e. any other related matters.¹

Conduct of the inquiry

1.2 In accordance with usual practice, the committee advertised the inquiry on its website and wrote to a number of organisations and individual stakeholders inviting submissions by 14 January 2016. Details of the inquiry were made available on the committee's website at www.aph.gov.au/senate_legalcon.

1.3 The committee received 32 public submissions, which are listed at Appendix 1; 2 submissions were received *in camera*. A public hearing was held in Sydney on 18 February 2016. A list of witnesses who appeared before the committee at the hearing is at Appendix 2.

1.4 The committee thanks all those who made submissions and gave evidence at its public hearing.

A note on terminology

1.5 During the course of the inquiry, the committee heard opposition to and concern about the use of the phrase 'revenge porn'. This issue is discussed in more detail in chapter 2. The committee shares the concerns raised in relation to the connotations of 'revenge porn' and the committee agrees that there are more appropriate terms—such as 'non-consensual sharing of intimate images'—that should be used instead; this terminology reflects that a variety of motives are relevant and that not all images are created or distributed for the purposes of pornography.

1 *Journals of the Senate*, 12 November 2015, p. 3377.

Structure of this report

- 1.6 There are five chapters in this report.
- 1.7 This chapter describes the phenomenon of non-consensual sharing of intimate images and outlines some statistics about victims in Australia. It also describes current legislation in Australia, at both a Commonwealth and state level, as well as legislation in comparable international jurisdictions.
- 1.8 Chapter 2 discusses a range of issues raised during the course of the inquiry.
- 1.9 Chapter 3 considers criminal law approaches and options for legislative reform.
- 1.10 Chapter 4 considers broader responses to non-consensual sharing of intimate images, including civil remedies, education and options for victims to report non-consensual sharing of intimate images.
- 1.11 Chapter 5 outlines the committee's views and recommendations.

Background

What is 'revenge porn'?

1.12 The non-consensual sharing of intimate images encompasses a range of behaviours which may include:

images obtained (consensually or otherwise) in an intimate relationship; photographs or videos of sexual assault/s; images obtained from the use of hidden devices to record another person; stolen images from the Cloud or a person's computer or other device; and pornographic or sexually explicit images that have been photo-shopped, showing the victim's face.²

1.13 As stated above, images may have been obtained with or without the consent of the victim, are associated with a range of motivations, and can be distributed by various means.³ What constitutes an 'intimate image' can also vary according to community standards. For example, 'photographs of a Muslim woman without her hijab' would be considered an intimate image in some circumstances.⁴

1.14 While the non-consensual sharing of intimate images is often perpetrated by ex-partners who distribute images seeking revenge, it can also involve acquaintances or strangers who distribute images in order to coerce, blackmail, humiliate or embarrass another person, or those who distribute images for sexual gratification, fun, social notoriety or financial gain.⁵

1.15 The non-consensual sharing of intimate images can occur by various means, for example, by:

2 Drs Nicola Henry, Asher Flynn and Anastasia Powell, *Submission 9*, p. 3.

3 Attorney-General's Department (AGD), *Submission 28*, p. 4.

4 Safe Steps, *Submission 29*, p. 3.

5 Drs Henry, Flynn and Powell, *Submission 9*, p. 3.

text message or email to family, friends, colleagues, employers and/or strangers; uploading images to pornography websites, including mainstream pornography sites, or specifically designed revenge pornography or "ex-girlfriend porn" websites; uploading images onto social media, thread or image board websites; or more traditional means of distributing images in public places, such as through the post, letterboxes or public spaces.⁶

Prevalence of non-consensual sharing of intimate images

1.16 The non-consensual sharing of intimate images is becoming increasingly prevalent, in part due to technological advances and the use of mobile phones and other recording devices, as well as the pervasive ubiquity of social media. It was observed by Associate Professor Terry Goldsworthy et al that:

It can be argued that revenge porn is but an example of a broader trend that has seen technology impact on criminal activity in a number of ways. As a result of movement from the physical to the digital world, globalisation and society's reliance on technology, many more of our lifestyle activities are conducted in the digital world.⁷

1.17 Limited research has been conducted on non-consensual sharing of intimate images in Australia, and there is a need for greater understanding of the extent of the problem. Further research in this area could:

draw out the themes associated with revenge porn, what the particular issues affecting victims of crime are and what legal and policy responses are needed to tackle those issues.⁸

1.18 Research to date, however, does give some insight into the scope of the problem. A 2015 survey on online abuse and harassment conducted at the Royal Melbourne Institute of Technology (RMIT), reported that 1 in 10 Australians have had a nude or semi-nude image of them distributed online or sent onto others without their permission.⁹ This research surveyed 3000 Australian respondents between 18 and 55 years of age via a panel survey provider, and used quota sampling to match the demographics of the sample with the Australian census data.¹⁰

1.19 The Northern Territory Commissioner of Police informed the committee that in that jurisdiction six separate reports of non-consensual sharing of intimate images had been received in the period from July 2015 to December 2015 and that these instances:

6 Drs Henry, Flynn and Powell, *Submission 9*, p. 3.

7 Assistant Professor Terry Goldsworthy and Senior Teaching Fellow Matthew Raj, *Submission 31*, p. 1.

8 Ms Victoria Laughton, Research and Advocacy Officer, Victim Support Service (VSS), *Committee Hansard*, p. 7.

9 A. Powell and N. Henry, *Digital Harassment and Abuse of Adult Australians: A Summary Report*, RMIT University, Melbourne, 2015. See also Dr Nicola Henry, Senior Lecturer, La Trobe University, *Committee Hansard*, 18 February 2016, p. 30.

10 Dr Henry, La Trobe University, *Committee Hansard*, 18 February 2016, p. 31.

involved allegations of ex-partners making material available either generally through the internet or specifically to associates of the victim. The material in question has varied from mildly provocative images to highly explicit sexual images or movies.¹¹

1.20 Women's Legal Services NSW told the committee:

The Domestic Violence Resource Centre down in Victoria did a national survey in 2015. That survey was with 546 [domestic violence] workers. Of that number, 98 per cent reported that their clients had experience facilitated stalking and abuse—not all necessarily were the non-consensual sharing of intimate images but technology facilitated stalking and abuse.¹²

1.21 The problem of non-consensual sharing of intimate images has also been increasing in comparable overseas jurisdictions. Data from the United Kingdom (UK) indicates that since legislation was introduced in April 2015, 'nearly 830 cases of revenge pornography have allegedly been reported to police, with the first offender sentenced on 7 August 2015'.¹³

1.22 Globally, analysis by *The Economist* from 2014 showed there are at least 3000 pornography websites functioning with a revenge purpose.¹⁴ That analysis also stated:

In Japan the number of cases reported to police more than tripled, to 27,334, between 2008 and 2012.

The consequences for the unwitting subjects can be severe, including damage to their future relationships and careers. Ms Chiarini was harassed online. Others have had abusive strangers turn up at their doors. In the past couple of years several are known to have killed themselves.

Yet victims often find themselves without legal recourse. Many countries have laws against harassment or "malicious communication", but these generally target repeated actions, direct contacts and verbal or physical threats. Copyright law cannot help if the person who publishes an image also took it. Even if it was snapped by the subject (one survey suggests that such "selfies" make up a large share of all revenge porn), getting it taken down is slow and costly. And during the delay it may be republished elsewhere.¹⁵

1.23 Many submitters noted that women are more likely than men to be victims of non-consensual sharing of intimate images. For instance, the Law Council of Australia

11 Northern Territory Commissioner of Police, *Submission 25*, p. 2.

12 Ms Elizabeth Snell, Law Reform and Policy Coordinator, Women's Legal Services NSW, *Committee Hansard*, 18 February 2016, p. 27.

13 Law Council of Australia (LCA), *Submission 10*, p. 2.

14 *The Economist*, 'Misery merchants', 5 July 2014, available: <http://www.economist.com/news/international/21606307-how-should-online-publication-explicit-images-without-their-subjects-consent-be> (accessed 21 February 2016).

15 *The Economist*, 'Misery merchants', 5 July 2014.

(LCA) provided details of convictions in the UK since April 2015 when non-consensual sharing of intimate images legislation was enacted and noted that the 10 convictions to date in that jurisdiction have all involved female victims: 'it is clear that currently the majority of reported victims of "revenge pornography" are women'.¹⁶ However, there have also been prominent Australian examples of men being victimised.¹⁷

Current legislation

Commonwealth

1.24 Part 10.6 of the *Criminal Code Act 1995* (Cth) (the Code) provides for the criminalisation of conduct relating to the misuse of a telecommunications service with a penalty of imprisonment for three years. Under section 474.17 of the Code, a person is guilty of an offence if:

- a) the person uses a carriage service; and
- b) the person does so in a way (whether by the method of use or the content of a communication, or both) that reasonable persons would regard as being, in all the circumstances, menacing, harassing or offensive.

1.25 The individual must have intended to use the carriage service and have been reckless as to whether they were using a carriage service in a way that the reasonable person would regard in all the circumstances as menacing, harassing or offensive.¹⁸ The reasonable person test allows for community standards and common sense to be taken into account when determining whether certain conduct or content of a communication is in fact menacing, harassing or offensive.

1.26 Under section 473.4 of the *Criminal Code*, matters to be taken into account when deciding whether reasonable persons would regard particular material or use of a carriage service as being offensive include:

- the standards of morality, decency and propriety generally accepted by reasonable adults
- the literary, artistic or educational merit (if any) of the material, and
- the general character of the material (including whether it is of a medical, legal or scientific character).

1.27 The types of use of a carriage service the offence may cover include use that would make a person apprehensive as to their safety or well-being or the safety of

16 LCA, *Submission 10*, p. 2.

17 S. Wardill, 'Sexting MP Peter Dowling sent explicit images to secret mistress', *Courier Mail*, 6 August 2013.

18 *Criminal Code Act 1995* (Cth) ss 5.6(2), 5.2, 5.4.

their property, use that encourages or incites violence, and use that vilifies persons on the basis of their race or religion.¹⁹

1.28 Other provisions of the Criminal Code that are potentially relevant include section 471.12 criminalising the use of a postal or similar service to menace, harass or cause offence, and sections 474.19 and 474.20, criminalising the use of a carriage service for child pornography material. Section 474.25 establishes offences related to the obligations of internet service providers and internet content hosts with regard to child pornography and child abuse material.

Criminal Code Amendment (Private Sexual Material) Bill 2015

1.29 In September 2015, the Australian Labor Party developed an exposure draft of the Criminal Code Amendment (Private Sexual Material) Bill 2015. The Bill is currently at second reading stage before the House of Representatives; it sets out proposed amendments to the *Criminal Code Act 1995* that:

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 of, causing that person harm or distress, as well as those who operate 'revenge porn' websites.²⁰

1.30 A number of submitters to this inquiry also made submissions on the exposure draft and forwarded these to the committee.

State and territory

1.31 To date, South Australia and Victoria are the only states in Australia to have introduced legislation specifically in relation to non-consensual sharing of intimate images.

South Australia

1.32 In 2013, South Australia introduced legislation which makes it an offence to distribute invasive images of a person without their consent.²¹

1.33 The South Australian Act defines 'distribute' and 'invasive image' as follows:

distribute includes—

- (a) communicate, exhibit, send, supply, upload or transmit; and
- (b) make available for access by another,

but does not include distribution by a person solely in the person's capacity as an internet service provider, internet content host or a carriage service provider;

...

19 Explanatory Memorandum (EM), *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill (No. 2) 2004*, p. 34.

20 Criminal Code Amendment (Private Sexual Material) Bill 2015 Exposure Draft, *Discussion Paper*, September 2015, p. 1.

21 *Summary Offences (Filming Offences) Amendment Act 2013* (SA), s 26C(1).

invasive image means a moving or still image of a person—

- (a) engaged in a private act; or
- (b) in a state of undress such that the person's bare genital or anal region is visible,

but does not include an image of a person under, or apparently under, the age of 16 years or an image of a person who is in a public place...²²

Victoria

1.34 In 2014, Victoria introduced legislation which makes it an offence to threaten to distribute or distribute an intimate image.²³

1.35 The Victorian Act defines 'distribute' as including publishing, exhibiting, communicating, sending, supplying or transmitting to any other person and to 'make available for access by any other person'.²⁴

1.36 Under the Victorian Act, 'intimate image' is defined as:

...a moving or still image that depicts—

- (a) a person engaged in sexual activity; or
- (b) a person in a manner or context that is sexual; or
- (c) the genital or anal region of a person or, in the case of a female, the breasts...²⁵

New South Wales

1.37 In June 2015, the New South Wales (NSW) Parliament undertook an inquiry into remedies for the serious invasion of privacy, which is due to report in March 2016.

International jurisdictions

1.38 Various comparable international jurisdictions such as New Zealand, the UK, Canada and numerous states in the United States of America, have introduced similar criminal law legislation to specifically address the phenomenon of non-consensual sharing of intimate images.

1.39 A table summarising the key features of overseas non-consensual sharing of intimate images legislation was provided by the Attorney-General's Department (AGD) and is included in this report at Appendix 4.

New Zealand

1.40 Up until 2015, the *Privacy Act 1993* (NZ) specifically excluded domestic affairs which meant that people were not liable for collecting, distributing or using any

22 *Summary Offences (Filming Offences) Amendment Act 2013* (SA), s 26A.

23 *Crimes Amendment (Sexual Offences and Other Matters) Act 2014* (Vic), ss 41DA and 41DB.

24 *Crimes Amendment (Sexual Offences and Other Matters) Act 2014* (Vic), s 40.

25 *Crimes Amendment (Sexual Offences and Other Matters) Act 2014* (Vic), s 40.

information that related to their family or household, even if harmful to another person.²⁶

1.41 In July 2015, the *Harmful Digital Communications Act 2015* (NZ) (the HDCA Act) was enacted.²⁷ The HDCA Act means that the exclusion for personal information relating to domestic affairs no longer applies in circumstances where 'collection, disclosure or use would be highly offensive to an ordinary reasonable person'.²⁸

1.42 The HDCA Act defines 'intimate visual recording' as:

(a) ...a visual recording (for example, a photograph, videotape, or digital image) that is made in any medium using any device with or without the knowledge or consent of the individual who is the subject of the recording, and that is of—

(i) an individual who is in a place which, in the circumstances, would reasonably be expected to provide privacy, and the individual is—

(A) naked or has his or her genitals, pubic area, buttocks, or female breasts exposed, partially exposed, or clad solely in undergarments; or

(B) engaged in an intimate sexual activity; or

(C) engaged in showering, toileting, or other personal bodily activity that involves dressing or undressing; or

(ii) an individual's naked or undergarment-clad genitals, pubic area, buttocks, or female breasts which is made—

(A) from beneath or under an individual's clothing; or

(B) through an individual's outer clothing in circumstances where it is unreasonable to do so; and

(b) includes an intimate visual recording that is made and transmitted in real time without retention or storage in—

(i) a physical form; or

(ii) an electronic form from which the recording is capable of being reproduced with or without the aid of any device or thing²⁹

1.43 The HDCA Act outlines numerous orders that can be made by the court against a defendant:

- an order to take down or disable material:
- an order that the defendant cease or refrain from the conduct concerned:

26 Office of the Privacy Commissioner (New Zealand), *Harmful Digital Communications Act FAQs*, available: <https://opcwebsite.cwp.govt.nz/news-and-publications/guidance-resources/hdca-faqs/#amendment-section-56> (accessed 21 February 2016).

27 *Harmful Digital Communications Act 2015* (NZ).

28 *Harmful Digital Communications Act 2015* (NZ), s 41.

29 *Harmful Digital Communications Act 2015* (NZ), s 4.

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- an order that the defendant not encourage any other persons to engage in similar communications towards the affected individual:
 - an order that a correction be published:
 - an order that a right of reply be given to the affected individual:
 - an order that an apology be published.

1.44 The HDCA Act also empowers a court to make orders against an online content host, for example 'take down or disable public access to material that has been posted or sent', 'order that the identity of an author of an anonymous or pseudonymous communication be released to the court' and 'order that a right of reply be given to the affected individual'.³⁰

1.45 Offences under the HDCA Act include non-compliance with a court order, with a penalty of not more than six months imprisonment or a fine not exceeding \$5000 for a natural person,³¹ and 'causing harm by posting digital communication':

- (1) A person commits an offence if—
 - (a) the person posts a digital communication with the intention that it cause harm to a victim; and
 - (b) posting the communication would cause harm to an ordinary reasonable person in the position of the victim; and
 - (c) posting the communication causes harm to the victim.
- (2) In determining whether a post would cause harm, the court may take into account any factors it considers relevant, including—
 - (a) the extremity of the language used:
 - (b) the age and characteristics of the victim:
 - (c) whether the digital communication was anonymous:
 - (d) whether the digital communication was repeated:
 - (e) the extent of circulation of the digital communication:
 - (f) whether the digital communication is true or false:
 - (g) the context in which the digital communication appeared.
- (3) A person who commits an offence against this section is liable on conviction to,—
 - (a) in the case of a natural person, imprisonment for a term not exceeding 2 years or a fine not exceeding \$50,000:
 - (b) in the case of a body corporate, a fine not exceeding \$200,000.³²

30 *Harmful Digital Communications Act 2015* (NZ), s 19.

31 *Harmful Digital Communications Act 2015* (NZ), s 21.

32 *Harmful Digital Communications Act 2015* (NZ), s 22.

1.46 Online content hosts can be held liable in respect of specific content of a digital communication posted by a person and hosted by the online content host.³³

United Kingdom

1.47 In the UK, section 33 of the *Criminal Justice and Courts Act 2015* (UK) makes it an offence:

for a person to disclose a private sexual photograph or film if the disclosure is made (a) without the consent of an individual who appears in the photograph or film, and (b) with the intention of causing that individual distress.

1.48 The UK Act defines 'private sexual photograph' as photographs or films which show something not of a kind ordinarily seen in public, depicting either an individual's exposed genitals or pubic area, or something that a reasonable person would consider to be sexual because of its nature, or content, taken as a whole. The UK Act includes the sharing of these images without consent both on- and offline as well as the physical distribution of images. Offenders can be imprisoned for up to two years.³⁴

Canada

1.49 In December 2014 the *Protecting Canadians from Online Crime Act 2014* (Canada) was enacted.³⁵ The Canadian Act 'was introduced primarily to address cyber bullying concerns'³⁶ and amends the Canadian Criminal Code to provide for:

(a) a new offence of non-consensual distribution of intimate images as well as complementary amendments to authorize the removal of such images from the Internet and the recovery of expenses incurred to obtain the removal of such images, the forfeiture of property used in the commission of the offence, a recognizance order to be issued to prevent the distribution of such images and the restriction of the use of a computer or the Internet by a convicted offender;

(b) the power to make preservation demands and orders to compel the preservation of electronic evidence;

(c) new production orders to compel the production of data relating to the transmission of communications and the location of transactions, individuals or things;

(d) a warrant that will extend the current investigative power for data associated with telephones to transmission data relating to all means of telecommunications;

(e) warrants that will enable the tracking of transactions, individuals and things and that are subject to legal thresholds appropriate to the interests at stake; and

33 *Harmful Digital Communications Act 2015* (NZ), ss 23 and 24.

34 Attorney-General's Department (AGD), *Submission 28*, p. 14.

35 *Protecting Canadians from Online Crime Act 2014* (Canada).

36 AGD, *Submission 28*, p. 16.

(f) a streamlined process of obtaining warrants and orders related to an authorization to intercept private communications by ensuring that those warrants and orders can be issued by a judge who issues the authorization and by specifying that all documents relating to a request for a related warrant or order are automatically subject to the same rules respecting confidentiality as the request for authorization.³⁷

1.50 The Canadian Act defines an 'intimate image' as:

a visual recording of a person made by any means including a photographic, film or video recording, in which the person is nude, is exposing his or her genital organs or anal region or her breasts or is engaged in explicit sexual activity; in respect of which, at the time of the recording, there were circumstances that gave rise to a reasonable expectation of privacy; and where the person depicted retains a reasonable expectation of privacy at the time the offence is committed.³⁸

1.51 Offenders face a sentence of up to five years' imprisonment.³⁹

1.52 It is worth noting that the Canadian Act also makes complementary amendments to authorise the removal of such images from the internet and the recovery of expenses incurred to obtain the removal of such images, the forfeiture of property used in the commission of the offence, a recognisance order to be issued to prevent the distribution of such images and the restriction of the use of a computer or the internet by a convicted offender.⁴⁰

United States of America

1.53 At present there is no specific federal 'revenge porn' offence under United States (US) law. The extent to which existing federal offences may address non-consensual sharing of intimate images is the subject of debate:

Although American privacy and copyright laws appear to provide avenues for redress in certain cases, critics have dismissed the suitability of these civil law remedies to address revenge porn, citing the cost of civil litigation and the conceptual diminishing of a revenge porn matter to one of property law as key challenges to this approach.⁴¹

1.54 Democratic Congresswoman Jackie Speier has prepared a 'discussion draft' of the Intimate Privacy Protection Bill 2015 that is yet to be introduced into Congress. The draft:

proposes to make it a federal crime, by providing that it is unlawful to reproduce, distribute, exhibit, publish, transmit, or otherwise disseminate a visual depiction of a person who is nude or partially nude or engaged in

37 *Protecting Canadians from Online Crime Act 2014* (Canada), summary.

38 AGD, *Submission 28*, p. 16.

39 AGD, *Submission 28*, p. 16.

40 AGD, *Submission 28*, p. 16.

41 AGD, *Submission 28*, p. 14.

sexually explicit conduct, regardless of whether the depicted person consented to the capture of the image.¹⁶ The perpetrator must have known, or should have known, that such an act would likely cause emotional distress to a reasonable person if that reasonable person were so depicted. The offence carries a maximum five year penalty. Notably, the offence can also apply to telecommunications and internet service providers who fail to remove the content in question within 48 hours of receiving a notice of such content from the victim, the victim's legal representative, or a law enforcement officer.

1.55 Many jurisdictions (26 states) in the US have enacted legislation in response to non-consensual sharing of intimate images.⁴² For example, the state of Illinois criminalised the non-consensual dissemination of private sexual images in June 2015. Illinois' legislation does not require that the offender have the intent to cause emotional distress to the victim⁴³ and:

The content of the material distributed without consent is not defined by the presence of nudity or "sexual parts", and acknowledges that victims can be harmed by non-consensually distributed sexual images that do not contain nudity (e.g. engaging in any sexual act);

There is strong punishment for the crime of distributing non-consensual private sexual material, including 1-3 years in prison, and substantial fines. Furthermore, the law requires forfeiture of any profits made from the distribution of the non-consensual material;

The law also includes images that victims may have taken of themselves and not just those that are taken by another person;

The law can also be made to apply to any person who distributes the non-consensual image, and not just the original distributor, in order to prevent an image "going viral"; and

The law also includes the act of "doxing", or sharing personal information in connection with the non-consensual image.⁴⁴

1.56 In September 2015 California amended *The Penal Code of California* to include the following offences:

647. ...every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

...

(4) (A) Any person who intentionally distributes the image of the intimate body part or parts of another identifiable person, or an image of the person depicted engaged in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or an image of masturbation by the person depicted or in which the person depicted

42 AGD, *Submission 28*, p. 13.

43 AGD, *Submission 28*, p. 15.

44 YWCA Adelaide, *Submission 8*, p. 5.

participates, under circumstances in which the persons agree or understand that the image shall remain private, the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress.

(B) A person intentionally distributes an image described in subparagraph (A) when he or she personally distributes the image, or arranges, specifically requests, or intentionally causes another person to distribute that image.⁴⁵

1.57 In addition to the offences under the California Penal Code, victims of cyber exploitation also have a private right of action against their perpetrators under California law:

Assembly Bill No. 2643 codified a private right of action against any person who intentionally distributes a photograph or recorded image of another without consent, if: (1) the person knew that the other person had a reasonable expectation that the material would remain private, (2) the distributed material exposes an intimate body part or shows an act of intercourse, oral copulation, sodomy, or other act of sexual penetration, and (3) the other person suffers general or special damages as described in Civil Code section 48(a). A victim may also be able to bring a tort claim for the public disclosure of private fact and/or the intentional infliction of emotional distress depending on the circumstances of the case.⁴⁶

45 *The Penal Code of California*, s 647.

46 AGD, *Submission 28*, p. 15.

