

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S PORTFOLIO

Program: Australian Federal Police

Question No. SBE16/095

Senator Pratt asked the following question at the hearing on 17 October 2016:

1. How many cases of revenge porn have been prosecuted under section 474.17 of the Criminal Code?
2. How many prosecutions have been made under section 474.17 of the Criminal Code that do not relate to revenge porn?
3. How many convictions have been made under section 474.17 of the Criminal Code?
4. How many complaints have the AFP received since 1 January 2016 from victims of technologically-facilitated harm and abuse?
5. Please provide a breakdown of the number of complaints the AFP have received from victims of technologically-facilitated harm and abuse for the following calendar years:
 - a. 2011
 - b. 2012
 - c. 2013
 - d. 2014
 - e. 2015
6. When was the 'victim based crime' division of the Crime Operations portfolio established?
 - a. How many AFP personnel sit within this division?
 - b. How much funding does this division receive?
 - c. Aside from revenge porn, which other crimes are the focus of this portfolio?
7. Do AFP personnel receive training on how to respond appropriately to female victims of technologically-facilitated harm and abuse?
 - a. If so, is the training is provided internally or externally?
 - b. How many personnel have undergone this training? Please provide a breakdown of their seniority (e.g. recruits, superintendent and above).
 - c. How frequently is this training provided to AFP personnel?

The answer to the honourable senator's question is as follows:

1. Conduct that may constitute non-consensual sharing of intimate images (commonly referred to as 'revenge pornography') is usually, but not exclusively, prosecuted under s 474.17 of the *Criminal Code 1995* (Criminal Code). Section 474.17 makes it an offence to use a carriage service in a way that reasonable persons would regard as being menacing, harassing or offensive. If the matter involved a victim that was a minor, the child pornography offences in the Criminal Code may also be relevant in some circumstances.

Several states and territories have introduced or announced an intention to introduce offences that specifically criminalise the non-consensual sharing of intimate images. South Australia and Victoria introduced specific offences for the non-consensual sharing of intimate images in 2012 and 2014 respectively. New South Wales, Western Australia and the Northern Territory have announced plans to introduce specific offences for the non-consensual sharing of intimate images. States and territories also prosecute the non-consensual sharing of intimate images under broad

offences such as stalking, identity theft, and domestic violence offences (see, for example, *The Queen v Kotynski* (unreported) 3 February 2017), also known as the Robyn Night case.

The government is engaging with states and territories to ensure national consistency in addressing the non-consensual sharing of intimate images. On 9 December 2016, the Council of Australian Governments agreed to the development of principles for nationally consistent criminal offences relating to non-consensual sharing of intimate images. The Commonwealth Attorney-General's Department is leading the development of these principles through the National Cybercrime Working Group for consideration by the Law, Crime and Community Safety Council this year.

2. Details of the number of defendants convicted of at least one offence under s 474.17 are contained in the response to question 3. Given the breadth of cases prosecuted under s474.17 the CDPP does not have a mechanism, without expending significant time and resources, of identifying which of these prosecutions relate to the non-consensual sharing of intimate images.
3. Since the introduction of s474.17 in 2004 there have been 844 charges proven against 410 defendants from prosecutions conducted by the CDPP. These statistics are current up to 5 December 2016.
4. Due to the large number of child exploitation reports the AFP receives, it would be an unreasonable diversion of police resources to manually extract which of these reports came directly from a potential victim. These reports come from a number of different sources. The AFP receives reports from international law enforcements agencies, non-government organisations such as the US National Centre for Missing and Exploited Children and direct reports from members of the public. The vast majority of the reports the AFP receives are regarding the unlawful online activities of individuals involved in the production and supply of child exploitation material or involved in online procuring/grooming of persons under 16 both in Australia and by Australians overseas.
5. See answer 4.
6. On 1 July 2015, as part of the Commissioner's revised organisational model, the Victim Based Crime function was inaugurated to integrate the AFP's investigation, outreach and prevention efforts across adult and child exploitation. As part of the Crime Operations portfolio under Manager Victim Based Crime, the function focuses on greater interoperability and addresses critical gaps in the AFP's end-to-end management of victims, in order to reduce the incidence and impact of Commonwealth crimes against the person.
 - a. AFP Victim Based Crime consists of 121 members including 86 sworn members, 1 protective service officer and 34 unsworn members.
 - b. The AFP's employee budget is not allocated to divisions, instead it is managed centrally to enable the flexible movement of resources to the highest priority operational area. Currently there are 120.6 FTE allocated to Victim Based Crime divisions at the AFP. To the end of October 2016, the actual employee expenditure for Victim Based Crime was \$4.9m. If the current level of staffing is maintained for the full financial year, the estimated employee cost for the

2016-17 will be \$14.7m. In 2016-17 Victim Based Crime was allocated supplier funding of \$1.1m and administered funding of \$0.1m.

- c. Under the established *ANZPAA Cybercrime Protocols*, the investigation of technology-enabled crime (incorporating the non-consensual sharing of intimate images, sexting, cyber bullying, sextortion and technology facilitated abuse) is the primary responsibility of State and Territory police.

Commonwealth crimes against the person investigated by Victim Based Crime include aggravated online child sexual exploitation, travelling child sex offenders, human trafficking, people smuggling and kidnappings of Australians overseas.

- 7. At this time, AFP does not provide specific training on how to respond appropriately to female victims of cyber harm and abuse. The Interviewing Vulnerable Witnesses Program (IVWP) curriculum does not include content regarding technologically-facilitated harm and abuse. Specialised operational areas have access to externally offered training and courses run through other government and law enforcement agencies such as state police prescribed persons interviewing courses to comply with jurisdictional criminal procedure requirements.