

Ask
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Image-based abuse in NSW: the new legal framework

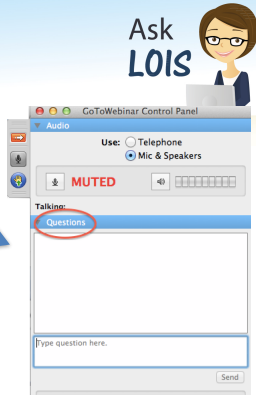
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Legal Service NSW
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Welcome

- Use your control panel to ask questions by typing in the question box.
- Participate & enjoy!



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What we will cover today

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- What is “image-based abuse”?
- The previous NSW criminal law
- The new offences created by the Crimes (Intimate Images) Amendment Act 2017

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Image-based abuse

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Image-based abuse (IBA) occurs when nude, sexual or otherwise intimate images are recorded, distributed, or threatened to be distributed, without the consent of those pictured. It includes real and altered still and video images.

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Terminology

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Different terms used:


- Image-based abuse
- Non-consensual sharing of intimate images
- Revenge porn

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Terminology

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Different terms used:

- **Image-based abuse**
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- Revenge porn

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Crimes Act 1900

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Previously had to rely on Division 15B, Voyeurism and related offences

- 91J: Voyeurism
- 91K: Filming a person engaged in private act
- 91L: Filming a person's private parts
- 91M: Installing device to facilitate observation or filming


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Crimes (Intimate Images) Amendment Act 2017

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- New provisions specifically addressing IBA
- Creates four new offences

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Crimes Act – Division 15C



New Division 15C – Recording and Distributing Intimate Images

Four new offences:

- 91P: Record intimate image without consent
- 91Q: Distribute intimate image without consent
- 91R: Threaten to record or distribute intimate image
- 91S: Fail to comply with a court order for rectification



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91P: Record intimate image without consent



A person who intentionally records an intimate image of another person:(a) without the consent of the person, and (b) knowing the person did not consent to the recording or being reckless as to whether the person consented to the recording, is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 3 years, or both



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91Q: Distribute intimate image without consent



A person who intentionally distributes an intimate image of another person:(a) without the consent of the person, and (b) knowing the person did not consent to the distribution or being reckless as to whether the person consented to the distribution, is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 3 years, or both



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91R: Threaten to record or distribute intimate image



A person who threatens to record or distribute an intimate image of another person:
(a) without the consent of the other person, and
(b) intending to cause that other person to fear that the threat will be carried out, is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 3 years, or both



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91S: Fail to comply with a court order for rectification



A court that finds a person guilty of an offence against section 91P or 91Q may order the person to take reasonable actions to remove, retract, recover, delete or destroy any intimate image recorded or distributed by the person in contravention of the section within a period specified by the court.

A person who, without reasonable excuse, contravenes an order made under this section is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.



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S91N: Definitions




"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.




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S91N: Definitions

“engaged in a private act” means:

- (a) in a state of undress, or
- (b) using the toilet, showering or bathing, or
- (c) engaged in a sexual act of a kind not ordinarily done in public, or
- (d) engaged in any other like activity.


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S91N: Definitions

"private parts" means:


- (a) a person's genital area or anal area, whether bare or covered by underwear, or
- (b) the breasts of a female person, or transgender or intersex person identifying as female.

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S91O: Consent

- Consent must be free and voluntary
- Consent to a particular instance of recording or distribution does not mean consent for other instances
- A person does not consent to recording or distribution:
 - if the person is under the age of 16 years or does not otherwise have the capacity to consent, including because of cognitive incapacity, or
 - if the person does not have the opportunity to consent because the person is unconscious or asleep, or
 - if the person consents because of threats of force or terror (whether the threats are against, or the terror is instilled in, that person or any other person), or
 - if the person consents because the person is unlawfully detained


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Quiz


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If a woman sends a nude photo of herself to her boyfriend and she does not tell him not to show the photo anyone else, and he then shares that photo on a private group chat of his friends, has he committed an offence?

A. Yes
B. No


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Quiz


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A. Yes
B. No


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Quiz


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A man hints to his partner he will post a video of the two of them having sex to her Facebook page, though he does not come right out and threaten explicitly. He does not really have such a video, he just wants to scare her a bit. Has he committed an offence?

A. Yes
B. No


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Quiz


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Quiz


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If a person is found guilty of recording and distributing an intimate image without consent, and then the court orders that he remove the image from websites to which the image has been posted, and he fails to do this, what is the **maximum total possible sentence** of imprisonment he can receive?

A. 3 years
B. 5 years
C. 8 years
D. 9 years


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Quiz


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Quiz


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A man uses “deepfake” technology to take a photo of his ex-partner’s face and combine it with video pornography to make it look as though she is having sex in the video. He posts this image to various porn websites. Has he committed an offence?

A. Yes
B. No


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Quiz


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A. Yes
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Quiz


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A man secretly takes a picture of his partner when she is not wearing her hijab. He posts this picture on his Facebook page against her wishes. Has he committed an offence?

A. Yes
B. No

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Quiz

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A man takes a picture of his partner when she is not wearing her hijab. He posts this picture on his Facebook wall against her express wishes. Has he committed an offence?


A. Yes?
B. No?


We don't have a clear answer to this question.

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Any Questions?

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