



Western Australia

**Online Sexual Harassment and Cyber Security Bill
2017**

Explanatory Memorandum

With the rise of technology in this digital age, the sexual harassment of women online has become a significant issue in Western Australia, and indeed across the nation. One of the most serious concerns associated with this trend is the sending of explicit images or videos by an ex-partner after a relationship breakdown, commonly known as ‘revenge porn’. This is because once the material is out in the public domain, the individual depicted has no idea how many other people will view it, or worse still, transmit it on. Such actions are distressing, damaging and detrimental for any person, but unfortunately, women seem to disproportionately bear the brunt of these encounters. Hence something must be done to ensure that their dignity is protected, and their safety and security guaranteed.

Unwanted images depicting a male sender are also disseminated to many Western Australian women on a daily basis. The explicit content can shock, disturb or even humiliate those that receive it unexpectedly. Further the display of explicit images on social media - in a vengeful manner or otherwise - is another cause for concern, with Western Australian high schools the most prevalent space in which this activity occurs. Even threats to release an image or video can cause harm, often leaving the individual in an anxious and vulnerable state.

Hence, this Bill seeks to make it illegal for an individual to intentionally distribute an image or video without consent from all parties, including the receiver. In the case that the image or video is of another person then consent can only be given if it is necessary for purposes associated with medicine, science, law etc. However for images or videos depicting the sender there are no requirements placed on receiver consent (for those of age). Furthermore, the Bill ensures that the display of images requires consent similar to that of distribution, which is only given for one the purposes outlined and or for an educational function. Threats to breach any of the provisions outlined above are illegal with punishment operating on a graduated system, scaled according to the age of the offender and the person depicted.

It is especially important that today’s teenagers and young adults are properly educated about the importance of respecting one another’s character and privacy. For this reason the Bill establishes the Women’s Cyber Safety Committee to provide vital support services and advise the Department of Education on potential programs for high schools. These services will include a Women’s Cyber Safety Helpline that provides counsel to women affected.

Currently in Western Australia, there are no laws prohibiting the sharing of images or videos involving those over the age of 16, rendering young people powerless should they be subject to this kind of destructive behaviour. The Online Sexual Harassment and Cyber Security Bill 2017 fills this gap in Western Australian criminal law.



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Western Australia

A Bill for —

An Act to criminalise the display and distribution of explicit images and videos, punish offenders, support victims and provide vulnerable women with the legal protection they need.

Part 1 — Preliminary

1. Short title

This Bill may be cited as the *Online Sexual Harassment and Cyber Security Bill 2017*.

2. Commencement

This Bill commences on the day on which this Act receives Royal Assent.

3. Interpretation

In this Bill, unless the contrary intention appears —

“**Adult**” means a person over the age of 18.

“**Biennial**” means occurring every two (2) years.

“**Child**” means a person under the age of 18, under the Children and Community Services Act 2004.

“**Condition**” means the observable state of the individual, specifically regarding their well- being.

“**Conflict of interest**” means an interaction of private interests and the official responsibilities of a person in a position of trust.

“**Explicit**” means representing sexual activity and/or nudity.

“**Expressly**” means explicitly and clearly.

“**Majority**” means a successful vote, whereby over half of the present members of the committee support a particular motion, given a quorum is present.

“**Member**” means an authorised person chosen by the Minister for Women’s Interests to attend the Women’s Cyber Safety Committee meetings.

“**Online sexual harassment**” refers to direct and personal communication transmitted via technology conveying messages directly relating to sex and/or sexuality, which are unwelcome by the receiver.

“**Threatens**” means to indicate impending punishment, injury, humiliation etc.

“**WCSC**” means an abbreviation for the Women’s Cyber Safety Committee.

“**WCSH**” means an abbreviation for the Women’s Cyber Safety Helpline.

Part 2 — Distribution of Explicit Image or Video without Consent

Division 1 — Images and Videos Depicting another Person

4. Distributing an explicit image or video depicting another person

A person (A) commits an offence if —

- (a) A intentionally distributes, transmits or otherwise disseminates an image or video of another person (B);
- (b) The content is explicit in nature;
- (c) Another person (C) has not expressly consented to receive such image or video for a purpose connected to —
 - (i) Law enforcement;
 - (ii) Medicine;
 - (ii) Law;
 - (ii) Science; and/or
 - (iii) Education only.
- (d) B has not expressly consented to have such an image or video distributed, transmitted or otherwise disseminated to C for the same purpose.

Division 2 — Images and Videos Depicting Oneself

5. Distributing explicit image or video depicting oneself

A person (A) commits an offence if —

- (a) A intentionally distributes, transmits or otherwise disseminates an image or video of oneself to another person (B);
- (b) The content is explicit in nature; and
- (c) B has not expressly consented to receive such an image or video subject to the age of consent provisions in the Criminal Code Compilation Act 1913 (Section 321).

Part 3 — Displaying of Explicit Image or Video without Consent

6. Displaying explicit image or video

A person (A) commits an offence if —

- (a) A intentionally displays, uploads or otherwise exhibits an image or video of another person (B) —
 - (i) On a social media website;
 - (ii) In a public place; and/or
 - (iii) In any other scenario where such an image or video is visible to the public, online or otherwise.
- (b) The content is explicit in nature; and
- (c) The other person (B) has not expressly consented to have such an image or video displayed, uploaded or otherwise exhibited for a purpose connected to —
 - (i) Law enforcement;
 - (ii) Medicine;
 - (ii) Law;
 - (ii) Science; and/or
 - (iii) Education only.

Part 4 — Threats to Distribute or Display Explicit Image or Video without Consent

7. Threatening to distribute or display explicit image or video

A person (A) commits an offence if—

- (a) A threatens another person (B) that A will distribute an explicit image and or video depicting B to another person (C) in a manner contrary to the provisions outlined in Part 2; or
- (b) A threatens another person (C) that A will distribute to C an explicit image or video depicting another person (B) in a manner contrary to the provisions outlined in Part 2; or; and/or
- (c) A threatens another person (B) that A will distribute an explicit image and or video depicting oneself to B in a manner contrary to the provisions outlined in Part 2; or
- (d) A threatens another person (B) that A will display an explicit image or video depicting B in a manner contrary to the provisions outlined in Part 3.

Part 5 — Punishment

Division 1 — Distribution of Explicit Image or Video Without Consent

8. Penalty for distributing explicit image or video of a child

An adult who intentionally distributes an explicit image or video of a child, in a manner contrary to the provisions outlined in Part 2, is guilty of a crime and is liable to—

- (a) Imprisonment of up to four (4) years; and
- (b) A minimum fine of \$20,000.

9. Penalty for distributing explicit image or video in any other case

An adult who intentionally distributes an explicit image or video in any other case, in a manner contrary to the provisions outlined in Part 2, is guilty of a crime and is liable to—

- (a) Imprisonment of up to two (2) years; and
- (b) A minimum fine of \$10,000.

10. Penalty for children

Subject to relevant provisions of the Young Offenders Act 1994 and the Sentencing Act 1995, a child who intentionally distributes an explicit image or video depicting either a child or an adult, in a manner contrary to the provisions outlined in Part 2, is guilty of a crime and is liable to—

- (a) Imprisonment of up to six (6) months; and
- (b) A minimum fine of \$2,000.

Division 2 — Displaying of Explicit Image or Video Without Consent

11. Penalty for displaying explicit image or video of a child

An adult who intentionally displays an explicit image or video of a child, in a manner contrary to the provisions outlined in Part 3, is guilty of a crime and is liable to—

- (a) Imprisonment of up to six (6) years; and
- (b) A minimum fine of \$30,000.

12. Penalty for displaying explicit image or video in any other case

An adult who intentionally displays an explicit image or video in any other case, in a manner contrary to the provisions outlined in Part 3, is guilty of a crime and is liable to—

- (a) Imprisonment of up to three (3) years; and
- (b) A minimum fine of \$15,000.

13. Penalty for children

Subject to relevant provisions of the Young Offenders Act 1994 and the Sentencing Act 1995, a child who intentionally displays an explicit image or video depicting either a child or an adult, in a manner contrary to the provisions outlined in Part 3, is guilty of a crime and is liable to—

- (a) Imprisonment of up to nine (9) months; and
- (b) A minimum fine of \$3,000.

**Division 3 — Threats to Distribute or Display Explicit Image or Video
Without Consent**

14. Penalty for adults

An adult who threatens to distribute or display an explicit image or video, in a manner contrary to the provisions outlined in Part 4, is guilty of a crime and is liable to—

- (a) Imprisonment of up to eight (8) months; and
- (b) A minimum fine of \$4,000.

15. Penalty for children

Subject to relevant provisions of the Young Offenders Act 1994 and the Sentencing Act 1995, a child who threatens to distribute or display an explicit image or video, in a manner contrary to the provisions outlined in Part 4, is guilty of a crime and is liable to—

- (a) Imprisonment of up to one (1) month; and
- (b) A minimum fine of \$400.

Part 6 — Operations and Oversight

Division 1 — Women's Cyber Safety Committee

16. Women's Cyber Safety Committee

- (1) A Women's Cyber Safety Committee (WCSC) is to be established.
- (2) The WCSC will be a body corporate with perpetual succession.
- (3) The WCSC will be an agent of the State and have the status, immunities and privileges of the State.
- (4) Proceedings may be taken by or against the WCSC in its corporate name.

17. Membership of the WCSC

The WCSC will consist of 6 members appointed by the Minister for Women's Interests—

- (a) One (1) member must have a degree associated with cyber security;
- (b) One (1) member must have a degree associated with psychology or counselling;
- (c) One (1) member will act as a representative of the Minister for Women's Interests;
- (d) Two (2) members must have an understanding of the contemporary issues surrounding both men and women's cyber safety. This includes experience with individuals affected by the distribution and/or display of their own explicit images, including threats to do so.

18. Roles of the WCSC

The WCSC will perform the following functions—

- (a) Jointly administer, oversee and regulate the Women's Cyber Safety Helpline (WCSH) outlined in Clause 25; and/or

- (b) Invite guests with experience in the contemporary context of high school education, cyber safety, counselling and/or psychology to attend committee meetings so that they can contribute to discussions on topical cyber safety issues; and
- (c) On the advice of these guests, consider and, where deemed necessary, recommend programs to the Department of Education that will educate both male and female students about such topical cyber safety issues, including but not limited to those outlined in Parts 2, 3 and 4; and
- (d) As per Part 8, the WCSC will conduct reviews into the progress of the Online Sexual Harassment and Cyber Security Bill 2017.

19. Minimum meetings of the WCSC

- (1) The WCSC must have a minimum of four (4) meetings per year
- (2) Extra meetings will be called at the discretion of the Chairperson.

20. Presiding Officer

- (1) The Minister for Women's Interests will select a Chairperson.
- (2) The Chairperson will preside over all meetings of the WCSC.
- (3) The Chairperson will notified of any conflicts of interest arising from the membership of the committee and determine the action/s taken. That is whether the member in question shall be permitted to contribute to and remain in discussions on the issue from which the conflict arose and related matters.
- (4) In the event that the Chairperson is absent from a meeting, all members present shall elect an acting Chairperson to preside over the meeting.

21. Quorum

Four (4) members of the committee will be required to be present in order to constitute a full meeting.

22. Remuneration

Members of the committee will be paid such remuneration and other allowances as determined by the Premier on recommendation of the Public Sector Commissioner.

23. Members unable to act

- (1) If a member is unable to act as a result of illness, absence or insolvency, the member must appoint a proxy to attend the relevant meeting in their place.
- (2) If that member is unable to act at subsequent meetings thereafter, the Minister for Women's Interests will appoint another person to fulfil a similar capacity, either the original proxy or another person deemed fit for service.
- (3) While so acting according to the tenure of his or her appointment, that other person is taken to be a member.
- (4) If a conflict of interest arises, the member of committee to whom it relates shall notify the Chairperson in writing no less than one (1) business day after the conflict of interest has arisen, or has become known to the member.
- (5) As per Clause 20, the Chairperson will determine whether or not the member in question shall be permitted to contribute to and remain in discussion about the matter to which the conflict of interest relates

24. Termination of members

A member of the committee may be terminated by the Minister for Women's Interests on the advice of the Public Sector Commissioner on the grounds of—

- (a) Misbehaviour;
- (b) Incapacity; and/or
- (c) Failure to comply with the provisions outlined in Clause 23.

Part 7 — Women's Cyber Safety Helpline

25. Women's Cyber Safety Helpline

- (1) A Women's Cyber Safety Helpline (WCSH) is to be established
- (2) The WCSH will be jointly administered by the Women's Cyber Safety Committee (WCSC) as per Clause 18, and the Department of Local Government and Communities
- (3) These two entities will assume responsibility for the planning and execution of the WCSH. This will include but is not exclusive to –
 - (a) The appointment of female phone operators with experience in counselling, psychology, cyber security and/or criminal law; and
 - (b) At least two (2) administration officers as per Clause 27.

26. Roles of the WCSH

The WCSH will perform the following functions—

- (a) Advise women of their rights under the Online Sexual Harassment and Cyber Security Bill 2017;
- (b) Provide legal advice where possible to those who have been subject to online sexual harassment, including but not limited to the distribution or display of explicit images or videos - including threats to distribute or display - without consent;
- (c) Refer women to Legal Aid WA in situations where it is deemed not possible to provide sufficient legal advice;
- (d) Provide counsel to women who have reasonable cause to suspect that they may be subject to any of the behaviour outlined in Subclause B in the future; and
- (e) Refer the other respective enquiries onto a government entity deemed fit and appropriate to respond, given the nature of the concern and condition of the individual in question.

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27. Administration Officers

- (1) The WCSH will initially appoint at least two (2) administration officers and determine whether or not more are needed as they see fit.
- (2) Administration officers will have first contact with callers.
- (3) Administration officers will elect to transfer the call to a phone operator deemed appropriate to respond to the enquiry.
- (4) When electing to transfer a call, administration officers will consider the nature of the concern and the condition of the individual in question.
- (5) Where an enquiry is deemed to be outside the scope of online sexual harassment, administration officers will refer the respective enquiry onto a government entity as per Clause 26 Subclause E.

Part 8 — Review

28. Review period

- (1) A review of the Online Sexual Harassment and Cyber Security Bill 2017 by the Women's Cyber Safety Committee (WCSC) is to commence three (3) years from the day on which this Act receives royal assent.
- (2) A timeframe for subsequent reviews will be determined by the WCSC during the course of the review.
- (3) The WCSC will submit a report to the Minister for Women's Interests within six (6) months of the conclusion of each review.

29. Review content

The WCSC will be responsible for reviewing the progress, efficiency and effectiveness of the Online Sexual Harassment and Cyber Security Bill 2017 and its various provisions, including but not limited to—

- (a) The provisions of Parts 2, 3 and 4 and corresponding levels of offence within the community;
- (b) The provisions of Part 5 and relevant sentencing outcomes; and/or
- (c) The provisions of Part 7 and corresponding levels of accessibility, engagement and outreach amongst victims or at-risk women.

30. Men's issues

Upon its first review, the WCSC will also consider the provisions of the Online Sexual Harassment and Cyber Security Bill 2017, specifically Parts 2, 3 and 4 insofar as they concern male victims. This will mean the consideration of relevant statistics and potential amendments, either at that review or any future review, which the Minister for Women's Interests will be advised by way of a report outlined in Clause 28 Subclause 3 should any change be proposed.

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31. Committee review

The Minister for Women's Interests will conduct a biennial review into the WCSC, that considers several factors which include but are not limited to—

- (a) Productivity;
- (b) Efficiency;
- (c) Membership composition; and
- (d) Contemporary contexts associated with online sexual harassment and cyber security issues.