**SUBMISSION REGARDING CIVIL PENALTY REGIME FOR NON-CONSENSUAL SHARING OF INTIMATE IMAGES**

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**INTRODUCTION**

As a legal academic with substantial research experience in the area of pornographic harm and sex discrimination[[1]](#footnote-1), I am pleased that the government has recognised that the non-consensual sharing of intimate images (also known as ‘revenge pornography’) is an issue that requires specific regulation. I support any Commonwealth attempt to regulate this issue, which is long overdue.

Over the past decades, internet technology has progressed rapidly from rudimentary beginnings as a tool for the military and research institutions, to a readily accessible form of communication and information dissemination available in most people’s homes and workplaces. The rise of the internet has also resulted in the pornography industry rising to meet market demands, with a proliferation of pornographic web sites, which make pornographic and violent content readily available, often free of charge.

Mobile phone technology has also contributed to this proliferation with many people having cameras and Internet access on their mobile telephones and other electronic devices such as ipads. It is a relatively simple and easy to take a photo or film, and to upload it to an Internet web site, and/or to distribute it via email or text message within seconds. The nature of the internet means that once that image is distributed it is almost impossible to control - it can be downloaded, saved, and/or redistributed near instantaneously with very little that is able to be done to delete or stop its distribution or sale.

The internet poses considerable problems for legislators due to the speed at which technology has progressed, the failure of the law to keep up with these technological developments, and its international, cross-jurisdictional span. The internet and the near instantaneous communications that it supports (including email and message boards such as Facebook and Instagram) has allowed pornography to proliferate, making it easy for anyone to become a pornographer and to capture domestic and sexual abuse on film and to upload and distribute it.

It thus comes as little surprise that the ‘non-consensual sharing of intimate images’, which has come to be known as ‘revenge pornography’ is now so prevalent. Photographs and videos taken in the course of intimate relationships, with or without consent, are easily, and in fact instantly able to be, distributed by virtue of a few clicks on an iphone, ipad or computer. A person who is experiencing the rejection and powerlessness of a relationship ending is readily able to take back control, and to convert those feelings of lack back to those of superiority, control, and satisfaction by distributing intimate photographs in order to distress and humiliate the person who has rejected them. However, as I discuss below, the ability to take and distribute inages of a victim is not confined to personal relationships.

I provide specific recommendations below which would strengthen any proposed law reforms in this area.

**Submission 1. The terminology, ‘Non-consensual sharing of images’ does not reflect the impact on victims. More accurate terminology should be employed. I suggest ‘sexual harassment via technology’.**

At its core, ‘revenge pornography’ is about power and powerlessness. The perpetrator seeks to exert dominance and control over his disempowered victim – a victim who can do very little to negate the damage, especially if the images have been distributed using near instant forms of communication, such as being emailed, uploaded to web sites such as ‘Facebook’ or ‘YouTube’, or sent via mobile telephone text message. This has proven to be such a popular form of oppression that there is now a proliferation of web sites that enable users to upload and share these images, and there is little, if anything, that a victim can do (legally or otherwise) to have these images removed once they have been uploaded or distributed.

The term ‘revenge pornography’ connotes some sort of wrongdoing or blame attributable to the victim. [[2]](#footnote-2) However, the neutral terminology of ‘non-consensual sharing of intimate images’ also downplays the serious negative impact on victims (which is further explained under submission 3 below) and downplays the seriousness of the perpetrator’s offence against the victim. I suggest that a different descriptor is more appropriate, such as ‘sexual harassment by technology’.[[3]](#footnote-3) This would be a more accurate descriptor of the range of circumstances in which such discrimination and harassment can occur. For example, such conduct not only occurs in the context of intimate relationships, or the breakdown of intimate relationships. It can also occur in the context of abuse by acquaintances or strangers.[[4]](#footnote-4)

**Submission 2. Any proposed legislation should recognise that the non-consensual sharing of images is an issue of sex equality and sex discrimination that disproportionately harms women and perpetuates their inequality in society and systemic inequality more broadly.**

As well as noting the prevalence of the non-consensual sharing of intimate images (or threats to do so), Powell and Henry also highlight the ‘gendered’ nature of online abuse.[[5]](#footnote-5) They state that women are ‘significantly more likely’ likely to be victims of online sexual harassment by male perpetrators.[[6]](#footnote-6)

The gendered and hierarchical nature of revenge pornography has also been identified in several submissions made to the Legal and Constitutional Affairs References Committee. One victim advocate discussed the use of revenge pornography as a coercive tool in relationships – either to coerce the victim during the relationship, or to punish her when it ends:

…it is clear that revenge porn is used as a tool of *power and control.* In one case, intimate images of a woman were shared on Facebook explicitly with the intention to punish her for ending the relationship. In a second example, revenge porn was used in an ongoing relationship to *coerce and control* the victim.[[7]](#footnote-7)

As noted above, another victim advocate commented that non-consensual sharing of images is not only used as a means of coercion and control in the context of intimate relationships, but also when the victim and the offender are not in a relationship at all -- for example, when the victim has been sexually assaulted:

…image based sexual exploitation may be used as a means by which to threaten and intimidate intimate partners or ex-partners. In the context of intimate partner violence, or IPV, it would appear to add another layer of coercive control. Some of our clients in IPV situations have presented for support after experiencing this form of exploitation.

We also recognise that the behaviour affects people who are not in IPV situations. SASS has supported clients who have been sexually assaulted by an associate, such as a friend of a friend, and the perpetrator has then used photos or recordings as a means to silence or blackmail them. Victims of drink spiking in pubs and other venues may also be targeted. The impacts of the behaviour in all of these contacts are potentially devastating for individuals, families and communities…[[8]](#footnote-8)

The non-consensual sharing of (or threat to share) images reaffirms social power and powerlessness, coercion and control, satisfaction and humiliation, socially equal and socially unequal. Revenge pornography seeks to disempower, humiliate and distress victims in order for a (usually male) perpetrator to gain power and control over a (usually female) ‘other’. The victim suffers, but so does a society that takes sex equality seriously.

Further, the non-consensual sharing of (or threat to share) images is about perpetuating a gendered hierarchy in which women are suppressed and oppressed. This hierarchy was identified by Professor Catharine MacKinnon and Andrea Dworkin who argued that, as well as the real physical, psychological, reputational and economic harms suffered by women used in pornography or as a result of the viewing of pornography, pornography contributed to gender inequality in society in that it tainted the way women are perceived, and therefore treated in society. As stated by MacKinnon:

…pornography…institutionalizes the sexuality of male supremacy which fuses the erotization of dominance and submission with the social construction of male and female. Gender is sexual. Pornography constructs the meaning of that sexuality. Men treat women as who they see women as being. Pornography constructs who that is...[[9]](#footnote-9)

MacKinnon and Dworkin are not alone in identifying the connection between pornography and inequality. The harms to women’s equality as a result of pornography have also been judicially recognised in the United States. For example, in *American Booksellers’ Association v Hudnut,* Judge Easterbrook of the Indianapolis Court of Appeals stated that:

Depictions of subordination tend to perpetuate subordination. The subordinate status of women in turn leads to affront and lower pay at work, insult and injury at home, battery and rape on the streets…[[10]](#footnote-10)

Additionally, in the Canadian Supreme Court decision of *R v Butler,* Sopinka J recognised these harms, stating:

If true equality between male and female persons is to be achieved, we cannot ignore the threat to equality resulting from exposure to audiences of certain types of violent and degrading material…[[11]](#footnote-11)

The non-consensual sharing of intimate images cannot and should not be differentiated from the above comments about the harms of pornography in general. The objective of sharing these images is to degrade and humiliate the victim. Women are disproportionately devalued and objectified. They are reduced to sexualised objects and this in turn reflects how society sees them individually and collectively. Legislative reforms should recognise these harms. This is consistent with current equal opportunity legislation whose objects include educating the public that sex discrimination is real and not acceptable.[[12]](#footnote-12)

Please refer to the *Anti-pornography Civil Rights Ordinance* drafted by MacKinnon and Dworkin as an example of this legislative recognition. MacKinnon and Dworkin drafted the Ordinance at the request of residents of the City of Minneapolis who were concerned about the prevalence of pornography in their neighbourhoods.[[13]](#footnote-13) The ordinance was the first attempt to recognise pornography as an issue of sexual inequality. Section 1, clause 1 of the Ordinance recognised pornography as ‘a practice of sex discrimination’ which has the effect of threatening the health, safety, peace, welfare, and equality of citizens in our community.’ Section 1, clause 2 fully describes these harms, and therefore I believe that it is informative to reproduce this statement below in full:

Pornography is a systematic practice of exploitation and subordination based on sex that differentially harms and disadvantages women. The harm of pornography includes dehumanization, psychic assault, sexual exploitation, forced sex, forced prostitution, physical injury, and social and sexual terrorism and inferiority presented as entertainment. The bigotry and contempt pornography promotes, with the acts of aggression it fosters, diminish opportunities for equality of rights in employment, education, property, public accommodations, and public services; create public and private harassment, persecution and denigration; promote injury and degradation such as rape, battery, sexual abuse of children, and prostitution, and inhibit just enforcement of laws against these acts; expose individuals who appear in pornography against their will to contempt, ridicule, hatred, humiliation, and embarrassment and target such women in particular for abuse and physical aggression; demean the reputations and diminish the occupational opportunities of individuals and groups on the basis of sex; contribute significantly to restricting women in particular from full exercise of citizenship and participation in the life of the community; lower the human dignity, worth, and civil status of women and damage mutual respect between the sexes; and undermine women’s equal exercise of rights to speech and action guaranteed to all citizens under the [Constitutions] and [laws] of [place].[[14]](#footnote-14)

I have previously argued that the ordinance should be included in equal opportunity legislation.[[15]](#footnote-15) I ask now that the government consider amendments to current Australian equal opportunity legislation, for example the *Sex Discrimination Act 1984* (Cth), which is better placed to recognise the harm of revenge pornography to sex equality principles (and its role in sexual harassment and sex discrimination).

**Submission 3. Civil penalties involve paying a fine to government. They do not recognise, nor do they compensate for, harms suffered by victims. Victims need access to compensation, together with enforceable punitive damages and injunctive relief.**

Civil penalties involve a monetary sum, by way of a fine, being paid to government as a punishment for contravening legislation. However, such a penalty is inadequate to address the many harms suffered by victims.

The Legal and Constitutional Affairs References Committee noted the submission of the Sexual Assault Support Service Inc (SASS) who identified a broad range of harms to victims including:

* feelings of shame, humiliation, personal violation, and powerlessness;
* fear and apprehension about personal safety;
* sense of being watched or constantly ‘under surveillance’;
* fear of being filmed or photographed during sexual activities;
* being propositioned by strangers and propositioned for sexual activities;
* hyper vigilance online (for example compulsively checking websites to see if more images have been uploaded);
* disruption to education or employment;
* damage to (or concern about) reputation, personal standing in the community, current or future intimate relationships, relationships with family and friends, and/or future employment prospects;
* social withdrawal;
* body shame;
* trust issues;
* trauma symptoms (including anxiety, sleeplessness, and nightmares); and
* suicidal ideation and/or attempts.[[16]](#footnote-16)

Some of these harms were suffered by a Western Australian woman, Caroline Wilson, who brought a breach of confidence claim in the Supreme Court of Western Australia against her ex-partner, Neil Ferguson, who posted 16 photographs and two videos of a sexual nature on his Facebook page after their relationship ended. The photos could be viewed by his 300 Facebook friends, some of which were co-workers as the parties shared a place of employment, the Cloudbreak mine site. His Honour, Mitchell J commented that:

The publication of the explicit images had the effect on the plaintiff which the defendant evidently intended. When she saw the photographs and videos the plaintiff was absolutely horrified, disgusted, embarrassed and upset. She felt particularly humiliated, distressed and anxious because she and the defendant both worked at the same site. She concluded (and I infer) that many of the parties’ mutual friends and colleagues would see the photographs and videos.[[17]](#footnote-17)

Ms Wilson suffered a loss of wages because after publication of the photographs, she felt unable to return to work, as well as suffering ongoing embarrassment and humiliation. At the time of trial she required sleeping tablets and ongoing psychological counselling. Mitchel J, whilst constrained by awarding damages for a breach of confidence in equity, awarded equitable compensation of $48,404.00 and an injunction (to stop the images being further published or distributed). A civil penalties regime would have resulted in Ms Wilson receiving no compensation for the harms she suffered.

I ask that the government consider the range of remedies provided in the Anti-pornography Civil Rights Ordinance drafted by Catharine A MacKinnon and Andrea Dworkin. As well as recognising pornography’s harms to equality, the Ordinance recognises the very real physical, psychological, reputational and economic harms caused to victims, and provides victims with a range of remedies for these harms which existing laws do not. These include nominal, compensatory and punitive damages, as well as for ‘reasonable costs’ including legal costs. [[18]](#footnote-18)

**Submission 4. Victims need access to legal remedies *before* publication/ distribution occurs – for example, injunctions**

Any reforms *must* also deal with threats to share or distribute non-consensual images. If victims are being threatened with such exposure, they must be able to have recourse to immediate injunctive relief to prevent sharing or distribution from occurring. Injunctive relief was a significant remedy for victims under the *Anti-pornography Civil Rights Ordinance* drafted by MacKinnon and Dworkin. Access to injunctive relief will allow victims to fight back against blackmail or coercion from a perpetrator threatening to release images. Also, preventing the release of images will help to mitigate the harm that a victim will suffer because, if an image is uploaded, shared or distributed, it can be distributed multiple times, to multiple locations, making it impossible to assure that the image has been completely removed from the internet.

A preventative model has been applied in Western Australia through recent amendments to the *Restraining Orders Act 1997* (WA) by the *Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016* (WA). When making a family violence restraining order, the court has broad powers to make an order restraining the respondent from ‘distributing or publishing, or threatening to distribute or publish, intimate personal images of the person seeking to be protected.’[[19]](#footnote-19) The definition of ‘family violence’ now includes ‘distributing or publishing, or threatening to distribute or publish, intimate personal images of the family member’.[[20]](#footnote-20)

**Submission 5. There should be a prima facie presumption that consent was NOT given by the victim to the sharing, publication or distribution of these images**

When a photograph is taken, particularly if the victim appears to be a willing participant, it is assumed that the victim has consented. Linda Marchiano was the victim of serious sexual violence at the hands of her husband for a three-year period, and forced to perform in pornography for fear of her life and for the lives of her family members. When she eventually escaped and spoke out about her abuse, she was not believed, with the images made of her cited as proof of her consent.[[21]](#footnote-21) Ms Marchiano testified that: ‘So many people say that, in Deep Throat I have a smile on my face, and I look as though I am enjoying myself. No one ever asked me how those bruises got on my body.’[[22]](#footnote-22) Victims may not seek a legal remedy because they fear being told they have consented.

Consent is not clear-cut, and can often be coerced. This was identified in the following a submission to the Legal and Constitutional Affairs Committee:

The key issue is consent. It might happen in a loving relationship; it also happens in an abusive domestic relationship. Again, consent is the issue, because the internet images may or may not be taken with the consent of the subject, the woman. Then, because she is in the context of an abusive relationship, out of fear for her safety, or the safety of her children, or both, she is compelled to comply with the perpetrator and what he is doing with the internet images. [[23]](#footnote-23)

Given the complex nature of consent, I suggest that consent should not be an element of any offence regarding the non-consensual sharing of images. If consent must be incorporated, it should prima facie be regarded *not* to have been given, with the onus on the perpetrator to prove that it was.

**Submission 6. There should be a prima facie presumption that ‘intent to cause harm’ was intended by the perpetrator.**

For similar reasons to those proposed above regarding consent, I suggest that the victim should not have to prove that the perpetrator intended to cause harm. As detailed above, the harms that result to victims are extensive and devastating enough, without the victim having to prove intent or malice on the part of the perpetrator. The devastating consequences for the victim of a threatened or actual distribution of sharing of intimate image indicates that there is malicious intent, without it having to be proven as an element of any offence.

I do, however, agree that there is some merit in the argument that intent or malice could be a relevant factor in determining the quantum of the penalty (or damages) to be paid by the perpetrator.

**Submission 7. Victims need an expedited remedy once publication or distribution has occurred. Given the prevalence of revenge pornography, and the fact that it can be distributed and redistributed instantaneously, will the Commissioner be able to expeditiously act? If there is any doubt about this, victims should be able to bring an action themselves without having to rely on the Commissioner (for example, in the Human Rights and Equal Opportunity Commission)**

In *Wilson v Ferguson*, Mitchell J commented on the difficulty of the near instantaneous means by which these images can be distributed:

…technological advances…have dramatically increased the ease and speed with which communications and images may be disseminated to the world. The defendant was easily able to upload the images of the plaintiff to a platform where they would be readily seen by members of the parties’ social group. He could have as easily uploaded the images to a platform, such as YouTube, where they would have been visible to the world. The process of capturing and disseminating an image to a broad audience can now take place over a matter of seconds and be achieved with a few finger swipes of a mobile phone. No special licence or resources are practically or legally required to achieve such a broadcast. In many cases, such as the present, there will be no opportunity for any injunctive relief to be sought or obtained between the time when a defendant forms the intention to distribute the images of a plaintiff and the time when he or she achieves that purpose.[[24]](#footnote-24)

This makes it imperative that victims are able to immediately access a remedy. I raise concerns about whether the Commissioner will be able to act in a sufficiently short period of time to mitigate the damage suffered by victims after an image has been distributed. This is especially given the prevalence of the threatened or actual distribution of these images.

I would ask the government to consider the role of the Commissioner, and whether another statutory tribunal, such as the Administrative Appeals Tribunal (Cth), or the Human Rights and Equal Opportunity Commission would be a more appropriate body to deal with this issue. Indeed, a Tribunal could arguably grant an interim injunction, before hearing a claim for damages, compensation, and sexual harassment by virtue of the actual or threatened distribution of these images.[[25]](#footnote-25)

**Submission 8. The Commissioner should have broad and extensive powers to issue take down notices to both perpetrators and ISPs once an image has been distributed**

Given the severe detriment to victims, the Commissioner needs to have immediate, broad and extensive powers to direct the immediate removal of these images from servers, web sites and other electronic devices once they have been distributed. This should extend to printed copies made of these electronic images.

The cross-jurisdictional nature of the Internet, and the speed at which such images can be shared, transmitted, or uploaded, makes it imperative for the Commissioner to have broad and effective powers of removal. I acknowledge that there will be very little that can be done by the Commissioner to issue a take-down notice when an image is hosted or uploaded outside of the Australian jurisdiction. However, the faster and more coercive the Commissioner’s powers, the more chance there is of a fast removal, and of the take-down of the image before it is sent out of the jurisdiction.

Again, I urge the government to consider whether another Tribunal could more effectively deliver a remedy for victims, for example, by issuing a take-down notice, with the Commissioner’s office offering information, support and advice for victims.

Additionally, I would support an approach taken by MacKinnon and Dworkin in their Anti-pornography Ordinance, under which victims of pornography can bring a civil claim themselves, without having to rely on police, prosecutors or government agencies (such as the Commissioner’s office) to do it for them. This approach gives victims back some of the power that has been taken away from them by the perpetrator of this abuse. The amendment of existing anti-discrimination laws whereby victims could bring a claim for sex discrimination or sexual harassment by way of actual or threatened distribution of these materials themselves would help to empower victims.

1. Dr Michelle Evans is an Associate Professor at the Curtin University Law School. She has a PhD in Constitutional Law from Curtin University, with a Chancellor’s Commendation for academic excellence. She has a Master of Laws from Murdoch University for her dissertation titled, *Regulating Internet Pornography as an Issue of Sex Discrimination.* She has also published 6 refereed journal articles and 2 book reviews in the area of pornography and sex discrimination as follows:

   ‘Australia’s failure to address the Harms of Internet Pornography’ (2011) 2 *The Western Australian Jurist* 129-147

   ‘Rethinking the Federal Balance: How Federal Theory Supports States’ Rights’ (2010) 1 *The Western Australian Jurist* 14-56

   ‘The Harms of Pornographic “Speech”: Lessons from the United States, Canada and Australia’ (2009) *Journal of Applied Law and Policy*, 105-116

   ‘Censorship and Morality in Cyberspace: Regulating the Gender-Based Harms of Pornography Online’ (2007) Volume 11 *Southern Cross University Law Review*, 1-58

   ‘Censoring Internet Pornography in Australia: A Call for a Civil Rights Approach’ (2006) Volume 10 *University of Western Sydney Law Review*, 75-107

   ‘What’s Morality got to do with it? The Gender-based Harms of Pornography’ (2006) Volume 10 *Southern Cross University Law Review*, 89-137

   ‘Pornography and Australia’s Sex Discrimination Legislation: A Call for a More Effective Approach to the Regulation of Sexual Inequality’ (December 2006) Volume 8 *The University of Notre Dame Law Review*, 81-106

   ‘Book Review: Gail Dines, Pornland: How Porn has Hijacked our Sexuality (Spinifex, 2010)’ (2012) 1 *Australian Journal of Gender and Law* 1-10

   ‘Book Review: Gay Male Pornography: An Issue of Sex Discrimination (Vancouver, Canada: UBC Press, 2004) By Christopher N. Kendall’ (December 2005) Volume 7 *The University of Notre Dame Law Review*, 127-135

   This submission draws upon ideas and arguments contained in this previous work. I agree that this submission may be made public.

   **Contact details**

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2. See the Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Phenomenon colloquially referred to as ‘revenge porn*’ (February 2016), [2.1]-[2.9] for a discussion of terminology. [↑](#footnote-ref-2)
3. Ibid. Other suggestions from victim advocates were ‘non-consensual sharing of intimate images’ (Australian Women Against Violence Alliance at [2.7]) and ‘technologically facilitated sexual violence’ (Project Respect at [2.8]). [↑](#footnote-ref-3)
4. See, for example, Submission from Ms Alexis Martin, Policy/Research Officer, Sexual Assault Support Service Inc. (SASS), Legal and Constitutional Affairs References Committee Report, *Phenomenon colloquially referred to as ‘revenge porn*’ (February 2016), 17) (emphasis in underlining):

   We also recognise that the behaviour affects people who are not in IPV situations. SASS has supported clients who have been sexually assaulted by an associate, such as a friend of a friend, and the perpetrator has then used photos or recordings as a means to silence or blackmail them. Victims of drink spiking in pubs and other venues may also be targeted. The impacts of the behaviour in all of these contacts are potentially devastating for individuals, families and communities…’ [↑](#footnote-ref-4)
5. Powell and Henry surveyed 2,956 Australians aged from 18 to 54, about ‘Digital Harassment and Abuse’ with ‘10.7% reporting that someone had *taken* a nude or semi-nude image of them without their permission; 9.3% reported that someone had *posted* such images online or sent them onto others; and 9.6% reported that someone has *threatened* to post nude or semi-nude images of them online or send them onto others.’ See, Anastasia Powell and Nicola Henry, *Digital Harassment and Abuse of Adult Australians: A Summary Report* (RMIT University, 30 October 2015), 2 (emphasis in original) at <https://research.techandme.com.au/wp-content/uploads/REPORT_AustraliansExperiencesofDigitalHarassmentandAbuse.pdf> [↑](#footnote-ref-5)
6. Powell and Henry, ibid, 4. [↑](#footnote-ref-6)
7. Submission from Ms Victoria Laughton, Research and Advocacy Officer, Victim Support Service (VSS), Legal and Constitutional Affairs References Committee Report, *Phenomenon colloquially referred to as ‘revenge porn*’ (February 2016), 17. Emphasis added. [↑](#footnote-ref-7)
8. Submission from Ms Alexis Martin, Policy/Research Officer, Sexual Assault Support Service Inc. (SASS), Legal and Constitutional Affairs References Committee Report, *Phenomenon colloquially referred to as ‘revenge porn*’ (February 2016), 17). [↑](#footnote-ref-8)
9. Catharine A MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press, 1989), 197. American spelling has been retained to be consistent with original sources. [↑](#footnote-ref-9)
10. *American Booksellers Association v Hudnut* 771 F 2d 323 (7th Cir. 1985) cited in Catharine A MacKinnon, and Andrea Dworkin, *In Harm’s Way: The Pornography Civil Rights Hearings* (Boston: Harvard University Press, 1997). See also MacKinnon, Catharine A, *Only Words* (Cambridge: Harvard University Press, 1993), 65-68 for a discussion of *Hudnut*. [↑](#footnote-ref-10)
11. *R v Butler* [1992] 1 SCR 452 (Sopinka J), 496-497. [↑](#footnote-ref-11)
12. See, for example, *Sex Discrimination Act 1984* (Cth), s3(d). [↑](#footnote-ref-12)
13. The history of the Ordinance is outlined in Catharine A MacKinnon and Andrea Dworkin, *In Harm’s Way: The Pornography Civil Rights Hearings* (Boston: Harvard University Press, 1997). [↑](#footnote-ref-13)
14. ‘Model Anti-pornography Civil Rights Ordinance’ in Andrea Dworkin and Catharine A MacKinnon, *Pornography and Civil Rights: A New Day for Womens’ Equality* (Organizing Against Pornography, 1988), Appendix D, 138, section 1, clause 2. [↑](#footnote-ref-14)
15. Michelle Evans, ‘Pornography and Australia’s Sex Discrimination Legislation: A Call for a More Effective Approach to the Regulation of Sexual Inequality’ (2006) Volume 8 *The University of Notre Dame Law Review*, 81-106. [↑](#footnote-ref-15)
16. Senate Legal and Constitutional References Committee, Parliament of Australia, *Phenomenon colloquially referred to as ‘revenge porn’* (February 2016)[2.23]. [↑](#footnote-ref-16)
17. *Wilson v Ferguson* [2015] WASC 15, [38]. [↑](#footnote-ref-17)
18. ‘Model Anti-pornography Civil Rights Ordinance’ in Andrea Dworkin and Catharine A MacKinnon, *Pornography and Civil Rights: A New Day for Womens’ Equality* (Organizing Against Pornography, 1988), Appendix D, 138. [↑](#footnote-ref-18)
19. *Restraining Orders Act 1997* (WA), s10G(2)(d). [↑](#footnote-ref-19)
20. *Restraining Orders Act 1997* (WA), s5A(2)(k). [↑](#footnote-ref-20)
21. Linda Lovelace, *Ordeal* (Citadel Press, 1980). See also Gloria Steinem, ‘The Real Linda Lovelace’ in Diana E.H. Russell (ed), *Making Violence Sexy: Feminist Views on Pornography* (New York: Teachers College Press, 1993), 23. [↑](#footnote-ref-21)
22. Testimony of Linda Marchiano at the Minneapolis Hearings quoted in MacKinnon, Catharine A., & Dworkin, Andrea, *In Harm’s Way: The Pornography Civil Rights Hearings* (Boston: Harvard University Press, 1987), 62. [↑](#footnote-ref-22)
23. Submission from Ms Victoria Laughton, Research and Advocacy Officer, Victim Support Service (VSS), Legal and Constitutional Affairs References Committee Report, *Phenomenon colloquially referred to as ‘revenge porn*’ (February 2016), 18). [↑](#footnote-ref-23)
24. *Wilson v Ferguson* [2015] WASC 15, [80]. [↑](#footnote-ref-24)
25. For a more specific discussion as to how a statutory tribunal could hear matters involving pornography, see Michelle Evans, ‘Pornography and Australia’s Sex Discrimination Legislation: A Call for a More Effective Approach to the Regulation of Sexual Inequality’ (December 2006) Volume 8 *The University of Notre Dame Law Review*, 81-106. [↑](#footnote-ref-25)