

8.0 CONSTITUTIONAL INTERACTION

Under section 51(v) of the Australian Constitution, the Commonwealth has power to make laws with respect to postal, telegraphic, telephonic, and other like services. This has been interpreted as giving the Commonwealth power to make laws with respect to 'carriage services', including telecommunications networks and the internet.⁵¹

The criminalisation of non-consensual sharing of intimate images should include the distribution of such images other than online (e.g. in hard copy). Commonwealth legislation may be restricted to online forms for constitutional reasons. The Senate Committee noted that unified and uniform legislation across Australia would substantially address jurisdictional issues within Australia that hinder both victims and police in pursuing allegations of non-consensual sharing of intimate images. Given concerns about the potential of Commonwealth legislation to invalidate inconsistent State and Territory legislation, the preference appeared to be that Commonwealth legislation operate in conjunction with that in the States and Territories.⁵²

⁵¹ Senate, Legal and Constitutional Affairs References Committee, Parliament of Australia, *Phenomenon colloquially referred to as 'revenge porn'* (2016) at [3.15].

⁵² Senate, Legal and Constitutional Affairs References Committee, Parliament of Australia, *Phenomenon colloquially referred to as 'revenge porn'* (2016) at [5.16].