

RESEARCH ARTICLE

Intimate image abuse offences: stakeholder perspectives of the effectiveness of the new offences in Hong Kong

Thomas Crofts[†] 

City University of Hong Kong, Hong Kong SAR
Email: tcrofts@cityu.edu.hk

(Received 15 November 2024; revised 20 December 2024; Accepted 15 January 2025)

Abstract

Intimate image abuse is a problem that is shared by many societies, and jurisdictions are learning from each other about how best to address this issue. In 2021 Hong Kong enacted four new intimate image abuse offences. Based on 15 semi-structured interviews with service providers and legal professionals, this study explores stakeholder perceptions of the effectiveness of the new offences in Hong Kong. Themes that emerged included why there was a need for specific offences, the impact that the new offences have had and whether further criminal law or non-criminal law reforms are necessary. A key finding from this research is that crafting offences to specifically target intimate image abuse is important to strengthen community awareness of the wrongfulness of intimate image abuse, enhance protection of victims and increase prosecutions. To be most effective, however, criminal law reform should be accompanied by holistic education and police training. Other non-criminal law reforms, such as working with providers and developing alternative complaints mechanisms, are also necessary to successfully combat intimate image abuse.

Keywords: intimate image abuse; revenge pornography; criminal justice; criminal law reform; policing

Introduction

It has taken many years for the range of ways in which intimate image abuse facilitated by new technologies can be perpetrated to be understood and recognised as deserving of criminalisation. Yet, even though it has been recognised that the harms caused by intimate image abuse are substantial enough and perpetrators culpable enough to justify a criminal law response there has tended to be a low prosecution rate for such behaviours.¹ A main reason for this was that existing offences were not

[†]I would like to thank Andrew Dyer, Massimo Lando, Murray Lee, Arlie Loughnan, Nicola Wake, Normann Witzleb and the anonymous referees for their helpful comments, as well as Zirui Wang for research assistance for this project, which has been supported by a grant from the Research Grants Council of the Hong Kong Special Administrative Region, China (Project No CityU 11606621).

¹See for example, N Henry et al 'Policing image-based sexual abuse: stakeholder perspectives' (2018) 19 *Police Practice and Research* 565, 569–570; C McGlynn and E Rackley 'Image-based sexual abuse' (2017) 37 *Oxford Journal of Legal Studies* 534, 535; M Salter and T Crofts 'Responding to revenge porn: challenges to online legal impunity' in L Comella and S Tarrant (eds) *New Views on Pornography: Sexuality, Politics, and the Law* (Praeger, 2015) p 233; S Bloom 'No vengeance for revenge porn victims: unraveling why this latest female-centric, intimate-partner offense is still legal, and why we should criminalize it' (2014) 42 *Fordham Urban Law Journal* 233, 261.

developed with intimate image abuse in mind, making them a poor fit for such behaviour.² Many jurisdictions have now enacted offences to specifically target intimate image abuse and overcome problems associated with existing offences. This includes Hong Kong, which enacted four new offences in September 2021.³ Alongside tailoring elements to capture intimate image abuse behaviours, the creation of specifically labelled offences make it clear to the community that the behaviour is wrongful and sends a strong message to law enforcement that it should be taken seriously and prosecuted.⁴ Despite this, research from some jurisdictions shows that the creation of new offences has not necessarily led to significantly better protection of victims and increased prosecutions.⁵ This indicates that there are still problems addressing intimate image abuse and that further reforms may be necessary.

With such issues in mind, this novel study examines perceptions of the effectiveness of the newly enacted intimate image abuse offences in Hong Kong. To gain insights into this research question from a range of perspectives semi-structured interviews were undertaken with 15 service provider and legal professional stakeholders. A thematic analysis of these interviews identified recurring themes and subthemes. These concerned the types of intimate image abuse occurring in Hong Kong, the need for specific offences, the impact reforms have had on public perceptions, policing and victims' experiences, and the desirability of further reforms. Overall, it was found that while it is important to craft a range of offences that can specifically target the various forms that intimate image abuse can take, this alone does not necessarily increase the chances of successful prosecutions or provide remedies that victims primarily want. Other non-criminal law reforms, such as education and police training, developing alternative complaints mechanisms and working with providers, are necessary to successfully combat intimate image abuse. These findings have significant implications not only for law and practice in Hong Kong but also for jurisdictions grappling with how to best address intimate image abuse. As the recent reform process in England and Wales demonstrates, learning from other jurisdictions about what seems to work or not can help countries to refine offences and consider what other non-legal reforms can be implemented.⁶

1. The need for intimate image abuse offences

The taking and sharing of intimate images is not a new phenomenon. As the Law Commission for England and Wales notes, 'nude and sexual images have been taken and shared since photography was invented'.⁷ What has changed in recent decades is that new technologies have facilitated the ability to observe and record intimate parts and acts and manipulate and share intimate images. This has led to new dimensions of harm due to the 'unprecedented power of new technologies in achieving new forms of social shaming – beyond geographic borders, at vast speeds, to diverse audiences'.⁸ This abuse can take many forms and be perpetrated for a variety of motivations.⁹ Intimate images may be obtained with

²Law Commission *Intimate Image Abuse: A Consultation Paper* (CP 253, 2021) para 1.40; Henry et al, above n 1; T Crofts 'Criminalization of voyeurism and "upskirt photography" in Hong Kong: the need for a coherent approach to image-based abuse' (2020) 8 *Chinese Journal of Comparative Law* 505; D Citron and M Franks 'Criminalizing revenge porn' (2014) 49 *Wake Forest Law Review* 345.

³Crimes (Amendment) Ordinance 2021, s 3 adding ss 159AAB–159AAE to the Crimes Ordinance (Cap 200) (HK).

⁴McGlynn and Rackley, above n 1, 557; T Kirchengast and T Crofts 'The legal and policy contexts of "revenge porn" criminalisation: the need for multiple approaches' (2019) 19 *Oxford University Commonwealth Law Journal* 1, 26.

⁵B Bottomley 'Intimate image abuse – despite increased reports to the police, charging rates remain low' (Refuge, 25 January 2023) <https://refuge.org.uk/news/intimate-image-abuse-despite-increased-reports-to-the-police-charging-rates-remain-low/> (last accessed 10 February 2025); A Huber 'Image-based sexual abuse: legislative and policing responses' (2023) *Criminology & Criminal Justice*, available at <https://doi.org/10.1177/17488958221146141> (last accessed 10 February 2025); A Flynn and N Henry 'Image-based sexual abuse: an Australian reflection' (2019) 31 *Women & Criminal Justice* 313.

⁶Law Commission *Intimate Image Abuse: A Final Report* (Law Com No 407, 2022) para 3.29.

⁷*Ibid*, para 1.2.

⁸N Henry and A Powell 'Embodied harms: gender, shame, and technology-facilitated sexual violence' (2015) 21 *Violence Against Women* 758, 761.

⁹E Rackley et al 'Seeking justice and redress for victim-survivors of image-based sexual abuse' (2021) 29 *Feminist Legal Studies* 293; Law Commission (CP 253), above n 2, 108–115.

consent during a relationship or between friends. They may be recorded without consent in a public or private space (eg ‘upskirting’ and ‘downblousing’), stolen from a person’s device or manipulated to appear to be the victim (‘sexualised photoshopping’ and ‘deep-fakes’). The images may be possessed and distributed without consent or there may be threats to distribute the images. These behaviours may be motivated by revenge (particularly at the breakdown of a relationship), a desire to humiliate, distress, coerce or blackmail the victim. The perpetrator may act for the purposes of sexual gratification, financial gain, social notoriety or even just for fun or to flirt. The range of ways that intimate image abuse can be perpetrated, and ways that are continually emerging, can make it difficult to combat such behaviours.

A growing understanding of the severity of harms caused by intimate image abuse and the degree of culpability of perpetrators meant that a criminal law response came to be regarded as necessary and justified.¹⁰ It also became clear, however, that there were problems with existing offences in many jurisdictions.¹¹ A key problem was that offences that were applied, such as loitering, offensive conduct, producing offensive material, criminal intimidation, blackmail and access to a computer with a criminal or dishonest intent,¹² pre-dated new technologies and were not designed with these behaviours in mind. This made it difficult or impossible to squeeze the behaviour within the elements of such offences.¹³ More fundamentally, such offences ‘fail to bring out the sexual nature of the criminal activity concerned’.¹⁴ They also have penalties that are not commensurate with the violation of ‘the victim’s right to privacy and sexual autonomy, [which] may cause long-term distress, humiliation, harassment, and stress to the victim’.¹⁵ This lack of appropriate offences also meant that police would often not take action because they did not fully understand applicable laws or felt that difficulties gathering evidence would mean little chance of successful prosecution.¹⁶ Further explanations for the inadequate police response are attitudes of victim-blaming and the perception that harm committed in the online world is not real harm.¹⁷ Unsurprisingly then, research shows that victims generally have not had positive experiences with criminal justice system responses.¹⁸

All these factors made it clear that there was a need, in many jurisdictions, for new offences directed at intimate image abuse. Such offences should make prosecutions easier to achieve by having labels and offence elements targeted specifically at intimate image abuse. Creating specifically labelled offences also sends a powerful message to police that the behaviour should be taken seriously and subject to prosecution.¹⁹ The impact of new, specifically labelled offences also goes beyond policing by communicating to the public the wrongfulness of the behaviour subject to prohibition.²⁰ This can strengthen the community’s opposition to the prohibited behaviour, counter victim-blaming attitudes and help victims feel supported in reporting intimate image abuse.²¹

¹⁰Bloom, above n 1; Citron and Franks, above n 2; T Crofts ‘Refining the contours of intimate image abuse offences’ in K Summerer and G Caletti (eds) *Criminalising Intimate Image Abuse: A Multi-Perspective, Comparative Approach* (Oxford: Oxford University Press, 2024) p 121.

¹¹Rackley et al, above n 9.

¹²In relation to Hong Kong, see Crofts, above n 2.

¹³Ibid; C McGlynn et al ‘Shattering lives and myths: a report on image based sexual abuse’ (Durham University and the University of Kent, July 2019) available at <http://dro.dur.ac.uk/28683/1/28683.pdf?DDD34+DDD19> (last accessed 10 February 2025).

¹⁴Law Reform Commission of Hong Kong *Rape and Other Non-Consensual Sexual Offences* (Consultation Paper 2012) para 6.23; C McGlynn et al ‘“Revenge porn”: the continuum of image based sexual abuse’ (2017) 25 *Feminist Legal Studies* 25, 36.

¹⁵Legislative Council Brief, Crimes Ordinance (Chapter 200) Crimes (Amendment) Bill 2021, SBCR 6/2801/73, para 4.

¹⁶Huber, above n 5; Henry et al, above n 1, 571.

¹⁷Huber, above n 5, 3–4; Henry et al, above n 1, 574.

¹⁸Huber, above n 5, 11; Rackley et al, above n 9.

¹⁹McGlynn and Rackley, above n 1, 557.

²⁰McGlynn and Rackley, above n 1, 557; Crofts, above n 2, 505; Citron and Franks, above n 2, 276; more generally on the importance of fair labelling, see J Chalmers and F Leverick ‘Fair labelling in criminal law’ (2008) 71 *Modern Law Review* 217, 226.

²¹Commonwealth Parliament of Australia, Senate Legal and Constitutional Affairs Committee *Phenomenon Colloquially Referred to as ‘Revenge Porn’* (Parliamentary Paper No 69, 2016) para 5.750; Citron and Franks, above n 2, 349; McGlynn and Rackley, above n 1, 553; T Crofts and T Kirchengast ‘A ladder approach to criminalising revenge pornography’ (2019) 83 *Journal of Criminal Law* 87, 94; G Caletti ‘Can affirmative consent save “revenge porn” laws? Lessons from the Italian criminalization of non-consensual pornography’ (2021) 25 *Virginia Journal of Law & Technology* 113, 164; Office of the e-Safety Commissioner *Image-Based Abuse National Survey: Summary Report* (October 2017) p 3.

2. The development of intimate image abuse offences

Initially, only a limited range of behaviours concerned with observing and recording a person doing a private act were covered by intimate image abuse specific offences. For instance, the offence of voyeurism was created in England and Wales in 2003 and in Canada in 2005.²² It took around a decade more for other forms of intimate image abuse to be criminalised. For example, the publication of intimate images without consent was criminalised in Canada in 2014²³ and the offence of non-consensual sharing of intimate images or threats to share intimate images was created in England and Wales in 2015.²⁴ Other jurisdictions which had initially been slower to create specific offences were able to learn from the experiences of England and Wales and Canada about what seemed to be working – or not. For instance, there had been criticism that the non-consensual sharing offence in England and Wales offered only limited protection because it covered a narrow range of images (those of a private sexual nature)²⁵ and set a high threshold of culpability (an intention to cause distress).²⁶ As a result, jurisdictions that were later in enacting offences have tended to define intimate images more broadly and adopt multiple offences covering a range of behaviours with lower culpability thresholds.

The offences created, for example, in the Australian States of New South Wales in 2017²⁷ and Western Australia in 2019²⁸, and Singapore in 2019²⁹ define intimate images as images of a person's private parts and images of a person engaged in a private act (eg in a state of undress, using the toilet, showering or sunbathing, engaged in a sexual act of a kind not ordinarily done in public or a similar activity).³⁰ They also address newer and emerging forms of intimate image abuse, for example 'deep-fakes',³¹ by including images that have been altered to appear to be the victim.³² While the Australian and Singaporean offences cover a similarly broad range of behaviours, including observing, recording, distributing and threatening to distribute intimate images (and possession in Singapore), they differ on the mental elements required. In New South Wales, for example, the perpetrator must intend to distribute knowing that the subject does not consent or being reckless as to the lack of consent, but there is no requirement for proof of an intention to harm the subject of the image.³³ An even lower culpability threshold exists in Western Australia, where no mental element is required at all for the offence of distributing an intimate image without consent.³⁴ In contrast, Singapore requires a relatively high degree of culpability. For example, the offence of distribution of an intimate image or recording requires that the perpetrator intentionally or knowingly distributes an intimate image or recording without the subject's consent, knowing or having reason to believe that the distribution will or is likely to cause the subject humiliation, alarm or distress.³⁵

²²Sexual Offences Act 2003, s 67; Criminal Code (Canada), s 162.

²³Criminal Code (Canada), s 162.1.

²⁴Criminal Justice and Courts Act 2015, s 33.

²⁵Ibid, s 33. The image must depict something that is not of a kind ordinarily seen in public and show all or part of an individual's exposed genitals or pubic area; something that a reasonable person would consider to be sexual because of its nature; or something that, taken as a whole, has a content that a reasonable person would consider to be sexual.

²⁶Criminal Justice and Courts Act 2015, s 33(1)(b).

²⁷Crimes Amendment (Intimate Images) Act 2017 (NSW).

²⁸Criminal Law Amendment (Intimate Images) Act 2018 (WA).

²⁹Criminal Law Reform Act 2019, s 120 inserting ss 377BB–377BF into the Penal Code (Singapore).

³⁰See for example, Crimes Act 1900 (NSW), s 91N; Criminal Code (WA), s 221BA.

³¹Law Commission (CP 253), above n 2, paras 1.39–1.42

³²Penal Code (Singapore), ss 377BE(5), 377C(3)(f).

³³Crimes Act 1900 (NSW), s 91Q. For discussion of offences developed in Australia, see Kirchengast and Crofts, above n 4.

³⁴Criminal Code (WA), s 221BD. This is consistent with the basic approach to liability in the traditional criminal codes of Australia, whereby unless an offence provision mentions a mental state, none needs to be established. An accused can rely on general criminal responsibility provisions in Chapter 5/V of the Criminal Codes of Queensland and Western Australia, alongside any specific or general defences. See T Crofts and S Tarrant 'Criminal law pedagogy and the Australian state codes' in K Gledhill and B Livings *The Teaching of Criminal Law: The Pedagogical Imperatives* (Routledge, 2017) p 99.

³⁵Penal Code (Singapore), s 377BE(1).

In developing new offences to address intimate image abuse the Hong Kong SAR Government relied on reports conducted by the Hong Kong Law Reform Commission, a public consultation and research on the experiences of other common law jurisdictions, such as Australia, Canada, England and Wales and Singapore.³⁶ The four new offences enacted in Hong Kong more closely resemble the approach in Singapore of combining physical elements that cover a relatively broad range of behaviours with requirements for high degrees of fault. The four offences are voyeurism, unlawful recording of intimate images, publication of images unlawfully obtained and non-consensual publication of intimate images. Intimate images are broadly defined to cover intimate parts (an ‘individual’s genitals, buttocks, anal region or breasts (whether exposed or only covered with underwear); or the individual’s underwear covering genitals, buttocks, anal region or breasts’) and intimate acts (‘using the toilet in a manner that an intimate part of the individual is likely to be revealed; or ... doing a sexual act that is not of a kind ordinarily done in public’).³⁷ This also includes images that have been altered to appear to show an intimate part or intimate act of the subject, unless no reasonable person would believe that it shows an intimate part or intimate act of the subject. Voyeurism applies where a person surreptitiously and disregarding whether the subject consents, observes or records that person in a place in which any individual can reasonably be expected to be nude, to reveal an intimate part, or to be doing an intimate act. Alternatively, the offence also applies where the subject is exposing an intimate part or is doing an intimate act and the observation or recording is done of purposes of recording or observing an intimate act or part, or for a sexual purpose.³⁸ Unlawful recording or observation of intimate parts applies where a perpetrator records or operates equipment with the intention of recording or observing an intimate part in circumstances in which the intimate part would not otherwise be visible. The perpetrator must do this disregarding the subject’s lack of consent (that is, knows the subject does not consent or is reckless as to the lack of consent³⁹) and do this for a sexual purpose or dishonestly.⁴⁰ In relation to publication there are two offences. The first covers publication of intimate images obtained through one of the previous two offences, where the perpetrator knows or is reckless as to whether the image originates from the commission of an offence and they disregard whether the subject consents to the publication.⁴¹ The second publication offence applies to publication or threatened publication without consent where the perpetrator disregards the subject’s lack of consent and intends to cause humiliation, alarm or distress to the subject or is reckless as to the likelihood of causing such harm.⁴²

More recently, the offences in England and Wales have been reviewed by the Law Commission, showing that the process of crafting offences to appropriately address intimate image abuse is ongoing and that research on the experiences of other jurisdictions is an important part of that process. As the Law Commission noted, ‘[t]o help us with our understanding and analysis of this area of law we have considered a number of other countries and states which have implemented intimate image abuse laws’.⁴³ After finding that the offences in England and Wales lack coherency, leading to ‘undesirable gaps and limitations and inconsistent application’⁴⁴ the Law Commission recommended a scaffolded approach. Accordingly, it proposed a new base offence, covering taking or sharing an image without consent and without requiring proof of an additional intent element.⁴⁵ Alongside this would be separate offences where a particular intention can be established (intention of humiliating, alarming or distressing

³⁶Six offences were proposed originally. For further discussion on the development of these offences see T Crofts ‘Combating intimate image abuse in Hong Kong’ (2022) 52 *Hong Kong Law Journal* 405, 429.

³⁷Crimes Ordinance (Cap 200) (HK), s 159AA.

³⁸Crimes Ordinance (Cap 200) (HK), s 159AAB.

³⁹Crimes Ordinance (Cap 200) (HK), s 159AAH.

⁴⁰Crimes Ordinance (Cap 200) (HK), s 159AAC.

⁴¹Crimes Ordinance (Cap 200) (HK), s 159AAD.

⁴²Crimes Ordinance (Cap 200) (HK), s 159AAE.

⁴³Law Commission (CP 253), above n 2, para 1.16.

⁴⁴Law Commission (Law Com 407), above n 6, para 1.10.

⁴⁵Law Commission (CP 253), above n 2, para 1.56.

the victim⁴⁶ or acting for the purpose of obtaining sexual gratification).⁴⁷ Instead of creating separate offences, the Online Safety Act 2023 now inserts into the Sexual Offences Act 2003 a new offence of sharing or threatening to share an intimate photograph or film with alternative ways of satisfying its elements.⁴⁸

This brief review of offences created shows that jurisdictions continue to refine offences with the aim of ensuring that criminal law can appropriately respond to intimate image abuse.⁴⁹ Against this background, the current study aimed to understand whether the newly enacted offences in Hong Kong are perceived to have been effective. This has implications not just for Hong Kong but also for other jurisdictions considering the effectiveness of their laws and the need for further reforms.

3. Methodology

Semi-structured interviews with stakeholders were chosen as the most appropriate way of exploring the research question, as this allows participants scope to explore issues not necessarily foreseen by the researcher while ensuring some consistency across the sample.⁵⁰ A range of stakeholders were invited to participate, based on their capacity to provide insights from a variety of perspectives. These included legal professionals (solicitors, barristers, officers of the Department of Justice, magistrates and judges), NGOs (such as, advocacy and victim support organisations), representatives from independent statutory bodies, members of the police and social workers. These stakeholders were identified through a process of reviewing policy documents identifying those who have made public comments about intimate image abuse, have been involved in or made submissions about law reform, practice law and may have been involved in cases concerning intimate image abuse or provide outreach, support and advice. Snowball sampling was also adopted, whereby stakeholders were asked if there were other persons whom they recommended for this project.⁵¹ Several stakeholders declined to take part in this study, largely in the case of legal professionals because of a lack of experience with intimate image abuse cases, or in the case of the Police Research Unit for operational reasons.

In-depth semi-structured interviews were undertaken with 15 stakeholders in 2024. Of these stakeholders 7 were practising lawyers, 6 worked for NGOs, 1 was a magistrate and 1 was from an independent statutory body. The interviews were undertaken face to face (n = 8), via Zoom (n = 4) or telephone (n = 1). Two stakeholders provided written answers with the possibility of further follow up questions. A range of indicative questions were developed so that specific aspects of the research question could be addressed while also allowing stakeholders space to explore themes they saw as relevant.⁵² The interviews were undertaken in English language with a research assistant present who could communicate in Chinese (Mandarin and Cantonese) to translate and explain any phrases that participants preferred to express or have explained in Chinese.

In accordance with ethically approved procedure the interviews were digitally recorded to ensure accuracy of transcription and anonymised.⁵³ Given the relatively small number of participants and to better preserve anonymity stakeholders were identified as either legal professionals (LP) or service providers (SP) and assigned a number. This division broadly indicates the type of experience that these stakeholders have had with intimate image abuse. Following the steps recommended by Braun and

⁴⁶Ibid, para 10.73.

⁴⁷Ibid, para 10.80. For a similar proposal see Crofts and Kirchengast, above n 21. For criticism of this approach, see Flynn and Henry, above n 5, 320.

⁴⁸Online Safety Act 2023, s 188, Sexual Offence Act 2003, s 66B.

⁴⁹Law Commission (CP 253), above n 2, para 1.9.

⁵⁰N Britten 'Qualitative interviews in medical research' (1995) 311 *BMJ* 251.

⁵¹C Noy 'Sampling knowledge: the hermeneutics of snowball sampling in qualitative research' (2008) 11 *International Journal of Social Research Methodology* 327.

⁵²Britten, above n 50.

⁵³The project was approved by the Human and Artefacts Ethics Sub-Committee of City University of Hong Kong.

Clarke, the transcripts were checked for accuracy, open coding was performed by the researcher and a research assistant independently of one another, preliminary codes were discussed and then these codes were refined before being used to analyse all responses.⁵⁴ As inductive and thematic coding progressed, themes and sub-themes were identified and those which were repeated were identified as key themes. The semi-structured interview questions were formulated based on themes identified in related research. Thus, while the prompts from the interview questions would have created particular key themes it was through the coding process that these key themes were reiterated, and that new themes, nuances and subthemes emerged.

Studies vary on the number of participants recommended to reach data saturation – ie the point at which further interviews are not adding new information leading to a better understanding of the research question but rather are repeating what has previously been said.⁵⁵ Some studies suggest that saturation occurs with 12 interviews, and that broader themes become apparent after only six interviews.⁵⁶ Another study reviewing empirical studies assessing sample sizes for saturation found that saturation was reached with 9–17 interviews.⁵⁷ The number of participants in this study fell at the higher end of these suggested ranges and saturation did occur, with themes beginning to be repeated after only a few interviews, giving a textured understanding of the issues. The recurring themes and subthemes identified in stakeholder responses related to: the types of intimate image abuse occurring in Hong Kong; the need for new offences; the impact of the new offences on policing, public perceptions and victims' experiences; and the types of further criminal law and non-criminal law reform necessary. These themes and subthemes are explored in the following section.

4. Findings

(a) Types of intimate image abuse occurring in Hong Kong

The interviews generally began with stakeholders talking about the types of intimate image abuse behaviours that they had come across, or that they were aware of, in their role as SP or LP. The most common type of behaviour mentioned was voyeurism and non-consensual recording of intimate images. These behaviours were noted to be most frequently occurring inside mass transit railway (MTR) stations, particularly on escalators:

So most common would be ...⁵⁸ in ... public transportation, when they try to use their...phone. Yeah, taking photos of people ... females wearing skirts. [LP1]

The most common form of this conduct is somebody on an escalator at the MTR, somebody following up with their camera, ... their phone, and they put it underneath the skirt. [LP7]

Offences such as voyeurism are quite pervasive on public transportation. [LP5]

Other places in which voyeurism and non-consensual recording of intimate images was noted to occur were bathrooms or changing rooms:

⁵⁴V Braun and V Clarke 'Using thematic analysis in psychology' (2006) 3 *Qualitative Research in Psychology* 77.

⁵⁵B Saunders et al 'Saturation in qualitative research: exploring its conceptualization and operationalization' (2018) 52 *Quality & Quantity* 1893.

⁵⁶G Guest et al 'How many interviews are enough?: an experiment with data saturation and variability' (2006) 18 *Field Methods* 59.

⁵⁷M Hennink and B Kaiser 'Sample sizes for saturation in qualitative research: a systematic review of empirical tests' (2022) 292 *Social Science & Medicine* 114523.

⁵⁸Filled pauses, such as 'um', 'oh', 'ah', 'like', which do not affect the meaning of the statement have been replaced with ellipses to improve readability: W Powers *Transcription Techniques for the Spoken Word* (AltaMira Press, 2005) pp 67–68.

Most of the time it is ... someone who goes about the public areas with their mobile phone ... occasionally, they would set up ... a very small camera ... I have come across a case where a guy works in a restaurant, a fast food restaurant, where they have a unisex change room ... what he had done was, he set up his own phone ... on one of the ... shelves ... and he waited for the female staff to come in, and he was basically videotaping her to change. [LP4]

He used a camera on his foot, went into toilets and put it underneath the divider between toilets. [LP7]

Non-consensual distribution and threats to distribute intimate images were also commonly mentioned by stakeholders:

we cover cases such as the non-consensual taking of intimate image, non-consensual sharing of intimate image ... or someone being threatened ... with the intimate image. [SP2]

I think we get quite a lot of ... threaten share ... and also non-consensual share too. [SP3]

A typical scenario, mentioned by several stakeholders, in relation to sharing or threatening to share, was that of males who obtained intimate images of their partner with consent during the course of a heterosexual relationship and then out of revenge distributed or threatened to distribute the images when the relationship ended:

it was between...a guy and the ex-girlfriend and ... I think he, somehow he mentioned ... or he actually sent some ... photos, either photos or videos of them having sex when ... they were together ... but then they broke up, and the guy ... I don't know whether he did it, or ... he was saying that he would do it. [LP1]

Previously there would be cases where, especially between partners, parties would agree to their intimate images being taken by the opposite party. Then, inevitably, following a sour end to the relationship, parties would seek to 'get back at each other' by publication of these images online to a wide audience or threatening to do so anyway. [LP5]

The incident occurred between the ex-couple. They are couple originally and then they, ... break up, and then ... because of some ... emotions or hatred ... the partner exposed these photos ... to others. [SP5]

An ex-boyfriend ... he has nude photographs of a girlfriend and the girlfriend wanted to break up with this guy ... and of course this guy doesn't want that ... and they say, I've got your nude photograph, so if you break with me, I'm going to share it on the internet [LP6]

The last of these comments indicates that threats to share may be used to intimidate and coerce the victim to stay in a relationship. Threats may also be used to blackmail for financial gain. Indeed, one stakeholder noted that 'blackmailing is actually quite common' [LP6]. This was noted to be particularly the case where the victim was male, and especially where the victim was a member of the LGBT community [SP1]. In such cases the perpetrator would obtain images with consent or surreptitiously during a face-to-face or an online sexual encounter and then threaten to distribute the images if the victim did not pay a certain amount.

Sometimes, in our cases, it's...blackmail by someone they already know or encounter already, just like ... we ... have fun and then I date you through the gay apps and then I meet you someday and I

have sex with you. Maybe that dickhead ... already ... captured my photo ... without consent or video without consent. Or even though with consent, at least the dickhead kept those photos or videos, and then they will blackmail you after the sex or the dating. [SP1]

It was also mentioned that it was not uncommon for the victim to be a heterosexual male: 'straight men is not a small amount' [SP1]. In such cases it was noted that often the perpetrator would pretend to be a woman or use AI to appear to be a woman in order to obtain images and then blackmail the victim:

It was also related to the straight man. Yeah, because sometimes the strangers pretending [to be] a woman ... and maybe that pretty woman is just AI or just recorded videos. [SP1]

Threats to distribute images were not always used to extort money from the subject of the image. It was also noted that there were cases where threats to distribute were made to induce further sexual encounters with the victim or to try and coerce the person into a relationship:

Some of them is not asking for money. Some of them is asking for another sex, or even ... a relationship with you. And then I try to use your video or the photos to blackmail you, to force you to be ... together ... in that case, money may not be the first priority in their list. [SP1]

(b) The need for new offences

There was agreement among stakeholders that the new offences were necessary. The most common reason given for introducing new offences was that it had previously been difficult to prosecute cases because the existing offences had not been designed to address intimate image abuse. Legal professionals noted that a range of offences were used to prosecute intimate image abuse, such as access to computer with criminal or dishonest intent, publication of obscene or indecent articles, loitering or disorderly conduct in public, but there were difficulties satisfying the elements of those offences. For instance, loitering requires that the behaviour occurs in a public place so does not cover acts occurring in private and disorderly conduct requires some sort of public disturbance or breach of the peace [LP7]. Such matters are reflected in the following comments:

It was always problematic as to what charge to bring and they [Department of Justice] tried a number of different charges over the years. [LP7]

The old offences, the loitering, let's say, offensive operations, indecency, all those. I think they're quite unsatisfactory because ... that's not the reason why they were there. [LP4]

This made it hard to secure convictions against perpetrators. [LP5]

This situation was noted to have been exacerbated when the Court of Final Appeal held that the offence of access to a computer with a criminal or dishonest intent, which had previously been used to prosecute some intimate image abuse behaviours,⁵⁹ did not apply where a person used their own device.⁶⁰

The Court of Final Appeal said that you can't misuse your own computer, basically, so that was no longer an option. [LP7]

⁵⁹*HKSAR v Ho Siu-Hei Jason* [2018] HKCFI 974.

⁶⁰*Secretary for Justice v Cheng Ka Yee and Others* [2019] HKCFA 9 at [40].

This lack of appropriate offences was thought to have contributed to the difficulty police faced pursuing cases and meant that sometimes no action would be taken:

Despite their best efforts, given the lack of legal framework surrounding the issue, they often had to turn away people who sought help ... Even where the police did try to press charges against the perpetrators, they were often unable to successfully prosecute them. [LP5]

(c) The impact of the new offences

(i) On public perceptions

Stakeholders felt that an important function of creating new offences was that they can influence public perceptions about the wrongfulness of intimate image abuse and deter this behaviour from occurring. As one stakeholder commented:

I think the law serves a lot of functions, you know, so offer protection is one of the kinds, and at the same time, it also serves the function to raise the awareness because it has some deterring effect, like ... to tell the public ... that this kind of act would be illegal if you do it. [SP2]

An important part of social education was seen to be that the new laws had created an environment where victims were more willing to be open about their experiences. This was important to help educate the community about the harms of intimate image abuse:

If more victims are willing to share and more victims' stories being told on the internet and then people know ... there were huge impacts ... brought by this kind of abusive acts. [SP2]

While some stakeholders commented that the public had already known that intimate image abuse was wrong, there was general agreement that the new offences had created greater social awareness of the wrongfulness of intimate image abuse:

I think the public more or less have always known that the acts covered under the new laws are not right. Perhaps the new laws may have spelt this out to them in a clearer way ... I think the new laws have somewhat improved public awareness about intimate image abuse. The new laws provide apt guidelines on what is acceptable and non-acceptable in society. [LP5]

I think ... more people are more aware of the new laws ... from our observation not only on the forum ... but also when there are cases happening ... then people would comment below like ... this is not legal and you shouldn't do that. [SP7]

Even though the new offences were perceived to have increased social awareness of the wrongfulness of intimate image abuse it was noted that victim-blaming attitudes continue to exist in the public:

I think the awareness is there. But sometimes when you see cases on forum about non-consensual distribution ... people still say things like, ... you take the photo, you should expect it will be circulated ... I think that that kind of mindset is still there. [SP3]

It was also noted that, while the public may know that the new offences exist, they may not actually know the content of the laws:

People are aware of the existence of offences, but at the same time they are very technical. [LP3]

I think in the public awareness, they will understand that there's new law restricting those behaviours, but about ... you have someone's private photo and then you share it to someone without consent ... I don't think that it is very well known. [SP1]

Some stakeholders did comment on how promotion of the new laws, particularly by the public transport corporation, has helped educate the public and raise public awareness:

So, when it was coming out ... the new law, there was quite a lot of ... publicity. And on the MTR, they had ... a bunch of posters telling victims to ... make their voices heard ... [and] not to be quiet. There was quite a big ad campaign on the ... trains. [LP4]

Various organisations, including notably the MTR in Hong Kong, have taken it on themselves to spread this information by placing advertisements telling people to report incidents of voyeurism that they witness. ... These campaigns help educate the wider public on what constitutes intimate image abuse and what they should do about it. [LP5]

However, some felt that not enough had been done to promote the new laws:

The government never really promoted the law ... I think there's a video out there ... But ... that's the only one I see ... and perhaps ... they have also done ... a 15 minute ... TV special that talks about ... now you are not allowed to do this ... and that's it. I have never seen more than that. [SP3]

(ii) On policing

There were mixed feelings among stakeholders about the impact that the new offences have had on the policing of intimate image abuse. Some commented that there has been a positive impact because enacting specific offences has given a clear direction to police that action should be taken against perpetrators. This was felt by some to have had the effect that most reported cases are investigated:

Without the laws, they don't see the severity... [and] how serious this case is, but when there are laws right now ... they tend to ... you know, take it more seriously ... They have more motivation ... because [they are] told by the law that they need to ... take up the case. I mean ... they no longer have the excuse to...reject ... our clients. [SP2]

In my experience ... the police is very helpful ... they show their ... concern, show their ... passion on the case ... I think the attitude at that moment is okay. Yeah, at least the victims feel like ... the police is not ignore them or ... they provide ... support wholeheartedly. [SP1]

It was, however, noted that care should be taken not to assume that all police are the same and that there can be differences in how complaints are dealt with depending on rank, experience and station:

I think it's also ... a lot of variation in how police handle the case. Some of them may be really helpful. [SP6]

The view that the new laws might not have made much difference to the policing of intimate image abuse was expressed by several stakeholders, but for quite divergent reasons. Some legal professionals felt that not much had changed because the police have always taken complaints of intimate image abuse seriously [LP7], [LP5]. In contrast, a more common view expressed by both legal professionals and service providers was that not much had changed because the police still do not regard intimate image abuse as very serious and instead prioritise what they regard as more serious crimes:

In reality, I think it was just the same, just the mindset of the police. They just think that, well, we prefer to do some hardcore crimes rather than doing this kind of ... internet thing. [LP6]

They don't care ... because they are too busy dealing with other cases. So, these kind of, ... minor cases, they will get like, just leave it ... don't report it, don't complain, don't make a fuss, basically. [LP8]

I think intimate image abuse is not a serious offence from their perspective. I mean, compared to other criminal offences ... I don't think they have allocated enough resources and attention to these kind of cases. [SP2]

Most of the time when the investigator want to check the IP address of ... the distributor, they have to pass the information to another team, like the team called cyber security team. And that takes time because they have to queue ... and for the image based sexual abuse cases, that would be a more lower priority. [SP7]

This lack of attention was also noted to be the result of an ongoing perception, despite the new offences, that intimate image abuse is not a crime but a private matter:

I think, even though the law is passed ... in terms of a lot of ... front line operations in the law enforcement ... they still don't see it as ... abuse. They still see it as a private ... dispute. [SP3]

(iii) On victims' experiences

Stakeholders spoke about their perceptions of victims' feelings regarding how reports of intimate image abuse have been handled since the enactment of the new offences. Several stakeholders reported that complainants often felt frustrated because the prosecution process took longer than they expected and they had little control over that process:

Client had mixed feelings, mostly negative, she was anxious and frustrated that no concrete action was taken, she felt a loss of control over the matter. She does not know what to do. Things don't move on as quick as she expected. [LP3]

The case indeed do get dragged quite long, for a very long period of time ... and we have to ... repeatedly ... request ... on behalf of ... our service user ... whether there's an update on the case ... and that do take quite long. [SP3]

While it was noted that police were taking more action now that the new offences had been enacted there were still feelings of frustration among complainants that police were not putting much effort into investigation. This made some stakeholders question whether the law had really improved things:

The victims are very frustrated that ... the police ... put aside their case and they [were] not willing to put much effort in ... investigating the abuser ... Many of them were very frustrated. And ... therefore on and off, we were ... also questioning ourselves like ... what has the law done? [SP2]

Sometimes the police will ignore them, or they will think that the police cannot provide any help. Even though the law was established, I think the police may not ... help some of them. [SP1]

It's a problem if you see the law is there but you can't really use it. You see the law and hope it'll help you – then frustrating that it doesn't. [LP3]

Perception definitely is bad, because, ... he wanted to seek help from ... the one he expect they can help, but they cannot do this [leading to] feeling [of] injustice. [SP5]

A particular source of frustration among complainants was reported to arise from the desire to have images removed from circulation and expectations that police can help with this:

I think it happens across professionals ... other social workers, school based social workers, or school teachers, or counselling based in school. They also think reporting to the police would help them to remove the image from the students ... But, no, they don't. So ... they would create a false hope for the victim. Like, telling them, oh, you must report it because the police will have to remove it. But...that is actually not true. So it's a false hope. [SP3]

The actual thing is that the photo take down ... is the immediate help for him ... police can't help and ... can't do anything for him. [SP5]

(d) The need for further reforms

(i) Reforms to offence elements

Stakeholders generally felt that the offences are well designed and will be used to address intimate image abuse appropriately. Comments regarding reforms to offence design tended to relate to the mental elements. Here there was a marked difference in opinion between service providers and legal professionals. Service providers were inclined to consider that requiring proof of specific mental elements, such as a dishonest purpose in the offence of unlawful recording, would be an obstacle to successful prosecutions and was an unnecessary inclusion:

The element of intent ... requires to prove that ... the recorder does the recording dishonestly ... but if you take picture of someone without consent, would it be honest? I mean, it is obviously very redundant. [SP2]

We did talk to some legislators ... about ... why must they include ... this one about dishonest. [SP3]

Whether ... it's ... do I have the intention to cause you distress ..., we don't think that's quite [what] matters ... when we try to talk to survivors, they also think it's kind of odd. [SP3]

In contrast, legal professionals were largely in agreement that there is no concern regarding the inclusion of such specific mental elements because they do not consider them to be difficult to establish:

It is not very difficult to establish intention. It is fair to say that people won't out of nowhere publish images, so won't be difficult to prove intention. [LP3]

That's probably quite easy to prove, actually. All you need to do is have the witness come and say, and ... I think it will be hard for the defence to challenge that. [LP4]

Legal professionals also tended to have a positive view of requiring such mental elements. As the following comment illustrates, there is a concern that not requiring such mental elements would make the law too harsh, especially in situations of heightened emotions:

Certain casual or emotional explosion of their views online will attract criminal liability, that might be too harsh. [LP2]

Only a few other comments were made about the elements of the offences. One stakeholder remarked that it was redundant and unnecessary to require that the perpetrator acts ‘surreptitiously’ in the offence of voyeurism [SP2]. Another comment was that there could be difficulties establishing the offence of unlawful recording because of the requirement that this be done by operating equipment beneath the clothing, so it may not apply where images are taken from other angles [SP3].

(ii) Education and training

Most stakeholders spoke about education being an important way of preventing intimate image abuse and that there is a need for better public and school education about intimate image abuse:

Education is far behind the legal reform ... the more in-depth education is what we want ... it could more effectively change people’s mind. [SP2]

I think most importantly a lot of education needs to go on at schools educating people about what intimate image abuse is and what the punishments for this are. This provides preventative measures to stop intimate image abuse from happening in the first place, so that we do not have to take any remedial action. [LP5]

Alongside embedding education about appropriate behaviours and the new laws in the school curriculum, one stakeholder remarked on the usefulness of using other routes, such as social media, to provide education because young people do not engage with traditional media:

I observe most of the youngsters now, they only indulge in the internet, you know, indulge in TikTok, IG, WeChat ... So, ... for the adults, they will read the newspaper or read the news, ... but for the youngsters, it’s quite difficult to ... know ... how to let them know what’s happening now. [SP5]

Stakeholders did not directly state that there was a need for better training of police. However, this was implied through comments, such as the following:

We still have to remind the police that this, this all exists, because sometimes ... we just feel like they don’t know what’s going on ... The training ... that is supposed to be provided with the police, that is not there. [SP3]

[The victims] got frustrated. And...apparently there are ... still a lot to do with the police training. [SP2]

While noting the importance of education and training several respondents commented that changing culture and behaviour takes a long time [SP5], [LP6].

(iii) Redress and remedies

An issue that stakeholders tended to think was not adequately addressed in the new laws is the procedure for having intimate images removed from circulation. The new laws do make provision for a magistrate to issue a disposal order requiring a person, ‘whether in Hong Kong or elsewhere, to take reasonable steps to remove, delete or destroy, or to cause the removal, deletion or destruction of, the image within a period to be specified’.⁶¹ However, this can only be done once the intimate image is the subject of criminal proceedings. Stakeholders frequently commented on the difficulty of getting images removed from

⁶¹Crimes Ordinance (Cap 200) (HK), ss 159AAK–159AAO.

online sites and the challenges of identifying and dealing with online providers. Unsurprisingly, this was thought to hinder the effectiveness of the new laws:

The new offences do not necessarily deal with ... the role of platforms to which these intimate images have been posted. [LP5]

The enforcement of the new law has not been too effective. This mainly comes down to the fact that social media allows users to register without using their real information and does not take positive steps to verify users' information. This allows for a lot of fake accounts to be created, which are often the accounts that are used to commit these crimes. [SP1]

I think the takedown service in Hong Kong is very lacking. [SP1]

It was therefore suggested by several stakeholders that an alternative system for removing images should be developed. A Hong Kong service provider, RainLily, did launch a take down service in 2021. A report published by them revealed that between 2021 and 2023 the service had been successful in having 89% of the 1,342 pieces of non-consensual intimate images reported to it removed from online platforms.⁶² Despite this success, some service providers reported that whether images can be successfully removed depends on whether the person or organisation behind the website can be contacted:

For many of the websites, they were actually operated by small sites ... and so for these kind of websites in particular, the pornography sites ... the problem is the most serious because for ... the corporate, like meta Twitter, they have policy and they have the teams ... But then for some of the websites ... they don't have a team and ... that is the ... dire problem. [SP2]

Whether it's effective or not ... it's always related to the platforms, whether they would like to respond. [SP7]

Several stakeholders noted that the Office of the Privacy Commissioner for Personal Data (PCPD) has a role to play in dealing with complaints about infringements of privacy and that this might include some cases of intimate image abuse:

Regarding intimate images being spread online, the PCPD would carry out online patrols and follow up the matter. Depending on the circumstances, the PCPD would request the platforms concerned to remove the intimate images in question after reviewing the cases. Any person who suspects that his or her personal data privacy has been infringed and can provide prima facie evidence may make an enquiry or lodge a complaint with the PCPD. In addition, if a complaint received by the PCPD does not involve 'personal data' under the definition of the PDPO but may constitute other offences ... the PCPD would consider referring the case to the Police for criminal investigation with the consent of the complainant. [SP4]

The Privacy Commissioner will normally, upon receipt of a complaint ... conduct an investigation. After which, you know, they will make findings. [LP2]

Some ... cases also ... [involve] complaints, [they] go to the Privacy Commission and then after receiving the complaint that Privacy Commission would issue a letter or a warning to the online platform and request them to remove the image. [SP2]

⁶²RainLily *Image-Based Sexual Violence Take-Down Assistance (Ta-Da)* (Service Report 2021–23) p 6.

It was commented, however, that there are limitation on how useful the PCPD procedure is in relation to combatting intimate image abuse because of the way that personal data is defined and because its orders are not legally binding:

The PCPD still have ... to issue a notice ... without legal power ... But sometimes if you report to PCPD, it must touch ... the basis of doxxing. But in many cases, ... they are just ... distributing the images, but without doxxing, like exposing other personal data. They won't accept the cases. [SP3]

But there is no other personal data in the photos so PCPO⁶³ might not cover such cases – not sure if pictures included so might not be enough to violate PCPO. [LP3]

It was therefore recommended that the PCPD could play a greater role in addressing intimate image abuse:

PCPD office can play a role, have a delegated team ... [It] should extend coverage of personal data to include these images. [LP3]

We did ... talk about whether the PCPD can take up more [of a] role. [SP3]

The need for government to work closely with online platforms and technology developers to prevent intimate image abuse occurring was also noted by stakeholders, as exemplified in the following comment:

The government should develop close ties with tech platforms, the likes of Facebook, X, YouTube, Telegram etc to develop strategic relationships whereby they can lean on these platforms to help combat intimate image abuse. Another potential measure that is rather creative, is that Hong Kong can take a leaf from the book of the South Korean government, who has mandated cell phone manufacturers to disable muting the camera shutter sound, making it hard to take photos without notice. These all help to combat intimate image abuse in different ways. [LP5]

5. Discussion and implications

A key finding of this research is that the themes and subthemes discussed by Hong Kong stakeholders are strikingly similar to those reported in research in other jurisdictions. This confirms that many jurisdictions face comparable issues in relation to how to effectively address intimate image abuse. The most commonly reported types of intimate image abuse in Hong Kong were non-consensual recording of intimate images on public transport or in public transport precincts, threats to distribute following a relationship breakdown, and blackmail. These findings align with research conducted in 2021 by the Hong Kong Association Concerning Sexual Violence Against Women.⁶⁴ In their survey of persons who had experienced intimate image abuse in the preceding three-year period the most common experiences reported by the 206 respondents were: intimate images taken without consent (n = 151); private acts observed without consent (n = 82); being threatened or blackmailed to distribute images (n = 62); and having intimate images distributed without consent (n = 60). In terms of the place in which the intimate image abuse occurred, most commonly reported were: public transport (n = 93); the street (n = 52); instant message application (n = 52); and home (n = 47).⁶⁵ Similar types of behaviour are reported in overseas jurisdictions.⁶⁶

⁶³Personal Data (Privacy) Ordinance (Cap 486) (HK).

⁶⁴Association Concerning Violence Against Women *Survey Report on Intimate Image Abuse* (January 2021).

⁶⁵Ibid, p 7.

⁶⁶See for example, Office of the e-Safety Commissioner *Summary Report*, above n 21.

Despite a clear need for a criminal law response given the range of intimate image abuse behaviours occurring, stakeholders reported that prior to the new offences being enacted it was not easy to successfully prosecute perpetrators in Hong Kong. These findings echo those in other jurisdictions. For instance, in England and Wales, the Law Commission found that '[a] recurring theme was that it was difficult to understand which criminal offences might be applicable',⁶⁷ particularly because potentially applicable offences were 'never designed to deal with this type of conduct'.⁶⁸ Similarly, in Australia it has been noted that, 'victims have limited options for criminal redress unless the behavior can be prosecuted under broader, existing laws, such as stalking, indecency or surveillance devices offenses'.⁶⁹

It was therefore unsurprising that respondents agreed that there was a need for the enactment of specific intimate image abuse offences in Hong Kong. The sentiment that the new offences are well designed and able to appropriately capture cases of intimate image abuse may be a reflection of the extensive range of sources relied on by the Hong Kong SAR Government to draft the offences.⁷⁰ As a result, an expansive approach was taken to the definition of intimate images and a coherent range of behaviours are covered by the offences. The main aspect of the offences that stakeholders did comment on was the requirement for specific mental elements. The striking difference in opinion between service providers and legal professionals on whether this is likely to be problematic is also reflected in research in other jurisdictions. Service providers tend to echo the view that requiring, for example, proof of a dishonest purpose or an intention to cause distress, was unnecessary and requiring it makes the offence difficult to establish, thus hindering prosecutions.⁷¹ The contrasting view, expressed by legal professionals, that it is not problematic to require proof of such specific mental elements, was also expressed by lawyers in research conducted by Huber in the UK. In that research, four of the six lawyers interviewed commented that 'any reasonable person would know that distress was caused'.⁷² Those lawyer stakeholders also 'stressed the importance of the clause [requiring intention] to prevent overcriminalisation'.⁷³

The views of the legal professionals in Hong Kong and in the UK align with those reflected in government policy documents on the proposed new offences in Hong Kong. The government felt that there was a need to require a specific intent in the offence of unlawful recording or observation of intimate images⁷⁴ and in the offence of publication or threatened publication of intimate images without consent⁷⁵ to 'confine the scope of the offence, so as to avoid casting too wide a net'.⁷⁶ There is, however, some evidence suggesting that service providers' concerns that requiring such specific mental elements will hinder prosecutions is being borne out. Between October 2021 and December 2022, of the 109 reported cases of publication or threatened publication of intimate images without consent only two proceeded to prosecution, leading to two convictions.⁷⁷ The situation was better with regard to the offence of unlawful recording or observation of intimate parts, where of 521 reported cases there were

⁶⁷Law Commission (CP 253), above n 2, para 1.41.

⁶⁸Ibid, para 1.42.

⁶⁹Henry et al, above n 1, 569.

⁷⁰Crofts, above n 36, 429.

⁷¹Law Commission (CP 253), above n 2, paras 3.56–3.57; A Dymock and C Van Der Westhuizen 'A dish served cold: targeting revenge in revenge pornography' (2019) 39 *Legal Studies* 361; M Yar and J Drew 'Image-based abuse, non-consensual pornography, revenge porn: a study of criminalization and crime prevention in Australia and England & Wales' (2019) 13 *International Journal of Cyber Criminology* 578; Flynn and Henry, above n 5, 313.

⁷²Huber, above n 5, 5.

⁷³Ibid, 6. Similar concerns were also reported by the Law Commission in response to its proposal for a base offence not requiring such a specific intention: Law Com 407, above n 6, paras 6.24–6.30.

⁷⁴The offence requires that the perpetrator acts dishonestly for the purpose of sexual gratification.

⁷⁵The offence requires that the perpetrator acts with the intention to cause humiliation, alarm or distress to the individual or with knowledge or recklessness as to the likelihood of causing such harms.

⁷⁶Legislative Council, Bills Committee on Crimes (Amendment) Bill 2021, Response to Public Views, Paper No CB(2) 1222/20-21(01), para 17.

⁷⁷Rainlily, above n 62, p 13.

178 prosecutions and 171 convictions.⁷⁸ Without further research it cannot be said for certain whether the cause of the low prosecution and conviction rate relates to difficulty establishing the specific mental elements or whether this is the result of other factors, discussed below, such as lack of familiarity with the new offences or ongoing victim-blaming attitudes on the part of the police.

Even without further research on the cause of the low rate of prosecutions for publication or threatened publication of intimate images without consent, this research indicates that a preferable approach would be to adopt scaffolded offences, as recently proposed by the Law Commission in England and Wales.⁷⁹ Having offences that require a specific intention with no alternative base offence overlooks the fact that there can be a range of motives and that significant harm may be caused to a victim regardless of the perpetrator's intention.⁸⁰ It also leads to an all or nothing approach: either the specific intention can be established or there can be no conviction. With a scaffolded approach, if a specific intention can be established, indicating a higher degree of culpability (for example an intention to cause harm to the victim), then the perpetrator can be convicted of the more serious offence.⁸¹ If this cannot be established then all is not lost and the perpetrator can still be convicted of the base offence, which does not require proof of a specific mental element. This approach allows for variations in harm and culpability to be reflected in specifically labelled offences, which 'stand as an enduring feature of moral and legal record, as a testimony to the precise respect in which the defendant failed in her or his basic duties as a citizen'.⁸² This also has a better communicative effect in helping the public identify 'the degree of condemnation that should be attributed to the offender'⁸³ in a fairer way than broadly defined offences.

In terms of the communicative effect of the new laws, there was general agreement that they have increased public awareness about intimate image abuse, even though there may not be a full understanding of the content of the laws. While it was acknowledged that there had been some promotion of the new laws, particularly by the public transport operator, some felt that more could be done to educate the public. The implications of this align with the general view found in literature in other jurisdictions that public and school education is the key to preventing intimate image abuse behaviours from occurring, overcoming victim blaming and helping victims feel comfortable reporting intimate image abuse.⁸⁴ As the Law Commission comments:

[o]ne of the strongest, most consistent, messages we received was that the criminal law cannot operate in isolation and that it is vital that any changes in the law are accompanied by a well-resourced, effective education programme for children and those who work with and care for them.⁸⁵

Implied in stakeholder comments was also the need for better education and training of the police. There was some agreement that the new offences have had a positive impact by giving the police a clear message that intimate image abuse should be taken seriously, yet some stakeholders felt that there was still room for improvement. While noting that there can be considerable variance among police, it was commented that some officers still view intimate image abuse as not serious, do not know much about the new laws and how to deal with victims, and prioritise offences that they regard as more serious. These findings are similar to those reported in other jurisdictions. Bond and Tyrrell have found that police responses in the UK are often inadequate because they are not fully aware of the applicable laws and 'lack confidence both

⁷⁸Ibid.

⁷⁹Law Commission (Law Com 407), above n 6, para 16.3.

⁸⁰Rackley et al, above n 9, 293; Henry et al, above n 1, 565.

⁸¹For further discussion of the advantages of this approach see Crofts, above n 21. For criticism of this approach, see McGlynn and Rackley, cited in Law Commission (Law Com 407), above n 6, para 6.110; Flynn and Henry, above n 5, 320.

⁸²J Horder 'Rethinking non-fatal offences' (1994) 14 *Oxford Journal of Legal Studies* 335, 339.

⁸³Chalmers and Leverick, above n 20, 226.

⁸⁴Office of the e-Safety Commissioner, above n 21, p 3.

⁸⁵Law Commission (Law Com 407), above n 6, para 14.3, also para 6.19.

in investigating cases and in effectively responding to victims'.⁸⁶ Similarly, Henry, Flynn and Powell found that insufficient awareness of applicable laws, 'victim-blaming attitudes and lack of understanding of gendered violence' have affected the way that police respond to intimate image abuse in Australia.⁸⁷ The implications of this are that training should be provided about 'which cases meet legal requirements, advising on image removal or signposting to relevant services, and digital data collection'⁸⁸ and 'should ideally be produced collaboratively between researchers, stakeholders and criminal justice staff'.⁸⁹

Regarding the impact of the new offences on victims' experiences, stakeholders commented that victims were often frustrated with the amount of time prosecutions took, with poor communication by the police, and with their lack of control over the prosecution process. These sentiments are similar to those reported in Huber's research in the UK, where 'only one victim was happy with police communication while six felt that the police failed to keep them informed'.⁹⁰ This again highlights the importance of training for police officers not just about the relevant offences but also about how to appropriately deal with victims of intimate image abuse and what support they need, including being kept informed and updated about the prosecution process.⁹¹

A main source of perceived dissatisfaction among victims was found to be the lack of help getting images removed from the online environment. This is unsurprising given that research shows that often a major concern for victims is the prompt removal of intimate images from circulation.⁹² While the new law does make provision for a magistrate to make a disposal order for the removal or deletion of images this can only be done once legal proceedings have commenced, 'by which point it is too late to stop the re-sharing and circulation of the content'.⁹³ Some stakeholders suggested that, to address this shortcoming, the role of the PCPD could be extended to expressly deal with complaints of intimate image abuse, including a takedown service.⁹⁴ The implications of this are that there needs to be an alternative to the sometimes arduous and protracted criminal process, where there is a simple procedure for making complaints, which can be dealt with swiftly and victims provided with assistance to have intimate images promptly removed.⁹⁵ This could be achieved by extending the role of the PCPD or by creating an alternative body tasked with this role, similar to the Office of the e-Safety Commissioner in Australia.⁹⁶ Such a body could also be entrusted, as is the Office of e-Safety, to 'facilitate solutions with stakeholders in social media and the technology industry to combat image-based abuse'.⁹⁷ This confirms that while criminal law can help deter intimate image abuse and respond if it does occur, other mechanisms are necessary to help prevent it occurring.

Conclusion

This study explored the effectiveness of the new offences created to address intimate image abuse in Hong Kong. Interviews with stakeholders highlighted that the inadequacy of existing offences in Hong

⁸⁶E Bond and K Tyrrell 'Understanding revenge pornography: a national survey of police officers and staff in England and Wales' (2021) 36 *Journal of Interpersonal Violence* 2166; Huber, above n 5, 10.

⁸⁷Henry et al, above n 1, 569–574. See also L Zvi and M Shechory-Bitton 'Police officer perceptions of non-consensual dissemination of intimate images' (2020) 11 (2148) *Frontiers in Psychology* 1.

⁸⁸Huber, above n 5, 13.

⁸⁹Ibid, 14.

⁹⁰Ibid, 8; see also McGlynn et al, above n 13, 10.

⁹¹R Holder and E Englezos 'Victim participation in criminal justice: a quantitative systematic and critical literature review' (2023) 30 *International Review of Victimology* 25.

⁹²Henry et al, above n 1, 577.

⁹³RainLily, above n 62, p 13.

⁹⁴This has also been proposed by RainLily, above n 62, p 30.

⁹⁵Henry et al, above n 1, 576.

⁹⁶eSafetyCommissioner 'Image-based abuse' (last updated 6 Feb 2025) <https://www.esafety.gov.au/key-topics/image-based-abuse> (last accessed 10 February 2025).

⁹⁷Office of the e-Safety Commissioner *Summary Report*, above n 21, p 3.

Kong meant that there was a need for offences specifically crafted to address the range of ways that intimate image abuse can be perpetrated and that are future proof so that they are able to respond to ever evolving ways that intimate image abuse is committed. Given that Hong Kong looked at other jurisdictions and reform recommendations to see what seemed to work – or not – when creating the four new offences it is unsurprising that they are generally regarded as well designed. There is a concern that the mental elements contained in some of the offences are hindering their effectiveness. However, more research is needed to confirm whether this alone or other factors are the cause. Significantly, this study confirms that while the creation of targeted offences is necessary, it is not sufficient, on its own, to address intimate image abuse. Specifically labelled and packaged offences can foster and cement community perceptions about the wrongfulness of this behaviour, and help overcome victim-blaming and shaming attitudes. They also send a clear message to police that intimate image abuse is to be taken seriously and prosecuted. However, this study also confirms that stakeholders believe that societal and police attitudes and practices can be slow to change. As such, new offences need to be accompanied by improved public education, school education and police training. Additionally, alternative complaint procedures are necessary to swiftly investigate complaints and provide victims with the remedy they often primarily desire – assistance with the prompt removal of intimate images from the online environment. Enlisting the assistance of online providers to develop policies and industry standards, as well as safety features to make it more difficult for intimate image abuse material to be posted, and easier to remove if it is, is also essential. In sum, the findings of this research highlight the need to also think beyond the framework of criminal law and criminal justice actors for ways to address and prevent intimate image abuse.