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Article

‘Devastating, like it broke me’: Responding to image-based sexual abuse in Aotearoa New Zealand

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journals.sagepub.com/home/crj**Nicola Henry**

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Abstract

The non-consensual taking or sharing of intimate images, also known as ‘image-based sexual abuse’, has become a widespread problem. While there has been growing attention to this phenomenon, little empirical research has investigated victim-survivor experiences. Drawing on interviews with 25 victim-survivors, this article focusses on the different responses to image-based sexual abuse in Aotearoa New Zealand. We found that victim-survivors had diverse and often multiple experiences of image-based sexual abuse, perpetrated for a variety of reasons, which extended beyond the paradigm of malicious ex-partners seeking revenge. Some participants described the harms experienced as ‘devastating’: a form of ‘social rupture’. Few had formally reported to police or pursued other justice options. While participants held different justice ideals, all sought recognition of the harms perpetrated against them. Yet they faced multiple obstacles when navigating justice, redress and support options. The authors conclude that far-reaching change is needed to improve legislative, policy and prevention responses to image-based sexual abuse.

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Keywords

Image-based sexual abuse, intimate images, justice, non-consensual pornography, revenge pornography, social rupture

Introduction

The visual image has, in many ways, become the quintessential feature of the digital era. The sharing of photographs or videos is practised far and wide by billions of Internet users and helps to connect people to their friends, family, whānau and community. Yet intimate images are also used as a weapon or tool of abuse when taken, created or shared (or threatened to be shared) without consent. In this article, we refer to these practices as ‘image-based sexual abuse’ (Henry et al., 2021; McGlynn and Rackley, 2017; Powell and Henry, 2017)¹ and conceptualise these behaviours as part of a continuum of sexual violence, whereby the image-based sexual abuse exists on a spectrum alongside other unwanted sexual violations that occur across a woman’s lifetime (Henry et al., 2021; Kelly, 1988; McGlynn et al., 2017).

In 2015, the New Zealand Parliament introduced the *Harmful Digital Communications Act 2015* (HDCA) to tackle different forms of online abuse under one consolidated law. The legislation makes it a criminal offence to post a harmful digital communication, with a maximum sentence of 2 years’ imprisonment. There are, however, significant limitations, including its failure to criminalise digitally altered images or threats to distribute images, as well as untenable harm thresholds which allow many acts of image-based sexual abuse to fall through the legislative cracks. In response to widespread calls for law reform, in mid-2020 the Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Bill was proposed, which, if adopted, would bring some welcome changes. At the time of writing, the Bill is yet to come before the Committee of Whole House although it had undergone a Justice Committee review, which recommended a series of amendments (which we briefly discuss in the final section of the article).

In this article, we focus on justice, redress and support in the New Zealand context. Drawing on data from a larger Australian-New Zealand-UK project that examined the pervasiveness, nature and impacts of image-based sexual abuse (see Henry et al., 2021), the article outlines the key findings from qualitative interviews conducted with 25 New Zealand adults who had experienced image-based sexual abuse. We first review the research literature on image-based sexual abuse in New Zealand and describe the methodology for the study. In the second section, we provide an overview of the range of experiences of image-based sexual abuse that victim-survivors reported. Third, we outline the reported impacts of image-based sexual abuse, examining participants’ experiences navigating various avenues for justice, redress and support that are available in New Zealand. In the final section of the article, we discuss participants’ reflections on their justice interests. We conclude by arguing for comprehensive civil and criminal legal responses, wider community education and prevention initiatives, as well as sustained resourcing for support organisations.

Researching image-based sexual abuse

Literature review

There is growing evidence that image-based sexual abuse is a pervasive problem in many countries around the world (see, for example, Branch et al., 2017; Eaton et al., 2018; Gámez-Guadix et al., 2015; Henry et al., 2021; Lenhart et al., 2016). However, like other forms of sexual abuse and harassment (Gavey, 2019; Gavey et al., 2021), the prevalence and incidence of image-based sexual abuse are difficult to measure, particularly since many people do not know whether others have taken or shared intimate images of them (Henry et al., 2021). While New Zealand data on the prevalence of image-based sexual abuse are limited, two studies provide an indication of the scope and extent of the problem. The first study was conducted by Netsafe (2019), which involved a representative survey of 1001 adults. They found that 5% of New Zealand adults had either experienced someone *sharing* intimate or sexual images of them without their consent or said that someone had *threatened to share* intimate images of them.

The second study was the one we conducted in 2019 with 2028 New Zealand respondents aged 16–64 years (Henry et al., 2021).² We found that 1 in 3 (35.1%) respondents reported that someone had *taken* a nude or sexual image of them without their consent; one in five (21.7%) said that someone had *shared* a nude or sexual image of them without their consent; and one in five (19.9%) reported that someone had *made threats to share* a nude or sexual image of them. We also found that Māori respondents (48.4%) were significantly more likely than non-Māori (37.8%) to have experienced image-based sexual abuse, and that gay, lesbian, bisexual (LGB) + and younger respondents (under 39 years of age) were significantly more likely to report experiencing image-based sexual abuse than their heterosexual or older counterparts. Of those who had experienced image-based sexual abuse, we found that 82.2% reported negative experiences, including 76.5% reporting reputational concerns and 63.8% reporting safety concerns (Henry et al., 2021).³

These two studies reveal that image-based sexual abuse is a problem faced by a large number of New Zealanders. International evidence suggests image-based sexual abuse is likely to have differential impacts on diverse groups in the community. Consistent with the New Zealand findings, researchers have, for instance, found that younger people (including younger women), Indigenous peoples, LGB + people, and migrants and people of refugee backgrounds, are more likely to have experienced image-based sexual abuse than their counterparts (e.g. Eaton et al., 2018; Henry et al., 2021; Lenhart et al., 2016; Office of the eSafety Commissioner (OeSC), 2017; Powell et al., 2018).⁴

While a growing number of surveys investigating the prevalence of image-based sexual abuse demonstrate its pervasiveness across diverse communities, by way of contrast little qualitative research has been undertaken globally to specifically investigate the experiences of victim-survivors of image-based sexual abuse. It is perhaps not surprising then that little qualitative research has been conducted with New Zealand victim-survivors of image-based sexual abuse (see Henry et al., 2021). In the Canadian and US context, Samantha Bates (2017) interviewed 18 victim-survivors of ‘revenge porn’ who reported serious mental health effects, including post-traumatic stress, suicidality, anxiety,

depression, as well as other negative impacts, such as a loss of control, an erosion of self-esteem, lack of trust and harmful coping mechanisms (e.g. high alcohol use). Similarly, in another study, Richard Abayomi Aborisade (2021) conducted 27 interviews with adult Nigerian women who had experienced image-based sexual abuse. He found that victims experienced self-blame, anxiety and depression (among a range of other mental health effects), and were subjected to victim-blaming, stigmatisation and isolation within their social networks (see also Mandau, 2021).

In our wider study, we conducted semi-structured interviews with 75 victim-survivors in Australia, New Zealand and the United Kingdom, exploring the ‘all-encompassing, ongoing and often devastating harms’, which are often not recognised, validated or acted upon by friends, family, community and criminal justice personnel (Henry et al., 2021; see also McGlynn et al., 2021). We used a feminist phenomenological approach to explore the holistic and consequential harms of image-based sexual abuse, with a focus on five key harms: social rupture, constancy, existential threat, isolation and constrained liberty. We argued that these harms are ‘interconnected, fluid and are experienced differently by victim-survivors depending on their particular context and positionality’ (McGlynn et al., 2021).

In this present article, we focus on the lived experiences of New Zealand victim-survivors and consequences of these harms. Our purpose is to highlight the importance of justice, redress and support, and point to the shortcomings of current legal and community responses to image-based sexual abuse in the New Zealand context.

Methods

The aim of our broader study was to qualitatively investigate the experiences, impacts and help-seeking pathways of victim-survivors of image-based sexual abuse in Australia, New Zealand and the United Kingdom. Ethics approval was granted from a university human ethics committee in 2017 to conduct interviews with victim-survivors, as well as key stakeholders. Interviews were conducted in 2017 and 2018.

Victim-survivor participants for the New Zealand component of the project were recruited using the following methods: paid Facebook advertising (including using targeted advertising to recruit for diversity); informal social media recruitment, such as sharing links to the project website via Twitter and Facebook groups; electronic and hard-copy distribution of recruitment flyers (e.g. at universities and on community noticeboards); and snowball sampling through victim-support organisations and networks. Participants were required to be 18 years or older, live in New Zealand and have had at least one experience of image-based sexual abuse – which we framed in the recruitment materials in the following way: ‘Has anyone ever taken or shared an intimate photograph or video of you without your knowledge or consent? Has anyone ever threatened to take or share an intimate image of you?’ Participants were given a store voucher of \$50 NZD as a token of appreciation for their contribution and to compensate for any travel costs.

The interview schedule centred on the following themes: experiences; harms and impacts; causes or underlying drivers; the availability of support services and resources; police responses; and legal and non-legal forms of justice. The interviews were audio-recorded with participants’ permission and later transcribed by an external transcription

company and then de-identified. The de-identified data were thematically coded by the research team using the NVivo 12 software programme. To protect participants' identities and their confidentiality, we use pseudonyms for participants and have not matched these with demographic details owing to the enhanced risks of identification within New Zealand's small population.

In total, 25 victim-survivor participants were recruited for semi-structured interviews in person or by telephone (1 by telephone; 24 face-to-face). Most of the participants were younger adults aged 18–29 years (72%), with 20% aged 30–39 years, and only two participants aged over 50 years. While 92% of participants identified as women, one participant identified as a man and one as 'no gender'. Just over half the participants identified as heterosexual/straight (56%), whereas 16% identified as bisexual and 12% as 'other' sexuality (three participants identified as either queer, pansexual or undecided). In relation to ethnicity, 64% of participants identified as Pākehā, two participants identified as Māori, 16% identified as another ethnicity or nationality, and two did not specify their ethnicity or selected 'prefer not to say'.

Given the participants we interviewed were mostly young women living in urban areas, and nearly two-thirds were Pākehā, the research did not uncover patterns and consequences of image-based sexual abuse particularly to other specific groups of women in New Zealand, including those who may be at increased risk to such abuse. For example, we did not speak to persons living in rural or remote areas, and nor did we speak to recently arrived migrant or refugee people with limited English proficiency. Given the relatively small number of victim-survivors we interviewed, we were also unable to undertake any in-depth analysis of how the intersections of age, gender, race, ethnicity, socio-economic status, sexuality and disability may have mediated or shaped victim-survivor experiences of image-based sexual abuse. While there were some important axes of difference among our participants, none of the participants – with the exception of one woman who was Muslim and had recently arrived in New Zealand – reflected on how their race, ethnicity or sexuality shaped their experience of image-based sexual abuse. Despite these limitations, our findings offer valuable insights into some of the unique experiences of New Zealand victim-survivors and inform our critique of existing justice, redress and support options.

Victim-survivor experiences of image-based sexual abuse

New Zealand victim-survivors described a range of experiences that capture the breadth of image-based sexual abuse as experienced by other participants in the broader study (see Henry et al., 2021). For instance, participants disclosed how their partners secretly filmed them engaged in an intimate or sexual act without their knowledge. They mentioned photos or videos being taken while they were asleep or drug- or alcohol-affected, or images being taken when they were conscious but unaware that they were being filmed. Others spoke about hidden cameras in bedrooms and bathrooms, or of third parties surreptitiously recording consensual sexual encounters. They described being pressured or coerced into taking or sharing images of themselves, particularly by intimate partners. They also recounted how partners, friends or other known persons had shared intimate images of them on social media, pornography sites and among friends via text

messaging and mobile devices. Finally, they mentioned that others (often ex-partners) had threatened to share their images online or with friends, family and colleagues to shame, punish or humiliate them.

Like the findings of our broader study (Henry et al., 2021), most participants (68%) said that the perpetrator was a partner or former partner, and for at least half of the participants (52%), there was a clear pattern of abusive and controlling behaviour over and above the image-based sexual abuse (see also Douglas et al., 2019). Amy, for instance, reflected that her ex-partner, who sent her the photos as a 'reminder' to her of his power and control, was 'absolutely malicious . . . Just a conniving sort of person that just wants you to know that you're always under their thumb'. Xia too said she felt her partner always expected to be 'in charge' in their relationship and that they did things 'he wanted to do'. She believed that the images gave him a 'tighter hold' over her. Participants also described their partners threatening to share their intimate images should they try to end the relationship.

Several victim-survivors also described friends or acquaintances engaging in abuse against them. Olivia, for instance, said that a friend had snuck in and taken a video of her 'performing a sexual act' on his friend and later posted it on Facebook. This also happened to Faith, who was filmed having sex without her consent by the man's flatmate.

We asked participants to reflect on what they saw as the perpetrator's key motivations, and their answers pointed to the relational context and meaning of the abuse. While there is rarely a single motivation for image based-sexual abuse, with motivations often overlapping, the themes of power and control nonetheless emerged as common, particularly among those victim-survivors who reported that the perpetrator was a current or former partner (see also Eaton et al., 2021; Pina et al., 2017). This too was also consistent with the findings of our broader study (Henry et al., 2021). However, similar again to our broader study, images were not always shared due to motivations of revenge or malice, but instead to make fun of the victim or to bolster the perpetrator's social status among their peer group. Hana, for instance, spoke of her friends sharing a photo of her naked and drunk in the bathtub on Facebook 'because they thought it would be funny'. Katie, when she was at high school, said that a couple of girls took photos of her without her consent in the shower in the gym changing rooms to find out what she really looked like because she was very thin. In some instances, the sharing of images was also tied to sexual exploitation and male bonding. Alice described how her boyfriend was 'pooling' together, with two of his friends, dozens of intimate photographs and videos of her and two other women, including one woman who had been recorded without her knowledge in the shower.

Only three victim-survivor participants described strangers engaging in image-based sexual abuse against them. Cassie described being groomed from an early age by sexual predators online who coerced her into sending sexual images and threatened to share them with her parents if she did not send more further explicit images. Jordan described chatting to a woman online who showed him her breasts and when he reciprocated and had shown himself to her, he received a series of threatening emails from a criminal enterprise informing him that a video had been taken and that if he did not pay them US\$200 they would share the video with his Facebook friends and contacts. Noni told us about her lover's wife, who was not personally known to her, making threats against her.

Noni said the wife had found her intimate photos and had threatened to post them on a 'hooker' website to show everybody that she 'was a bitch and a slut'.

While five participants, including Jordan and Noni, experienced a one-off experience of image-based sexual abuse, most participants (80%) reported having experienced multiple forms of image-based sexual abuse, either by the same person or by different perpetrators at different points in their lives (or in some cases there were multiple perpetrators for a single instance of image-based sexual abuse). For several participants, image-based sexual abuse was also experienced alongside other forms of violence and abuse, such as rape, sexual assault, sexual harassment and family or domestic violence. In all such cases the participants were women. Image-based sexual abuse may thus be considered part of a continuum of sexual violence, which refers to a spectrum of experiences that include different but related forms of sexualised violence against women (Kelly, 1988; see also Henry et al., 2021; McGlynn et al., 2017).

The harms of image-based sexual abuse

Consistent with the findings of our wider study (Henry et al., 2021), the New Zealand participants similarly articulated often devastating impacts of image-based sexual abuse (see also Aborisade, 2021; Bates, 2017; McGlynn et al., 2021; Mandau, 2021). Participants described their experiences in terms of a 'social rupture': a marked and overwhelming rupture or breach that radically disrupted their lives (McGlynn et al., 2021). Faith said it was 'devastating, like it broke me'. Rachel described it as 'life ruining', while Megan called it a 'quiet trauma' saying that she felt like she had been split 'into two separate people'. Sally spoke about being 'terrified', Amy said she felt 'hysterical', and Xia described sitting on the toilet, 'wanting to cry', feeling like 'I wanted to be sick' and 'shaking I was so mad'.

Relatedly, participants mentioned a significant deterioration in their mental health. Olivia said she 'drank and had more prescription meds than any food intake'. Kerry said she tried to take her own life about a year after her images were shared around her school and she had experienced 'constant harassment' and 'slut-shaming'. Jordan described how his self-confidence 'plummeted' and 'never recovered', while Xia said she felt ashamed and embarrassed. Participants also spoke of the mistrust they now felt towards others, particularly men, leading them to avoid, in Esther's words, 'people getting close' and 'finding out too much about me' and then using that information to 'hurt me'. As mentioned by Kristy: 'It certainly taught me that I can't trust people even close to me, or the fact that people can be this cruel just because they don't get what they want. It really changed me'.

The ever-present possibility of intimate images being shared and re-shared was another common concern, leading to hyper-vigilance and an overwhelming sense of an 'existential threat' (McGlynn et al., 2021). Participants spoke about the incessant worry – about who had seen the images and whether they had been shared or kept. As Penny stated, it is 'so creepy' not to know 'if he still has them, I don't know if they were shared without anyone else, if anyone else saw them'. Olivia said the worst part was 'not knowing how long the [image] was up there for [on Facebook] and how many people saw it'. And Faith said she 'kept freaking out that he'd posted them online and I'd walk down the street and somebody would point at me and go . . . "I've seen you"'.

Associated with a sense of constancy was a lack of control and a loss of freedom (these themes also arose from the analysis of data from our broader study (see Henry et al., 2021; McGlynn et al., 2021)). Participants recounted significant impacts on their life choices concerning where they lived, studied, worked or socialised. For instance, Rachel, Olivia and Kerry were forced to move to another town, city or country to rebuild their lives. Others spoke about their fears for their future. Cassie was concerned about getting kicked off a professional sports team. Jordan spoke about his dream of being a performer being shattered and his career being ‘stuffed’. And Kristy discussed her concerns about getting into a law enforcement career: ‘That’s not something I really want to deal with. I’m scared that I can’t go for any (position) because (the images) will resurface’.

Finally, victim-survivors described receiving hostile and negative reactions after disclosing their experiences to friends, family and others, or they feared that if they did disclose, that there would be significant repercussions. Tia, for instance, reflected that not only was her experience deeply violating but it also potentially jeopardised her safety, putting her at increased risk of so-called ‘honour-based’ violence because the image showed her not wearing a hijab or appropriate clothing for a Muslim woman from her country of origin. This meant that she only told one close friend about her experience. Adele said that after her former flatmate had sent sexual photographs of her in the post to her family members that ‘everybody was horrified at me’ and that one of her sisters didn’t speak to her for 6 months.

Other victim-survivors disclosed being blamed for the image-based sexual abuse. Kristy said that after her images were shared around the entire school, the teachers were mad at her, telling her ‘it was a stupid thing to do’. She said ‘I had a few people I knew who were saying that to me, saying that I was meant to be a role model and not do that sort of stuff’. Kerry described how her ex-boyfriend had shared an intimate image of her around the school and how she was called a ‘slut’ by other students and lost many friends. Kerry was made by her school to go through mediation sessions set up by the school counsellor with her ex-boyfriend, even though she did ‘not want to be in the same room as him’. And Harriet mentioned that she experienced a lot of victim-blaming and gossiping online after her ex-partner was prosecuted for the non-consensual sharing of her images on social media. She said comments were made, such as: “‘Oh, she shouldn’t have done that, that’s her own fault’” and “‘Oh, she was cheating on him’”.

Some victim-survivors decided not to tell people because they feared they would not be believed. Megan said ‘no one believes me . . . the majority of the people that I’ve told have been like “you’re a fucking liar” . . . So I don’t even tell anyone anymore because there’s no point’. Annie said she didn’t feel comfortable to tell anyone about her experience because she was worried about judgemental attitudes from people she trusted:

I didn’t feel like I could [tell anyone], especially at that age . . . I knew like, for example, my parents would get angry at me for sharing them in the first place, then they’d see me negatively, and my friends would be like, ‘Oh, you know that was really stupid’ especially with someone that I hadn’t known that well . . . it’s just all these little things I was afraid of. And, I just didn’t want to talk about it, because I knew I wouldn’t have any positive support.

These diverse victim-survivor experiences underscore the importance of community awareness of the prevalence, nature and impacts of image-based sexual abuse, and the

importance of ensuring that victim support services, police, online safety agencies and experts, and educational and workplace institutions are adequately trained to respond to image-based sexual abuse. In addition to awareness, education and training, adequate resourcing is vital to ensure that victim support services have the capacity to respond to these types of harms, in addition to the invaluable support they provide victims of domestic and sexual violence (Rackley et al., 2021).

Responding to image-based sexual abuse: Justice, redress and support

In New Zealand, while there has been growing attention to the problem of image-based sexual abuse, a lack of a holistic response to its often devastating, interconnected harms has often left victim-survivors without adequate avenues for legal and non-legal redress, and without sufficient practical and emotional support. In this section, we reflect on participants' views and experiences related to three key justice, redress or support mechanisms: police reporting; online safety and digital platforms; and criminal offences and civil remedies.

Police reporting

For some participants in our study, reporting the image-based sexual abuse to the police was not an option because of past negative experiences with police when reporting sexual assault. Megan, for instance, had reported a rape to police a few years previously and was told they 'wouldn't do anything unless more complaints came in'. She said that the police 'don't give a fuck unless you're a millionaire'. In other cases, victim-survivors did not recognise what happened to them to be a criminally wrongful act. As Sally stated, she didn't even know there was an option to go to police, let alone pursue other legal justice options. And in Gina's case, going to Netsafe felt like a 'step down from going to the police'. She said 'It just felt a bit scary rocking up at the police station and being like "hey, can I do this?" Like it would be a bit more intimidating than emailing someone [Netsafe], like emailing someone is a bit easier'.

In total, six participants (24%) in our study said they reported their experiences of image-based sexual abuse to New Zealand police or had the police contact them to let them know their images had been discovered on the perpetrator's phone. Three of these participants described positive experiences. Rachel, for instance, described the police response as 'just amazing' and that they made her feel 'very safe' and 'were very reassuring . . . [and] relatable'. Nikki said that while it was 'very difficult' reporting to the police, they had been 'very understanding and apologetic and reassuring and just reminded me I didn't deserve this'. Xia too described positive experiences with the police, who reassured her that they had worked on many cases and she was 'one of many'.

In contrast, three participants said the police response was not helpful. In Esther's case, the police said 'there's nothing we can do'. Adele said that the police said they couldn't do anything about it unless the perpetrator started to threaten her. And in Harriet's case, she said she felt like 'a number' and she wasn't 'treated like a person who

had been a victim'. Indeed, Harriet only found out about her ex-boyfriend's conviction for image-based sexual abuse when it appeared on the front page of the newspaper. Although there has been some attention to the policing of image-based sexual abuse within the existing literature (see, for example, Bond and Tyrrell, 2021; Henry et al., 2018), those studies have been with police or stakeholders, rather than focussed directly on victim-survivor experiences of police responses to image-based sexual abuse. As such, further research is warranted.

Online safety and digital platforms

Under the *New Zealand Harmful Digital Communications Act 2015* (HDCA), Netsafe is the 'approved agency' empowered to receive, investigate and assess complaints of online abuse (including image-based sexual abuse), maintain relationships with online providers, hosts and agencies, and provide education and advice on online safety. Netsafe reportedly receives approximately 3500 reports of online abuse per year, including 550 reports of image-based sexual abuse from predominantly (85–90%) female victims (Bradley, 2021). Netsafe can act on behalf of complainants by contacting the digital platforms with a timestamped URL with reference to the breach of their community standards, or the person posting the image to request that the images are taken down. If Netsafe cannot resolve the complaint through more informal channels (e.g. requests made to platforms or users), the complainant can file a civil order in the New Zealand District Court, which has the power to issue takedown orders and impose criminal penalties or a fine on people who do not comply with such orders (see Pacheco and Melhuish, 2021).

In our interviews, we asked victim-survivors about their knowledge of and/or experience in dealing with Netsafe. All but one of the victim-survivors we spoke to either experienced image-based sexual abuse prior to Netsafe taking on the 'approved agency' role in 2016, or had no knowledge or experience with Netsafe. The one person who did contact Netsafe was Gina. She said that 'They were really, really good actually' and that she was 'really surprised'. She said they got in touch with her very quickly and clearly outlined the next steps, which involved them talking to the perpetrator first. She said: 'I'm just really appreciative of Netsafe . . . they solved it really quickly and they were extremely supportive as well . . . I felt a little bit more comfortable going to them before I went to the police'. There was only one other participant, Nikki, who had heard of Netsafe. Nikki said she looked them up but felt 'overwhelmed'. Others said that even if they had known about Netsafe, they probably wouldn't have contacted them because they didn't understand the gravity of the situation at the time or that it was a wrongdoing of the kind that there would be any formal remedy for.

Digital platforms, such as social media sites, video-streaming services and pornography websites, also play a critical role in prohibiting, moderating and removing image-based sexual abuse content (see Dragiewicz et al., 2018; Henry and Witt, 2021). As mentioned above, Netsafe can advocate on behalf of the complainant to request that content is removed on certain digital platforms. Two participants in our study mentioned that the police made the content removal requests to the platform on their behalf, while five participants described experiences with directly reporting image-based

sexual abuse to the digital platform themselves rather than through Netsafe or the police. Esther, for instance, mentioned how the moderators of one website requested a photo of her to prove it was actually her making the request for the takedown of content. They then asked for the original images that had been posted of her on that site. Eventually, after about 3 months, those images were removed from the site. Esther's images were also posted on Pornhub, Reddit and 4chan but she said that in comparison those platforms 'responded immediately' and took the images down quickly. Similarly, Rachel and Aroha said that Instagram had been responsive in removing the image-based sexual abuse content (in Rachel's case, taking the images down within half an hour), although in Gina's case, she said that Instagram 'didn't do anything about' her images. She said she thought it was because her face wasn't shown in the images or they didn't consider it 'pornographic enough'. Finally, Megan said that she contacted Google requesting that search results linking to her nude images be removed. Megan said that Google actioned her request but she thought it might have taken them a week or two and they only removed the 'nude stuff'.

Criminal and civil justice responses

The law plays an important role in recognising the harms of image-based sexual abuse, deterring potential perpetrators, holding perpetrators accountable and helping victim-survivors achieve a sense of justice. In our study, only two participants said that the perpetrator had been prosecuted for criminal offences. One had been convicted under the HDCA, which resulted in a sentence of 9 months' home detention, while the other was convicted in 2010 for 4 months imprisonment for sharing intimate images of her on Facebook (before the HDCA had come into effect).⁵ Indeed, for many of the participants, their cases may not have been prosecutable under the current provisions of the HDCA. The HDCA criminalises only some forms of image-based sexual abuse, mainly those acts which fit the paradigmatic 'revenge porn' scenario, whereby former partners seek retribution after a relationship breakdown by sharing their ex-partner's intimate images online. This is because only those acts where the accused had an intention to cause harm are punishable under the current law (s22(1)(a)). Yet, as our study has shown, image-based sexual abuse is not only perpetrated by partners or ex-partners, but also by friends, family members, work colleagues, acquaintances and strangers. Participants in our study also mentioned that perpetrators appeared to have a range of motivations, and while certainly some mentioned the perpetrator wanting to shame, humiliate and embarrass them, others mentioned perpetrators being driven by reasons such as the kind of masculine social status associated with peer exchange of a women's intimate images or making fun of another person. In other words, some perpetrators may not have had a primary intent to cause harm to the victim-survivor, although they were certainly reckless about the potential for their actions to cause harm. Such cases would not likely fall within the current scope of the criminal provisions contained within the HDCA.

The HDCA is also limited because it requires proof that the posting of a digital communication would cause harm to an ordinary reasonable person in the position of the victim' (s22(1)(b)) and that the posting of the communication actually 'causes harm to

the victim' (s22(1)(c)). This threshold has been widely criticised as overly narrow and restrictive (see Gavey and Farley, 2020; Harvey, 2017; Henry et al., 2019).

In mid-2020, the Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Bill (a Member's Bill led by Labour MP Louisa Wall) was introduced. At the time of writing this article, the Bill has gone through a second reading and a review by the Justice Committee (whose proposed amendments are due to be considered and voted in by the Committee of the Whole House some time in 2022). The proposed Bill seeks to create a specific criminal offence for the posting of a digital communication of intimate images of another person without their consent with up to 2 years imprisonment. It also will remove the requirement of intent to cause harm specifically in relation to an intimate visual recording so that a person can be found guilty of the crime if they did not have a 'reasonable excuse' for the posting of the intimate visual recording and knew the victim had not consented to the posting, or were reckless 'as to whether the victim has consenting to the posting'. It will also allow the courts to issue take-down and cease and desist orders. However, threats to distribute intimate images and the creation or sharing of digitally altered images (including 'deepfakes'), which we found can constitute a significant harm for victim-survivors (see Henry et al., 2021; McGlynn et al., 2019), were not recommended by the Justice Committee in its amendments of the Bill currently before Parliament and are not in the existing legislation. A Supplementary Order Paper proposed by Louisa Wall will be considered by the Committee of the Whole House in 2022 to decide on whether digitally altered images should be covered by a new clause of the bill.⁶

As well as the criminal sanctions, the HDCA also provides a civil redress option, empowering the New Zealand District Court to issue takedown orders and impose penalties on people who do not comply with such orders. This avenue can be pursued by victims when Netsafe is unable to resolve a complaint. The maximum penalty for non-compliance is 6 months imprisonment, or a fine not exceeding \$5000 for a natural person or \$20,000 for a body corporate. None of the participants we spoke to had used, or were aware of, the civil law options provided for by the HDCA, or indeed any other civil law options (such as discrimination, privacy or breach of confidence).

For participants in our study, the lack of engagement with criminal or civil avenues of justice is perhaps unsurprising given the inadequacies of the legal framework for responding to the diverse experiences of image-based sexual abuse (see also Rackley et al., 2021). A further barrier to seeking redress through the court system is that there is no automatic anonymity or name suppression for the complainant, reducing for many their willingness to take this pathway. As most of interviews were conducted in 2017 (only 2 years after the introduction of the HDCA), we suggest further research is needed into the experiences of complainants within the New Zealand justice system to better capture victim-survivor experiences of the law.

Justice for victim-survivors

In this final section of the article, we reflect on the justice interests of the 25 New Zealand victim-survivors we interviewed. Similar to survivors of sexual violence more generally (Clark, 2015; Daly, 2017; McGlynn and Westmarland, 2019), some victim-survivors of

image-based sexual abuse wanted the perpetrator prosecuted and convicted, whereas others wanted a more restorative approach. Rachel, for instance, said that the ultimate outcome for her was that the perpetrator was charged and that made her 'feel good'. Penny said while she didn't want the perpetrator punished, some kind of rehabilitative option would have been ideal; 'something to make him – help him – understand that that behaviour was wrong'. Hana said that for her having her friends express a genuine apology for posting her naked pictures as a joke on Facebook was an ideal outcome. And Sally said too that 'some sort of acknowledgement' from the perpetrator was what she wanted and, although she was afraid for her safety at the time of the incident, she would now 'consider seeing him to try and find closure around it'.

But other victim-survivors said they did not want either a criminal or restorative justice approach; instead, they just wanted minimal attention drawn to them and the existence of their intimate images. As Adele articulated, she 'just really wanted to forget it'. This was also expressed by Katie, who said 'I just didn't want more attention . . . I just wanted to pretend it never happened'. Kerry said that although she knew what the perpetrator did was wrong, going to the police would be 'a nail in the coffin. Like I'd be that girl . . . who went to the police and took him to court and I didn't want to be like that . . . have that reputation'. In Harriet's case, while she did report the image-based sexual abuse to the police, she only did so to get the images removed from her Facebook page. Her priority was getting the content taken down: 'I just wanted it off and gone, off the Internet, and I wasn't thinking that he'd get charged'.

In addition to not wanting to 'make a fuss' or not wanting to draw public attention to themselves or their images, victim-survivors also wanted to keep a low profile as they were concerned about the perpetrator engaging in further abusive behaviour should they take any action.⁷ For example, Rachel said that originally she thought she was going to have to 'just suck it up' and do whatever the perpetrator wanted her to do so that he didn't 'spread all these images and things about me'.

Despite their different views, almost every victim-survivor we interviewed spoke about the importance of recognition for the wrongs they had experienced (McGlynn and Westmarland, 2019). As articulated by Faith:

[I] want the people that have done this to me to understand that it's not okay . . . I just want them to know that what they did was wrong. I want them to never do it to anybody else again. I'm sick of being told that, 'Well it's your fault, and you do all of this stuff so you should expect it to happen to you'.

Gina too mentioned a similar longing for outside recognition by an authoritative figure or organisation: 'I guess for me, all I was really looking for was an organisation that could scare him a little bit because I just think that he didn't take me seriously and I think he just needed someone to stand over him and be like "What you're doing is wrong and this is why it's wrong"'. She said she was also concerned that not reporting him would be letting it 'slide' and 'normalising it' meaning that he could 'keep doing it to other people'.

Kerry told us that the 'ultimate justice' for when a person shares an intimate image without consent is it would 'instantly backfire' on them because other people receiving

the image would ‘actually realise, like, this isn’t ok; [this person] obviously doesn’t want it being shared’.⁸ Amy mentioned that justice for her would be the image-based sexual abuse not happening in the first place. Other participants reflected on more ‘karmic’ forms of justice. Adele said the perpetrator having a ‘shitty life’ was karma for their bad behaviour, while Nikki said that being ‘happy’ and ‘having a sense of security and a sense of self’ was justice to her.

Finally, participants agreed on the importance of resources, support services and education. They wanted it ‘ingrained from childhood’ that this behaviour is ‘really wrong’ (Penny) and ‘greater education’ and awareness so that people know they ‘can’t do this’ (Alice), particularly at primary and high school levels. They wanted ‘serious consequences’ for image-based sexual abuse and for people to know it was a criminal offence. They wanted more knowledge about image-based sexual abuse and where to go for help and support; as Taylor said, she wanted to know more about ‘the law, the people who can support me and the helpline’. Gina noted having a clear and accessible description in layperson’s term (and a visual guide) for victim-survivors about their reporting, justice and support options was crucial ‘Does this constitute [abuse]? Is this something I can do something about?’. She also mentioned that having some clear statistics on the website of support services was important to let people know they are not alone.

The experiences, harms and justice interests of victim-survivors highlights the importance of crafting holistic, whole-of-community and well-resourced responses to image-based sexual abuse. The victim-survivor justice interests discussed here echo the experiences and perspectives of survivors of image-based sexual abuse in related studies (Henry et al., 2021; McGlynn et al., 2019; Rackley et al., 2021), as well as victim-survivors of sexual violence more broadly (Clark, 2015; Daly, 2017; McGlynn and Westmarland, 2019). Given the diversity and ‘kaleidoscopic’ nature of victim-survivor experiences and harms, it is essential that there are a suite of justice, redress and support options available to them and that those options are straightforward to navigate and come with guidance, support and care throughout the whole process.

Conclusion

Participants in our study described diverse and harmful experiences of image-based sexual abuse. While they had different views on how to respond to this form of abuse, they spoke about the importance of justice, redress and support – through formal justice avenues, such as police, or civil or criminal proceedings, as well as through more informal support avenues such as victim advocacy services or family, whānau, friends, workplaces or schools. While some participants had positive experiences in these areas, overall they were often let down and left without adequate professional or personal support to help them navigate the complex processes involved in finding their intimate images, requesting those images be taken down or deleted, or pursuing remedies or counselling and advice.

While the current proposals to amend New Zealand’s law may better respond to a more diverse range of image-based sexual abuse experiences, as the participants in our study clearly articulated, the criminal justice pathway is often flawed, uncertain or even dangerous. The participants we spoke to did, however, express unequivocal agreement

that the harms and wrongdoings against them (and others like them) must be appropriately recognised. For some this meant a form of interpersonal justice with perpetrators reflecting on what they had done and why their behaviour was wrong; whereas others wanted broader recognition of image-based sexual abuse as a form of gender-based violence, and a move away from the victim-blaming that is often directed to victim-survivors of image-based sexual abuse. Overall, participants were motivated to take part in this study because they wanted to be heard and wanted their experiences to be clearly recognised as wrongs done to them by the perpetrator – and not something they had deserved.

The experiences of victim-survivors of image-based sexual abuse underscore the importance of a whole-of-community approach, which includes primary prevention education, criminal and civil penalty schemes, well-resourced victim support services, police training, as well as greater action and transparency from the digital platforms and mobile applications that host, encourage or support non-consensual imagery with little to no consequences (Henry et al., 2021; McGlynn et al., 2019; Rackley et al., 2021). For many victim-survivors, in New Zealand as well as elsewhere, the most pressing priority is often content removal – ensuring images are removed from online sites and digital devices. Without this, the abuse can be incessant and never-ending. But victim-survivors also want greater awareness of the issues and recognition of the harms perpetrated against them. These experiences and reflections emphasise the importance of more creative and holistic solutions within and beyond the criminal justice system to both better respond to and prevent image-based sexual abuse.

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Notes

1. We define ‘images’ to include both moving and still images, including video, photographs and screenshots. We define ‘taking’ and ‘creating’ to include photographing or recording still or moving images, as well as altering images (digitally or through other means) to make it look as if the person is posing in a nude or sexual way or performing a sexual act. Finally, we define ‘sharing’ as giving others access to images, which includes showing, circulating or distributing images via digital devices or platforms, or through non-digital means (see Henry et al., 2021). In this definition, we include pressure or coercion to take and/or share nude or sexual images of oneself by another person.
2. Respondents were recruited through Qualtrics, an online panel provider. As this was a non-probability sample, it is not representative of the New Zealand population, although quota sampling was used according to New Zealand Census data on age and gender to mirror these demographic features of the population.
3. Both studies found that those under 30 years of age were more likely to experience image-based sexual abuse.
4. No research has yet documented rates of image-based sexual abuse specifically for people with disabilities or for sex workers who may also be at a higher risk of image-based sexual abuse.
5. Since the HDCA came into effect in 2015, there have been 418 people charged under the Act, which includes 270 convictions as of December 2020 (New Zealand Ministry of Justice, 2021a). Not all charges or outcomes relate to image-based sexual abuse offences. Prior to the introduction of the HDCA, persons could be prosecuted under the *Crimes Act 1961* (s124) for distributing or exhibiting ‘indecent matter’.
6. For the Justice Committee’s recommended amendments to the bill, see https://www.parliament.nz/resource/en-NZ/SCR_115762/3173b2ed17a7f64df00f3a16e40d62868feb83e2. The Supplementary Order Paper proposing to add a new clause to cover digitally altered images can be found here: <https://www.legislation.govt.nz/sop/members/2021/0083/3.0/whole.html>
7. Note that these reasons resonate with those found in the New Zealand Crime and Victims Survey (New Zealand Ministry of Justice, 2021b), for some victims of interpersonal violence not reporting to the police.
8. A recent New Zealand study (Gavey et al., 2021) reports on research with young men around the ethics of ‘onsharing’ nude images, in which they discuss how men could react in ways that have this sort of effect.

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