

Harmful Digital Communications Act closes ‘revenge porn’ loophole in the Privacy Act

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The Harmful Digital Communications Act (HDCA) that is now in force makes some changes to the scope of the Privacy Act.

One change is to close the ‘revenge porn’ loophole, where complainants’ ex-partners could distribute intimate photographs or videos without breaching the Privacy Act.

Previously, any information gathered during the course of an individual’s domestic or family affairs was not covered by the Privacy Act (section 56). The HDCA amendment eliminates this exemption in situations where it would be ‘highly offensive to an ordinary reasonable person’ to collect, use or disclose the information in question.

“The domestic affairs exemption has been problematic in this context as smartphones and social media have turned everyone into a publisher,” Privacy Commissioner John Edwards said. “This change to the law gives people the chance to obtain a remedy if things go wrong.”

The HDCA also places some new limits on the way publicly available information can be used or disclosed. Using or disclosing publicly available information is now limited to circumstances where it would not be unfair or unreasonable to do so.

Mr Edwards says the Privacy Act amendments will only apply to a small portion of cases, as the legal thresholds for ‘highly offensive’ and ‘unfair or unreasonable’ are quite high.

For more information about the changes [read the FAQs](#) on the HDCA.

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