

22 January 2018

Ms Julia Knight  
Secretary to the Social Policy Scrutiny Committee  
GPO Box 3721  
DARWIN NT 0801

*Via email: SPSC@nt.gov.au.*

**RE: Criminal Code Amendment (Intimate Images) Bill 2017**

Thank you for the opportunity to comment on this Bill which will amend the Criminal Code to address the non-consensual sharing of intimate images by criminalising such sharing or threats to share. The Explanatory Statement and Statement of Compatibility with Human Rights clearly describe the basis for such a legislative change that is generally in line with the Northern Territory Law Reform Committee's *Report on the Non-Consensual Sharing of Intimate Images*. (Report No 43. November 2016).

There can be no greater example of a blatant invasion of privacy than many of the publicly reported instances of 'revenge porn' (or non-consensual sharing of intimate images). Although there are some civil avenues for complaint, as outlined in the Northern Territory Law Reform Committee Report (above), they do not offer a sufficient response to what appears to be a growing problem.

For this reason I support the criminalisation of the non-consensual sharing of intimate images in the manner proposed in the Bill. I note that there are several jurisdictions that have already enacted legislation to address these concerns both within Australia and elsewhere.

I remain a little concerned about the breadth of the definition of 'intimate image' in the proposed section 208AA of the Bill and I have appreciated the opportunity to discuss my concerns with Ms Fiona Hardy, Senior Policy Officer from the Department of Attorney General and Justice to understand the reason for the broad definitions and the policy basis for the 'consent' model chosen.

Section 208AA states:

**Intimate image** means an image that depicts or has been altered to depict:

- (a) A person engaged in a sexual act; or
- (b) A person in a manner or context that is sexual; or
- (c) the genital or anal region of a person, whether bare or covered by underwear; or
- (d) .a breast, whether bare or covered by underwear, of a female person or of a transgender or intersex person who identifies as female.

Although as Information Commissioner, I fully support legislation that provides proper redress to victims of the non-consensual sharing of their intimate images, these definitions could potentially capture images that would not normally be classified as 'revenge porn' and the like. For example, paragraph (a) of the definition could conceivably extend to two people embracing and kissing in the street. Such an image was clearly not intended to be captured by the Bill, although I concede that it would also be unlikely to be the subject of a criminal complaint.

I query whether definition (a) and perhaps (b) could be more tightly drafted without risking the integrity of the Bill. A tighter definition for (a) might read an. 'act of a sexual nature/sexual act not ordinarily done in public.' Such a definition would to my mind more clearly categorise the type of sexual image that the legislation is targeting.



Brenda Monaghan

Commissioner, Information and Public Interest Disclosures