

The Director, Online Content Section
Department of Communications and the Arts
Via email: onlinesafety@communications.gov.au

To the Director, Online Content Section,

Re: Consultation process on a proposed civil penalty regime for the non-consensual sharing of intimate images

Thank you in advance for considering the feedback of Family Planning Alliance Australia (FPAA) in your consultation process on a proposed civil penalty regime for the non-consensual sharing of intimate images. Family Planning Alliance Australia has chosen to submit this letter in response to the consultation document provided. This letter is divided into four distinct sections:

1. Overview of Family Planning Alliance Australia
2. Challenges with existing legislation
3. Questions raised in consultation paper
4. Case study demonstrating the complexity of non-consensual image-sharing

1. Overview of Family Planning Alliance Australia

Family Planning Alliance Australia is a national body focused on advocacy and policy development to improve the reproductive and sexual health, rights and literacy of all Australians.

The Family Planning Alliance Australia has shaped the reproductive and sexual health landscape through advocacy, policy development, networking and capacity building at the national and international level for over thirty years. We work collaboratively with non-government organisations, governments and the private sector to lead policy changes and advocate for improved reproductive and sexual health rights.

Strategic Objectives

1. Provide expert advice and opinion on reproductive and sexual health issues
2. Lead national policy development in reproductive and sexual health in priority areas
4. Advocate in critical areas of reproductive and sexual health and rights
5. Lead reproductive and sexual health to achieve evidence-based policy and improve health outcomes

Activities

FPAA has worked in four areas to improve reproductive and sexual health outcomes in Australia:

- i) Collaboration
- ii) Aboriginal and Torres Strait Islander health
- iii) *National certificate in Reproductive Sexual Health for Doctors*
- iv) Research

Collaboration

FPAA has developed and consolidated a strategic collaboration amongst state and territory based Family Planning Organisations (FPO) and other members.

Key outcomes have been:

a) the building and enhancing of a coordinated Family Planning National Alliance (FPAA). The alliance has successfully developed a new corporate structure in the transition from SH&FPA to Family Planning Alliance Australia including diverse, relevant membership.

b) augmented the work of the state based FPOs through strengthening communication, identifying emerging issues and trends in sexual and reproductive health, building and consolidating networks and partnerships and combining expertise in the development of project outputs. In addition, the alliance undertook an analysis of emerging national reproductive and sexual health needs that informed a national advocacy approach.

c) Developing three position statements on;

1. Long Acting Reversible Contraception (LARC);
2. Access to abortion in Australia, and
3. Relationships and Sexuality Education (RSE) in schools in Australia

These position statements provide the foundation for an advocacy initiative that will promote and advance a nationally consistent and evidence-based approach to sexual and reproductive health, practice and education.

The FPAA collaboration has produced a range of policy documents to influence political decision making, organizational policy settings and health professional practice. Following the development of the policy documents FPAA has delivered a national dissemination strategy to extend reach and access to national stakeholders.

The FPAA has further contributed to inter-sectoral collaboration and a nationally consistent approach through building the capacity of member and associate member organisations with a focus on health workforce training, integration of health services, equity and preventing poor health through health promotion activities.

Aboriginal and Torres Strait Islander Health

A genuine, effective collaboration has been formed with the State/Territory Aboriginal Community Controlled Health Organisations and Family Planning organisations and the FPAA.

Through this, the organisations addressed the need for organisational level commitment to an Action Plan that was developed collaboratively, and ensured that these Actions will be incorporated into annual operational planning processes.

A revised set of Action Plan priorities was developed at a National Forum, and each State/Territory group has committed to immediate, medium term and long term actions under each of the new priorities (partnerships, Workforce, Community and Health promotion)

The Action Plan contains an achievable list of Actions, to be undertaken in each State and territory, which will strengthen collaboration between the two sectors, and thereby improve sexual and reproductive health for Aboriginal and Torres Strait islander people.

By focussing on the State/Territory level, the project was able to engage with what these organisations can actually do, as opposed to producing a list of "motherhood statements" or vague principles without any specific accountability. It also better reflects the reality of the different levels of existing collaboration in each State/Territory, and empowers the organisations in each jurisdiction to start from where they are now.

National certificate in Reproductive Sexual Health for Doctors

The new mixed mode curriculum was developed by the Medical Practitioner Reference Group of the FPAA and is owned by the FPAA.

The new mixed mode curriculum meets the requirements of Australian College of Rural and Remote Medicine (ACRRM) and Royal Australian College of General Practitioners (RACGP).

The new curriculum has now been mapped against the most suitable formats for delivery. This ranges from completely staging the course in a face-to-face format to staging the course in a blended learning format with the majority of the course staged online. There are aspects of the course where face-to-face delivery mechanisms are required, especially in the areas of communication and in awareness raising of diversity. The exact format of any course is determined by the local jurisdiction and is based on the needs of the potential participants. There is an emphasis that any face-to-face component of a blended format utilises a 'flipped classroom' model where the face-to-face component

supports the individual learning through the online format. Family Planning Organisations are now able to deliver learning content in a variety of modes, to best meet the needs of the local medical workforce.

Research

FPAA analysed current and emerging national reproductive and sexual health needs and provide findings to the Australian government.

The Reproductive and Sexual Health in Australia report was sent to Commonwealth as part of a Commonwealth grant. The finalisation and production of the hardcopy books and online PDF version was made available to the public. The report was launched by Prof O Kane, NSW Chief Scientist on at the National Reproductive Health Research Forum in Sydney. The report is available online at https://www.fpnsw.org.au/sites/default/files/assets/rshinaust_book_webedition_1.pdf

Report findings were presented at the National Reproductive Health Research Forum and stimulated the discussion on current and emerging reproductive health issues

Research forums were held with leaders in the field and the research priorities identified during the forums include:

- Health economics of reproductive health
- Unintended pregnancy
- Reproductive health needs of specific populations
- National Reproductive and Sexual Health workforce
- Sexual health service delivery
- Youth sexual health issues
- Gender-based violence

2. Challenges with existing legislation

While the scope of this consultation does not extend to the effectiveness or operation of existing criminal offences, Family Planning Alliance Australia would like to identify that the application of existing child pornography laws to consensual and private images taken, distributed and stored by youth under 18, but over the ages of consent, is problematic for a number of reasons:

- Young people are able to consent to sexual activity, but not to sharing of sexual images;
- Sharing of sexual images increases with students who are having sexual relationships;
- This law has informed the approach commonly taken with sexting education, for example, students are often taught “just don’t do it”;
- Often the blame is placed on the person who takes the photo when they become a victim of non-consensual sharing of these images; and
- This may reduce the likelihood of the young person reporting the non-consensual sharing of images due to fear of legal consequences and internalised victim blaming – for example “I was asking for this because I did the wrong thing by taking an intimate photo of myself”.

Introduction of civil penalties and the inclusion of information regarding this in education programs and public awareness campaigns could assist in shifting focus to the abusive behaviour and therefore reassure victims of non-consensual sharing of images and increase reporting.

3. Questions raised in consultation paper

The following section outlines Family Planning Alliance Australia’s feedback in response to issues and questions raised in the consultation paper.

- **Complaints handling** – Family Planning Alliance Australia assert that young people should have the option of requesting that police or family are not notified in the event of a complaint.
- **Complaint handling** – At the time a complaint is made, the Commissioner should assess:
 - Age and maturity of the young person;

- What is in the best interests of the young person; and
- The young persons' ability to make an informed choice.
- **Adult vs young person process** – The process to handle a case whereby an intimate image of a young person is shared with another young person without consent should be different to the process of handling a case where only adults are involved. When a case involves young people, factors including intent to harm should be considered.
- **Criminal vs civil penalties** – While the scope of this consultation does not extend to the effectiveness or operation of existing criminal offences, Family Planning Alliance Australia would like to identify that the application of existing child pornography laws to consensual and private images taken, distributed and stored by youth under 18, but over the ages of consent, is problematic:
 - Young people are able to consent to sexual activity, but not to sharing of sexual images;
 - Sharing of sexual images increases with students who are having sexual relationships;
 - This law has informed the approach commonly taken with sexting education, for example, students are often taught “just don’t do it”;
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 - This may reduce the likelihood of the young person reporting the non-consensual sharing of images due to fear of legal consequences and internalised victim blaming – for example “I was asking for this because I did the wrong thing by taking an intimate photo of myself”.

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- **Cooperative arrangement with social media services** – Family Planning Alliance Australia endorses the existing cyberbullying complaints scheme and the cooperative arrangement with social media services. Family Planning Alliance Australia recommends a cooperation arrangement with social media services is established for non-consensual image sharing, in a similar manner to the existing cyberbullying complaints scheme.
- **Different penalties for intent of the image-sharer** – Family Planning Alliance Australia recommends imposing different penalties based on the intent of the image-sharer.
- **Enforcement actions applicable to parties other than the image-sharer** – Family Planning Alliance Australia recommends enforcement actions can be applied to parties other than the image-sharer.
- **Victims be compelled to use established complaints processes prior to lodging a complaint** – Family Planning Alliance Australia recommends victims are obligated to use existing complaints processes prior to lodging a complaint.
- **Legal obligation on content hosts to remove the images** – Family Planning Alliance Australia recommends content hosts have a moral and legal obligation to remove images when required by the Commissioner.
- **Consent to share** – Family Planning Alliance Australia assumes that intimate images sent in a private forum ie one-to-one, are not intended to be shared. Consent to share intimate images should be aligned to a young person providing informed consent for other sexual activities (for example: age; ability to understand the choice; must be sober; without pressure or coercion).
- **Vulnerability** – Family Planning Alliance Australia recommends ‘vulnerability’ does not require special consideration. However, the following issues must be considered with all cases, and these may define vulnerability:

- Age;
- Ability to understand the choice;
- Must be sober; and
- Without pressure or coercion.
- **Proof of consent** – Family Planning Alliance Australia believes the person sharing an image should be required to prove consent such that a reasonable person would accept this proof of consent.
- **Consent given then withdrawn** – If requested, a person must take reasonable steps to delete or retrieve an image. Any further sharing of images after consent has been withdrawn should be addressed in the complaints process.
- **Definition of ‘intimate image’** – Family Planning Alliance Australia endorses the definition of ‘intimate image’ from Canada “where an intimate image means a visual recording of a person made by any means including a photographic, film or video recording:
 - a) in which the person is nude, is exposing his or her genital organs or anal region or her breasts or is engaged in explicit sexual activity;
 - b) in respect of which, at the time of the recording, there were circumstances that gave rise to a reasonable expectations of privacy; and
 - c) in respect of which the person depicted retains a reasonable expectation of privacy at the time the offence is committed.”
- **Applying community standards to ‘intimate image’** – when applying community standard to define an ‘intimate image’ Family Planning Alliance Australia recommends cultural standards and differences are carefully considered.
- **Digital vs physical sharing of ‘intimate image’** – where possible, legislation that addresses sharing of digital intimate image(s) should equally apply to sharing physical copies of intimate image(s).
- **Informed consent from sharer** – Family Planning Alliance Australia assumes that the sender of intimate images can provide informed consent and this should be aligned to a young person providing informed consent for other sexual activities (for example: age; ability to understand the choice; must be sober; without pressure or coercion).
- **Actual harm to the victim** – Family Planning Alliance Australia recommends that the victim does not have to experience actual harm for the Commissioner to take action against the perpetrator. To enact positive social change, it is important that all perpetrators of non-consensual image-sharing are pursued, regardless of the harm caused.
- **Likely harm to victim vs actual harm** – Family Planning Alliance Australia recommends that the Commissioner considers the likely harm to a victim when determining the action to take.

4. Case study demonstrating the complexity of non-consensual image-sharing



Improved capacity after receiving a Family Planning Organisation’s education services

Scenario

A Family Planning organisation was contacted by a school after being identified in the media as one of the schools that had student’s photos shared on a national porn ring site and provided respectful relationships sessions to all 8 students. One of the learning exercises involved identification of healthy attitudes and actions in relationships. The lesson uses a traffic lights system and poses many scenarios that can be categorised as such – green for go, orange for questionable or stop and think moments and red for disrespectful or unsafe behaviours.



Response

After participating in the workshop one student approached the Educator, wanting to let the Educator know that the relationship she was currently in had many of the orange and some red light behaviours. The Educator reassured the student that saying something was the right thing to do and helped her to identify support services and trusted adults to talk to within the school community. The Educator went on to consult with the student's teacher and subsequently the grade coordinator, and informed other members of senior staff as agreed with the student.

Outcome

Immediate action was taken by the school including consultation with parents, authorities and making appointments with the school psychologist.

Emails of support and thanks from the school's senior staff and psychologist were received by Family Planning Alliance Australia Educators not only for the timely and relevant content but also for their diligence in following up matters.

Thank you for considering our submission. My contact details are provided below and I can be contacted directly to discussion the contents of our letter.

Yours sincerely,

Alice Evans

Alice Evans
Chairperson
Family Planning Alliance Australia
Phone