

29 June 2017

The Director, Online Content Section
Department of Communications and the Arts
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Canberra ACT 2601
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Dear Director

Response to issues raised in the

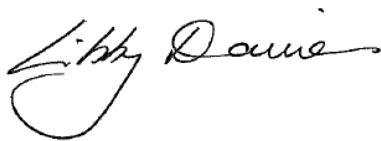
Discussion Paper: Civil penalties regime for non-consensual sharing of intimate images. May 2017,

Please find enclosed White Ribbon Australia's response to select issues in the aforementioned discussion paper.

Thank you for the opportunity to respond to the discussion paper.

Please contact us should you wish us to elaborate on the information contained in this submission.

Yours sincerely



Libby Davies

CEO

Response to issues raised in the Discussion Paper: Civil penalties regime for non-consensual sharing of intimate images. May 2017

1. Introduction

White Ribbon Australia (White Ribbon) appreciates the opportunity to comment on the issues raised in the discussion paper on a proposed civil penalties regime for non-consensual sharing of intimate images.

We commend moves by the Australian Government, such as the proposed civil penalties regime, to address this complex and harmful form of abuse.

We acknowledge the challenges these efforts face relative to constant technological developments, the global nature of online content hosting, limited public awareness of this issue and the developing evidence base.

Herein, we address issues 22, 26, 28, 33 and 34 as they relate to community attitudes and the role of the proposed civil penalties regime as a mechanism by which to prevent image-based abuse from occurring.

2. Issue 22: Should cases be treated differently where the victim has given consent for an image to be shared in one context, but the image is then shared in a different context to that for which consent had been given?

In regards to this issue for consideration, we draw the Department's attention to the most recent research by Henry, Powell and Flynn (2017) on the attitudes of Australians to people who have experienced image-based abuse. This research found that while Australians support the criminalisation of image-based abuse, many also hold victim-blaming attitudes. Of particular relevance to this issue is the finding that 62% of Australians agree 'If a person sends a nude or sexual image to someone else, then they are at least partly responsible if the image ends up online' (Henry, Powell & Flynn 2017, p. 7-8). Men are more likely than woman to hold this attitude (Henry, Powell & Flynn 2017, p. 8). This is identified by the authors as a victim-blaming attitude.

Attitudes that shift the blame for abuse, wholly or in part, from the perpetrator to the victim can undermine attempts to hold perpetrators accountable (Webster et al. 2014, p. 127). This can also impact on the recovery of victims, as less empathy and support is offered to them (Webster et al. 2014, p. 36). Research conducted for the National Community Attitudes Survey, which identified concerning levels of victim-blaming attitudes among Australians relative to domestic violence, rape and sexual assault, also found that people holding these attitudes may be less likely to intervene when they witness or become aware of violence (Webster et al. 2014, p. 36).

We advise against a civil penalty regime that potentially reinforces the perspective identified by Henry, Powell and Flynn (2017), and advocate for community education on the nature and causes of image-based abuse. In addition to civil and criminal penalties, community education is key to holding perpetrators accountable, supporting victims and preventing image-based abuse from occurring in the first place.

3. Issue 26: What should the definition of ‘intimate images’ be for the purpose of the prohibition?

We encourage the Department to adopt a definition of ‘intimate images’ that reflects the diversity of experiences that victims of image-based abuse have had, with reference to research and in consultation with victims.

In addition to the civil penalties regime, **we recommend community education on the definition of image-based abuse to reinforce the move away from popular terminology such as ‘revenge porn’.** This term simplifies a complex issue, and potentially reinforces victim-blaming attitudes by implying that perpetrators are people who have been ‘wronged’ by victims. We commend the language used in the discussion paper and in the proposed definition of intimate images.

4. Issue 28: How might community standards be applied in the consideration of whether an image is intimate?

Issue 33: Should ‘intent to cause harm’ or ‘seriousness’ be included as elements of the prohibition?

Issue 34: Should ‘intent to cause harm’ or ‘seriousness’ be factors to be considered by the Commissioner in determining the action to be taken against a perpetrator?

Here we address these issues in relation to community understanding of, and attitudes towards, image-based abuse. In this respect, we consider the function of the civil penalty regime as a mechanism that prevents this form of abuse by shaping community attitudes towards image-based abuse and deterring potential perpetrators.

Compared to other forms of abuse, there is limited research available on image-based abuse. Australian researchers have been identified as leading the way internationally (DeKeseredy & Schwartz 2016, p. 1), particularly the research conducted by Powell and Henry (2015) and Henry, Powell and Flynn (2017) into people’s experiences of, and attitudes towards, image-based abuse.

The 2017 research shows that many Australians hold victim-blaming attitudes. These attitudes suggest a limited understanding of the nature of image-based abuse and the harm it can cause to victims. On this basis, we are concerned about a civil penalty regime that applies community standards in the consideration of whether an image is intimate. Similarly, it is difficult to gauge how serious people think image-based abuse is and their awareness of the significant levels of harm it can cause victims. This may present difficulties to the Commissioner when determining action to be taken against a perpetrator.

Additional research into community awareness of image-based abuse is required to draw conclusions about this and to inform the Department’s response to issues 28, 33 and 34.

5. References

DeKeseredy, W & Schwartz, M (2016). 'Thinking sociologically about image-based sexual abuse: The contribution of male peer support theory'. *Sexualization, Media and Society*. October – December 2016: 1-8.

Henry, N, Powell, A & Flynn, A (2017). *Not just 'revenge pornography': Australian's experiences of image-based abuse*. Melbourne, Australia: RMIT University. Retrieved from: https://www.rmit.edu.au/content/dam/rmit/documents/college-of-design-and-social-context/schools/global-urban-and-social-studies/revenge_porn_report_2017.pdf

Powell, A, & Henry, N (2015). *Digital harassment and abuse of adult Australians: A summary report*. Retrieved from: https://research.techandme.com.au/wp-content/uploads/REPORT_AustraliansExperiencesofDigitalHarassmentandAbuse.pdf.

Webster K, Pennay P, Bricknall R, Diemer K, Flood M, Powell A, Politoff V, Ward A (2014). *Australians' attitudes to violence against women: Full technical report, Findings from the 2013 National Community Attitudes towards Violence Against Women Survey (NCAS)*, Victorian Health Promotion Foundation, Melbourne, Australia.