



October 2015

YWCA Adelaide Submission to the Australian Labor Party's Criminal Code Amendment (Private Sexual Material) Bill 2015 Exposure Draft

YWCA Adelaide welcomes this important opportunity to provide comments on the Exposure Draft of the *Criminal Code Amendment (Private Sexual Material) Bill 2015*.

YWCA Adelaide wishes to express its support for the Australian Labor Party's proposed *Criminal Code Amendment (Private Sexual Material) Bill 2015*, and will provide general comments on the issue of 'revenge porn' in response to several of the issues noted the discussion paper.

This submission has been informed by existing research, as well as consultation with young women through YWCA Adelaide's programs and services. In particular we will focus on the impact of 'revenge porn' on young women, as evidence suggests this is the group increasingly vulnerable to such offences.¹ It is our hope that this submission will inform and reaffirm the Amendment Bill, in order to provide protection and support for victims, and to target and ultimately deter perpetrators of such offences.

YWCA Adelaide

YWCA Adelaide is a not for profit young women's leadership organisation which has been providing a voice for young women and girls in South Australia for 135 years. The organisation is well respected for its work in advocating for greater gender equality and efforts to support women and girls during every step of their leadership journey. YWCA of Adelaide engages an early intervention and primary prevention approach to its policy and program priorities of advancing women's leadership, preventing and eliminating violence against women, and promoting positive self-image.

YWCA Adelaide and YWCA Australia are part of the World YWCA movement, the world's largest women-led membership movement with a global outreach of 25 million women and girls. This global network of women leads social and economic change in over 120 countries worldwide. Across Australia, the YWCA works with approximately 250,000 individuals and families each year.

¹ Salter, M. & Crofts, T. *Responding to revenge porn: Challenging online legal impunity*. In Comella, L. & Tarrant, S. (Eds.) *New views on pornography: Sexuality, politics and the law*. Praeger Publisher, 2015



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General Comments

We are living in an environment where technology-facilitated violence is ever increasing, including online gendered abuse of women, and perpetrators are using various forms of technology to facilitate intimate partner violence².

'Revenge porn' does not only occur in the context of relationships. It is also part of sexual violence and harassment in the online space, and is linked to broader acts of sexual violence in our communities.

YWCA Adelaide supports legislation that effectively responds to these varied forms of non-consensual distribution of private sexual material, and that can be applicable to both online and 'offline' mediums. As noted in the discussion paper provided, legislation targeting 'revenge porn' is being introduced in several countries including the UK, the US, Canada, Israel, Brazil. Therefore the introduction of this Bill is timely, and necessary.

YWCA Adelaide engages with young women through a variety of programs and forums. These young women are increasingly sharing their concerns on issues related to 'revenge porn', including the sharing of private sexual material without their consent, the threat of such acts, their sense of powerlessness in these situations, and their uncertainty around what to do if or when it occurs.

These are concerns shared by women of various ages, starting as young as primary school age. While there are existing laws around such offences in Australia for persons under 18 years, these offences continue to occur as adults, and yet we currently lack comprehensive national legislation that specifically recognises and responds to technology based sexual offences for adults, and the ongoing harm caused by the sharing of private sexual material without consent.

In 2014 YWCA Australia conducted a nation-wide survey of young women, called SHE Speaks. 30% of survey respondents said that they felt unable to seek help when experiencing violence in their relationships. Also worryingly, 30% of respondents felt that they were unable to identify problematic behaviours in relationships.

Given these results, and that young women tell us that they feel unable to find adequate and effective solutions to dealing with issues relating to 'revenge porn' and online sexual violence, YWCA Adelaide hopes that this process leads to legislation that meets these community needs.

Below are general comments in regards to particular issues in the discussion paper.

² Henry, N., *Beyond the 'sext': Technology-facilitated sexual violence and harassment against adult women*, Australian & New Zealand Journal of Criminology, March 2015, 48: 104-118

Issue Questions:

Issue 1 – Threats to private sexual material:

YWCA Adelaide supports legislation that also deals with the threat of sharing private sexual material, as this can also have serious impacts on the victim and, as with other threats of violence in relationships, forms part of a power imbalance where abuse and exploitation can occur.

Issue 2 – Meaning of 'private sexual material':

Legislation should ensure that the content itself is not scrutinised for its level of sexual explicitness, but rather focus on the harm or potential harm it can cause the subject of the non-consensual sharing of the content.

On the issue of gender inclusivity, when forming legislation, gender neutral language should be used, such as 'they', 'them', 'individual' or 'person', and terms such as 'he'/'she' should be avoided.

Issue 3 – Intention of Perpetrators:

Given the varied reasons for acts of 'revenge porn', and the wide-ranging consequences on the victim, the safety and dignity of the victim should be the driving force behind this legislation. Therefore the harm or potential harm inflicted on victims should be the main consideration in responding to the offence, rather than the intention of the perpetrator.

Issue 5 – Protections for the Media:

On ensuring a balance of protection for the media and the victim, there are existing examples of legislation that incorporates reasonable clauses for media and journalists, such as the UK legislation on 'revenge porn'.³

Issue 6 – Consent:

Michael Salter, in his research of instances of 'revenge porn' in several countries, found that 'where women are involved in consensually producing sexual or erotic images that are then non-consensually shared, it appears that the authorities are considerably less concerned.'⁴

It is the view of YWCA Adelaide that consenting adults have the right to share private material with another individual, and should not be made responsible, or given less credibility, for the actions of perpetrators who then use that image to harm or threaten to harm the subject of that material.

Caution should also be taken not to place the onus on the victim to prove they did not consent to the material being shared, but rather should be on the perpetrator, as the former would be an unfair burden of proof, and potentially further victimise the subject of the material.

³ *Criminal Justice and Courts Act 2015*, Part 1, S. 33.4 (UK)

<http://www.legislation.gov.uk/ukpga/2015/2/section/33/enacted#section-33-1-a>

⁴ Salter, M. & Crofts, T., *op cit*, 2015



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Conclusion:

Thank you for the opportunity to provide comments on this Exposure Draft of the *Criminal Code Amendment (Private Sexual Material) Bill 2015*.

YWCA Adelaide acknowledges that addressing the issue of 'revenge porn' is part of a broader responsibility of all areas of our communities, however we understand the importance of government providing leadership by creating a legislative framework that will target the perpetrators and protect the victims, and serve to deter those who might consider sharing private sexual material without consent, through any means.

YWCA Adelaide commends the work of the Labor Party, in particular MPs Tim Watts and Terri Butler, for their leadership in putting forward this Bill and addressing this important issue.

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