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YWCA Adelaide Submission to the Inquiry into the Phenomenon Colloquially Referred to as 'Revenge Porn'

YWCA Adelaide welcomes this important opportunity to provide comments on the *Inquiry into the phenomenon colloquially referred to as 'revenge porn', which involves sharing private sexual images and recordings of a person without their consent, with the intention to cause that person harm.*

YWCA Adelaide wishes to express its support for legislation that effectively addresses acts of 'revenge porn'¹ and will provide general comments on the issue in response to the terms of reference provided by the Legal and Constitutional Affairs References Committee.

This submission has been informed by existing research, as well as consultation with young women through YWCA Adelaide's programs and services, and through national consultation with young women in the YWCA SHE Speaks Survey.

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.² It is our hope that this submission will inform and reaffirm legislation that will provide protection and support for victims, and 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 build strong and equitable communities through the development of women's leadership. YWCA 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 When using the term 'revenge porn', we are including any act of distributing private sexual material without consent, regardless of whether it was used with the intention of taking revenge on the victim.

² 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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Terms of Reference

(a) The phenomenon colloquially referred to as 'revenge porn', which involves sharing private sexual images and recordings of a person without their consent, with the intention to cause that person harm:

We are living in an environment where technology-facilitated violence is ever increasing, including the online gendered abuse of women, and perpetrators using various forms of technology to facilitate intimate partner violence³.

'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 gendered violence in our communities.

Evidence suggests that women and girls are disproportionately affected by technology-facilitated gendered and sexual violence, in addition to evidence demonstrating that women and girls are the majority of victims of sexual harassment and sexual violence in offline contexts as well.⁴

Michael Salter frames 'revenge porn' as being linked with "misogynist cultures that flourish in some online networks, in which anonymous groups of men can mobilise to stalk, harass and threaten revenge porn victims over long periods of time".⁵ This online culture, and the legal impunity enjoyed by perpetrators, leaves women with little power and recourse to protect themselves or receive justice.

While we recognise that there are also male victims of 'revenge porn' and online sexual violence, evidence suggests that women and girls are the majority of victims of acts of 'revenge porn'. Women and girls are noted as the primary targets of non-consensual pornography⁶, and young women are more likely than young men to send explicit images of themselves, often due to pressure from peers or male partners.⁷

YWCA Adelaide supports legislation that effectively responds to these varied forms of non-consensual distribution of private sexual material, that can be applicable to both online and 'offline' mediums. Legislation targeting 'revenge porn' has already been introduced in several countries including the UK, the US, Canada, Israel, Brazil. Therefore the introduction of federal legislation in Australia is timely, and necessary.

(b) The impact this has on the targets of revenge porn, and in the Australian community more broadly:

YWCA Adelaide engages annually with thousands of young women through a variety of programs, projects, events, research and forums. These young women are increasingly sharing their concerns on issues related to 'revenge porn', including the sharing of private sexual material

³ Henry, N. & Powell, A., *Beyond the 'sex': Technology-facilitated sexual violence and harassment against adult women*, Australian & New Zealand Journal of Criminology, March 2015, 48: 104-118

⁴ Henry, N. & Powell, A., *ibid*

⁵ Salter, M. 'Responding to Revenge Porn; Gender, Justice and Online Legal Impunity', Global Criminology, published Nov 2013 <http://www.globalcriminology.com/main/criminology-articles/cybercrime/56-responding-to-revenge-porn-gender-justice-and-online-legal-impunity-by-michael-salter?showall=&limitstart=>

⁶ Henry, N. & Powell, A., *op cit*

⁷ Ringrose, J., Gill, R., Livingstone, S. & Harvey, L. 'A qualitative study of children, young people and 'sexting': a report prepared for the NSPCC. National Society for the Prevention of Cruelty to Children, London, UK 2012



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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.

In 2014 YWCA conducted a nation-wide survey of young women and girls aged between 15-30 years, called SHE Speaks.⁸ 34% of survey respondents said they had received uninvited and/or unwanted indecent or sexually explicit text messages. Furthermore, 30% 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.

These are concerns shared by women of various ages, starting as young as primary school age. While there are existing laws in Australia around the sharing of private sexual material, irrespective of consent, for persons under 18 years, these offences continue to occur as adults where there is no consent. 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 such offences.⁹

It is clear that the impacts on targets of 'revenge porn' are significant and can be damaging long-term, particularly within the context of an online environment. Victims of 'revenge porn' have publically spoken about the impact this has had on them. Many have had to change their identities, change employment or study, and have experienced significant safety and mental health issues.

One victim from the US, who is now an advocate to end revenge porn, wrote on her website:

*"Due to this act, I have had to legally change my name, stop publishing in my field (I am a PhD student), stop networking (giving presentations, going to conferences), change my email address four times and my phone number three times, change jobs, and explain to human resources at my school that I am not a sexual predator on campus."*¹⁰

All too often, victims of 'revenge porn' who attempt to report incidents or request images to be taken down are further victimized by either the lack of legal recourse, or by further harassment carried out by those who distributed the images, often in a public manner.

While this is a global issue, it is one that requires a national response, as there have been many victims of 'revenge porn' in Australia, including the approximately 400 photos of Adelaide young women that were released on a US revenge porn website in June 2015. One woman who was a victim of this act said "there's nothing I can do about it... it has made me feel really unsafe".¹¹

Given these impacts, 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 inquiry leads to legislation that meets these community needs.

⁸ She Speaks Report 2014, <http://www.ywca.org.au/sites/ywca.org.au/files/docs/She%20Speaks%20Survey%202014%20Final.pdf>

⁹ Henry, N., 2015, *op cit*

¹⁰ <http://www.endrevengeporn.org/my-letter-to-legislators.html>

¹¹ See <http://www.news.com.au/technology/online/intimate-photos-of-around-400-adelaide-women-have-been-posted-on-a-us-site-in-revenge-porn/news-story/737a9658a180f5ce3e4ba3999719a6c2>



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(c) Potential policy responses to this emerging problem, including civil and criminal remedies;

Under the *Broadcasting Services Act 1992*, internet providers in Australia have some responsibilities to take down illegal or offensive content, under the direction of the Australian Communications and Media Authority, and have a responsibility to follow procedures set out in an industry code of practice for dealing with overseas-hosted content that would be prohibited if it was classified in Australia.¹²

While this is a much needed safeguard, the complexities and globalisation of the internet make it either difficult or not possible for material to be taken down in every instance. Furthermore, it does not undo the damage already inflicted upon victims of 'revenge porn'.

Civil action may be a viable option, such as suing for defamation, but this should not be the only option, and can be impeded by the high financial cost on the part of the victim. Criminal charges act to not only deter perpetrators, but also reinforce the serious and unacceptable nature of acts of sharing private sexual images without consent. It is crucial that Australia puts in place legislative measures that aim to stem the pervasiveness of 'revenge porn', and provides support and protection for victims.

The media also has a role to play in developing policies that prevent 'revenge porn' and protect a victim's right to privacy. Initiatives by online companies such as Twitter, Facebook and Instagram, who have banned the use of 'revenge porn' on their sites, are welcomed.

Encouragingly, the search engine Google announced a new policy in June 2015 where they would accept complaints (through submissions) from victims of revenge porn, and remove those images from its search results.¹³

These policy responses are needed to tackle this whole of society issue, however they are limited in their impact and scope, and need to be reinforced by robust legislation that not only deters perpetrators, but allows victims a path for recourse.

(d) The response to revenge porn taken by Parliaments in other Australian jurisdictions and comparable overseas jurisdictions

Legislation that addresses 'revenge porn' should aim to remove legal impunity for perpetrators, and maintain as its key focus, the harm or potential harm on the victim.

Given the already complex and globalised nature of the internet, it is crucial that federal legislation be put in place to provide a national approach, rather than state-by-state approach. Otherwise, there will be increased ambiguity, and a lack of consistency in terms of jurisdiction and responsibility.

Additionally, while Commonwealth law exists which criminalises the use of a carriage service to menace, harass or cause offence; this law is limited in its scope, and has not been widely used to prosecute the non-consensual sharing of private images.

¹² See <http://acma.gov.au/Industry/Internet/Licensing--I-want-to-be-an-ISP/Carriage-service-provider-rules/carriage-service-provider-rules-isp-licensing-i-acma>

¹³ See <http://www.adelaidenow.com.au/technology/google-takes-action-against-revenge-porn-accepting-complaints-from-victims-and-removing-images-from-searches/news-story/af405e3ccc19986888b48656711d190b>



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As legislation on 'revenge porn' is a relatively new area, it is useful to learn from legislation currently enacted in other countries. According to the End Revenge Porn initiative in the US, the state of Illinois has some of the best legislation in regards to the issue of 'revenge porn'. This is due to the following inclusions:¹⁴

- The content of the material distributed without consent is not defined by the presence of nudity or 'sexual parts', and acknowledges that victims can be harmed by non-consensually distributed sexual images that do not contain nudity (e.g. engaging in any sexual act).
- There is strong punishment for the crime of distributing non-consensual private sexual material, including 1-3 years in prison, and substantial fines. Furthermore, the law requires forfeiture of any profits made from the distribution of the non-consensual material.
- The law also includes images that victims may have taken of themselves and not just those that are taken by another person.
- The law can also be made to apply to any person who distributes the non-consensual image, and not just the original distributor, in order to prevent an image 'going viral'.
- The law also includes the act of 'doxxing', or sharing personal information in connection with the non-consensual image

Care should also be taken to protect the privacy and anonymity of victims who go through the court system. An example of a failure to do so can be seen in the UK, where after a perpetrator had been charged and sentenced under their new 'revenge porn' laws, the victim of the crime was named and her photo was published in national and other media, when the story was reported on. This resulted in the victim being further victimized and traumatized, and sparked a widespread community and social media campaign to change the law to prevent media from publically naming victims, thus protecting their anonymity.¹⁵

(e) Any other related matters

The following critical issues should also be considered when forming legislation that responds to 'revenge porn':

Threats to private sexual material:

YWCA Adelaide supports legislation that also deals with the threat of sharing private sexual material, and not just the act, 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.

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.

¹⁴ See <http://www.endrevengeporn.org/seven-reasons-illinois-leading-fight-revenge-porn/>

¹⁵ See http://www.yorkpress.co.uk/news/14157706.Thousands_back_NoMoreNaming_campaign/



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Consideration should also be taken of potential cultural differences as to what is considered 'sexual' or 'intimate' material, and thus definitions of 'private sexual material' should be contextualised within legislation.

Language:

As there are many motivations for a perpetrator to distribute another person's private sexual material, legislation that addresses 'revenge porn' should also be inclusive of any act of distributing private sexual material without consent, regardless of whether or not it was used with the intention of taking revenge on the victim.

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.

Intention of Perpetrators:

Perpetrators can be driven by several other motivations other than intent to cause harm or distress, such as monetary gain, sexual gratification, or entertainment. In considering this, 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.

For example in the US state of California, wording of their 'revenge porn' legislation has been amended to now not require intent from the perpetrator. Instead they are criminally liable where: *"the person distributing the image knows or **should know** that distribution of the image will cause serious emotional distress"* (emphasis added).

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.'¹⁶

Moreover, at times the media and wider community have aimed criticism at women for producing or sending the images that have then been distributed without their consent.¹⁷ This victim blaming is dangerous in that it can further victimise the target, and it fails to address the behaviour of the perpetrator who committed the act.

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.

¹⁶ Salter, M. & Crofts, T., *op cit*, 2015

¹⁷ See <http://www.smh.com.au/entertainment/tv-and-radio/channel-sevens-sunrise-accused-of-victim-shaming-in-nude-photo-facebook-post-20150618-ghrd2u.html>



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Conclusion:

YWCA Adelaide would like to thank the Legal and Constitutional Affairs References Committee for the opportunity to provide a submission to the *Inquiry into the phenomenon colloquially referred to as 'revenge porn'*.

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

YWCA Adelaide acknowledges the work of the Australian Labor Party, in particular MPs Tim Watts and Terri Butler, in putting forward the *Criminal Code Amendment (Private Sexual Material) Bill 2015* and corresponding Discussion Paper, and we look forward to the Federal Parliament enacting legislation to address this important issue.