



# Top End Women's Legal Service Inc.

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18 December 2016

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Sir or Madam,

**Re: 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**

Thank you for inviting comments to the inquiry into the phenomenon generally referred to as 'revenge porn' ('the Inquiry'). The Top End Women's Legal Service Inc. ('TEWLS') welcomes the opportunity to make submissions to the Inquiry, noting that we have recently made submissions to the *Criminal Code Amendment (Private Sexual Material) Bill 2015 Exposure Draft* ('Exposure Draft') proposal to amend the *Criminal Code Act 1995 (Cth)* to criminalise non-consensual pornography under federal law.

TEWLS notes that this submission to the Inquiry will reference and in part build upon our October 2015 submission to the Exposure Draft.

## About TEWLS

Top End Women's Legal Service ('TEWLS') is a community legal centre focused on the advancement of women's rights. We are funded by the Commonwealth Attorney General's Department and the Department of Prime Minister and Cabinet to provide legal advice, casework and community legal education to women living in the Top End of the Northern Territory ('NT'). TEWLS provides assistance in a number of areas of law including family law, domestic and family violence, housing and tenancy, credit and debt, employment law, sexual assault, discrimination and compensation for victims of crime. We provide outreach services for culturally and linguistically diverse women, Aboriginal women in the town communities surrounding Darwin and incarcerated women in the Darwin Correctional Precinct.

## Our Submission

### **A Defining 'revenge porn'**

Consistent with academic and media rhetoric, the Inquiry refers to the phenomena of 'revenge porn' as the dissemination of a person's private sexual material without their consent, with the intention to cause that person harm. In our experience, non-consensual distribution of private sexual material typically occurs in the context of a relationship breakdown, where an individual may have been initially willing for the material to be produced and the relationship has consequently deteriorated. However, we note that revenge porn material is not always initially obtained with the consent of the subject. In these cases, private sexual material may be acquired through 'hacking' into the subject's personal technological hardware, e.g. phone or cloud storage, which is then made publicly available.<sup>1</sup>

TEWLS also acknowledges that the concept of revenge porn may involve circumstances of non-consensual production and distribution of sexual material outside the context of a relationship, such as third parties secretly recording otherwise consensual activity or the recording of sexual assault.<sup>2</sup> We note that the distribution of such material is especially damaging for victims located in small and remote communities given the lack of anonymity and close interpersonal relations within the community. This is especially concerning given the prevalence of online mobile platforms, which allow such material to be easily and quickly disseminated to the entire community and beyond.

Despite the common usage of the term revenge porn, TEWLS is uncomfortable with this expression as conceptions of revenge generally associate the vengeful act as being some form of retribution and is therefore somewhat justified.<sup>3</sup> We submit that this is by no means the case and that revenge porn clearly intersects with a number of wider concerns beyond the context of the 'broken-down' relationship. Nevertheless, given the general acceptance and widespread use of the term revenge porn, TEWLS will use this expression throughout this submission to refer to the non-consensual behaviour outlined by the Inquiry.

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<sup>1</sup> See generally Rachel Budde, 'Taking the Sting Out of Revenge Porn: Using Criminal Statutes to Safeguard Sexual Autonomy in the Digital Age' [2014] *Georgetown Journal of Gender and Law* (forthcoming) 19.

<sup>2</sup> TEWLS notes that when this conduct involves minors, such behaviour will intersect with federal and state child-pornography offences.

<sup>3</sup> Nicola Henry, Anastasia Powell and Asher Flynn, Submission No 13 to New South Wales Legislative Council Standing Committee on Law and Justice, *Inquiry into Remedies for the Serious Invasion of Privacy in New South Wales*, 4 September 2015, 1; Zac Franklin, 'Justice for Revenge Porn Victims: Legal Theories to Overcome Claims of Civil Immunity by Operators of Revenge Porn Websites' (2014) 102 *California Law Review* 1303, 1307.

## **B The impact of revenge porn**

In our experience, revenge porn is a highly gendered activity that is primarily committed by males and disproportionately targets women, although males may also be victimised.<sup>4</sup> As such, TEWLS welcomes the Inquiry, noting that to date, there has been inadequate consideration given to how technologies are being used to facilitate or perpetrate technology-facilitated sexual violence or harassment against women.<sup>5</sup>

TEWLS notes that the impact of non-consensual distribution of private sexual material is arguably associated with more serious consequences for females than those that may arise when revenge porn targets men. Put simply, female social status has traditionally been intertwined with perceptions of chastity and modesty, making women particularly more exposed to harm when their private sexual life is made public. As such, many suggest that revenge porn is a means where male offenders seek to instrumentalise these double standards in sexual norms to punish an ex-partner for a perceived wrong by distributing the material to either specific third parties or the general public.<sup>6</sup>

In light of the above, TEWLS is particularly concerned about the ways in which private sexual material can be exploited in contexts of family or interpersonal violence. Specifically, we note that there is evidence to suggest that domestic and family violence offenders use private sexual material as a tool to intimidate, harass and/or control both current and former partners.<sup>7</sup> This technology-facilitated sexual violence has been noted to take place in a number of situations such as;

- partners recording intimate partner sexual assaults;
- women 'agreeing' to intimate images being taken in the context of an already violent relationship, where refusing may not be a safe option; and situations where a partner threatens to distribute private sexual material (whether originally taken with consent or not) to third parties such as, the children of the relationship, extended family, or employers as a means of punishment and control.<sup>8</sup>

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<sup>4</sup> See also Janice Richardson, 'If I Cannot Have Her Everybody Can: Sexual Disclosure and Privacy Law,' in *Feminist Perspectives on Tort Law*, ed. Jane Richardson and Erica Rackley (Routledge, 2012) 145.

<sup>5</sup> See generally Citron, D. K., & Franks, M. A. (2014). Criminalizing Revenge Porn. *Wake Forest Law Review*, 49, 345.

<sup>6</sup> Michael Salter and Thomas Crofts, 'Responding to Revenge Porn: Challenges to Online Legal Impunity' in Lynn Comella and Shira Tarrant (eds), *New Views on Pornography: Sexuality, Politics and the Law* (Westport, 2015) 223, 235.

<sup>7</sup> Danielle Citron and Mary Anne Franks, 'Criminalising Revenge Porn' (2014) 49 *Wake Forest Law Review* 345, 351.

<sup>8</sup> Nicola Henry and Anastasia Powell, 'Beyond the 'Sext': Technology Facilitated Violence and Harassment Against Adult Women' (2015) *Australian and New Zealand Journal of Criminology* 48 104, 113.

## C Potential policy responses

TEWLS notes that one potential policy response currently being considered is the proposed Criminal Code Amendment to criminalise revenge porn under federal law.<sup>9</sup> Generally, TEWLS supports the Exposure Draft as an effective response to the issue of revenge porn as it;

1. expressly recognises the way in which an individual can consent to the distribution of private sexual material;
2. includes an offence capturing the scenario where victim's may have their private sexual material used against them by a partner through the threat of publication; and
3. the relevant offence does not provide that the distribution must be intentional, only that the subject experienced harm or distress or that there was a risk of harm or distress.

We note that our specific comments to this Exposure Draft can be accessed through our October 2015 submission.

In principle, TEWLS generally supports policy development in both, criminal and civil law to appropriately respond to the issue of revenge porn. However, TEWLS considers that future policy responses should focus on specifically criminalising revenge porn, as criminal offences effectively serve as a symbolic and educative function for society.<sup>10</sup> Specifically, TEWLS notes that by providing a tailored offence for criminal porn, this behaviour would be appropriately identified to the public and would clearly highlight and reinforce the 'wrongfulness' of revenge porn. TEWLS therefore considers that policy efforts should be focused on refining the Exposure Draft, as the Bill would provide a clear message to the Australian public of the wrong committed and precisely how the offender has 'failed' in her or his basic duties as a citizen.<sup>11</sup>

## D Current domestic responses

In recent years, revenge porn has come to be regarded as an issue seriously affecting many people. However, to date, only Victoria and South Australia have enacted statutes that can directly be used against revenge porn perpetrators.<sup>12</sup> In contrast, all other states and territories rely on previously enacted criminal law provisions as a

<sup>9</sup> *Criminal Code Amendment (Private Sexual Material) Bill 2015 Exposure Draft* (Cth).

<sup>10</sup> Ashworth, *Principles of Criminal Law*, 1.

<sup>11</sup> See Jeremy Horder, 'Rethinking Non-Fatal Offences Against the Person,' (1994) 14(3) *Oxford Journal of Legal Studies*, 339.

<sup>12</sup> *Summary Offences (Filming Offences) Amendment Act 2013* (SA); *Crimes Amendment (Sexual Offences and Other Matters) Act 2014* (Vic).

form of catchall offence, which may or may not encapsulate the relevant individual occurrence.<sup>13</sup>

## **I Victoria**

Victoria is the most recent state to instigate specific criminal law provisions to target revenge porn. In 2014, the *Crimes Amendment (Sexual Offences and Other Matters) Act 2014* (Vic) amended the *Summary Offences Act 1966* (Vic) ('SOA') to introduce the offences:

1. the 'distribution of intimate image' under s 41DA; and
2. the 'threat to distribute intimate image' under s 41DB.

Section 41DA of the SOA prohibits the intentional distribution 'of an intimate image where the distribution is contrary to community standards of acceptable conduct.' The offence is not applicable where the subject of the image is an adult and consents to the distribution' and carries a two year maximum jail term.

Section 41DB of the SOA 'prohibits a person from making a threat to distribute such an image and carries a maximum one-year jail term.' The inclusion of s 41DB of the SOA recognises that the use of revenge porn is frequently accompanied by threats of distribution and controlling behaviour. The section emphasises that it is the consent of the subject that renders publication lawful or criminal and explicitly takes into account the contextual nature of consent. Specifically, s 41DA(3)(b) of the SOA provides that the respective consent must be to the 'distribution of the intimate image' and the specific 'manner in which the intimate image was distributed'.

Whilst the Victorian offences clearly provide protection for revenge porn victims, by examining the amendment's political context, it is clear that several misconceptions of revenge porn currently exist. Firstly, one of the key reasons for the 2014 amendment was not so much to protect the immediate well-being of victims, but to protect their job prospects and life outcomes.<sup>14</sup> In our experience, the non-consensual distribution of private sexual material can have devastating impacts on an individual's professional capacity and career prospects. However, the discussion surrounding the harm of revenge porn should not be limited to this concern. Instead, it must be recognised that revenge porn is a destructive, multi-faceted experience and that consideration of the victim's agency and sense of self must remain paramount throughout the revenge porn discourse.<sup>15</sup>

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<sup>13</sup> Tim Gotsis, 'Revenge Pornography, Privacy and the Law' (Briefing Paper No 7, Parliamentary Library, Parliament of New South Wales, 2015) 3.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

Another concern is that the discussion surrounding the Victorian revenge porn amendment focused significantly on a 'risk management approach.' For example, it was highlighted that there is a pressing 'need to educate parents about devices'<sup>16</sup> and the need to 'educate children about understanding consequences, as we do in many other areas of concern.'<sup>17</sup> TEWLS notes that concerns of online safety are certainly valid and important considerations in the context of revenge porn. However, the emphasis placed on this risk minimization model has been met with significant criticism. For example, given the disproportionate victimization of females in this context, Crofts, Salter and Lee argue that the excessive focus on individual responsibility obscures the gendered inequities and amplifies existing cultural norms that blame women who experience gendered violence.<sup>18</sup>

Similarly, TEWLS notes that in mass media, women are consistently urged to avoid the risks that are said to arise from the production of private sexual images, alongside the message that women who take such risks are personally responsible for harms that subsequently befall them.<sup>19</sup> TEWLS notes that this approach to issues such as revenge porn not only suggest that women are responsible for male perpetration, but overlooks the fact that digital and online technology has become highly integrated in modern sexual life. Put simply, by emphasising the need to avoid sending images to a partner, rather than to not distribute the images that a partner has been trusted with implicitly justifies the harm experienced by revenge porn victims.

## **II South Australia**

In 2013, South Australia became the first state to introduce revenge porn oriented criminal law provisions. Introduced under the *Summary Offences (Filming Offences) Amendment Act 2013* (SA), section 26C makes it an 'offence to distribute... invasive images in a situation where the distributor knows, or should know, that the person depicted did not consent to the distribution'. It carries a maximum sentence of \$10,000 fine or imprisonment for 2 years, and carries similar requirements to the Victorian offences detailed above.

It is important to note that the term 'invasive image' is defined as 'a moving or still image of a person engaged in a private act or in a state of undress such that the

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<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Michael Salter and Thomas Crofts, 'Responding to Revenge Porn: Challenges to Online Legal Impunity' in Lynn Comella and Shira Tarrant (eds), *New Views on Pornography: Sexuality, Politics and the Law* (Westport, 2015) 223, 235. See also Julia O'Connor, Ann Shola Orloff, and Sheila Shaver, 'States, Markets, Families: Gender Liberalism and Social Policy in Australia, Canada, Great Britain and the United States' (Cambridge University Press, 1999).

<sup>19</sup> See generally Moira Carmody and Kerry Carrington, 'Preventing Sexual Violence' (2000) 33(3) *The Australian and New Zealand Journal of Criminology* 341, 344.

person's bare genital or anal region is visible'.<sup>20</sup> TEWLS notes that this does not fully encompass what may be capable of constituting revenge porn and that it arguably creates a high threshold to be satisfied in order for a particular image to attract criminal sanction for its distribution. TEWLS also notes that the SA legislation does not concern itself with occasions where a victim may have their 'invasive images' used against them by a partner through the threat of publication. This is a significant issue, as this submission notes that revenge porn has the capacity to be used as a tool of control and oppression in interpersonal and family relations.

## **E Current international responses**

### **I *Unites States***

Like the Australian context, there are a number of jurisdictions in the United States ('US') that have responded to growing concerns that the criminal law is not adequate to address revenge porn. The State of New Jersey was the first US State to introduce a law relating to revenge porn. Enacted in 2003, the Criminal Code of New Jersey states that a person commits an offence.

if, knowing that he is not licensed ... he discloses any photograph ... or any other reproduction of the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or contact, unless that person has consented to such disclosure.<sup>21</sup>

It is important to note that under this provision, there is no requirement for ulterior intent. This suggests that the state of New Jersey recognises that the harm experienced by revenge porn stems from the breach of a person's autonomy and right to control their own image, rather than because an individual acts maliciously towards another party. The omission of the requirement of intent and the focus on the subject's consent has been praised by many as the appropriate response to revenge porn as it privileges an individual's right to sexual agency and identity. In light of this, this offence is widely considered as providing the model approach in the legal system's response to revenge porn.<sup>22</sup>

However, we note that this provision provides a potential loophole in that a defence applies where the actor provides prior notice of what he or she intends to do, and he or she acts for a lawful purpose.<sup>23</sup> 'Lawful purpose' is not defined, but if it is taken to encompass both civil and criminal matters there are those that are concerned that this could seriously weaken the offence.

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<sup>20</sup> *Summary Offences (Filming Offences) Amendment Act 2013* (SA) s 26A.

<sup>21</sup> New Jersey Code 2C:14-9(c).

<sup>22</sup> Ave Mince-Didier, 'Revenge Porn: Law and Penalties' (2015) *Criminal Defense*.

<sup>23</sup> New Jersey Code 2C:14-9(d)(1)-(2).

## II *United Kingdom*

In 2015, the United Kingdom ('UK') enacted a specific offence to respond to the challenge of revenge porn under the *Criminal Justice and Courts Act 2015* (UK). Under s 33(1) *Criminal Justice and Courts Act 2015* (UK), it is an offence for a person to disclose a private sexual photograph or film if the disclosure is made 'without the consent of the [subject] with the intention of causing that individual distress.'

Unlike the New Jersey approach or the Exposure Draft, the UK's revenge porn provision is centered on the perpetrator's intent to cause distress. This focus on the ulterior intent of the distributor, rather than the harm that arises from non-consensual distribution, creates a serious limitation for the protection of potential revenge porn victims. Specifically, TEWLS notes that it may be difficult to prove the images were shared to cause harm, rather than to make a profit or as some sort of joke. As such, the UK provision is significantly limited in upholding the sexual autonomy and integrity of potential victims, as it does not recognise the harm to victims as occurring through violations of their trust and agency as it only considers this behaviour to be 'wrong' where the offender deliberately intended to incite such harm.

However, whilst this provision is somewhat limited by its requirement of intent, the UK offence provides a sophisticated and flexible response to the issue of consent. Traditionally, the position of consent has been framed as a simple binary choice: you either consent to disclosure or you do not. However, this approach is now recognised within the contemporary discourse as too simplistic.<sup>24</sup> Instead, it is now largely accepted that consent can be limited to certain circumstances and particular people – in other words, just because an individual chooses to give an image to a particular individual does not mean that they agreed to have the material being disclosed to others.

In recognition of this understanding, the UK response to revenge porn states that 'consent' to a disclosure [of private sexual material] includes general consent covering the disclosure, as well as consent to the particular disclosure.<sup>25</sup> TEWLS considers that the express inclusion of consent to "particular" conduct as vital in the context of revenge porn as it expressly affirms that consent can be limited to certain people and circumstances. Expressly incorporating the concept of specific or particular consent is a fundamental part of sexual autonomy and identity, and by recognising this, TEWLS suggests that the provision provides greater certainty regarding the ways in which individuals may provide consent to the distribution or use of their private sexual material.

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<sup>24</sup> Joan McGregor, 'When She Says No She Doesn't Mean Maybe and She Doesn't Mean Yes: A Critical Reconstruction of Consent, Sex and the Law' 1996 2(3) *Legal Theory* 175.

<sup>25</sup> *Criminal Justice and Courts Act 2015* (UK) s 33(7)(a).



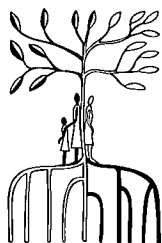
## Conclusion

We appreciate the opportunity to make this submission. We support ongoing policy and legal development in responding to revenge porn in Australia, and note that we would be glad to be consulted regarding any proposed changes. Should you require further information, please do not hesitate to contact our office on (08) 8982 3000.

Yours faithfully,

**TOP END WOMEN'S LEGAL SERVICE INC.**

Vanessa Lethlean  
Managing Solicitor



# Top End Women's Legal Service Inc.

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2 October 2015

Mr Tim Watts  
PO Box 6022  
House of Representatives  
Parliament House  
Canberra ACT 2600

By email: [Tim.Watts.MP@aph.gov.au](mailto:Tim.Watts.MP@aph.gov.au)

Dear Mr Watts,

**Re: Proposed Criminal Code Amendment (Private Sexual Material) Bill 2015 Exposure Draft**

Thank you for inviting comments to the Criminal Code Amendment (Private Sexual Material) Bill 2015 Exposure Draft ('Exposure Draft'). The Top End Women's Legal Service Inc. ('TEWLS') welcomes the opportunity to make a submission to the Exposure Draft proposal to amend the *Criminal Code Act 1995* (Cth) to criminalise non-consensual pornography under federal law.

In principle, TEWLS supports the Exposure Draft. In our experience, the non-consensual dissemination of private sexual material is typically through acts of revenge or intimidation where perpetrators aim to control subjects of the material.

## About TEWLS

TEWLS is a community legal centre focused on the advancement of women's rights. We are funded by the Commonwealth Attorney General's Department to provide referrals, legal advice, casework and community legal education to women in the Top End of the Northern Territory. TEWLS provides assistance in a number of areas of law including domestic and family violence, sexual assault, family law, compensation for victims of crime, housing, discrimination, workplace health and safety, employment law, motor vehicles and consumer credit debts. We provide outreach services for culturally and linguistically diverse women, Aboriginal women in the town communities surrounding Darwin and women in prison.

## Our Submission

### **Definition of 'private sexual material'**

We support the Exposure Draft discussion paper's question as to the inclusivity of section 474.24D of the Exposure Draft. So as to ensure that the

proposed offences capture private sexual material depicting all members of the community, particularly those who identify as lesbian, gay, bisexual, transgender, intersex or queer, we recommend that section 474.24D(3)(c) of the Exposure Draft be amended to read:

- 3) ..
- a) ..
- b) ..
- c) The breasts of a female person or person who identifies as female.

### **Causing distress or harm**

We submit that there is a potential contradiction in the operation of sections 474.24E(1)(e)(ii) and 474.24E(4)(b) of the Exposure Draft, where the first section discusses 'risk' and the second effectively creates a barrier to the interpretation of 'causing distress or harm'. We propose that clarification is provided with regard to whether 'distress or harm' to a subject will be ascertained via a subjective or objective test.

### **Penalties**

We support the proposed penalties in that they are proportionate to 'revenge porn' offences, including the proposed three years imprisonment for using a carriage service for private sexual material or making a threat to transmit private sexual material, as well as the proposed five years imprisonment for possessing, controlling, producing, supplying or obtaining private sexual material for use through a carriage service.

In addition to jail terms, we propose that penalties should also include forfeiture of any profits derived from the distribution of private sexual materials. We propose that this forfeiture would act as a disincentive for any existing revenge porn websites, such as those references in the Exposure Draft discussion paper.

### **Aggravating circumstances**

We propose for aggravating circumstances to be considered in any amendments to the Exposure Draft so as to reflect the seriousness and repercussions of disseminating private sexual material. Aggravating circumstances could include:

1. Whether the private sexual material was photographs or videos. We note that videos will invariably consist of multiple frames, meaning that a number of frames should be considered as a number of offences and consequently, an aggravating factor;
2. Whether the private sexual material was consensually taken or recorded. If photos or videos were taken with a hidden camera, long

lens, or otherwise, that non-consensual taking or recording of private sexual material should be considered an aggravating factor; and

3. The circumstances surrounding the dissemination of the material. We propose that this could include whether the device holding private sexual material was stolen, lost or otherwise ascertained by an uninvolved third party to a respective relationship where private sexual material was shared within the confines of the relationship.

Further, we propose that consideration is given to circumstances where private sexual material is disseminated by an offender and then later disseminated by another person, such as a revenge porn or photo sharing website. In these circumstances, the subject of private sexual material suffers further distress and harm as a result of multiple disseminations, which were caused by the first offender's actions. We propose that the subsequent dissemination, if it has already occurred prior to a first offender's proceedings, be accounted as an aggravating factor in that offender's sentencing.

#### Case Study – Mary's Story

Mary is a woman living in the Northern Territory. She and her ex-partner Tom were in a long-term relationship and had children together. During their relationship, Mary allowed Tom to take intimate photos of her.

After Mary and Tom separated, he uploaded photos to a website without Mary's permission. Mary wrote to the site requesting the photos be taken down. The website removed the photos. However, Tom uploaded the photos, along with Mary's name and address, to another website. Mary found out about these photos after someone she knew saw them, and told her which site they were on.

Mary asked TEWLS to help remove the photos. We requested the website remove the photos and the photos were removed. Mary was also successful in obtaining a domestic violence order which restrained Tom from distributing the photos. This was the only legal recourse available.

Several months later, the photos appeared on other websites. It is unclear whether Tom had uploaded the photos again or someone else had downloaded the initial photos, and then distributed them to other websites.

Some of these websites had feedback or complaint forms, which TEWLS used to request the removal of the photos. Other sites did not, and considerable research was undertaken to identify the 'host' for the sites so the request to remove the photos could be made. While two websites took down the photos, other websites did not respond or appeared to be inactive.

In response to this case, TEWLS developed a framework for people who want to lodge website complaints in the context of the unauthorised transmission of private sexual material (see Appendix A).

## **Defences – dissemination of private sexual material by the media**

We support the inclusion of defences through the proposed section 474.24H of the Exposure Draft, including protections for the media (section 474.24H(4) of the Exposure Draft). However, we share similar concerns to those raised in the Exposure Draft discussion paper in that there is a risk private sexual images shared by the media may extend and prolong the damage caused by victims. We suggest a narrow exception for media disclosures and disclosures made for the public benefit.

### **'Photo sharing' websites**

As noted in the Exposure Draft discussion paper, 'photo sharing' websites have become prominent and often lucrative points of dissemination for non-consensual private sexual material. While TEWLS supports the Exposure Draft's criminalisation of operating these websites through section 474.24G of the Exposure Draft, we note that there is often no mechanism for reporting material and/or making complaints on these websites for subjects to have the respective private sexual material removed. This removal would ideally happen in the interim between reporting the material and the completion of criminal proceedings.

### **Bi-partisan support**

We note previous endorsement of this proposal to criminalise the dissemination of non-consensual pornography by the now Minister for Women Senator Michaelia Cash in the presence of the now Prime Minister Malcolm Turnbull.<sup>1</sup> So as to progress the proposed Exposure Draft amendments to the *Criminal Code Act 1995* (Cth), we would welcome bipartisan support.

We thank you for your consideration of the above and would be pleased to be contacted should you wish to discuss this submission further. Should you require further information, please do not hesitate to contact our office on (08) 8982 3000.

Yours sincerely,  
**TOP END WOMEN'S LEGAL SERVICE INC.**

Vanessa Lethlean  
Managing Solicitor

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<sup>1</sup> Transcript of The Hon Malcolm Turnbull MP and Senator The Hon Michaelia Cash – Doorstop Interview, Parliament House, Canberra 7 September 2015  
<<http://www.malcolmturnbull.com.au/media/transcript-doorstop-interview-parliament-house-canberra-7-september-2015>>.

## **APPENDIX A: Pathway to Lodge Website Complaint**

If an individual or organisation needs to find out who is operating a website and web administrator contact details are not listed on the site:

1. Identify the "registrant" of the domain name.

You can do this by going to **www.whois** and entering the website domain name (e.g. nakedmompictures.com) into the search box.

Top level domains are domain names ending in .com, .net, .org etc. Use of these domains are regulated by the Internet Corporation for Assigned Names and Numbers ('ICANN').

A **registrar** of a top level domain name is a company authorised by ICANN to provide services to people who want to register a new domain name, renew their existing domain name, or make changes to their domain name record.

Australia has its own regulatory authority that deals with domain names ending with .au

A registrar sells domain names to a **registrant** (or "**registered name holder**" - the person or company that owns the particular domain name) or to a "**reseller**" who then sells it to the registrant.

2. Contact the **registrant** directly to complain about site content.

The registrar is obliged to provide an individual or an organisation with the contact details for the registrant if the details on Whois are incorrect or out of date.

The registrar is obliged to provide Whois with the name, postal address, e-mail address, voice telephone number, and (where available) fax number of the administrative contact for the Registered Name Holder. (see ICANN registrar Accreditation Agreement, [https://www.icann.org/resources/pages/ra-agreement-2009-05-21-en?routing\\_type=path](https://www.icann.org/resources/pages/ra-agreement-2009-05-21-en?routing_type=path))

Under this same policy, the registered name holder of a domain name must represent to the registrar that the registration of the domain name and the manner in which the domain name is used will not infringe upon the legal rights of any third parties.