

## **Additional Remarks from Government Members of the Committee**

1.1 Government Senators acknowledge widespread support for the introduction of a legislative framework that incorporates law-enforcement and education to address the harm being caused by the phenomenon colloquially referred to as 'Revenge Porn' ('revenge porn').

1.2 Government members of the committee broadly do not disagree with the conclusions and recommendations of the majority report. Government Senators note however that the inquiry process in this case has been premature. Evidence provided to the committee clearly indicates that the relevant governments and government departments are in the process of formulating their advice to government on this issue. Once such advice is provided government will be able to formulate a response which, if legislated, will come before the committee for inquiry and report in the normal way.

1.3 The committee should note the agreement reached by COAG in December 2015 to undertake detailed assessment of appropriate responses to revenge porn.

1.4 The Government members of the committee offer the following remarks on the recommendations of the majority committee report:

1.5 Recommendation 1 of the majority report calls for governments to substitute the term 'revenge porn' with the term 'non-consensual sharing of intimate images'. Government members agree that some other nomenclature may be appropriate although noting that the brief—if inaccurate—terminology 'revenge porn' does provide a now well-known and understood description of the recent and increasing criminal phenomenon.

1.6 Recommendation 2 of the majority report calls on the Commonwealth to legislate offences of knowingly or recklessly recording or sharing intimate images without consent and/or threatening to take or share such images. Government members of the committee agree but urge a cautious and consultative approach to developing the elements of these offences. The advice of legal experts will be essential in ensuring a scheme is developed that does not criminalise innocent conduct or place unsuspecting citizens in unnecessary legal peril.

1.7 Recommendation 3 of the majority committee report calls on the states to enact offences similar to those mentioned in recommendation 2, and to do so taking into account any relevant Commonwealth legislation. The Government members of the committee have no particular objection to this however note that formulation of offences around revenge porn is already under consideration by the Commonwealth and various state governments.

1.8 Recommendation 4 of the majority report calls on the Commonwealth to empower a Commonwealth agency to issue 'take down notices for non-consensually shared intimate images'. Government members of the committee agree and note that evidence provided to the committee indicated that the Children's eSafety Commissioner already has that power in relation to children and it should not be too

difficult to extend those provisions (if not necessarily to this agency) to enable this to happen.

1.9 Recommendation 5 of the majority report calls on the Commonwealth to instigate a 'formal mechanism' for engagement between government and internet and social media providers. Government members of the committee do not object to this however note that in the case of the Children's eSafety Commissioner existing mechanisms are operating satisfactorily.

1.10 Recommendation 6 of the majority report calls on the government to give further consideration to the Australian Law Reform Commission's 2014 proposal for the introduction of a tort of privacy. Government members do not support the introduction of a tort of privacy and note that tort law is ordinarily a matter for the states and that creating a new tort of privacy could produce unforeseen and undesirable consequences. These consequences may be precluded by the introduction of a specific revenge porn prohibition.

1.11 Recommendation 7 of the majority report calls for the introduction of an education and awareness campaign. Government Senators agree with this recommendation and note that the evidence shows that the Government, and relevant agencies, are already investigating a wide range of legal, social and cultural responses to the emergence of revenge porn.

1.12 Recommendation 8 of the majority report calls for all Australian Police forces to undergo training around new offences relating to revenge porn in their jurisdictions. Government members have no objection but suggest that this recommendation is unnecessary in that police officers would normally be trained in any new legislative scheme that created new offences.

**Senator the Hon Ian Macdonald**  
**Deputy Chair**