

23 April 2021

Committee Secretariat
Justice Committee
Parliament Buildings
Wellington

Re: Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Bill

Tēnā koutou,

Thank you for the opportunity to provide a written submission on the Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Bill (the Bill).

Regional Public Health (RPH) delivers population and personal health services in the greater Wellington region. Our geographical area of service delivery spans Hutt Valley, Capital & Coast, and Wairarapa District Health Boards. We deliver a range of population and personal health services, aiming to improve the health of communities throughout the greater Wellington region. In particular, we focus on achieving equitable health outcomes for Māori, Pacific peoples, tamariki and young people, low income whānau, and other people groups facing complex challenges.

We have a range of occupations working within Regional Public Health including: medical officers of health and public health physicians, public health advisors, public health analysts, health protection officers, and public health nurses.

The following submission to the Bill is derived from our public health perspective, knowledge, and experiences working in the community. For additional advice or clarification on any of the points raised in our written feedback please contact:

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We are able to provide further advice or clarification on any of the points raised in our written submission. We do **not** wish to make an oral submission.

Nāku noa, na

Dr Annette Nesdale
Medical Officer of Health

Peter Gush
General Manager

Reason for submitting

The reason for this submission is to ensure that population health risks are considered. Reducing inequity is a primary way in which RPH addresses the roots of public health issues. Non-consensual disclosure of intimate visual recordings is a form of sexual- and gender-based violence (SGBV). As disclosure of intimate visual records disproportionately affects women and gender-diverse individuals, this legislation will prevent and mitigate inequities caused by SGBV.

This submission addresses public health matters and provides recommendations on areas where the Bill or further legislation could be enhanced specifically regarding interpersonal sharing of intimate visual recording and deepfake technology.

RPH is supportive of the Harmful Digital Communications Bill.

RPH supports the comprehensive overview of the Bill, especially the detail around consent and what consensual posting of intimate visual recordings is.

RPH also recommends that the Bill address interpersonal sharing of intimate visual recording **and** inappropriate use of deepfake technology, in which a person in an existing image or video is replaced with someone else's likeness. With increased use of such technology, creating legislation to prevent dissemination of fake, intimate visual recordings will also be essential.

Lastly, RPH encourages active implementation of the Bill and encourages the managing agency to develop frameworks for education and prevention of non-consensual sharing of intimate visual recordings, primarily in schools. By empowering communities, especially tamariki, with knowledge on the topic and potential repercussions faced, we can reduce harmful behaviours, outcomes, and inequities.

Prevention of Sexual Harm

Non-consensual sharing of intimate visual recordings has been shown to have profound impacts on the mental as well as psycho-social wellbeing of victims, similar in many cases to the impacts of SGBV. Research highlights victims' experiences of trust issues, posttraumatic stress disorder, anxiety, depression, suicidal thoughts, and several other mental health effects.¹ These findings reveal the seriousness of this issue as well as the similarities between revenge porn and sexual assault.²

From a social perspective, these feelings may be further perpetuated by the "traditional sexual double standard," placed on victims. Research shows that victims were perceived as more promiscuous and more blameworthy when they were more naked, which adversely impacted the outcomes that victims experienced.³ Following the "traditional sexual double standard," victims are

¹ Bates S. Revenge Porn and Mental Health: A Qualitative Analysis of the Mental Health Effects of Revenge Porn on Female Survivors. *Feminist Criminology*. 2017;12(1):22-42. DOI: 10.1177/1557085116654565.

² Eaton AA, Noori S, Bonomi A, Stephens DP, Gillum TL. Nonconsensual Porn as a Form of Intimate Partner Violence: Using the Power and Control Wheel to Understand Nonconsensual Porn Perpetration in Intimate Relationships. *Trauma Violence Abuse*. 2020 Feb 26:1524838020906533. DOI: 10.1177/1524838020906533. PMID: 32100637.

³ Mckinlay T, Lavis T. Why did she send it in the first place? Victim blame in the context of 'revenge porn'. *Psychiatr Psychol Law*. 2020 Jun 11;27(3):386-396. DOI: 10.1080/13218719.2020.1734977. PMID: 33071547; PMCID: PMC7534260.

also most commonly young women,⁴ with offenders being men in 89.7% of the cases in New Zealand from 2015-2018.⁵

The research calls for robust policy and legislation to generate accountability among perpetrators of non-consensual sharing of intimate visual recordings as well as protect victims.^{4,6}

Recommendations

The Bill creates an essential legal framework around holding perpetrators accountable for taking advantage of social power dynamics and inequities to harm victims. However, RPH acknowledges that additional areas could be expanded to create a more comprehensive Bill:

1. The Bill does not address 'private/interpersonal' sharing of intimate visual recordings. While it outlines that "posting" a digital communication of intimate visual recordings of another person stipulates an offence, it does not consider 'private/interpersonal' (e.g. among friends or peer groups), non-consensual sharing of intimate visual recordings. While difficult to measure exactly, this 'private/interpersonal' sharing of intimate visual recordings is most common among intermediate school-aged youth in New Zealand.⁷ RPH recommends that the Bill address this area of concern and include a clause addressing 'private/interpersonal' sharing of intimate visual recordings to accompany general posting of intimate visual recordings. This would create accountability for not only posting, but also non-consensual, private sharing of intimate visual recordings.
2. With the advent of deepfake technology, the internet is seeing more harmful photos and videos constructed using artificial intelligence. According to a Deeptrace report, as of September 2019, 96% of deepfake videos online were pornographic.⁸ As deepfake pornography is almost always non-consensual, relying on the artificial synthesis of faces and bodies to create seemingly realistic media could lead to similar health outcomes to those that result from non-consensual sharing of intimate visual recordings.⁹ RPH recommends that the Bill address the posting of deepfake pornography, holding those who post such recordings accountable in the same way, as it could have similar, adverse impacts on victims.

Implementation

Constructing a legal framework to prevent non-consensual sharing of intimate visual recordings will have profound impacts on improving gender-based inequities across Aotearoa. However, active

⁴ Henry N, Powell A. Technology-Facilitated Sexual Violence: A Literature Review of Empirical Research. *Trauma Violence Abuse*. 2018 Apr;19(2):195-208. Epub 2016 Jun 16. PMID: 27311818. DOI: 10.1177/1524838016650189.

⁵ Macdonald N. Victim disgusted police considering warning for revenge porn crime. *Stuff*. 2019 Jun 2.

<https://www.stuff.co.nz/national/crime/113119711/victim-disgusted-police-considering-warning-for-revenge-porn-crime>.

⁶ Lee JR, Darcy KM. Sexting: What's Law Got to Do with It? *Arch Sex Behav*. 2021 Feb;50(2):563-573. DOI: 10.1007/s10508-020-01727-6. Epub 2020 May 22. PMID: 32445133.

⁷ Sheikh-Cope Z, Cope R. Our kids online: porn, predators & how to keep them safe. 2019.

⁸ Debusmann B. Deepfake is the future of content creation. *BBC News*. 2021 Mar 8. <https://www.bbc.com/news/business-56278411>

⁹ Sample I. What are deepfakes – and how can you spot them? *The Guardian*. 2020 Jan 13.

<https://www.theguardian.com/technology/2020/jan/13/what-are-deepfakes-and-how-can-you-spot-them>

implementation of the legislation and prevention will be paramount to creating effective change. Specifically, developing educational materials will be essential to teach youth and wider communities about reducing harmful behaviours, outcomes, and inequities that they perpetuate. In particular, we recommend two areas of action:

1. The education guide *Relationships and Sexuality Education*, published in 2020 by Te Tāhuhu o te Mātauranga/the Ministry of Education addresses consensual, healthy, and respectful relationships, bullying, as well as the increasing availability of confronting and explicit online content. These areas are important to discuss and introduce to children of all ages. As such, we strongly recommend that schools actively incorporate these themes into the curriculum.
2. A set of guidelines, outlining steps that schools can take in confronting and managing non-consensual posting of intimate visual recordings. Creating a “best practice” document that all schools can adopt in situations where students have non-consensually shared intimate media will help them manage the situation, support the victim, and work with parents to mitigate the harm caused. We recommend that the managing agency draw up a set of best practice guidelines to support schools across Aotearoa.

Thank you for the opportunity to comment on the Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Bill. RPH wishes to support the Select Committee by offering our public health expertise, knowledge and skills, where appropriate in regards to implementing the above recommendations. If you have any further questions and/or would like to arrange a meeting, please contact us.