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S21.07 oral

Oral submission to the Justice Committee on the Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Bill 305-1

Presenters:

Sue Kedgley and Beryl Anderson

Justice Committee

Ginny Andersen (Chairperson), Labour; Vanushi Walters, Labour; Simon Bridges, National; Simeon Brown, National; Emily Henderson, Labour; Nicole McKee, ACT; Willow-Jean Prime, Labour; Nick Smith, National; Arena Williams, Labour.

Introduction

Kia ora Koutou

Thank you for the opportunity to submit to you today on the Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment bill.

NCWNZ has a long-standing concern about the amount of internet-based violence and abuse that women are subjected to on a routine basis; the harm this causes to women and especially young women today; the lack of protections against this sort of abuse and the ability for perpetrators of on-line sexual abuse to do so with impunity.

For all of these reasons, we strongly support this bill and its intention to make the posting of intimate images and recordings without consent illegal and punishable by up to three years in prison. The present law, where victims have to prove that a perpetrator deliberately sought to harm a victim, and the victim has to prove that they have suffered from serious emotional distress, makes it very difficult to bring about a prosecution, so we congratulate Louisa Wall for bringing this important bill to Parliament which will make it much easier to prosecute a perpetrator who cannot prove that he has the explicit consent of a person whose sexual image he is sharing on the internet.

We also support the provision in this bill that will allow a court to issue take-down orders for revenge porn recordings.

Revenge porn or the distribution of sexually explicit images or videos of individuals without their consent, is yet another example of the growing trend for the unregulated internet to be used as a platform for violence and abuse against girls and women.

According to research conducted by NetSafe (2019) and by Dr Claire Meehan, of Auckland University, revenge porn or image-based sexual abuse has become, in recent years, an increasingly common form of abuse to control and degrade women and particularly young women. A British campaigner against the sexual abuse of young girls, Lucy Wadha, argues that image-based forms of sexual abuse must be taken just as seriously as abuse in real life, and we agree with her.

Victims of revenge porn are subject to trauma, mental anguish, humiliation and even, in extreme cases, suicide. Many of us know young women who feel their lives have been ruined by the widespread sharing of sexual images of them, taken and distributed without their consent.

The sharing of sexually explicit images without consent is absolutely not permitted in traditional media, so why should it be permitted unregulated on the internet. We note that perpetrators often take images of women in compromising situations secretly, without their victim's knowledge, and will often seek to act anonymously. We agree with previous submitters about the growing use of deep fake technology. For this reason, they are often hard to trace. We also note that non-consensual sexual images are frequently shared numerous times, so that it may not be easy to track down all the perpetrators.

We are pleased that this bill passed its first reading unanimously and hope it will continue to enjoy unanimous support in this House. Its swift passage through Parliament will send a strong deterrent message to perpetrators of image based sexual abuse and will help protect young women and some men from being deliberately harmed in this way. We agree with the previous submitters that there needs to be a great deal of education and communication around this issue.

We support the comments by Youth Law that their needs to be consequential changes to ACC Act Schedule 3 to provide support to those affected in this way.

Questions

Q: Ginny Andersen. It is clear that communication of the legislative changes will be needed to inform those who are engaging with and distributing of images. Any ideas on how we can do this?

A: Communication should start in the schools as it appears to be a particular phenomenon with teenagers and the early 20s. There will need to be massive communication around the whole issue.

Q: Emily Henderson. Debating a little bit around the breach of trust about posting an image that was made consensually and a deep fake image that damages the reputation. Talk to whether the breach of trust is an aggravating feature or if it makes the Act significantly different?

A: This is a global issue. It is critical to focus on the sharing of image and that doing so needs explicit consent, acknowledging that this is difficult to get. In some written form. Deep fake images should be included in this, otherwise there will be a loophole that would be exploited.

Q: Nick Smith. Legislation is always trying to catch up with new technology. What form is practical in this internet age for consent?

A: If it is not written in some form, there is no proof.

Interjection from Simon Bridges that we don't do this for rape.

A: It is a specific step when you go to post – so this is not a direct analogy. Have to be able to point to some written point. It must be written in some form – a text is a written form.

Q: Vanushi Walters. We heard earlier from the Prostitutes Collection on the withdrawal of consent. What is your view in terms of accountability if there has been a withdrawal of consent versus if there was no consent in the first place? Is it a lesser harm?

A: It would depend on the point at which consent is withdrawn. It is another issue. There needs to be provision for withdrawal, and that should be the end of the matter. Can't say it is a lesser issue because you gave it then withdraw it. The impact will be on what happened before consent was withdrawn – was it withdrawn after the images were posted or before.

Conclusion

We were thanked for our written and oral submissions.