



Submission to

the Legal Affairs and Community Safety Committee

Criminal Code (Non-consensual Sharing of Intimate Images) Amendment Bill 2018

September, 2018

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submission

Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the Legal Affairs and Community Safety Committee (the Committee) for the opportunity to provide feedback to the *Criminal Code (Non-consensual Sharing of Intimate Images) Amendment Bill 2018* (the bill).

Nursing and midwifery is the largest occupational group in Queensland Health and one of the largest across the Queensland government. The QNMU is the principal health union in Queensland covering all classifications of workers that make up the nursing workforce including registered nurses (RN), registered midwives (RM), enrolled nurses (EN) and assistants in nursing (AIN) who are employed in the public, private and not-for-profit health sectors including aged care.

Our more than 59,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses and midwives in Queensland are members of the QNMU.

Recommendation

The QNMU recommends:

- The parliament pass the bill with the following amendment to Clause 5 new section 223(4)¹

It is a defence to a charge of an offence against subsection (1) to prove that –

- (a) the person engaged in the conduct that is alleged to constitute the offence for a genuine artistic, educational, legal, medical, **clinical, research**, scientific or public benefit purpose;

¹ Additional wording in **bold**.

Clinical and Medical Images

The QNMU supports the intent of the bill, however we ask the Committee to consider the circumstances that may arise for nurses, midwives and other clinicians in obtaining, using and/or disclosing clinical images.

For the purposes of this submission, a clinical image may be a photo, video recording, or audio recording. A clinical image may be of the patient's body - such as an injury, skin lesion or body fluid - or an image of a pathology report, diagnostic image, or medication (AMA, 2018).

The availability of technology and mobile devices allows clinicians to take and share images in order to diagnose, treat and manage a patient's condition more quickly and efficiently. For example, the use of digital images is important in monitoring, healing and preventing deterioration in wound management. A Nurse Practitioner specialising in wound care may be asked to provide advice on an image sent from a remote location.

As with any health information, nurses and midwives must act in accordance with relevant privacy legislation and/or their employer's policies when taking clinical images. Clinical images should only be used and/or disclosed:

- for the direct or primary purpose for which they were collected;
- for a secondary purpose closely related to the direct or primary purpose. This could include sharing the image with another clinician to confirm diagnosis, treatment and management;
- in accordance with the patient's consent (if the use and disclosure is different from the direct or secondary purpose); or
- where permitted by law – that is, the use and disclosure falls within an exemption under the relevant privacy legislation (Australian Medical Association, 2018).

We contend the wording in the bill should recognise clinicians such as nurses and midwives (not just medical practitioners) may also use images in their practice. Advances in medicine and science also arise through research that relies on images. For these reasons we suggest section 223 of the bill should read:

It is a defence to a charge of an offence against subsection (1) to prove that –

- (a) the person engaged in the conduct that is alleged to constitute the offence for a genuine artistic, educational, legal, medical, **clinical, research**, scientific or public benefit purpose;

References

Australian Medical Association (2018) *Use and Disclosure of Clinical Images* retrieved from <https://ama.com.au/use-and-disclosure-clinical-images>