



## Micah Projects Submission to Committee Secretary, Legal Affairs and Community Safety Committee

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



Submission to Parliament of Queensland

Submission Title:

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

Micah Projects commends the Hon. Yvette D’Ath, Attorney-General and Minister for Justice, and her government colleagues, for introducing the Criminal Code (Non-consensual Sharing of Intimate Images) Amendment Bill 2018 into the Queensland Parliament on August 22, 2018. Image-based abuse has a devastating impact on far too many people — including young, vulnerable people and women and girls who are often subject to image –based abuse within an ongoing pattern of gender-based violence. “Revenge porn” is a growing and disturbing violation that is generally designed to humiliate and threaten others.

Micah Projects welcomes the consideration that the Bill is now undergoing by the Legal Affairs and Community Safety Committee. Due to the severity of the harm that image-based abuse causes, we urge the Committee to support the Bill and for the Parliament to take effective, and sustained action to: (a) punish offenders, (b) to eradicate image-based abuse, and (c) provide support to those who endure the harmful impact of image-based abuse.

### Objective and features of the Bill

The objective of the Bill is to create a new offence related to non-consensual sharing of intimate images that would apply to sending, or threatening to send, intimate material without consent. This offence will have a maximum penalty of three years imprisonment. Distribution must happen in a way that would cause the person in the image distress reasonably arising in all the circumstances. In arguing the case for the Bill, the Minister made the following comments in her statements to Parliament and media statement:

- These laws would apply to both sending, and threatening to send, intimate material without consent, and will come with a maximum penalty of three years jail.
- The definition will extend to photo shopped images – where an image has been altered to look like a person is portrayed in an intimate way.
- The Bill also allows courts to make a rectification order –the images must be removed or deleted, and if they aren’t a person faces a two-year jail term.
- While sharing intimate images can affect anyone, it disproportionately affects women and girls.
- The Bill also includes the threat to distribute – whether an image exists or not. Regardless of the intention of the distributor, it is important to remember that the impact of the non-consensual distribution of an intimate image on the victim can be devastating. Some of the most damaging consequences can be caused before an image is even shared. Threats to distribute intimate images without consent can cause untold fear and anxiety. In some of the cruellest instances these threats can be used to control or coerce the threatened person.

- Victims often don't know whether there is material in existence; but a threat to distribute material—even material that may not exist— provokes extreme fear and can be used to control, coerce, and harm a person.
- The bill defines consent for the purpose of the new offence to confirm that consent must be free and voluntary and given by a person with cognitive capacity to consent.
- In recognition of the greater vulnerability of young children, the bill provides that a child under 16 years of age cannot consent to the distribution of an intimate image.

Micah Projects supports the comments made by the Hon. Yvette D'Ath, Attorney-General and Minister for Justice — her recognition of the pattern of coercion and control in which image-based abuse co-exists, and the particular vulnerability of young people under 16 years.

## About Micah Projects and the Brisbane Domestic Violence Service (BDVS).

Micah Projects is a not-for-profit organisation committed to providing services and opportunities in the community to create justice and respond to injustice. We believe that every child and adult has the right to a home, an income, healthcare, education, safety, dignity and connection with their community of choice. Micah Projects provides a range of support and advocacy services to individuals and families according to their needs and capacity. Many of the people we support are enduring hardship and are vulnerable to exploitation and abuse. Micah Projects works to break down barriers that exclude people from housing, healthcare, employment, meaningful connections, and to give people a voice. We assist individuals and families who are:

- Unsafe due to domestic and family violence.
- Homeless or could lose their tenancy.
- Experienced childhood abuse in an institutional setting.
- Young and pregnant and/ or parenting.
- Living with a disability and need support to live an independent life.
- Living with a mental illness.

We run the Brisbane Domestic Violence Service, Young Parents for Young Mothers and a wide range of housing and other support services in which the people we support have reported experiences of on-line abuse and technology based stalking and abuse. In our work, we witness the devastation and humiliation that coercion, control and the use of image-based abuse can cause. We witness the shame, vulnerability, fear and self-harm that many of the women subject to this abuse endure.

## Summary of Micah Projects Response to the Bill

Micah Projects supports the introduction of the Criminal Code (Non-consensual Sharing of Intimate Images) Amendment Bill 2018. We support the statements made by the Hon. Yvette D’Ath Attorney-General and Minister for Justice in introducing the Bill — particularly her recognition of the gender-based patterns of coercion and control that commonly underpin image-based abuse and the particular vulnerability of young people under 16 years.

Micah Projects welcomes the national recognition and action that is now occurring to respond to and eradicate image-based abuse through the Federal Parliament, State and Territory jurisdictions; the National Plan to reduce Violence Against Women and Children (2010-2022) Third Action Plan and the work of the Office of the e-Safety Commissioner. We urge the Queensland Parliament to take effective and consistent action with other Australian Governments given the cross-border nature of on-line technologies, technological abuse and Image Based Abuse (IBA).

Micah Projects also wishes to express some concern about the framing of the sharing of images “by consent”/“without consent”. It is our experience of working with young women, and those experiencing Domestic and Family Violence (DFV) that “consent” is a nuanced concept, and that there are many reasons that women may say “yes” in the context of sexual decision making (across a range of different scenarios) when they would rather say “no”. Current community understanding of the concept of informed and enthusiastic consent are still lagging. We also need to make a distinction between agreeing to create an image and agreeing to share an image.

Government action and responsibility does not stop with the introduction of the Bill. Four sustained actions are required:

1. Introducing laws that make IBA unlawful (as per the Non-consensual Sharing of Intimate Images) Amendment Bill 2018). This must include clear definitions of consent and an onus of responsibility on the perpetrator of the IBA to have a duty of care to protect the rights and privacy of others. There must also be a review of the impact and effectiveness of the laws in 3-5 years of their proclamation.
2. Enforcing the new laws —this will require additional law enforcement training and resourcing to reprimand and prosecute offenders, and to enable offending images to be rapidly removed.
3. Community education about the laws.
4. Increased effort to ensure that every young Queenslanders receives respectful relationships education, incorporating learning on IBA and strategies to ‘call out’ IBA when they know of it, rather than being a bystander.

## Responding to Image-Based Abuse —Promoting Safety

1 in 5 Australians aged 16–49 have experienced image-based abuse (IBA). Although women aged 18-24 are more likely to be targets, IBA impacts people regardless of their age, race, religion, gender, sexual orientation, education or bank balance (Henry., Powell., Flynn, et al., 2017). An emerging, significant problem in Australia and internationally is the non-consensual sharing of intimate images, known as ‘revenge pornography’. This has a severe impact on victims, including serious psychological injury; humiliation and distress; and loss of reputation, social standing and employment (The National Plan to Reduce Violence Against Women and their Children (2010-2022). Third Action Plan).

With the growing use and misuse of technology, evidence shows that technology-based abuse and stalking, and IBA is growing — and is impacting negatively on those who are targeted. This includes many women in intimate relationships (Fraser et al., 2010).

In research on the intersections of intimate partner sexual violence (IPSV) and domestic violence, ANROWS (2015) reported that IPSV generally occurs in the context of other forms of violence and was often part of a larger pattern of coercive control in a relationship. It also featured in some cases the use of image-based abuse. Not all IBA occurs in an intimate relationships, but much of it is gender-based —that is a form of abuse in which men/boys are the primary offenders, and women/girls are the primary victims.

New technology has made it more difficult for prosecutors and judges to hold on-line stalkers and IBA perpetrators accountable for their crimes (Fraser et al., 2010). This makes it increasingly important for law enforcement agencies and personnel to be trained and resourced to enforce the new IBA laws, including threats of IBA. The Parliament of Australia, on August 23, 2018, introduced the Enhancing Online Safety (Non-consensual Sharing of Intimate Images) Bill 2018. The new measures will empower the Office of the eSafety Commissioner to quickly remove offending images published without consent and take action to prevent further sharing. This responds to the main concern of victims which is the rapid removal of images, in a timely, easy and effective way without causing further distress. It will be essential for the Queensland Parliament to provide legislative backing for effective enforcement of offenders and rapid removal of offending images.

The National Plan to Reduce Violence Against Women and their Children (2010-2022) Third Action Plan sets out a plan (below) to counter the impact of online pornography and its contribution to the sexual objectification of women and girls, the development of rape cultures and the proliferation of sexual assault.

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4.6: Respond to the distribution of intimate material without consent, including what is known as 'revenge pornography'.	4.6(a) Develop a national portal to assist women in the removal of intimate images that are distributed online without their consent. 4.6(b) Work with internet content hosts / services / telecommunication companies and social media services to facilitate consistent and responsive approaches for removal of intimate material. 4.6(c) Undertake a national legislative review of the adequacy of criminal legislation for those distributing intimate material without consent to identify any jurisdictional amendments that may be required. 4.6(d) Provide information to the broader community that highlights the impacts and consequences of distributing intimate material.
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The e-Safety Commissioner has taken positive action to counter IBA, including the production and promotion of bystander information. It will be important for the Queensland Government to support national and state efforts that:

- Enforce the new laws —this will require additional law enforcement training and resourcing to reprimand and prosecute offenders, and to enable offending images to be rapidly removed.
- Educate the community on IBA, the new laws and ways to avoid being a bystander.
- Educate every young Queenslander on respectful relationships education, including IBA.

Micah Projects has a community education function at BDVS —actively promoting understanding of the many forms of violence and abuse and their harmful impacts. The Young Parents for Young Mothers have delivered an award winning Expect Respect program for young people. We also actively support the work of YFS Ltd, Logan with their R4Respect program that features a Don't be a Bad Apple animated video series to reach young people with messages on IBA (<https://www.anrows.org.au/node/1405>). These kinds of educational efforts need to be expanded in Queensland to counter the attitudes and behaviours that allow IBA to flourish.



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