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Justice Committee
Parliament

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Tēnā koe

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

Tōpūtanga Tapuhi Kaitiaki o Aotearoa, New Zealand Nurses Organisation (NZNO) welcomes the opportunity to comment on the Harmful Digital Communications (*Posting of Intimate Visual Recordings without Consent*) Amendment Bill (the Bill).

NZNO is the leading professional nursing association and union for nurses in Aotearoa New Zealand, representing 51,000 nurses, midwives, students, kaimahi hauora and health workers on professional and employment matters. NZNO embraces te Tiriti o Waitangi and contributes to the improvements of the health status and outcomes for all Aotearoa New Zealanders through influencing health, employment, and social policy development.

Furthermore, we share the intent of the Ministry of Health's definition of equity which equally applies to NZNO work across professional, industrial and member activities.

NZNO has consulted its members and staff in preparation of this submission. NZNO, supports the amendment to the Bill and acknowledges the insertion of Section 22A – (*Posting of Intimate Visual Recordings without Consent*). We agree with the intent to both safeguard and penalise any persons for posting online inappropriate harmful recordings.

The Bill's new Section 22A will now make it an offence to post any non-consensual and unauthorised intimate visual recordings. The offence imposes sanctions of sentencing up to three years imprisonment and/or prosecution of fines between \$50,000 to \$200,000 (dependent on the sanctioned case for an individual or body corporate) for soliciting non-consensual intimate visual recordings. These sanctions reflect the seriousness of this criminal Act and raises concerns about how normalised this behaviour has become. The lack of reported research on this issue in terms of

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the impact on mental and physical health and wellbeing, particularly for youth, and the rainbow and ethnic communities (LGBTQA, Māori, Pacific, Migrants, Asian) experiencing online cyber bullying is concerning, given the severity of these new sanctions.

A recent Netsafe New Zealand report (2019) indicated nearly five percent of adult New Zealanders have personally experience some form of online sexual abuse (the majority female).¹ The statistics for children and youth access to online pornography is equally alarming, particularly for victims impacted by and subjected to experiencing sexual violence, abuse, and exploitation. Further findings from Netsafe found that most young people see online pornography as a primary form of sexual education, with 71 percent having accidentally discovered online pornography and utilise these platforms to engage sexual interests.² The gender and racial online bullying has not been remedied thus far with many people in the past seeking civil action, nor has there been a massive uptake from government to introduce such harsh penalties,³ until now. However, there is much to learn about the appropriate use of online digital communication.

As the largest nursing organisation in New Zealand, we have a duty of care and commitment to upholding the professional standards of nursing when engaging in any forms of online digital communication. In 2019, NZNO applied professional nursing standards to support the development of a guideline that addressed the best ways of engaging in social media and electronic communications. The document is a guide to maintaining professionalism online for nurses and nursing students. The guide includes practical scenarios that support staff and members to better understand the appropriate use of digital communication. Particularly, relating to the consent process for what can be shared digitally, and the codes of conduct and ethics that are associated with that.

NZNOs social media guide aims to introduce staff and members to safely participate in online digital communication while being aware of the associated risks. The guide also provides the mechanism by which a person can seek advice relating to online harassment and bullying. Particularly, online social media networks, that can pose risks for health professionals and their patient/client relationships, nurse-colleague relationships, and current and future employment opportunities. It is important as health professionals working across the sectors and communities that we remain vigilant when participating in any use of online digital communication.

In principle, NZNO welcomes the new Section 22A in the Bill as it strengthens the infringement for

¹ <https://www.netsafe.org.nz/image-based-sexual-abuse-survey-2019/>

² <https://www.healthnavigator.org.nz/clinicians/p/pornography-and-young-people-for-healthcare-providers/>

³ Hunt, A. (2020). Why our online harm legislation isn't working.
https://adls.org.nz/Story?Action=View&Story_id=225

unauthorised intimate visual recordings, often referred to by many health experts and educators as revenge porn.⁴ It is one step forward in addressing the sensitivity and anxiety for many who participate in online sharing. This is a nationwide and global debate, particularly following the increase in online cyberbullying and identity theft (data sovereignty), which global social media giants, Facebook, brought to the attention of the world, that no data is private regardless of online security software systems.⁵ This is not a conversation to be taken lightly and it does impact everybody, as the surge for online digital communications increased following the Covid-19 pandemic.

It is important that following the amendment, the justice committee considers consulting across the health and education sectors, and particular communities. Since the black lives matter movement, those such as Maori, Pacific, Asian, and Migrants have been the target of online inappropriate bullying. The severity and harm inflicted by inappropriate use of online digital communication, can be devastating particularly communities already experiencing extreme inequities. The Bills amendment while specific to online digital communication, raises opportunities to address such behaviour and could be the catalyst for more changes to come. As te Tiriti partners, it is important for communities particularly those vulnerable consumers of digital technology such as Māori that there is meaningful action to seek ways to work culturally better with Māori, Pacific, Asian, Migrants consumers and whānau to maximise their experience and safer accessibility.

Furthermore, while NZNO supports these strict sanctions for such inappropriate online behaviour. We would encourage the justice committee to consider investing more in educating the public on the use and risks associated with online digital communication. We also recommend the justice committee provide practical tools for those isolated communities, particularly those who lack access to digital technology. The pandemic has taught Aotearoa New Zealand, that online use is the new age of learning and communicating. It has also highlighted that not everyone has access to digital technology, nor do frequent digital consumers, fully understand the potential risks involved when sharing online.

NZNO would like to raise the following concerns and recommendation regarding the definition of terminology referred to in the new Section 22A of the Bill. These include (but not limited to).

- The definition of “intimate visual recording” does not appear to be defined in the proposed new Section 22A.

⁴ Dr Claire Meehan is a lecturer in criminology at the University of Auckland and is researching the economic and social impact of cybercrime.

<https://www.newsroom.co.nz/@ideasroom/2019/02/25/453284/revenge-porn-is-sexual-abuse>

⁵ <https://www.techrepublic.com/article/facebook-data-privacy-scandal-a-cheat-sheet/>

- Under the Crimes Act 1961, Section 216H to 216N, provides a definition of intimate visual recordings, and identifies the process of seeking consent and transmission of real time data.⁶ Is this the full definition to support the new section in the Bill?
- We would encourage the justice committee consider including specifications relating to the Crimes Act definition of intimate visual recording, by either including in the Bill itself and/or providing a supplementary paper to that effect.

It is important as a professional organisation we engage in any comprehensive technology and sexuality education that influences engagement and the use of online digital communication technology. We thank you for the opportunity to express our concerns and equally support the Bill. Nga mihi nui ki a koe.

Nāku noa nā



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⁶ <https://www.legislation.govt.nz/act/public/1961/0043/latest/DLM329850.html>