

**Submission on the
Harmful Digital
Communications
(Unauthorised Posting of
Intimate Visual
Recording) Amendment
Bill**

To the Justice Select Committee

April 2021

Introduction

1. The Wellington City Youth Council (Youth Council) welcomes the opportunity to submit on Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Bill to the Justice Select Committee.
2. Posting an intimate visual recording, often know as revenge porn or sharing nudes, without consent is abhorrent and this Bill seeks to explicitly and simply make it an offense to undertake these actions.
3. Youth Council wholeheartedly supports this Bill and its explicit focus on making the posting of revenge porn an offense.

Explicit and simplified offense for posting revenge porn

4. Concerns have been raised that the current provisions in the Harmful Digital Communications Act 2015 are overly onerous and difficult for the high threshold to be reached.
5. We support the explicit addition in this Amendment Bill, to make posting revenge porn, an offense.
6. In particular, we note and support the recognition in the Bill that harm arises from the posting of an intimate visual recording without consent, and that this amendment aims to prevent and limit the implication of this harm by providing a deterrent to posting revenge porn.
7. The current Act as it is makes it too difficult and cumbersome to prove the three-part test required to demonstrate harm, meaning that can be too difficult to legally prove that an offense has occurred when revenge porn is posted.
8. Simplifying the threshold from a too high to prove position to what is proposed in the Amendment Bill is a common sense approach that Youth Council supports.

Young people are often subject to revenge porn posts

9. Almost every young person will know of someone that has been a victim of revenge porn. The harm caused by the posting of intimate recordings – including both images, videos, and audio – are enormous for young people.
10. Significant mental health concerns and social stigma are clearly apparent when revenge porn is posted – posting personal, private, and intimate moments without consent exposes young people to ridicule, severe bullying, self confidence and body issues, and social exclusion.

11. Posting intimate visual recordings can and does break young people as they seek to forge ahead in life while learning and experiencing how the world works.
12. Those who post intimate recordings without consent do it for no other reason than to harm the victim through personal mental harm and social ostracization.
13. The result of these outcomes sees young people exclude themselves, bullied by their peers, and can see young people self-harm and unable to make emotional connections with others.
14. Youth Council underscores that the harm intended from posting an intimate visual recording is real, implicit in the act of posting, and of significant concern.

Amendment sets out a clear message

15. In explicitly criminalising the act of posting an intimate visual recording without consent and highlighting the harm that comes from this act highlights the importance of consent and reduces the difficulty around requiring the current three-part test to prove harm occurred.
16. As Parliamentarians, this move to explicitly criminalise the act of posting an intimate visual recording without consent sends a clear message that this conduct is not right, abhorrent, and will be punished heavily, in keeping with society's view.

Immediate requirement for takedown orders

17. The Bill also highlights that, when it becomes known that an intimate visual recording has been posted without consent, that harm has already occurred.
18. We submit that there should be more direct provisions added to the Bill to limit the further spread or access to recordings. We urge the Committee to take advice on how this action could occur.
19. We wonder if the Bill should include a further amendment to require that the District Court issue "take down" orders immediately upon learning of an application.
20. In short, we submit that as an interim measure, "take down" orders must become mandatory and immediate when an application under s 18 and 19 of the HDCA is brought in respect of an intimate visual recording posted without consent.

Consent education should be mandatory

21. We submit that the District Court should be required to order offenders under the new s 22A to attend court-approved consent education as part of their sentence.

Is taking a revenge porn video, but not posting it, acceptable?

22. We highlight that the current amendment only provides for the **posting** of an intimate visual recording to be an offense under the Bill.
23. However, **maintaining** a copy of an intimate visual recording is not an offense.
24. We are concerned that, as is well understood by young people, the threat of posting an intimate visual recording is held over people can inflict similar harm to act of posting the recording itself.
25. We highlight that **maintaining** an intimate visual recording, explicitly without consent, should be considered in the same way as **posting** an intimate visual recording.
26. We note that many people take and maintain intimate visual recordings. We do not submit that the state criminalises this action.
27. Instead, we submit that **taking and maintaining** an intimate visual recording, **without consent**, might be considered in a similar light to **posting** an intimate visual recording.
28. It is the element of consent, and how the mere existence of having an unconsented recording could be held over someone, causing harm, that we see to be of concern.

More proactive support needed too

29. We urge the Select Committee to highlight to Parliament and Government that greater action needs to be taken to proactively stop this sort of offending before it happens, with enhanced consent education.
30. A “stick” approach, reactively punishing perpetrators after the fact, is a deterrent, to a degree. But the harm has already occurred for the victims, and the ramifications are considerable, not only personally but also socially.
31. The proactive “carrot” approach to supporting people to understand that this conduct, of posting an intimate visual recording without consent, is heinous is also critical.

How does the Bill work for younger people?

32. Young people are increasingly involved across digital mediums from an increasingly early age. However, the HDCA may prove a less effective deterrent for younger people below the age of 17 where any offending is dealt with in the Youth Court which is not open to the public and where offending might not end in a charge.

33. We note concern that some of those who may be both victims and offenders of posting intimate visual recording without consent may not be properly covered under the Bill.
34. Younger people may well engage in the conduct that is criminalised under the Bill, but who cannot and in many respects should not be charged with the offenses provided for. Therefore, the element of deterrence is removed.
35. But at the same time, young people who may have been offended against by younger people have still been harmed.
36. Although we do not have a firm view on how to address this issue, we do highlight the concern to the committee.

Summary

37. Youth Council supports the Bill as proposed.
38. Specifically, we support the explicit and simplified offense for posting revenge porn.
39. We note that young people are often subject to revenge porn posts.
40. We note that the Bill sets out a clear message.
41. We submit that a further amendment should be considered to introduce an immediate requirement for takedown orders.
42. We further submit that consent education should be mandatory for offenders.
43. We question if taking and maintaining an intimate visual recording without consent should be treated similarly to posting a recording.
44. We submit that more proactive support is needed to stop offending before it occurs.
45. We question how the Bill works for younger people.