

**Child Wise submission in response to the discussion paper entitled ‘Civil penalties regime for non-consensual sharing of intimate images’ (2017).**

**Introduction**

Child Wise welcomes the opportunity to respond to the issues raised in the Department of Communications and the Arts discussion paper ‘Civil penalties regime for non-consensual sharing of intimate images’ (2017). Given the prevalence of the non-consensual sharing of intimate images Child Wise supports the introduction of civil penalties where those penalties take into account the status of minors, both as victims and as offenders. The following submission broadly responds to issues regarding minors that need to be taken into account when formulating a civil penalties regime.

**Information about the author**

Child Wise is a not-for-profit organisation that aims to reduce the incidence and impact of child abuse and exploitation. Child Wise works to build awareness, deliver education, and provide the tools to empower individuals and communities around Australia so they can actively prevent child abuse and exploitation.

**Response**

First and foremost, Child Wise would like to emphasise that in the formation of new civil penalties around the sharing of non-consensual intimate images, the status of minors within society and the law needs to be taken into account. It is Child Wise’s opinion that penalties

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and processes established for minors should be separate to the penalties and processes established for adults.

The emphasis in cases involving minors who share images non-consensually should be on education around the proliferation of intimate images rather than on punitive responses.

There are a number of examples in the United States where Judges have acted creatively to avoid charging minors with crimes and imposing heavy penalties. One particularly interesting example involved an Ohio Judge ordering a group of teenagers to attend sex education classes and to conduct a survey around what their peers knew about 'sexting'. They found that most teenagers surveyed were unaware that there were any possible legal ramifications for their actions in sharing and possessing intimate images.<sup>i</sup> The Judge acted accordingly and offered his expertise to schools as a tool for education and prevention. Other more conventional US-based education programs have included information on legal ramifications, the impact on victims, age-appropriate boundaries and education on responsible interactions on the Internet and other digital media.<sup>ii</sup>

In the case of the non-consensual sharing of images similar education programs emphasising the short-term and long-term impacts on victims and perpetrators, the importance of consent, respectful online and digital interactions and appropriate harm minimisation tactics for digital interaction may be beneficial.

In more severe cases or in cases that involve repeat offenders punitive responses are more appropriate i.e. a hierarchy of penalties would be appropriate for minors. A hierarchy of penalties should at the very least take into account the intent behind the sharing of the image, the harm caused and the extent to which the image has been shared. If an adult shares an image of a minor, criminal proceedings should immediately be entered into.

When it comes to issues of consent Child Wise would like to raise the following questions:

Is a child under the age of 18 ever capable of consenting to the sharing of an intimate image?

Is a child under the age of 18 ever capable of consenting to receiving an intimate image?

It is the opinion of Child Wise that parents and police should be notified in cases where an intimate image of a minor has been shared. The level of police involvement may be dependent on what is appropriate for the severity of the case but in all instances, police involvement is preferred. For minors who wish to lodge a complaint about the non-consensual sharing of an image processes should be easily accessible and understandable, straightforward and swift.

The grey areas inherent in current laws around the proliferation of intimate images of minors shared by minors warrants further discussion than is possible in the context of this submission. Child Wise would welcome the chance to continue being a part of this discussion in any further contexts.

Finally, Child Wise is of the opinion that education and easily accessible information for minors around the sharing of intimate images is imperative. The laws and community standards around intimate image sharing are complex and regularly changing. Understanding the laws and community standards is so complex that many adults are unsure of what is or is not legal, where to access information and what avenues are available and appropriate to use when attempting to respond to the non-consensual sharing of an intimate image. Therefore a clear, targeted and consistent form of education should be regularly delivered to minors in order to prevent the issues referred to above and in the discussion paper. Child Wise believes

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that education is the key in addressing the prevalence of intimate image sharing among young people both consensually and non-consensually.

### **Conclusion**

When addressing the creation of a civil penalties regime for non-consensual sharing of intimate images, Child Wise has identified the importance of separating minors from adults in both process and the establishment of appropriate penalties. Child Wise has pointed out issues inherent in consent around the sharing of intimate images for minors under the age of 18 and indicated that police involvement should occur in all cases that involve the sharing of images of minors. Child Wise has further highlighted the need for appropriate and up-to-date education to be delivered to minors as a preventative measure.

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<sup>i</sup> Salcido Carter, L 2012 *Effective responses to teen sexting: a guide for Judges and other professionals*, Futures without violence, San Francisco, California, p. 1.

<sup>ii</sup> Salcido Carter, L 2012 *Effective responses to teen sexting: a guide for Judges and other professionals*, Futures without violence, San Francisco, California, p. 9.