

19 September 2018

Our ref: BDS-CrLC

Committee Secretary  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000

By email: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Committee Secretary

**Criminal Code (Non-consensual sharing of Intimate Images) Amendment Bill 2018 – questions on notice**

Thank you for the opportunity to appear before the Committee on the Criminal Code (Non-consensual sharing of Intimate Images) Amendment Bill 2018 (the bill) and apologise for the delay in the provision of our responses to the questions on notice.

The Committee has requested that the Queensland Law Society (QLS) to respond to the following questions on notice. Due to the exceptionally short timeframe, we note that we reserve our right to make further comment on these issues in future consultations.

**1. What would a rectification order look like?**

As stated in our submission, the Society is concerned by the lack of clarity with the provision in the bill that deals with rectification orders. We note that the Bar Association also took issues with this provision in their submission on the bill.

We propose such an order could simply take the form of an order of the Court, similar to other orders – for example, bail orders and orders for inspection of material. This could be simple enough as to comprise a Form 12 General Form of Order (like similar orders under rule 8 of the *Criminal Practice Rules 1999*). The draft form is linked here for your attention:  
[https://www.courts.qld.gov.au/\\_\\_data/assets/word\\_doc/0005/87935/cpr-f-12-20070712.doc](https://www.courts.qld.gov.au/__data/assets/word_doc/0005/87935/cpr-f-12-20070712.doc).

The procedure could be for prosecutors or the Office of the Director of Public Prosecutions to draft a proposed order for the Court to approve. This process is done similarly for forfeiture orders and serious violent offender declarations.

We would also like the legislation itself to define what constitutes “reasonable action” to comply with a rectification order, and further, for the legislation to provide for circumstances where a person is incapable of complying with an order.

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**2. Who would a rectification order apply to?**

Reasonably, a rectification order could only apply to the defendant upon the institution of proceedings under the new offence provision. We cannot anticipate such an order being able to bind third parties, nor would it be fair or appropriate if it did. This would be an appropriate limit in the ambit of rectification orders, and a justifiable one as third parties should not be bound by the actions or prosecution of another person.

**3. Should reference be made by the Magistrate to the Enhancing Online Safety Act 2015 (Cth) when making a rectification order?**

We have now had the opportunity of briefly reviewing *Enhancing Online Safety Act 2015 (Cth)* to which the Committee Chair referred. We note that there may be constitutional limitations to the Queensland State Parliament enacting legislation similar to this legislation, as telecommunications is a head of power regulated by the Commonwealth and not by the State. Because the State may not be able to legislate in the same area, reference to this Act in State legislation may leave the Queensland legislation open to constitutional challenge.

As such, we do not consider that a Magistrate should have reference to the *Enhancing Online Safety Act 2015 (Cth)* when making a State rectification order. In any event, we believe there should be reasonable ambits to the power a Magistrate can have with making a rectification order under these proposed provisions, because the power itself arises out of the prosecution of a singular defendant for a State offence provision.

**4. Should we use the NSW provision to deal with intimate image?**

We have reviewed the NSW definition of “intimate image” set out in section 91N of the *Crimes Act 1900 (NSW)*. In our view, this is a preferable and less ambiguous definition to the provision proposed by section 207A of the current bill. We note that the definitions of “private parts”, “engaged in a private act” and “image” will also need to be imported from section 91N of the *Crimes Act 1900 (NSW)* for this definition to effectively operate.

Yours faithfully

Ken Taylor  
President

