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Submission to the Government Administration Select Committee on the Crimes (Intimate Covert Filming) Bill

Introduction

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 40 nationally organised societies. It has 33 branches throughout the country attended by representatives of those societies and some 150 other societies. The Council's function is to serve women, the family and the community at local, national and international levels through research, study, discussion and action.

Ten specialist Standing Committees study issues relating to their particular subjects and, with input where possible from the general membership, prepare submissions on legislation and discussion documents. The Parliamentary Watch Committee monitors changes to legislation and makes oral submissions before the Select Committees of Parliament.

The membership was asked questions on The Crimes (Intimate Covert Filming) Bill via *The Circular* and email, and this response has been prepared by the Justice and Law Reform Standing Committee. The Bill has generated much discussion amongst the membership, with half of the branches responding within the timeframe. Members complemented the Law Commission for their timely response to an urgent amendment regarding people's privacy.

With the continuing enhancement of technology it is necessary to be ahead of eventualities in communications such as presented by computer peripheral devices and digital camera cell phones. Technology will always over-reach any legislation. There will always be unscrupulous people taking advantage of any loophole in the law.

NCWNZ has policy on and deplores bad taste in photographs which appear in the daily press that are an invasion of people's privacy. Also, NCWNZ has requested various ministers of the crown to take steps to counteract the proliferation of material which is degrading to humanity.

Summary

NCWNZ supports the purpose of the Crimes (Intimate Covert Filming) Bill in amending the Principal Act, the Crimes Act 1961. Of the many responses received, only one person queried whether these actions would be better dealt with as 'offensive behaviour' and therefore not earning such a large penalty.

Specific Comments

Part 1 Amendments to principal Act

3 New heading and sections 216G to 216M inserted

Members indicated that this amending legislation is vitally necessary, more so at this time with advancing technology and the need for censorship and privacy. It is very easy for people to misuse digital technology, especially cell phones, which now have the capacity to record visual images and to transmit them widely. It is a crime to be a 'peeping tom'. The implications of this



practice could cause widespread embarrassment, and be regarded as a truly malicious act. Concerns were expressed that this is an area of activity that might be undertaken by school age children as a joke or to spite someone. It was felt that there would need to be an awareness campaign from the personal safety angle.

216G Intimate visual recording defined

In addition to the activities defined in this clause, members would like to see added the filming of people in gymnasiums, at the beach or poolside. Although these are public places, people do not expect to be filmed there and there is a social acceptance of the privacy of fellow bathers or gym users.

Another area that members felt should be defined is filming at accidents, when a person or victim's permission is unable to be obtained

Clause 216H Prohibition on making intimate visual recording

Everyone is liable to imprisonment for a term not exceeding 3 years who intentionally or recklessly makes an intimate visual recording of another person.

The membership expressed concern that there is a huge difference between the phrases 'intentional' and 'reckless', especially given the penalty of three years.

Young children fooling between themselves are not the same as paedophiles and other adults with malicious intent. NCWNZ strongly submits that younger people, fooling or behaving recklessly with their new "toys", especially mobile phones, ought to be dealt with differently, perhaps in the same way as instances of bullying. Many will not be aware of the law unless there is a very specific education campaign directed at them through the channels by which they usually gain information.

Clause 216I Prohibition on possessing intimate visual recording in certain circumstances

(1)

The use of the wording "in his or her possession, or under his or her control" raised concerns amongst our membership as mobile phones or computers might be used by many members of a family or their friends.

(2)

The application of this clause must take into account the way in which communication occurs in a modern world. Deleting material that is the unintentional receipt of "an intimate visual recording knowing it to be an intimate visual recording" does not necessarily remove it from the electronic device.

Clause 216J Prohibition on publishing, importing, exporting, or selling intimate visual recording

(1)

The same concerns were raised here at the difference between 'reckless' and 'knowing'. Where a person casually shows an intimate visual recording that they have received unsolicited, the level of punishment is deemed too high.

(2)(e) stores electronically in a way that is accessible by any other person or persons

Where electronic devices are shared, the information may be accessible to other persons. There was concern that this definition was too constraining.



**Clause 216K Disposal and forfeiture
(1) and (2)**

The members strongly felt that the words “the Court may, in addition to or instead of” should be strengthened by changing ‘may’ to ‘shall’. If the visual recordings should not be in existence at all, for whatever purpose, then surely they should automatically be destroyed after a conviction.

(3)

In general, the membership supported this clause, though there were some concerns raised on the determination of “any other person who ... would be directly affected ...”

(4)

Members were pleased to see that the Court could return to someone other than the person convicted, “any equipment, goods, or other thing used in respect of the commission of the offence”.

Clause 216M Protection from liability

While the membership support the explicit inclusion of the Police, Customs, Security Intelligence Service and Corrections officers as people being protected from liability, they also suggested that employees of Child Youth and Family should be one of the prescribed classes covered by **1(g)**.

While the membership anticipates that the method of prescription would be by Regulation, they would prefer this to be defined in the legislation.

The members would also support the inclusion of a new section in Clause 216M to cover medical and health professionals who publish or publicly use material that has been taken during an investigation to assist diagnosis or research but they must have met their medical ethical requirements, ie have permission for the taking of the photographs.

(4)

The membership supports the wording of this clause – that this “does not apply in respect of anything done in bad faith or without reasonable cause”.

Conclusion

The National Council of Women of New Zealand supports the introduction of this Crimes (Intimate Covert Filming) Bill.

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