

The Rt Hon David Gauke MP
Secretary of State for Justice
Ministry of Justice
102 Petty France
London SW1H 9AJ

4 May 2018

Dear Mr Gauke

RE: Recommendations to strengthen proposals to criminalise ‘upskirting’

We are writing to follow up our letter of 10 January 2018 recommending the criminalization of upskirting and in light of the Prime Minister’s statement that she too is ‘outraged’ at this ‘intrusive behaviour’ during PMQs on 2 May 2018. We understand that the Ministry of Justice is continuing to review the law in this area.

As we noted in our earlier letter, upskirting is a pernicious form of [image-based sexual abuse](#) which current laws – specifically those relating to voyeurism and outraging public decency – fail to adequately address. The bill proposed by Wera Hobhouse MP will provide a clear and effective legal remedy for victims. Specifically, it will ensure that ‘upskirting’ is recognised and treated as a sexual offence, thereby providing these particular victims with automatic anonymity. We hope that the Government will support moves to criminalise this activity.

In addition, and in light of the Ministry of Justice’s ongoing review, we are writing again to take this opportunity to recommend further measures to strengthen the law to protect **all** victims of image-based sexual abuse and to eliminate unjustified inconsistencies and failings in the law.

In particular, we draw your attention to the [Crimes Amendment \(Intimate Images\) Act 2017](#) recently enacted in New South Wales. It straightforwardly criminalises:

- the non-consensual creation of intimate sexual images (thereby covering upskirting and voyeurism)
- the non-consensual distribution of intimate images (conventional ‘revenge porn’, as well as distribution of upskirt images)
- threats to create and/or distribute intimate sexual images (currently not covered in English law, though part of Scots law)
- photoshopped or altered images (again not covered in English law but part of Scots law)

Adopting a similar provision would address many of the [gaps, inconsistencies and loop-holes](#) in the current criminal law, such as:

- *Automatic anonymity* currently only granted to victims of voyeurism, not non-consensual distribution of intimate images (‘revenge porn’) leaving many victims reluctant to report to the police;
- *Different motive requirements* confuse the law and are not justified. Voyeurism is only an offence if the perpetrator is motivated by sexual gratification; yet, if the perpetrator of

- revenge porn is motivated by sexual gratification, there is no offence. Neither voyeurism nor revenge porn is an offence if carried out for financial gain, for a laugh or for 'group bonding';
- The Hobhouse Bill will cover the *creation* of upskirt images, but not their distribution. Distribution will be covered by separate legal provisions, with separate motive requirements and no anonymity.

We also encourage you to consider introducing a statutory civil remedy to ensure better protection and further avenues of redress for victims of image-based sexual abuse, similar to that in the Protection of Harassment Act.

We make these recommendations drawing on our research in the area and close working relationships with policy-makers, politicians and the voluntary sector. We hope that these recommendations will be useful as your review continues. We would, of course, be happy to provide any further comments if that would be helpful.

With best wishes

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