ATSILS
Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd

Brisbane Office | ABN: 1111 6314 562
Level 5, 183 North Quay, Brisbane Qld 4000
PO Box 13035, George Street, Brisbane Qld 4003
07 3025 3888 | Freecall 24/7: 1800 012 255
07 3025 3800
info@atsils.org.au
www.atsils.org.au

1st June 2026

The Hon. Deb Frecklington MP
Attorney-General and Minister for Justice
Minister for Integrity
GPO Box 149
Brisbane Qld 4001

By email: criminallaws@justice.qld.gov

Dear Attorney-General,

Re: Consultation paper: Criminal responses to image-based abuse

Thank you for the opportunity to provide comments on the 'Consultation Paper: Criminal Responses to Image-Based Abuse' (**Consultation Paper**) which relates to the proposed criminalisation of the creation of intimate images through digital technology without consent. In this submission, we have outlined our comments on relevant consultation questions posed in the Consultation Paper.

Preliminary consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander peoples across Queensland. The founding organisation was established in 1973. We now have 25 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil and family

law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by over five decades of legal practise at the coalface of the justice arena and we, therefore, believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

Comments on the Consultation Paper

Please find below our responses to the Consultation Paper questions which we considered we could provide meaningful comment on.

As an overall comment, we do not support the creation of a new offence to capture the creation of intimate images that have been digitally altered by or generated using artificial intelligence (**AI**) or other technologies. We support the expansion of the existing offences relating to distribution or threats to distribute intimate images so that they explicitly capture artificially generated material. In our view, this reflects the reality that harm primarily arises from distribution, in contrast with creation of such content.

That being said, we acknowledge that the Consultation Paper expressly states that the Queensland government is committed to criminalising the non-consensual creation of such images and that many of the consultation questions are framed with respect to the 'new offence'. Accordingly, we have opted to respond to those questions in consideration of the above.

2. Should the new offence be limited to sexually explicit material, or should humiliating, degrading or invasive depictions also be captured?

If the outcome of the consultation is that the proposed new offence encapsulates 'humiliating, degrading or invasive depictions', these terms will need to be defined (particularly, what constitutes 'invasive') to mitigate ambiguity in relation to the interpretation of these terms.

3. Should the new offence include an intent element?

Yes, it is critical that there is an intent element. This is especially important when considering the evolving nature of AI technologies. AI systems might generate images

in ways that are not entirely within the control or intention of the user (for example, creation of images where multiple images are generated for the prompt maker's selection, over which the prompt maker has very limited control). As ignorance of the law is not a defence, an intent element is necessary to ensure fairness.

4. Should genuine medical and law enforcement purposes be defences for the new offence?

Yes, we consider that there should be a defence for each of these purposes. In the context of 'law enforcement purposes' we strongly recommend that this be defined as a safeguard to avoid ambiguity as to what is lawful and what is not.

5. Are there any other scenarios in which a person should not be liable for the new offence?

To the extent that the proposed new offence might apply to children, we recommend that the government consider a diversionary pathway that involves education and/or restorative justice to support children to be better informed about the unlawfulness of this conduct and the harms that it can cause. This would also serve as a powerful prevention/early intervention tool which could assist in preventing further offending conduct.

6. Should there be any other protections for victims (for example, should the court be able to make a non-contact order prohibiting the offender from contacting the victim)?

There are already various legal frameworks in which courts have the power to order no-contact with a person including, for example, under the *Domestic Violence and Family Protection Act 2012*, via sentencing orders, bail orders, under the *Peace and Good Behaviour Act 1982*, in the context of staking and harassment under the Criminal Code, etc. It is possible that a discrete power is not required.

That said, in the event that the proposed amendments include a discrete power of the court to make non-contact orders in connection with the proposed new offence provisions, the legislation should specify relevant considerations, such as the offender's intent and relationship with the victim. There should also be a mechanism to vary such orders without requiring an appeal.

7. Is the existing definition of an 'intimate image' sufficient to capture the use of modern technology, or does it need to be clarified or expanded?

'Intimate image' is defined under s207A of the Criminal Code as follows:

> *intimate image, of a person—*
> *means a moving or still image that depicts—*
> *(i) the person engaged in an intimate sexual activity that is not ordinarily done in public; or*
> *(ii) the person's genital or anal region, when it is bare or covered only by underwear; or*
> *(iii) if the person is female or a transgender or intersex person who identifies as female—the person's bare breasts; and*
> *(b) includes an image that has been altered to appear to show any of the things mentioned in paragraph (a)(i) to (iii); and*
> *(c) includes an image depicting a thing mentioned in paragraph (a)(i) to (iii), even if the thing has been digitally obscured, if the person is depicted in a sexual way.*

In our view, an argument could be made that the existing definition of 'intimate image' as extracted above captures 'deepfake' images and videos. That being said, if amendments are proposed to be made to this legal framework, it presents an opportunity to polish the drafting of the definition of 'intimate image' to perhaps more explicitly address the use of technologies such as AI.

8. Should the existing offences of distributing, or threatening to distribute, intimate images capture those images or videos that are artificially generated?

Yes. In our view, existing offences relating to distribution or threats to distribute intimate images should explicitly capture artificially generated material. Where the victim is under 16, we expect that existing child exploitation material provisions would apply.

10. Should offences relating to 'intimate images' capture sexually explicit audio material?

As a concept, including audio material could be tricky. It is difficult to comment on this without seeing the proposed drafting. As a general comment, there would be significant hurdles relating to identifying the person that the audio material was allegedly of/about. The audio material would have to be clearly identifiable and attributable to the victim.

11. If the new offence captures the creation of humiliating, degrading or invasive depictions that are artificially generated, should the existing offences of distributing, or threatening to distribute, intimate images also capture this material?

As noted in our earlier comments, we oppose the creation of an offence relating to the creation of intimate images. The only comment we would make in response to this question is that in re-drafting the framework, we would warn against creating duplication, where such is unnecessary or could cause confusion.

13. Are there any other ways Queensland's laws could be improved to address image-based abuse?

In our view, it should be essential that the drafting of proposed amendments to the existing legal framework incorporates protections to avoid disproportionate criminalisation of children and young people. As an example, the government should consider that the prosecution of any such new offence alleged against a child should require the approval of the Director of Public Prosecutions, consistent with the approach taken in Victoria and New South Wales. Further, the legislation should make clear that police are required to implement appropriate diversionary mechanisms, such as cautions and similar responses, for children and young people who engage in lower-level conduct without an appreciation of its seriousness. Both features are critical to mitigating the risk that minor or impulsive behaviour by young people is not met with unnecessarily punitive consequences that undermine rehabilitation and run counter to the principles underpinning the youth justice system.

Thank you for the opportunity to review the Consultation Paper.

Yours faithfully,

Shane Duffy
Chief Executive Officer