Special Rapporteur on Violence against Women
Office of the High Commissioner for Human Rights
Via email: vaw@ohchr.org
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Australian Women Against Violence Alliance
Submission on online violence against women

Thank-you for the opportunity to make a submission in response to the public consultation on online violence against women.

About the Australian Women Against Violence Alliance (AWAVA)
Australian Women Against Violence Alliance (AWAVA) is one of the six National Women’s Alliances funded by the Australian Government to bring together women’s organisations and individuals across Australia to share information, identify issues and contribute to solutions. AWAVA’s focus is on responding to and preventing violence against women and their children. AWAVA’s role is to ensure that women’s voices and particularly marginalised women’s voices are heard by Government, and to amplify the work of its member organisations and Friends and Supporters. AWAVA’s members include organisations from every State and Territory in Australia, representing domestic and family violence services, sexual assault services, and women’s legal services, as well as organisations representing Aboriginal and Torres Strait Islander women, young women, women educators, women in the sex industry and other groups. AWAVA's lead agency is the Women's Services Network (WESNET).
Introduction

Over the last few decades, technology such as the internet, social media, mobile phones, computers and surveillance devices have increasingly been used against women by perpetrators as a tactic of control and abuse within the wider context of violence against women. For these reasons in the submission we are using the term ‘technology-facilitated abuse’ as opposed to online violence against women in order to capture the wide range of behaviours that are inflicting violence and harm on women.

Australian legislation is enacted at the Commonwealth (national) level and in the jurisdictions of the sub-national States and Territories. Legislative responses to the increasing technology-facilitated abuse are neither unified nor consistent. While we understand that with rapidly developing technology, it may be hard for both legislation and police investigation techniques and models to catch up, it is necessary for legislation to both recognise the possibility of committing an offence facilitated through technology and more importantly, to focus on the criminal nature of such a behaviour.

Manifestations of technology-facilitated abuse range from recording of intimate images where a victim/survivor does not have a safe option not to consent, to stalking, installing hidden applications to track woman’s location¹ or to obtain access to her email or messages, (cyber)bullying and harassment, and the use of communications technologies to enable a sexual assault and/or to coerce a victim into an unwanted sexual act.²

Technology-facilitated abuse has also become a tool of perpetrators of domestic and family violence to threaten, harass and/or control both current and former partners.³ In terms of sexual violence in both intimate partner and non-intimate partner relationships, technology is another weapon with which assault is perpetrated. Manifestations of technology-facilitated sexual violence include non-consensual sharing of intimate images, online sexual harassment, technology-facilitated sexual assault and coercion, sexual exploitation, broadcasting sexual assaults online etc.

At Canberra Rape Crisis Centre (CRCC), for example, young women have now overtaken mature/older women as the largest group accessing services, due in large part to the impacts of trauma where sexual violence and technology-facilitated violence are among the dynamics present. While the role of technology in domestic and family violence is becoming more widely understood, the kinds of cases to which CRCC responds to are not included in domestic violence statistics, since the relationships involved are often not formal or legitimised, unlike ‘domestic’ relationships.

Non-consensual sharing of intimate images has damaging consequences that go beyond its potential impact on reputations and career prospects. Research has found that technology-facilitated abuse, including the non-consensual sharing of intimate images, or the threat of sharing such images, can traumatised and isolate victims and constitutes a major barrier to the full enjoyment of social life and

autonomy. Online interactions now constitute a major dimension of social life for many people, and the unauthorised sharing of intimate images can traumatis and is increasingly used as a tactic of control in abusive relationships and in the perpetration of sexual assault. More generally it also manifests and reaffirms the means of maintaining male privilege and power.

While both men and women may become victims of technology-facilitated abuse, it is important to recognise the gendered nature of the technology-facilitated abuse. Firstly, as research has shown the majority of victims are women and the majority of perpetrators are men. Secondly, the impacts of this behaviour is gendered as it is rooted in outdated stereotypes about gender roles, sexuality and sexual norms for women. And lastly, the underlining cause of violence inflicted through technology lies in the “social and structural context of gender hierarchization”, in other words, power relations between men and women, the dominant position of men over women, and the desire for control and coercion. The normalisation of male violence and restrictive expectations about women and girls are some of the key drivers of violence and bullying generally.

We are also seeing an increased number of social media pages and groups promoting violence against women, sexism, and harmful gender stereotypes. Typically, these are created in traditionally masculine institutions such as the military or sporting clubs. It takes a lot of community pressure to remove these pages.

Notes on the language used in the Australian context

Within the Australian context, one of the manifestations of technology-facilitated abuse that gets a great deal of media attention is image-based abuse, which is commonly referred to in a sensationalist way as ‘revenge porn’. The term has become widespread in policy work as well. Unfortunately, the practice of referring to image-base abuse as ‘revenge porn’ sends a misleading message about the nature and impact of this crime.

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6 Ibid.


As several previous submissions from the women’s sector as well as academics have pointed out, revenge is just one of various possible motives for the non-consensual sharing of intimate images, where the main reasons lie in control and intimidation. The term “porn” may inadvertently reinforce the view that people whose intimate images are misused were somehow responsible for this misuse, because they supposedly “consented” to the creation of the image. Problematically, the term ‘porn’ implies ‘sex’ rather than coercive control, intimidation and abuse.

It is important to explicitly name the behaviour as a form of abuse, whether that abuse occurs through an interpersonal violation, breach of trust, exploitation, public shaming and/or harassment. AWAVA, thus, uses the terminology of “non-consensual sharing of intimate images”, “image-based abuse”, and “technology facilitated abuse”. This terminology is beginning to be used more widely by government agencies such as the Australian Office of the e-Safety Commissioner.

Scale of technology-facilitated abuse

Comprehensive research on the prevalence of all forms of technology-facilitated abuse is absent in Australia. Most commonly, technology-facilitated abuse is viewed as a type of violence against women. The most recent research focusing on the scale of image-based abuse (as one form of technology facilitated abuse) only has been done by researchers from RMIT and La Trobe University. This research found that one in five people in Australia has experienced image-based abuse.\(^9\) While both women and men are equally affected, men are more likely to be a perpetrator and known to the victim. The study has also found that 56 per cent of people with a disability and 50 per cent of Indigenous Australians had been victims of image-based abuse. People who identified as LGBTIQ were more likely to be victims (36 per cent) than heterosexual people (21 per cent).

In 2017 the Australian Human Rights Commission produced a report on sexual assault and sexual harassment at universities in Australia. It has found that “more than 1 in 5 students experienced technology-based sexual harassment in 2016”. More detailed findings highlighted that:

- 22% of students had experienced technology-based sexual harassment on at least one occasion in 2016;
- 5% of students experienced technology-based sexual harassment in 2016 in a university setting;
- Women (3.2%) were more than twice as likely as men (1.4%) to have been sexually harassed in a university setting in the form of repeated or inappropriate advances on email, social networking websites or internet chat rooms; and
- Trans and gender diverse students were more likely than women or men to report sexual harassment at university in 2016.\(^10\)

In the area of domestic and family violence, technology-facilitated abuse is widespread. The national survey of technology-facilitated abuse drawing on the experience of family violence practitioners

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across Australia\textsuperscript{11} stated that almost all survey respondents (98 per cent) indicated that they had clients who had experienced technology-facilitated stalking and abuse. Another survey of survivors who had received unwanted contact from a partner or ex-partner via the phone or internet found that 80 per had been abused via text messages, while Facebook was the next most commonly used technology.\textsuperscript{12}

**Current policy measures to identify and respond to technology-facilitated abuse**

**The Third Action Plan of the National Plan to Reduce Violence against Women and their Children 2010-2022 (the Third Action Plan)**

Australia’s commitment to working towards gender equality and ending violence against women is embodied by the adoption of the National Plan to Reduce Violence Against Women and Their Children 2010-2022 (the National Plan), which acts as the primary national policy on reducing sexual, domestic and family violence.

The National Plan is an important document that aims to unify the Australian community towards a shared goal: ending violence against women and children. The four Action Plans (each covering three years) under the National Plan are intended to build a set of defined and practical steps to respond to and prevent violence against women and their children.

The Third Action Plan of the National Plan identifies responding to image-based abuse as one of its priorities.

4.6: **Respond to the distribution of intimate material without consent, including what is known as ‘revenge pornography’**.

4.6(a) Develop a national portal to assist women in the removal of intimate images that are distributed online without their consent.

4.6(b) Work with internet content hosts / services / telecommunication companies and social media services to facilitate consistent and responsive approaches for removal of intimate material.

4.6(c) Undertake a national legislative review of the adequacy of criminal legislation for those distributing intimate material without consent to identify any jurisdictional amendments that may be required.

4.6(d) Provide information to the broader community that highlights the impacts and consequences of distributing intimate material.

As a part of the Third Action Plan funding, the Australian government announced that $4.8 million would be provided to the eSafety Commissioner to develop a national online portal (the Portal) to help counter the effects of non-consensual sharing of intimate images.\textsuperscript{13}


The Office of the Children’s eSafety Commissioner

A key function of the Children’s eSafety Commissioner is to administer a complaints system, backed by legislation, to ensure the quick removal of material from social media sites that is targeted at, and harmful to, an Australian child.

In 2015 the Australian government announced a $100 million Women’s Safety package to improve the safety of women and their children who are experiencing or are at risk of experiencing domestic and family violence and sexual violence. Under the Package, the work of the eSafety Commissioner has been expanded to address online violence and safety for women. As a part of this funding, the Commissioner developed the ‘eSafety Women’ website, and has been delivering workshops to front line workers on technology-facilitated abuse since July 2016. In October 2017, the Office for the eSafety Commissioner launched a new online portal where people can report image-based abuse, learn about legal options and find links to support.

National statement of principles relating to the criminalisation of the non-consensual sharing of intimate images

On 19 May 2017, the Law, Crime and Community Safety Council agreed on national principles to assist the Commonwealth, states and territories to create an effective and consistent criminal framework to combat the non-consensual sharing of intimate images. The principles provide jurisdictions with guidance on victim protection, consent, harm and penalties. However, States and Territories retain a lot of discretion to adopt relevant legislation as they see fit.

While the national principles urge States and Territories to define intimate images broadly and “inclusively to cover still images and visual recordings”, we agree with Liz Snell, Law Reform & Policy Co-ordinator at Women’s Legal Service New South Wales, that:

“intimate image’ should include an image that reveals a person in a way that is inconsistent with their cultural context, for example, an image of a person being depicted without a head covering where a head covering is of cultural or religious importance.”

Existing legislation to identify and respond to technology-facilitated abuse

Existing legislation regarding technology-facilitated abuse differs by jurisdiction and whether it attracts civil or criminal penalties. The section below separately addresses measures regarding non-consensual sharing of intimate images and other forms of technology-facilitated abuse.

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14 See https://www.esafety.gov.au/
Commonwealth level

Criminal Code Act 1995\(^{20}\)

On the Commonwealth level, the Criminal Code Act 1995 provides for the criminalisation of conduct relating to the misuse of a telecommunications service with a penalty of imprisonment for three years. Under section 474.17 of the Code, a person is guilty of an offence if:

\begin{itemize}
  \item[a)] the person uses a carriage service; and
  \item[b)] the person does so in a way (whether by the method of use or the content of a communication, or both) that reasonable persons would regard as being, in all the circumstances, menacing, harassing or offensive.
\end{itemize}

The individual must have intended to use the carriage service and have been reckless as to whether they were using a carriage service in a way that the reasonable person would regard in all the circumstances as menacing, harassing or offensive.

This Commonwealth provision can be interpreted to include cyberstalking and cyberbullying, including in the context of family and domestic violence as well. Henry and Powell argue that the existing law is broad in applications and that “many legal and law enforcement experts have commented that it is not well known or enforced for image-base offences”.\(^{21}\)

States and Territories level

Non-consensual sharing of intimate images legislation

We refer you to the attached table for a detailed description of the current legislation in the area of image-based abuse.

In summary, legislation to prevent and criminalise image-based abuse differs by jurisdiction with no specific Commonwealth offence. Currently, only ACT\(^{22}\), NSW\(^{23}\), VIC\(^{24}\) and SA\(^{25}\) have provisions in respective Criminal Acts/ Codes prohibiting non-consensual sharing of intimate images. WA recognises distribution of intimate images as well as cyberstalking as grounds for obtaining a family violence restraining order.\(^{26}\) Other States and Territories do not have similar offences, but have offences relating to possession and distribution of indecent materials, images, and/or films.\(^{27}\) All States and Territories have laws against child sexual abuse and child pornography/child


\(\)\(^{22}\) Crimes Act 1990 (ACT) Part 3A Intimate Image Abuse, Sections 72A-72H.

\(\)\(^{23}\) Crimes Act 1990 (NSW) Section 91P Record intimate images without consent, Section 91Q Distribute intimate image without consent, Section 91R Threat to record or distribute intimate image without consent.

\(\)\(^{24}\) Summary of Offences Act 1966 (VIC), Section 41B Visually capturing genital or anal region, Section 41C Distribution of an image of genital or anal region, Section 41DA Distribution of intimate image, Section 41DB Threat to distribute intimate image.

\(\)\(^{25}\) Summary of Offence Act 1953 (SA) Section 26DA Threat to distribute invasive image or image obtained from indecent filming, Section 26D Indecent filming, Section 26C Distribution of invasive image, Section 26B Humiliating or degrading filming.

\(\)\(^{26}\) Restraining Orders and Related Legislation Amendment (Family Violence) Act 2016 (WA) Part 1B Family Violence Restraining Order, Section 10G Restraints on respondents.

exploitation material, which are not confined to online offences. The Commonwealth Criminal Code includes offences relating to the abuse of children via a carriage service (including phone and internet) and the Customs Act 1901 contains offences for the importation and exportation of, among other things, child pornography and child abuse material in hard copy.

Criminal offences for other forms of technology-facilitated abuse
We refer you to the attached table for a detailed description of the current legislation in the area of image-based abuse.

Across States and Territories legislation differs in terms of the capacity to identify and respond to technology-facilitated abuse. On the level of States’ and Territories’ legislation several types of offences can be interpreted as committed through technology.

Apart from image-based abuse, other relevant manifestations of technology-facilitated abuse include:

- threats;
- stalking;
- harassment;
- defamation; and
- computer related offences like unauthorised modification or access to data and communications.

Threats
A technological component in making threats is explicitly recognised only in the Cth Criminal Code, 474.15 Using a carriage service to make a threat.

The only State legislation that can be interpreted as addressing the delivery of threats via technology is Section 31 Documents containing threats of the Crimes Act 1990 (NSW). The text reads as “sending or delivering a document containing threats to kill or inflict body harm”.

Stalking
Similarly, this offense exists in all jurisdictions with similar penalties of maximum two to three years of imprisonment for a non-aggravated offense and from five to ten years (Victoria has the highest penalty) in aggravated cases.

In most jurisdictions except for the NSW Crimes (Domestic and Personal Violence) Act 2007 and the QLD Criminal Code Act 1899 (Section 359E Unlawful Stalking) the technological aspect of the offence is explicitly written.

Harassment
The Crimes Act 1990 (NSW) foresees 5 years of imprisonment when “a person who assaults, stalks, harasses or intimidates any school student or member of staff of a school while the student or member of staff is attending a school, although no actual bodily harm is occasioned”. No technological component of stalking or harassment is included in this offence. The limitation is significant as it neither covers bullying and harassment by the same perpetrator committed outside the school ground

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30 NSW Crimes Act 1990, SECT 6OE Assaults etc at schools
nor bullying and harassment perpetrated on the school ground but through technology, including
school computers.

Another example is the WA Criminal Code Act that safeguards from racist harassment and incitement
to racial hatred (3-14 years of imprisonment). The technological aspect of harassment is implied in the
definition of ‘distribution’. 31

**Defamation**

This offence exists in all Australian jurisdictions with no mention of a technological aspect of it. However, the Crimes Act 1990 (ACT) does interpret ‘publish’ as publishing in print or via electronic
means.32

While it is argued that prosecution is rare, the amount of cyberbullying in which derogatory or
denigrating material is posted on the internet is reaching high levels. To prove criminal defamation, it is
necessary to show that the offender had both knowledge of the falseness of the information, and
an intention to cause serious harm (or reckless indifference towards it).33 Without admission of guilt, criminal defamation may be difficult to prosecute.34 With existing difficulties in prosecution, it is
important to have an explicitly written technological aspect of the offence.

**Computer related offences such as unauthorised modification or access to data and communications**

Every State and Territory has legislation that foresees criminal penalties for the unauthorised use of
computers to modify, access data or impair communications.35 However, the legislation in this area
has yet to catch up with the increased use of technology. With the emergence of smart homes, at a
given time up to 20 devices can be recording data. Thus, it is important to enlarge the definition of an
unauthorised computer to encompass other existing and emerging electronic devices, not only to
access or modify the data but also to impersonate a victim.

**Surveillance legislation**

An unauthorised use of surveillance devices has a strong link with domestic and family violence. A
number of Commonwealth, State and Territory laws variously restrict the use of listening,36 optical,37
data38 and tracking39 surveillance devices. Most commonly, phones are used to overhear, record,
monitor or listen to a private conversation without consent. Definitions and penalties vary across
jurisdictions.

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31 WA Criminal Code Act, Chapter XI — Racist harassment and incitement to racial hatred.
33 See https://cybercrime2013.wordpress.com/findings-and-research/where-does-cyber-bullying-fit/
36 A ‘listening device’ means any instrument, apparatus, equipment or device capable of being used to listen to or to record
a private conversation, but does not include a hearing aid.
37 An ‘optical surveillance device’ means any instrument, apparatus, equipment, or other device capable of being used to
record visually or observe a private activity. It does not include, for example, spectacles or contact lenses.
38 A ‘data surveillance device’ means any device capable of being used to record or monitor the input of information into or
the output of information from a computer. It does not include an optical surveillance device (ie, a video camera filming
the typing of words on a computer in not a data surveillance device).
39 A ‘tracking device’ means an electronic device the primary purpose of which is to determine the geographical location of
a person or an object.
In short, the most comprehensive legislation to address an unauthorised use of all possible surveillance devices is in the New South Wales, Northern Territory and Victoria. We refer you to the attached table for a detailed description of the current legislation in the area of surveillance.

New legislative developments in Australia

Civil penalties regime for non-consensual sharing of intimate images

While there have been proposals to introduce new criminal laws to tackle image-based abuse, to date the federal government has only proposed a civil penalties scheme through the eSafety Commission, which would assist victims in reporting image-based abuse and having the images removed.

In May 2017 the Department of Communications and the Arts released the consultation paper on the civil penalties regime for non-consensual sharing of intimate images. The consultation sought views on how a proposed civil penalty regime might best complement existing regulation and other initiatives, and how it might be framed; the expansion of the role of the Commissioner to administer the new scheme, and how the Commissioner might enforce the civil penalty regime; and definition of key terms.

It is proposed that the civil penalties regime operates alongside the Portal giving the eSafety Commissioner additional powers to enforce the prohibition on non-consensual sharing of intimate images. It is anticipated that the civil penalties regime will provide the ability to remove the images and stop their distribution in a fast manner and take the burden off the criminal justice system by providing a complementary avenue for victims to pursue. However, if a victim chooses to pursue the civil penalties, the access to the criminal justice system on the same matter will be barred. The public consultation explicitly stated that only feedback on the civil and not criminal penalties was sought.

AWAVA has made the submission to the Department reinstating our position to criminalise the non-consensual sharing of intimate images in the Commonwealth law.

The best protection in the Australian context will be achieved by a specific purpose Commonwealth law mirrored by consistent and uniform State and Territory laws. Penalties for the offence should be substantial, reflecting the harm caused and the need to deter potential offenders. The definition of the offence should recognise that there are cultural and other differences in understandings of what is intimate or sexual. It should also focus on the potential harm caused to the victim, rather than the intention of the offender, with culpability framed in terms of recklessness with regard to the likely impacts on the victim, rather than depending on intention per se, which can be difficult to establish.

We also refer you to the submission made by the WESNET and Women’s Legal Services Australia. We support their view that “any civil penalty regime must be accompanied by consistent and uniform

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40 See the consultation paper and stakeholder submissions at https://www.communications.gov.au/have-your-say/civil-penalty-regime-non-consensual-sharing-intimate-images
42 Ibid.
criminal legislation enacted in each Australian State and Territory, and at a Commonwealth level, noting State and Territory legislation must address the non-consensual sharing of intimate images beyond carriage services and postal services”.

**The Crimes Amendment (Intimate Images) Act 2017 (New South Wales)**

The Crimes Amendment (Intimate Images) Act 2017 (NSW), which will amend the Crimes Act 1900 (NSW), is important legislation that criminalises one aspect of technology-facilitated stalking and abuse, that is, the non-consensual recording and/or sharing of intimate images.

The Bill defines four new offenses concerned with intentional recording and distribution of intimate images without consent, threat to record and/or distribute as well as contravening an order such as failing to take reasonable steps to take down or destroy an intimate image recorded or distributed without consent.

Amongst important statements is absence of the need for the prosecution to prove actual fear as well as absence of the requirement to prove an existence of an image in a ‘threat to distribute’ offence. As Liz Snell argues “this is important as the mere threat is sufficient to cause fear, anxiety, a sense of powerlessness and a feeling of being trapped in a relationship categorised by domestic violence.”

In addition, the three new offences will allow a victim to apply for financial compensation under the NSW Victims Support Scheme in recognition of the harms caused.

The proposed bill is an important development in the area of responding to and prosecuting for image-based abuse.

**Senate inquiry into the adequacy of existing offences in the Commonwealth Criminal Code and of state and territory criminal laws to capture cyberbullying**

In September 2017, a Senate inquiry was launched aimed at reviewing the adequacy of existing offences in the Commonwealth Criminal Code and of state and territory criminal laws to capture cyberbullying. Amongst areas of review are the application of section 474.17 of the Commonwealth Criminal Code ‘Using a carriage service to menace, harass or cause offence’, and the adequacy of the policies, procedures and practices of social media platforms in preventing and addressing cyberbullying. One of the key focus areas of the inquiry is adequacy of penalties in instances of suicide attempts or committed suicides.

**Emerging areas of concern**

**Technology-facilitated abuse of women in the sex industry**

We draw your attention to an emerging issue of the technology-facilitated abuse of women in the sex industry that has been raised by our member organisation Project Respect. Project Respect states that women are reporting instances of clients filming them without permission. Women who have been trafficked also experience technology-facilitated abuse at the hands of traffickers who are using

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45 Ibid.
47 Victims Support Scheme provides support services, including free counselling and financial assistance to victims of crime. http://www.victimsservices.justice.nsw.gov.au/
48 http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Cyberbullying
49 Project Respect is a support and referral service for women trafficked for sexual exploitation and women in the sex industry. Project Respect is a member of AWAVA. For more information, see http://www.projectrespect.org.au/
their recordings in a threatening manner, “with the aim of building control over the woman as part of their enslavement”.50

Project Respect states that technology-facilitated sexual violence against women in sex industry has been increasingly impacting women on different levels: in the context of family violence, with clients in the sex industry, and in the context of women trafficked for sexual exploitation.

We refer you to the full text of the submission prepared by Project Respect in response to the Senate inquiry on ‘revenge porn’ that outlines more issues of concern in relation of technology-facilitated abuse of women in the sex industry. The submission can be accessed via this link.

**Technology-facilitated abuse of women human rights defenders**

In general, human rights defenders are often facing violence directed at them because of the work they do. Amnesty International states in their report, that “the abuses they experience are multi-faceted and they are subject to multiple and intersecting forms of discrimination”.51 Women human rights defenders are often targeted not only for their activism but “also because of their gender and their activities are repeatedly delegitimized and denigrated”.52

Women working on the issues of sexual and reproductive rights, gender equality, family and domestic violence are more vulnerable to threats including technology-facilitated abuse. For women in regional and rural areas, threats are increasing due to the fact that they are normally known to both victim/survivors and perpetrators. Women also become targets of trolling and cyberbullying online for their posts and/or promoting of gender equality and rights of women and girls.

We urge you to further examine the area of technology-facilitated abuse against women to protect and promote human rights of women and girls.

**Cyberbullying and diverse populations**

Reports over the last 10 years indicate that from 60 to 80 per cent of people who identify as LGBTIQ have experienced homophobic abuse including cyberbullying.53 Transgender women and men experience significantly higher rates of non-physical and physical abuse compared with women and men who identify as homosexual.54 The National LGBTI Health Alliance states that LGBTI young people aged 16 to 27 are five times more likely to attempt suicide.55 When experienced bullying and harassment, the risk is higher.

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50 Project Respect submission to the Senate Legal and Constitutional Affairs References Committee Inquiry into the ‘Phenomenon colloquially referred to as ‘revenge porn’’
https://d3n8a8pro7vhmx.cloudfront.net/projectrespect/pages/15/attachments/original/1453939756/Revenge_Porn_Submission.pdf?1453939756


52 Ibid.

53 Australian Research Centre in Sex, Health and Society, La Trobe University, Writing Themselves in 3: The third national study on the sexual health and wellbeing of same sex attracted and gender questioning young people (2010); ACON, Submission to the House of Representatives Standing Committee on Family, Community, Housing and Youth inquiry into the impact of violence on young Australians (2009), p.4; Also see Tomsen & Mason 2001; Australian Human Rights Commission Violence, Harassment and Bullying and the LGBTI Communities

54 Australian Research Centre in Sex, Health and Society, La Trobe University, Writing Themselves in 3: The third national study on the sexual health and wellbeing of same sex attracted and gender questioning young people (2010);

55 See National LGBTI Health Alliance http://lgbthealth.org.au/statistics/#_ftn1
Chatrooms have been identified as the place where young LGBTI people are most likely to feel threatened. The incidence of cyberbullying has increased greatly in recent years with the proliferation of online social networking tools. There have been high profile cases of LGBTI young people being bullied and harassed online that have resulted in self harm and suicide.

As noted above, researchers Henry and Powell also found that people with disabilities and Aboriginal and Torres Strait Islander people are among populations vulnerable to the increased rates of technology-facilitated abuse. The suicide rate amongst Aboriginal and Torres Strait Islander peoples is more than double the national rate.

Thus, we believe that jurisdictions need to consider how criminal penalties can work together with antidiscrimination laws to treat cyberbullying on the grounds of sexuality, culture, race, gender, disability and religion as particularly serious offences. Penalties should reflect that.

Best practice in responding to and educating about technology-facilitated abuse

The Safety Net Project

The Safety Net Project is one of the signature projects of WESNET which looks at the intersection of technology and violence against women. Since 2011, Safety Net Australia has been training front-line agencies on the intersection of technology and violence against women issues; these trainings range from how abusive individuals misuse technology to how survivors can use their technology safely and privately. WESNET worked closely with the eSafety Commission (the Commission) in providing expert content for the two-hour “Empowering women to take control online,” training, which is delivered to front-line agencies in partnership with the Commission. WESNET also provides technical expertise to practitioners, policy makers, and technologists on technology-facilitated abuse issues that impact women, including the misuse of images and video to harass, abuse, and harm.


Recharge: Women’s Technology Safety

Recharge is a collaborative project between Domestic Violence Resource Centre Victoria (DVRCV), Women’s Legal Service NSW and WESNET. As part of this project, DVRCV conducted a national survey of technology-facilitated abuse drawing on the experience of family violence practitioners across Australia. For more information visit http://www.wlsnsw.org.au/recharge/

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58 See for example, J Schwartx., ’Bullying, Suicide, Punishment’, New York Times, 2 October, 2010. At www.nytimes.com/2010/10/03/weekinreview/03schwartz.html?_r=1&ref=tyler_clementi
60 The Women’s Services Network (WESNET) is the national peak organisation for domestic and family violence services in Australia. WESNET works to promote the prevention or control of human behaviour that is harmful or abusive to human beings, specifically the reduction of domestic and family violence against women and their children. For more information visit https://wesnet.org.au/
SmartSafe

In 2015 the Recharge project was expanded Australia-wide through a national survey\(^{62}\), the creation of legal guides\(^{63}\) and referral information\(^{64}\) for all states and territories, and development of online training programs.\(^{65}\) More information about SmartSafe can be found at [http://www.smartsafe.org.au](http://www.smartsafe.org.au)

**Recommendations for reform**

1. **Broadening the definition of violence against women to include technology-facilitated abuse**

In line with the CEDAW General Recommendation 35 on gender-based violence against women, updating general recommendation No. 19, in particular paragraph 20, we are calling for a broadening of the definition of violence against women to capture technology-facilitated abuse as one of the manifestations of gender-based violence.

2. **Increased focus on the primary prevention programs**

There is a need to increase the focus on primary prevention programs consisting of (but not limited to) educational programs about dominant constructions of gender, masculinity and violence against women, as well as promoting and mainstreaming gender equality on multiple levels including through policy.

3. **Reform to criminal and civil laws**

There is a need for a consistent and uniform legislation adequately responding to the nature of crime and impact it has, especially in aggravated cases.

4. **Adequate consultation process regarding legislation changes**

It is important to ensure that a wide range of stakeholders working in the areas of violence against women, technology-facilitated abuse, children and technological safety, lawyers, police, magistrates and other relevant bodies are consulted on the changes and implementation of the legislation. It is also important to include victims/survivors in the consultation process to ensure that their experiences are heard and anticipated legislative changes meet their needs in accessing justice.

5. **Training for magistrates, lawyers and police on violence against women and technology**

Police training is important in ensuring their ability to investigate and prosecute perpetrators, as well increasing public trust in obtaining justice in the instances of technology-facilitated abuse. There is also a need to review and improve existing investigation techniques and models. Powell and Henry argue that police lack sufficient training to cope with the increased rates of crimes committed in the online realm.\(^{66}\)

It is equally important to train lawyers and appropriate magistrates on violence against women and technology-facilitated abuse. We refer you to the Safety Net Australia, a project run by WESNET for training available\(^{67}\) as a best practice in the area.

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\(^{64}\) See [http://www.smartsafe.org.au/support-overview](http://www.smartsafe.org.au/support-overview)

\(^{65}\) See [https://wesnet.org.au/safetynet/training/](https://wesnet.org.au/safetynet/training/)


\(^{67}\) See [https://wesnet.org.au/safetynet/](https://wesnet.org.au/safetynet/)
6. Training and resources for frontline workers and service providers

As Liz Snell has noted, “Resources are also required for police and frontline worker training and for a place where victims/survivors can go to get technical support as well as access to practical and legal support.”68

7. Adequate and sustainable funding to service providers

It is imperative to ensure adequate and sustainable funding to organisations working in the women’s service sector for continuing service provision, training and resource development for responses to technology-facilitated violence against women.

8. Support and information for a diversity of victims/survivors

It is important to recognise the diversity of needs for victims/survivors. For example, the needs of women who are experiencing technology-facilitated abuse in the context of domestic violence will differ from those of young people.

It is vital that specialist women’s services are sufficiently funded to provide necessary support. Victims of technology-facilitated abuse need to have access to online, telephone and in-person counselling and advice services.

9. Community awareness and attitude change

Despite the high prevalence of technology-facilitated abuse and broad agreement about the need to criminalise these types of behaviours, Henry and Powell argue that the Australian public still holds attitudes that amount to victim-blaming. Their survey has pointed to a serious need for an awareness raising campaign aimed at producing relevant information for victims, encouraging ‘bystander’ and ‘witness’ actions and challenging the culture of victim-blaming.69

We thank you for the opportunity to participate in the public consultation on existing good practices on law regulating violence against women and sexual harassment online. If you would like to discuss the contents of the AWAVA submission further, please contact Merrindahl Andrew, AWAVA Program Manager, using the details below.

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