



7 January 2016

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Parliament House
Canberra, ACT 2600
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RE: Senate Legal and Constitutional Affairs References Committee Inquiry into the phenomenon colloquially referred to as 'revenge porn', which involves sharing private sexual images and recordings of a person without their consent with the intention to cause that person harm.

The emergence of 'revenge porn' as a form of violence against women in our communities is an issue of increasing concern. As the peak body for family violence services for women and children in Victoria, Domestic Violence Victoria (DV Vic) welcomes the opportunity to provide comment to the Senate committee inquiry into this matter.

DV Vic urges the Committee to consider the use of 'revenge porn' in the context of intimate partner violence, with attention to the particular dynamics of family violence. The nature and prevalence of family and domestic violence in Australia is now recognised and there is a growing understanding of the issue in the community and amongst decision-makers. However, it is critical that an understanding of family violence, with its particular dynamics of coercive and controlling behaviours that undermine women, their rights and personal agency, are central to an understanding of, and responses to the issue of 'revenge porn'.

This letter reiterates issues raised in DV Vic's feedback to the exposure draft of the private members bill, *The Criminal Code Amendment (Private Sexual Material) Bill 2015*. We believe that the points raised in that response are equally pertinent to the considerations of the current inquiry.

The use of 'revenge porn' in family violence

The issue of 'revenge porn' is a growing concern across the community, especially as access to digital media and technologies continues to increase. DV Vic wishes to emphasise that the dynamics around coercion and control that are particular to a family and domestic violence context may place women experiencing family violence at greater of risk of being subject to 'revenge porn' by their partners or ex-partners. Anecdotal reports from DV Vic's member services indicate that the overwhelming majority of their clients have experienced some form of technology-enabled abuse by partners and ex-partners, such as stalking or harassment. In the same context, 'revenge porn' is now increasingly regarded as a common form of intimate partner abuse. The perpetrator may threaten to share or publish private sexual material to maintain power and coercive control over his partner or ex-partner and distribute the material as

retribution if the woman leaves. This form of abusive behaviour has significant adverse consequences for victims in many different aspects of their lives.

Women experiencing family violence live with fear and anxiety as a result of physical, sexual or psychological abuse by the person they love and who often purports to love them. They commonly feel ashamed and guilty about their experience and have often been made to feel that they are to blame for the abuse and consequently have little self-confidence. It's also common for perpetrators to isolate women from family and friends. The complex nature of the relationship between perpetrators and victims is a critical consideration in any policy and legislative responses to 'revenge porn'.

The notion of consent in the context of family violence

DV Vic believes that the criminalisation of these abusive behaviours ('revenge porn') sends a strong signal that the community considers such behaviour unacceptable and provides an important and much needed lever in the Commonwealth government's approach to preventing and responding to violence against women. DV Vic supports the creation of a specific criminal offence in relation to 'revenge porn' acts and threats, which are often associated with the controlling and coercive behaviours of perpetrators of family violence. The offence should apply to threats made directly to subject of the material as well as others, such as family members, who would be indirectly adversely affected by the sharing of the material, and consequently subjected to coercive control through this behaviour.

In developing a legislative response to 'revenge porn', the notion of consent is central. In the context of family violence, it's important to recognise the highly problematic nature of consent because women in this situation may not feel able to refuse to participate in the production of images or materials and/or to consent to their subsequent distribution. Due consideration must therefore be given to the limitations to the personal agency of those in a family violence situation. The model of positive consent as applied in sexual assault laws that makes explicit that consent is expressly and freely given could be useful in this context, with the clear articulation of the right to withdraw consent at any time.

Importantly, it will be critical that policy responses to 'revenge porn', including civil and criminal remedies, are developed in the context of existing state-based family and domestic violence laws as well as family law. A Commonwealth law against 'revenge porn' would allow for a consistent response across states and territories in recognition that this issue – often in digital form – crosses physical borders. This will be essential to ensure congruency with stalking, harassment and other laws as well as the national domestic violence order scheme and parenting orders.

We would welcome an opportunity to discuss the issues raised in this brief submission with the Committee.

Yours sincerely

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CEO, Domestic Violence Victoria