



10 December 2020

Mr Andrew Wallace MP
Chair
House of Representatives Standing Committee on Social Policy and Legal Affairs
PO Box 6021
Parliament House Canberra 2600

Via email: family.violence.reps@aph.gov.au

Dear Mr Wallace

RE: Supplementary response to questions on notice from Standing Committee on Social Policy and Legal Affairs inquiry into family, domestic and sexual violence

Thank you for the opportunity to appear before the Committee for a second time to discuss the important issue of technology-facilitated abuse and the harms that are occurring online against women and children in domestic and family violence situations.

I am providing supplementary information in response to your invitation to eSafety during the 17 November 2020 public hearing to make further suggestions for the government to consider concerning additional powers or functions that would add to eSafety's impact and effectiveness.

I note that this information should be considered as an adjunct to the more comprehensive written submission, dated 24 July 2020, which eSafety has presented to the inquiry, as well as testimony offered during the course of the inquiry's public hearings.

Please find below additional detail to support our earlier recommendations, which would enable eSafety to address the broad range of risks concerning technology-facilitated abuse and image-based abuse. As new powers, programs and functions, these recommendations would be subject to further resourcing requirements.

Regarding additional regulatory powers, eSafety notes that the Australian Government has announced its intention to introduce a new Online Safety Act.

This would create a new adult cyber abuse scheme to enable eSafety to compel the takedown of seriously harmful material posted online targeting an Australian adult.

eSafety has been working closely with the Department of Infrastructure, Transport, Regional Development and Communications to ensure we have the powers and tools we need to facilitate quick take down of harmful material, as well as take action against those posting harmful material so that harm is minimised.

We will also continue to work closely with industry, including to ensure users cannot hide behind the veil of anonymous accounts to evade appropriate enforcement action.

Thank you to the entire Committee for consideration of these recommendations.

Yours sincerely



Julie Inman Grant
eSafety Commissioner

eSafety's remit

As Australia's independent regulator for online safety, the eSafety Commissioner (eSafety) currently has a broad range of powers and functions. This includes investigating complaints, conducting research and undertaking education, training and awareness raising to address online harms and build digital safety, skills and resilience across Australia.

Importantly, eSafety has the scope and scale to work across government and with industry, non-government organisations and the community.

eSafety is therefore uniquely placed to drive online safety efforts to protect women and children online.

In the context of this inquiry, it is important to be aware that eSafety's takedown powers for cyberbullying currently only apply to the targeting of children under 18.

The Australian Government's proposed new Online Safety Act would strengthen eSafety's regulatory arm, enabling eSafety to assist women suffering serious harm online and compel greater transparency from platforms on their safety protections and assistance to users. Of particular note is the adult cyber abuse scheme, which proposes to include the mandatory takedown of serious online abuse experienced as part of domestic and family violence.

eSafety welcomes the increased powers and functions proposed.

Challenges and recommendations

There is a continuing lack of understanding among some sectors that technology-facilitated abuse (TFA) causes real, enduring harm. The physical, psychological, emotional, financial and sexual manifestations of family and domestic violence and abuse are huge. While it may not leave physical marks, the damage can be extensive and may also serve as a red flag for future potentially serious physical harm.

eSafety made 10 primary recommendations in its written submission to the inquiry, with a particular focus on supporting at-risk cohorts, behaviour change initiatives, technical upskilling to combat TFA and broader capacity building, including internationally. eSafety reiterates the importance of these recommendations as part of a suite of measures, which should also include those outlined below.

1. Continuation of the eSafetyWomen program

Launched in 2016 with funding under the Women's Safety Package, eSafetyWomen aims to empower all Australian women to manage technology risks and abuse. It has expanded since 2016, as the demand for its services grows.

The eSafety Women program is currently funded under two sources: an allocation from the Fourth Action Plan and budget appropriation, neither of which have ongoing funding. As a

result, eSafety has not had the resources to conduct more in-depth research and develop programs across all of the groups of women and children who are at risk.

Both sources of funding expire in 2022.

Recommendation

The eSafety Women program should be funded on an ongoing basis. This should include sustaining initiatives developed to date under the Fourth Action Plan for women from Aboriginal and Torres Strait Islander communities and women with an intellectual disability, while also providing for the development of resources and training to meet the needs of other at-risk groups of women (such as culturally and linguistically diverse audiences) and children.

2. Focus on children

Soon to be published eSafety research shows that over a quarter of domestic violence cases also include TFA involving children. Yet there is a gap in support services, advice and resources intended specifically to address children's needs, including their understanding of online and technology risks. eSafety research provides clear evidence of the harmful effect of TFA on children, including the impact on their mental health and education, their relationship with the non-abusive parent, as well as their everyday lives. It shows that children are directly abused via digital technology, as well as used by domestic violence perpetrators as a conduit in the TFA of their mothers.

Training and resources are needed to increase awareness of TFA and how to mitigate and protect against it. In particular, tailored resources are needed for children and for adult victims who are parents of affected children. Education for perpetrators is also needed, as perpetrators do not always recognise their misuse of technology as abusive or as part of domestic violence.

Increasing knowledge among professionals is an important area for consideration, as it supports improved identification of, and responses to, TFA within a range of organisations and formal systems. These responses include well-considered protection or intervention orders that explicitly address communication through children's devices and accounts.

Recommendation

Establish a new program within eSafety that provides training and support for frontline workers, including in family and domestic violence, child welfare and other relevant sectors such as education, about how children are involved in TFA as an extension of family and domestic violence cases involving their parents.

3. Safety technology resources and advice

There is no single body at the national level that can provide objective and specialised technical advice and support to women and children experiencing TFA in the context of family and domestic violence. This leads to some at-risk women and children not being

aware of how technology can be used to facilitate abuse, and what safety controls and technology are available to prevent abuse.

eSafety's legislative functions include supporting and encouraging the implementation of measures to improve online safety for Australians (section 15(1)c) of the *Enhancing Online Safety Act 2015*) and collecting, analysing, interpreting and disseminating information (section 15(1)(e) of the *Enhancing Online Safety Act 2015*).

eSafety is seeking to expand its work under these functions in relation to safety technical solutions. This work could involve scoping, mapping, analysing and evaluating technical solutions that address the specific risks and harms faced by women and children experiencing TFA in the context of family and domestic violence. It would also feed into eSafety's centralised repository for innovations and development in the online safety technology sector, while allowing for the provision of a distinct category that focuses on women and children in family and domestic violence.

Recommendation

eSafety should be funded to scope, analyse, evaluate and advise on technical solutions designed to protect women and children experiencing TFA in the context of family and domestic violence, so that eSafety can develop frameworks, criterion and guidance for industry. Research could also be undertaken to investigate how digital platforms and services are used to facilitate TFA. This would allow eSafety to develop bespoke guidance for women and the children, as well as frontline workers and law enforcement.

4. Promoting the adoption of Safety by Design

Technology companies and digital platforms need to do more to make their platforms safe, particularly for women and children. eSafety has observed how established and emerging platforms can be weaponised for abuse. There are also systemic inadequacies in the way platforms respond to user complaints.

eSafety's Safety by Design initiative (SbD) encourages organisations to put user safety and rights at the centre of the design, development and release of online products and services.

SbD emphasises the need to address online harms, alongside user safety and rights, in the product development lifecycle so that safety is systematically embedded into organisations' culture and operations.

It is a global initiative that has been developed with industry for industry, and encourages strong links between government, industry and advocacy organisations in helping to protect and safeguard citizens online.

Protecting voices at risk online is critical and the needs of diverse and at-risk groups should be effectively considered, incorporated and actioned within SbD practices.

Safety's SbD initiative is currently funded from existing resourcing.

Recommendation

Safety by Design should be provided dedicated funding to assist in extending its rollout and impact. This would assist eSafety to work collaboratively with technology companies, digital platforms and at-risk women and children to co-design and develop targeted resources and guidance for industry to improve the safety and responsiveness of their services.

5. Expanded training and education for the judiciary, legal profession and law enforcement

The findings of research conducted by eSafety and others indicate that the judiciary, legal profession and law enforcement do not always have a sufficient understanding of how technology can be weaponised and the prevalence of technologically perpetuated harms in society. The legal profession includes legal practitioners, but also extends to court staff and court advocates, among others.

This lack of understanding has serious implications for safety planning, legal responses and, critically, the safety of women and children. It also increases the risk that victims will be re-traumatised through their interaction with the legal system.

The judiciary, legal profession and law enforcement need more in-depth education and training on the nature, drivers, impacts and harms of TFA as it impacts on women and children. This needs to be trauma-informed and gender responsive, recognising that TFA within family and domestic violence is a form of gender-based violence.

Judicial education should address court processes, such as factors that could reduce the risk of re-traumatisation of victims in hearings, and inform judicial decision-making, including when assessing risk and harm to women and children, as well as sentencing.

Legal profession training should address their advocacy and advice role and extend to matters such as questioning and cross-examination, as well as the particular support needs of people who have been abused and traumatised through technology.

Law enforcement training should address their role as providing frontline support to victims. They are responsible for many of the key materials, such as witness statements, which will be presented to a court, as well as safety and risk planning and protection orders. Ensuring law enforcement agencies have an appropriate understanding of TFA will help ensure that when matters that involve TFA go to court, a more comprehensive assessment of abuse is presented for consideration.

Given the ubiquity of technology in society, and therefore the potential for TFA, it is important that this training not be narrowed to specialist areas of law. Rather, it should be extended to judicial officers, legal practitioners, legal support staff and law enforcement who may encounter someone who has experienced TFA or is at risk of TFA.

Critically, by providing the judiciary, legal profession and law enforcement more in-depth education and training on the nature, drivers, impacts and harms of TFA, it will also assist in shifting attitudes and behaviours in the community.

eSafety already collaborates with the judiciary, legal profession and law enforcement to raise awareness of TFA and online harms more broadly. With further resourcing eSafety could deliver a more comprehensive program across all jurisdictions.

As Australia's national regulator on online safety, eSafety has the authority and expertise to facilitate the judiciary, legal profession and law enforcement to undertake this training, while also having the extensive research and regulatory insights to draw on.

Recommendation

Expand the eSafety Women program to deliver education and training nationally to the judiciary, legal profession and law enforcement. This should outline the nature, drivers, impacts and harms of TFA, while also giving practical advice about handling TFA matters.

This education and training should be trauma-informed and gender responsive, recognising that technology-facilitated abuse within family and domestic violence is a form of gender-based violence.

This education and training should form part of broader online safety training to ensure a comprehensive understanding of the broader picture of online safety.

6. Dating apps

Dating apps are increasingly a modern form of romantic or sexual connection, while also connecting those in the community who may be more socially isolated due to personal circumstance or geographic location.

However, as highlighted in recent media reports, there are risks associated with the use of these platforms that can lead to online abuse, financial exploitation and sexual violence. It should be noted, though, that while dating platforms facilitate the initial meeting and interactions between users, harm can occur offline after this initial online connection has been made.

Recidivism, reporting and access to advice and support can be a problem in dating platforms. Users can circumvent a platform's policies and repeatedly create new profiles where they are free to target others, while those targeted by abuse are not provided with streamlined reporting routes or access to support services. While there is a range of legal remedies open to victims of this kind of abuse, there is a need for an increased focus on prevention and disruption on dating sites, including education about the pathways to help and support that are available to dating app users.

eSafety's website provides information and advice about online dating apps, including safety advice when using these platforms.

eSafety also works through its Safety by Design initiative to support and encourage industry, including dating platforms, to look at how the design of platforms can be used to inflame, encourage and facilitate harms – and what steps or interventions can be applied that both empower and protect their customers.

Recommendation

Develop an education and awareness campaign that explores the core issues relating to safety and dating apps, including the issue of consent, safety mechanisms on apps and reporting options, including to eSafety, law enforcement and industry. This should also include a cultural change element that counters victim blaming associated with dating apps and increases awareness among the community and frontline services about the abuse facilitated by dating apps.