



## Australian Women Against Violence Alliance

Senate Standing Committees  
on Legal and Constitutional Affairs  
Via email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)  
Date: 20 October 2017

### **Submission in response to the inquiry on the adequacy of existing offences in the Commonwealth Criminal Code and of state and territory criminal laws to capture cyberbullying**

Thank-you for the opportunity to make a submission in response to the inquiry on the adequacy of existing offences in the Commonwealth Criminal Code and of state and territory criminal laws to capture cyberbullying.

#### **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).

#### **General comments**

While cyberbullying is the focus of this inquiry, and the terms of reference suggest a particular interest in the issue as it applies to children and young people, we wish to highlight the fact that cyberbullying is also one of the manifestations of technology-facilitated abuse, which is a broader category. Other forms of such abuse include the non-consensual sharing of intimate images (image-based abuse), stalking, surveillance, installing hidden applications to track a woman's location<sup>1</sup> or to obtain access to her email or messages, the use of communications technologies to enable a sexual assault and/or to coerce a victim into an unwanted sexual act. There are forms of cyberbullying that do not fit the definition of technology facilitated violence and abuse against women, such as cyberbullying between school children or the broadcasting of assaults by men upon other men. However, it is important to understand that violence and bullying generally are strongly interlinked with dynamics of gender and sexuality. The normalisation of male violence and restrictive expectations about women and girls are some of the key drivers of violence and bullying generally.

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<sup>1</sup> See <http://www.smartsafe.org.au/disturbing-new-trend-domestic-violence-offenders-use-car-tracking>

Technology-facilitated abuse has become a tool of perpetrators of domestic and family violence to threaten, harass and/or control both current and former partners.<sup>2</sup> The national survey of technology-facilitated abuse drawing on the experience of family violence practitioners across Australia<sup>3</sup> 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 cent had been abused via text messages, while Facebook was the next most commonly used technology.<sup>4</sup> In this context, efforts to reduce violence against women can be strengthened by legal sanctions, together with appropriate interpretation and implementation of these sanctions, against all forms of technology-facilitated abuse.

Legislation to capture cyberbullying differs by jurisdiction. The very term ‘cyberbullying’ is only used in the Enhancing Online Safety for Children Act (2015), which gives powers to the eSafety Commissioner to investigate and act against reported cyberbullying against children. The eSafety Commissioner has also established a portal for women to report image-based abuse. We refer to you to our [submission](#) on the proposed civil penalties regime for non-consensual sharing of intimate images to the Department of Communication and the Arts, as well as [Women’s Legal Services Australia’s](#) and [WESNET Safety Net Australia’s](#) submissions to the same consultation.

We believe that the work of the eSafety Commissioner should be extended to focus not only on cyberbullying directed at children but also on other groups at risk. In the most recent survey by Powell and Henry it was concluded that people with disability, Aboriginal and Torres Strait Islander people and people who identify as LGBTIQ are particularly vulnerable to technology-facilitated abuse.<sup>5</sup>

We also refer you to the [submission made by Project Respect](#) to the Senate Legal and Constitutional Affairs References Committee Inquiry into the ‘Phenomenon colloquially referred to as ‘revenge porn’, which involves sharing private images and recordings of a person without their consent, with the intention to cause that person harm’. This submission contains important information about how women working in the sex industry are subjected to technology-facilitated abuse and the issues involved.

There is a need for a consistent legislation in relation to all forms of technology-facilitated abuse across all jurisdictions. More importantly, it is vital to ensure that appropriate magistrates, lawyers and police are interpreting and applying the legislation correctly. Appropriate training on violence against women and technology is required to achieve this end.

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<sup>2</sup> Henry, N., Powell A. (2015) Beyond the ‘sext’: Technology facilitated sexual violence and harassment against adult women. Australian & New Zealand Journal of Criminology. Vol. 48(1) 104–118

<sup>3</sup> Woodlock, Delanie (2015) ReCharge: Women’s Technology Safety, Legal Resources, Research and Training, Women’s Legal Service NSW, Domestic Violence Resource Centre Victoria and WESNET, Collingwood.

<sup>4</sup> Woodlock, Delanie (2013) Technology-facilitated Stalking: Findings and Recommendations from the SmartSafe Project, Domestic Violence Resource Centre Victoria, Collingwood  
<http://www.smartsafe.org.au/sites/default/files/SmartSafe-Findings-Booklet.pdf>

<sup>5</sup> Henry, N., Powell A., Flynn A. (2017) Not Just ‘Revenge Pornography’: Australians’ Experiences of Image-Based Abuse. A SUMMARY REPORT. RMIT University. Available at <https://www.rmit.edu.au/news/all-news/2017/may/not-just-revenge-porn--image-based-abuse-hits-1-in-5-australian>.

## 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.<sup>6</sup> Transgender women and men experience significantly higher rates of non-physical and physical abuse compared with women and men who identify as homosexual.<sup>7</sup> The National LGBTI Health Alliance states that LGBTI young people aged 16 to 27 are five times more likely to attempt suicide.<sup>8</sup> When experienced bullying and harassment, the risk is higher.

Chatrooms have been identified as the place where young LGBTI people are most likely to feel threatened.<sup>9</sup> The incidence of cyberbullying has increased greatly in recent years with the proliferation of online social networking tools.<sup>10</sup> There have been high profile cases of LGBTI young people being bullied and harassed online that have resulted in self harm and suicide.<sup>11</sup>

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.<sup>12</sup>

Thus, we recommend that in pursuing law reform, jurisdictions 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.

## 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.

## 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. Powell and

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<sup>6</sup> 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 [https://bullying.humanrights.gov.au/sites/default/files/content/pdf/bullying/VHB\\_LGBTI.pdf](https://bullying.humanrights.gov.au/sites/default/files/content/pdf/bullying/VHB_LGBTI.pdf)

<sup>7</sup> 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);

<sup>8</sup> See National LGBTI Health Alliance [http://lgbtihealth.org.au/statistics/#\\_ftn1](http://lgbtihealth.org.au/statistics/#_ftn1)

<sup>9</sup> Hillier, Horsely and Kurdas, 'It made me feel braver, I was no longer alone': The Internet and same sex attracted young people, published in J. Nieto. Sexuality in the Pacific, Spanish Association of studies in the Pacific, 2004, p15.

<sup>10</sup> Shaheen Shariff (2008) Cyber-bullying: Issues and Solutions for the School, the Classroom and the Home

<sup>11</sup> See for example, J Schwartz., 'Bullying, Suicide, Punishment', New York Times, 2 October, 2010. At [www.nytimes.com/2010/10/03/weekinreview/03schwartz.html?\\_r=1&ref=tyler\\_clementi](http://www.nytimes.com/2010/10/03/weekinreview/03schwartz.html?_r=1&ref=tyler_clementi)

<sup>12</sup> See <https://www.lifeline.org.au/about-lifeline/lifeline-information/statistics-on-suicide-in-australia>

Henry argue that police lack sufficient training to cope with the increased rates of crimes committed in the online realm.<sup>13</sup>

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.<sup>14</sup>

### Adequate and sustainable funding to service providers

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

### Image-based abuse

In relation to image-based abuse, we reiterate that the best protection in the Australian context will be achieved by a specific purpose Commonwealth law (in the Criminal Code) 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. 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.<sup>15</sup>

If you would like to discuss the contents of the AWAVA submission further, please contact Merrindah Andrew, AWAVA Program Manager, using the details below.

Merrindah Andrew

Program Manager

Australian Women Against Violence Alliance

[www.awava.org.au](http://www.awava.org.au) |

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<sup>13</sup> Anastasia Powell & Nicola Henry (2016): Policing technology-facilitated sexual violence against adult victims: police and service sector perspectives, Policing and Society.

<sup>14</sup> See <https://wesnet.org.au/safetynet/>

<sup>15</sup> Ibid.