

DOMESTIC
VIOLENCE
VICTORIA

Submission to the Consultation on a
Bill for a new Online Safety Act

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Domestic Violence Victoria

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Phone: 03 9921 0828

Author and Key Contact:

Anastasia Chung

Policy Advisor

Email: anastasiachung@dvvic.org.au

DV Vic CEO:

Tania Farha

Phone: 03 9921 0828

Email: taniafarha@dvvic.org.au

Acknowledgments

Acknowledgement of Aboriginal and Torres Strait Islander peoples

Domestic Violence Victoria acknowledges Aboriginal and Torres Strait Islander peoples as Australia's First Nations and Traditional Owners of Country. We pay respects to Elders past, present and emerging. We acknowledge that sovereignty was never ceded and recognise the right to self-determination and continuing connection to land, waters and culture.

Acknowledgment of victim-survivors

Domestic Violence Victoria acknowledges the strength and resilience of adults, children and young people who have experienced family violence, and recognises that it is essential that responses to family violence are informed by their experiences and advocacy. We pay respects to those who did not survive and acknowledge friends and family members who have lost loved ones to this preventable and far-reaching issue.

About DV Vic

Domestic Violence Victoria (DV Vic) is the peak body for specialist family violence response services for victim-survivors in Victoria. As such, DV Vic is recognised as the state-wide voice of Specialist Family Violence Services (SFVS) responding to victim-survivors. DV Vic is a membership-based organisation and is accountable to its members, who also comprise its Board of Governance. DV Vic's core membership comprises state-wide and regional specialist agencies working with victim-survivors of family violence across Victoria. We are an independent, non-government organisation that leads, organises, advocates for, and acts on behalf of its members utilising an intersectional feminist approach. However, the organisation is ultimately accountable to victim-survivors of family violence and works in their best interests.

DV Vic's work is focused on advocating for, supporting, and building the capacity of specialist family violence practice and service delivery for victim-survivors; system reform; and research, policy development and law reform. DV Vic analyses the views and experiences of member organisations, the evidence on family violence, and the lived experience of victim-survivors, and translates this into innovative and contemporary policy, practice, and advocacy.

DV Vic holds a central position in the Victorian family violence system and its strategic governance and is one of the key agencies with responsibility for providing family violence subject matter expertise, technical assistance, capacity building, and policy and practice advice to the SFVS sector, broader sectors, government, and other partners and stakeholders.

Language and Terminology Used

Family Violence

DV Vic recognises family violence as any behaviour that occurs in family, domestic or intimate relationships that is physically or sexually abusive; emotionally or psychologically abusive; economically abusive; threatening or coercive; or is in any other way controlling that causes a person to live in fear for their safety or wellbeing or that of another person. This definition includes violence within a broader family context, such as extended families, kinship networks and 'family-like' relationships which can include a paid or unpaid carer for people with disabilities; families of choice for LGBTIQ people; and cultural kinship networks.¹ In relation to children, family violence is defined as behaviour by any person that causes a child to hear or witness or otherwise be exposed to the effects of the above behaviour.²

Victim-Survivor

DV Vic uses the term victim-survivor to refer to both adults and children who experience family violence.³ The term victim-survivor includes all individuals and groups of people who are primarily targeted and affected by family violence. This gender-inclusive use of language is applied to

¹ Domestic Violence Victoria. (2020). *Code of Practice for Specialist Family Violence Services for Victim-Survivors* (2nd ed.). Domestic Violence Victoria. <http://dvvic.org.au/members/practice-development/>; *Family Violence Protection Act 2008* (Vic) s.5. http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/consol_act/fvpa2008283/

² Domestic Violence Victoria. (2020). *Code of Practice for Specialist Family Violence Services for Victim-Survivors* (2nd ed.); *Family Violence Protection Act 2008* (Vic) s.5. http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/consol_act/fvpa2008283/

³ Domestic Violence Victoria. (2020). *Code of Practice for Specialist Family Violence Services for Victim-Survivors* (2nd ed.).

acknowledge the disproportionate harms of family violence against people who identify as women and their children, while at the same time recognising that family violence impacts people across a diversity of gender identities, sexual identities, social and cultural contexts, and within various intimate partner and family and family-like relationships.⁴ DV Vic acknowledges the emerging evidence-base that is articulating the ways in which gender diverse and gender non-binary communities are targeted and affected by family violence, and which have been under-researched to date. DV Vic also acknowledges that intersecting systems of privilege and oppression translate to diversity in experiences and affects for different groups of victim-survivors.

When referring to the cyber-abuse Scheme, this submission will use the term victim-survivor to refer to adult victim-survivors, primarily within the context of current and former intimate partner relationships. When referring to the cyber-bullying Scheme, this submission refers to child victim-survivors, whose perpetrators are adult parents. Limited research shows that perpetrators of technology-facilitated family violence towards children are often biological fathers or step-fathers.⁵

Perpetrator/User of Violence

The terms ‘perpetrator’ and ‘user of violence’ are used interchangeably to refer to adults who use family violence. DV Vic acknowledges that across the spectrum of experiences and relationships in which family violence is perpetrated, family violence is most frequently and severely perpetrated by men. DV Vic understands this to be a manifestation of gender inequality and gender hierarchies in Australian society, and that people perpetrating violence also experience intersecting systems of both privilege and oppression.

Technology-facilitated abuse

Technology-facilitated abuse refers to the use of technology to abuse individuals and/or groups. This submission will focus on technology-facilitated abuse that occurs in the context of family violence, or technology-facilitated family violence. This can involve perpetrators’ misusing devices, accounts and software to abuse, threaten, control and track victim-survivors.⁶

⁴ Domestic Violence Victoria. (2020). *Code of Practice for Specialist Family Violence Services for Victim-Survivors* (2nd ed.).

⁵ eSafety Commissioner. (2020). *Children and technology-facilitated abuse in domestic and family violence situations*. eSafety research. <https://www.esafety.gov.au/about-us/research/children-and-technology-facilitated-abuse-domestic-and-family-violence-situations>, p. 64.

⁶ WESNET. 2020. *Second National Survey on technology abuse and domestic violence in Australia*, p.10.

Executive Summary

DV Vic welcomes the commitment of the Australian government to improve Australia's online safety laws. The *Online Safety Bill* strengthens many of the existing Schemes, adds a cyber-abuse Scheme, and increases the power of the eSafety Commissioner. DV Vic believes that victim-survivors have a right to use technology, and that internet service providers, social media services or relevant electronic service have a responsibility to ensure the online safety of their users. While there are significant improvements, we submit that some of the proposed changes can be strengthened to support victim-survivors.

Summary of recommendations

Definitions

Recommendation: Review and expand the definition of 'Australian' beyond those who are 'ordinarily resident' to include individuals who hold temporary visas, such as those seeking asylum

Basic Online Safety Expectations (BOSE)

Recommendation: BOSE to include specification that the service provider prohibits end-users from posting:

- (i) cyber-bullying material targeted at an Australian child;
- (ii) cyber-abuse material targeted at an Australian adult;
- (iii) a non-consensual intimate image of a person;
- (iv) class 1 material;
- (v) class 2 material;
- (vi) material that promotes abhorrent violent conduct;
- (vii) material that incites abhorrent violent conduct;
- (viii) material that instructs in abhorrent violent conduct;
- (ix) abhorrent violent material

Cyber-bullying targeted at an Australian child

Recommendation: Consider how the cyber-bullying Scheme can include recognition of cumulative harm on children (Clause 6 1(b)(ii))

Recommendation: Provide safeguards on how implementation will be protected from vexatious and malicious use by perpetrators for the purpose of perpetrating further family violence

Cyber-abuse targeted at an Australian adult

Recommendation: Adjust the test of 'an ordinary reasonable person' to ensure the online safety of from cyber-abuse of adult victim-survivors of family violence

Recommendation: Ensure the threshold of and evidence required to show 'serious harm' meets the specific nature of technology-facilitated family violence to ensure adult victim-survivors can access the Scheme

Recommendation: Provide safeguards on how implementation will be protected from vexatious and malicious use by perpetrators for the purpose of perpetrating further family violence

Notices or directions issued to end-users

Recommendation: Include a requirement that end-users refrain from posting any cyber-abuse material for which the adult is the target to ensure consistency in notices or directions issued at end-users (clause 89)

Introduction

Domestic Violence Victoria (DV Vic) welcomes the opportunity to provide feedback on an exposure draft of the *Online Safety Bill* (the Bill) to improve Australia's online safety laws. Not only would the Bill support the rights and improving protections for online users, it will also facilitate the safety and rights of victim-survivors of family violence.

This submission will set the context by discussing the prevalence, nature and dynamics, and risk of technology-facilitated family violence, as well as its increase during COVID-19. The paper will then refer to relevant parts of the Bill that can be strengthened to support the safety of victim-survivors and hold perpetrators accountable for their use of violence. These include discussion and recommendations on the Bill's definitions, Basic Online Safety Expectations (BOSE), and the cyber-bullying and cyber-abuse Schemes.⁷ This submission will then point to concerns regarding the notices or directions issued at end-users that create inconsistency, before moving onto additional comments and conclusion.

While the updates of the Online Safety Act proposed in the Bill are a significant improvement, DV Vic believes that some of the proposed changes can be developed to better support the safety of victim-survivors. DV Vic's recommendations were informed by conversations with Women's Services Network (WESNET) and Australian Women against Violence Alliance (AWAVA). DV Vic also endorses WESNET's submission. We look forward to working with the Australian Government's Department of Infrastructure, Transport, Regional Development and Communications to strengthen the Act to meet its objectives to 'improve' and 'promote' online safety for Australians.

Prevalence of technology-facilitated family violence

Research consistently shows the high prevalence of technology-facilitated family violence. Perpetrators use technology as a new way of perpetrating family violence, for example, through non-consensual sharing of intimate images, and alongside existing forms of abuse, such as threatening and controlling behaviours. A 2013 study found that 97% of family violence practitioners supported clients whose partners or ex-partners were using mobile technologies to stalk them.⁸ In the same study, 78% of victim-survivors stated their partner or ex-partner used technology to abuse and harass them, and 44% said a partner or ex-partner had threatened them via text, email or social media.⁹ Subsequent research also validates these high levels of technology-facilitated family violence. A 2015 study showed that 98% of family violence practitioners supported adult clients who had experienced technology-facilitated abuse and stalking.¹⁰ The percentage is higher in a study published last year, which found almost all (99.3%) practitioners supported clients who experienced such abuse.

⁷ DV Vic will not discuss the non-consensual sharing of intimate images Scheme, except to welcome the strengthening of this Scheme. DV Vic is supportive of the reduction in time to action removal notices from 48 to 24 hours. However, an evaluation of the effectiveness of this and other Schemes under the Bill would be beneficial.

⁸ Woodlock, D. (2013). *Technology-facilitated stalking: Findings and recommendations from the SmartSafe project*. Domestic Violence Resource Centre Victoria (DVRCV). https://www.dvrcv.org.au/sites/default/files/SmartSafe_0.pdf, p.15.

⁹ Woodlock, D. (2013). *Technology-facilitated stalking: Findings and recommendations from the SmartSafe project*, p.24.

¹⁰ Women's Legal Service New South Wales, DVRCV and WESNET. (2015). *ReCharge: Women's Technology Safety National study findings 2015*. DVRCV, p. 5.

Further, technology-facilitated abuse occurs in a context of violence against women and systemic discrimination against particular groups. Forms of discrimination include classism, ageism, ableism, homophobia, transphobia and racism. As a result, victim-survivors from diverse backgrounds face systemic barriers to accessing support, and perpetrators are able to exploit victim-survivor identities to exercise power and control. Women with disabilities, migrant and refugee women, Aboriginal and Torres Strait Islander women, and young women are at increased risk of experiencing technology-facilitated family violence.¹¹

Children have unique and distinct experiences of technology-facilitated family violence. A 2020 survey of more than 500 practitioners by eSafety Commissioner (the Commissioner) found that 27% of cases in the last 12 months included some form of technology-facilitated abuse involving children.¹² In more than a third of cases involving technology-facilitated family violence against children, perpetrators were using technology to: publicly insult the adult victim-survivor where the child can see it; sending the child messages insulting the adult victim-survivor; and demanding that the child respond immediately to calls or messages.¹³

Nature and dynamics of technology-facilitated family violence

Family violence – including technology-facilitated family violence - is a pattern of particular behaviours where perpetrators exercise power and control over victim-survivors. This was acknowledged by the Victorian Royal Commission into Family Violence which defined family violence is a pattern, not an event:

It is a pattern of behaviour that involves an escalating spiral of violence. This can include physical and sexual abuse, as well as psychological, emotional and financial abuse – all designed to intimidate, undermine, isolate and control. It can also include violence or threats of violence against children, other members and pets.

Technology-facilitated family violence can be emotional, financial and/or verbal, and with ‘relentless’ and co-occurring abuse, can have devastating impacts.¹⁴ The prevalence of technology in everyday life has meant that adult victim-survivors of technology-facilitated family violence feel like their perpetrators are ‘present in every aspect of the victim’s life’.¹⁵ This sense of omnipresence is felt even when victim-survivors are physically apart from perpetrators, or have left the relationship. Victim-survivors feel they have ‘no privacy, security, or safety, and that [the perpetrator] knows and sees everything’.¹⁶

The negative impacts of technology-facilitated family violence on children cannot be underestimated, such as impacts on developmental milestones, relationships, safety and mental health. Practitioner responses revealed the extent of these impacts:

¹¹ Women’s Services Network (WESNET). (2020). *Second National Survey on technology abuse and domestic violence in Australia*. WESNET. <https://WESNET.org.au/about/research/2ndnatsurvey/>, p. 32.

¹² eSafety Commissioner. (2020). *Children and technology-facilitated abuse in domestic and family violence situations*, p. 15.

¹³ eSafety Commissioner. (2020). *Children and technology-facilitated abuse in domestic and family violence situations*, p. 18.

¹⁴ WESNET. (2020). *Second National Survey on technology abuse and domestic violence in Australia*, p. 4.

¹⁵ Woodlock, D. (2013). *Technology-facilitated stalking: Findings and recommendations from the SmartSafe project*, p. 17.

¹⁶ Woodlock, D. (2013). *Technology-facilitated stalking: Findings and recommendations from the SmartSafe project*, p. 17.

Significant impact on the child's mental wellbeing (thoughts of suicide), high levels [of] school absenteeism, and disrupted attachment relationship, specifically when mum attempted to implement boundaries child would respond by telling mum that she would call dad (perpetrator) to come to the house.¹⁷

They had to move to another state and the children were prohibited from using any devices. They became socially isolated at school as they could not keep up with the news after hours. Children became withdrawn. Mother tried not to be cross with kids but deep down blamed them as she had told them not to tell dad where they were.¹⁸

Perpetrators are also skilled at couching their threats in a way that is meaningful and terrifying to victim-survivors, such that when victim-survivors report to authorities, police can find it difficult to find evidence that threats were made.

Technology-facilitated family violence, risk and safety

In Victoria's *Multi-Agency Family Violence Risk Assessment and Management Framework* (MARAM), controlling behaviours are a high-risk factor, which indicates a higher likelihood of lethality, injury and disability.¹⁹ Examples of controlling behaviours via use of technology include threatening to post, or posting, intimate images without consent; threats to 'out' victim-survivors to their family and friends if they are members of the LGBTIQ+ community; and threats to spread rumours via technology. These types of threats and controlling behaviours can prevent victim-survivors from disclosing family violence and seeking support.

Technology-facilitated family violence and COVID-19

It is no surprise that perpetrators' use of technology to control victim-survivors has increased during COVID-19. The number of people reporting behaviour, such as cyberbullying and image-based abuse more than tripled, according to the Commissioner.²⁰

For the month of March we had a 21 per cent increase in cyberbullying, we had a 48 per cent increase in adult cyber abuse. We had an 86 per cent increase in image-based abuse... and we've also seen spikes in online child abuse material.²¹

Between March and May 2020, there was a 200% increase in reports of image-based abuse.²² COVID-19 restrictions decreased victim-survivors' ability to seek support as lockdown measures, increased unemployment, alcohol and/or other drug use and mental health and financial stress increased perpetrators' physical and digital surveillance of victim-survivors.

¹⁷ eSafety Commissioner. (2020). *Children and technology-facilitated abuse in domestic and family violence situations*, p. 33.

¹⁸ eSafety Commissioner. (2020). *Children and technology-facilitated abuse in domestic and family violence situations*, p. 33.

¹⁹ Victorian Government. (2019). *MARAM Foundation knowledge guide*, p.25.

²⁰ Medhora, S. (2020, April 22). eSafety officer records 340% spike in complaints as coronavirus impacts online behaviour. *Australian Broadcasting Corporation*. <https://www.abc.net.au/triplej/programs/hack/complaints-esafety-increase-341-percent-because-coronavirus/12174654>.

²¹ Medhora, S. (2020, April 22). eSafety officer records 340% spike in complaints as coronavirus impacts online behaviour.

²² Long, C. (2020, June 3). Coronavirus shutdown prompts spike in reports of sextortion to eSafety Commissioner. *Australian Broadcasting Corporation*. <https://www.abc.net.au/news/2020-06-03/spike-reports-esafety-commissioner-coronavirus-shutdown/12314442>.

Strengthening the proposed *Online Safety Act* is crucial to ensure that adults and children are not only protected from strangers, but also from family members who use violence. This submission will discuss the relevant sections of the Bill that impact victim-survivors and perpetrators.

Definitions

‘Australian adult’ and ‘Australian child’

DV Vic understands that the Bill is about supporting the online safety of Australian adults and children. Part 1 Clause 5 definitions of ‘Australian adult’ and ‘Australian child’ refer to an adult or child, who is ‘ordinarily resident in Australia’. DV Vic is concerned that the current definitions appear to exclude victim-survivors who are on temporary visas in Australia, who would not be considered ‘ordinarily resident in Australia’.

‘Ordinarily resident in Australia’

DV Vic understands the scope of the Act is to support the online safety of individuals who are ‘ordinarily resident in Australia’, which implies their time in Australia is not subject to any limitations imposed by law. It is important, particularly with respect to technology-facilitated family violence, that all persons living in Australia at the time of such abuse taking place, regardless of visa or residency status, have the right to online safety. Holders of temporary visas face systemic barriers to support for family violence, including technology-facilitated abuse. This includes, ineligibility for support; limited rights to work; information about support and services provided in English.²³ Even when a victim-survivor engages with a service, the options for safe accommodation, financial security and legal rights are limited.

Perpetrators of family violence commonly use victim-survivors’ visa status as an extension of power and control over them.²⁴ A common threat that victim-survivors on temporary visas receive is the threat of deportation.²⁵ Given that temporary visa holders have limited support options, expanding the remit of the Bill to include temporary visa holders can ensure that they have recourse if they are victims of non-consensual sharing of intimate images, and/or cyber-abuse. In this way, the Bill can be used to support temporary visa-holders who experience technology-facilitated family violence. This is particularly important, as a report on family violence and temporary visa holders during COVID-19 found that the impacts of COVID-19 has worsened the existing barriers for temporary visa holders experiencing family violence at a time when victim-survivors need support more than ever.²⁶

²³ Kalapac, V. (2016). *inLanguage, inCulture, inTouch: Integrated model of support for CaLD women experiencing family violence: Final Evaluation Report*. Jean Hailes for Women’s Health. <https://intouch.org.au/wp-content/uploads/2018/11/inCulture-inTouch-evaluation-report-Feb-2017.pdf>, p. 19; eSafety Commissioner. (2019). *eSafety for women from Culturally and Linguistically diverse backgrounds: summary report*. eSafety research. <https://www.esafety.gov.au/about-us/research/women-from-diverse-backgrounds>, p. 21.

²⁴ Foster, H., Roman, B., Mahmoud, A., Boyle, C. (2020). *Impact of COVID19 on migrant and refugee women experiencing domestic and family violence*. Women’s Safety New South Wales. https://www.womenssafetyNSW.org.au/wp-content/uploads/2020/07/31.07.20_Impact-of-COVID-on-Migrant-and-Refugee-women-experiencing-DFV_FINAL.pdf; eSafety Commissioner. (2019). *eSafety for women from Culturally and Linguistically diverse backgrounds: summary report*.

²⁵ eSafety Commissioner. (2019). *eSafety for women from Culturally and Linguistically diverse backgrounds: summary report*, p.11.

²⁶ Segrave, M., Pfitzner, N. (2020). *Family violence and temporary visa holders during COVID-19*. Monash Gender and Family Violence Prevention Centre. https://intouch.org.au/wp-content/uploads/2020/09/Family-Violence-and-Temporary-Visa-Holders-During-COVID-19_Monash-report_-Sept-2020.pdf, p. 6.

Recommendation: Review and expand the definition of ‘Australian’ beyond those who are ‘ordinarily resident’ to include individuals who hold temporary visas, such as those seeking asylum

Basic Online Safety Expectations

DV Vic welcomes the establishment of a framework for *Basic Online Safety Expectations* (BOSE) for internet service providers, social media services or relevant electronic services. These expectations convey the importance of relevant providers and services having a responsibility in facilitating a safe online environment. Clause 46 outlines the core expectations, whereby service providers take ‘reasonable steps’ to ensure end-users can use the service safely (1a), have ‘clear and readily identifiable mechanisms’ for end-users to report and make complaints about particular material (1e), as well as to report and make complaints about the service’s terms of use (1f). These expectations make it clear to victim-survivors that they can expect safe use of the service, and have recourse if their online safety is compromised.

DV Vic notes that the above expectations are an improvement from and broader than the basic online safety requirements in *Enhancing Online Safety 2015* and require that service providers provide periodic reports to the Commissioner to ensure compliance. At the same time, it would be valuable to complement the above expectations by specifying that end-users be prohibited from posting violent and abusive material on the service. Doing so can set expectations about end-user responsibility in contributing to a safe online environment, while informing them that there are ‘clearly and readily identifiable mechanisms’ for complaints about said material. This sends a message that there is a zero tolerance to posting material that compromises end-users’ online safety.

Recommendation: BOSE to include specification that the service provider prohibits end-users from posting:

- (i) cyber-bullying material targeted at an Australian child;
- (ii) cyber-abuse material targeted at an Australian adult;
- (iii) a non-consensual intimate image of a person;
- (iv) class 1 material;
- (v) class 2 material;
- (vi) material that promotes abhorrent violent conduct;
- (vii) material that incites abhorrent violent conduct;
- (viii) material that instructs in abhorrent violent conduct;
- (ix) abhorrent violent material

Cyber-bullying material targeted at an Australian child

Research shows the importance of legal measures in contributing to a ‘significant reduction’ in technology-facilitated abuse targeting children.²⁷ DV Vic understands the importance of upholding the rights of children to participate online without being targets of and subject to cyber-bullying material. Some examples of cyber-bullying on the eSafety Commissioner website are ‘abusive texts and emails,’ ‘hurtful messages, images or videos,’ imitating others online’.²⁸ Children are also subject to technology-facilitated family violence, many of which are examples of cyber-bullying. DV Vic is concerned that the cyber-bullying scheme does not have a family violence lens, as it does not recognise the cumulative harm caused by family violence, or the likelihood a perpetrator can abuse the Scheme. Specifically, DV Vic is concerned about the following:

- Clause 6 1(b)(ii), regarding ‘the material would be likely to have the effect on the Australian child of seriously threatening, seriously intimidation, seriously harassing or seriously humiliating the Australian child’
- Clause 30 Complaints, objections and investigations

Clause 6 1(b)(ii): ‘the material would be likely to have the effect on the Australian child of seriously threatening, seriously intimidating, seriously harassing or seriously humiliating the Australian child’

DV Vic supports the inclusion of ‘seriously threatening’ and ‘seriously intimidating’ in this clause. As stated in relation to family violence, threats and intimidation are some of the most commonly reported types of technology-facilitated abuse targeting children.²⁹

It would also be valuable for the effects to recognise cumulative harm, which is frequently experienced by child victim-survivors of family violence. Cumulative harm ‘refers to the effects of multiple adverse or harmful circumstances and events in a child’s life. The unremitting daily impact of these experiences on the child can be profound and exponential, and diminish a child’s sense of safety, stability and wellbeing’.³⁰ Family violence can affect children in many ways, including who they trust, their current and future relationships, education outcomes and physical and mental health. The eSafety report on children and technology-facilitated abuse shows that in 67% of cases where children were the victims of technology-facilitated abuse, their mental health was negatively impacted.³¹ Children also felt guilty they had disclosed information to perpetrators, and their relationship with the non-abusive parent was negatively affected. It is important that the Scheme takes into account the cumulative effects and ongoing impacts of such behaviours on children.

Recommendation: Consider how the cyber-bullying Scheme can include recognition of cumulative harm on children (Clause 6 1(b)(ii))

²⁷ eSafety Commissioner. (2020). *Children and technology-facilitated abuse in domestic and family violence situations*, p. 60.

²⁸ eSafety Commissioner. (2020). <https://www.esafety.gov.au/key-issues/cyberbullying>.

²⁹ eSafety Commissioner. (2020). *Children and technology-facilitated abuse in domestic and family violence situations*, p. 16.

³⁰ Bromfield, L., Miller, R. (2012). *Cumulative harm: Best interests case practice model*. Victorian Government.

<https://www.cpmanual.vic.gov.au/sites/default/files/Cumulative%20harm%20specialist%20practice%20resource%202012%203014%20.pdf>, p. 5.

³¹ eSafety Commissioner. (2020). *Children and technology-facilitated abuse in domestic and family violence situations*, p. 32.

Clause 30: Complaints, objections and investigations

With respect to this clause, DV Vic would like to draw attention to the potential that a perpetrator of family violence may use the Scheme to abuse adult victim-survivors by making false complaints, objections and investigations. DV Vic notes that a complaint can be made by an Australian child, or on behalf of an Australian child, which in a family violence context, provides opportunities for vexatious and malicious use of technology by perpetrators to further perpetrate family violence. WESNET's 2020 survey found that perpetrators sometimes used technology to impersonate adult victim-survivors.³² Perpetrators would send emails from victim-survivor's accounts or pretended to be them on social media. Additionally, a publication by eSafety Commissioner shows that in more than a quarter of family violence cases, perpetrators used technology pretend to be an adult victim-survivor.³³ Given this frequency, there is a likelihood that perpetrators may set up a false account, or even use victim-survivors' accounts pretending to be adult victim-survivors, to post cyber-bullying material to a child. Perpetrators may then make a complaint against adult victim-survivors to discredit them in legal proceedings and/or increase burden on victim-survivors if they receive an end-user notice for cyber-bullying to follow its conditions (clause 70).

DV Vic is also concerned that perpetrators may coerce a child to make a complaint against an adult victim-survivor. In this way, children can experience technology-facilitated abuse in situations where perpetrators involve them in the abuse directed against their mothers.³⁴ This could be likely given that perpetrators are already controlling the children's technology use.³⁵ Further, if phone and internet accounts are often owned and paid for by perpetrators, they could withhold technology if children do not comply with their demands.³⁶ Given the prevalence of such controlling behaviours, perpetrators can extend these behaviours to involve children by forcing them to make complaints against adult victim-survivors.

Recommendation: Provide safeguards on how implementation will be protected from vexatious and malicious use by perpetrators for the purpose of perpetrating further family violence

Cyber-abuse material targeted at an Australian adult

DV Vic welcomes the introduction of this scheme, given the prevalence of cyber-abuse that victim-survivors of family violence experience.

However, similar to the above concerns regarding the cyber-bullying scheme, DV Vic has concerns about:

- Clause 7 1(b) regarding an 'ordinary reasonable person' drawing conclusions on material that is considered cyber-abuse targeted at an Australian adult
- Clause 7 1(b) regarding the threshold of 'serious harm'
- Clause 36 Complaints, objections and investigations

³² WESNET. (2020). *Second National Survey on technology abuse and domestic violence in Australia*, p. 59.

³³ eSafety Commissioner. (2020). *Children and technology-facilitated abuse in domestic and family violence situations*, p. 25.

³⁴ eSafety Commissioner. (2020). *Children and technology-facilitated abuse in domestic and family violence situations*, p. 38.

³⁵ eSafety Commissioner. (2020). *Children and technology-facilitated abuse in domestic and family violence situations*, p. 65.

³⁶ eSafety Commissioner. (2020). *Children and technology-facilitated abuse in domestic and family violence situations*, p. 65.

Clause 7 1(b) ‘Ordinary reasonable person’

DV Vic has concerns that the test of an ‘ordinary reasonable person’ does not recognise the dynamics of family violence and the specific nature of threats directed at adult victim-survivors. The challenge with technology-facilitated family violence is that ‘threats are often covert and have specific meanings intended only for the victim-survivors’.³⁷ Victim-survivors are experts of their specific family violence circumstances in a way on which no ‘ordinary reasonable person’ would be able to draw conclusions. Threats can seem innocuous to an ‘ordinary reasonable person’ because ‘a violent partner often knows how to specifically torment their victim, using their intimate knowledge to threaten her in ways that may not seem obvious to others, but cause enormous fear for the victim.’³⁸ One example is of a perpetrator sending a message asking an adult victim-survivor to ‘pack the Medicare card in their son’s bag for handover ‘in case he gets injured’ while with him’.³⁹ Another example is a message reminding the adult victim-survivor ‘to pack sunscreen because he knows she wouldn’t like them to get burnt (when he previously threatened to douse her and the children in petrol and set them on fire)’.⁴⁰ These messages asking to pack a Medicare card, and to pack sunscreen, without a family violence lens, can seem innocuous and even thoughtful and sensitive. That is because perpetrators know to code their messages in such a way that the threat is known only to the victim-survivor.

DV Vic also has concerns that the test of ‘an ordinary reasonable person’ would not take into account the diverse backgrounds of victim-survivors. Perpetrators are skilled at using victim-survivors’ identities against them, such as through culturally-specific humiliation and threats. One example of a threat made online was to cut a victim-survivor’s hair, which ‘in some cultures indicates adultery’.⁴¹ The unique dynamics of technology-facilitated family violence in diverse communities, such as Aboriginal and Torres Strait Islander communities, people with disabilities, culturally and linguistically diverse communities, older people, younger people, alcohol and/or other drug users, must therefore be considered.

As a result, it is important to extend the test of an ‘ordinary reasonable person’ to draw conclusions on material that is considered cyber-abuse targeted at an Australian adult to ensure specific and personalised tactics of family violence being perpetrated online fall into the definition.

Recommendation: Adjust the test of ‘an ordinary reasonable person’ to ensure the online safety of from cyber-abuse of adult victim-survivors of family violence

Clause 7 1(b): Threshold of ‘serious harm’

Clause 7 1(b) states that for the purposes of this Act, ‘an ordinary reasonable person would conclude that: it is likely that the material was intended to have an effect of causing serious harm to a particular Australian adult’. In the first instance, DV Vic questions why there are varied

³⁷ WESNET. (2020). *Second National Survey on technology abuse and domestic violence in Australia*, p. 23; Women’s Legal Service New South Wales, DVRCV and WESNET. (2015). *ReCharge: Women’s Technology Safety National study findings 2015*, p.8.

³⁸ Women’s Legal Service New South Wales, DVRCV and WESNET. (2015). *ReCharge: Women’s Technology Safety National study findings 2015*, p.8.

³⁹ WESNET. (2020). *Second National Survey on technology abuse and domestic violence in Australia*, p. 28.

⁴⁰ WESNET. (2020). *Second National Survey on technology abuse and domestic violence in Australia*, pp. 28-29.

⁴¹ eSafety Commissioner. (2019). *eSafety for women from Culturally and Linguistically diverse backgrounds: summary report*, p. 10.

DV Vic supports the definition of serious harm that not only includes ‘serious physical harm’ but also ‘serious harm to a person’s mental health, whether temporary or permanent’. DV Vic is unclear about what might constitute evidence of serious harm intended to be covered by the Scheme, and therefore the degree to which victim-survivors will be able to access the Scheme.

As a result, DV Vic would like to draw attention to ways in which technology-facilitated family violence is targeted at adult victim-survivors.⁴² One way that perpetrators do so is through verbal and emotional abuse, such as name-calling and putdowns online. Further, such abuse is constant, resulting in distress and persistent interruptions to victim-survivors’ lives. WESNET’s recent survey shows that in some cases, ‘[t]he sheer volume of messages and calls constitutes harassment charges – it is not uncommon to speak to women who are getting 300 plus messages from [perpetrators] per day’.⁴³ This distress is exacerbated when third parties, like perpetrators’ family and friends, participate in the abuse,⁴⁴ or when perpetrators use multiple devices and online platforms to perpetrate abuse. DV Vic would like assurance that the threshold of ‘serious harm’ would cover technology-facilitated family violence to ensure adult victim-survivors can access the Scheme.

Recommendation: Ensure the threshold of and evidence required to show ‘serious harm’ meets the specific nature of technology-facilitated family violence to ensure adult victim-survivors can access the Scheme

Clause 36 Complaints, objections and investigations

As with the earlier recommendation in relation to cyber-bullying targeted at an Australian child, DV Vic would like to draw attention to the potential that a perpetrator of family violence may use the Scheme to abuse adult victim-survivors by making false complaints. DV Vic notes that a complaint can be made by an Australian adult, or on behalf of Australian adult. DV Vic has concerns that perpetrators can impersonate an adult victim-survivor’s account to make a complaint against an adult victim-survivor.

Recommendation: Provide safeguards on how implementation will be protected from vexatious and malicious use by perpetrators for the purpose of perpetrating further family violence

Notices or directions issued to end-users

DV Vic is concerned about the inconsistency in notices or directions issued to end-users, particularly:

- Clause 89 removal notice given to an end-user

Clause 89 removal notice given to an end-user

DV Vic notes that the eSafety Commissioner can issue a remedial direction to an end-user as part of the non-consensual sharing of intimate images Scheme (clause 83), while removal notices can be issued to end-users as part of the cyber-bullying (clause 70) and cyber-abuse Schemes (clause 89).

⁴² Women’s Legal Service New South Wales, DVRCV and WESNET. (2015). *ReCharge: Women’s Technology Safety National study findings 2015*.

⁴³ WESNET. (2020). *Second National Survey on technology abuse and domestic violence in Australia*, p. 22.

⁴⁴ eSafety Commissioner. (2019). *eSafety for women from Culturally and Linguistically diverse backgrounds: summary report*, p. 9.

However, the lack of consistency across the Schemes may inadvertently send a message that some forms of technology-facilitated abuse are more ‘significant’ than cyber-abuse targeted at an Australian adult. Clause 70 and 83 share a similarity in that the Commissioner can issue a notice or direction, requesting that the user refrain from posting any cyber-bullying material, or from breaching clause 75 (posting or threatening to post an intimate image), respectively. However, in the case of the cyber-abuse scheme, there is no requirement in the removal notice given to an end-user that the user refrain from posting any cyber-abuse material for which the adult is the target (clause 89). Given the prevalence of cyber-abuse in the context of family violence, it is important to ensure consistency in messaging that any and all forms of technology-facilitated abuse are not acceptable.

Recommendation: Include a requirement that end-users refrain from posting any cyber-abuse material for which the adult is the target to ensure consistency in notices or directions issued at end-users (clause 89)

Additional comments

Ensuring that the leaders in the space of technology-facilitated family violence, such as WESNET, have adequate funding and resources to continue their important work is invaluable. Family violence practitioners recognise WESNET as experts in this space. WESNET pioneered research and surveys with victim-survivors and practitioners and brings technology and family violence into conversations at Technology Safety Summits. Their professional development programs have also been influential to build the capability of practitioners to support the online safety of victim-survivors.

Further, DV Vic supports the recommendations made by WESNET and eSafety Commissioner in their recent reports.⁴⁵ We would like to reiterate the significance of longitudinal research, capability-building, responsible partnerships between technology developers and the family violence sector, and prevention approaches.⁴⁶ Longitudinal research allows family violence practitioners to understand the key ways that technology-facilitated abuse are used against victim-survivors, allowing practitioners to work from an evidence base to assess and manage family violence risk in the online space. Building the capability of practitioners and first responders to recognise and respond to technology-facilitated abuse is also important.

It would also be valuable to assess the ongoing effectiveness of the Schemes once they are implemented to ensure they are meeting the Bill’s objectives. Data pertaining to community awareness of the Schemes, number of individuals supported by each Scheme, number of individuals who could not be supported and why, penalties, co-occurrence with family violence, and co-sentenced offences would be beneficial to understand the gaps and strengths.⁴⁷ DV Vic proposes that the Schemes are evaluated by an independent agency.

⁴⁵WESNET. (2020). *Second National Survey on technology abuse and domestic violence in Australia*; eSafety Commissioner. (2020). *Children and technology-facilitated abuse in domestic and family violence situations*; eSafety Commissioner. (2019). *eSafety for women from Culturally and Linguistically diverse backgrounds: summary report*.

⁴⁶ WESNET. (2020). *Second National Survey on technology abuse and domestic violence in Australia*, pp. 44-45.

⁴⁷ DV Vic acknowledges that the eSafety Commissioner and Australian Communications and Media Authority (ACMA) provide reporting data in their annual reports. eSafety Commissioner and ACMA. (2020). *Annual reports 2019-2020*. <https://www.esafety.gov.au/sites/default/files/2020-10/ACMA%20and%20eSafety%20annual%20report%202019-20.pdf>.

Conclusion

DV Vic believes that the *Online Safety Bill* is a significant improvement in ensuring that Australians, including victim-survivors of family violence, have access to safety online. Given the prevalence of technology-facilitated abuse in family violence, it is critical to ensure that the legislative framework regulating online safety is robust and adequacy takes into account how technology is used to perpetrate family violence.

However, as outlined above, DV Vic believes that a number of aspects of the Bill can be improved to further protect victim-survivors. To this end, we have made a series of recommendations to improve the Bill and point towards areas where we believe the Act needs to be further amended.

DV Vic would like to thank the Australian Government's Department of Infrastructure, Transport, Regional Development and Communications for the work they have done on the *Online Safety Bill* to date and looks forward to working with them and our partners in the community sector to continue to support victim-survivors.