

1 October 2015

Response to the Exposure Draft of the *Criminal Code Amendment (Private Sexual Material) Bill 2015*

Domestic Violence Victoria (DV Vic) welcomes the opportunity to provide feedback on the Exposure Draft of this important Bill.

About Domestic Violence Victoria (DV Vic)

As the peak body for family violence services in Victoria, DV Vic has a broad membership of over 60 state-wide and regional family violence agencies across Victoria, which provide a variety of responses to women and children who have experienced family violence, including every specialist family violence service in Victoria, community and women's health agencies, some local governments and other community service agencies. DV Vic holds a central position in the Victorian integrated family violence system and its governance structures.

DV Vic provides policy advice and advocacy to the Victorian Government about family violence prevention and response. Since our establishment in 2002, DV Vic has been a leader in driving innovative policy to strengthen sectoral and system responses to family violence, building workforce capacity and representing the family violence sector at all levels of government.

Introduction

The issue of 'revenge porn' is a growing concern across the community. It is now regarded as a common form of intimate partner abuse, either through threats to share or publish or the actual publication of private sexual material. This form of abusive behaviour has significant adverse consequences for the victim, as noted in the discussion paper. The use of 'revenge porn' as a means for retribution in a family or domestic violence situation is increasing. The perpetrator may threaten the sharing or publication of private sexual material to maintain power and coercive control over his partner and share the material publically as retribution after the woman leaves the relationship. The criminalisation of these abusive behaviours through this Bill sends a strong signal that the community considers this practice unacceptable and provides an important and much needed lever in the Commonwealth government's response to preventing violence against women.

Issues for Consideration

1. Threats to share private sexual material

DV Vic supports the creation of a specific criminal offence in relation to 'revenge porn' threats, which are often associated with the controlling coercive behaviours of perpetrators

of family violence. The offence should apply to threats made directly to subject of the material as well as others who will be indirectly adversely affected by the sharing of the material, and consequently subjected to coercive control through this behaviour.

2. The meaning of 'private sexual material'

DV Vic endorses the intention to broaden the definition to incorporate private images that are not necessarily sexually graphic; that the non-consensual sharing of private images without consent is a form of violence. For this reason consideration might be given to using the terminology of 'intimate material'. The premise of the definition that a reasonable person would not expect the images to be made public is important. This would include the way a person is depicted and what they are doing, and the personal nature of that. It would be useful to articulate the circumstances such as the subject's cultural or religious background, sexual identity and employment that would preclude the material from public view.

S 474.24D (4) appears to say that material is not 'private sexual material' if it has been photo-shopped or otherwise altered to present the person in a way which would not be made public. Clearly alteration of an image in such way will have the same capacity to cause distress and harm to the subject and as such distribution of such material should be considered in the same way as other non-consensual sharing of private images.

It is important that the Bill uses non-gendered language and references same-sex attraction and diverse gender identity.

3. Intention of perpetrators

S 474.24E using a carriage service for private sexual material addresses the question of intention and motivation. It appears to provide for the victim to make a case for the harm and distress caused.

4. Protection of the media

This Bill is premised on the fact that this material is by definition 'private sexual material', which implies that it is never in the public interest to publish it, whether it has been previously transmitted or not. Presumably the Bill will heighten media awareness of the nature of 'revenge porn' and place responsibility on them to seek consent for the subject of the material before publication. While recognising that the media should be protected to some degree, the purpose of this Bill is to protect victims from the harm and distress caused by publication of private material without their consent. DV Vic believes that strong sanctions should apply to any transmission of this material by anyone, including the media.

5. The meaning of consent

Consideration could be given to using the model of positive consent as applied in sexual assault laws to provide clarity ie that consent is expressly and freely given. In the context of family violence the concept of consent is highly problematic given that women in this

situation may not feel able to refuse to participate in the production of the images or materials and further to consent to their subsequent distribution. While it may be useful to give explicit examples of express consent – perhaps in the Bill’s Explanatory Memorandum, for example, ‘I consent to sharing it with you and your friend only’, and ‘I do not consent for this material to be shared in hard copy (printed) in any circumstances’, consideration should be given to the family violence context and limitations to the personal agency of those in this situation. Also it is important that the Bill articulates that consent can be withdrawn at any time.