



*Thank you for the opportunity to make a submission of the review of the online safety laws, administered by the Department of Infrastructure, Transport, Regional Development and Communications.*

*This submission advocates for an intersectional approach to developing and implementing any legislation in this space and then focuses on the cyber abuse scheme for adults and victim/survivors of domestic and family violence (DFV). It is informed our work in relation to domestic and family violence (DFV) and technology, conducted over the past seven years. We want to acknowledge the colleagues and projects that will be referenced in and have informed this submission:*

1. *Spaceless Violence: Technology-facilitated Abuse, Stalking and Advocacy (2019, completed by Bridget Harris and Delanie Woodlock, with Women's Legal Service NSW)*

Examining 13 women's experiences of and responses to technology-facilitated abuse and stalking in the context of family violence in non-urban areas, this project also considered how technology is used by victim-survivors and advocates. In focusing on regional, rural and remote sites in New South Wales, Victoria and Queensland, the research revealed how geographic and social isolation and barriers encountered beyond the cityscape shaped impacts of and regulation of technology-facilitate harms. The research was sponsored by the Australian Institute of Criminology.

2. *Domestic Violence and Communication Technology: Survivor Experiences of Intrusion, Surveillance and Identity Crime (2019, completed by Molly Dragiewicz, Bridget Harris, Delanie Woodlock, Michael Salter, Helen Easton, Angela Lynch, Jhan Leach and Lulu Milne with Women's Legal Service NSW and Women's Legal Service Queensland)*

The research investigated how domestic violence perpetrators intrude on victim-survivor lives via unwanted contact, unauthorised access to telecommunications accounts and devices, and identity theft in Australia. Drawing on 20 interviews with victim-survivors in New South Wales and Queensland and 3 focus groups with 10 advocates working across the country (in non-urban settings), it recognised that domestic violence victim-survivors comprise a large group of vulnerable consumers whose rights, privacy, and security are compromised when telecommunication services and devices are misused. The research was sponsored by the Australian Communications Consumer Action Network.

3. *Landscapes of Violence: Women's Experience Surviving Family Violence in Regional and Rural Victoria (2014, completed by Amanda George and Bridget Harris)*

Exploring the experiences of and outcomes for women and children victim-survivors of family violence in regional and rural Victoria, this project examined 30 participant's contact



with and perceptions of government agencies (including police, magistrates' courts, Department of Human Services) as well as private and community advocates (legal actors and services, women's services and family violence services) and healthcare professions. Issues and barriers facing survivors escaping family violence were identified, and victim-survivors, support workers (24 participants), legal actors (19 participants) and magistrates (3 participants) offered suggestions as to how the criminal justice system and broader community might assist in improving access to justice, supporting and protecting victim-survivors and their children. Sector-wide consultation of government and non-government agencies and experts informed the development of recommendations outlined by the authors. The research was sponsored by the Alfred Felton Bequest and Geelong Community Foundation.

4. *Children and Technology-facilitated Abuse in Domestic and Family Violence Situations: Full Report (2020, Completed by Molly Dragiewicz, Patrick O'Leary, Jeffrey Ackerman, Ernest Foo, Christine Bond, Amy Young and Claire Reid).*

This mixed methods study (survey of 515 professionals who work with domestic violence, focus groups with 13 domestic violence specialist staff who work with children, interviews with four young people aged 16 to 18 who have been affected by technology-facilitated abuse, interviews with 11 domestic violence survivors whose children had experienced technology-facilitated abuse, interviews with 11 fathers identified as perpetrators of domestic violence attending a men's behaviour change program) found that professionals were aware of children's involvement in technology-facilitated abuse in more than a quarter of domestic violence cases as either direct victims or collateral victims of abuse directed at their mothers. Technology-facilitated abuse was part of coercive control. The most common types of abuse included monitoring and stalking, threats and intimidation, and blocking communication. Most of the abuse involved the misuse of common devices and applications that have legitimate uses such as mobile phones, social media and GPS tracking. This research was commissioned by eSafety.

Finally, we note that, as referencing indicates, some of this submission has been drawn from:

Bridget Harris, Delanie Woodlock & Molly Dragiewicz, *Harris, Woodlock and Dragiewicz Submission to the Australian Parliament Standing Committee on Social Policy and Legal Affairs Inquiry into the Report on Family, Domestic and Sexual Violence*. (Australia: Harris, Woodlock and Dragiewicz, 2020).

### **Intersectional framings of technology-facilitated violence**

While recognising that anyone can be subjected to technology-facilitated violence, a wealth of research produced by academics, advocates and civil bodies have emphasised that some



groups are disproportionately targeted. Essentially, ‘offline’ inequalities and discrimination mirror and fuel ‘online’ harm. As a population, women are disproportionately victimised.<sup>1</sup> Indeed in 2018, The United Nations Special Rapporteur on Violence against Women maintained that “[o]nline and ICT-facilitated forms of violence against women have become increasingly common, particularly with the use of, every day and everywhere, of social media and other technical platforms.<sup>2</sup> Men can certainly experience technology-facilitated violence, but the literature suggests that rates of victimisation are lower and also that there are differences in the type of abuse encountered. Men’s ideas or behaviours are most likely to be the subject of attacks and threat to and doxing of men is rare. In contrast, women are exposed to a spectrum of harm which is “more extensive (often sustained), overtly reference their sex, sexualities, gender and objectifies (and threatens) their bodies”.<sup>3</sup> Other groups experiencing higher rates of victimisation are LGBTIQ individuals whose gender expression and or sexuality may be targeted.<sup>4</sup> Additionally, Black people, Indigenous peoples and people of colour may receive abuse which is both racialised.<sup>5</sup> Those who practice a religion other than Christianity have also been disproportionately affected by

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<sup>1</sup> Z. Abul Aziz, Due diligence and accountability for online violence against women. *Association for Progressive Communication Issues Papers*. (Association for Progressive Communication, 2017); Amnesty International, *Toxic Twitter: Violence and Abuse against Women Online* (London: Amnesty International, 2018); Danielle Keats Citron, “Law’s Expressive Value in Combating Cyber Gender Harassment”, *Michigan Law Review*, 108, (2009): 373–415. Internet Governance Forum, *Best Practice Forum (BPF) on Online Abuse and Gender-based Violence Against Women*. Available at: <http://www.intgovforum.org/cms/documents/best-practice-forums/623-bpf-online-abuse-and-gbv-against-women/file> (2015); Karla Mantilla, *Gendertrolling: How Misogyny Went Viral* (Santa Barbara: Praeger, 2015); Nicolas Suzor, Molly Dragiewicz, Bridget Harris, Rosalie Gillett, Jean Burgess, and Tess Van Geelen, “Human Rights by Design: The Responsibilities of Social Media Platforms to Address Gender-based Violence Online”, *Policy & Internet* 11, no.1: 84–103.

<sup>2</sup> Dubravka Šimonović, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences on Online Violence against Women and Girls from a Human Rights Perspective* (no. A/HRC/38/47), (New York: United Nations, 2018) 4.

<sup>3</sup> Bridget Harris, “Technology and Violence against Women”, in *The Emerald Handbook of Feminism, Criminology and Social Change*, ed. Sandra Walklate, Kate Fitz-Gibbon, Jude McCulloch and JaneMaree Maher. (Bingley: Emerald, 2020), 317-336. See also Jill Filipovic, “Blogging While Female: How Internet Misogyny Parallels ‘Real-World’ Harassment”, *Yale Journal of Law and Feminism* 19, no.1 (2007): 295-303; Jesse Fox & Wai Yen Tang, “Women’s Experiences with General and Sexual Harassment in Online Video Games: Rumination, Organizational Responsiveness, Withdrawal and Coping Strategies”, *New Media & Society* 19, no.8 (2016): 1290-1307. Emma A. Jane, “‘Back to the kitchen, cunt’: Speaking the Unspeakable about Online Misogyny”, *Continuum: Journal of Media and Cultural Studies* 28, no.4 (2014): 459-475.

<sup>4</sup> Harris, *Technology and Violence Against Women*.

<sup>5</sup> Bronwyn Carlson & Ryan Frazer, *Cyberbullying and Indigenous Australians: A Review of the Literature*, (Sydney: Macquarie University, 2018). Kishonna L. Gray. “Deviant Bodies, Stigmatized Identities, and Racist Acts: Examining the Experiences of African-American Gamers in Xbox Live”, *New Review of Hypermedia and Multimedia* 18, no.4 (2012): 261-276; Stephanie Madden, Melissa Janoske, Rowena Briones Winkler & Amanda Nell Edgar, “Mediated Misogynoir: Intersection Race and Gender in Online Harassment”, in *Mediating Misogyny: Gender, Technology and Harassment*, ed. Jacqueline Ryan Vickery & Tracy Everbach (Cham: Palgrave, 2018), 71-90.



online harms, with their faith attacked.<sup>6</sup> Persons with cognitive, intellectual or physical disabilities or mental illnesses have reported experiencing online abuse where their bodies, perceived capabilities is critiqued.<sup>7</sup> Of course, abuse can target many different aspects of identity and association so, for instance, someone's religion, gender identity and sexuality can be the focus of abuse.

Thus, it is imperative that there is an *intersectional lens*<sup>8</sup> is adopted when considering developing and implementing responses (such as in the proposed laws) to technology-facilitated violence. This means that there is recognition of inequalities and the interrelationship between discrimination and different self or assumed identities (such as in relation to class, sex, gender diversity, ethnicity, sexuality and disability).<sup>9</sup> Harms affect and manifest in different ways for individuals and groups. Speaking to Indigenous experiences of cyberbullying, for instance, Carlson emphasises that "Internet technologies such as social media are often experience differently by Indigenous peoples, so we cannot assume that cyberbullying occurs at the same rate, for the same reasons, and with the same impacts as for non-Indigenous peoples".<sup>10</sup> Unfortunately, there is a lack of diversity in the tech industry, which has resulted in the design and management of platforms that, at best can overlooking the impacts and effects on different (especially marginalised) groups, and at worst, can actively facilitated abuse or fail to respond to or regulate harms.<sup>11</sup>

### **The need to recognise context of technology-facilitated abuse and victimisation experiences**

In engaging platforms and telecommunication agencies to respond to technology-facilitated abuse, DFV victim/survivors have consistently reported difficulties.<sup>12</sup> While acknowledging

<sup>6</sup> Imran Awan & Irene Zempi, *'We Fear for Our Lives': Online and Offline Experiences of Anti-Muslim Hostility*, (Birmingham and Nottingham: Tell MAMA, Birmingham City University, Nottingham Trent University, 2015).

<sup>7</sup> Lauren Hackworth, "Limitations of 'just gender': The Need for an Intersectional Reframing of Online Harassment Discourse and Research", in *Mediating Misogyny: Gender, Technology and Harassment*, ed. Jacqueline Ryan Vickery & Tracy Everbach (Cham: Palgrave, 2018), 71-90.

<sup>8</sup> Kimberlé Crenshaw, "Demarginalizing the Intersections of Race and Sex: A Black Feminist Critique of Doctrine, Feminist Theory and Antiracist Politics", *University of Chicago Legal Forum* 140, no.1 (1989); 139-167.

<sup>9</sup> Harris, *Technology and Violence Against Women*.

<sup>10</sup> Bronwyn Carlson, *Cyberbullying and Indigenous Australians: A Summary*, (Sydney: Macquarie University, 2018), 2.

<sup>11</sup> Emily Chang, *Brotopia: Breaking Up the Boys' Club of Silicon Valley*, (New York: Portfolio, 2018); Anita Gurumurthy, *Gender and ICTs*, (Brighton: Institute of Development Studies, 2004); Bridget Harris & Laura Vitis, "Digital Intrusions: Technology, Spatiality and Violence Against Women", *Journal of Gender-Based Violence* 4, no.3 (2020): 325-341. Harris, *Technology and Violence Against Women*; Michael Salter, *Crime, Justice and Social Media* (London: Routledge, 2017) Suzor et al., *Human Rights By Design*.

<sup>12</sup> Molly Dragiewicz, Bridget Harris, Delanie Woodlock, Michael Salter, Helen Easton, Angela Lynch, Helen Campbell, Jhan Leach & Lulu Milne, *Domestic Violence and Communication Technology: Survivor Experiences of Intrusion, Surveillance and Identity Crime*, (Australia: ACCAN, 2019); Amanda George & Bridget Harris,



that there has been some progress in recent years in enhancing recognition of DFV (largely driven by advocates and organisations such as WESNET and The eSafety Commissioner), there is still limited awareness of what constitutes technology-facilitated abuse. This has the potential to hinder the effectiveness of a cyber abuse scheme for adults.

### Technology and DFV<sup>13</sup>

Technology-facilitated abuse is an umbrella term, which includes a multitude of behaviours, such as the use of technology to enact other forms of abuse (such as financial abuse or sexual abuse) and to assist in ‘traditional’ (in-person) stalking.<sup>14</sup> Technology-facilitated abuse can also include:

- **The sending or posting of abusive acts or communications** using technology which are intended to harass or defame the victim-survivor;
- **Causing an unauthorised function or impairing an authorised function** on a device owned by a victim-survivor;
- Publishing a victim-survivor’s private and identifying information (**doxing**) or sexualised content without consent;
- **Impersonation** of a victim-survivor or another person in an attempt to intimidate, harass, defraud or steal a victim-survivor’s identity;
- **[Stalking] Using technology to monitor the activities, movements or communications** or a victim-survivor.<sup>15</sup>

Taxonomies, such as the one above, can be useful in assisting victim/survivors, advocates and practitioners to recognise and respond to technology-facilitated abuse. They may also

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*Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria*, (Geelong: Deakin University, 2014); Bridget Harris and Delanie Woodlock, *Spaceless Violence: Women’s Experiences of Technology-Facilitated Domestic Violence in Regional, Rural and Remote Areas*, (Canberra: Australian Institute of Criminology, forthcoming).

<sup>13</sup> Please note that some of this section draws directly from: Bridget Harris, Delanie Woodlock & Molly Dragiewicz, *Harris, Woodlock and Dragiewicz Submission to the Australian Parliament Standing Committee on Social Policy and Legal Affairs Inquiry into the Report on Family, Domestic and Sexual Violence*. (Australia: Harris, Woodlock and Dragiewicz, 2020).

<sup>14</sup> See also Christine Barter, Nicky Stanley, Marsha Wood, Alba Lanau, Nadia Aghtaie, Cath Larkins & Carolina Øverlein, “Young People’s Online and Face-to-Face Experiences of Interpersonal Violence and Abuse Across Five European Countries”, *Psychology of Violence* 7, no.3 (2017)375-384; Harris & Woodlock, *Spaceless Violence*; Alison Marganski & Lisa Melander, “Intimate Partner Violence and Victimization in the Cyber and Real World: Examining the Extent of Cyber Aggression Experiences and Its Association with In-Person Dating Violence”, *Journal of Interpersonal Violence* 33, no.7 (2015): 1071-1095.

<sup>15</sup> Bridget Harris, “Technology, Domestic and Family Violence: Perpetration, Experiences and Responses”, *Centre for Justice Briefing Paper 4*, (2020): 1-4; Harris & Woodlock, *Spaceless Violence*. See also Heather Douglas, Bridget Harris & Molly Dragiewicz, “Technology-facilitated Domestic and Family Violence: Women’s Experiences”, *British Journal of Criminology* 59, no.3 (2019): 551-570.



be useful in the development of prevention initiatives. However, this is not a complete or permanent outline of technology-facilitated abuse as **technologies will evolve and so will perpetrator behaviours**. For this reason, we should be attentive to the dangers new devices and digital media may pose and the strategies employed by those engaging in violence on an ongoing basis.<sup>16</sup>

It is important to recognise that domestic and family violence is all about context. **Identical behaviours may be abusive in the context of coercive and controlling relationships and innocuous or healthy in non-abusive relationships**. Apps may be used to track a partner, for instance, in a non-abusive relationship, with the consent of both parties, to aid a meet-up. However, in an abusive relationship, the same app may be used in efforts to stalk a victim-survivor and restrict their movements. Technologies that can be used to aid connection in healthy relationships, such as video calls like FaceTime between a parent and child, may be dangerous or harmful for victim/survivors with abusive partners and their children. Perpetrators may, for example, ask children to activate video functions and ask them to ‘show me around your new room and house!’ which potentially provides information about where a victim-survivor has relocated, entry and exit points and security in their residence<sup>17</sup>

**Additionally, perpetrators use particular approaches and activities with specific meanings based on what will be most intimidating and threatening to an individual victim-survivor.** Calling at a particular time or using specific derogatory terms in text messages, for example, may be tactics employed because they are upsetting or threatening to a specific target. This can be because of discomforts, fears, upsetting or painful memories or trauma victim-survivors have or have experienced and, in referencing these moments, the impact and terror of an attack is compounded.<sup>18</sup> There are, quite simply, **relational and individualised features** of technology-facilitated abuse that cannot be easily or completely catalogued in a generic list of decontextualised behaviours.

***It is vital to consider the context in which behaviours occur and, the impact and effect on and risk facing a victim/survivor.*** This means that the **individualised and relational features of digital harms are recognised**. To do so, we and our colleagues working in the field<sup>19</sup>

<sup>16</sup> Harris, Technology, Domestic & Family Violence; Harris & Woodlock, Spaceless Violence.

<sup>17</sup> Dragiewicz et al., Domestic Violence and Communication Technology; Dragiewicz et al., Children and technology-facilitated abuse; Harris, Technology, Domestic & Family Violence.

<sup>18</sup> Harris, Technology, Domestic & Family Violence. Delanie Woodlock, *Technology-facilitated Stalking: Findings and Recommendations from the SmartSafe Project*, (Collingwood: Domestic Violence Resource Centre Victoria, 2013); Delanie Woodlock, “The Abuse of Technology in Domestic Violence and Stalking”, *Violence Against Women* 23, no.5 (2017): 584-602.

<sup>19</sup> Bridget Harris and Delanie Woodlock, “Digital Coercive Control: Insights from Two Landmark Domestic Violence Studies”, *British Journal of Criminology* 59, no.3. (2019): 530-550; Molly Dragiewicz, Jean Burgess, Ariadna Matamoros-Fernández, Michael Salter, Nicolas P. Suzor, Delanie Woodlock & Bridget Harris, “Technology-facilitated Coercive Control: Domestic Violence and the Competing Roles of Digital Media Platforms”. *Feminist Media Studies* 18, no.4 (2018): 609-625.



suggest that we understand this phenomenon as ***digital coercive control*** (or ‘technology-facilitated coercive control’). Essentially, this refers to “the use of devices and digital media to stalk, harass, threaten and abuse partners or ex-partners and children”, definition which specifies the method (digital), intent (coercive behaviour) and impact (control of an ex/partner) and - because the concept of ‘coercive control’ is central - situates harm within a wider setting of sex-based inequality.<sup>20</sup>

This lens helps us to capture both behaviours which are **more readily problematised and recognised as well as those which may otherwise be overlooked or seen as ‘serious’**.<sup>21</sup>

### The effects and outcomes of digital coercive control

Technology **magnifies the harms of DFV and creates new forms and channels to abuse**. Technology-facilitated abuse is not a distinct form of violence that happens in isolation. It is a common feature of many victim/survivors’ experiences of DFV during relationships and at separation. However, there are unique features of digital coercive control that warrant attention.

The **possibility of ‘escaping violence’ and ‘feeling safe’ no longer has the same geographic boundaries they did before technology came to occupy such a significant role in our lives**.

Digital coercive control is **spaceless** in that it is not confined to a particular place. Victim/survivors may be exposed to these harms anytime they access a device (or a device is activated by a perpetrator) or digital media. In extending beyond real-world sites and delivering immediate, constant, and sometimes anonymised or clandestine, contact and surveillance it can therefore **feel inescapable and create a pervasive and oppressive condition of ‘unfreedom’**.<sup>22</sup>

This spacelessness can be seen in the use of technologies such as GPS, which domestic violence practitioners have termed a **“leash” that perpetrators can use to entrap, control and monitor victim/survivors**. The recent 2020<sup>23</sup> follow-up survey to the 2015 study on

<sup>20</sup> Harris & Woodlock, Digital Coercive Control, 533-534

<sup>21</sup> Evan Stark, *Coercive Control: The Entrapment of Women in Personal Life*, (Oxford: Oxford University Press, 2007).

<sup>22</sup> Tammy Hand, Donna Chung and Margaret Peters. *The Use of Information and Communication Technologies to Coerce and Control in Domestic Violence and Following Separation*, (Sydney: Australian Domestic and Family Violence Clearinghouse & UNSW, 2009). Bridget Harris, “Spacelessness, Spatiality and Intimate Partner Violence: Technology-facilitate Abuse, Stalking and Justice”, in *Intimate Partner Violence, Risk and Security: Securing Women’s Lives in a Global World*, eds, JaneMaree Maher, Sandra Walklate, Jude McCulloch & Kate Fitz-Gibbon, (London: Routledge Studies in Crime, Security and Justice, 2018), 52-70; Harris & Woodlock, Digital Coercive Control; Woodlock, The Abuse of Technology.

<sup>23</sup> Delanie Woodlock, Karen Bentley, Darcee Schulze, Natasha Mahoney, Donna Chung & Amy Pracilio, *Second National Survey of Technology Abuse and Domestic Violence in Australia*, (Australia: Curtin University and WESNET, 2020).



technology used by perpetrators of domestic violence<sup>24</sup> found that practitioners' estimates of women tracked with GPS apps or GPS devices had increased by 244.8% by 2020. In 2015, 8.12% of practitioners reported seeing this 'all the time'. In 2020, almost one-third (28%) reported seeing GPS tracking 'all the time'. These increases occurred alongside other significant growth in the use of technology to monitor and track victim/survivors. In 2015, 12.5% of practitioners reported seeing the use of video cameras.

Technologies can provide **new channels for enacting abuse and invading victim/survivors' lives.**

While the literature on the impact of digital coercive control on victim/survivors' mental and physical wellbeing is still developing, the available research describes **significant impacts on victim/survivors' mental health and feelings of safety and freedom.** Woodlock's<sup>25</sup> 2013 SmartSafe study asked 46 victim/survivors about the impact of the abuse on their lives, with 84% indicating that technology-facilitated stalking and abuse had a detrimental impact on their mental health. Women commented that these impacts included nightmares, panic attacks, anxiety and depression. Victim/survivors also felt the abuse had wider negative effects on their lives, with 74% stating that they felt they had to be careful about where they went and what they did as a result of the abuse. Similarly, victim/survivors in George and Harris'<sup>26</sup> study described anxiety and trauma-related symptoms after being subjected to technology-facilitated violence. Dragiewicz et al<sup>27</sup> found that technology exacerbated the impact of DFV on survivors during and after relationships. Dragiewicz et al found that technology-facilitated abuse also had significant implications for children.<sup>28</sup>

Digital coercive control can also precede and signify risk for lethal violence. **Abusive and obsessive contact and stalking via technology have been identified as emerging trends in DFV partner homicide and filicide cases**<sup>29</sup> (Death and Family Violence Review and Advisory Board 2017; Dwyer & Miller 2014). The NSW Domestic Violence Death Review Team found that abusers stalked victims in 39% of cases prior to the fatal assault. Over 50% of these cases "included the abuser using technology to stalk the victim, such as persistent text

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<sup>24</sup> Delanie Woodlock, *ReCharge: Women's Technology Safety, Legal Resources, Research and Training*, (Australia: Women's Legal Service NSW, Domestic Violence Resource Centre Victoria, WESNET & ACCAN, 2015)

<sup>25</sup> Woodlock, SmartSafe

<sup>26</sup> George & Harris, *Landscapes of Violence*.

<sup>27</sup> Dragiewicz et al., *Domestic Violence and Communication Technology*.

<sup>28</sup> Dragiewicz et al., *Children and Technology-facilitated Abuse*.

<sup>29</sup> Death and Family Violence Review and Advisory Board, *Domestic and Family Violence Death Review and Advisory Board: 2015-2017 Annual Report*, (Australia: Death and Family Violence Review and Advisory Board, 2017); Jenny Dwyer & Robyn Miller, *Working with Families Where an Adult is Violent: Best Interest Case Practice Model Specialist Practice Resource*, (Victoria: Department of Health and Human Services, 2014); Harris, *Technology, Domestic & Family Violence*.





messaging, checking the domestic violence victim's phone, and engaging with the victim on social media / dating sites under a false identity".<sup>30</sup>

### **Discussion paper responses**

#### **(Question 11) Is the proposed application of the cyberbullying and cyber abuse schemes to designated internet services and hosting services, relevant electronic service and social media services, appropriate?**

As noted above in this submission, in the course of our research on this topic, victim/survivors have had mixed (and often negative) experiences when engaging these organisations to assist in addressing cyber abuse. This step could be useful, but it is vital that, alongside robust discussion about what constitutes 'cyber abuse', there is training and awareness as to how this can manifest in the course of DFV. Importantly, we believe that it would be useful to consider patterns of behaviour as opposed to isolated events. Recognising that the material would, as the discussion paper notes, need to be "menacing, harassing or offensive... rather than likely to have the effect of seriously threatening, intimidating, harassing or humiliating", we flag that there could be great issues in having some technology-facilitated abuse experienced by victim/survivors recognised by the designated services. While it is important that the definitions of cyber abuse are flexible, if they are not clearly including harms experienced by victim/survivors, then the impact of the legislation could be limited.

We also flag that DFV victim/survivors are likely to be contending with ongoing abuse (in relationships or post-separation) and myriad effects of violence and trauma. Their time, energy and ability to engage with designated services could be limited as they have heavy burdens managing their own safety. If there is an expectation that victim/survivors first engage designated internet services, hosting services, relevant electronic services and social media services, it is imperative that that this is a clear, straight-forward, effective and supportive process. If not, they may be unlikely to reach out again.

#### **(Question 12) Is the proposed take-down period of 24 hours reasonable, or should this require take-down in a shorter period of time?**

This might be an issue of feasibility. It is key that, in the interests of maintaining DFV victim/survivor confidence in any such system, there is a consistent and attainable timeline. Communication back to persons reporting could be a valuable part of the takedown process so that they know what action has been taken and when it is complete.

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<sup>30</sup> NSW Death Review Team, *NSW Domestic Violence Death Review Team Report 2015-2017*. (NSW: Domestic Violence Death Review Team, 2017), 134.



**(Question 13) Do the proposed elements of a definition of adult cyber abuse appropriately balance the protection from harms with the expectation that adults should be able to express views freely, including robust differences of opinion?**

While recognising legal parameters and difficulties in defining cyber abuse, we are concerned that the proposal does not specifically recognise the harms to which DFV victim/survivors are exposed. We would recommend that there is consideration of digital coercive control – the patterns and dynamics of abuse – as opposed to isolated instances of harm. DFV victim/survivors can feel silenced, overlooked and ignored when their experiences are not validated. Conversely, DFV perpetrators can feel their actions are affirmed, justified, legitimate or accepted when there is no response to their abuse. Additionally, when victim/survivors do seek help but fail to achieve recognition of the harms experienced or access to assistance, they may elect not to report harms or reach out again. This can have huge impacts on their health, wellbeing and security.

We want to emphasise that there are, as noted above, extensive harms, impacts and risks associated with digital coercive control. Frequently, victim/survivors are expected to manage their own tech-safety, to change their behaviours when using technology or, to disengage from technology. This is generally unrealistic, given the role technology plays in our lives, aiding social and civic engagement, providing education and employment opportunities, and also daily functions (such as paying bills, checking in re COVID19, etc). It can also be problematic to expect victim/survivors to change their use of technology or, disengage altogether, given technology can ensure they have access to formal and informal supports. Finally, it does not necessarily ensure safety, as perpetrators engaging in highly controlling and coercive behaviours through technology and, illustrating obsessive tendencies, are unlikely to just cease efforts to contact and monitor victim/survivors. It can, in fact, escalate risk of fatal violence. Thus, while recognising that freedom of expression is key, victim/survivors essentially are entrapped by perpetrators, and a lack of regulation of cyber abuse and, expectations that they change their use of technology, creates a condition of unfreedom. It is imperative that we consider (and foreground) victim/survivor perspectives, needs and, the barriers encountered, when considering new interventions.

**(Question 14) Should the penalties differ under a cyber abuse scheme for adults and the cyberbullying scheme for children?**

No responses to this question.

**(Question 15) What additional tools or processes, in addition to removal notices, could be made available to the eSafety Commissioner to address cyber abuse occurring across the full range of services used by Australians?**

We appreciate the eSafety Commissioner's work and efforts to address cyber abuse experienced by DFV victim/survivors, and also take the opportunity to acknowledge the



significant contributions of WESNET. Both provide key advice, support and assistance to advocates, practitioners and victim/survivors. We also recognise that both have sought to engage various tech and communication bodies in efforts to enhance responses in this area. We would like to see further progress in this field from tech and communication bodies who have the means to better assist victim/survivors. If the proposal is to proceed, then designated internet services, hosting services, relevant electronic services and social media services should have greater awareness of DFV enabled through training and education programs.

Communication back to persons reporting cyber abuse about actions taken could be very useful given that our research participants report using application reporting functions without knowing about the outcome of the report.

Finally, the premise that an “ordinary reasonable person” would conclude the material “was intending to have an effect of causing serious distress or serious harm”, or “regard the material as menacing, harassing or offensive,” could be limiting as ordinary people may not recognise how coercive control or DFV manifest or the distressing or harmful effects on adults and their loved ones.

*Thank you again for the opportunity to provide input to the consultation. We are available to be contacted if you require clarification, further information or, to discuss this submission further.*

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