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Online Safety Branch, Content Division
Department of Infrastructure, Transport, Regional Development and
Communications
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Response to the Consultation on a Bill for a new Online Safety Act

The Women's Services Network (WESNET) wishes to thank the Department of Infrastructure, Transport, Regional Development and Communications for the opportunity to comment on the Online Safety Bill as circulated in late December 2020.

WESNET is Australia's peak body representing Specialist Women's domestic and family violence frontline services. A public benevolent institution, WESNET provides relief and support to women and children experiencing domestic violence, family violence and other forms of gender-based violence. WESNET are experts in domestic and family violence and are considered the Australian NGO expert in the area of the intersection between technology and violence against women. WESNET's technology safety experts provide training and educational resources to frontline practitioners and provide a helpline for complex technology abuse scenarios and tech support as well as material relief such as new smartphones and prepaid credit.

As a peak body for women's specialist services, WESNET's focus in this submission is to bring the point of view of survivors of domestic and family violence and other forms of gender-based violence, and to look at the bill from the perspective of women's safety. In particular, we are concerned with Technology-facilitated abuse, which, in this submission, we mean as the technology-facilitated abuse that occurs in the context of domestic and family violence. This can involve perpetrators misusing devices, accounts and software to abuse, threaten, control and track victim-survivors.¹

The new Online Safety Act, according the pre-reading material provided for this consultation process, is designed to keep Australians safe online and that "all Australians

¹ Woodlock et al. (2020). *Second National Survey on technology abuse and domestic violence in Australia*, WESNET, p.10

should be able to engage online confidently, to work, communicate and be entertained, without fear of abuse or being subject to harmful content”.

This bill will go some way towards this, but in our view underestimates the ways in which perpetrators of domestic and family violence can misuse technology to harm and abuse their victims using online mechanisms.

WESNET is concerned that the Online Safety Bill may be presented as a solution to technology-facilitated abuse experienced by survivors of domestic and family violence. In reality, the misuse of technology is far broader than the coverage of this bill. The dynamics of domestic and family violence are often also more complex and multi-faceted and require a much larger and coordinated response.

An ordinary reasonable person may not get the hidden meaning in many kinds of technology-facilitated abuse used by perpetrators of domestic and family violence

We are concerned that while Clause 7(b) “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” and clause 7(c) “an ordinary reasonable person in the position of the Australian adult would regard the material as being, in all the circumstances, menacing, harassing or offensive” is likely to generally cover most situations, it may not be a good guide where the adult victim of cyber abuse is experiencing coercive control tactics commonly used in domestic and family violence and other abusive intimate partner relationships.

The use of coercive control tactics by abusers are often covert and obscure or only make sense to the intended victim is well documented (Dragiewicz et al, 2019, Woodlock et al 2019, Woodlock et al 2020, Woodlock 2013). For example, in the recent Second National Survey undertaken by WESNET and Curtin University, practitioners noted that threats were often covert and had specific meanings only for the victim-survivors, therefore it was difficult to demonstrate the severity of the threat posed. One frontline worker reported:

“Perps [sic] can be quite covert in their abusive messages. They have meaning for the victim, but it is hard to show they are abusive”²

Another frontline practitioner, talking about mandated contact in a family court decision, stated:

“This contact is so commonly used to abuse our client, often covertly so that the court would not see this as abuse. E.g. a text asking her to pack the Medicare card in their son's bag for handover 'in case he gets injured' while with him. Or an SMS telling her not to forget to pack sunscreen because he knows she wouldn't like them to get burnt (when he has previously threatened to douse her and the children in petrol and set them on fire).”

² Woodlock et al. (2020). *Second National Survey on technology abuse and domestic violence in Australia*, WESNET, p.18

In the above scenarios, an ordinary reasonable person in the position of an Australian adult would most likely regard these text messages regarding packing the medicare card or the sunscreen as good co-parenting, rather than the covert threats that are intended to be only understood by the victim.

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

Relevant electronic service p13

The definition of relevant electronic service is too narrow and will not keep pace with emerging methods of technology abuse. For example, would an abusive message sent via Bluetooth between devices such as smartphones, or other smart devices would be covered under this definition? It does not fit into any of the electronic services defined in (a)-(f) and would need to be specified in the legislative rules.

Perpetrators also use a range of other applications that are online but would not be covered under this definition. For example, descriptions used in banking transactions, leaving endless negative reviews on online or other businesses, and a myriad of other ways that are not currently covered by the definition.

Recommendation: broaden the definition of electronic services.

Serious harm p14

The definition of Serious harm needs to incorporate the cumulative harm known to occur in instances of technology-facilitated abuse. Research has shown that survivors of technology-facilitated domestic violence often experience significant fear, terror, and other mental health issues associated with the pervasive and all-encompassing nature of technology-facilitated abuse.

Perpetrators will adapt

There is already evidence that perpetrators are adapting their abuse tactics to avoid or manipulate any punitive responses. For example in the Second National Survey on Technology Abuse and Domestic Violence in Australia³ found that perpetrators, now aware that abusive text messages were being used as evidence in court proceedings, are now routinely using other devices owned by friends, or family members or using anonymous messaging apps, to deliberately thwart and avoid being identified as the end-user sending the abuse. In other cases, WESNET has seen many abusers impersonate the survivor, with the express purpose of implicating the survivor as the aggressor and the actual abuser as the victim. We fully anticipate that abusers will make nuisance false reports designed to implicate the survivor.

³ Woodlock et al. (2020). *Second National Survey on technology abuse and domestic violence in Australia*, WESNET

Due to significant workload and other resource pressures, WESNET has not been in a position to provide a more fulsome submission, but would be very happy to provide more information on request. We are also aware that many other women's services across Australia, were not in a position to provide a submission for the same reason. Please contact us at wesnet@wesnet.org.au or on 1800 937 638 for further information.

WESNET also supports the submission of Domestic Violence Victoria.

Yours sincerely,

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References

Dragiewicz, M. et al., 2019. *Domestic violence and communication technology* Australian Communications and Media Authority, ed., Sydney. Available at: www.acma.gov.au.

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