



21 February 2020

Director  
Online Safety Research and Reform Section  
Department of Communications and the Arts  
GPO Box 2154  
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By email: [onlinesafety@communications.gov.au](mailto:onlinesafety@communications.gov.au)

Dear Sir/ Madam

***Re: Consultation on a new Online Safety Act***

Thank you for the opportunity to provide written input on the proposals for a new Online Safety Act.

I commend the Australian Government's efforts to improve Australia's online safety regulatory framework.

The Australian Human Rights Commission (the Commission) believes that online safety is an important area of concern. I welcome the significant focus of the proposed Act towards the prevention of harm and safety online through the proposed initiatives, including an enhanced cyberbullying scheme, a new cyber abuse scheme for Australian adults, new take-down requirements, enhanced powers of the eSafety Commissioner and a reformed online content scheme.

The Commission is of the view that any law or scheme to promote and protect online safety should be approached within a human rights framework.

Online abuse is an issue that is relevant across several of the portfolios of my fellow Commissioners, most notably as an emerging gendered form of violence against women, a safety risk facing children, Aboriginal and Torres Strait Island people and lesbian, gay bisexual, transgender and intersex communities and a burgeoning challenge facing human rights defenders. There is also a high rate of racism and religious abuse online harming multi-cultural and multi-faith communities.

I consider the proposals of the Act as a sound step forward in achieving a world class scheme of prevention and protection of online abuse.

The eSafety Commissioner and eSafety Women are already recognised internationally as world leaders in addressing violence against women through technology. The

Commission endorses the proposal to streamline and simplify the laws empowering the eSafety Commissioner, as well as clarifying the functions of the Office, to better equip and enhance the eSafety Commissioner to protect women and girls from online abuse. Such enhancements should of course be supported by appropriate resourcing.

Consistent with previous submissions from the Australian Human Rights Commission, the functions of the eSafety Commissioner should be delivered consistent with Australia's international human rights obligations. I confirm that the eSafety Commissioner has worked closely with the Australian Human Rights Commission, consistent with our mutual interests in ensuring safety and respect for all Australians.

This letter focuses on my portfolios responsibilities as the Sex Discrimination Commissioner.

### **Priorities of the Sex Discrimination Commissioner**

As Australia's Sex Discrimination Commissioner, I identified technology as an emerging area of concern and opportunity in my Term Priorities document *Unleashing the Power of Gender Equality (2017)*.

In my time as Commissioner I have seen how technology can serve both as a source of opportunity and democratisation for women's rights and to elevate women's voices and opportunities, and also sadly, as a vehicle for abuse and harassment, including in domestic and family violence contexts.

Technology provides many opportunities to progress gender equality, including access to flexible work, diverse collaboration, improved connection and greater innovation. Online platforms are a powerful tool for women to increase their social connectedness and improve their economic security and access to information. There are new and lucrative work opportunities in the male-dominated technology industry and potential to increase the participation of women and girls in STEM industries.

Social media can amplify the voices of women who are often left behind in public debates, however in Australia we are also seeing social media being used to silence high profile women and to subject women who advocate on women's rights issues to online harassment and abuse.

For example, recent research conducted by Amnesty International found that 30% of women surveyed had experienced online abuse or harassment and 40% of women said the online abuse was misogynistic or sexist in nature.

Online abuse silences women and reduces their opportunities to engage online. The impacts for victims, especially women, of technology-facilitated sexual harassment can have equally devastating impacts as other forms of sexual harassment on women's mental health and wellbeing, as well as their reputations, careers and lives.

We have identified four common ways women face higher risks to their online safety:

1. Family and domestic violence situations
2. Sexual harassment
3. Women facing sexting and image-based abuse
4. Women in leadership roles and with public personas.

### **Family and domestic violence**

Technology facilitated abuse is a significant and growing form of family and domestic violence. Research provided by the eSafety Commissioner indicates that in 98% of cases domestic violence involves some form of online harassment, abuse, threats and surveillance or stalking from a current or former partner.

The Australian Government has explicitly acknowledged the way technology is used as a vehicle of abuse, including in domestic and family violence contexts, through funding eSafety Women under the Women's Safety Package to Stop the Violence. This funding supports the eSafety Commissioner to provide practical information, tools and education and to train frontline domestic violence sector workers.

### **Sexual harassment - *Everyone's business: Fourth national survey on sexual harassment in Australian workplaces***

In 2018, I released *Everyone's business: Fourth national survey on sexual harassment in Australian Workplaces* (2018 Survey), which surveyed the prevalence, nature and reporting of sexual harassment in Australian workplaces.

The 2018 Survey found that the majority (60%) of sexual harassment victims experienced more than one form of sexual harassment in their lifetime. When people who said they had been sexually harassed in the workplace in the last five years were asked about the most recent incident they experienced, half (49%) said that the same type of harassment had happened to them previously at the same workplace. Behaviours involving technology, including inappropriate advances on email or social media platforms and other kinds of unwelcome sexual conduct occurring online, were most likely to occur repeatedly.

## **Sexual harassment - *The National Inquiry into Sexual Harassment in Australian Workplaces***

I will shortly be launching the Commission's landmark National Inquiry into Sexual Harassment in Australian Workplaces report (National Inquiry). Under its Terms of Reference, the National Inquiry includes a review of:

- online workplace-related sexual and sex-based harassment and the use of technology and social media to perpetrate workplace-related sexual and sex-based harassment; and
- the use of technology and social media to identify both alleged victims and perpetrators of workplace-related sexual harassment.

### Types of harassment experienced

Each victim's experience of workplace sexual harassment is unique and influenced by a range of factors. The National Inquiry identified a number of different types of sexually harassing behaviour, including sexual harassment involving the use of technology, such as sexually explicit emails, SMS or social media, indecent phone calls, repeated or inappropriate advances online, or sharing or threatening to share intimate images or film without consent.

This reinforced findings from our 2017 submission to the UN Special Rapporteur on Violence Against Women, which noted that women, especially young women, experience violence and harassment online, including through the dissemination of private images or materials without consent, and violent, sexualised abuse and harassment. Women with a public profile, who work in journalism or media and women who advocate on women's rights issues, including family and domestic violence, appear to be at particular risk of this latter form of online harassment.

### Frequency of sexual harassment experienced online

Through National Inquiry consultations, I heard that women in media face systemic online harassment as part of their job, especially through sexually harassing and sexist posts on social media. The Commission was also told that in some workplaces, particularly in the media industry, employers did not have adequate policies covering sexual harassment or other workplace health and safety issues.

### Online abuse impacts specific groups more frequently and harmfully

In a consultation on the implications of technology for workplace sexual harassment, I heard that the proliferation of technology in the workplace was causing an increase in online sexual harassment of women generally, but also specifically and acutely to women with a disability, younger women and women in rural, regional and remote areas, who may lack access to adequate support and referral pathways.

While one in 10 Australians aged 18 years and over have had their intimate image/s or video/s shared without their consent, this increased to one in four women between the ages of 18–24, one in five for those identifying as LGBTQI and one in four for Aboriginal and Torres Strait Islander people. This experience compounds the already higher rates of discrimination experienced by these groups and creates a greater risk of harm.

#### Online abuse of victims and accused harassers harmful and undermines justice

It is not only victims who can be harmed by media reporting or the use of social media to raise allegations of sexual harassment. There can be significant career, financial and psychological impacts on alleged harassers and costs to organisations. Where allegations have been raised through social media, the lack of any formal process for testing these or natural justice can cause damage to all parties. A process to remove abusive content directed at anyone involved in a sexual harassment complaint may assist fair and appropriate management of complaints and reduce harm.

This is important in terms of fairness and justice, but also because a system that lacks procedural fairness risks creating a backlash that can result in further discrimination against women, such as practices where men feel uncomfortable working closely with or refuse to mentor women.

#### **Women facing image-based abuse**

Research by the eSafety Commissioner has also found that image-based abuse affects a wide range of Australians. Around 1 in 5 (11%) of Australians aged 18 or older have experienced image-based abuse, with women (15%) being twice as likely to experience such abuse compared to men (7%). The eSafety Commissioner's research with workers who support women experiencing domestic or family violence also shows that 98% of cases they have seen involve some form of online harassment, abuse, threats and surveillance or stalking from a current or former partner.

Other troubling statistics include:

- 90% of boys and 60% of girls have seen online porn and 88% of scenes of most popular porn include physical aggression towards women.
- About 30% of all internet traffic is porn related.
- 7 in 10 Australian girls aged 15-19 believe online harassment and bullying is endemic.
- 1 in 2 Australians with a disability report being a victim of image-based abuse.

### **Women in leadership and with public personas**

The eSafety Commissioner has a number of innovative programs and initiatives designed to protect and promote women's voices online.

In recent years, the eSafety Commissioner has established *WITS: Women in Tech Spaces* (WITS), in response to the manifold increase in online sexual harassment aimed at women with public personas and profiles, including female journalists, sportswomen, public figures and female politicians who are often targets for extreme online sexual harassment. In the absence of the requisite powers to act, the eSafety Commissioner created WITS – a cyber abuse initiative that is specifically targeted at women in leadership positions and with public personas, ranging from politics, business, media, sports and academia, who experience 'shockingly high levels of abuse'. WITS uses women's voices to raise awareness of the insidious impacts of cyber abuse. By drawing upon the stories, skills and strategies of women, WITS provides women with tips and techniques to build their psychological armour, confidence and resilience online.

Such a program, while helpful, should be accompanied by practical options for women to remove the harmful content, as a way to reduce the harm caused by the wider dissemination of the materials. The proposed Adult cyber abuse provisions offer such a practical option.

The eSafety Commissioner argues that a victim's agency and recovery need to be prioritised in conjunction with principles of due process and natural justice to the alleged harasser. The Commission agrees that it is important to balance the rights of victims and alleged harassers and uphold the law.

### **Proposed legislative change**

The work of the eSafety Commissioner, through its education function and the Image Based Abuse Scheme, has had a positive impact on the online safety of Australians.

Given the rapid developments in technology we support the need for expanded, streamlined and enhanced laws to protect Australians, particularly women, multicultural communities, LGBTI communities, Aboriginal and Torres Strait Island communities and people with disability (“affected communities”).

The importance of grappling with technology-facilitated sexual harassment and abuse cannot be overstated; it impedes women’s and other affected communities’ full participation in online life, often driving them offline, and it undermines their autonomy, identity, dignity and well-being.

Consultations in support of the National Inquiry indicate that affected communities’ value:

- clear laws prohibiting online abuse and harm
- access to clear information about their rights and options
- options to seek prompt removal of the inappropriate materials
- options to seek further recourse if necessary.

I heard that the primary concern of victims is to quickly understand their rights and to have the harmful images taken down and the abuse to stop. I have also heard that current laws can be confusing (including laws on sexual harassment, stalking and criminal conduct), however tools and education provided by the eSafety Commissioner have been effective in raising awareness and facilitating action to address unacceptable online content. Quick removal of abusive and harmful images can minimise long term harm. Currently, the main way to respond to abuse and threats is to approach the police. I recommend a mechanism in the proposed Act to provide quick, practical responses, without removing workplace or criminal options. The image-based abuse system response has been very successful in providing a quick, practice and gender sensitive response to image-based abuse.

It is for this reason I support the proposed changes to the Act.

The Commission remains committed to working with Australian Governments and key stakeholders to ensure stronger protections for women online, and that all Australians are guaranteed meaningful participation in public debate without discrimination, threats and abuse.

I hope my input will be helpful and please do not hesitate to contact me should you require any further information.

Yours sincerely



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