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Submission to the review of the Online Safety Act

Thank you for the opportunity to provide a submission to the review of the Online Safety Act (OSA). We are also very grateful for the granting of an extension.

Wesnet provides comments based on its role as the national peak body for specialist women's domestic and family violence services. With just over 350 eligible members across Australia, Wesnet represents a range of organisations and individuals, including women's refuges, shelters, safe houses, and information/referral services. Wesnet is also recognised as the leading non-government organisation specialising in the intersection of family violence and technology abuse.

Since its inception Wesnet has engaged with the development of the OSA in a number of ways, including through submissions on its exposure draft and by providing several sets of comments on the industry codes. We continue to raise the same issues we have raised regarding the regulatory and policy approach to technology facilitated abuse in the context of domestic and family abuse: neither the legislation nor the codes, are adequate in addressing technology safety as it applies to those victimised by an intimate partner, former partner or other family member.

While we are pleased to see the issues paper explicitly recognise technology-facilitated abuse, particularly in the context of domestic and family violence, as a harm that may not be fully addressed under the OSA, the issues paper still falls short in conveying the full extent and scope of the ways in which technologies are used as part of intimate partner violence. Particularly as many of the forms of technology abuse being experienced are through technologies that are not considered to be "online" for example the rising misuse of smart cars. More needs to be done to embed safety by design and put a positive duty on regulators and providers with a very clear and specified understanding and focus on the

dynamics and characteristics of domestic and family violence. The OSA also needs to contemplate risks and threats to society and the community as a whole, not just individual safety, particularly given the continued onus on victims to report.

Objects of the OSA

The objects of the OSA should be amended to reflect the growing understanding of the distinct nature of domestic, family and sexual violence, including coercive control.

This could be achieved by adding to the existing suite of complaints systems along the lines of: “The complaints and objections system for posts, images, and other uses of social media, electronic and internet services intended to threaten, intimidate or cause harm to an intimate partner, former intimate partner or family member”. The same remedies should apply.

Definitions

The deferral of the definition of ‘abhorrent violent conduct’ to the criminal code is outdated. Current community standards deem any sexualised violence abhorrent. If one is to accept a continuum of sexualised violence and rape, penetrative sex (as in the criminal code) is not necessarily the most extreme, depending on the context. Sexualised violence needs a much more nuanced response than that contained in the criminal code. We note below that online materials that promote hate crimes and violence against women and children should be considered of a higher magnitude of potential societal harm than many other violent and criminal acts.

Although not currently included as a definition, the term ‘ordinary reasonable person’ is used throughout the OSA. This needs further guidance in the OSA, or in accompanying materials, to take into account different contexts. For example, a comment on social media may not meet an ‘ordinary reasonable person’ threshold of intimidating or threatening in the context of an unknown ‘keyboard warrior’ or standard misogynist but, in the context of intimate partner violence, may be deeply threatening. It may, for example, be a signal that the person knows where you are and what you are doing, and can contact you, your friends, employer and/or relatives at any time. It may be making a coded reference to previous instances of violence or coercion.

Industry codes

While the codes offer the opportunity to improve some elements of online safety, and Wesnet is pleased to see many technology providers taking proactive measures to lessen harms, and potential harms, to women and children, the codes set low-level minimum standards and do not operate well in the context of domestic and family violence when the consequences of non-action are too frequently severe. The codes alone cannot drive change at the required pace and must - along with other elements of the OSA - be made more enforceable, accompanied by stronger penalties and investments in education and transformational change.

Codes are not appropriate in the context of preventing or providing remedies for technology abuse in the context of domestic violence.

Limiting these codes to actions to address material classified as 1A and 1B based on the classification of films, video games and publications, serves to position those harmed (or potentially harmed) by technology as passive consumers of a product. This classification system does not sit comfortably with many of the sectoral codes, including social messaging services, relevant electronic services, distribution of applications, or the manufacturing and supply of equipment (such as tracking devices or applications). While Child Sexual Exploitation Material (CSEM) may be clearly identifiable within the classification system, tailored behaviours intended to intimidate and threaten any particular child or adult (such as via social messaging or media sites), or the use of technology for abusive purposes (such as tracking or impersonation) are not.

The Codes should apply a human rights and intersectional lens to harm, and to depictions of crime and violence.

The Codes - being restricted to the provisions of the OSA - are limited in their ability to address individual instances of family and domestic violence. This should be addressed by changes to the OSA but, in any case, the codes themselves should be able to more effectively address materials that depict or promote hate crimes, misogyny and violence against women and children. Harms done to women and children do not happen in a vacuum, but against a backdrop of power imbalances and inequality, and gender inequality is the main driver of gender-based violence.¹ Multiple oppressions combine to increase the magnitude of potential harms, including in relation to race, ability, ethnicity, sexuality and gender identity.

Online material that promotes hate crimes and violence against women and children should be considered of a higher magnitude of potential societal harm than many other violent and criminal acts. As the limiting of depictions of drug use is deemed appropriate based on public health concerns, so should the depiction or incitement of violence against women given its massive disease burden. In 2018, for women aged 15 to 44 years, intimate partner violence was ranked as the fourth leading risk factor for total disease burden.²

The increased magnitude of harms - and, indeed, criminality - associated with hate crimes (including gender-based violence) needs to at the very least be acknowledged in the discussion around risk assessments in the Head Terms. Research has shown that hate crime victimisation is harmful for victims and those who share the victim's identity, as well as harmful for the broader community.³

¹ Our Watch, [Prevention Handbook](#), Australian Government.

² AIHW (Australian Institute of Health and Welfare) (2021) [Australian Burden of Disease Study: Impact and causes of illness and death in Australia 2018](#), Australian Government.

³ Chloe Keel, Rebecca Wickes & Kathryn Benier (2022) The vicarious effects of hate: inter-ethnic hate crime in the neighborhood and its consequences for exclusion and anticipated rejection, *Ethnic and Racial Studies*, 45:7, 1283-1303, DOI: 10.1080/01419870.2021.1930094.

The Codes should take the opportunity to educate and provide guidance with respect to the intersection of technology abuse and domestic and family violence.

While we understand that the enforceability of these codes operates within the currently limited remit of the OSA (which should be expanded), and apply only with respect to classifications 1A and 1B, in our view there is nothing to preclude them serving a broader educative role and providing general guidance.

While non-consensual image-based abuse and cyberbullying - which form only some types of technology abuse perpetrated by domestic and family abusers - can be referenced to other parts of the OSA, the safety of women and children more generally who are known to be most vulnerable to technology abuse should be a cohesive theme throughout all educative and guidance materials relating to the OSA. Technology providers must be encouraged by all available means to have in place mechanisms to respond to and protect victims of domestic and family violence.

Complementary codes need to be developed

Complementary codes need to be developed. While this is likely provided for under the OSA already (for example s.138 (3)(l) to (q)), the act would benefit from amendment specifically to include reference to gender-based and domestic and family violence, not limited by the classification system, and in consultation with domestic and family violence specialist services. Telecommunication companies, among others, are doing valuable work in developing shared approaches - for example, Telstra, Optus, TPG Telecom, Vocus Group and Aussie Broadband have [pledged to continually improve their support of domestic and family violence \(DFV\) victim-survivors](#) - but more can be done to drive change across the online sector, in a way that fair and consistent and is underpinned by the regulatory framework.

Basic online safety expectations

We refer to [Accountability, the Online Safety Act and the Basic Online Safety Expectations: Can safety standards be enforceable?](#) by Reset.Tech Australia, and agree with the recommendations contained within to strengthen enforcement, transparency and compliance.

In addition, and consistent with comments provided regarding the Objects of the Act, the OSA would better serve victim-survivors of gender-based violence with specific reference to 'materials intended to threaten, intimidate or cause harm to an intimate partner, former intimate partner or family member' in s.46(1)(e), along with safety by design settings to help prevent the use of technologies to harass, intimidate and harm.

Thank you again for allowing us to make a submission to this review. We would very much welcome the opportunity to be involved on a continuing basis, and see great value in the OSA evolving to be more inclusive of the unique needs and circumstances of women and children escaping violence.

Your sincerely

Signed



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