

**Submission  
No 73**

## **COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS**

**Organisation:** eSafety Commissioner

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# eSafety Commissioner submission

Coercive control inquiry

29 January 2021

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### Acknowledgment

eSafety acknowledges the Traditional Custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to Aboriginal and Torres Strait Islander cultures, and to Elders past, present and emerging.

## Introduction

The eSafety Commissioner (eSafety) welcomes the opportunity to contribute to the NSW Joint Select Committee on Coercive Control's inquiry into coercive control.

The online world has created benefits and opportunities that were unimaginable decades ago. But the same technologies that have heralded in these benefits and opportunities can also be used to perpetuate abuse. This includes technology-facilitated abuse (TFA) within the context of family and domestic violence, which is often a deeply embedded feature of coercive control.

The consultation paper notes that coercive control can 'include a range of abusive behaviours – physical, psychological, emotional or financial – the cumulative effect of which over time robs victim-survivors of their autonomy and independence as an individual'.<sup>1</sup>

As Australia's national leader in online safety, eSafety wants to stress that coercive control includes abusive behaviours perpetuated through technology. With technology inextricably integrated into our lives, it is very frequently used as a weapon, delivering or extending on other forms of abuse. It is imperative that measures to address coercive control understand and address the role that technology plays.

The statistics are stark: a 2020 survey of domestic and family violence frontline workers reported that 98.3% had clients who had experienced TFA.<sup>2</sup>

While women (and their children) disproportionately suffer TFA, this is not a women's issue: it is a societal issue that all sectors of society have a responsibility to address.

This submission has two parts. Part One provides an overview of eSafety's regulatory remit, including its research, reporting schemes and programs, which eSafety hopes will provide context and insights that will assist the Committee in its deliberations. Part Two directly responds to the consultation questions of relevance to eSafety.

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<sup>1</sup> NSW Government, Coercive Control – Discussion Paper, October 2020, page 7, referencing 'Paul McGorrrery and Marilyn McMahon 'Criminalising Coercive Control: An Introduction' in Marilyn McMahon and Paul McGorrrery (eds) Criminalising Coercive Control: Family Violence and the Criminal Law (Springer, 2020), page 3'.

<sup>2</sup> Woodlock, D., Bentley, K., Schulze, D., Mahoney, N., Chung, D., and Pracilio, A., (2020). Second National Survey of Technology Abuse and Domestic Violence in Australia. WESNET.

## Part One

### About eSafety

eSafety is Australia's national independent regulator for online safety. It is the first government agency in the world dedicated specifically to online safety. It leads, coordinates, educates and advises on online safety issues and aims to empower all Australians to have safer, more positive online experiences.

By adopting a whole-of-community and multifaceted regulatory approach, which draws upon social, cultural, technological and regulatory initiatives and interventions, eSafety aims to minimise potential harms online.

eSafety operates a number of reporting schemes. This includes a cyberbullying scheme for Australian children aged under 18, an image-based abuse scheme for Australians of all ages and the Online Content Scheme, which relates to illegal and harmful online content, including child sexual exploitation material.

eSafety undertakes an extensive research program to ensure its programs and resources are evidence based. This equips eSafety with the insights and knowledge it needs to understand the nature of online safety issues and design, implement and evaluate best possible solutions.

eSafety works closely with the domestic and family violence sector, including crisis workers, counsellors, law enforcement and the legal profession, to ensure all institutions, services and people understand and acknowledge the seriousness of TFA, the harms it causes and the steps that can be taken to better manage risks.

### Technology-facilitated abuse

TFA refers to abusive behaviours and activities that occur via internet-enabled devices and online platforms. For example, using mobile phones, other devices, social media and online accounts including email or banking. The term covers four main behaviours:

1. Harassment: sending threatening messages or images, or bombarding with calls, emails or texts.
2. Monitoring/stalking: covert GPS tracking or hacking into email, social media or bank accounts.
3. Impersonation: creating a false account that results in harassment or abusive messages being sent to the victim.
4. Threats/punishment: posting or threatening to post embarrassing content or intimate images.

All these behaviours are also behaviours of coercive control.

TFA enables an abuser to control their partner, both during the relationship and post-separation. It means the abuser can exert power over their partner even when they are not physically present. For the victim, the impacts can be profoundly damaging.

A woman in a domestic and family violence situation can experience isolation and continuing fear and anxiety for herself and her children: she can feel afraid, trapped, isolated, highly stressed, anxious and as if there is no escape. The ubiquitous presence of technology in our

day-to-day lives means that the victim can be tracked and made 'accountable' even when she is away from her abuser, including in the post-separation stage.

There is considerable evidence of long-term negative impacts on mental and physical health.

### **Case study: Kate's story**

Kate had been happily married to Michael for almost 10 years and they had two children together. They'd met at university and even though they were very different, somehow they clicked.

She trusted him with everything. When they were newly-weds, she even sent him naked photos of herself when she was travelling for work. He knew they were private and understood the photos were only for him.

Over the years, Michael became controlling and emotionally abusive. Eventually, Kate decided she and their children would be happier away from Michael. He wasn't happy about the separation, but things seemed amicable enough, at least at first.

But things changed when the court ordered Michael to pay child support and for Kate to have the kids most of the time.

Michael was furious and sent Kate messages saying that maybe her family would like to see what sort of person she really is. He threatened to send them her nude photos and said it would demonstrate to them that she's not always the person she pretends to be.

Kate couldn't believe he would threaten her like that.

Kate stood her ground about the child support and told Michael to delete her photos, but he refused. After a heated exchange of messages one night, Michael sent her photos to Kate's parents and other family members using Facebook Messenger. He then threatened to send them to a group of Kate's employees with whom she was friends on Facebook.

She felt extremely anxious and didn't know what to do or who to turn to for help. Kate called 1800RESPECT and the counsellor she spoke to recommended she report what had happened to eSafety.

eSafety reached out to Facebook and they disabled Michael's account. eSafety suggested Kate might be able to apply for a protection order with a specific condition prohibiting Michael from sharing her intimate images online and put her in touch with a community legal service.

eSafety let Kate know that she could report to police, but Kate didn't want to go through the stress of a criminal proceeding.

eSafety also explained that they can take action against a person who shares or threatens to share someone else's intimate images. Kate felt that this would be a good way for Michael to understand that what he did was wrong and has legal consequences. eSafety issued Michael with a formal warning.

Michael let eSafety know that he deleted the photos from his phone and other devices.

## eSafety Women

Launched in 2016, eSafety Women aims to empower all Australian women to manage technology risks and abuse. The program helps women take control of their online experiences by:

- providing practical tools and information to equip women to protect themselves and their families against all forms of online abuse
- training frontline, specialist and support staff in the domestic and family violence sector, giving them the knowledge, skills and resources to effectively support women and their families, and
- actively raising awareness and understanding of TFA to help women identify it and take steps towards preventing it.

In this time, eSafety Women has been at the forefront of understanding and addressing how technology is used in domestic and family violence situations. This includes the way it perpetuates and exacerbates non-physical forms of abuse and flags potential serious physical abuse.

The program has expanded since 2016 and its key components now include:

- delivery of intensive face-to-face workshops and customised presentations
- webinar-based training for domestic and family frontline workers
- provision of eSafetyWomen—online training for frontline workers
- provision of web-based information and resources, and
- a range of fact sheets and ‘top tip’ postcards, covering the most important aspects of the eSafety Women program in 12 community languages.

As at 31 December 2020, more than 12,800 domestic and family violence frontline workers have participated in eSafety’s face-to-face workshops or webinar sessions. For those frontline workers who are unable to attend training, the eSafetyWomen online learning program (launched in 2018) provides in-depth practical training to complement and support the workshop program. In that time, more than 3000 frontline workers have registered for this training.

Under the Fourth Action Plan (2019-2022) of the [National Plan to reduce Violence against Women and their Children](#), eSafety has been tasked with developing and rolling out specialist online resources for frontline workers focusing in two areas.

1. Women with an intellectual disability or communications difficulties.
2. Aboriginal and Torres Strait Islander communities.

Further research will be conducted under both work streams to explore the experiences of women in these communities and to co-design, develop and implement the resources and

training approaches to best meet their needs. Both programs will be completed in phases to 2022.

## Focusing on and listening to those at-risk

eSafety shapes and prioritises its programs and resources to support, protect and build the capacity of diverse individuals and communities most at-risk online. A number of intersecting factors influence risk levels and individual experiences of online harm.

While TFA can affect anyone, irrespective of age, geographic location or cultural background, some communities and cohorts are at greater risk. They also experience abuse in particular ways.

Research demonstrates that Aboriginal and Torres Strait Island women, women living with a disability, women from culturally and linguistically diverse (CALD) communities and women identifying as LGBTIQ+ are at increased risk of TFA. Critically, it also demonstrates that they face particular barriers to accessing support.

eSafety has undertaken research in this area to ensure the specific and differing needs of diverse women are recognised and addressed.

## Key research

### Women from CALD communities

In February 2019, eSafety released research into the online safety of women from CALD communities.<sup>3</sup> The research found that:

- Most TFA experiences did not have a cultural dimension. However, several cases included culturally-specific threats, including:
  - threats of deportation (especially for women on spousal visas)
  - threats of honour killing delivered via a third party
  - culturally-specific humiliation (such as sending images of a woman without her hijab), and
  - threats of withholding Islamic divorce.
- CALD women face significant barriers to seeking help and support, including:
  - a lack of awareness that TFA may constitute a criminal offence
  - language barriers, which may contribute to CALD women not knowing what services are available to them, and creates challenges for them explaining their personal experiences with TFA
  - issues with interpreter services, particularly where the interpreter may know the victim and/or perpetrator
  - low digital literacy, which heightens their risk of TFA and affects their ability to identify that they are victims of TFA and their ability to address the abuse once identified, and
  - cultural biases and misunderstandings from some support services, particularly the police.

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<sup>3</sup> eSafety Commissioner, eSafety for women from culturally and linguistically diverse backgrounds: summary report, February 2019, <https://www.esafety.gov.au/about-us/research/women-from-diverse-backgrounds>



- Social isolation can be amplified, as fear of shaming can be particularly strong in CALD communities.

To support women from diverse and high-risk communities and cohorts, eSafety has released a range of fact sheets and a 'top tip' postcard covering the most important aspects of the eSafetyWomen program. These resources have been translated into 12 community languages.

Further investment is needed to better support women from CALD communities. There is a need for tailored training and resources for frontline workers (including services from the fields of domestic and family violence, settlement services and multicultural women's health). Training and materials should reflect the particular challenges being faced by women in these communities and be made available in a broader range of community languages.

### Aboriginal and Torres Strait Islander women

In October 2019, eSafety released research relating to Aboriginal and Torres Strait Islander women's experiences of TFA.<sup>4</sup> Recognising that there is considerable diversity in the living circumstances, service access and needs of Aboriginal and Torres Strait Islander women depending where they live, this research focused on Aboriginal and Torres Strait Islander women living in urban areas. It was based on qualitative research comprised of in-depth interviews and a discussion group with service providers who support Aboriginal and Torres Strait Islander women.

It identified six types of TFA. In order of prevalence, these were:

- abusive phone calls and text messages
- destroying or restricting technology access
- social media and third-party abuse
- monitoring and stalking
- image-based abuse, and
- fight videos.

Aboriginal and Torres Strait Islander women living in urban areas did not experience substantially different impacts of TFA from those felt by other women, which included heightened levels of stress, anxiety and depression, self-doubt and negative impacts on both relationships and finances.

Some impacts, however, appeared to be amplified. These were:

- the risk of being socially isolated from kinship networks and fear of shaming and family retribution, and
- social isolation combined with financial difficulty and the emotional pressure from extended family was such that some women returned to the abuse perpetrator.

The research identified numerous barriers to seeking support for TFA. Social barriers included:

- low levels of digital literacy
- community attitudes

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<sup>4</sup> eSafety Commissioner, Online Safety for Aboriginal and Torres Strait Islander women living in urban areas, October 2019, <https://www.esafety.gov.au/about-us/research/online-safety-aboriginal-and-torres-strait-islander-women-living-urban-areas>

- lack of awareness of TFA being a form of abuse
- the practice of sharing devices, changing phones regularly and lateral violence (violence towards peers)
- shame and victim blaming, and
- fear of community retaliation.

The noted service system barriers to seeking support for TFA included:

- justice system barriers
- issues with police
- challenges in providing sufficient evidence
- fear of racial prejudice and fear of police brutality, and
- barriers related to child protection and courts, and legislation issues.

These barriers were intertwined with housing and financial difficulties, drug and alcohol issues and overlapping pressures that prevented women from seeking support for TFA.

### Children and technology-facilitated abuse in domestic and family violence situations

In December 2020, eSafety released world-first research that explores the role technology plays in children's exposure to family and domestic violence.<sup>5</sup> It shows the impacts of TFA and highlights a range of strategies used for protection and intervention.

The research is based on a survey of over 500 professionals who work with domestic and family violence cases, as well as focus groups with domestic violence specialist staff and interviews with young people, mothers and perpetrators. This research focuses on adult victims who are mothers, as women are far more likely than men to experience intimate partner violence.

The key findings include:

- Over one quarter (27%) of domestic violence cases involve TFA of children.
- Of cases involving children, the most common forms of TFA they experienced are:
  - monitoring and stalking – 45%
  - threats and intimidation – 38%
  - blocking communication – 33%.
- This abuse typically involves everyday technologies – such as mobile phones (79% of cases), texting (75%) and Facebook (59%) – that do not require sophisticated technical expertise.
- The research provides clear evidence of the harmful effect of technology-facilitated abuse on children. It causes real harm, negatively impacting children's mental health (67% of cases), their relationship with the non-abusive parent (59%) and their everyday activities (59%).
- The research highlights options for future action such as education, hands-on technology support, screening tools for professionals and extending phone replacement programs to older children.

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<sup>5</sup> eSafety Commissioner, Children and technology-facilitated abuse in domestic and family violence situations: full report and summary report, December 2020, <https://www.esafety.gov.au/about-us/research/children-and-technology-facilitated-abuse-domestic-and-family-violence-situations>

The research also showed that even when adult victims manage to separate physically from their abusers, they may still be tethered to their former partners through technology, either through continuing direct abuse or through requirements (often court-imposed) to maintain contact with children. Even when intervention orders were in place and may have been helpful in managing some forms of abuse, communications about parenting were frequently used as an avenue to continue abusive communications.

eSafety's full suite of research is available on its website at <https://www.esafety.gov.au/about-us/research>.

## Digital capacity building

While eSafety sees the harm and damage that can occur online, it also sees the immense benefits of being online. The internet and digital technologies have revolutionised the lives of Australians in many positive ways.

Crucially, one of the most important primary prevention measures is digital capacity building: giving women, in both their personal and professional lives, the skills and strategies to prevent and respond to TFA and engage online in ways likely to promote positive online experiences.

Capacity building should be a lifelong process that begins at the earliest age possible. It should occur at the individual and community level and at a societal and cultural level. In other words, it needs to focus on building the capacity of the individual, but also of communities and society to understand, recognise and respond to harm online, including technology based coercive control, and promote safer and more positive experiences.

## Part Two

### 1. What would be an appropriate definition of coercive control?

eSafety strongly recommends that technology be addressed in the definition of coercive control. To adequately address and curtail the behaviours, it is critical that the definition allows for the many ways that abusive behaviour can manifest and be perpetuated over time, including post separation.

It is also critical that the definition of coercive control reflects the way that technology can contribute to and exacerbate non-physical forms of violence, including psychological, emotional, sexual and financial abuse, as well as the way it can be used to isolate a victim or enforce control through monitoring and surveillance. Further, post separation, TFA can replace other types of control and opportunities for physical violence.

The misuse of technology by perpetrators enables often covert abuse: it takes place out-of-sight, at any time and remotely, even when the two parties are not co-located. It also enables continuation and, in many cases, escalation of abuse post separation.

Abuse through technology can be targeted at the non-abusive partner and also at the children of the relationship. eSafety's research shows that children are directly abused via digital technology, as well as used by domestic violence perpetrators as a conduit in the TFA of their mothers. This is another pathway by which perpetrators exert control over the non-abusive parent.

Further, the use of technology to 'gaslight' a victim results in her doubting her own impressions and experiences. This impacts on her capacity to collect evidence of this kind of abuse. The removal or blocking of access to technology can severely isolate a woman not just from day-to-day services and parenting obligations, but from accessing help and support for herself or her children.

At the same time, the definition of coercive control will need to be carefully crafted to ensure that the positive role of technology is not limited or thwarted. This is discussed further in question 2.

### 2. How should it distinguish between behaviours that may be present in ordinary relationships with those that taken together form a pattern of abuse?

eSafety recognises that technology is a strong force for good. It can be a vital lifeline to help and support and allows a victim to stay connected to trusted friends and family. Some actions and behaviours can be both positive and negative. For example, supervising children's use of technology can be a positive parental attribute and is actively encouraged, whereas similar monitoring over a partner's technology may be a sign of abuse. It can also be particularly difficult to distinguish between ordinary and abusive behaviours with TFA, which underscores the need for education and tailored support.

The focus of eSafety Women's programs addressing TFA in domestic and family violence is on helping frontline workers support their clients to identify and address where technology may be part of an abuse cycle, as well as empowering women to continue to safely use technology.

It is critical that any legislative approach does not limit these positive uses of technology. Further, legislative action should be supported by comprehensive education and training for all stakeholders. This will help ensure that they are confident in identifying where technology is used to facilitate abuse and in distinguishing between abusive and ordinary patterns of behaviours.

#### **4. Could the current framework be improved to better address patterns of coercive and controlling behaviour? How?**

Key to improving the current framework is to improve its coordination with intersecting regulatory schemes, including eSafety's regulatory remit.

eSafety supports a holistic approach to addressing coercive control in the domestic and family violence setting.

To improve the operation of current frameworks, it is important that intersecting regulatory schemes work efficiently to address coercive control and technology abuse. The number of reports received by eSafety involving domestic violence incidents of technology abuse is well below accepted prevalence figures. This highlights the need for a multi-agency approach to prevention, early intervention and crisis support.

Interagency cooperation is vital to improving the mechanisms in place and to promoting consistent responses to prevent domestic and family violence. This would enable agencies to share relevant information and achieve common goals. eSafety supports increased service integration in conjunction with legislating coercive control to reduce the prevalence of coercive control and domestic and family violence.

Strategies for coordinated responses could include a Memorandum of Understanding between agencies to facilitate open communication, streamlined referral pathways with less 'red tape' and the sharing of resources and expertise.

Opening pathways for information sharing would also limit the number of times a victim must tell their story. This will create a safe space for victims to feel supported and understood, which will also make them more likely to report abuse to agencies such as eSafety, while also reducing occurrences of re-traumatisation.

#### **5. Does the law currently provide adequate ways for courts to receive evidence of coercive and controlling behaviour in civil and criminal proceedings?**

A key finding from eSafety's *Understanding the attitudes and motivations of adults who engage in image-based abuse* research was that there is a critical need to improve administrative data relating to image-based abuse.<sup>6</sup> The research showed that image-based abuse is not visible in the sentencing or intervention services data and that there is a need for frontline workers, such as domestic violence specialists, police and others to include questions about image-based abuse, and TFA more broadly, in any interview with a perpetrator or victim.

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<sup>6</sup> eSafety, (2019) *Understanding the attitudes and motivations of adults who engage in image-based abuse*, [https://www.esafety.gov.au/sites/default/files/2019-10/Research\\_Report\\_IBA\\_Perp\\_Motivations.pdf](https://www.esafety.gov.au/sites/default/files/2019-10/Research_Report_IBA_Perp_Motivations.pdf)

Anecdotal evidence from frontline workers who have participated in eSafety's training have also noted issues in collecting evidence of TFA and coercive control that may be admissible in court proceedings. eSafety acknowledges there is a need to balance the existing and complex legal framework relating to the recording of evidence with the need to protect the safety of the individual involved. There is also the need to avoid committing a potential offence in order to collect evidence. This includes collecting evidence of potential coincident abuses.

It is imperative that frontline workers, from law enforcement to domestic and family violence support workers, are trained in collecting evidence. They are responsible for many of the key materials, such as witness statements, which will be presented to a court, as well as safety and risk planning and protection orders. Ensuring these frontline workers have an appropriate understanding of TFA will help ensure that when matters that involve TFA go to court, a more comprehensive assessment of abuse is presented for consideration.

## **7. What are the advantages and/or disadvantages of creating an offence of coercive control?**

eSafety believes the advantages in creating a coercive control offence significantly outweigh the potential disadvantages. Further, any disadvantages can be addressed through careful law reform and broader education and training.

The advantages of creating an offence include enabling victims, law enforcement and the judicial system to understand, and importantly prosecute, abuse through a course of conduct or pattern of behaviour, rather than a singular incident. This shows the breadth of offending behaviour and illustrates the victim's whole story, which gives context to the charges (or related charges). This will further assist police and the courts to recognise an escalation of behaviour and prevent further abuse or domestic violence murders. Critically, coercive control is often a precursor – and red flag – for serious domestic abuse, including death.

Another advantage is that there would be benefits and consistency with coercive control being a standalone offence, as other established offences like stalking, intimidation and image-based abuse are not incorporated into one general offence. Without a standalone offence, there is a risk the seriousness of each individual offence will minimise the overall picture of controlling and criminal behaviours.

No law reform is without risk. In the context of a coercive control offence, there is a risk that perpetrators may use the criminal justice system to further abuse the victim, such as the making of false reports. However, this can be managed by adequately training frontline workers, police and the courts to identify primary offenders and patterns of behaviours.

Creating a specific offence also serves as a public declaration from government that this behaviour is unacceptable and will not be tolerated.

## **8. If an offence of coercive control were introduced to NSW, how should the scope of the offence be defined, what behaviours should it include and what other factors should be taken into account?**

For the reasons outlined in question 7, eSafety believes there is merit in introducing a specific offence of coercive control within NSW and, more broadly and for consistency, all jurisdictions in which such an offence could apply.

eSafety does not necessarily offer a position on the scope of the offence, as it will encompass behaviours and activities beyond eSafety's remit. However, eSafety can make specific comments about the nature and behaviours of coercive control it sees within TFA, as well as broad comments for the Committee to consider.

As outlined earlier, technology is frequently used in cases of domestic and family violence to facilitate and exacerbate a range of non-physical patterns of abuse, including psychological, emotional, sexual or financial abuse. In domestic and family violence cases, technology is used to harass, stalk and monitor, threaten, intimidate and humiliate victims, and the impacts on them can be profoundly damaging.

Broadly speaking, eSafety notes that the scope and thresholds of the offence will significantly affect the uptake of the offence. In particular, eSafety notes the different experiences of England and Wales, where a coercive control offence commenced in 2015, and Scotland, where a coercive control offence commenced in 2019. Statistics for both jurisdictions are outlined in the discussion paper. A key difference between the schemes is that the legislation in England and Wales requires that the behaviour had a 'serious effect' on the victim, whereas the legislation in Scotland has the threshold of 'intent to harm'. The threshold in Scotland has led to a higher uptake of the offence.

eSafety wants to clarify, though, that while the experience of other jurisdictions provides useful insights, any law reform must be adequately tailored to Australia, specifically NSW.

#### **10. Could the current legislative regime governing ADVOs better address coercive and controlling behaviour? How?**

It is imperative that technology is specifically included in ADVO conditions. Current NSW legislation and civil orders in the form of Apprehended Domestic Violence Orders (ADVOs) could better address coercive control and offending behaviour, with specific reference to TFA.

eSafety recommends adding technology abuse to [ADVO standard conditions \(1\(A\), \(B\), \(C\)\)](#), taking guidance from Victoria's Family Violence Intervention orders (FVIO) conditions which explicitly prevent the respondent (person named) from 'publishing on the internet or by email or other electronic communication any material about the protected person.'<sup>7</sup>

eSafety proposes a change to the current ADVOs to include technology abuse as a subsection in the standard conditions and recommends providing an example in the final version served on the person named in the order. Such an example could be, 'Must not send abusive messages via phone, email, social media or other electronic communication, or share, or threaten to share, intimate images or videos of the person in need of protection (PINOP).'

The difficulties with investigating offences involving technology abuse should not prevail over managing risks of harm to victims. It is vital that ADVO conditions reflect the ways technology can be misused to ensure all potential victims are adequately protected by an order, including mothers and their children who are disproportionately affected. This was a clear gap identified in eSafety's world-first research exploring the role technology plays in children's exposure to family and domestic violence referenced earlier.

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<sup>7</sup> Magistrate's Court of Victoria, Applying for a Domestic Violence Intervention Order, <https://www.mcv.vic.gov.au/sites/default/files/2019-11/FVIO1-Application-for-Family-Violence-Intervention-Order.pdf>

Current legislative regimes do not recognise coercive control offences as criminal unless written in an ADVO, whereafter the criminality comes into play when there is a breach of that order. In essence, the breach of a court order is treated more seriously than the behaviour itself. This is not only detrimental to the victim's confidence in the criminal justice system, but also calls into question the system's ability to prevent further harm to victims.

**12. Would jury directions specifically addressing domestic and family violence be of assistance in criminal proceedings? If so, what should a proposed jury direction seek to address?**

Jury directions assist the jury to evaluate information and evidence in a trial. The consultation paper notes jury directions under the *Jury Directions Act 2015* (Vic) specifically relating to family violence, though these are only available at the request of the accused in a criminal proceeding in which self-defence or duress in the context of family violence is in issue.

eSafety supports the directions outlined under the section 60 of the *Jury Directions Act 2015* (Vic), including that people may react differently to family violence and there is no typical, proper or normal response to family violence and that responses are influenced by cultural, social, economic and personal factors. However, eSafety believes their application should extend beyond circumstances where self-defence or duress is raised.

In evaluating information and evidence in a trial, it is important juries understand the nature and impacts of trauma. Jury directions relating to trauma exist in relation to certain sexual offences, particularly for the purposes of determining the reliability, credibility and truthfulness of witnesses, especially complainants.

By way of example, the following provision exists under the *Criminal Procedure Act 1986* No 209 (NSW)

*'Section 293: Warning may be given by Judge if differences in complainant's account*

*(1) This section applies if, on the trial of a person for a prescribed sexual offence, the Judge, after hearing submissions from the prosecution and the accused person, considers that there is evidence that suggests a difference in the complainant's account that may be relevant to the complainant's truthfulness or reliability.*

*(2) In circumstances to which this section applies, the Judge may inform the jury:*

*(a) that experience shows:*

*(i) people may not remember all the details of a sexual offence or may not describe a sexual offence in the same way each time, and*

*(ii) trauma may affect people differently, including affecting how they recall events, and*

*(iii) it is common for there to be differences in accounts of a sexual offence, and*

*(iv) both truthful and untruthful accounts of a sexual offence may contain differences, and*



*(b) that it is up to the jury to decide whether or not any differences in the complainant's account are important in assessing the complainant's truthfulness and reliability.*

*(3) In this section:*

*difference in an account includes:*

- (a) a gap in the account, and*
- (b) an inconsistency in the account, and*
- (c) a difference between the account and another account.'*

This and similar provisions relating to sexual offences draw upon extensive research that shows the impact trauma has on memory and recall. Through its work with victims and frontline workers, eSafety seeds the profound impact trauma has on victims.

A jury direction detailing the impacts of trauma, where there are differences in a complainant's account, should be included as part of a package of reform for a coercive control offence.

### **15. What non-legislative activities are needed to improve the identification of and response to coercive and controlling behaviours both within the criminal justice system and more broadly?**

Non-legislative changes are fundamental for both supporting law reform and creating the social, cultural and institutional framework for change. This should be understood as both a whole of community approach and a systems approach.

Given their pivotal role in the judicial system, it is vital that the judiciary, legal profession and law enforcement have training and education on TFA, including coercive control behaviours. This should outline the nature, drivers, impacts and harms of TFA, while also giving practical advice about handling TFA matters. This education and training should be trauma-informed and gender responsive, recognising that TFA within family and domestic violence is a form of gender-based violence. This education and training should form part of broader online safety training to ensure a comprehensive understanding of the broader picture of online safety.

Given the ubiquity of technology in society, and therefore the potential for TFA, it is important that this training not be narrowed to specialist areas of law. Rather, it should be extended to judicial officers, legal practitioners, legal support staff and law enforcement who may encounter someone who has experienced TFA or is at risk of TFA.

eSafety already collaborates with the judiciary, legal profession and law enforcement to raise awareness of TFA and online harms more broadly.

Raising community awareness will be vital to supporting any new offence. This will assist women understand that this behaviour constitutes abuse and change societal attitudes towards domestic violence, including victim-blaming narratives. Relevantly, eSafety drove the change around the lexicon of image-based abuse. eSafety shifted from the term 'revenge porn', an inherently victim blaming term, to 'image-based abuse', which reinforces

the nature of the act: abuse.

Similarly, there is power, impact and practical importance in labelling coercive control.

Building digital capacity is also vital. This should be a lifelong process that begins at the earliest age possible. Given the increasing importance of engaging online, capacity building in online safety and digital literacy is a key measure in the short and long term that gives women skills and strategies to prevent and respond to TFA, including coercive control, and engage online in ways likely to improve gender equality.

Embedding comprehensive and nationally coordinated respectful relationships and online safety education into the Australian Curriculum is key. eSafety refers to the 'four Rs of online safety': respect, responsibility, resilience and reasoning. The 'four Rs of online safety' should be reflected in the Australian Curriculum.

This also points to the need for respectful relationship education to include targeted and tailored programs for boys. As an early intervention prevention measure, this can help challenge and change the stereotypes and beliefs that underpin sexist attitudes and lead to gender-based violence.

Men's behaviour change programs can also play a role in raising awareness of TFA and gender-based abuse, particularly in addressing perpetrators' attitudes to the way technology is used in abusive relationships.

As part of a whole of community approach, capacity building initiatives aimed at women and girls, as well as men and boys, should also extend to parents, carers, educators, school communities and other relevant groups. Further, occupations like hairdressers, teachers, dentists and general workplaces can be upskilled to support frontline workers and victims in identifying coercive control and providing connections to pathways for support.

[eSafety's website](#) provides an extensive range of best practice advice and resources to help all Australians engage safely online.