

Submission on Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018

The Department of Home Affairs invites public comment up until 10th of September 2018. Submit any comments to [REDACTED].

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About the CASAs and SECASA

The Victorian CASA Forum is the peak body for the 15 Centres Against Sexual Assault (CASAs) in the State. Fourteen of these Centres provide direct services. The other Centre is the Sexual Assault Crisis Line (SACL) which provides an after-hours telephone response. Six of the CASAs are based in metropolitan areas. One of them is based at the Royal Children's Hospital, the Gatehouse Centre and sees children, adolescents and their parents or carers. The other eight CASAs are based in regional areas of Victoria.

The South Eastern Centre Against Sexual Assault and Family Violence (SECASA) provides sexual assault and family violence services in Victoria within the Mornington Peninsula, Frankston, Bayside, Port Phillip, Stonnington, Glen Eira and Kingston local government areas. SECASA provides services to children and adults, both female and male, who have been sexually or physically assaulted. The Centre also works with non-offending family members, partners, caregivers and support workers. SECASA is a member of the Victorian Centres Against Sexual Assault (CASAs), which is a collective of non-profit, state-government funded rape crisis centres.

The proposed amendment

The Telecommunications (Interception and Access) Act 1979 was created in the days of landlines and no internet. To broaden this Act to justify the stalking of every citizen by monitoring everyday activity conducted using telecommunications devices is unwarranted and, we believe, detrimental for all citizens, especially those with a background of family violence and/or sexual assault.

Family violence statistics

- 1 in 6 Australian women (17% or 1.6 million) have experienced physical or sexual violence by a current or former partner (ABS, 2017)
- 1 in 6 Australian women have experienced an episode of stalking (ABS, 2017)
- Violence against women is a fundamental violation of human rights, and one that Australia has an obligation to prevent under international law. (United Nations, 2017)

Family violence survivors

By seeking the ability to access all citizens' activities conducted on telecommunication devices, this new legislation has the potential to create an atmosphere of control and fear, particularly for victims of family violence.

Because of their family situation, survivors of family violence, usually women and their children, have high needs for privacy. They are already the target of an abuser, and often need to keep their electronic data and activities secret.

Amending the current legislation so that it requires a telecommunications provider to "give officers and authorities of the Commonwealth and of the States and Territories such help as is reasonably necessary" to assist with interception services, giving access to stored communications and disclosing information or documents raises a number of concerning issues.

1. An atmosphere of fear and coercion

Family violence often includes privacy violations such as surveillance, monitoring, or other stalking. For a family violence victim, privacy in relation to their activities goes hand in hand with their physical safety. These activities might be seeking information about how to escape from an abusive relationship, electronically storing evidence of abuse or critical documentation as part of a safety plan.

Perpetrators use mobile technologies to create a sense of being ever-present in the victim's life. Fraser et al. (2010, p. 44) writes that "one of the more terrifying tactics used by stalkers is to make the victim feel that she has no privacy, security, or safety, and that the stalker knows and sees everything."

According to Stark (2012, p. 25), stalking "is the most dramatic form of surveillance used in coercive control ... [and] falls on a continuum with a range of surveillance tactics whose aim is to convey the abuser's omnipotence and omnipresence." Family violence perpetrators want their victims to know that they are always under surveillance. Stark (2012) asserts this is a key tactic men use to control, intimidate and instil fear in their victims.

This amendment will give authorities and those collecting the data the ability to access all telecommunication activity which mimics the same control exerted over victims by their abuser. Survivors will feel that no matter where they go or what they do electronically, just like in the family violence they have suffered, they will not be able to escape this controlling relationship, regardless of if their activities are law abiding or not.

2. The ability for proxy stalking

Workers identified Facebook as a platform that perpetrators use to proxy stalk women. Proxy stalking refers to a perpetrator using the activities of other people against the victim (Melton, 2007). In a family violence setting this technique is used to heighten a woman's feelings of isolation by conveying the impression that the perpetrator does not need to be present to control her; he can monitor her via other people and, in so doing, create the impression that no matter where she goes, she will not be safe from him. (Woodlock, D. 2015)

This amendment will allow the monitoring of the activities of a victims' friends and family members. This can include the school friends of child victims. If these contacts disclose information about the victims, it will be possible to monitor the activities of an individual even if they themselves are not using telecommunications devices.

Melton (2007) argues that a victim may find proxy stalking more terrifying than other forms of stalking, because it involves numerous people following and tracking her. Victims will be in constant fear of others talking about them and may actively isolate themselves from the networks that offer them the most support.

3. PTSD and stalking

Perpetrators use technology to isolate women from their support systems, through either direct or indirect harassment of the victim, their children or their friends and family. Dimond et al. (2011) emphasizes that victims should have the right to safely access technology, which can enhance their connections with friends and family.

Knowing that there is the possibility of having all telecommunication activities, including those with an expectation of privacy, examined by a third party and possibly used against them, may trigger Post Traumatic Stress Disorder (PTSD) in survivors of family violence. This ability to examine private communications at will mimics the atmosphere of coercion and control in a family violence situation. PTSD has a detrimental effect on victim's general mental health and ability to thrive.

4. Stalking effects on mental health

Isolation from family and friends and a lack of social supports after a traumatic experience have been linked with higher levels of psychological distress (Logan & Walker, 2009, p. 259). Isolation also contributes to depression and suicidal behaviour in victims (World Health Organization, 2013).

Logan & Walker (2009, p. 259) state that stalking can create various forms of social isolation. As many victims must move in order to stay safe, the way they stay in touch with friends and family is most likely to be via an electronic device. However if victims believe their activities are being monitored, they will be fearful of using technology in case that information is given to their abuser as in the recent case involving Senior Constable Neil Punchard in Queensland. (Robertson, 2018)

A large-scale population study conducted in Australia found that stalking is one of the most common forms of violence against women and, as with other forms of gender - based violence, stalking affects women's mental health (Rees et al., 2011). Our fear is that the amendment will inhibit communication between an already scared and isolated population and their potential support people. This would include curtailing the child victim's access to telecommunications devices so as to protect the family.

According to the Family court family violence means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful.

Family violence can affect not only a person's safety, but also:

- their willingness to come to the courts
- their ability to participate in court events

(Family Court of Australia 2018)

In 2011, the definition of family violence in the Family Law Act was expanded to incorporate notions of coercion and control (which are not always accompanied by physical violence or threats).

This amendment will permit the government and its authorised representatives to become proxy abusers by subsuming the same powers as the family violence abuser of coercion and control.

5. Misuse of information

Statistics show family violence in Australia affects 1 in 6 women. A percentage of these women will be in a relationship with or have a connection to the men and women who make up the “officers and authorities of the Commonwealth and of the States and Territories”. A percentage will be in a relationship with or have a connection to workers in the telecommunications industry who have access to the private data this amendment proposes is to be gathered and stored. This amendment will give them carte blanche to invade the privacy of their current or ex partners without any checks or balances. If this amendment goes ahead, how does the government proposed to stop this happening?

As the case involving Senior Constable Punchard illustrates, at the very least there needs to be education for this worker population so they properly understand their duty of care and the potentially deadly consequences their actions could have for someone in a family violence situation.

We would recommend some form of declaration that all workers with any access to this information must sign to say that neither they, nor any member of their family, or any close friends or associates of theirs, has had any allegations of family violence made against them and that they themselves have never had an intervention order taken out against them.

The government must take full responsibility and be able to be held responsible for any consequences resulting in harm to victims of family violence that arises from the release of or misuse of any data collected covertly about individuals.

6. Using information for good

Family violence is a form of domestic terrorism. We would recommend that if this amendment goes ahead, police are permitted to have access to the private data of perpetrators of family violence so they can pass this on to the victims. In this way both police and victims can keep informed at all times of their abusers’ whereabouts and activities and take appropriate actions.

Childhood sexual abuse

- 1 in 3 women and 1 in 6 men are sexually abused before the age of 18. (Fergusson & Mullen, 1999)
- 1 in 5 women and 1 in 20 men have experienced sexual violence since the age of 15 years. (ABS, 2006)

1. Consent and respectful relationships

The Department of Education in Victoria has recently introduced new curriculum to highlight the need for respectful relationships and consent. (“Respectful Relationships: A Resource Kit for Victorian Schools - FUSE - Department of Education & Training,” n.d.) We are teaching children that covertly monitoring someone’s online activities is not part of a respectful relationship. We are teaching children that you must have consent before gathering and storing intimate information about other people. Authorising the government and their agents to spy on people’s private data without their knowledge or consent goes against both of these initiatives.

2. Children and help seeking behaviours

“Up to 22% of school age children have mental health problems. However, less than one quarter at risk of mental health problems access professional services.” (Oh et al, 2014)

“Young people found it difficult to engage with these services because of their feelings of stigma, embarrassment, insecurity, guilt and fear. Some felt unable to seek help even from their families and friends.” (Fargas-Malet & McSherry, 2018) This legislation will undermine the belief that we are all entitled to privacy. We are particularly concerned about the effect that this will have on children who are victims of sexual abuse. 1 in 5 adolescents say that they have gone to the internet to research a difficult health topic such as drug use, sexual health or depression. (Borzekowski, 2006)

We want to encourage children to seek help and disclose abuse. To do this usually requires secrecy as the majority of the abusers are family members. If children accept all their online activities can be accessed and traced back to them, they will be less likely to search online for information that might be helpful or to contact an online service to seek help.

Conclusion

Family violence has killed more women in Australia than terrorism. For family violence victims, privacy is closely linked to safety. It is our belief that this proposed amendment will put this already vulnerable group in greater danger.

In Australia, one woman per week is killed from family violence.

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