# ACCANect 2018

**Session 17: 4:00 – 4:20pm**

**Domestic violence and communication technology**

**Presenter: Helen Campbell, Executive Officer, Women's Legal Service NSW**

**In this session, Helen Campbell will provide the audience with an overview of the ongoing work instigated by Women’s Legal Service NSW on technology facilitated abuse and discuss some of the resources available to assist those who are impacted.**

**4:20 – 4:25pm Q&A**

JULIE McCROSSIN: I invite the Chat Pit

of Fun Helen Campbell a warrior on the issues we've just been

discussing for some time, executive officer of the women's legal

service, in NSW, and I'll hand over to her to talk about

communication technology and domestic violence and abuse, please

make her welcome.

APPLAUSE

HELEN CAMPBELL: Sorry I'm not really from the fun department! I

am a lawyer so if I'm going to start with some Laurie things. That's

the fine print. Read all the fine print before you sign the contract?

And I acknowledge that we are meeting on indigenous land, home of

the Gadigal people of the Eora nation and pay respects to their

elders past and present. So it's a bit of a gallop a short session, so I

will try and be as comprehensive as I can with restricted time. I

think you probably got the message already but it's not new

behaviour. It's new tools, same behaviour, and in some respects

enlarged and enhanced impact on victims. Today we're going to look

at what is technology assisted domestic violence, the legal

framework for responding to it, harassment via technology, sharing

intimate images without consent and a little bit about online

surveillance. You can see a whole range of behaviours that fall into

the category of technology assisted domestic violence. We are

talking about the Internet, social media, mobile phones, computers,

surveillance devices and using them to stalk, harass, intimidate or

humiliate a partner or former partner. So some of the behaviours

that we commonly see include getting access to pass words so for

woman in controlling or escaping controlling relationships it's not

very much help to get - tell them to change their password because

their perpetrator has control over their access. We're looking at

unauthorised access to accounts, checking in, checking call logs,

messages, accounts, reading phone bills, deleting or unfriending on

social media, making false accounts, posing as the victim, in order

to send noxious messages that have the effect of losing support

from friends and family, using technology to spread rumours,

threats intimidation, overwhelmingly the fact with enormously large

volume of unwanted calls or messages, as I said tracking, checking,

surveilling and stalking, and demanding threatening or actually

sharing intimate images, we also see the use of covert, surveillance

devices such as hidden cameras, audio recordings and GPS tracking.

I'm not going to cover every State and Territory in Australia today.

Mostly I know about NSW law and the Commonwealth laws that

cover the whole of the country, there are similar laws to the ones in

NSW although they have various different names, in most of the

other States and Territories and we do have a comprehensive set of

legal fact sheets that do cover every jurisdiction should you wish to

look up what the story is for your home State or Territory. In the

criminal law area we have Commonwealth laws some of which we've

just heard about under the criminal code, the telecommunications

regulation and some copyright issues. In NSW, we have criminal

offences, domestic violence offences, regulation of the use of

surveillance devices and recent specific legislation relating to the

non-consensual sharing of intimate images. In the civil law

regulatory regime again we have apprehended domestic violence

order, we have our wonderful eSafety commissioner, we have some

equitable remedy for breach of confidence and some defamation

remedies. Not all of the civil law implications but it's just important

to realise that there are a range of remedies available, often the

making of these laws predated the online world that we live in so

we're dependent largely on enlarging the effectiveness of our

regulatory regime to become more inclusive of emerging

technologies. Apprehended domestic violence orders are probably

the most readily accessible and well known remedy applying for

victims of domestic and family violence. It's a jurisdiction exercised

through local courts, it's a low cost or no cost jurisdiction, it moves

fairly quickly through the courts, it's enforceable by police, and it

can be tailored to meet the needs of each individual person. So we

would argue that just about any apprehended violence order is or

should be read as including online harassment, intimidation and

abuse. But there may also be benefit for the education of the

perpetrator and those enforcing the orders to also specify that when

we say don't contact that also means don't contact via Facebook, it

also means don't contact via text message, so that we make sure

that the comprehension of what don't harass means includes all the

kinds of communication tools and facilities that we have available to

us. We certainly see that multiple uses can constitute harassment

and can be used to evidence a breach of an apprehended violence

order or be used as evidence as ground for making an apprehended

violence order. Unfortunately, we have had a tradition of some

reluctance by certain law enforcement officers who seem to

minimise the seriousness of offences that are occurring online as

compared to physically threatening in real life offences, in fact we

know it's not less important, in some respects it's more significant

because it's always potentially threatening, you can't physically

move yourself to a safe place to escape and it seems to go on

endlessly so we can see in some respects the psychological dam

done by online abuse can be worst than physical abuse. Just have a

little mention for our NSW colleagues the code of practice for NSW

police helpfully points out there is no such lawful term as a technical

or minor breach. Any breach or threatened breach is to be treated

the same and every breach is to be taken seriously. So that's good

isn't it? Sharing intimate images without consent. This is the most

recently added piece of legislation in NSW and also at the

Commonwealth level. Image based abuse occurs when a nude

sexual or otherwise intimate image is taken or shared without the

consent of the person featured in the image and it can also include a

threat to share that image whether or not the image actually exists.

The women often is in a situation where she doesn't know if covert

images have been taken or he says he has, by hidden cameras or

hidden audio records, she doesn't know for sure whether that image

exists, but that doesn't limit her entitlement to protection, as Julie

said it shouldn't be called revenge porn, it implies that she's done

something for which she's entitled to extract revenge and it's not

necessarily done for the purpose of sexual gratification, so we prefer

the terminology of image based abuse and of course this can occur

from a variety of motives such as a desire to control, punish,

humiliate or otherwise harm the victim. In some cases there are

also financial incentives as in blackmail, or a desire for social status

or notoriety among mates. So wee talked a bit about how an

intimate image is defined. So we're talking private parts, private

acts, in circumstances where you could reasonably expect privacy.

And we're talking genitals etc. Private acts, being undressed, using

a toilet, showering or bathing or engage in a sexual act of a kind not

ordinarily done in public. What kinds of sexual acts are ordinarily

done in public? Air kissing maybe? The image can be still or moving

whether or not digitally altered. Consent ask a very comprehensive

definition of consent and I so wish we had in in their sexual assault

law, your concept must be given freely and voluntarily it must be

given to the recording of each image and to each separate instance

of sharing of that image. A person who consents to the recording of

an image on one occasion is not assumed to have consented on any

subsequent occasions, a person who consents to distribute that

image on one occasion is not assumed to have consented it to any

further or other distributions and some people can't consent at all.

Under 16, cognitively impaired, unconscious, asleep, being

consenting under threat of force or terror, or because they were

unlawfully detained. The Commonwealth civil penalty scheme which

we've just heard about so well from Julie, I don't need to repeat

here, we are so excited about this. This is something we have been

advocating for for five years and the fact that Julie and her team are

so on top of it, we're getting really good reports of short turn around

times, the rapid takedown of the images by far and away the

remedy the women want, civil penalties as Julie said, good to have

the stick in your backpack but that's that rapid take down that is the

most highly satisfying response that women are receiving and it's

really really valuable so it's really easy to use reporting portal, go

there, I'm going to talk about lots of different other laws you can

use, quite frankly don't bother with the other ones just go see the

eSafety commissioner. This is using a carriage service, so I'll just

get my horse and buggy and jump on my carriage service so we

have some predating the Internet by some years regulation of

telecommunications which I'm sure I don't need to tell anyone in

this room about, but there's certainly have been some successful

prosecutions of those who have used telecommunications devices

for improper uses. There are provisions that criminalise voyeurism,

and unfortunately that has to be for sexual gratification. Offenders

doing it to humiliate or harm aren't covered by that provision. That

skipped didn't it? Where was I up to. Publishing an indent article.

Again, these are old sort of - old fashioned concepts however, this

one was used successfully, back in 2011, for the prosecution of a

man who posted photos of his ex-girlfriend on Facebook, didn't get

much of a sentence but it was an example of the way you can

adapt, the legal system can adapt older laws to cover newer

situations. Defamation is only a game that very rich people play. It

comes with the damage that in fact you just further drawing

attention to whatever it was that defamed you. Request be used in

these sorts of circumstance, one example was a footballer called

Ettinghausen who got $100,000 after a magazine pictured a photo

of his genitals. There's a couple of other cases as well. Equitable

action for breach of confident is really really ancient but has been

used in modern contexts as well. Coming on to surveillance, the use

of surveillance devices is tightly regulated and in many

circumstances it is prohibited. So you are covered under the

domestic violence laws in NSW, for doing those creepy things, and

there are prohibitions on installation, use and maintenance of

listening devices and again there was only listening devices when

these laws were first made so again you need to stretch them a bit.

It's had more recent changes including optical surveillance and

there's a prohibition on the installation use and mains of tracking

devices. Again for many women experiencing domestic violence they

will be experiencing a full spectrum of controlling and abusive and

threatening behaviours, so whatever it is, you don't need to pick a

separate offence for each thing that's going on, if you go for

apprehended domestic violence order and the breach of the

apprehended domestic violence order, that's a catch all that will

cover online and offline behaviours. A lot of women think that it

would be terrific to use these very same techniques to gather the

evidence that can be used to support their case and in some

circumstances that is true. But not in every circumstance and you

need to be very careful about the way in which you use, share or

record evidence that you want to use for your case. So as I said,

generally speaking it's prohibited without the consent of both parties

which of course you won't have. The exception to this is when you

can demonstrate that you were only doing it to protect your lawful

interests, what's a lawful interest? It's defined, an interest that is

not unlawful we do have a couple of cases that give us some idea of

how it might be used in practice, so for example, 2014 case in NSW,

a daughter recorded secretly a conversation with her father who had

been sexually abusing her and the admissions that he made in that

recorded conversation were allowed into evidence against him

because it was considered that she was protecting a lawful interest

in doing that recording. Just finally, watch out where your digital

foot preps might take you. This chap was a cadet at Duntroon and

he entered the bedroom of a sleeping colleague and sexually

assaulted her. She didn't see him well enough in the dark to be able

to identify him. The police had some DNA and got what they thought

was the suspect and looked at his phone and here what was his

search history. How to beat a sexual assault charge, sexual assault

sentence ACT and can you leave the country while under

investigation? So he got bail refused. That's it. (APPLAUSE)

JULIE McCROSSIN: Could I just say before I come to question, that

was a really good presentation, it's not easy to give legal

information to predominantly non-lawyers so please give her

another warm round of applause. (APPLAUSE

JULIE McCROSSIN: If I could I'd like to invite up on to the stage,

Ellie Rennie and also Tyson Yunkaporta who are our next speakers

so they're at the ready at this point in our program but first I'd like to

go to question or comments for Helen.

>> Mary-Anne, St Clare institute Northern Territory, a couple of

things, we lost a young girl to cyberbullying in Katherine not long

ago so the more we can do for that the better. Am I contempt

playing cyberbullying though, cyclone Marius did about $300,000 of

damage to our property and some of the contractors we've had have

done even more damage and the insurance company and I'm not

the only one and I haven't done it yet, I've almost taken a photo

and said, "Look what these guys have done." I usually don't try and

say anything I unless I can stay positive. What's the legal

implications if I do report to saying something that's fact but not so

nice?

HELEN CAMPBELL: You're taking this opportunity to get some free

legal advice. She'll probably respond with a disclaimer but I'll leave

that to Helen. It's all disclaimer. It's outside my area of expertise.

It's pretty much focussing on the domestic and family law

environment and now you have a commercial dispute it sound to

me. Look, the safest thing to do is to use the proper channels for

complaining, you never get into trouble for complaining to the right

place. I don't know what is right place is for you but go there.

JULIE McCROSSIN: That was really good, good common sense,

another round of applause for Helen Campbell. We have a question

here.

>> Jessa Curtis. Similar interesting and very relevant topic at the

moment. Particularly curious we do a lot of work on the handling of

life threatening and unwelcome communications code and it wasn't

listed in there and I'm just interested in your honest opinion of if it's

actually helpful if you left it out because it's not the right tool and if

so what do we need to do to fix it?

HELEN CAMPBELL: I left it out because I was trying to get it short

enough. I do have a longer presentation of this version where it has

a slide on it. I worked with the committee that did the last two

revisions of the code. We didn't get everything we wanted into it, we

are particularly a bit stuck with difference of opinions about the

importance of protecting privacy. We think the victims' privacy is

more important than the perpetrator's privacy, so I think we've got

a way to go there with balancing those interests. We do recommend

that women contact their providers for assistance when they're

receiving unwelcome calls and the vast majority that are being

subject to technology facilitated stalking and abuse, the most

frequent method is next messages particularly with pictures

attached. It's scarily in the telecommunications space. I think the

industry is very well main mean and concern and want to do their

best by their customers. There's generally a drawback to any

voluntary code of practice that is the good reliable players will do it

anyway and those that don't really that interested in voluntary

compliance will not so much. I particularly like to thank Telstra at

this point, they've really taken a leadership role in being really

active in caring and responding to the needs of victims of domestic

violence, have a fabulous program of providing free telephones and

$30 worth of credit for women escaping domestic violence, that

capacity to easily get access to a second phone with a secret

number that he doesn't know keep her in touch with her friends and

her service providers, it really enhances her safety and it's a really

practical thing that has been done about it and I think that's the

way we want to see the whole of the industry moving forward.

Thank you Telstra.

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