

AIJAC

Submission to the Attorney-General's Department's Public Consultation on Doxxing and Privacy Reforms

28 March 2024

Introduction

The Australia/Israel & Jewish Affairs Council (AIJAC) is grateful for this opportunity to make a submission to the Attorney-General's Department in response to its inquiry into doxxing and privacy reforms.

AIJAC is the premier independent public affairs organisation for the Australian Jewish community and conveys the interests of the Australian Jewish community to government, media and other community organisations.

AIJAC strongly supports efforts to strengthen federal laws to protect victims of doxxing, tighten privacy laws and to ensure that victims have sufficient legal recourse to both protect their privacy and stop perpetrators from continuing to harass, intimidate, menace and otherwise cause harm to victims. AIJAC also believes that doxxing is an issue with particular implications for the Australian Jewish community - and new laws regarding doxxing should be a key part of any government strategy to counter the explosion of antisemitism that has occurred since the Hamas mass terror attack that occurred last October 7.¹

We note that the most serious and notorious case of doxxing in Australia over recent months targeted a WhatsApp group of Australian Jewish creatives – and that current antisemitic conspiracy theories that are widespread make additional targeting of Australian Jews for doxxing likely if nothing is done about this trend.

AIJAC suggests a series of recommendations below for any such reforms to anti-doxxing laws centred on the need to: 1. define doxxing clearly, 2. simplify legal remedies available for those doxxed, and 3. facilitate pro-active public protections for victims that do not place the primary onus for taking action against acts of doxxing on the victims themselves.

¹ The Executive Council of Australian Jewry (ECAJ) recorded an estimated 738% spike in antisemitic incident last October and November compared to the previous year - <https://www.ecaj.org.au/wordpress/wp-content/uploads/ECAJ-preliminary-report-antisemitic-incidents-since-Oct-7-attack-1.pdf>.

Recommendations

AIJAC recommends Australian law reform to combat the pernicious contemporary phenomenon of doxxing. The law should define it, simplify the remedies available and facilitate their provision in the following ways:

- The current definition of doxxing set out by the e-Safety Commissioner as 'intentional online exposure of an individual's identity, private information or personal details without their consent' should be further elaborated to specify 'carve outs' from that definition that distinguish legitimate whistleblowing and public interest reporting and set the limits upon them. The new law should include criminal and civil offences, as well as victim compensation. In relation to offences:
 - Doxxing culpability should be a strict liability civil offence, subject to defences. Social media companies providing platforms for doxxing that has been made the subject of complaint to them should be captured by the strict culpability provisions.
 - Aggravated doxxing should be a criminal offence requiring proof of intent and should include the associated offences of aiding and abetting, conspiracy and concealment.
- The gaps in current Australian laws concerning cyberbullying need to be addressed. Any new law will require a clear definition of cyberbullying that "recognises the breadth and complexity of the issue" and includes coverage of adult victims.²
- Social media companies should be engaged and their responsibilities should be articulated by legislating to:
 - Require that a 'duty of care' be imposed upon ³social media companies for the benefit of their users, as recommended in the Senate Legal and Constitutional Affairs Reference Committee. Such a clause will strengthen the right of federal agencies, the police and/or victims, to seek orders for social media companies to remove content that constitutes doxxing and/or other forms of cyberbullying.
 - Require social media companies to disclose the identity(s) of doxxing perpetrators who conceal their identities.
 - Order social media companies to remove personal and/or identity information of victims from their platforms.

² https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Cyberbullying/~media/Committees/legcon_ctte/Cyberbullying/report.pdf

³ <https://www.infrastructure.gov.au/sites/default/files/documents/government-response-adequacy-existing-offences-commonwealth-criminal-code-state-territory-criminal-laws-capture-cyberbullying1.pdf>

- Impose civil penalties on social media companies that fail to act responsibly and require that social media companies contribute to victim compensation.
- A remedy to provide redress to doxxing victims might be the provision of victim compensation, provided by the Commonwealth and claimable by the federal government as a debt against the perpetrators of doxxing and upon social media companies in circumstances where the latter fail to take down material within 24 hours of a complaint. Compensation for damages incurred due to doxxing, should include provisions for emotional distress, loss of income, loss of future potential income, and direct costs associated with victimhood, such as medical and security costs.
- Administrative remedies that compel national agencies to fulfil their mandates might include a statutory right to compel a governmental agency to act, similar to mandamus, in situations of doxxing; and a statutory tort under the *Privacy Act* for invasion of privacy that would allow individuals to seek redress independently of the agencies, with redress available through a civil tribunal or lower court.
- A government-funded nation-wide awareness and education campaign about doxxing, other forms of cyberbullying, and the harms they cause.

What is Doxxing?

Doxxing is the act of deliberately sharing private or identifying information about a person without their consent. Doxxing is almost always done with the express purpose of ⁴harassing, intimidating, cyberbullying, stalking, causing public embarrassment and shame, and also encouraging other people to target the victim, too.⁵ The consequences of doxxing can be even further reaching and include physical assault, and racial and/or religious vilification⁶ and have severe and long-term personal and professional consequences, as well as physical and mental health impacts, such as job loss, depression, anxiety, low self-esteem, stress, and more.⁷

Doxxing can be regarded as a form of cyberbullying⁸, although it is not defined as such in Australian law. It leverages a significant imbalance of power; the perpetrators usually choose to remain anonymous, and the victims are exposed to “public scrutiny and become more accessible.”⁹ Even when the perpetrator(s) are not anonymous, they still retain a significant

⁴ <https://www.esafety.gov.au/industry/tech-trends-and-challenges/doxxing>

⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6352099/#:~:text=Not%20only%20does%20doxxing%20violate.location%20are%20often%20made%20public.>

⁶ <https://www.ecaj.org.au/have-you-been-the-victim-of-doxxing/>

⁷ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6352099/#:~:text=Not%20only%20does%20doxxing%20violate.location%20are%20often%20made%20public.>

⁸ <https://socialmediavictims.org/cyberbullying/types/doxxing/#:~:text=Doxxing%20is%20a%20harmful%20act.forms%20of%20abuse%20and%20humiliation.>

⁹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6352099/#:~:text=It%20also%20intensifies%20the%20power.cyberspace%20and%20the%20physical%20world.>

power over their victims; once personal/identifying information is out in the public domain, nothing can be done to turn back the clock, even if the personal/identifying information is removed. Doxxing is also considered a form of online vigilantism¹⁰.

Doxxing can have significant and long-lasting mental and physical health consequences. These impacts include ongoing harassment (on and offline), identity theft, employment loss, death threats, physical and/or sexual assault, loss of friendships and/or family rifts, among others¹¹. It can have a snowball effect that unearths more identifying information, including victims' addresses, phone numbers, email addresses and other personal information.

Doxxing as a form of cyberbullying is a growing problem not just in Australia but across the world¹². In January 2019, the Australia Institute released a report on cyberbullying and online harassment, concluding that more than one in three Australian internet users have experienced some form of online abuse or harassment, with the most common forms of this being abusive language (27%), being sent unwanted sexual material (18%), and threats of physical violence or death (8%)¹³. Overall, the estimated cost of cyberbullying and online harassment to the Australian economy in 2019 was \$3.7 billion in health costs and lost income.¹⁴

A Doxxing Case Study

In late January 2024, chat transcripts and membership details from the private WhatsApp group (referred to in this submission as the "J.E.W.I.S.H" WhatsApp group) of some 600 Jewish-Australian creative professionals and academics was deliberately published by anti-Israel/pro-Palestinian activists on their own social media accounts. Some of these accounts have hundreds of thousands of followers.

This action was strongly defended by some who incorrectly claimed that the J.E.W.I.S.H group was engaged in attempts to 'silence pro-Palestinian' supporters and activists, and that this action was therefore not doxxing but "whistleblowing"¹⁵. In this specific case, victims were also at the receiving end of racist slurs, including some which are associated with the U.S. hate group, the Ku Klux Klan.¹⁶

Personal and identifying details, including names, photos, social media account details, and workplaces, were published by anti-Israel/pro-Palestinian activists across their own social media accounts. Some of these activists actively encouraged their followers to harass, discriminate,

¹⁰ <https://blackbox.com.sg/everyone/online-harassment-many-still-think-vigilantism-is-justified>

¹¹ <https://socialmediavictims.org/cyberbullying/types/doxxing/#:~:text=Doxxing%20is%20a%20harmful%20act,forms%20of%20abuse%20and%20humiliation.>

¹² https://australiainstitute.org.au/wp-content/uploads/2020/12/P530-Trolls-and-polls-surveying-economic-costs-of-cyberhate-5bWEB5d_0.pdf

¹³ <https://australiainstitute.org.au/post/online-harassment-and-cyberhate-costs-australians-3-7b/>

¹⁴ <https://australiainstitute.org.au/post/online-harassment-and-cyberhate-costs-australians-3-7b/>

¹⁵ <https://theconversation.com/the-jewish-creatives-whatsapp-leak-was-more-whistleblowing-than-doxxing-heres-why-223552>

¹⁶ <https://mosaicmagazine.com/observation/israel-zionism/2016/03/whore-you-calling-a-zio/>

shame, intimidate or boycott the professional businesses and services of the members of the group. One of the pro-Palestinian activists involved, Elsa Tuet-Rosenberg, told her social media followers: “¹⁷let these f..king Zionists know no f..king peace.”

For the sake of transparency, AIJAC notes that several AIJAC staff members were also members of the J.E.W.I.S.H creatives WhatsApp group.

Politicians from across the political spectrum have condemned the doxxing of the J.E.W.I.S.H group.

Prime Minister Anthony Albanese spoke out against the doxxing in February, saying it was “completely unacceptable”.¹⁸

“Let’s be very clear, these are 600 people in the creative industries... who had a WhatsApp group, not heavily political, to provide support for each other because of the antisemitism we’ve seen.

“Now these people have a range of views about the Middle East. What they have in common is they are members of the Jewish community The idea that in Australia someone should be targeted because of their religion, because of their faith, whether they be Jewish, or Muslim, or Hindu or Catholic – it’s just completely unacceptable.”

The doxxing represented an “enormous violation of privacy,”¹⁹ according to Wentworth MP Allegra Spender.

Independent Goldstein MP ²⁰Zoe Daniel said, “personal information and identification should not be able to be used as a weapon.”

Antisemitism context

While any new laws will rightly cover all Australians, the fact that the key group in Australia’s most recent example of mass doxxing was made up of Jewish individuals - who were targeted because they were Jewish and supposedly “Zionists” - was not an accident and cannot and should not be ignored. The targeting of the J.E.W.I.S.H creatives group, and in such a gleeful and shameless manner, did not occur in isolation, but as part of a deeply worrying rise in global

¹⁷ [HRC happy to work with Israel hater](#)

¹⁸ <https://www.theguardian.com/australia-news/2024/feb/12/albanese-government-to-propose-legislation-to-crack-down-on-doxxing>

¹⁹ <https://www.news.com.au/technology/online/social/doxxing-attack-on-jewish-australians-prompts-call-for-legislative-change/news-story/9a2f3615dbf5594fb521a8959739e1f8>

²⁰ <https://www.news.com.au/technology/online/social/doxxing-attack-on-jewish-australians-prompts-call-for-legislative-change/news-story/9a2f3615dbf5594fb521a8959739e1f8>

antisemitism, including Australia in recent years, and especially since the Hamas terror attack in Israel on October 7 and the ensuing Hamas-Israel war.

Australian Jews have been extensively targeted - both as a group and individuals - by anti-Israel and pro-Palestinian activists - in a manner that is unprecedented since Europe in the 1930s and 1940s.²¹

Australian Jews - who are one of the smaller minority groups in Australia²² - have been and continue to be publicly labelled with vicious, historic and false antisemitic tropes²³ and blood libels²⁴ and in a way calculated to deny them the same democratic right to gather publicly²⁵, protest, raise awareness of misinformation and propaganda, and correct the public record, such as write letters-to-the-editor and letters of complaint. Australian Jews have also been accused of having a dual loyalty to a "foreign power", which is an old, unfounded antisemitic trope.²⁶

Antisemitism has been²⁷ rising across Australia over the past few years, but has exploded since the October 7 terror attacks and the Hamas-Israel war. Since October 7, the reported incidents of antisemitism have skyrocketed; between October 2023 and November 2023, that number was 662, which represents a 738% jump²⁸. Again, that is only reported incidents. In the 12 months between October 1, 2022 and September 30, 2023, reported incidents of antisemitism rose - including verbal abuse, messages, cyberbullying, violence, vandalism and graffiti, posters and such - by 3.5% compared to the previous 12 months.²⁹ (It should be noted that these were only incidents that were reported to the Executive Council of Australian Jewry, and that actual figures are believed to be significantly higher.)

Even though neither the nature of the group, nor its activities, should be relevant to whether it has the same legal right to privacy as any other Australians - not to mention protection from the deluge of criminal behaviour and harassment that the doxxing directly led to - it is important to note that the J.E.W.I.S.H creatives group was created to provide a safe space and support for Jewish people to grieve, express themselves, support each other and share information. Some members also discussed the incorrect information, propaganda and misinformation being spread on mainstream and social media. These latter discussions were the excuse given by the

²¹ <https://www.news.com.au/technology/online/social/doxxing-attack-on-jewish-australians-prompts-call-for-legislative-change/news-story/9a2f3615dbf5594fb521a8959739e1f8>

²² <https://www.australianjewishnews.com/record-number-of-jews/>

²³ https://www.ajc.org/sites/default/files/pdf/2021-10/AJC_TranslateHate-Glossary-October2021.pdf

²⁴ <https://www.adl.org/resources/blog/blood-libel-accusations-resurface-wake-oct-7>

²⁵ <https://aijac.org.au/op-ed/rise-of-anti-semitism-echoes-older-more-dangerous-eras/>

²⁶ <https://aijac.org.au/op-ed/rise-of-anti-semitism-echoes-older-more-dangerous-eras/>

²⁷ <https://theconversation.com/antisemitism-how-the-origins-of-historys-oldest-hatred-still-hold-sway-today-87878>

²⁸ <https://www.ecaj.org.au/wordpress/wp-content/uploads/ECAJ-preliminary-report-antisemitic-incidents-since-Oct-7-attack-1.pdf>

²⁹ <https://www.ecaj.org.au/anti-jewish-incidents-in-australia-2023-ecaj-report/>

doxgers for their actions, alleging that because of them, all members of the group were part of the conspiracy by powerful Zionists to muzzle pro-Palestinian voices.

The doxxing of the J.E.W.I.S.H creatives group was clearly motivated by the spread across Australia and beyond of an antisemitic conspiracy theory which says there is "a vast conspiracy reaching into the deepest recesses of power in Australia and across the world" in which it is claimed Jews "illegitimately use their 'power' to muzzle anyone who dares to report or expose Israeli crimes against Palestinians."³⁰

This is not a fringe phenomenon – several Australian politicians have made statements based on this antisemitic conspiracy theory.³¹

Members of the J.E.W.I.S.H creatives WhatsApp group have also been accused of being disproportionately 'powerful', 'connected', and 'influential'. The doxxed group, along with Jewish Australians as a whole, have been accused of having the "power to force the media to support their agenda"³² – something that other racial and/or religious groups are not accused of, despite their populations being significantly larger.

Other doxgers – such as Elsa Tuet-Rosenberg quoted above – argued that publishing the contact details of the J.E.W.I.S.H creatives group was appropriate because they are "Zionists" who deserve no peace (though it is actually not clear all members of the group were Zionists).

Journalist Julie Szego, who was a member of the J.E.W.I.S.H creatives group, spoke out publicly about how the word 'Zionist' is being used as a more 'palatable' form of antisemitism, especially by the far-left³³.

"These days, really, you just put the word 'Zionist' there instead of 'Jew' and you can say almost anything. It seems the sky's the limit in the kind of tropes you can put out there, antisemitic tropes, to the point that we have seen a member of the New South Wales parliament, Jenny Leong, talk about Jews and their tentacles...as if we are a sinister people."

"I believe in the right of the Australian Jewish community to push back against some of the abuse that they have been experiencing and exercise their democratic right to advocate for their interests."

In the case of the J.E.W.I.S.H creatives group's doxxing, the intention of those who collected the personal information and publicly distributed it - again, to their social media accounts - was

³⁰ Allon Lee, "Rise of anti-Semitism echoes older, more dangerous eras", *West Australian*, Mar 18, 2024 - <https://aijac.org.au/op-ed/rise-of-anti-semitism-echoes-older-more-dangerous-eras/>.

³¹ See *Ibid.* for examples.

³² <https://aijac.org.au/op-ed/rise-of-anti-semitism-echoes-older-more-dangerous-eras/>

³³ <https://www.facebook.com/watch/?v=709564564495435>

crystal clear. It was to collectively punish all members of the group because they were “Zionists”, holding religious and political viewpoints different to the perpetrators (note: it is public knowledge that one of the perpetrators is a Jewish anti-Zionist activist), and also part of a supposed conspiracy to suppress pro-Palestinian views and information.

Needless to say, almost any collective of Jews in Australia would be liable to similar claims by anyone who believes in the conspiracy theory about Jewish power deliberately muzzling pro-Palestinian voices. An overwhelming majority of Jews are Zionists, meaning they support Israel's right to exist as a Jewish homeland, and in most Jewish collective discussions, there is likely to be some talk about perceived misinformation in mainstream or social media, and how to attempt to correct it, just as there was on the J.E.W.I.S.H creatives group forum.

Given the prevalence of the conspiracy theory in Australia, that makes Jewish groups perhaps most likely target to suffer future incidents of doxxing.

Jewish victim impact

The impact on victims of the J.E.W.I.S.H creatives group doxxing has been significant, both personally and professionally. Multiple victims received death threats³⁴, and one couple was forced to go into hiding after their five-year-old child's life was threatened. AIJAC is also aware of multiple artists who have had multiple jobs³⁵ - worth thousands of dollars - cancelled and are now struggling to find new work and support themselves in their industry. One victim, who had played in his band for eight years, was suddenly dropped and labelled “racist”³⁶. Several victims were subjected to graffiti attacks.

While this inquiry is not dealing with issues of racism, prejudice or religious-based discrimination, it must be noted that the public response from certain sections of society, specifically the far-left³⁷, has been deeply disturbing and contradictory to past incidents of doxxing³⁸. It is clear that because the victims in this case are Jewish and Zionists, this doxxing is not just seen as acceptable, but praised by some.

Several victims of the J.E.W.I.S.H creatives group doxxing incident have provided statements to AIJAC about how the doxxing has directly impacted their lives - personally, professionally, and in terms of their mental health and sense of safety. All wished to remain anonymous.

³⁴ <https://www.theguardian.com/australia-news/2024/feb/09/josh-burns-jewish-whatsapp-group-channel-publication-israel-palestine-clementine-ford>.

³⁵ <https://www.dailymail.co.uk/news/article-13064549/Business-owner-reveals-torrent-abuse-cancellations-feminist-writer-Clementine-Ford-published-details-pro-Jewish-WhatsApp-chat.html>

³⁶ <https://thejewishindependent.com.au/death-threats-boycotts-target-jewish-creatives>

³⁷ <https://www.theatlantic.com/ideas/archive/2024/02/jewish-anti-semitism-harvard-claudine-gay-zionism/677454/>

³⁸ <https://www.abc.net.au/news/2019-02-22/doxxing-the-new-weapon-of-choice-for-trolls/10833428>

"Lisa", 37, Melbourne

"My parents were holocaust people. They were both extraordinary. I am so glad they are no longer alive and not witnessing any of this, as they have been through more than enough.

"I always wondered why I have been so lucky, to be born white in Australia; I've always thanked my lucky stars. I am one of the doxxed 600. I am Jewish.

"I am a practising professional artist and have always considered the art world in Melbourne to be 'my world'. Which I loved. Not any more. The art world in Melbourne has become totally divisive. It is dreadful. It is shocking. It is terrible that this hatred towards Jewish people - any people - is allowed to fester and grow as it is. I am dumbfounded that nothing is being done, no action is being taken.

"I cannot go into the city. I am finding the best way to deal with all of this is to isolate and I have been out twice and twice only since the doxxing.

"I wore a mask on both occasions for fear of being recognised. I went to the NGV triennial and I went to the Melbourne Art Fair, on the last day as I knew it would be quieter.

"The doxxing has totally affected me, not in an obvious way or violent way, but in a very deep insidious way. I used to feel safe and secure in my Melbourne. Not anymore."

"Brian", 42, Melbourne

"I joined one of the WhatsApp chats groups that were designed to support individuals during the crisis period post October 7, including the trauma of the events, the aftermath and the obvious increase in antisemitism in Australia and across the world. The group was formed to support artists and academics and provide a forum for dialogue regarding the effect that the war was having on our industries and individuals and keep people informed. In my opinion, this group was an essential component of our collective experience and a lifeline for some of the more vulnerable individuals who may have been feeling alone or threatened in their communities.

"I did not think for a minute that a private chat that I had been privy to in a private WhatsApp chat would ever be revealed to the public. However, as we know, some less than ethical characters gained access to the contents of this chat, and released the names of those participants who were on there - many of which were published for public consumption. The list is called 'Zio600'.

"I must admit that it came as a huge shock when one of my work colleagues who had received this list contacted me saying that I had been listed as one of the members of the 'Zio600' list.

"Aside from the fact that our private messages had been hacked and exposed, which constitutes doxxing, I immediately panicked that this could very well impact my professional employment.

"Working at the organisation that I work - where a degree of confidentiality, privacy and decorum is required - I was genuinely concerned that there could be repercussions. Had I crossed a line by joining a private chat? I knew that, essentially, I had not, but from the perspective of my employer, were there any issues? Did they have recourse to reprimand me or discontinue my employment? Despite the fact that I wasn't very active in the WhatsApp chat, nor had I really thought too much about my participation due to the fact that I was not very active, yet I was still listed publicly without my consent.

"This is just one example of the nefarious nature of my doxxing experience. To expose 600 people - most of whom didn't even contribute to the group - and accuse them of being 'genocide supporters' is crazy and dangerous."

"Robyn", 25, Brisbane

"It began with the Antoinette Lattouf saga. Then I began to notice the increasingly dangerous statements being shared on certain popular and influential social media accounts. I'd read Clementine Ford (CF) demonising members of our chat. Seeing the online onslaught of vitriol made me panic that I'd be outed and defamed one day too. I noticed CF was followed by about 70 of my online connections from arts community film school, friends were liking and following posts by CF and others like her. By that point I'd already been unfollowed by 100 or so colleagues from my industry simply for posting about Israeli hostages. I wondered if I would lose all my contacts if CF ever named me.

"On January 22 it was revealed that CF had access to all 900 pages of Jewish Creatives chat. I was distressed about what would be revealed and felt violated; my community crumbled. On January 30, I was alerted by the WhatsApp group that I'd been doxed, with my full name and LinkedIn profile picture on a poster designed like a 'Wanted' criminal list, portraying me and 29 other creative/academic Jews as the 'Top 30 Contributors to the Z600 posting 70+ contributions' who use our 'time and energy' for the 'Zionist project' amidst a genocide of the Palestinian people and destruction of their land. The page ended with 'Shame job. Nazi behaviour.'

"After this happened, other people in the arts and comedy arena blew up my picture and wrote slurs on my LinkedIn profile. Carla Burn publicly outed me as neurodivergent and a former member of The Improv Conspiracy school that I was a paid participant in, has also accused me of being 'genocidal' and 'racist'" to her male Arab friend. The same man who told Hitler jokes in a theatre intensive twice and was allowed to remain studying with our teacher for this much sought-after clown course, whereas I was deemed 'too sensitive' for not finding him gushing about the merits of 'Secret Hitler' funny.

"I am the one the teacher excluded from the next specialist theatre courses or improv nights because the communities have become so radicalised they'll only accept Jews that go to rallies that support their own political ideology.

"Physically, emotionally, wellbeing wise I'm severely compromised by this doxxing."

Multiple victims of the J.E.W.I.S.H creatives group doxxing have also spoken of the grave lack of support or protection they received from both police and the e-Safety Commissioner. It is clear, therefore, that police currently lack sufficient powers to investigate and charge individuals who not only engage in doxxing but also use social media to actively encourage their followers to harass, abuse, discriminate and otherwise negatively disrupt the lives of victims. This is especially concerning because in 2022, the e-Safety Commissioner was granted new powers, under the *Online Safety Act*, to compel social media companies to remove content that is deemed to be bullying within 24 hours.³⁹ To AIJAC's knowledge, this did not occur in this case.

There have been other high-profile doxxing incidents overseas in the past, including⁴⁰ 'GamerGate' in 2014. However, the J.E.W.I.S.H creatives group doxxing seems by far the most public and concerning incident to occur in Australia.

Legal Context

Currently, doxxing is covered under several laws, including 474.17 of the⁴¹ Commonwealth *Criminal Code*, which makes it an offence to menace, harass or offend someone using a carriage service. The law was passed well before social media became a popular and common part of modern life, and some legal experts consider these laws "outdated, convoluted, and seldom applied."⁴² Another legal expert said current laws are "outdated, confusing and rarely enforced."⁴³

In 2017, the Senate Legal and Constitutional Affairs Reference Committee⁴⁴ investigated the adequacy of the current Commonwealth Criminal Code, plus state and territory laws to effectively criminalise cyberbullying. It noted that there is currently no actual definition of what constitutes cyberbullying⁴⁵.

³⁹ <https://www.theguardian.com/media/2022/jan/23/how-will-new-laws-help-stop-australians-being-bullied-online>

⁴⁰ <https://time.com/4927076/zoe-quinn-gamergate-doxxing-crash-override-excerpt/>

⁴¹ <https://mblawyers.com.au/doxxing-and-cyber-harassment-what-it-is-and-the-need-for-legislative-reform/>

⁴² <https://www.lexology.com/library/detail.aspx?g=3767caf7-a878-44c2-8871-e70ee2242c95#:~:text=The%20Australian%20government%20has%20announced,in%20a%20WhatsApp%20group%20chat.>

⁴³ <https://mblawyers.com.au/doxxing-and-cyber-harassment-what-it-is-and-the-need-for-legislative-reform/>

⁴⁴ <https://www.infrastructure.gov.au/department/media/publications/australian-government-response-senate-legal-and-constitutional-affairs-reference-committee-report>

⁴⁵ https://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Cyberbullying/~media/Committees/legcon_ctte/Cyberbullying/report.pdf

Given the complex social context in which doxxing occurs - and the significant impacts it can have on victims - AIJAC agrees with the 2017 Senate inquiry that "cyberbullying is a complex social issue which requires a multifaceted response and cannot be addressed by criminal sanctions alone."⁴⁶

A new law specific to doxxing would bring Australia in line with other countries that have already enacted such legislation, including Singapore, South Korea and the Netherlands.⁴⁷

Current laws and proposed changes

It is the view of AIJAC that the objective of a new Commonwealth law regulating doxxing specifically should be threefold: 1. defining doxxing clearly, 2. simplifying legal remedies available for those doxxed, and 3. facilitating pro-active public protection for victims by law enforcement and public authorities.

Define

As online connectedness widens and intensifies, instances of "intentional online exposure of an individual's identity, private information or personal details without their consent" will inevitably spread and increase. Currently, victims are confronted with a confusing maze of possible paths that they might take to seek solutions to combat the harm caused.

The definition of doxxing drawn up for and displayed on the e-Safety Commissioner website describes doxxing as the "intentional online exposure of an individual's identity, private information or personal details without their consent."⁴⁸ The e-safety Commissioner website refers to three different doxxing practices:

1. De-anonymising: revealing the identity of someone
2. Targeting: revealing someone's contact, location or security information
3. Delegitimising: revealing sensitive or intimate information about someone

These practices are not comprehensive and there is inevitably confusion in drawing up a precise definition of doxxing from this.

In each of the three doxxing practices listed above, harm caused by illegal means may occur. Forms of illegal harm caused by doxxing can include criminal violence and threats, defamation, physical torts, commercial breaches, and privacy torts. Some of these legal harms are criminal offences, some are civil offences, while others are civil torts or breaches of contract. It is evident

⁴⁶ <https://www.infrastructure.gov.au/sites/default/files/documents/government-response-adequacy-existing-offences-commonwealth-criminal-code-state-territory-criminal-laws-capture-cyberbullying1.pdf>

⁴⁷ <https://lsj.com.au/articles/doxxing-to-be-criminalised-in-australia/>

⁴⁸ <https://www.esafety.gov.au/industry/tech-trends-and-challenges/doxxing>

that these harms are already regulated under law, each in different ways. In most cases, a variety of state or territory laws overlay Commonwealth laws.

An essential first step in legal reform concerning doxxing is to provide a signpost that directs victims to available legal remedies. That signpost would identify and define doxxing as an illegal harm.

Doxxing can, in some circumstances, be incorrectly labelled as “whistleblowing”. In the J.E.W.I.S.H creatives group doxxing incident, the doxers claimed to be whistleblowers. However, doxxing is distinguishable from whistleblowing, and Australian law needs to recognise the difference. Any exemptions carved out of the definition to allow whistleblowing should be limited to those public interest whistleblowing protections presently available under Commonwealth laws.

Exemptions for journalism, such as public interest reporting on individual people, should be limited to public figures, including those who hold high public office or who have already voluntarily disclosed their own personal information to the general public.

It has been suggested that it could be problematic not to exempt the public posting of details of an alleged criminal perpetrator on social media or of another’s personal information in a civil court case. However, unless that information is already in the public domain, neither of these circumstances should be exempted.

It is the view of AIJAC, therefore, that the current definition of doxxing set out by the e-Safety Commissioner as “intentional online exposure of an individual’s identity, private information or personal details without their consent” should be further elaborated to specify the “carve outs” from that definition. Those elaborations should distinguish legitimate whistleblowing and public interest reporting and set clear limits upon them.

Simplify

The current panoply of Commonwealth laws is complex. We outline some of their categories below. An objective of the proposed anti-doxxing law should be to simplify legal remedies for victims. Once doxxing has been defined, then prescribed remedies can be tailored to the instances of harm identified in the definition.

It is the view of AIJAC that remedies to prevent and ameliorate the harms caused by doxxing should include criminal and civil offences, as well as victim compensation. In relation to offences:

- Doxxing culpability should be a strict liability civil offence, subject to defences
- Aggravated doxxing should be a criminal offence requiring proof of intent and should include the associated offences of aiding and abetting, conspiracy and concealment.

In relation to civil liability for torts, there are many overlapping forms of tort relevant to doxxing but they either have gaps or are ill-suited as a remedy to doxxing. Described below is a non-exhaustive list that sets out cyberbullying, defamation, malicious or injurious misrepresentation, and privacy intrusion. In addition, commercial breaches, such as unfair trading or breach of contract may also be relevant to doxxing and are set out below. A simpler tailored remedy is needed.

One remedy to provide redress to doxxing victims might be the provision of victim compensation, provided by the Commonwealth and claimable by the federal government as a debt against the perpetrators of doxxing

Categories of applicable Commonwealth laws include harassment, threats, physical attacks, bullying, conspiracy, privacy intrusion, defamation, racial discrimination and commercial breaches.

· Harassment

- Using a Carriage Service to Menace, Harass or Cause Offence, section 474.14. A person commits an offence if: (a) the person uses a carriage service; and (b) the person does so in a way (whether by the method of use or the content of a communication, or both) that reasonable persons would regard as being, in all the circumstances, menacing, harassing or offensive.

· Threats

- Using a carriage service to make a threat, section 474.15: (1) Threat to kill; (2) Threat to cause serious harm.
- Using a carriage service for a hoax threat, section 474.16.

· CyberBullying

- Cyberbullying is online communication to or about an Australian child that is seriously threatening, seriously intimidating, seriously harassing or seriously humiliating. It can include posts, comments, emails, messages, memes, images and videos. It is confined in application to Australian children.
- There is clearly a gap in relation to cyberbullying against Australian adults.
- Bullying in general is regulated under Commonwealth laws on workplace relations and is confined to workplace situations. There is no regulation of bullying of adults outside of the workplace.

· Conspiracy

- Doxxing may occur as part of a plan to instigate forms of physical attacks against the victim. For example, criminal assault or trespass, or acts of public nuisance or civil disturbance might be anticipated as consequences of doxxing. In the circumstances of doxxing, the identities of parties that will undertake the physical attacks may be unknown at the outset, but the acts of others might be anticipated or contemplated. Nevertheless,

the doxxer is a participant in the conspiracy and should be criminally and civilly accountable.

· Privacy intrusion

- The *Privacy Act* section 80W empowers the Privacy Commissioner to apply to the Federal Court or Federal Circuit Court for an order that an entity, that is alleged to have contravened a civil penalty provision in that Act, pay the Commonwealth a penalty. The 'civil penalty provisions' include a serious or repeated interference with privacy (section 13G).

· Defamation and malicious statements

- Defamation is the making of false statements that harm somebody's personal reputation. A rash of recent Australian defamation lawsuits have been characterised by complexity, expense and failure. The civil suit for defamation is thus no solution to the problem of doxxing.
- Malicious or injurious falsehood arises when a person makes a false representation about another person's goods or services. In the cases of doxxing of members of the Australian Jewish community, the services of creative artists were harmed by the publishing of false representations about them. These false representations were published with malicious intent and caused actual damage.

· Racial discrimination

- The unfair treatment of a person based on nationality or ethnic origin is defined as a form of racial discrimination in the *Discrimination Act* section 9.
- The vilification of Australian Jews and persons of Israeli origin, the vast majority of both of whom are Zionists, on the basis of their nationality or ethnic origin, by doxxing them is unfair treatment and an act of racial discrimination.

· Commercial contract breaches

- Doxxing Jewish Zionists in order to exclude them from commercial activities can be part of the process of imposing commercial disadvantages that take many forms. These include unfair trading, breach of contract, commercial discrimination and malicious and injurious falsehoods.

Legal reforms intended to address doxxing should aim to bring some order to this complexity, giving victims clear avenues to seek legal redress through any of these means, perhaps through a checklist process provided through the office of the e-Safety Commissioner.

Facilitate

To combat the intentions of doxxers, the law must be simple, efficient and agile, rather than incomplete, cumbersome, confusing and convoluted, as at present. The administration of justice needs to be facilitated in a way that makes it efficient. Thus, administrative interventions are simpler and more efficient than judicial interventions and private-sector actions taken by social

media companies in fulfilment of corporate responsibility are more agile than administrative interventions.

There is deep concern in the Australian Jewish community at the failures of the Australian Human Rights Commission, the e-Safety Commissioner and of state and territory police forces to protect or support victims within the community, or to take enforcement actions against perpetrators of doxxing, cyberbullying, privacy offences and incitement to racial hatred directed against members of the community, in circumstances where there is clear evidence of illegal actions under current laws. The perceived non-feasance of governmental authorities suggests that the allocation of independent rights to victims to take legal action would be appropriate to facilitate enforcement in situations of governmental non-feasance.

In the federal sphere of online safety, the e-Safety Commissioner's Regulatory Operations Group is responsible for the protection of children from cyberbullying. Despite the unusual circumstances of the doxxers of the J.E.W.I.S.H creatives group making a proud public disclosure of their own identities, the e-Safety Commissioner has taken no action against the doxxers, most likely because the cyberbullying scheme protects children and not adults. Although the adult victims of doxxing made complaints to the e-Safety Commissioner, there has been no response and no investigations have been undertaken. This may be due to the gap within the scheme that leaves adults unprotected from cyberbullying.

In the federal sphere of privacy regulation, the Office of the Australian Information Commissioner (OAIC) is responsible for handling privacy complaints. The *Privacy Act* section 40 provides a complaints mechanism, under which the OAIC may initiate an investigation in response to a complaint. Where the investigation indicates that it is likely that an interference with privacy has occurred, and conciliation is not considered appropriate or conciliation has been attempted without resolution, then the OAIC will consider what enforcement action to take.

The Australian Human Rights Commission has not undertaken any visible action in relation to the recent escalation in antisemitism across Australia.

The Australian Federal Police might be given an enforcement role, similar to the issuing of orders to move on or fines for public disorder, as is discussed above.

Laws must take into account the context into which the doxxing takes place and the intentions of perpetrators as to what they hope or expect to occur. Therefore, any new law(s) should encompass the roles of the social media companies that provide platforms to doxxers. Furthermore, social media companies can be required to play an enforcement role, requiring the removal of offending material - such as doxxing - within 24 hours of complaint.

Unfortunate impediments to enforcement of privacy regulations include the willingness and resources available to government agencies to take enforcement actions. AIJAC suggests that two legislative responses to such non-feasance could be:

- A statutory right to compel a governmental agency to act, similar to mandamus, in situations of doxxing; and
- A statutory tort under the Privacy Act for invasion of privacy that would allow individuals to seek redress independently of the AOIC, with redress available through a civil tribunal or lower court.

Conclusion

AIJAC believes that it is clear that existing laws regarding doxxing are insufficient, especially during the current era of social media, online-driven propaganda, professional activism on and offline, and cyberbullying. AIJAC supports efforts to raise awareness about doxxing and the dangers of doxxing, including a nation-wide education campaign to ensure that all Australians - children and adults - are aware of the immense harm that can be caused.

AIJAC also strongly supports comprehensive efforts to strengthen federal laws to protect victims of doxxing, tighten privacy laws and to ensure that victims have sufficient legal recourse to both protect their privacy and stop perpetrators from continuing to harass, intimidate, menace and otherwise cause harm to victims. We have recommended a series of measures that we believe will help achieve the important goals of 1. defining doxxing clearly, 2. simplifying legal remedies available for those doxxed, and 3. facilitating pro-active public protection for victims by law enforcement and public authorities.

AIJAC believes these reforms are not only valuable in their own right, but crucial to the continued success of Australia's unique and highly valued model of multiculturalism, given the racially targeted nature of the most important example of mass-doxxing that has occurred in Australia in recent months.

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