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Your reference: Trolling Bill
Date: 25 February 2022

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Ms Sophie Dunstone
Committee Secretary
Legal and Constitutional Affairs Legislation Committee
The Senate
Parliament of Australia
Parliament House
CANBERRA

legcon.senate@aph.gov.au

Dear Ms Dunstone,

Social Media (Anti-Trolling) Bill 2022

I refer to your email of 15 February 2022.

The Legal Services Commission (Legal Services) is South Australia's largest legal assistance services provider. In the 2020/2021 financial year we delivered over 145,000 client services to the community. Through our Family Law practice and Domestic Violence legal assistance services, we are acutely aware of the psychological harm that can be done by online trolling. I have consulted with senior legal staff about the proposed Bill and would like to provide the following feedback.

Unlike the Commonwealth *Online Safety Act 2021*¹ which provides for removal notices to be served on social media service providers, the *Social Media (Anti-Trolling) Bill 2022* (the Bill) does not appear to provide any new protections for the victims of trolling. Rather the Bill seeks to protect from defamation persons or organisations who host online pages and social media service providers where defamatory comments are made by third parties. We understand that the legislative effect of the Bill is to remediate the consequences of the High Court decision in the defamation case of *Voller*².

Legal Services welcomes the establishment of the complaints scheme in clause 16 of the Bill and the requirement for the social media service provider to disclose the identity of those who post defamatory material anonymously. We support the provisions of clause 16 which place the onus on the social media service provider to notify the commenter of the complaint. We support the requirement that large social media service providers who originate overseas be required to have a "nominated entity" in Australia.

¹ [Online Safety Act 2021 \(legislation.gov.au\)](http://legislation.gov.au)

² *Fairfax Media Publications Pty Ltd v Voller* [Case S236/2020 - High Court of Australia](#)

There is no doubt that the Bill will provide strong protection especially for small organisations who host pages where third parties can provide online, real time comment such as community and arts organisations. However, we submit that the Bill's complex remedy for a complainant against a social media service could be a financial impost on individuals who seek compensation for reputational damage. The individual will, for example, be required to seek a court order to discover the identity of the commenter if this is not voluntarily provided to the social media service by the commenter.

We have concerns with the provisions of clause 16 (1)(h)(ii) which allow the social media service to refuse to disclose the commenter's identity if:
"the provider reasonably believes that the defamation complaint or the request, as the case may be, does not genuinely relate to the potential institution by the complainant of a defamation proceeding against the commenter in relation to the comment."
This places the onus on the complainant to seek a court order, especially as the social media service provider is protected from liability for such disclosure in Clause 16(5). The basis for this "reasonable belief" is not set out in the Bill.

We would submit that the Bill should require the social media service to remove or at the very least suspend the alleged defamatory comments until the person claiming to be defamed has decided on a course of action with respect to the comments.

Another concern which we have is that social media service providers and page hosts may become less vigilant in monitoring and removing posts which incite hatred against named individuals as members of specific groups in society given the providers and hosts protections under the Bill.

Thank you for the opportunity to comment on the exposure Bill.

Yours sincerely,

David Mazzone
Acting Director