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**Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Social Media  
(Anti-Trolling) Bill 2022 [Provisions]**

**About Us**

The Centre for Digital Wellbeing is a research and policy centre focusing on social media's impact on mental health and wellbeing, safety and social cohesion in the Australian community. The Centre brings together a network of health, mental health, digital technology and policy experts to facilitate critical discussions on social media's impact on mental health and social cohesion, formulate policy responses and develop resources that assist users to better engage in healthy digital practices. The Centre simultaneously facilitates critical discussions on social media's impact on social cohesion and mental health to inform users and policy makers in Australian society.

The Centre for Digital Wellbeing welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs Committee's inquiry into the Social Media (Anti-Trolling) Bill 2022 [Provisions] (the Bill). While we welcome the Government's focus on improving the online experience of Australians, we are concerned about the narrow focus of the Bill. Our view is that it will provide limited redress for the vast majority of victims of online abuse and that a more comprehensive approach to regulating social media is required to effectively combat the range of online harms experienced by Australians.

**Background**

Social media has fundamentally shifted the way Australians maintain connections, consume content and share information. As of March 2019, over 17 million Australians aged over 14 years used

Facebook, representing an increase of nearly 4.2 million users since 2015.<sup>1</sup> Other platforms such as YouTube, Instagram, Pinterest and Twitter also experienced significant growth in that period.<sup>2</sup> Social media platforms have seen further increases in usage with the COVID-19 pandemic, with more than one in three Australians increasing their use of social networking apps following the introduction of COVID-19 restrictions.<sup>3</sup> Australian teens use an average of four different social media services and spend an average of 14.4 hours a week online.<sup>4</sup>

While the increased use of social media can bring benefits, including increased connectedness and social support, providing a forum for individuals to share personal experiences, insights and advice with others who have similar experiences and giving a platform to those traditionally excluded from public debates,<sup>5</sup> there is a growing body of evidence suggesting that social media also has a negative impact on the mental health and wellbeing of individuals and on social cohesion.<sup>6</sup>

### **Australians face a range of online harms**

Negative online experiences that can affect an individual's mental health and wellbeing include trolling (making deliberately provocative comments),<sup>7</sup> cyberbullying (using technology to bully a person and hurt or intimidate them)<sup>8</sup> and online hate (posting about a person or group based on their race, religion, ethnicity, sexual orientation, disability or gender).<sup>9</sup>

Each of these can encompass a range of behaviours including sending abusive messages, spreading rumours about a person, making public posts belittling, humiliating, demeaning or offending a person, sharing intimate or false photos online, and threats of sexual or physical violence. In the context of the Bill, it is important to recognise while online abuse may be perpetrated by people acting anonymously online, people do often abuse others online under their real name, with other identifying information also readily available.<sup>10</sup>

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<sup>1</sup> Roy Morgan. *Facebook on top but Instagram and Pinterest growing fastest* (17 May 2019) <http://www.roymorgan.com/findings/7979-social-media-trends-march-2019-201905170731>.

<sup>2</sup> Ibid.

<sup>3</sup> Australian Communications and Media Authority. *COVID restrictions helped increase digital communications use for older Australians* (22 April 2021) <https://www.acma.gov.au/articles/2021-04/covid-restrictions-helped-increase-digital-communication-use-older-australians>.

<sup>4</sup> eSafety Commissioner. *The digital lives of Aussie teens* (February 2021) <https://www.esafety.gov.au/sites/default/files/2021-02/The%20digital%20lives%20of%20Aussie%20teens.pdf>.

<sup>5</sup> E M Seabrook, M L Kern and N S Rickard. 'Social Networking Sites, Depression, and Anxiety: A systematic Review' (2016) *JMIR Mental Health* 3(4) 50; M Michikyan and C Suárez-Orozco. 'Adolescent Media and Social Media Use: Implications for Development' (2016) *Journal of Adolescent Research* 31(4), 411-414.

<sup>6</sup> Centre for Digital Wellbeing. Submission to the Inquiry into Social Media and Online Safety (12 January 2022) <https://digitalwellbeing.org.au/wp-content/uploads/2022/01/Centre-for-Digital-Wellbeing-Submission-to-Inquiry-into-Social-Media-and-Online-Safety-12-January-20221.pdf>.

<sup>7</sup> eSafety Commissioner. *Trolling* <https://www.esafety.gov.au/young-people/trolling>.

<sup>8</sup> eSafety Commissioner. *Cyberbullying* <https://www.esafety.gov.au/young-people/cyberbullying>.

<sup>9</sup> eSafety Commissioner. *Online hate* <https://www.esafety.gov.au/young-people/online-hate>.

<sup>10</sup> H Dyer. 'Online abuse: banning anonymous social media accounts is not the answer' (21 October 2021) *The Conversation* <https://theconversation.com/online-abuse-banning-anonymous-social-media-accounts-is-not-the-answer-170224>.

The impact of trolling, cyberbullying and online hate can be devastating. The ability for material to be disseminated widely and quickly online makes it difficult to stop. Further, the ability of online abusers to save, re-post and re-share abusive content an unlimited number of times can trap the victim in a perpetual loop of trauma. Constant access to the internet and notifications make it difficult to disconnect from the abuse. The permanence of abusive content posted online coupled with the large audience who may view the content exacerbate challenges for victims.

The consequences of online bullying are felt particularly by women, with 38 per cent of women directly experiencing abuse online, rising to 45 per cent among teenagers and young adults. The rates of abuse are significantly worse for marginalised individuals and groups, such as LGBTIQ+ and women of colour.<sup>11</sup> Further, young people are particularly vulnerable to the negative impacts of online abuse, given the development and maintenance of social connection is crucial during this life stage.<sup>12</sup> Teenagers are more likely to be highly sensitive to online acceptance and rejection.<sup>13</sup>

### **Limitations of the proposed bill**

Despite the reference to anti-trolling in the name of the Bill, the Bill's focus is very limited and relates only to defamatory content—that is, material that is published and injures a person's reputation without lawful reason or defence.<sup>14</sup> Some jurisdictions in Australia also require the material to have caused "serious harm" to the victim.<sup>15</sup> While defamation is a type of online abuse that people experience, it is only a very small subset of the types of abuse committed online. Further, the Bill focuses only on material posted online anonymously, which is an even smaller subset of online abuse. The material must also have been posted in Australia, further limiting the scope of the Bill.

With its narrow focus on defamation, the Bill does not address the issues that the majority of victims of online abuse experience. For example, a person experiencing repeated racist online attacks or being vilified for their sexuality or gender identity is unlikely to have a defamation claim, but is a victim of online abuse and is likely to suffer as a result of that abuse.

The Bill's focus is on providing people who have been the victim of anonymous defamation with a means of 'unmasking' (identifying) the person who posted the defamatory material so that the victim can commence defamation proceedings through either seeking the poster's identity from the social media company or by seeking an end-user information disclosure order from a court as a precursor to defamation proceedings. Even in those limited cases where online abuse constitutes defamation, the

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<sup>11</sup> Web Foundation. 'Facebook, Google, TikTok and Twitter make unprecedented commitments to tackle the abuse of women on their platforms' (1 July 2021) <https://webfoundation.org/2021/07/generation-equalitycommitments/>.

<sup>12</sup> C T Barry, C L Sidoti, S M Briggs, S R Reiter and R A Lindsey. 'Adolescent social media use and mental health from adolescent and parent perspectives' (2017) *Journal of Adolescence*, 61, 1-11.

<sup>13</sup> E A Crone and E A Konijn. 'Media use and brain development during adolescence' (2018) *Nature Communications* 9(588), 1-10.

<sup>14</sup> Justice Connect. 'Defamation' (2021) <https://www.nfplaw.org.au/sites/default/files/media/Defamation.pdf>.

<sup>15</sup> Ibid.

majority of Australians do not have the financial resources or the time to commence defamation proceedings, meaning this will be of limited utility.

Further, while the Bill recognises that defamatory material posted online poses particular challenges, given how quickly it can spread, it does not require the removal of defamatory content and is expressly neutral on this point.<sup>16</sup> Again, this highlights its limited utility for the majority of Australians.

We recognise that this Bill is only one part of the Australian Government's approach to the regulation of social media companies and online harms and that the House of Representatives is currently holding an Inquiry into Social Media and Online Safety, which has a broad remit.<sup>17</sup> However, the Bill's narrow focus means that it is not relevant for the majority of Australians and will not provide any meaningful redress for those experiencing online abuse. In failing to address the broader systemic issues, this Bill fails to mitigate the real-world harms experienced by many Australians using social media. Instead of this Bill, we consider that comprehensive, targeted and holistic reforms are necessary.

### **Key considerations**

- By focusing only on defamatory content, the Bill will do little to respond to the harmful effects online abuse can have on Australians, particularly Australians from marginalised communities.
- Any further reform in relation to social media platforms should occur in a comprehensive and holistic manner, ensuring that legislation is informed by an understanding of the range of online harms experienced by Australians and is targeted to meaningfully and practically respond to those harms.

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<sup>16</sup> Social Media (Anti-Trolling) Bill 2022, Explanatory Memorandum.

<sup>17</sup> The Centre for Digital Wellbeing made a submission to this inquiry, available at: <https://digitalwellbeing.org.au/wp-content/uploads/2022/01/Centre-for-Digital-Wellbeing-Submission-to-Inquiry-into-Social-Media-and-Online-Safety-12-January-20221.pdf>. The Chair of the Centre also appeared before the Select Committee on 21 January 2022.