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Bill will not prevent social media trolling

The Law Council of Australia believes the best defence against social media defamation is a nationally consistent approach to law reform.

In its [submission](#) on the Social Media (Anti-Trolling) Bill 2021 Exposure Draft, the Law Council has recommended the Commonwealth Government defer its push to address social media defamation until the comprehensive review of Model Defamation Provisions, which is currently underway, is completed.

“The Commonwealth is to be commended for recognising the urgent need for our laws to keep pace with developments in online publishing, particularly in light of the negative impact trolling has on the lives and wellbeing of so many Australians,” Law Council of Australia President, Mr Tass Liveris said.

“While the intentions of this Draft Bill are laudable, it is not likely to achieve the outcomes it seeks and we think there are better alternatives already being investigated.”

The Law Council’s submission notes that despite its title, the Draft Bill does not address trolling, but rather focuses on defamation.

“Defamation is actually only a very small proportion of what constitutes social media trolling,” Mr Liveris explained. “For many reasons, defamation law is likely to be a relatively ineffective mechanism for seeking individual reputational redress and for reducing trolling activity on social media. In practice, the Draft Bill will have very little impact in improving this situation.”

“The Model Defamation Provisions review into the liability of internet intermediaries has been a substantial and in-depth process and it has the potential to ensure that reforms to the law of defamation in Australia are developed in a way which is comprehensive, complementary, certain and clear,” Mr Liveris said.

“Therefore, the Law Council considers that intervention at the federal level in the law of defamation should not occur until the completion of the Stage 2 Review process and should form part of any package of reforms to the liability of online intermediaries more broadly.”

Following the decision in *Fairfax Media Publications Pty Ltd v Voller* [2021] HCA 27, it is appropriate to reconsider the circumstances in which internet intermediaries will be liable in defamation for third-party content. The Law Council is generally supportive of reforms to set out more appropriately when social media page owners should be considered publishers of third-party comments.

“The Law Council reiterates its call for the law to place greater onus on the originator of defamatory online material,” Mr Liveris said.

However, the Law Council is concerned that the Draft Bill does not adequately balance competing public interests, may leave victims without recourse and, in certain circumstances, may provide unwarranted complete protection from liability.

“These outcomes would be antithetical to the purported purpose of protecting people from trolling on social media”, Mr Liveris said.

Contact: Kristen Connell, P. 0400 054 227, E. kristen@talkforcemediacom.au