



# Social Media (Anti-Trolling) Bill 2022 [Provisions]

A submission to the:  
Senate Standing Committee on Legal and  
Constitutional Affairs

Prepared by:  
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**yourtown** is a national organisation and registered charity that aims to tackle the issues affecting the lives of children and young people. Established in 1961, **yourtown's** mission is to enable young people, especially those who are marginalised, to improve their life outcomes. **yourtown** provides a range of face-to-face and virtual services to children, young people, and families seeking support. These services include:

- Kids Helpline, Australia's only national, free 24/7 telephone, webchat and email counselling and support service for 5- to 25-year-olds;
- Mental health service/s for 0- to 11-year-old children and their families with moderate mental health needs;
- Employment and educational programs and social enterprises which support young people to re-engage with education and/or employment, including program specifically for those in long-term unemployment;
- Accommodation responses to young parents with children who are at risk, and to women and children seeking refuge from domestic and family violence;
- Young Parent Programs offering case work, individual and group work support and child development programs for young parents and their children;
- Parentline, a telephone and online counselling and support service for parents and carers; and
- Expressive Therapy interventions for young children and infants who have experienced trauma and abuse or been exposed to violence.

### **Kids Helpline**

In 2021, Kids Helpline counsellors responded to more than 3,991 children and young people concerned about online safety issues, of which 13% expressed suicide-related concerns. Compared to other counselling contacts, eSafety issues were more likely to be from children under 18 years of age, with the youngest person to contact Kids Helpline with a concern or worry about online or texting activity being 5 years old. Of Kids Helpline contacts disclosing cyber-safety issues, the most common accompanying concerns were bullying (identified in 29% of counselling sessions); emotional wellbeing (22%); peer/friend relationships (18%); mental health (17%); suicide-related concerns (13%); and dating and partner relationships (12%).

Being safe online is the top topic of interest for children aged 5- to 12- years' old accessing information on the Kids Helpline website. In 2021, there were 2,756,507 unique visitors to the website, collectively participating in 2,981,825 web sessions, with a 4% increase in new users accessing the website compared with 2020. Being safe online is the top topic of interest for children aged 5-12 years old (19,826 views); sexting (84,553 views); and cyber-bullying (75,000) views are the 3<sup>rd</sup> and 4<sup>th</sup> top topics accessed by teens respectively; and the impacts of pornography (4,021) views is the 3<sup>rd</sup> top issue accessed on the website by young adults aged 19-25 years. The web resource on sexting is the third most frequently visited page in the Teens area on the Kids Helpline website.

Similar trends are reflected in sessions conducted by Kids Helpline at school. In 2021, Kids Helpline @ Primary School delivered sessions to 12,948 students, with a focus on topics such as cyber-bullying; online safety; being kind online; and thinking about social media. In the same year, Kids Helpline at High School delivered sessions on online safety and cyber-bullying to 291 students..

**yourtown** strongly supports the Australian Government's commitment to keeping everyone safe from online harm and responding to the challenges and opportunities presented by new technological challenges. **yourtown** supports in-principle the intent of the Social Media (Anti-Trolling) Bill 2022 (the Bill) to protect ordinary Australians from being found liable for defamatory comments posted online on social media. However, to provide full protection under the Bill, it is critical that explicit provisions are provided to protect social media services from being required to reveal the identity of 'posters' of alleged defamatory material where it is published on a social media platform operated for therapeutic, counselling, or mental health support purposes.

**Recommendation 1:** That social media service providers (such as **yourtown**):

- are exempted from unmasking anonymous users who post alleged defamatory material where the defamatory material is posted on a social media platform operated for therapeutic, counselling, or mental health support purposes; and
- where held to be 'publishers' of defamatory comments posted online, may access a defence, if the defamatory material was published on a social media platform operating for the purpose of therapeutic, counselling, or mental health support.

**yourtown** operates a peer therapeutic online platform, called My Circle. This is a free, private, and confidential, social media platform for 13-25 -year-olds across Australia, with multiple users at the same time. It operates as a virtual space where young people can come together to talk online about a specific topic (e.g., bullying, depression, anxiety). While in the Circle, the participants can ask questions and have supportive conversations with others to learn more about their experiences and what they can do to cope with them. Further, when young people are reaching out and initially seeking help, privacy and anonymity are highly important to them. Facilitating help-seeking behaviour of young people in virtual contexts requires the creation of spaces where young people want to share what they are experiencing in ways where they feel both safe, and anonymous. The popularity of this form of therapeutic support is evidenced by My Circle's exponential growth over the past 2 years, from 340 average monthly users during 2020, to 3,705 monthly users in January 2022.

However, on occasion, comments or material might be posted by participants that could be considered defamatory. While My Circle is a monitored and moderated clinical environment with rules for participation and expectations for behaviour; there are on occasions comments that are made that could be considered defamatory and are removed. If this occurs, the person making the inappropriate post receives a warning against their behaviour. If they receive three warnings, they are banned from participation on the platform and removed from the group. Rather than giving young people an instant ban upon the first occasion, this process provides them with the opportunity to receive corrective information or guidance on the first, and second occasion, so that they can learn information about the impact of their behaviour and (hopefully) change it.

As children and young people, these participants are often still developing their understanding of interpersonal relationships and the broader implications of their actions. My Circle provides an

opportunity to provide mental health support to the young participants, as well as a safe space to provide guidance helping participants to learn from, and correct any harmful behaviours, such as online trolling or defamatory comments.

Under the Bill, **yourtown** could be required to ‘unmask’ anonymous young people who have posted alleged defamatory material on our social media platforms, such as My Circle, and provide details of a participant’s name, email address and phone numbers to aid in a legal suit. This would conflict with, and potentially negate the therapeutic benefits (including that of anonymity) for young people using My Circle. Without a provision of a safe space where young people can learn safely, and be supported to change their behaviour, they may turn to unmoderated and unsafe online or other spaces instead; or withdraw from seeking help altogether.

There are also significant concerns that children and young people seeking mental health and counselling support anonymously through online peer support forums could be ‘unmasked’ for alleged defamatory comments. Children expressing themselves in these forums should not be held liable for their behaviours which are often the result of developmental immaturity, experiences of trauma, and intergenerational, social, and environmental disadvantage beyond their control. There are key differences in brain development and thinking pathways between adults and children, and how these differences can influence children’s decision making and behaviour.<sup>1</sup> There is overwhelming evidence in the fields of child development and neuroscience indicating the human brain does not reach developmental maturity until a person reaches their mid-20s,<sup>2</sup> with the capacity for abstract reasoning still evolving in children aged 13 years due to the ongoing development of the frontal cortex.<sup>3</sup> This lack of developmental maturity impacts not only a child’s ability to understand their actions, but also their ability to comprehend legal proceedings.<sup>4</sup> It is inhumane to expose children and young people to actions of defamation through unmasking them in therapeutic environments, holding them liable for actions and behaviour they may not understand, control or have ever been taught was inappropriate or wrong.

It is strongly recommended that provisions are inserted in the Bill that protect the unmasking of anonymous users who post allegedly defamatory material on social media platforms operated for therapeutic, counselling, or mental health support purposes.

**Recommendation 2:** That the title of the Bill removes a reference to ‘anti-trolling’ and is changed to a title more reflective of the intent of the legislation.

<sup>1</sup> Queensland Government, *Queensland Treasury ‘Youth Offending Research Brief April 2021’*, accessed [Youth offending \(qgso.qld.gov.au\)](https://youth.offending.qgso.qld.gov.au).

<sup>2</sup> Barendregt, Charlotte and van der Laan, André, ‘Neuroscientific insights and the Dutch adolescent criminal law: A brief report’ (2018) 65 *Journal of Criminal Justice*; Prior, David et al, *Maturity, young adults and criminal justice: A literature review* (March 2011).

<sup>3</sup> The pre-frontal cortex is responsible for decision making and impulse control, and the amygdala is responsible for emotional processing and control. These are the last two parts of the brain to reach maturity. See also Barendregt, Charlotte and van der Laan, André, ‘Neuroscientific insights and the Dutch adolescent criminal law: A brief report’ (2018) 65 *Journal of Criminal Justice*; Prior, David et al, *Maturity, young adults and criminal justice: A literature review* (March 2011); Scott, Elizabeth, Duell, Natasha and Steinberg, Laurence, ‘Brain development, social context and justice policy’ (2018) 57 *Washington University Journal of Law and Policy* 13.

<sup>4</sup> United Nations Committee on the Rights of the Child, ‘General comment: no.24 (2019) on children’s rights in the child justice system’ paragraph 22, accessed at [CRC/C/GC/24-E-CRC/C/GC/24-Desktop\(undocs.org\)](https://www.unhcr.org/refugees/4d9d9d9d.html). See also the principles of Gillick Competence (Gillick v West Norfolk and Wisbech Area Health Authority [1986] AC 112) as adopted by the High Court in Australia in Secretary, Department of Health and Community Services v JWB and SMB (Marion’s case) (1992) 175 CLR 218.

The reference to 'trolling' in the Bill's title is unhelpful and does not appear to reflect the intent and purpose of the Bill. Further, no mention is given to 'anti-trolling', or 'trolling' within the body of the Bill, nor is a definition provided within the Bill or the *Online Safety Act 2021*.

'Trolling' as a concept does not reflect the broad nature of 'defamatory material' which is anticipated to be addressed under the Bill. Trolling, as defined by the eSafety Commissioner, is 'when someone makes a deliberately provocative comment or post and waits for people to take the bait'.<sup>5</sup> However, defamatory material under the Bill appears to encompass a breadth of communications or material much broader than 'trolling', the publication of which is capable of meeting the threshold required for a defamation case under state or territory law. To limit the Bill to 'trolling' behaviour only, would limit the protections which this Bill seeks to provide.

It is recommended that the reference to 'anti-trolling' is removed, and a more appropriate title is inserted, for example, the Social Media (Defamatory Material) Bill 2022.

## Conclusion

We would welcome the opportunity to explore these ideas with you further in more detail. Should you require any further information, please do not hesitate to contact Kathryn Mandla, Head of Advocacy and Research at **yourtown** via email at [kmandla@yourtown.com.au](mailto:kmandla@yourtown.com.au).

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<sup>5</sup> [Trolling | eSafety Commissioner](#)