**2a.**  **The Challenge of Online Abuse: Trolling**

**What is trolling?**

Trolling takes many forms. Trolls typically respond to or post inflammatory, off-topic, or ludicrous material to generate an emotional response from users. This behaviour can lead to a pile-on effect, where others join in on the attack. Many Australian users experience online trolling. The most common platforms for such encounters are Instagram, YouTube, and Snapchat. On these platforms, trolling is often confused with cyberbullying.

**What do users who experience trolling have to do?**

In Australia, it is up to the individual to report to the online service first. This typically involves the user collecting evidence, such as screenshotting abusive comments and reporting the troll within the app. When the service does not remove the content within 48 hours, an individual can report to eSafety if their experience meets the legal threshold of serious cyberbullying. A key message to internet users on platforms is to not feed into the trolls and report the abuse within the used app.

Social media platforms can be reluctant to change bullying policies as they try to balance users' freedom of speech, privacy, and protection. Private intermediaries that do not make in-app regulatory changes, such as social media platforms, continue to amplify the voices of trolls.

**Trolling and the law**

Compared with other online antisocial behaviour, such as cyberbullying, trolling remains largely unregulated within the legal framework of Australia. There are fundamental differences between cyberbullying and trolling behaviours regarding form, content, intent, and consequence. These differences are not reflected in the *Online Safety Act 2021* (Cth), which has formed a world-first cyber abuse scheme for adult Australians and introduced new basic online safety expectations to promote and improve online safety. Although researchers have deemed cyberbullying and trolling to be different behaviours, the *Online Safety Act* *2021* (Cth) does not specifically protect the safety of users from being trolled, and no other legislation exists that specifically targets trolling in Australia.

To have access to a legal remedy, Australian residents seeking justice for being trolled on platforms need to fall within legal provisions in the *Online Safety Act 2021* (Cth) and *Criminal Code Act 1995* (Cth) that regulate cyberbullying, harassment, image-based abuse, or offensive and illegal content. Trolling can, but doesn’t always, fall within these definitions.

If the complaint fits within the criteria, a complaint can be made to the Commissioner about the matter. Criteria includes:

* Under s 30 of the *Online Safety Act*, an Australian child who has reason to believe they are a target of cyber-bullying material on platforms is a justified matter.
* An Australian Adult under s 36 can make a complaint if they believe they have been a target of cyberabuse material.
* Under s 474.17 of the *Criminal Code Act,* an offence is set out in the way a ‘reasonable person would regard as being, in all the circumstances, menacing, harassing or offensive’.

Both the *Online Safety Act 2021* (Cth) and *Criminal Code Act 1995* (Cth) address cyberbullying and harassment broadly and require modifications to address trolling effectively.

**Social Media (Anti-Trolling) Bill**

The federal government introduced an exposure draft on *Social Media (Anti-Trolling) Bill 2021* (Cth) shortly after the decision in *Fairfax Media Publications Pty Ltd v Voller.* The High Court found that media companies can be held responsible for alleged defamatory third-party comments made on Facebook accounts of media companies. The Bill intended to address defamatory comments by exposing anonymous commenters through platforms obtaining their contact details. The Bill established a limited role on trolling issues and lapsed at the dissolution of Parliament in April 2022.