

The AFL and its clubs must continue to expose and sanction online trolls, it's the law

Written by Eric Windholz, Senior Lecturer and Associate, Monash Centre for Commercial Law and Regulatory Studies, Monash University

We have experienced what at times has felt like an epidemic of online trolling of AFL players in recent weeks. Some of the trolling has taken the form of sexual abuse, such as that of [Taylor Harris](#).

Others have been racist in nature, such as that of [Eddie Betts](#) and [Liam Ryan](#).

It's beyond doubt that online trolling is a serious issue due to the significant, and potentially long term, impacts cyberbullying can have on the mental health and well-being of its targets, and their families.

Eddie Betts, for example, has [described](#) racist comments from fans "wrecking" his enjoyment of the game and bringing his wife to tears. And Taylor Harris similarly has [described](#) how vulgar sexist comments make her feel "uncomfortable in my workplace", not knowing whether the people making them would show up at the football on the weekend.

What to do about online trolling is more problematic.

Read more: [***Fighting online abuse shouldn't be up to the victims***](#)

Some forms of online trolling are illegal

Some laws already operate to criminalise the behaviour in certain defined circumstances. For instance, under the Australian Commonwealth [Criminal Code](#), it's an offence for a person to use the internet, including social media:

The AFL and its clubs must continue to expose and sanction online trolls, it's the law

Written by Eric Windholz, Senior Lecturer and Associate, Monash Centre for Commercial Law and Regulatory Studies, Monash University

in a way that reasonable persons would regard as being, in all the circumstances, menacing, harassing or offensive.

And according to the Victorian [Crimes Act](#), it's an offence to publish on the internet a statement or other material relating to the victim:

with the intention of causing physical or mental harm to the victim [...] or of arousing apprehension or fear in the victim for his or her own safety or that of any other person.

Trolling also may constitute unlawful racial hatred under the [Commonwealth Racial Discrimination Act](#) if done to offend, insult, humiliate or intimidate another person, or a group of people, on the basis of their race, colour or national or ethnic origin.

And trolling may be defamatory. Defamation generally occurs when a person intentionally publishes – including through social media – information about another person or group of people that damages their reputation, or can make others think less of them.

Read more: [***Don't be a bystander: Five steps to fight cyberbullying***](#)

But the law is hard to enforce

While declaring trolling to be a criminal offence (and defamatory) is strong on symbolism, enforcement can be slow and costly. And proving intent is difficult. It's also a reactive, after-the-event remedy. The damage is done well before prosecutorial action is taken.

For this reason, people have been searching for more proactive legal remedies. After all,

The AFL and its clubs must continue to expose and sanction online trolls, it's the law

Written by Eric Windholz, Senior Lecturer and Associate, Monash Centre for Commercial Law and Regulatory Studies, Monash University

prevention is better than cure.

This has led to calls for legislation requiring social media companies to act more quickly to identify and remove sexist and racist comments from their sites. Some, including the West Australian Premier Mark McGowan and AFL Players Association Chief Executive Paul Marsh, have even [called for](#) legislation to force people to use legitimate names on social media, removing the false bravado that comes from anonymity.

But it's unclear what more social media companies should do to protect AFL players – especially in a political environment in which governments are calling on them to do more to address [child sexual abuse material](#) and [extremist content](#).

Each social media company already has its own rules about what is and is not allowed on their platforms, and the way users are expected to behave towards one another. See, for example, Facebook's [Community Standards Policy](#), Google's [User Content and Conduct Policy](#), and Instagram's [Community Guidelines](#).

These rules generally prohibit sexist and racist content that purposefully targets individuals with the intention of bullying, harassing or degrading them. And each company employs literally thousands of people to monitor and remove content that is in breach of their rules.

Read more: [**Can Facebook use AI to fight online abuse?**](#)

It's about work health and safety

This then leaves us with the AFL itself, and its clubs. Their immediate response has been positive. The AFL has taken the initiative to expose and sanction the trolls behind recent racist and sexist comments, and, where appropriate, to refer the trolls to the police for investigation.

The AFL and its clubs must continue to expose and sanction online trolls, it's the law

Written by Eric Windholz, Senior Lecturer and Associate, Monash Centre for Commercial Law and Regulatory Studies, Monash University

In the case of Liam Ryan, the AFL was, in a short period of time, able to trace the comments back to a member of the Richmond Football Club, which then imposed a two year ban on the perpetrator attending games.

But the AFL has also signalled there are limits to what it can do. AFL Chief Executive, Gillon McLachlan, [said](#) :

It's a big wide world out there and you can't do it for all of them.

But this is exactly what the AFL and its clubs must aim to do. Why? Because online trolling is a workplace health and safety issue.

Under [work health and safety laws](#) , AFL clubs must, so far as is reasonably practicable, provide and maintain for their players a working environment that is safe and without risks to health. And the AFL, as the sport's governing body, must ensure, so far as is reasonably practicable, that players are not exposed to risks to their health or safety arising from the conduct of the AFL competition.

We already have observed that online trolling is a risk to mental health. And as Taylor Harris's comments suggest, it can also make a workplace unsafe.

Through their actions, the AFL and its clubs have demonstrated they are able to expose and sanction trolls. This leans heavily in favour of the measure being reasonably practicable. The courts have [made clear](#) that once the availability and suitability of a relevant safety measure is established:

that safety measure should be implemented unless the cost of doing so is so disproportionate to the benefit (in terms of reducing the severity of the hazard or risk) that it would be clearly unreasonable to justify the expenditure.

The AFL and its clubs must continue to expose and sanction online trolls, it's the law

Written by Eric Windholz, Senior Lecturer and Associate, Monash Centre for Commercial Law and Regulatory Studies, Monash University

For the AFL to now do less would not only be morally debatable, it also would be legally questionable.

Eric Windholz worked with WorkSafe Victoria from 2001 to 2009, including as General Counsel and General Manager, Strategic Programs and Support.

Authors: Eric Windholz, Senior Lecturer and Associate, Monash Centre for Commercial Law and Regulatory Studies, Monash University

Read more <http://theconversation.com/the-afl-and-its-clubs-must-continue-to-expose-and-sanction-online-trolls-its-the-law-114293>