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Submission Re: Feedback on an exposure draft of the Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023.

I have reviewed the exposure draft of the Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023.

I have grave concerns for Australian citizens and all online digital platform services including providers/users be that organisational, business or politically related, media companies or otherwise if this bill was to be successful. It is one of the worst pieces of legislation introduced into parliament, because it is irresponsible, beyond unreasonable and limits fundamental rights.

The Australian government has already unlawfully engaged in interfering with the free speech of individuals, groups and associations for example on platforms such as Facebook, Youtube and Twitter. This was exposed in a Parliamentary hearing in May/June 2023 whereby the Department of Home Affairs disclosed their arrangement with social media companies to censor Australians.

I have concerns regarding the entire Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023. Starting with the terms by which misinformation and disinformation are laid out.

#### MISINFORMATION AND DISINFORMATION

7 Misinformation and disinformation 5 (1) For the purposes of this Schedule, dissemination of content using a 6 digital service is misinformation on the digital service if: 7 (a) the content contains information that is false, misleading or 8 deceptive; and 9 (b) the content is not excluded content for misinformation 10 purposes; and 11 (c) the content is provided on the digital service to one or more 12 end-users in Australia; and 13 (d) the provision of the content on the digital service is 14 reasonably likely to cause or contribute to serious harm.

15 (2) For the purposes of this Schedule, dissemination of content using a 16 digital service is disinformation on the digital service if: 17 (a) the content contains information that is false, misleading or 18 deceptive; and 19 (b) the content is not excluded content for misinformation 20 purposes; and 21 (c) the content is provided on the digital service to one or more 22 end-users in Australia; and 23 (d) the provision of the content on the digital service is 24 reasonably likely to cause or contribute to serious harm; and 25 (e) the person disseminating, or causing the dissemination of, the 26 content intends that the content deceive another person.

Under these terms the independent regulator, the Australian Communications and Media Authority (ACMA) and all included under the excluded content for misinformation purposes will have unprecedented powers to post any content and information as it sees fit without penalty. This means any individual or group of people who do not agree with content and or information can be labelled as potentially providing misinformation, that is misleading or deceptive and cause or contribute to serious harm. This proposed legislation is extremely dangerous and harmful and ostensibly silences any one from engaging in critical discussion or in challenging the content and information and worse yet, they

will be penalised for attempting to do so. This is unlawful, goes against basic human rights, and is a clear breach of power being used as an egregious attempt to thwart any form of justice.

Moreover some of the other most concerning areas centre around:

- freedom of expression
- excluded content for misinformation purposes

## FREEDOM OF EXPRESSION

Australia has been a Member of the UN since its formation in 1945. The UN General Assembly adopted the International Covenant on Civil and Political Rights (ICCPR) on 16 December 1966.

General comment 34. emphasises that freedom of expression and opinion are the foundation stone for a free and democratic society and a necessary condition for the promotion and protection of human rights. This General Comment addresses in detail:

- freedom of opinion
- freedom of expression
- freedom of expression and the media
- the right to access to information
- the importance of freedom of expression in a democratic society

General Comment 25 emphasises freedom of expression in the context of participation in public affairs and the right to vote.

The Human Rights Committee has stated that:

Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organise themselves. This participation is supported by ensuring freedom of expression, assembly and association. ...In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.

It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organisations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticise and oppose, to publish political material, to campaign for election and to advertise political ideas.

Furthermore, a well-established principle of statutory interpretation in Australian courts is that **Parliament is presumed not to have intended to limit fundamental rights, unless it indicates this intention in clear terms. This includes freedom of expression.**

## EXCLUDED CONTENT FOR MISINFORMATION PURPOSES

The bill you are proposing to enshrine in law gives the independent regulator, the Australian Communications and Media Authority (ACMA) unprecedented powers to control information.

Moreover further exclusions have been awarded to the following:

(b) professional news content; 16 (c) content produced by or for an educational institution 17 accredited by any of the following: 18 (i) the Commonwealth; 19 (ii) a State; 20 (iii) a Territory; 21 (iv) a body recognised by the Commonwealth, a State or a 22 Territory as an accreditor of educational institutions; 23 (d) content produced by or for an educational institution 24 accredited: 25 (i) by a

foreign government or a body recognised by a 26 foreign government as an accreditor of educational 27 institutions; and 28 (ii) to substantially equivalent standards as a comparable 29 Australian educational institution; 30 (e) content that is authorised by: 31 (i) the Commonwealth; or 32 (ii) a State; or (iii) a Territory; or 2 (iv) a local government.

The excluded content for misinformation purposes is unlawful and potentially harmful and unconstitutional. In fact the High Court has held that an implied freedom of political communication exists as an indispensable part of the system of representative and responsible government created by the Constitution. **It operates as a freedom from government restraint, rather than a right conferred directly on individuals.**

Furthermore, I have serious concerns over how the penalties are determined, which can only be described as draconian measures designed to control information and to force compliance, and even worse are designed to ruin not only individuals but the online service providers and cause reputational damage, including ruining careers and livelihoods, with serious repercussions for society as a whole. This is unlawful and goes way beyond the powers that should be afforded to not only to the ACMA but all parties excluded under the content for misinformation purposes.

Lastly, this bill will breach the privacy of not only digital online services but all individuals particularly as they pertain to private messages, information held by digital providers and the way that information is gathered by the ACMA.

I am vehemently against this bill. I believe it to be Orwellian in nature, the measures are draconian and unlawful and will be used to control information under the guise of protecting Australians.

I believe this bill to be extremely deceptive and only serves to bring harm to the welfare of a free and open society. It serves no other purpose than to control information and to stem free speech, and has been designed to purposely and permanently silence and penalise anyone that does not agree with any narrative including content and information outside of the ACMA and excluded parties contained in the bill. Lastly I confirm that my submission can be published and made public.

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