

Submission on the *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023*

My submission is that the *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023* should not be enacted in its current form. My reasons for opposing the Bill are as follows:-

1. The Bill contemplates that a government authority will decide what is 'misinformation' and 'disinformation' and assumes that a single decision-maker can infallibly determine what is true and what is false, misleading or deceptive. This is inconsistent with the notion that Australia is a 'free' and 'egalitarian' society. In a free society, truth should be sorted from fiction by allowing a free exchange of information and ideas, so that 'truth' is the product of the accumulation of many individual judgements about the validity of that information and those ideas. The validity of information and ideas can be tested by comparison with other information and ideas that circulate freely. No individual or organisation is to be set up as an infallible arbiter as to what is true because no individual or organisation is infallible in that regard. In an egalitarian society, equal respect is shown to each and every person by allowing the communication of honestly held beliefs and opinions, including honestly mistaken beliefs and opinions.
2. The definitions of 'misinformation' and 'disinformation' extend beyond material that is demonstrably false to include material that is 'misleading' or 'deceptive' – see paragraphs 7(1)(a) and 7(2)(a) of the proposed Schedule 9 - which potentially includes information that is true on its face but is captured by the definition on the basis of a judgement in the individual case that a lack of context (or similar) might have the effect that *some people* are misled or deceived (even if most or many people are not).
3. For material to be 'misinformation' and 'disinformation', it is enough that 'the provision of the content ... is *reasonably likely* to cause or contribute to serious harm' [italics added] – see paragraphs 7(1)(d) and 7(2)(d) of the proposed Schedule 9. There is an attempt to define 'serious harm' in subclause 7(3) but this is not an exhaustive definition. It seems to be contemplated that the matters listed in the subclause would be 'weighed' in a fairly unstructured way by the decision-maker. 'Harm' is given a very broad definition in clause 2 that includes, notably, 'disruption to public order *or society* in Australia' [italics added]. This would appear not to be limited to the incitement of public violence or civil commotion.
4. Any uncertainty as to what might be characterised as 'misinformation' or 'disinformation' encourages providers of digital platforms to err on the side of caution by developing excessively restrictive policies as to what material may be disseminated on their platform. The result may be a 'freezing' of legitimate discourse on matters of public policy and other matters of public interest.

The Bill, as currently framed, effectively confers power on a government body to decide, within very broad parameters, what constitutes 'misinformation' and 'disinformation' and to impose significant penalties on digital platform providers for allowing the dissemination of information so characterised. For this reason alone, the Bill should be rejected. If the Bill is to be enacted, this should occur only after significant amendments to the definitions of 'misinformation', 'disinformation', 'harm' and 'serious harm'.

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