

Dear Sir/Madam,

Thank you for the opportunity to make a submission to the Australian Federal Government regarding the proposed *Communications Legislation Amendment Bill 2023 (Combatting Misinformation and Disinformation)* – henceforth known as the ‘Bill’.

This Bill is intended to extend the powers of ACMA (the Australian Communications and Media Authority) to determine what constitutes ‘misinformation’ and ‘disinformation’ in the media – and its decisions will be final. Once it has advised social media platforms of what is ‘truthful’ and ‘acceptable’ on any given topic, ACMA will be able to impose stringent penalties on those platforms that publicise what it considers to be ‘misinformation’ or ‘disinformation’ whether on individual or corporate accounts. Another section of the Bill also exempts the government and ‘registered’ news organisations from being subjected to ACMA penalties.

There are numerous serious concerns pertaining to this proposed legislation that would impact many, if not, most Australians. I will list them below to distinguish each issue as concisely as possible.

**1. Australians will lose their human rights to freedom of speech and expression.**

Currently, Australia is a signatory to the *United Nations Declaration of Human Rights and the International Covenant on Civil and Political Rights*, of which *Article 19* states: ‘*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.*’ This right of Australians to freely hold opinions, and express them via media platforms, will be seriously impacted by this Bill. Once ACMA determines that certain opinions or beliefs constitute ‘misinformation’ or ‘disinformation’, any media organisations that host such opinions could be targeted by ACMA with heavy fines and/or jail time for the platforms’ managers. In order to avoid these harsh penalties, media organisations will have to police the content on their outlets to such an extent that certain views on religion, politics, health, moral or other controversial issues will not be published – in direct contravention of the Human Rights declaration quoted above. In other words, this Bill extinguishes the rights of Australians to freedom of speech and expression ‘*through any media regardless of frontiers.*’

**2. ACMA will have excessive powers to determine what is ‘misinformation’ or ‘disinformation’ with no right of appeal.**

By making ACMA the sole arbiter of what constitutes ‘misinformation’ and ‘disinformation’, and failing to give clear, legally explicit definitions of terms like ‘threat’ or ‘harm’, ACMA could declare any opinion on any topic as ‘misinformation’, ‘disinformation’ or posing a ‘threat’, with no right of appeal by individuals or entities. To give a salient example, Australia will soon host a Referendum on whether or not our Constitution should be changed to allow one racial group the right to have a second ‘voice’ to parliament and executive government (on top of the one person, one vote system that already exists) – a right that no other racial group of Australians will have. Currently, there are campaigns by those that support either the ‘Yes’ or ‘No’ cases prior to the referendum being conducted. However, several government ministers have already called the arguments being made by lawyers, politicians and members of the public for the ‘No’ case as ‘misinformation’, ‘disinformation’ or ‘threatening’. If this Bill were passed, there would be no media platforms allowed

to publicise the 'No' arguments at all – so the whole referendum process would be hijacked by ACMA. This Bill robs Australians of their democratic rights to share their opinions via media because one small group of unelected Australians (the ACMA executive team of six people) deems their views to be 'misinformation', 'disinformation' or 'threatening'. This is completely unacceptable in a democratic country such as our own.

**3. The Bill uses poorly defined terms making it more suited to a totalitarian regime.**

The Federal Government website states: *'Misinformation and disinformation pose a threat to the safety and wellbeing of Australians, as well as to our democracy, society and economy.'* Even this statement could be construed as 'misinformation' by democratic citizens. By failing to adequately define what constitutes 'misinformation' and 'disinformation', this statement is meaningless and renders the Bill unenforceable from a democratic point of view. Such an extension of power to so few individuals, the lack of any rights to an appeals process, the reliance on the judiciary to hammer out the possible meanings of vague terminologies and the brutal enforcement of heavy fines and possible incarceration of offenders are all features of totalitarian regimes: they have no place in a free and democratic nation such as Australia.

**4. The Bill does not provide adequate safeguards or transparency.**

The Australian Human Rights Commission (AHRC) states that: *'There are inherent dangers in any body... becoming the sole arbiter of truth. ... There is a real risk that efforts to combat online misinformation and disinformation by foreign actors could be used to legitimise attempts to restrict public debate, censor unpopular opinions and enforce ideological conformity in Australia.'* The AHRC and other groups have clearly indicated that the Bill does not include adequate transparency or safeguards for democratic rights and should therefore be withdrawn.

**5. Lack of government accountability.**

By exempting the government from being targeted by ACMA, the Bill enables government ministers and executive government to present only one position on a range of important issues. Even if the position is later found to be false or misleading, there will be no penalties for the government or media companies that present this inaccurate information: thereby leading to an abuse of power and a serious lack of accountability for government agencies to present truthful material to the public. Once again, this is more a feature of totalitarian regimes than that of a free, democratic nation such as Australia.

**6. The Bill permits enormous government overreach.**

'Misinformation' is defined by the Bill as 'unintentionally misleading or false content that may cause serious harm'. 'Disinformation' is defined as 'misleading or false content that is intended to deceive or cause serious harm'. 'Serious harm' is defined very broadly and includes expressing 'hatred' against 'protected groups, harm to the environment, or the threat of undermining the democratic process'. The irony – if not rank hypocrisy – of this situation is that the Bill itself poses a 'threat of undermining the democratic process'. It is normal in democracies for there to be a range of opinions on almost any issue, but once ACMA accepts the government's position, all Australians who hold opposing views and express them on media platforms will be deemed to be spreading 'misinformation' or 'disinformation' by definition. This Bill therefore permits enormous government overreach and dominance into the range of opinions that could and should be expressed in a healthy democracy.

**7. The Bill permits overreach by media organisations to restrict freedom of speech.**

Since the Bill contains no liabilities for media outlets who excessively police free speech on their platforms, the tendency will be to overuse their ACMA-endorsed powers rather than risk fines or jail time, thereby limiting transparency, accountability and balance in the use of these powers. This will again lead to the loss of democratic freedoms by individuals and media companies.

**8. The Bill provides no adequate protections of individual privacy.**

Since the Bill permits ACMA to compel owners of digital platforms to disclose information about those who express 'misinformation' and 'disinformation', there is no protection of individual privacy.

User information will not be protected and this loss of privacy constitutes a further loss of democratic rights to Australian citizens.

**9. By excluding all government-authorised content from censorship, the Bill is undemocratic and one-sided.**

The Bill excludes all government-authorised content from this censorship regime, so it is inherently hypocritical and will establish an asymmetry that results in one rule for government and another rule for opposition parties and media organisations that usually hold government to account. This is a direct threat to our democratic system of government and the ability to freely report alternative viewpoints via media organisations.

**10. The Bill only permits 'registered news organisations' to present the government's opinions – again, a practice more suited to totalitarian governments than democracies.**

Along with government, only 'registered news organisations' will be exempt from ACMA's power to prosecute. If only 'official' journalists employed by 'official' news organisations are protected, there is no hope that we can ever again engage as a society in genuine debate and 'truth-telling'. In order to become a 'registered news organisations', there will no doubt be a legal requirement to represent the government's own views on any and every issue. Carving out special privileges for certain politicians, academics, and journalists just highlights that everybody else will have lost their rights to freedom of opinion, expression and speech. Once again, these privileges resemble those in communist or fascist regimes, and directly oppose the current rights that exist for individuals and media outlets to express counter-narratives to the government's position on many controversial issues. Even if the opinions of the government or 'registered' news organisations are later shown to be false, there will be no ability for members of the public to take legal action or demand an apology because both entities will already be exempted by law from potential accusations of 'misinformation' or 'disinformation'.

**11. Excessive penalties within the Bill.**

The severity of the penalties for failing to comply with the Bill's standards are not in proportion to the 'crimes' of reporting counter-narratives. Such penalties constitute excessive overreach and will act like those of a totalitarian regime.

In conclusion, despite the comment on the government website that states: *'Misinformation and disinformation pose a threat to the safety and wellbeing of Australians, as well as to our democracy, society and economy'* – it is indeed this Bill that *'pose[s] a threat to the safety and wellbeing of Australians, as well as to our democracy, society and economy.'* In all the ways outlined above, the proposed *Communications Legislation Amendment Bill 2023 (Combatting Misinformation and Disinformation)* is deeply flawed and should be withdrawn by the government with immediate effect.

Once again, thank you for the opportunity to present my concerns regarding this Bill. I would urge all parliamentarians to defeat this Bill at the earliest opportunity in order to protect the democratic rights to freedom of speech and freedom of expression for all Australians.

Yours faithfully,

Dr Michele Browne