

To: The Department of Infrastructure,
Transport, Regional Development,
Communications and the Arts, GPO Box 594
Canberra ACT 2601

Regarding: New ACMA powers to combat misinformation and disinformation (the
Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill
2023)

To the submissions officer,

I understand this bill to allow ACMA to *indirectly* curate and censor content through its code and standard making powers which supports government and other authoritative institutions in their efforts to protect Australian citizens from harm. I believe these powers in their current iteration as presented in the exposure draft have the potential to do more harm than good. They undermine the necessary legal due process when there is a discrepancy between public opinion and the positions of our authoritative institutions. The definitions provided lack the clarity required to protect freedom of speech and expression while minimising harm from disinformation.

Further separation between the terms misinformation and disinformation are required. The bill describes that disinformation is disseminated with an intent to deceive or cause harm, it has an antisocial nature and can perhaps tighter regulations when there is a potential for harm. Misinformation on the other hand is poorly defined and understood, the keywords used are false, misleading or deceptive. Deceptive communication harbours negative and misleading intent and is more in the realm of disinformation by the bill's own definition, that is if we use "intent" to separate the two terms. Understanding the false and misleading aspects of misinformation is important in clarifying the exact content that may justify ACMA's powers.

In regards to "false" information, only a judicial process can determine the fine line between truth and falsehood and this may take several months at a minimum. What criteria are the ACMA using to determine what information is accurately reported as false? What checks and balances are in place to ensure that the review of all reported information is accurate, and the outcome of the review is consistent regardless of the opinions held by the reviewer? Does the content provider have to include a clear reference supporting their claims, perhaps from peer reviewed literature, for it to be deemed accurate and what if those claims oppose government recommendations? Does anecdotal evidence and the authors own subjective opinion need to be explicitly prefaced as such to avoid any confusion on the quality of their information? Perhaps tighter regulations surrounding the language used in social media will inspire greater thoroughness in the spread of information without resorting to stricter regulatory powers.

Accurate and truthful information which is out of context can be misleading. This aspect of misinformation can still indirectly cause harm but not due to the intent of the author, as it can be communicated with sincere and honest intent, but by how it is understood by the end user. This information is necessary for public consideration. Reviewing it as harmful to the end user and thus requiring censorship indirectly through the end stage of ACMA's progressive powers implies that the ACMA has adopted a single context as the primary truth, which leads us once again to the undermining of due process. A simple example of de-contextualised truth that I suspect will be classified as misleading information is, "Non of the COVID-19 vaccines have long term safety studies", if spoken soon after their release then the comment is technically accurate as most pharmaceuticals go through several years of safety testing to be considered safe, yet the comment

undermines the safety testing that has been done through project Warp Speed. This statement can cause hesitancy and thus harm through under-vaccination during a pandemic but emerging data has shown that COVID vaccines have a far greater injury rate than that of previous vaccines using recent TGA data showing the rate of injuries in Western Australia as an example. I understand that some vaccines have even been removed from the market for carrying lower risks of injury than the COVID vaccines. So, who determines the ever shifting ethical line between the risk of personal injury from a product and enforcement of its use through a mandate? Such conversations are a bedrock for a free and creative exchange of ideas that, despite carrying a risk of harm, provoke both insight and resiliency through a diversity of thought and action. An unforeseeable future (including exceptionally poor and disparate epidemiological modelling) necessitates precisely this level of free speech, which is immediately subverted when attempts are made to exert control over our public dialogue to preference and overexpose a single message such as “safe and effective”, for this example.

All three key words attributed to the definition of misinformation are poorly chosen and the definition lacks the clarity needed to protect freedom of speech. I believe any further substance attributed to the word misinformation, despite it’s potential to indirectly cause harm, is concretely within the realm of democratic discourse and creates the necessary friction that allows ivory tower academics to prove the integrity of their ideas and decisions against public scrutiny. Though I do agree that there is a line and any anti-social behaviour through the spread of *disinformation* harbouring harmful intent should be moderated both to mitigate public confusion and to help improve the quality of discourse on any given topic.

While this bill claims it is not aimed at curtailing freedom of speech, I suspect it will classify any oppositional ideas to both the lockdowns and COVID vaccinations as a factor in increasing disobedience and hesitancy respectively, and thus causing harm to the health of Australians. Many of the lock down response and vaccination critics such as Peter McCullough, Robert Malone and Robert Kennedy Jr were figure heads in the rally’s during COVID. They had convincing arguments which were often well referenced yet they were met with active censorship rather than engagement which strongly intensified the level of dissent and conversely further propagated much of their contribution and discourse surrounding vaccination and lockdowns. Was their contribution to the discourse surrounding COVID helpful in retrospect? I believe this is worth reviewing. A retrospective review of the accuracy of third party fact checking services during the pandemic will help inform the extent of ACMA enforcement powers if any are justified at all. Emerging evidence on the effects of lockdowns as well as COVID vaccine safety and efficacy will indicate whether or not both have had unforeseen and undesirable outcomes. And perhaps those outcomes have been effectively tempered by the doubt and hesitancy created by those figure heads. Of course any review would need to taking into account all factors including increases in domestic violence, mental health, substance abuse, our economic health, etc. Higher level modelling, analysis and discussion is essential before insisting on tighter regulations that curtail freedom of speech over our digital social landscape, with public access to the modelling and data justifying the proposed ACMA powers for transparency and accountability.

The bill seems intentionally vaguely worded and is absent of the proper checks and balances that allows it to be used fairly, and instead it just seems to serve as an instrument that only supports the current government in power and whatever opinion it holds at the time. It has poor implications for democratic debate outside of authoritative decision making and is leaning towards autocratic forms of control. Stifling any public concerns also stifles the very feedback that is required to instigate and refine democratic discourse and policy making. The solution is greater transparency in decision making with more pressure on those in authority to make better decisions that are easily defensible against public scrutiny through education, engagement and understanding.

I also strongly support Peter Fam's submission on behalf of Maat's Method law firm and Australians for science and freedom (their submission was made public). Their recommendations for improving this exposure draft, as well as their opinions, reflect my own.

Thank you for reading my submission.

Kind regards,

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29 July 2023