

Review of the *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023*

Submission from [REDACTED]

Email: [REDACTED]

The Hon Michelle Rowland MP  
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House of Representatives  
Parliament House  
Canberra ACT 2600

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Dear Ms Rowland,

Thank you for the opportunity to submit a submission to the review of the *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023*.

We are making this brief submission as members of the public to express some concerns about the draft Bill, framed around the issues of:

- the coherent and capable of being tested and applied definitions of disinformation and misinformation;
- governance and oversight; and
- the proposed law's potential effect on Australians' freedom of speech and expression.

## 1. The definitions

We would like to highlight the ambiguous nature of the definitions of misinformation and disinformation provided in the Bill and the confusion as to how these definitions are to be applied by the digital platforms to assess the quality of the information. E.g., currently, the Bill proposes the following test for misinformation. It should be:

- (a) "false, misleading or deceptive";
- (b) "not excluded content for misinformation purposes";
- (c) "provided on the digital service";
- (d) "to one or more end-users in Australia"; and
- (e) "reasonably likely to cause or contribute to serious harm".

This definition raises more questions as to the definitions and application of the following terms:

- False
- Misleading
- Deceptive
- "reasonably likely"
- Harm.

Who is going to be the ultimate arbiter in deciding whether the information in question is “false, misleading or deceptive”? Falsehood would suggest that there is a reliable source of truth that could be referred to and that is widely accepted. Yet, during the COVID outbreak, we saw many messages that contained what we now know to be scientifically proven (though it took time to prove) information blocked and/or labelled as “misinformation”.

We included the word “harm” in this list because although a definition of the word is provided in the Bill, it also raises more questions. For example, the word “hatred” is not defined and leaves a lot of room for interpretation. Would a negative comment about someone who is of a particular ethnic origin or sexual orientation, or religious background be considered just a negative comment, an offensive comment or “hatred”? E.g., would a comment like ***“I hate the Catholic church because my son was molested by a priest”*** be labelled as “harmful” because it would certainly offend the Catholic church and its followers and even has the word “hate” in it?

## **2. Application, governance, and oversight**

There is insufficient detail about the application of the proposed law and its governance and oversight in the Bill. This leads to an assumption that the platforms will self-determine any material as misinformation or disinformation and, most likely, over-censor information to avoid penalties. The current voluntary fact-checking regime employed by the platforms, in our view, is the most democratic one as it does not deprive the public of accessing an alternative opinion or view, while at the same time allowing the public access to scientific and scholarly sources that may contradict or oppose this data, ultimately leaving the public with the opportunity to exercise their right to free thought and reasoning. Going beyond this by simply deleting any kind of information is an extreme approach that robs the public of the opportunity to critically assess the information available and, instead, treats the public as a perpetual child of sorts that is incapable of processing the information and making decisions. This could lead to a version of 1984/Stalin repression-style thought policing where any expressed thoughts would be censored if they are suspected to lead to any harm to any end-user. It is, in our opinion, potentially extreme overreach by the platforms as well as the government, which leads to the next point.

## **3. Freedom of speech and expression**

Free speech has a critical role in a democratic society. Australia is a party to seven core international human rights treaties. The right to freedom of opinion and expression is contained in articles 19 and 20 of the *International Covenant on Civil and Political Rights* (ICCPR). Not only the Bill is not protective of freedom of expression, but it aims to directly regulate the content of any speech, publication, broadcast, display or promotion on digital platforms (except, conveniently, those that

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are approved by the government) and to restrict or censor information on social media, which may include important matters relating to public health and political matters. Our grave concern is that the proposed law will make it harder for Australians to criticise their government and government-subsidised institutions and even, each other, when they disagree with alternative views.

Although we recognise that the right to freedom of speech should be balanced with other rights and responsibilities, we question the integrity of the proposed system for the governance of information on social media platforms. Most publications that would advocate "national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence" are already prohibited by law and do not require another layer of legislation. We urge the government to exercise caution so as not to overreach into the realm of free thought, free speech and free expression.

Our submission is that the proposed legislation will be an overreaction to the problem of false or misleading information and that the existing tools are sufficiently effective in dealing with such information by exposing it and opposing it with other, more reliable sources. Silencing is not an answer and will only create a greater divide between the public and the government by generating even more mistrust within the general community.

Although the Bill undoubtedly is well-intentioned, *'the road to hell is paved with good intentions'*.

Yours faithfully,

[REDACTED]