I have several short points to record, all of which warn against the introduction of legislation in this sector. The proposed legislation is not only of dubious validity, it will be ineffective against it's stated aims while doing harm to that which it claims to protect.

In giving these comments I identify myself as having:
- a history of promoting community broadcasting in Australia;
- a current Associate membership of the Electronic Frontiers Foundation (USA);
- and past service as a board member (2015-18) of Electronic Frontiers Australia.

1: Be it proposed directly or by proxy, it is an antiquated notion that governments can use law to police public speech in the modern global village. Citizens of this world have access to far more diverse and disparate information feeds and viewpoints than was the case even a mere 40 years ago. They have already demonstrated a capability to determine their own viewpoint and personal opinion on contemporary issues without the need for governments to construct 'word-fences'. Whether somebody chooses to believe or disbelieve a given item should be of no concern to the administrators of any democratic nation.

2: Australia should learn from the mistakes of countries that have already attempted legal approaches to policing publishers and public forums. The outcomes of these types of measures are not positive for either democracy or the citizenry. The real-world experience of controls implemented against speech and/or publishers by the United Russia Party, the Chinese Communist Party, and the National Socialist German Workers Party run counter to Australian society. In addition to degrading the international view of Australia as a democratic nation, anti-freedom mechanisms such as this will serve as a deterrent for international citizens seeking asylum from such oppression.

3: While proposing to police social media company practises, in effect the law will silence and persecute individuals via proxy. Platform operators will confine the scope of their acceptable-use terms and conditions, while increasing their use of 'fact-checking' to avoid unwanted discourse against the current narrative. Operators may also choose to geo-fence content so that some discussions are not available in a given jurisdiction. All of these measures run counter to the interests of preserving freedom of speech in a democratic society.

4: The proposal claims to scope the operational policies of companies but it will in effect be far more granular. The assessment criteria for harmful topics is such that items more specific than the higher level policy will become the action points. Already at this early stage the proposal itself delves into contemporary subject matters thereby demonstrating it will be used to target items of content. Given the long demonstrated history of scope-creep, this legislation and subsequent regulations will only become more oppressive over time despite the optimistic 'good-intentions' of this original proposal. There is no set of active Australian law which has become smaller either in volume or scope since Federation.

5: The mechanism of complaint under the process leaves it open to exploitation by activists and political agitants. Of all the categories of complaint that will be registered under the legislation, contemporary political items will the highest category. It is already the case in Australia where complaints lodged under processes using this model, the activist class are over-represented. Legislation which claims to protect Australian's overall but in practice becomes leverage for the activist subset is a poor standard of governance.

6: Market forces have demonstrated that technology companies rise and fall in favour. Australian's are quite capable of voting with their feet and spending their time and money where they feel more entertained, engaged and welcome. IT ventures that fail to hold interest against changing societal values and shifting generations, will atrophy at the hand of the free-market. In short, a platform that routinely provides hollow or false content will lose advertising revenue and it's subscriber base. Government regulation is not necessary where free-market forces apply.

7: Excessively large penalties for individuals, along with the high cost of litigation, effectively prevent justice under this law. Freedom from the fear of government prosecution in social discourse should be the default in Australia and countries like it. There are already laws and regulations used in Australia by both government itself and activists where the process is used as a punishment. These legal channels may have originated with good intentions but provide avenues that are routinely exploited for lawfare aimed at stopping or otherwise harming an opponent or competitor.

8: The Commonwealth Government is not empowered with the legal authority to make laws with regard to the holding or expression of opinions. Using legislation to compel a third-party to do so on behalf of the government would reasonably fail legal challenge. The legal history of ACMA's predecessor *(Australian Broadcasting Tribunal)* demonstrated this where license holders had to be deemed 'fit and proper people'. Subjective legislation leads to litigation where only the wealthiest can typically succeed. Such outcomes are neither beneficial to or defensive of democratic freedoms.

9: Australian laws are not required in this matter because despite having branch offices around the world and paying tax in Ireland, the mega-companies this legislation is supposed to police are American. The digital media platforms in America are afforded protection by Section 230 of the Communications Decency Act 1996 exempting them from the conventional responsibilities of publishers. The introduction of legislation in the small market of Australia will either be ignored, or the operators will provide a reduced feed for the suppressed geo-fenced Australian market. We have seen this done previously for Hong-Kong and China. Such restricted outcomes are not positive for our nation.

10: The contemporary terms 'misinformation' and 'disinformation' are euphemistic issues to enable censorship actions. This legislation provides a mechanism for the prejudicial enforcement of censorship to fight non-problems. ‘Mis’ and ‘Dis’ information are terms that have only fallen into common use as part of recent political discourse. These words do not parallel the era of democratic political debate and neither do they coincide the rise of the internet technologies. Laws which will enable the intimidation of opponents have no positive place in Australian society.

11: There are sufficient current Australian laws and regulations on the books which can be used by individuals and bodies corporate to take action against public offence. Throwing ACMA into the ring only serves to complicate the legal playing field. Indeed the scope of the federal legislation may well obscure or prevent a lesser legal case from proceeding thereby denying justice. Any government instrument that claims to genuinely defend freedom of speech must protect every individual in that democratic system, not just the chosen ones.

12: ACMA is neither resourced or qualified to assess the criteria proposed by the legislation. ACMA would have to increase both the size of it's operation and the complexity of it's skillset to implement the proposed monitoring and assessments. The cost of this scale-up should not be borne by the Australian taxpayers when it is said to be an effort aimed at the operators industry. The platform companies supposedly targeted should form the revenue base for compliance measures.

13: ACMA does not have the diversity of staff to provide the necessary heterogeneous view of Australian society. It is highly likely that actions taken by ACMA would originate from a limited spectrum of viewpoints and tolerances. It is unfair to forcibly expect the Australian population as a whole to accept the social compass of an administrative or activist subset.

14: Governments and their agencies are the largest creators of 'mis' and 'dis' information world-wide. The legislation only provides for legal action on individuals and corporations. Agencies such as the Joint Threat Research Intelligence Group (JTRIG) rely on generating disinformation and use social media to propagate it. Departments, authorities and officers will not be targeted by the new laws which establishes the defined harm of this legislation to be scoped at the population, and not the information accuracy issue *per se*.

15: ‘Misinformation’ and ‘disinformation’ items are transient. That which can be assessed to be true can subsequently be found to be false at a later date. In politics and any emergent situation *(such as war or pandemic)* information or statements that may offend or challenge the prevailing view can be overturned in a relatively short time. It is neither beneficial or feasible to prosecute an expressed view, if by the time the prosecution progresses, that fact has been overturned. To have such laws in place only reinforces the view that this legislation would be used more to damage and silence dissent than to enhance the purity of discourse.

16: The proposed authority is said to be in defence of democracy but will have completely the opposite effect. In any debate some people will view new facts as being wrong and some new learnings will be initially rejected due to the nature of humans to be fearful of change. The organic propagation of individual assessment and decision through the population will be retarded where government casts an authority shadow over the forums used for discourse and debate.

17: The proposal has thus far failed to consider that the introduction of even more law, on top of those already in force will be counter-productive in protecting democracy or preserving freedom of speech. It can be argued that the purposes behind this proposed legislation could be better served by repealing existing laws than by adding new ones. Free people in a free society require freedom of both thought and the right to express those thoughts in order to collectively exercise their democratic choice unencumbered by government authority.

In summary it can be demonstrated that legislation which uses process management to in-effect prosecute a determination of which content is acceptable will not have the actual effect of improving free-speech. With regard to public interest and freedom of expression, the government should err on the side of freedom and refrain from pursuing further regulation in this matter.

- Stuart Greig