

To Whom It May Concern

Thank you for taking my comments, and the comments of the public, into consideration during the drafting and implementation of the “Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023” (Henceforth referred to as the “Bill”) which concerns them and their interaction with the information environment including their ability to access, engage and communicate information.

It is evident that the purpose of the Bill is to solve a current and emerging set of problems that are a threat to the stability of our institutions and our economic, cultural, and democratic systems. These threats are very real however on reading the bill it is evident that this legislation will act more like a hammer when instead carefully applied tweezers are needed. Furthermore, the Bill does not include mentions of key points of concern in this space, namely the use of bots or fake accounts for the purpose of astroturfing. This is a concern as an individual sharing content behind their name and reputation should not be treated with the same extreme prejudice that one might with fake accounts/bots disseminating information perceived to be misinformation/disinformation. The lack of distinction and failure to address specific points of concern in the Bill in favour of being broad and general means that the Bill will likely require future adjustments, the creation of a new Bill, or in the near future for ACMA to create its own misinformation codes (as defined in Div 5: 50).

On the webpage <https://www.infrastructure.gov.au/> where public feedback is elicited, it is asked whether the Bill strikes a balance with freedom of expression. In my opinion, this balance can be struck by ensuring that misinformation codes include a provision that allows freedom of speech for individuals on platforms who are posting behind their name and reputation (even if that must be verified). This would not include calls to commit crime or illegal activity but will provide a layer of protection for freedom of expression so that misinformation codes can be developed bearing this provision in mind rather than allowing the censoring of individuals. Furthermore, free expression can be protected by ensuring that citizen journalists, small independent groups and emerging new organisations can be labelled “professional news content”.

**Why this is a critical issue to get correct and why nitpicking is necessary.**

Lawmakers and public institutions have the difficult problem of protecting the Australian public, in this highly complex environment, both now and in the future. The restriction of expression, information sharing, and ability to access different points of view through law must be approached carefully as these are rights that are fundamental to a society that aims to ensure the freedom of its citizens. Regardless of intent and initial use of legal instruments, there are always unintended consequences of intervening in a complex system (such as our collective information environment) and always the potential for misuse. This is why specificity must be employed in this situation because for the first time in human history, due to technology, a complete and immovable totalitarian state is possible and lawmakers must defend against this rather than pave the way for systemic control (even if it is paved with good intentions). The horrors of 20<sup>th</sup> Century (or modern day China) are a warning sign of what can happen once a society/culture loses its way. We are not immune now and won't be in the future. Free speech is both a defence against this possibility and will be the first victim if such a state should arise. Hence, use metaphorical tweezers, proceed carefully, make laws with care, don't make it easy for the would-be controllers of humanity by centralising the power to censor, because they do exist, have existed, and will exist.

**Specific issues:**

- 1) Stifle innovation: (Div 3: 32, Div 4: 37 – 39)

The Bill requires that representatives of a section of the digital platform industry create a misinformation code that will then apply to all other platforms in this section of the industry. This eliminates the chance for a variety of solutions to be devised and tested by various companies (or within the same company). Misinformation and disinformation are complex problems, and the best solution is unlikely to be the first or most obvious. By restricting the number of approaches that can be implemented there is a reduction in the chance that best practices will be uncovered. An example of differing approaches is playing out now, Twitter (now "X") utilises "community notes" allowing users to act as an aggregated fact checker compared to Facebook utilising third-party fact-checkers. It is not clear which of these or if another method is best practice for managing misinformation/disinformation, however the only way to determine that is to allow these companies the freedom to compete, compare and contrast the approaches.

Further, those in the industry establishing codes will be able to use their disproportionate influence to establish codes that may not be implementable for smaller companies, those with fewer resources, or those with different governance structures (such as a decentralised digital media platform). Whether intentionally (which it might be, to protect market share) or accidentally, Misinformation Codes established by representatives of a section may stifle experimental approaches to solving the unique problem and also stifle the innovation of new business models that may ultimately benefit the Australian people or "solve" the disinformation problem more effectively.

2) Incentive/Disincentive structure encourages *over-censoring* regardless of actual content:

Businesses/systems act within their best interests given the environment and the incentives/disincentives of that space. This Bill creates an environment that incentivises over-regulating content as the penalties for making a mistake in regulating that content are financial in nature as well as the possibility that ACMA would create their own misinformation code that will then apply to the digital platform. Without ACMA explicitly taking the role of dictating what should and shouldn't be allowed on platforms the platforms themselves are likely to take a hardline approach and regulate any content that *might* be considered misinformation/disinformation regardless of if that content matches the criteria. Thereby it is expected that the platforms will take a "better-safe-than-sorry" approach, given the rapid rise of A.I and automated systems it is likely that management of content will be done by an algorithm, harsher than necessary and will disregard actual legitimacy or content.

3) Definitions of misinformation and disinformation do not consider the difficulty in determining "true" from "false". (Subclause 7(2))

Definitions of misinformation and disinformation in the Bill specify for content to meet the criteria it must be "considered false, misleading, or deceptive". How to correctly identify what information is false or true is unlikely to be immediately evident in various domains. Public opinion, understanding, and acceptance of information are determined by the ability to access information and have it contrasted with conflicting ideas or competing information. In some cases, this is a simple and clear process and fact is easily discernible. However, in other cases what is "true" and "false" is not evident and for Australians to make personal decisions on these topics access to competing information is necessary. As digital platforms have become the equivalent of a town square it is here that debates on cultural topics, emerging science, new conflicting ideas/viewpoints, and more emerge and are debated before they are accepted/proven as "true" or "false". By ensuring that this process cannot

take place the opportunity to determine truth is taken away from broader society and given to whichever third-party/process the digital platform has specified in their Misinformation Code. The danger in this is that true information will be censored and thereby hidden from the public, examples of this have arisen post-pandemic where certain discussion points were censored by tech platforms despite “true” and “false” not being clear at the time, another key example would be the replication crisis in scientific literature. Regardless of where individuals fall on these issues the determination of “true” or “false” is not straightforward and scientific evidence/viewpoints presented in good faith must be made available to the public to make their own minds up. This is especially important as policy is often downstream from public opinion and public opinion is determined by access to information, often in the digital town square.

(Side note: as with determining fact so too is the creation of culture, it is a process of socialisation that requires pushback, discussion, and competition. Changes in cultural perspectives are inevitable and the processes by which they happen need to be healthy and unbiased to ensure that the result is closer to actual public consensus rather than a manufactured consensus).

4) Definitions of “harm”, misinformation, and disinformation are broad. (Subclause 7(2))

A further requirement for content to meet the criteria is that it is “reasonably likely” (a vague and bendable provision) to cause “harm”. “Harm” is defined broadly and when combined with “reasonably likely” a wide plethora of content may fall under this definition. Of concern is the potential for genuine discussion and criticism of belief systems (cultural or religious) to be labelled incorrectly as “hate” (point (a) under definitions of harm page 6) and the potential for any content related to organising protest (necessary for a functioning democracy) being censored (point (b)). Further examples could be provided, however they could be endless and are not necessary, one can make an argument for almost anything to be “reasonably likely” to cause “harm”. In fact, in a backward logic, as this bill aims to protect Australians from “harm”, by protesting the implementation of this Bill on a digital platform and disseminating that viewpoint it could be argued that the content protesting the Bill is harmful and should be removed, as it would be with any online discussion and information sharing on future government Bills that aim to “protect” or “reduce harm”. This is troubling as citizens in a democracy must be able to publicly debate and disagree with government policies (for it to be called a democracy).

5) The Bill provides provisions for protecting democracy but misunderstands underlying requirements for democracy to function. (Div 3: 35)

The Bill provides protections for political speech and information on digital platforms in relation to elections, referendums, and related authorised content that has the purpose of influencing how citizens vote. The intent of this seems to be a means of protecting democratic processes and to not impede on political campaigns on matters related to the primary engagement most Australians have with the political process (voting in elections and referendums). By only enshrining this part of the democratic process the Bill misunderstands a core part of democracy and instead ensures the possibility that all information immune to misinformation codes are only political content that is coming from Top-down. Democracy at

its core is a bottom-up process, democracy is the allowance of a population to utilise their aggregated wisdom to elect representatives that will then debate and compete on their behalf. For this process to work the way it is intended the population needs exposure to all available information about their world, country, and circumstance, so that a bottom-up decision can be made. Furthermore, democracy is not just involvement in elections. Policy and political decisions (even the issues that political campaigns campaign on) are downstream from public opinion, public opinion is formed based on a variety of information and sources. To codify in the law the ability to reduce potential sources of information is to also codify the ability to constrict public opinion and thereby policy and political decisions. While it is evident this is not the intention of the Bill, this must be considered as both an unintended consequence and the potential for misuse in the future.

These are some of the core issues I have identified with this Bill, it may seem like I am grasping at straws, being overly concerned about censorship, or nitpicking but I believe this to be absolutely necessary as the consequences of establishing broad laws around censorship are widespread. The freedom to engage with a variety of different information is tantamount to the freedom to think. Focus on bots, fake profiles, A.I generated content, and intentionally manipulative dissemination of content via proxy rather than individuals engaging in discussion, debate and information seeking behind their real-life persona.

Kind Regards

Jared Knott