

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

**Re:** The *Communications Legislation Amendment (Combatting Misinformation and Disinformation)* Bill 2023.

05/08/2023

Dear Officer,

### **SUBMISSION**

Thank you for the opportunity to make a submission regarding the *Communications Legislation Amendment (Combatting Misinformation and Disinformation)* Bill 2023 ('the Bill'). I write to you as an Honours Law Student with the [REDACTED] with a concern for the preservation of freedom of speech in Australian society.

As it stands, this Bill presents a Pandora's Box of problems in its endeavour to regulate information disseminated on media platforms. At best, in the instance where the current government has only honest intentions to delete information that is verifiably false and unobjectionably dangerous, this Bill provides insufficient protections against the poorer intentions of future governments to control public conversations on matters of genuine debate for political gain.

I refer you to s 7(1) of the Bill. This Bill gives the government absolute discretionary authority to determine what qualifies as 'misinformation' or 'disinformation' by empowering it to determine what qualifies as 'false', 'misleading', or 'deceptive'. This section is predicated on a dangerous perception that what is true or false is unilaterally verifiable and should not be subject to public debate or scrutiny through the availability of alternative facts. The additional requirement for such information to be 'reasonably likely to cause or contribute to serious harm' does nothing to protect this section against misuse. The definition of 'serious harm', addressed in s7(3) of Schedule 1, is left to the subjectivity of AMCA with general regard to circumstances, 'any other relevant matter' and, circularly, whether the information is false, misleading, or deceptive.

This Bill enables the Australian Communications and Media Authority ('AMCA') to collect information from digital platform providers or mandate them to retain specific records related to misinformation or disinformation matters, require the industry to formulate a code of conduct and strategies to combat misinformation which AMCA could officially endorse and enforce, and/or in the instance where AMCA arbitrarily believes such codes or strategies to be insufficient, to enforce an industry standard as a more stringent form of regulation. Despite statements by the Department to the effect that this Bill is concerned with regulating industry standards rather than individual speech, this Bill would necessarily have a direct impact on individuals who use on digital platforms. From s9, it is clear this Bill targets all content that is 'provided on a digital service if the content is...accessible to end-users using the digital service', and from s10, a 'service is provided to the public if...the service is provided to at least one person outside the immediate circle... of the person who provides the service.' Thus, an individual's usage of digital platforms is captured by this Bill. Media platforms, search engines, news aggregators and podcasting services would be effectively forced to censor content put up by individuals for fear of being penalised – by up to \$7.8 million or five percent global

turnover for corporations. It is furthermore apparent from the exposure draft that individuals could be personally 'subpoenaed' (in essence by s19) by the AMCA as a part of its investigative processes and, should they breach digital platform rules overseen by AMCA, personally exposed to civil and criminal penalties implemented by the Bill (without, per s21, any freedom from self-incrimination at that) despite public statements that AMCA does not intend to directly target individuals.

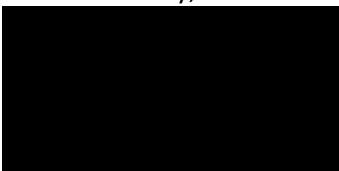
In an information-age, democracy depends on the preservation of freedom of speech (including across digital platforms) however inconvenient this may be. Respectfully, the limited ambit of Australia's constitutional, legislative, and common law protections on the freedom of speech is not an acceptable justification for this Bill. Rather, Australia ought to look to its international obligations in the International Covenant on Civil and Political Rights ('ICCPR'), including Article 9 which entails the right to hold opinions without interference, and the right to freedom of expression, including to 'seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his/her choice'. Limitations on this right in Article 19(3) are only permitted when 'necessary'... 'for the respect of the rights and reputations of others, 'for the protection of public order, or of public health or morals.' This qualification imposes a far higher standard for limiting speech and expression than this Bill, its object in s7 being to remove information that is 'reasonably likely to cause or contribute to serious harm.' Again, I emphasise that 'serious harm' is not adequately defined in the Bill and is dependent on the subjective opinion of AMCA. As such, this Bill represents a serious departure from the international standard on freedom of speech.

While false and misleading information can be problematic, history would testify a far greater threat to a fair and democratic society is the suppression of truth. The government is free to disseminate information to inform its citizens, but the privilege of rule must come at the cost of being subject to free and robust criticism. Further, scientific opinions, which evolve with the best available data, must be presented to Australians on the basis of transparency if they are to gain acceptance. As it stands, this Bill could impede scientific progress by stifling dissenting views that may not align with the government's stance on emerging controversial issues, for example in the areas of environmental and climate policy, pandemic management, or gender treatment. Truly controversial matters require open debate if a society is to be harmonious– not paternalistic government oversight. It is my humble suggestion that censoring online information will only increase dissenters' suspicion towards government rather than enhance social cohesion.

In sum, this Bill allows AMCA – a government body – to determine what information is false, misleading, deceptive, and likely to cause or contribute to serious harm without adequate protections against the government (or future governments) employing this power for self-interested and corrupt purposes. This Bill subjects disseminators of information to unprecedented serious civil and criminal penalties which would undoubtedly lead to platforms censoring individual users of their services. This deviates from international standards on freedom of speech, expression, and access to information. I urge the government to abandon this Bill and instead take advantage of the opportunity that our current political climate presents to facilitate and engage in free and robust debate on matters of public importance.

Thank you for your consideration on this urgent matter.

Yours sincerely,



Ashlyn Vice.

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