Professor Bronwyn Fredericks
Office of the Deputy Vice-Chancellor
(Indigenous Engagement)
The University of Queensland
Brisbane, Qld, 4072 Australia

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Department of Infrastructure, Transport, Regional Development, Communications and the Arts, Canberra, ACT 2600

Dear DITRDCA,

RE: FEEDBACK ON AN EXPOSURE DRAFT OF THE COMMUNICATIONS LEGISLATION AMENDMENT (COMBATTING MISINFORMATION AND DISINFORMATION) BILL 2023

Thank you for the opportunity to provide this submission in response to the proposed Bill that would grant new ACMA powers to combat misinformation and disinformation. This submission outlines my personal views, and not the views of The University of Queensland.

In this submission I emphasise the impact misinformation/disinformation is having on Aboriginal and Torres Strait Islander communities and consider the topic in relation to recent events where we have witnessed the large-scale distribution of information – Covid-19 and the upcoming referendum on an Aboriginal and Torres Strait Islander Voice to Parliament.

Throughout this submission I will address the draft Bill's response to striking balance between freedom of expression; the complexity of content exemptions; the scope of the private message exemption; and the size of the penalties – doing so specifically from an Indigenous perspective.

As the proposed Bill discloses that race-based misinformation and disinformation "would fall within the scope of the new ACMA powers" I implore the ACMA to first acknowledge that the spread of misinformation and disinformation for Indigenous peoples is an extension of the colonial project that seeks control over how Aboriginal and Torres Strait Islander peoples are represented in national/public discourses and treated as people – or in many cases as less-than-human.

Other than broad references to "race" it is problematic that the supporting documents for the Bill make little to no references to Aboriginal and Torres Strait Islander peoples. Furthermore, Indigenous peoples are not recognised within the "types of harm" that the ACMA identifies as resulting from misinformation. Given the complex and unique nature of colonisation and the intergenerational harms caused, it would be fitting to consider "colonial harm" or "harms to Indigenous peoples" within the framework. Indigenous people's exclusion suggests that they are considered a "minority" or "demographic" group alongside age or gender.

Indigenous Australians are proportionately amongst the highest users of social media in Australia – 20% higher than the national average and 60% higher in remote locations for

Facebook alone[1]. I believe it is therefore warranted that the ACMA encourage codes and standards that specifically target racist misinformation and disinformation directed at Aboriginal and Torres Strait Islander peoples. Furthermore, greater cultural literacy is needed so that all forms of racism – which is not always obvert or visible but quite often subtle or structural – are recognised, or that reports of racism/breaches made by Indigenous peoples are taken seriously. In many cases, misinformation is the result of the information that is negated, false attribution of authorship, and the denial of data sovereignty. It is promising to see that there are avenues for the ACMA to investigate complaints to ensure that digital platforms comply with codes and standards, but I would urge that consideration be given to how to make these processes and structures culturally safe for Aboriginal and Torres Strait Islander peoples.

It is also necessary for the ACMA to acknowledge that the spread of misinformation and disinformation about Aboriginal and Torres Strait Islander people online has far greater consequences that simply causing offence or cultural misunderstandings – it can kill. Studies have shown correlations between social media and suicide ideation. The spread of misinformation and disinformation about Aboriginal and Torres Strait Islander people – whether targeted at the individual, a family member, friend, or the wider Indigenous community – exacerbates ideation which can, and does, manifest in suicidal acts. The suicide rate in Indigenous communities is twice that of non-Indigenous communities. Indigenous children under 15 are eight times more likely to die from suicide which is the leading cause of death amongst children aged 5 to 17 and youth aged 15 to 25[2]. Statistics such as these should be kept in mind when enforcing misinformation/disinformation policies.

During Covid-19, disinformation about the virus and vaccinations sharply increased. Aboriginal and Torres Strait Islander people nationwide – but particularly in remote locations – were targeted in what were deliberate acts that aimed to manipulate Indigenous people's decisions and behaviours in accordance with personal religious, political, and social agendas and ideologies. The mistrust many Aboriginal and Torres Strait Islander people have towards government bodies and mainstream institutions – built on the back of racist, assimilationist, and segregative policies – were often taken advantage of in deeply disrespectful, manipulative, and harmful ways. Some have termed this as "Blackfishing", a reference to the capitalisation of Black cultures for economic, political, or ideological gain[3].

Indigenous representative bodies – particularly during the pandemic – have reported on having to discount misinformation fuelled by sources who manipulated historical narratives. Identifying practices of Blackfishing requires knowledge of Indigenous/settler histories and how colonisation has impacted and continues to impact Indigenous people across generations. This is why the cultural competency of both ACMA, and digital platforms/service providers is of the upmost importance. Improving cultural competency and increasing the Indigenous workforce can assist in identifying and responding to claims of misinformation/disinformation. I request that Aboriginal and Torres Strait Islander peoples are strongly considered when the

[1] Carlson, B., Farrelly, T., Frazer, R. & Borthwick, F. 2015. Mediating tragedy: Facebook, aboriginal peoples and suicide.

[2] Nasir, B. F., Kisely, S., Hides, L., Brennan-Olsen, S., Kondalsamy-Chennakesavan, S., Nicholson, G. C., Gill, N. S., Beccaria, G. & Toombs, M. 2022. Translating research into action: The design and development of an Indigenous specific suicide intervention skills training program (I-ASIST). *Australian journal of rural health,* 30, 870-875.

[3] Stevens, W. E. 2021. Blackfishing on Instagram: Influencing and the commodification of Black urban aesthetics. *Social Media+ Society,* 7, 20563051211038236.

ACMA obtains information, fact-checkers, or third-party contractors to assist them in monitoring compliance, and that the employment of Indigenous staff are encouraged in codes/standards as a measure to combat misinformation.

In another example of how online language plays off historical trauma, the Australian Defence Force who assisted in relocating Aboriginal community members in overcrowded houses in the Northern Territory (done in partnership with the community), was likened to the "stolen generations". Whilst *likening* something to the stolen generations may not be classified as disinformation in the strictest sense, characterisations such as these cultivate disinformed representations that are extremely damaging to Indigenous people. Studies have also exposed how extremists in the USA promoted anti-vaccine discourses on platforms such as TikTok through conflating ideas of "white supremacy" with notions of "pureblood" – in reference to blood untainted by the vaccine[4].

Although the ACMA will not have powers to force the removal of content from third party platforms, any policy that would make publishers accountable for the information they publish/distribute is welcomed, as are mechanisms that would see referrals to the anti-discrimination commissions or other legislative bodies. In cases where the removal of content is not plausible, publishers should be compelled in their codes/standards to engage in fact checking, as was done on some social media platforms during the pandemic, with mixed results. The wider social impact of any information publicly posted, as well as the representations it *implies* about Indigenous peoples and cultures should be considered in the codes – not just whether the written text is deemed "truthful".

In another example of disinformation during the pandemic, some religious groups likened Covid-19 vaccinations to the devil, or the "mark of the beast"[5]. In one community, such characterisations became so pervasive that it impacted both vaccination uptake and ruptured relationships between some of its community members and its religious leaders who publicly discounted the claim. The disinformation was traced back to Christian fundamentalist in the USA.

Organisations have also masqueraded as Indigenous peak representative bodies posting disinformation under the guise that they have the authority to speak for Indigenous communities. The Larrakia Nation Aboriginal Corporation, the peak body for the Larrakia Nation in the Northern Territory who also operate under the name "Larrakia Nation", had to distance itself from the Larrakia Sovereign Tribal Council when they claimed on social media that vaccination-related deaths on Groote Eylandt were outpacing the number of spaces in morgues[6]. They disingenuously did so by also using the name "Larrakia Nation".

Information online does not exist in a social vacuum. Online and offline domains interact which means that a single post, statement, or misrepresentation can quickly enter and spread through communities who may or may not have access to the internet. Many Indigenous communities maintain oral traditions of disseminating knowledge verbally and respect the autonomy of

[4] Day, Madi, and Bronwyn Carlson. "White Supremacist and Far Right Ideology Underpin Anti-Vax Movements." The Conversation 22 Nov. 2021. 25 Nov. 2021 <https://theconversation.com/white-supremacist-and-far-right-ideology-underpin-anti-vax-movements-172289>

[5] Fredericks, B., Bradfield, A., Mcavoy, S., Ward, J., Spierings, S., Combo, T. & Toth-Peter, A. 2022. The burden of the beast: countering conspiracies and misinformation within indigenous communities in Australia. *M/C Journal,* 25. https://doi.org/10.5204/mcj.2862

[6] ibid

individual knowledge holders and an individual's claim to knowledge. Regardless of the metrics associated with an individual post, if it is targeted to the right person, it can ignite a spot fire of misinformation that can explode into an uncontrollable inferno that spreads from one Indigenous community to the next.

Political caricatures have long been used as means to draw attention towards divisive and controversial topics. In 2016 a cartoon in *The Australian* portrayed Indigenous fathers as neglectful drunks and was met with condemnation that sparked an online countermovement under the hashtag #IndigenousDads[7]. More recently, Thomas Mayo was the subject of a racist cartoon that depicted him wearing a hammer and sickle shirt as he bribed big business for their support for an Indigenous Voice to Parliament. Memes engage in similar representations and like caricatures walk the line between exposé, satire, and stereotype – often being justified on grounds that it "sparks conversation".

Memes and other satirical content should be equally accountable for the information they share. In many cases it is difficult/near impossible for members of the public to distinguish satirical content from factual reporting. I therefore urge reconsideration that the code and standard-making powers exclude "electoral and referendum content and other types of content such as professional news and satire". Whilst upholding parliamentary freedom, robust discussion, and freedom of speech is important, political discussion should be not used as an excuse to sway opinions through sensationalised and misinformed representations. The proposed Bill states that content "*produced in good faith* for the purposes of entertainment, parody or satire will be excluded, even if the content is at surface value, misinformation." Greater consideration of the term "good faith" is needed as satire is often used as safety blanket for the spread of bigotry.

While alleged misinformation in news media is exempt from the proposed powers – intersectionality between social and traditional media exists, as social media often feeds off the sensationalised headlines and content of mainstream news. We are seeing this in the lead to the referendum where some organisations on social media are archiving/spinning traditional news articles with aim of constructing false narratives about Indigenous peoples and the referendum. The inclusion of the new Schedule 9 of the Broadcasting Services Act 1992 into the ACMA Act is welcomed and demonstrates ACMAs capacity to work in partnership with other government bodies to combat misinformation. I hope that if the ACMA does not include misinformation in traditional news media in its powers that it will continue to work with other bodies to ensure accountability.

If false/disputed representations are not taken down by social media platforms – in breach of their codes/standards – where possible, the ACMA should advise that platforms disclose the bias of the content; acknowledge its satirical nature; and/or direct audiences to counter arguments and/or non-satirical content that substantiates and counters the view presented. Whilst I understand that all distasteful or controversial posts cannot be monitored by the ACMA – and that satire has an important role in democratic debate – the focus should be placed on upholding ethical standards to create *cultural change*, placing responsibility on platforms to abide by ethical standards.

The Bill proposes that race-based harassment, abuse, or trolling of an *individual* will fall under the jurisdiction of the eSafety Commissioner under the *Online Safety Act 2021*. Whilst I

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[7] Fredericks, B., Bradfield, A., Nguyen, J. & Ansell, S. 2021. Disrupting the colonial algorithm: Indigenous Australia and social media. *Media International Australia,* 183**,** 158-178.

understand that the ACMA will not have powers nor the capacity to investigate individual cases, I believe that the ACMA does have a responsibility in this regard as racism on the individual perpetuates societal misinformation about race more broadly. Where the eSafety Commissioner should rightly address individual cases, the ACMA has a responsibility to recognise that race-based attacks on an individual – whether a high-profile sports player or member of a local community – is an attack on all those who identify in a similar manner.

Transparency is central to ensuring accountability and I commend the ACMA's commitment to gathering data through periodical reporting. I implore the ACMA to work in partnership with Aboriginal and Torres Strait Islander community groups who are best placed to speak to the impact of mis/disinformation and what strategies need to be built into providers' codes. As the ACMA will "encouraged industry to establish a framework of key performance metrics" which will help combat misinformation, I would encourage the ACMA to require media platforms to report on KPIs specifically relating to combating misinformation pertaining to Indigenous peoples. This should include reporting on the measures taken to assure cultural safety and inclusion of Indigenous representatives/voices in responses. It would also be beneficial to build the protection of Indigenous communities into ACMA's requirements for platforms to register an industry code.

I also encourage that data be openly shared with Indigenous organisations and the public so that it can be translated into community education/awareness campaigns, or other projects that could improve outcomes for Indigenous communities and the broader Australian community.

At face value, penalties for infringements appear sufficient and following the guidelines of penalties of 2 per cent of global turnover and the penalties under the EU's Digital Services Act (DSA), is welcomed. However, as Aboriginal and Torres Strait Islander communities are but all too aware of, such measures must be enforced rather than being treated as piecemeal "slaps on the wrist" that do not demand change. I hope that the ACMA is earnest in its commitment to "actively seek penalty orders" and that it enacts its powers to make enforceable standards.

It is promising that the ACMA is seeking powers that would demand digital platforms take increased responsibility and accountability for the content they distribute, and the measures enacted to counter mis/disinformation. The Bill's focus on creating systemic change through the development of codes and standards on mis/disinformation and building the datasets needed to monitor progress and adherence to such codes is commendable. However, greater consideration of Aboriginal and Torres Strait Islander perspectives is needed. Providing that Indigenous people are both avid users of social media and that false representations of Indigenous people continues to be a determining factor of social health and wellbeing outcomes; it is essential that Indigenous perspectives are sought, and Indigenous representation is included.

Yours Sincerely,

Professor Bronwyn Fredericks, PhD

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