

Department of Infrastructure, Transport, Regional Development,
Communications and the Arts,

I am writing this submission in response to the draft bill titled "Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023". As an Australian citizen, I must express my deep anger and outrage at the existence of this bill, which demonstrates a lack of respect for the freedom of speech of Australian citizens.

This bill creates an alarming division between citizens, categorizing them into two classes. The first group consists of politicians, journalists, and members of educational institutions who are granted the power to spread information, whether accurate or not, online. The second group consists of ordinary citizens, who often possess more knowledge about various topics, including industry insights, than those in the first category. This bill poses a significant risk to regular citizens, who have used the internet as a powerful democratic tool, giving them a voice. It is unacceptable to place such disproportionate limitations on their freedom of speech.

The excessive fines outlined in this bill will impede digital services from enabling free speech, making them more restrictive than even the most stringent platforms today. Moreover, the code applies universally across the industry, devoid of any "pressure escape valves" that could alleviate the harm caused by such limitations.

Attempting to accurately judge the veracity of information is an impossible task. Discoveries continually challenge previously accepted facts. It is crucial to recognize that even authorities and expert consensus have made false claims in the past. The COVID-19 pandemic provides numerous examples of shifting information. Statements such as, "Masks don't protect from COVID-19" and "The COVID-19 vaccine is a 2-dose vaccine," were previously considered fact but later proven false. Under this legislation, these statements could be classified as public health misinformation, leading to their removal. Furthermore, the bill's scope extends beyond provably false information to include

information that is merely "misleading" or "deceptive." Freedom of speech allows for open and honest discussions, acknowledging that people can be wrong and that truth can be found through debate.

Even Dr Nick Coatsworth, a former Deputy Chief Medical Officer of Australia, has expressed concerns about the scope and application of this bill. Via his personal Twitter account, he stated that implementing such legislation would be near impossible and would inevitably result in fines being levied on information that turns out not to be false. This scathing rebuke from an expert appointed to safeguard health information raises serious doubts about the bill's validity.

Industry bodies are often influenced and funded by the major players within a specific industry, creating an environment where new entrants lack the resources and time to contribute effectively. This imbalance is likely to result in industry codes that disadvantage smaller digital services. The proposed bill exacerbates this issue by providing larger digital services with the ability to establish onerous codes that smaller competitors cannot comply with, stifling competition and innovation. This goes against the principles of a free market.

In recent times, the free-market competition between platforms in addressing misinformation and disinformation has proven effective. Platforms with lax policies have witnessed user migration to platforms that align with community expectations. Users have shown dissatisfaction with platforms like Twitter, leading to increased sign-ups for alternatives like Mastodon and the introduction of new competitors such as BlueSky and the upcoming Instagram Threads by Meta. This competitive landscape validates the need to allow platforms to self-regulate and adjust according to user demands.

Furthermore, this bill's heavy reliance on the policies set by dominant digital services disregards competition regulators' efforts worldwide to lower barriers to entry for digital platforms. The bill's broad definitions include thousands of community websites that are

part of the "social web," further demonstrating the lack of consideration for smaller platforms.

The proposed bill places an unreasonable restriction on freedom, liberty, and the right to freedom of speech and enterprise. Its ignorance and broad scope are equivalent to an imagined scenario where the Australian government sets speed limits on every road globally, without informing anyone of the limit. This bill puts website owners, both individuals and companies, at risk of exorbitant fines, creating an environment in which compliance becomes unattainable due to a lack of awareness of industry codes. Foreign website owners could face fines and penalties without knowing they violated laws they were unaware of. Additionally, overseas digital services with no knowledge of Australian law or industry codes are expected to comply, an unworkable expectation.

The proposed bill's extraterritorial application is a glaring overreach and an affront to the global nature of the internet. Applying Australian law to foreign entities creates confusion and uncertainty and strains international relations. Just as Australia would object to other countries exerting such control over its citizens and businesses, it is imperative to recognize that foreign entities should not be subjected to Australian law in this manner.

Furthermore, this bill contradicts Australia's concerns with extraterritorial application. The government recently criticized the Hong Kong government for extraterritorial charges against activists based in Australia. Senator Penny Wong expressed deep concern for freedom of expression and assembly, declaring support for those in Australia exercising those rights. It is hypocritical to condemn such actions while proposing legislation that manifests similar extraterritorial concerns.

To illustrate further, consider the potential scenario where China demands Australian websites not publish misinformation about the Tiananmen massacre, as defined by this law. Would it be acceptable for Australian digital services to comply with Chinese industry body codes and face legal jeopardy for running a website

on Australian soil? Such a scenario would be deemed unacceptable by the Australian government. Recognizing this, it is essential to reject this bill's attempt at extraterritorial reach.

In its current state, this proposed bill encroaches upon personal values, faith, and beliefs. The categorization of fundamental faith worldviews as misinformation is intolerant and likely under this legislation. Australians should have the right to hold and express their opinions and beliefs without fear of persecution or legal consequences.

The bill's disregard for the freedom of political communication is deeply concerning. It undermines the democratic process by limiting access to information necessary for informed voting. Independent media organizations, journalists, and bloggers will face complex reporting standards and misinformation reports, damaging their reputations. Meanwhile, the government-approved media and educational institutions will benefit financially, ultimately stifling competition and diverse perspectives.

This bill not only disempowers ordinary citizens but also threatens digital platform providers with negative reputational records, financial penalties, and severe business inefficiencies. It further subjects citizens to potential distress when summoned before ACMA. These threats and actions are reminiscent of an oppressive regime, rather than a society built on the principles of mateship and respect for individual freedoms.

The proposed bill attempts to dictate what is true or false to an excessive degree, disregarding the experiences and viewpoints of ordinary Australians in the public sense-making process. Citizens should not be subjected to arbitrary silencing or categorization of their viewpoints as misinformation or disinformation. The bill assumes that ordinary people's viewpoints are more likely to cause harm than those of the government or its accredited journalists and educators, which is a disheartening and disrespectful view.

Moreover, the delegation of lawmaking power to private entities and the ACMA's authority to give legislative effect to misinformation codes and standards violates the implied constitutional freedom of political communication. The broad criteria for misinformation, such as causing harm to health, the environment, or the economy, limit legitimate discussions on public policy issues that are contested among political parties and interest groups.

In conclusion, this bill in its current form is an assault on freedom of speech, democratic values, and the principles of inclusivity and diversity. It fails to consider the experiences, knowledge, and viewpoints of ordinary citizens, granting disproportionate power to politicians, journalists, and educational institutions. The proposed legislation contradicts Australia's objections to extraterritorial reach and sets a dangerous precedent for oppressive measures. I strongly urge the Department of Infrastructure, Transport, Regional Development, Communications and the Arts to reconsider and reject this bill.

Yours sincerely,

Jorge Guillen