



# Consultation: Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023

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**McCabe Centre for Law and Cancer, and  
Cancer Council Australia**

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Cancer Council Australia and the McCabe Centre acknowledge the traditional custodians of the lands on which we live and work. We pay respect to Aboriginal and Torres Strait Islander elders past, present and emerging and extend that respect to all other Aboriginal and Torres Strait Islander people.

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## About us

The McCabe Centre for Law and Cancer is working for a world free from preventable cancers and in which all people affected by cancer have equitable access to safe, effective, and affordable treatment and care. The McCabe Centre is a Melbourne-based joint initiative of Cancer Council Victoria, the Union for Cancer Control and Cancer Council Australia. The McCabe Centre conducts world-leading legal research, policy development, and capacity building programs to promote the use of law as an essential tool in the prevention and control of cancer in Australia and overseas. The McCabe Centre is a WHO Collaborating Centre on Law and Noncommunicable Disease, and the WHO Framework Convention on Tobacco Control Knowledge Hub on Legal Challenges.

Cancer Council Australia is Australia's peak national non-government cancer control organisation and advises the Australian Government and other bodies on evidence-based practices and policies to help prevent, detect and treat cancer.

The McCabe Centre for Law and Cancer and Cancer Council Australia welcomes the opportunity to make a submission on the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023. As agencies concerned about the proliferation of misinformation about cancer causes and treatments on digital platforms, we are pleased to see action in this area.

We support the intent of the Bill to address the growing challenge of misinformation and disinformation in Australia, through a co-regulatory approach that reserves regulatory powers to the Australian Communications and Media Authority (ACMA) to act if voluntary industry efforts are inadequate.

We comment substantively on one area of the Bill, in relation to health misinformation and harm to the health of Australians.

## Recommendations

1. The prevalence of misinformation about cancer on digital platforms, together with the risk of serious harm as a result, means cancer misinformation should be a key focus area for this Bill.
2. The way this Bill regulates health misinformation needs to be consistent with existing legal and regulatory frameworks, and effective systems and processes should be in place to ensure coordination with relevant agencies.
3. Combatting misinformation upholds Australia's human rights obligations, including the right to health and the right to freedom of expression. In framing of the right to freedom of expression the Bill should acknowledge that the right to freedom of expression is not an absolute right, and some limits to this right can be justified.
4. A co-regulatory framework must be accompanied by initiatives to counter misinformation, including supporting collaborative patient-clinician relationships. All sectors, including

governments and health organisations, should invest in digital education and media health literacy initiatives, conduct fact-checking and content labelling interventions, and support multisectoral collaboration between governments, policymakers, digital platforms and community-based organisations to address health misinformation.

## **Health misinformation and serious harm**

The term ‘misinformation’ in the Bill is intended to capture content that is disseminated on a digital service, where that content is false, misleading or deceptive, and where the provision of that content on the service is reasonably likely to cause or contribute to serious harm.

For the purposes of this submission, we use the term ‘misinformation’ to mean both misinformation and disinformation.

For misinformation to be covered by the powers, it must be reasonably likely that it would cause or contribute to serious harm. For harm to be serious, it is intended that it must have severe and wide-reaching impacts on Australians. Subclause 7(3) outlines the matters that are relevant to determining whether the content could cause or contribute to serious harm:

- the circumstances in which the content is disseminated
- the subject matter of the false, misleading or deceptive information in the content
- the potential reach and speed of the dissemination
- the severity of the potential impacts of the dissemination
- the author of the information
- the purpose of the dissemination
- whether the information has been attributed to a source and, if so, the authority of the source and whether the attribution is correct
- other related false, misleading or deceptive information disseminated
- any other relevant matter.

Clause 2 of the Bill contains a definition of ‘harm’ and outlines types of harm that would be considered. This includes harm to the health of Australians. The Guidance Note for the Bill gives the following as an example of serious harm to health: “Misinformation that caused people to ingest or inject bleach products to treat a viral infection”.

We are pleased to see the definition of harm includes harm to the health of Australians. We know that many people use the internet and social media to seek and source health information,<sup>1</sup> and digital platforms play an important role in the dissemination of evidence-based health information.

At the same time however, health *mis*information has proliferated on digital platforms, with serious effects. Health misinformation is linked to an increased risk of morbidity and mortality<sup>2</sup> and can hinder the delivery of evidence-based medicine and negatively affect relationships between health practitioners and their patients.<sup>3</sup> Health information is easily absorbed through digital media, and while this is a significant benefit for the distribution of evidence based health information, the prevalence of misinformation alongside accurate information means that many people have difficulty discerning which sources of information are credible.<sup>4</sup> According to the World Health

Organization (WHO) on some social media platforms, falsehoods are 70% more likely to get shared than accurate news.<sup>5</sup> The WHO referred to the proliferation of false and misleading information during the COVID 19 pandemic as an 'infodemic' and commenced a programme of work to combat misinformation online. In Australia, ACMA's misinformation report found 4 in 5 Australians had seen misinformation about COVID-19, with 22% seeing 'a lot' or 'a great deal'.<sup>6</sup> The same report noted high public support of joint action by individuals, platforms and governments to reduce the amount of false or misleading information online.<sup>7</sup> This makes addressing health misinformation on digital platforms a critical public health goal.<sup>8</sup>

The health misinformation example provided in the Guidance Note for the Bill relates to the COVID-19 pandemic, and we acknowledge the very damaging effect of misinformation during the COVID-19 pandemic.

We also wish to highlight the persistent and long-standing issue of cancer misinformation, and the impacts of this misinformation. On most media sharing and social media platforms, misinformation about the causes and treatment of noncommunicable diseases, including cancer, are the most prevalent topics.<sup>9</sup> Nearly one-third of popular social media cancer articles contained misinformation and 76.9% of these contained harmful information.<sup>10</sup>

Misinformation spans the cancer control continuum and can affect cancer prevention, screening, diagnosis, treatment, and survivorship. Cancer misinformation includes inaccurate and misleading information about what causes cancer; the promotion of alternative and unproven therapies; the financial costs of unproven alternative therapies and 'fake cancer cures'; and the actions of unscrupulous actors and unregistered health service providers in promoting and profiting from unproven cancer therapies.<sup>11</sup> Misinformation about the composition of sunscreens and marketing of 'safer alternatives' to sunscreen have led to nearly half of survey respondents believing sunscreens contain chemicals that are bad for you; while 2 in 5 Australians incorrectly believe that alternative therapies can cure cancer.<sup>12</sup>

### **Cancer misinformation: alternative and unproven cancer therapies**

Alternative cancer therapies are commonly defined as cancer treatments used in the place of conventional medicine. They are usually untested and unproven, with no efficacy to prevent cancer growing or spreading. Other therapies have been tested and shown not to work. The side effects of alternative therapies are not always known; some alternative therapies can be harmful, expensive and can negatively impact the effective management of cancer symptoms.

Alternative cancer therapies are differentiated from complementary cancer therapies, which are various treatments and medicines that are used concurrently with conventional medicine to relieve some of the side effects of conventional cancer therapy and support the general well-being of patients. Complementary cancer therapies are not a cure for cancer and are not promoted as such.

Examples of therapies which are promoted as alternatives to evidence-based cancer treatments (such as surgery, chemotherapy and radiotherapy) include herbs, supplements and high-dose vitamins, and special diets and eliminating food groups, as well as mind-body techniques like

meditation, relaxation and spiritual healing. Other alternative therapies offered as cancer cures include ozone therapy and high dose intravenous vitamin C therapy.

We note that on media sharing platforms, such as YouTube, Instagram, and Pinterest, and on social network platforms, such as Facebook and WhatsApp, health misinformation about noncommunicable diseases and treatments are the most prevalent topics.<sup>13</sup> A 2021 study found that between 2018 and 2019, nearly one-third of popular social media cancer articles contained misinformation and 76.9% of these contained harmful information.<sup>14</sup> Most concerning, among the most popular articles on Facebook, articles containing misinformation and harmful information received statistically significantly more online engagement.<sup>15</sup>

Health service providers or others promoting alternative therapies often falsely promote their treatments and medicines as cures for cancer and may even encourage the cessation of conventional evidence-based cancer therapies. Patients may be charged exorbitant fees for unproven therapies. Where alternative therapies lead to patients either stopping or delaying conventional treatment, this may have serious consequences. In cancer care, the use of unproven therapies is associated with decreased survival.<sup>16</sup>

#### **Recommendation 1:**

The prevalence of misinformation about cancer on digital platforms, together with the risk of serious harm as a result, means cancer misinformation should be a key focus area for this Bill.

#### **Shared responsibility for misinformation**

Combatting health misinformation is a regulatory responsibility shared between different federal, state and territory government agencies.

There are overlapping regulatory frameworks regulating registered and unregistered health practitioners and health services; and regulating the advertising and promotion of alternative unproven cancer care. These include:

- The Australian Health Practitioner Regional Agency and National Boards, which handle complaints about registered health practitioners and develops standards, codes and guidelines for the profession.
- Health complaints entities in states and territories, which handle general complaints about health services and administer the National Code of Conduct for Healthcare Workers, which sets out a range of minimum standards for health services and health care workers. Relevantly, this Code mandates that health care workers must not claim or represent they are qualified, able or willing to cure cancer or other terminal illnesses; and that a health worker who claims to be able to treat or alleviate the symptoms of cancer or other terminal illnesses must be able to substantiate such claims.
- Australian Consumer Law and state consumer protection laws, which prohibit false, misleading or deceptive conduct, and have been used with some success to challenge the promotion of fake cancer cures.
- The *Therapeutic Goods Act 1989* and associated *Therapeutic Goods Advertising Code (No. 2)*. One of the key objectives of the Code is to ensure that the advertising of therapeutic goods to

the public is conducted in a manner that is ethical and does not mislead or deceive the consumer or create unrealistic expectations about product performance.

**Recommendation 2:**

The way this Bill regulates health misinformation needs to be consistent with existing legal and regulatory frameworks, and effective systems and processes should be in place to ensure coordination with relevant agencies.

**Misinformation and human rights**

Australia is a party to several international human rights treaties that affirm the right to health, principally, Article 12 of the International Covenant on Economic, Social and Cultural Rights which provides for the right to the highest attainable standard of physical and mental health. It is the primary responsibility of states to progressively protect, respect and fulfil the right to health, which includes creating a regulatory environment that supports this.

The right to health includes the right to access to credible health information for people to make informed decisions about their healthcare. Inaccurate information about health care and disease prevention, such as false information on risks associated with vaccines, may deter people from taking healthcare decisions that protect their health and put others at risk.<sup>17</sup> Therefore, taking steps to combatting misinformation that harms health is in fulfillment of Australia’s obligations under international human rights law. Corporations including digital media platforms also have a distinct duty to respect human rights, as recognised in the UN Guiding Principles on Business and Human Rights.<sup>18</sup>

A further dimension to misinformation and human rights is the obligation on governments to protect the rights of health experts and healthcare workers who are subjected to online abuse when conveying credible and evidence-based health information. This was most visible during the COVID-19 pandemic—a *Nature News* survey of COVID-19 researchers reported 81% of respondents said they had experienced personal attacks or trolling after speaking to the media about COVID-19, and 70% reported at least one kind of negative impact after speaking to the media ranging from physical threats to experiencing emotional distress.<sup>19</sup> Health care workers and COVID-19 experts in Australia experienced similar attacks and abuse.<sup>20</sup> In this case, misinformation—and the undermining and silencing of expert health information—risk both harm to the personal health and safety of health experts, as well as to public health, and must be addressed.

The concept of freedom of speech has been used and misused to permit online abuse. However, attitudes and regulatory responses towards online harassment have changed, particularly as victims of online abuse have shared their experiences<sup>21</sup> and there is greater acceptance of the need, and indeed the responsibility of governments, to intervene when the expressive rights of experts are being interfered with.

Subsection 3AC of the Bill declares an intent for digital platform services to be regulated to prevent and respond to misinformation and disinformation, in a manner that ‘has regard to freedom of expression’ and other matters including respect for user privacy, protection of the community against harm cases by misinformation, and public interest considerations. The guidance note for the Bill also

references balancing freedom of expression with the need to address online harm. Here, we would emphasise that the right to freedom of expression under Article 19 of the International Covenant on Civil and Political Rights can be lawfully limited by governments in certain circumstances, including for the protection and preservation of the rights of others, and for public health.

### **Recommendation 3:**

Combatting misinformation upholds Australia's human rights obligations, including the right to health and the right to freedom of expression. In framing of the right to freedom of expression the Bill should acknowledge that the right to freedom of expression is not an absolute right, and some limits to this right can be justified.

### **Multidisciplinary approaches to tackling health misinformation**

We welcome the move to a co-regulatory approach that this Bill signals, noting that self-regulation is inherently problematic and insufficient to combat misinformation. For example, ACMA's recent report on digital platforms' activities under the voluntary Australian Code of Practice on Disinformation and Misinformation notes the following:

- The minimal number of complaints received does not align with community concern about misinformation;
- Reports by signatories to the Code are insufficient to enable an assessment of their progress to achieve the Code's objectives and outcomes;
- There is an urgent need to improve the level of transparency about what measures platforms are taking and the effectiveness of those measures.<sup>22</sup>

Legislation is an important way to address health and cancer misinformation, and we welcome the stronger regulatory response the Bill represents. We also acknowledge that laws and regulation alone will not be enough. Health misinformation is a complex issue and, requires a multifaceted and multidisciplinary approach to be effectively addressed.

Addressing misinformation requires sharing of accurate information, but also correcting mistaken beliefs.<sup>23</sup> Cancer Council Australia's iHeard website is a resource created to dispel misinformation about cancer and provide audiences with accurate and scientifically supported information about cancer. Cancer experts use cognitive science, linguistic, structural and imagery-based techniques to provide evidence-based answers and explanations to combat misinformation, such as wearing underwire bras or using deodorants cause cancer.<sup>24</sup> iHeard's design applies the principles of the 'inoculation effect'<sup>25</sup> (empowering people to resist misinformation by highlighting common misconceptions, explaining their flaws, and presenting robust evidence); increasing the presence of accurate cancer-related facts through Search Engine Optimisation techniques to combat the 'Illusory Truth Effect'<sup>26</sup> (where the ubiquitous presence of an idea influences perceptions about its reliability) and strategies to mitigate the 'Backfire Effect'<sup>27</sup> (where attempts to refer and combat an idea, may reinforce that idea). While resources and response such as iHeard are continually being improved, clinicians and healthcare professionals also have an important role in combatting health misinformation, through building a relationship of trust and credibility and supporting patients to be guided by clinical expertise rather than online misinformation.<sup>28</sup>



#### Recommendation 4:

A co-regulatory framework must be accompanied by initiatives to counter misinformation, including supporting collaborative patient-clinician relationships. All sectors, including governments and health organisations, should invest in digital education and media health literacy initiatives, conduct fact-checking and content labelling interventions, and support multisectoral collaboration between governments, policymakers, digital platforms and community-based organisations to address health misinformation.

The McCabe Centre for Law and Cancer and Cancer Council Australia thank you for consideration of this submission.

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<sup>1</sup> Christopher Harrison et al 'Patient use of the internet for health information' (2014) *Australian Family Physician* 43(12)

<sup>2</sup> Alistair Coleman "Hundreds dead' because of COVID-19 misinformation' *BBC News* (online, 12 August 2020) <<https://www.bbc.com/news/world-53755067>>

<sup>3</sup> John Ioannidis, 'How to survive the medical misinformation mess', (2017) *European Journal of Clinical Investigation* 47(11)

<sup>4</sup> Victor Suarez-Lledo and Javier Alvarez-Galvez, 'Prevalence of Health Misinformation on Social Media: Systematic Review' (2021) *Journal of Medical Internet Research* 23(1)

<sup>5</sup> 'Combatting misinformation online' World Health Organization <<https://www.who.int/teams/digital-health-and-innovation/digital-channels/combating-misinformation-online>>

<sup>6</sup> 'ACMA misinformation report. Fact sheet 1: key research findings' Australian Communications and Media Authority <[https://www.acma.gov.au/sites/default/files/2022-03/ACMA%20misinformation%20report\\_Fact%20sheet%201%20-%20key%20research%20findings.pdf](https://www.acma.gov.au/sites/default/files/2022-03/ACMA%20misinformation%20report_Fact%20sheet%201%20-%20key%20research%20findings.pdf)>

<sup>7</sup> Ibid.

<sup>8</sup> Skyler Johnson et al, 'Cancer misinformation and harmful information on Facebook and other social media: a brief report' (2022) *Journal of the National Cancer Institute* 114 (7)

<sup>9</sup> Suarez-Lledo n 4

<sup>10</sup> Johnson n 8

<sup>11</sup> Meghan Woods, 'Cancer Council warns over cancer causing 'myths' *ABC News* (online, 16 March 2018) <<https://www.abc.net.au/news/2018-03-16/toothpaste-and-sunscreen-busting-cancer-myths/9548312>>

<sup>12</sup> Megan Varlow 'Bust the myth: what's fact or fiction when it comes to cancer?' *Cancer Council* (online, 4 February 2021) <<https://www.cancer.org.au/blog/bust-the-myth-whats-fact-or-fiction-when-it-comes-to-cancer>>

<sup>13</sup> Suarez-Lledo n 4

<sup>14</sup> Johnson n 8

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Global Partners Digital 'UN Special Rapporteur on Freedom of Opinion and Expression: Report on Disinformation Consultation' (Submission, February 2021) <

<https://www.ohchr.org/sites/default/files/Documents/Issues/Expression/disinformation/2-Civil-society-organisations/Input-for-report-on-disinformation-GPD-Submission.pdf>>

<sup>18</sup> The United Nations Guiding Principles on Business and Human Rights (2011)

<[https://www.ohchr.org/Documents/Issues/Business/Intro\\_Guiding\\_PrinciplesBusinessHR.pdf](https://www.ohchr.org/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf)>

<sup>19</sup> Richard Van Noorden, 'Higher-profile COVID experts more likely to get online abuse', *Nature News* (online, 4 April 2022) <<https://www.nature.com/articles/d41586-022-00936-4#:~:text=Surveys%20find%20scientists%20who%20appeared,report%20personal%20attacks%20or%20trolling.>>

<sup>20</sup> Melissa Cunningham and Aisha Dow, 'COVID medics face 'abusive, menacing and threatening' families' *The Age* (online, 14 November 2021) <<https://www.theage.com.au/politics/victoria/covid-medics-face-abusive-menacing-and-threatening-families-20211111-p5982b.html>>; Liam Petterson and Lucy Beaumont '5 Australian COVID experts on receiving abuse and trolling amid the pandemic' *The Conversation* (online, 14 October 2021) <<https://theconversation.com/5-australian-covid-experts-on-receiving-abuse-and-trolling-amid-the-pandemic-169825>>

<sup>21</sup> Danielle Keats Citron 'Restricting Speech to Protect it' in Susan Brison and Katharine Gelber (ed) *Free speech in the digital age* (Oxford University Press, 2019)

<sup>22</sup> 'Digital platforms' efforts under the Australian Code of Practice on Disinformation and Misinformation Second report to government' Australian Communications and Media Authority (July 2023)

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<sup>23</sup> Peter Schulz and Kent Nakamoto, 'The perils of misinformation: when health literacy goes awry' (2022) *Nature Reviews Nephrology* 18

<sup>24</sup> 'iHeard – cancer myths and facts' *Cancer Council* < <https://www.cancer.org.au/iheard>>

<sup>25</sup> Toby Pilditch et al 'Psychological inoculation can reduce susceptibility to misinformation in large rational agent networks' (2022) *Royal Society Open Science* 9(8)

<sup>26</sup> Aumyo Hassan and Sarah Barber, 'The effects of repetition frequency on the illusory truth effect' (2021) *Cognitive Research: Principles and Implications* 6

<sup>27</sup> Briony Swire-Thompson, Joseph DeGutis, and David Lazer, 'Searching for the Backfire Effect: Measurement and Design Considerations' (2020) *Journal of Applied Research in Memory and Cognition* 9(3)

<sup>28</sup> Schulz, n 23