

Submission in respect of the draft Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023

I do not support the draft Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023 (“Draft Bill”), nor the Australian Code of Practice on Disinformation and Misinformation (“the Code”).

The Draft Bill and all associated codes, legal instruments and legislative powers must not be progressed as they contain provisions that are unrealistic, unworkable and contravene Articles of the United Nations Universal Declaration of Human Rights.

The Draft Bill poses a grave threat to free speech and undermines democratic values. The Bill by implication rejects universal human rights to freedom of thought, freedom of opinion and expression, freedom to hold opinions without interference, and the right to education – where media reporting is educative. The Draft Bill curtails the right of independent media to provide researched facts and allow unhindered flow of opinion.

Dissenting opinion has typically led to human advancements, and differences of opinion ensure robust debate and discussion of issues. This freedom must be maintained – not quashed by the tenuous Draft Bill – for a healthy democratic society to flourish.

Specific arguments against the Draft Bill are:

- Terms such as “misinformation”, “disinformation” and “unintended” are not clearly defined. This is misleading, deceptive and unethical, as it leaves the entire Draft Bill and all its associated instruments open to reckless and dangerous misinterpretation. The proposed legislation would not be robust to stand in a judicial court. Properly researched and evidence-based media reporting can be challenged if a governing body deems the reporting to be “misinformation”. Without clear definition of these terms there can be no robust application, and no legal prosecution would stand a chance of reasonable prospect of conviction.
- The Draft Bill’s provisions apply specifically to the Australian environment and users, but many digital platforms are international. This international, anonymous environment makes it extremely difficult to enforce penalties for alleged “misinformation”. Penalties can never be enforced with any certainty, as they can be ignored by digital platform providers.
- Mainstream media are exempted from provisions of the Draft Bill and gain financially through grants. This amounts to a protectionist regime that rewards deliberate misinformation and disinformation reporting by mainstream media, as was witnessed every day during the COVID-19 pandemic. Independent media platforms are unethically targeted by the Draft Bill for providing factual and researched reporting, and allowing freedom of opinions. Independent media and alternative opinions would suffer from distorted and deliberately misconstrued fact-checking triggered by the Draft Bill’s provisions.

Further, an opt-out approach for the Code presents a dangerous precedent of coercion that cannot be tolerated for voluntary industry participation.

The draft Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023, the Australian Code of Practice on Disinformation and Misinformation, and all associated instruments must not be progressed or implemented in any manner.