

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

Re: New ACMA powers to combat misinformation and disinformation (the *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023*)

"Combatting Misinformation and Disinformation" Bill 2023: Safeguarding Democratic Principles

Introduction

The proposed "Combatting Misinformation and Disinformation" Bill 2023 by the Australian Government presents itself as a measure to protect citizens from the perils of online misinformation and disinformation. Yet, a closer examination of its provisions brings to light substantial concerns regarding governmental overreach, potential infringements upon freedom of expression and speech – pivotal pillars of democracy – and the looming specter of censorship. The bill's implications for these core democratic principles necessitate meticulous scrutiny and thorough public discourse.

The Crucial Role of Online Platforms

In today's digital age, the internet, particularly social media platforms, has become the contemporary equivalent of a public square. Within these platforms, individuals share ideas, information, and opinions, which makes preserving the freedom to express and discuss viewpoints an imperative aspect of a thriving democracy. As the bill beckons us to ponder the role of government in determining the contours of misinformation and disinformation, it concurrently obliges us to assess the appropriateness of governmental intervention in shaping citizens' online expression.

Balancing Government Intervention and Civil Liberties

Central to the debate is the pivotal question: Should the Australian government, facilitated by the Australian Communications and Media Authority (ACMA) and digital platforms, serve as the ultimate arbiters of truth? This inquiry leads us to contemplate the notion of self-determination, as the bill implicitly challenges citizens' capacity to form their own independent judgments, insinuating that they necessitate guidance from governmental entities, experts, and mainstream media. This dynamic raises significant apprehensions regarding the potential attenuation of individual autonomy and the stifling of a rich spectrum of perspectives.

Contextualizing the Historical Precedence

Though the current bill is novel, its sentiment has historical antecedents, often introduced into the parliamentary domain with limited success. The 2012 Finkelstein Report, a pertinent precedent, shed light on the doubt surrounding citizens' critical reasoning abilities and their capability to evaluate information autonomously. Despite the resistance such notions faced, the proposed bill signifies the persistence of patronizing convictions, suggesting that citizens require governmental bodies, experts, and mainstream media to prescribe truth and guide their cognitive processes.

The Spectrum of Implications for Democracy

The implications of this proposed legislation are both comprehensive and profound:

- 1. Freedom of Expression and Speech:** The bill holds the potential to impinge upon these foundational rights, empowering government and ACMA to monitor, track, and discern misinformation and disinformation. This might lead to excessive censorship and a quelling of dissenting voices, thereby undermining the very essence of democracy.
- 2. Preserving Open Discourse:** In its endeavor to counteract misinformation, the bill might inadvertently stifle open debate and the free exchange of ideas. An authentic democracy thrives upon diverse viewpoints and encourages the propagation of myriad opinions, nurturing a climate for well-informed decisions.
- 3. A Dichotomy of Society:** By exempting government bodies, mainstream media, and academia from its purview, the bill establishes a dichotomy between the "authorized" entities and the rest. This bifurcation

raises concerns about unequal treatment, where those vested with rule-making powers remain immune from the regulations they prescribe.

4. **Human Rights Ramifications:** Eminent legal experts opine that the bill violates human rights, especially the rights to freedom of speech, self-determination, and freedom of thought. The bill's nebulous definitions and subjectivity in enforcement could precipitate legal battles, favoring the influential at the expense of the common citizen.

Unintended Ramifications

While the bill strives to counteract misinformation and disinformation, it inadvertently might stymie authentic discussions. The distinction between misinformation and disinformation, hinging on the element of intent, presents a subjectivity that might result in the arbitrary removal of content. Furthermore, the bill's emphasis on "harm" and "serious harm" prompts scrutiny into its potential impact on discussions related to health, the environment, and social issues.

Proposals for Augmentation

To address the concerns raised by the bill, a spectrum of legal experts and advocacy groups recommend several key enhancements:

1. **Harmonization with Human Rights:** The bill must align with Australia's international human rights obligations, with heightened safeguards for free expression, self-determination, and freedom of thought.

2. **Incorporation of Guiding Principles:** The bill should integrate guiding principles underscoring the significance of freedom of speech and expression. ACMA's decisions should be compelled to acknowledge and respect these rights.

3. **Objective Definition Refinement:** The definitions of "misinformation" and "disinformation" should be reframed to encompass content constituting a criminal offense, shifting focus from subjective assessments of truth.

4. **Checks and Balances Implementation:** Introduce mechanisms of external and independent oversight over ACMA decisions to ensure transparency and accountability.

5. **Upholding Privacy:** Enforce a clause safeguarding compliance with privacy legislation during information provision.

Concluding Reflections

The proposed "Combatting Misinformation and Disinformation" Bill 2023 holds profound implications for democratic ideals, freedom of expression, and freedom of speech. While its intentions to counteract online harm are commendable, its latent potential for censorship, stifling of dissenting voices, and erosion of democratic values is deeply concerning. The vague definitions, subjective enforcement, and the potential bifurcation of society demand a deliberate public discourse and a collaborative endeavor to strike a delicate equilibrium between citizen protection and the preservation of democratic ethos. The onus is upon the citizenry to engage in informed, reasoned discussions and to advocate fervently for the safeguarding of essential rights. The outcome of this discourse will significantly shape the trajectory of Australia's digital landscape and the bedrock of its democracy.

In closing, we oppose any legislation which would empower ACMA or any other Australian body to restrict in any way, our right to communicate freely and openly on any issue.

Kind regards,

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On behalf of Australia Exits the W.H.O.