



Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023

Submission by the Alannah & Madeline Foundation

August 2023

For their right to be safe

Contents

Executive summary	3
About us	4
Recommendations	4
Misinformation and disinformation pose concerns for children online	5
A rights-based approach	5
Media and information literacy	7
Regulating the commercial handling of children's personal data	8

Executive summary

As an organisation dedicated to upholding children's rights and empowering children as positive digital citizens, the Alannah & Madeline Foundation (the Foundation) welcomes the Australian Government's commitment to preventing and addressing harms associated with misinformation and disinformation online.

Digital technologies are ever-present in the lives of most Australian families, with four out of five school-aged children owning at least one personal screen-based device. The average Australian child owns more than three screen-based devices.¹ By age 16-17, approximately 8 out of 10 young Australians use social media daily.² Many families struggle to find balance between the many benefits of the digital world and the risks it can pose to children.

While research into children's experiences of misinformation and disinformation is limited, there is evidence that they are particularly vulnerable to engaging with false and deceptive content due to their high use of digital technologies, including for news content, and their early and vulnerable stage of development. Children who are very vulnerable offline eg. due to mental or physical health problems, social isolation, or disability, are at particularly high risk of being deceived online or engaging with extreme content.

It is difficult to protect children from harmful online experiences while also enabling their full and positive participation in the digital world. We believe the right approach must involve a commitment to upholding all relevant articles of the United Nations Convention on the Rights of the Child and being guided by its General Comment No.25, 'On children's rights in relation to the digital environment'.

In particular, it is important to prepare children for participation in the digital world through high-quality education, resources and support. But it is essential that we also create appropriate, adaptive scaffolding and standards through regulation and operating standards which make the digital world safer for children by design.

The Australian Government has invested strongly in digital literacy education, including through a \$6 million commitment to give secondary schools free access to the eSmart Media Literacy Lab and other digital literacy products developed by the Alannah & Madeline Foundation. Media Literacy Lab is a fully accessible, gamified e-learning program for students aged 12-16, designed to equip them with the critical thinking skills they need to navigate the digital world and maintain positive social and emotional wellbeing – an important counter to disinformation and misinformation. However, gaps in skills, knowledge and attitudes remain, including among younger children, children facing school disengagement, parents, and some educators.

Children's exposure to misinformation and disinformation is not just a result of their own choices; and they should not be solely responsible for keeping themselves safe online, or for being able to identify and withstand the harms of mis- and disinformation. The design elements in digital products and services put there as part of their commercial model intentionally to drive user engagement and data handling, serve to fuel the problem. These elements include recommender systems, popularity metrics, autoplay functions, prioritising of paid-for content, presence of automated and fake accounts, deliberately weak privacy settings which enable or encourage contact with strangers, and more.

The Foundation believes the big-picture regulation of risks and harms to children in the digital world is best led by a trusted, expert, independent public regulator. We can see value in the Australian Communication and Media Authority (the ACMA) holding digital platforms accountable for their approach to handling misinformation and disinformation.

We are not well placed to comment on all aspects of the Exposure Draft. However, there are three approaches, missing at present, which we believe would help to deliver better outcomes for children:

- A clear commitment to a human-rights-based approach.
- A specification that codes and standards may include a role for industry in supporting high-quality media and information literacy to empower Australians online, including children.

- Support by the Australian Government for the creation of a children's online privacy code to require that digital platforms treat the best interests of the child as a primary consideration in the handling of children's data. This option was put forward as part of the review of Australia's Privacy Code. We believe a children's online privacy code would help reduce risk and harm to children relating to misinformation and disinformation, if appropriately resourced and led by a trusted public regulator.

About us

The Foundation was established the year after the Port Arthur tragedy by Walter Mikac AM in memory of his two young daughters, Alannah and Madeline. Our vision is that all children and young people are safe, inspired and have freedom to flourish.

Over the last 25 years our work has grown and evolved but our purpose remains the same. We have three program streams:

- **Safe and Strong: recovering and healing from trauma.** Very much linked to our origin story, we have a specialist trauma recovery and therapy service for children who have experienced significant trauma. This has grown in recent years to include working with early childcare providers, kindergartens and now primary schools to help them build their trauma informed capability and practices. Most of our work in trauma healing and recovery is Victorian based, with our therapists and consultants working from our clients' homes, education and care settings and places of work.
- **Safe and Strong: building positive digital citizens.** The Foundation works with schools, families and communities nationally to help children build the digital intelligence, skills and competencies they need to stay safe online and to be active, positive digital citizens. With over 10 years' experience working in online bullying and wellbeing, as technology has become ubiquitous, our work has developed into building digital intelligence, digital ethics and media literacy for all children aged 3-18.
- **Safe and Strong: bringing children's rights to life.** As a rights-based organisation, this is our policy and advocacy work. Since inception, we have advocated for firearms safety, and we convene the Australian Gun Safety Alliance. In other key policy matters related to our programs, we work closely with the Office of the eSafety Commissioner, the Prime Minister's National Office for Child Safety, and other major agencies such as the Australian Federal Police.

In 2018, we partnered with Kate and Tick Everett, after the tragic suicide of their daughter, Dolly. With them we worked to establish Dolly's Dream.

- **Safe and Strong: Dolly's Dream, changing the culture of bullying.** The purpose is the same, but the programs and services (Parent Hub, telephone help line, school and community workshops etc.) are specifically designed for remote, rural and regional families and communities, to meet their unique needs and contexts.

Recommendations

1. Articulate that the ACMA will take a human-rights-based approach to registering a code or determining an industry standard to address misinformation and disinformation. Such a commitment might perhaps be woven into the definitions of misinformation, disinformation and serious harm and/or into the criteria for the ACMA to consider before registering a code or determining a standard.

A vision for children's rights in the digital world, including in relation to misinformation, is articulated in the United Nations Convention on the Rights of the Child, General comment No. 25 (2021). Also relevant is the Freedom of Expression Assessment Framework for Disinformation Responses, developed by the Broadband Commission for Sustainable Development (UNESCO and International Telecommunication Union), designed to assist UNESCO member states to formulate legislative, regulatory and policy responses to disinformation in line with international human rights norms.

2. Specify that codes and standards for addressing misinformation and disinformation may include a role for industry in empowering Australians with high-quality information, guidance, and support for media and information literacy initiatives. The latter should be created through multi-stakeholder partnerships, with a child rights lens, a strong evidence base, and independent evaluation to ensure quality and impact. We submit that this would strengthen the current provision that industry codes may cover digital platform providers 'giving end-users and others information about misinformation or disinformation on digital platform services'.³
3. As suggested in Australia's recent *Privacy Act Review: Report 2022*, support the creation of a children's online privacy code. The code should apply to all digital products and services likely to be used by children under 18. The code should be underpinned by an expectation that the best interests of the child (as defined by the UN Convention on the Rights of the Child) are a primary consideration in relation to the handling of children's data, and that children's data must not be handled in ways shown to be harmful to children. Public regulators must be appropriately resourced to create the code in consultation with children, parents, educators and civil society; to track the code's implementation; and to address any serious or systemic failures to apply. The UK Children's Code, overseen by their Information Commissioner's Office, provides one model to learn from.

Misinformation and disinformation pose concerns for children online

Digital technologies are fully integrated into the lives of children and young people. Many experiences are beneficial or neutral, but some carry risks, including of exposure to misinformation and disinformation.

A survey of over 1,000 Australian children aged 8-16 (2020) found that on the previous day, 29% got news stories from social media and 19% got news from a website or mobile app. 75% of teens aged 13-16 said they got news from social media often or sometimes, as did 38% of children aged 8-12. Almost half (46%) said they paid little or no attention to the source of news stories, and 21% said that in the past six months they had shared a news story they later discovered was untrue.⁴ This echoes concerns raised by the Australian Competition and Consumer Commission in their 2019 report of the Digital Platforms Inquiry: that children and young people could be at particular risk in relation to misinformation and disinformation due to their high reliance on social media for news content.⁵

Meanwhile, the eSafety Commissioner found that in the past year almost half of Australian children aged 8-17 looked for physical health information online and approximately one-third discussed political or social problems online. Doubtless many experiences were harmless or positive, but a range of risks are present.⁶

As in the offline world, risk is not distributed equally. One UK study found that few school students had the critical literacy skills they needed to spot fabricated or misleading content, but that students from disadvantaged backgrounds were especially likely to struggle.⁷

Another important UK study confirmed that young people who are highly vulnerable in their offline lives are also highly vulnerable online. While researchers did not address misinformation, they found that vulnerable young people were many times more likely than their peers to be tricked online into buying fake goods; fall for scams; view racist or extremist content; or be deceived about someone's identity online. Groups at particular risk included young people in out-of-home care, young people with eating disorders, and young people with speech or hearing difficulties.⁸

A rights-based approach

Digital platforms' handling of misinformation and disinformation has ramifications for children's ability to enjoy several of their rights under the United Nations Convention on the Rights of the Child:

- Article 13 – The child's right to freedom of expression.
- Article 14 – The child's right to freedom of thought, conscience, and religion.

- Article 17 – The child’s right to information and material from a diversity of national and international media sources, especially those aimed at the promotion of children’s health and wellbeing.
- Article 24 – The child’s right to enjoy the highest attainable standard of health, which includes ensuring all segments of society are informed and supported in basic knowledge of child health.
- Article 36 – The child’s right to be protected from all forms of exploitation prejudicial to any aspects of the child’s welfare.⁹

It is difficult to protect children appropriately from online content which is false and linked to serious harm, while also facilitating their positive participation as empowered digital citizens. We believe the right approach must involve a commitment to uphold all relevant articles of the Convention and being guided by its General Comment No.25 (‘On children’s rights in relation to the digital environment’).

The state has an important role (in this case, via the ACMA) in working with industry to help ensure children can enjoy their rights online. General Comment No.25 states ‘Businesses should respect children’s rights and prevent and remedy abuse of their rights in relation to the digital environment. States parties have the obligation to ensure that businesses meet those responsibilities.’¹⁰

Approaches states should take, according to General Comment No.25, include:

- Encouraging providers of digital services used by children to apply concise and intelligible content labelling, including about trustworthiness of content.
- Upholding the principle that any restrictions on children’s right to freedom of expression online should be lawful, necessary and proportionate, and explained in age-appropriate language.
- Ensuring that automated information filtering, profiling, marketing, and decision-making do not supplant, manipulate or interfere with children’s ability to form and express their own views.¹¹

The Exposure Draft proposes to empower the ACMA to require stronger record keeping and reporting by digital platform providers, register industry codes about misinformation and disinformation, and, potentially, determine a misinformation standard for industry.¹² The Exposure Draft and explanatory documents state the need to balance freedom of expression and privacy with efforts to combat misinformation in the public interest.¹³ The Exposure Draft also articulates that there should be no infringement on any constitutional doctrine of implied freedom of political communication, and that, before registering a code or determining an industry standard, the ACMA must consider whether it burdens freedom of political communication and whether any such burden is reasonable and not excessive.¹⁴

However, at present there does not appear to be a clear, comprehensive commitment to work within a human rights framework in line with Australia’s international undertakings. Nor is there a clear, unifying theme of human rights violations in the list of examples of ‘serious harm’ provided in the guidance notes.¹⁵

We submit that a clearer human-rights-based approach would strengthen the focus and parameters of the Exposure Draft.

For example, there are several steps in the approach to combatting misinformation and disinformation, as set out in the Exposure Draft, where we believe it would be relevant to uphold human rights as a primary consideration. These are: the definitions of misinformation and disinformation; the definition of ‘serious harm’; the matters which must be considered in order to determine whether serious harm is likely; and the criteria which the ACMA must consider before registering a code or determining a standard.¹⁶

We also point to the work of the Broadband Commission for Sustainable Development, co-founded by UNESCO and the International Telecommunication Union. They developed a Freedom of Expression Assessment Framework for Disinformation Responses, to help UNESCO member states formulate legislative, regulatory and policy responses to disinformation while still respecting freedom of expression. The framework has 23 guiding questions to enable the assessment of interventions to address disinformation, in line with international human rights norms.¹⁷

The assessment framework does not cover every possible issue, but it could provide a valuable approach for reviewing and refining the proposed legislation and ensuring its alignment with Australia's international human rights obligations.

Media and information literacy

The Exposure Draft lists examples of matters that may be dealt with by codes and standards for industry about misinformation, recognising that applicability would vary across industry. Most of the matters listed focus on direct technological or procedural steps that digital platform providers can take to prevent or respond to misinformation and disinformation. Other options include support for fact checking and enabling of end-user reporting. The list adds that codes might also cover digital platform providers 'giving end-users and others information about misinformation or disinformation on digital platform services'.¹⁸

We believe that last item – currently very broad – would be stronger if it stated that a misinformation code would cover industry participants empowering end-users with high-quality information and support for media and information literacy.

Media and information literacy is an umbrella term covering media literacy, information literacy, and digital literacy – according to UNESCO: 'the essential competencies (knowledge, skills and attitude) that allow citizens to engage with media and other information providers effectively and develop critical thinking and life-long learning skills for socialising and becoming active citizens'.¹⁹

More specifically, General Comment No.25 stresses the importance of digital literacy education in schools, which should cover misinformation and other forms of biased or false content, with pedagogies assessed on the basis of their results.²⁰

Despite investment by the Australian Government in critical digital literacy and intelligence programs in secondary school settings, gaps in skills, knowledge and attitudes remain, including for younger children, children at risk of disengagement from education, parents, caregivers, some teachers, and adults responsible for children in extracurricular spaces eg. sports coaches, youth workers. (False information can cause problems in many other environments beside schools.) There is an argument to be made for incentivising industry to contribute more resources in this space, and potentially such commitments could sit within the structure of a code for addressing misinformation and disinformation.

General Comment No.25 specifies that states, when working with providers of digital services, should encourage the provision of accessible guidance, training, educational materials and reporting mechanisms for children, parents and caregivers, educators and relevant professional groups.²¹

We note and endorse UNICEF's recommendation that governments require large technology companies with significant global influence to fund independent, safe oversight of content moderation and digital literacy programs.²² We also note and endorse the recommendation by the Broadband Commission for Sustainable Development that internet communications companies provide more financial support to independently provided and delivered media and information literacy initiatives to help address disinformation. (The Commission also stresses the importance of independent evaluation of the impartiality and comprehensiveness of MIL products, especially those created by digital companies.)²³

The voluntary Australian Code of Practice on Disinformation and Misinformation (2021, DIGI) includes some recognition of this issue in Objective 4: 'Empower consumers to make better informed choices of digital content'. Measures in line with this commitment may include promotion of digital literacy.²⁴ However, ideally a code would articulate an expectation that such initiatives would have a child rights basis, a strong evidence base, independent evaluation, and demonstrated comprehensiveness and quality.

At present, the Exposure Draft and its accompanying documents do not make provision for this option.

Regulating the commercial handling of children's personal data

While high-quality education is important, we also recognise that children are vulnerable to misinformation and disinformation at a systems level. Many digital platforms provide products and services which appear to be free while making their profits through user engagement and handling of individuals' data.²⁵

We submit that children's risk of exposure to misinformation and disinformation is increased by design elements which are deliberately put there to drive user engagement and data handling.²⁶ These elements include:

- Recommender systems which promote material in response to the user's past activity or characteristics and the behaviour of users with similar profiles. This may create 'echo chambers' or nudge users toward more extreme content.
- Promotion of sensational content because of its high emotional appeal, not its accuracy.
- Popularity metrics which encourage users to create and share content based on the likes, shares and new followers they expect it to generate. (UNICEF found that the wish to 'go viral' was a big motive for children who shared misinformation and disinformation.²⁷)
- Autoplay functions which show content without initiation from the user.
- Targeted advertising, advertising disguised as regular content, and prioritising of paid-for content.
- Automated 'bot' accounts and fake profiles.
- Time-limited content which expires quickly, encouraging swift sharing without fact-checking.
- Contact with strangers fostered through direct messaging functions, accounts set to 'public' by default, and recommender systems which suggest new friends or followers.

While these design features may not have been intended to cause harm, they have effectively facilitated it. Australia has made some positive steps forward (such as the eSafety Commissioner's Safety by Design initiative), but we have not yet regulated successfully to address these risks.

We welcomed the proposal of Australia's *Privacy Act Review: Report 2022* create a Children's Online Privacy Code to better regulate how industry is permitted to handle children's personal information. While not focused specifically on misinformation and disinformation, we believe such a code would help reduce exposure, providing it includes the following elements:

- Children are defined as anyone under 18.
- Online services likely to be accessed by children (not just child-specific services) are required to treat the best interests of the child as a primary concern in the handling of children's data and to refrain from using children's personal information in ways shown to be harmful to children.
- 'The best interests of the child' is defined in line with the UN Convention on the Rights of the Child.
- Data protection impact assessments are required, especially to assess risks to children that arise from the handling of their data.
- Privacy / safety settings are 'high' by default for products and services used by children, unless there is a compelling reason to do otherwise guided by the best interests of the child.
- Learnings from overseas jurisdictions are studied eg. the UK Children's Code.
- Code development and implementation is led by trusted, expert public regulators, not by industry. These regulators must be appropriately resourced to create a high-quality code in consultation with children and their families, ensure the code is brought to life in industry practice, track its progress, and investigate and address any serious or systemic breaches.

When backed by strong leadership and adequate resourcing, regulatory frameworks can make a difference.

We are not aware of any measures of impact on children's exposure to misinformation and disinformation yet, but there are other signs of progress. 5Rights Foundation, who were involved in the drafting of the UK Children's Code, have observed that within months of its implementation, some positive changes appeared. For example, Instagram banned adults from messaging children, turned off location tracking and introduced prompts to encourage children to take breaks from scrolling, while Google made SafeSearch the default

browsing mode for children, turned off YouTube's autoplay function and set YouTube default upload settings to 'private' for under-18s. Many platforms unveiled new user controls and clearer published terms.²⁸ However, ensuring positive changes are sustained and built upon is an ongoing task. Relevant public regulators need adequate resourcing to maintain such work.

We would welcome the opportunity to discuss these matters further. Please contact:

Dr Jessie Mitchell, Manager, Advocacy
jessie.mitchell@amf.org.au

Sarah Davies AM, CEO
sarah.davies@amf.org.au

Ariana Kurzeme, Director, Policy & Prevention
ariana.kurzeme@amf.org.au

¹ A. Graham and P. Sahlberg, 'Growing Up Digital Australia: Phase 2 technical report,' Gonski Institute for Education, UNSW, Sydney, 2021, <https://www.gie.unsw.edu.au/growing-digital-australia-phase-2-results>

² P. Rioseco and S. Vassallo, 'Adolescents online (Growing Up in Australia Snapshot Series – Issue 5)', Melbourne, Australian Institute of Family Studies, 2021, <https://growingupinaustralia.gov.au/research-findings/snapshots/adolescents-online>

³ Parliament of Australia, Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023, Exposure Draft, p.30
<https://www.infrastructure.gov.au/sites/default/files/documents/communications-legislation-amendment-combatting-misinformation-and-disinformation-bill2023-june2023.pdf>

⁴ Tanya Notley, Michael Dezuanni, Hua Flora Zhong, Simon Chambers, 'News and Young Australia in 2020,' Western Sydney University and QUT, 2020,
https://www.westernsydney.edu.au/_data/assets/pdf_file/0009/1717875/News_and_Young_Australians_in_2020_web.pdf

⁵ Australian Competition and Consumer Commission (ACCC), 'Digital Platforms Inquiry: Final report', 2019,
<https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>

⁶ eSafety Commissioner, 'Mind the Gap: parental awareness of children's exposure to risks online', 2022,
<https://www.esafety.gov.au/research/mind-gap>

⁷ UNICEF, 'Digital misinformation / disinformation and children,' 2021,
<https://www.unicef.org/globalinsight/media/2096/file/UNICEF-Global-Insight-Digital-Mis-Disinformation-and-Children-2021.pdf>

⁸ Adrienne Katz and Dr Aiman El Asam, in partnership with Internet Matters, 'Refuge and Risk: Life online for vulnerable young people,' 2021, <https://www.internetmatters.org/wp-content/uploads/2021/01/Internet-Matters-Refuge-And-Risk-Report.pdf>

⁹ United Nations Convention on the Rights of the Child, 1989, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

¹⁰ United Nations Office of the High Commissioner, Convention on the Rights of the Child, 'General comment No. 25 (2021) on children's rights in relation to the digital environment', 2021,
<https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation>

¹¹ United Nations Office of the High Commissioner, 'General Comment No.25 (2021) on children's rights in relation to the digital environment'

¹² Parliament of Australia, Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023, Exposure Draft, pp.3-4

-
- ¹³ Australian Government Department of Infrastructure, Transport, Regional Development, Communication and the Arts, 'Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023', guidance note, 2023, https://www.infrastructure.gov.au/sites/default/files/documents/communications-legislation-amendment-combatting-misinformation-and-disinformation-bill-2023-guidance-note-june2023_2.pdf
- ¹⁴ Parliament of Australia, Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023, Exposure Draft, pp.32-33, 40, 50
- ¹⁵ Australian Government Department of Infrastructure, Transport, Regional Development, Communication and the Arts, 'Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023', guidance note, 2023
- ¹⁶ Parliament of Australia, Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023, Exposure Draft, pp.6, 12-13, 32-33, 40
- ¹⁷ Broadband Commission for Sustainable Development, 'Balancing Act: Countering Digital Disinformation While Respecting Freedom of Expression,' Broadband Commission research report on 'Freedom of Expression and Addressing Disinformation on the Internet', 2020, https://www.broadbandcommission.org/Documents/working-groups/FoE_Disinfo_Report.pdf
- ¹⁸ Parliament of Australia, Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023, Exposure Draft, p.30
- ¹⁹ UNESCO, 'Media and information literacy: policy and strategy guidelines', 2013, <https://www.unesco.org/en/node/66602?hub=750>
- ²⁰ United Nations Convention on the Rights of the Child, 1989
- ²¹ United Nations Convention on the Rights of the Child, 1989
- ²² UNICEF, 'Digital literacy for children: exploring definitions and frameworks', 2020, <https://www.unicef.org/globalinsight/media/1271/file/%20UNICEF-Global-Insight-digital-literacy-scoping-paper-2020.pdf>
- ²³ Broadband Commission for Sustainable Development, 'Balancing Act: Countering Digital Disinformation While Respecting Freedom of Expression'
- ²⁴ DIGI, 'Australian Code of Practice on Disinformation and Misinformation', 2022, <https://digi.org.au/wp-content/uploads/2021/10/Australian-Code-of-Practice-on-Disinformation-and-Misinformation-FINAL-WORD-UPDATED-OCTOBER-11-2021.pdf>
- ²⁵ ACCC, 'Digital Platforms Inquiry: final report', June 2019
- ²⁶ See for example: 5Rights Foundation, 'Pathways: How digital design puts children at risk,' 2021, <https://5rightsfoundation.com/uploads/Pathways-how-digital-design-puts-children-at-risk.pdf> ; 5Rights Foundation, 'Risky-by-design,' <https://www.riskyby.design/misinformation> ; eSafety, 'Recommender systems and algorithms – position statement,' 2022, <https://www.esafety.gov.au/industry/tech-trends-and-challenges/recommender-systems-and-algorithms>
- ²⁷ UNICEF, 'Digital misinformation / disinformation and children'
- ²⁸ 5Rights Foundation, 'Approaches to children's data protection - a comparative international mapping', 2022, <https://5rightsfoundation.com/in-action/approaches-to-childrens-data-protection-a-comparative-international-mapping.html> ; 5Rights Foundation, '5Rights celebrates the first anniversary of the Age Appropriate Design Code', 2022 <https://5rightsfoundation.com/in-action/5rights-celebrates-the-first-anniversary-of-the-age-appropriate-design-code.html>