

The proposed draft by the Albanese Government regarding the *Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023* (Cth) (“the Proposed Bill”) is a serious disappointment to many Australians. What this bill proposes is not only a serious overreach by the government into the personal lives of Australian citizens, but its proposal also directly clashes with several international treaties to which Australia is party. The relevant treaties are the *International Covenant on Civil and Political Rights* (“ICCPR”), the *International Convention on the Elimination of All Forms of Racial Discrimination* (“CERD”), the *Convention on the Rights of the Child* (“CRC”), and the *Convention on the Rights of Persons with Disabilities* (“CRPD”). Though each treaty does relate to all people (e.g., CRC refers solely to children, and CRPD refers solely to those with disabilities), all four treaties mention the right to freedom of expression and opinion in the following ways:

- “Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” – **ICCPR, Article 19(1) and Article 19(2)**.
- “... State Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following... civil rights, in particular... [t]he right to freedom of opinion and expression...” – **CERD, Article 5(d)(viii)**.
- “The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.” – **CRC, Article 13(1)**.
- “State Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others through all forms of communication of their choice...” – **CRPD, Article 21**.

Similarly, the *Universal Declaration of Human Rights* (“UDHR”), adopted by the United Nations and with Australia in favour, holds that:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” – **UDHR, Article 19**.

The Proposed Bill proposes to grant executive powers to the Australian Communications and Media Authority (“ACMA”), allowing them the power to enforce a code of practice, or to take stronger measures when necessary, to combat the spreading of misinformation or disinformation. The Proposed Bill very loosely defines “misinformation” as content that is “false, misleading or deceptive” and is “reasonably likely to cause or contribute to serious harm” (the Proposed Bill, Article 7(1)).

This loose definition gives rise to a number of important questions:

- Who defines whether information is false, misleading or deceptive?
- Is this power being granted to the ACMA through this legislation?
- How does this prevention of potential “false, misleading or deceptive” information infringe on the right to freedom of expression and opinion?

- What happens if the ‘misinformation’ is found to be true?

Granted, the right to freedom of expression may be subject to legal and necessary restrictions, such as for the protection of national security, for the respect of others’ rights and reputations, or for the prevention of incitement to commit crimes.

However, the Proposed Bill defines “harm” as any one of the following:

1. Hatred against a specific ethnic, racial, age, religious, or disabled group in Australian society; or
2. Disruption of public order; or
3. Questioning the integrity of Australian democratic processes and institutions (e.g., suggesting corruption); or
4. Harm to Australians’ health or to the Australian environment; or
5. Economic or financial harm to Australians or the Australian economy (including a sector of the Australian economy).

The above definition covers an extremely broad range of topics. Regarding point 1. of the definition of “harm” above, many of the treaties (e.g., the CERD, CRPD, and UDHR) already protect people from discrimination, limiting the that particular “harm” defined by the Proposed Bill, without the need for additional legislation. Additionally, the Proposed Bill’s definition of “harm” severely limits what Australians would be able to express. For example, if one Australian forms the opinion that a previous governmental election were fraudulent, he can no longer express his opinion, whether it be correct or otherwise, under the restrictions in the Proposed Bill. The vague definition provided by the Proposed Bill could easily be used to prevent Australians from bring pressing social, cultural, or religious issues to the forefront of society, resulting in the potential suppression of Australian citizens.

Another concern rising from the Proposed Bill is that its applications do not apply to content that has been excluded for “misinformation purposes” (the Proposed Bill, Article 7(1)). This excluded content is limited to content found in authorised entertainment, professional news content, educational content authorised by the Commonwealth, a State or Territory, or another authorised accreditor, or content that is authorised by the Commonwealth, a State or Territory, or a local government (i.e., council). Basically, this means that any content provided by the government or the Australian Broadcasting Commission (“ABC”), or for entertainment, cannot be policed by the ACMA, regardless of whether it is false, misleading, or deceptive. This implies that anything the government or the ABC publishes is not false, misleading, or deceptive, and this gives these bodies great power in determining what can be considered “false, misleading or deceptive”.

For example, if an Australian contradicts something published by the government or ABC, either the individual who expressed his opinion or the government/ABC is spreading misinformation, for two contradictory pieces of information cannot both be true. The individual who speaks up against the government/ABC is likely going to be deemed to be spreading “misinformation”, and the individual’s freedom of expression is, therefore, limited to spreading that which agrees with governmental and the ABC’s posts. The subsequent disciplinary action taken against the individual will have a severe chilling effect on the free exchange of ideas in the public square – one of the founding principles of a democracy.

Another issue arising from the Proposed Bill’s excluded content is the direct confrontation this causes with a key legal concept, called the Rule of Law. This concept underlies many legal institutions around the world, including those in the United States of America and

Australia. The principle of the Rule of Law originated in Ancient Greece, with the philosophy of Aristotle. Simply speaking, this principle of the Rule of Law states that all people and organisations are equal under the law – that is, no one person, or organisation, is above the law. This means that any laws enacted by Parliament are also for all the Members of Parliament (“MP”) to follow, and anyone – whether an MP, a white- or blue-collar worker, or even a stay-at-home mother or pensioner – caught breaking a law will be held accountable. The problem with the exclusion of the publications of certain organisations from any repercussions as detailed in the Proposed Bill is that the Rule of Law is no longer followed. The exceptions for specific organisations and/or people create two different laws. There will then be one law for the general population and a separate law for the government and ABC. This is against everything that a Western democratic nation stands for. A two-tiered society is a regression back to the days of lords and serfs. This is antithetical from the one-tiered society founded on the Rule of Law and is Australia as we know it.

In light of these points put forward, I request that the Proposed Bill be withdrawn. As representatives of Australia, all those in Parliament should stand for the rights and the freedoms of Australia’s citizens. It is saddening to see that such a bill against fundamental Australian liberties would be drafted in the first place. This is the worst attack on the Australian people that has ever been drafted. If the Proposed Bill is passed, it will drastically change Australia for the worse, and we will no longer possess the rights and freedoms to live our lives as we choose.