

Sarah Davis-Rogers

[REDACTED]

[REDACTED]

To: Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Subject: The Submission on the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023 is UNCONSTITUTIONAL

Dear Sir/Madam,

I am writing to express my deep anger and outrage regarding the proposed Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023. As an Australian citizen, I believe that this bill is a direct infringement on our freedom of speech and lacks respect for the voice of regular citizens in our democracy.

The bill creates a clear divide by establishing two classes of citizens. The first class, consisting of politicians, journalists, and members of educational institutions, will have the power to spread information, whether accurate or not, online. The second class, which includes regular citizens who often possess more knowledge on certain topics than those in the first class, risks being disproportionately harmed by this law. The internet has given regular people a powerful voice, and this bill threatens to suppress that voice.

One of the most concerning aspects of this bill is the excessive fines, which will lead digital services to become more restrictive in their speech than even the most stringent platforms currently. The breadth of the code, which applies across the entire industry with no escape valves, will compound the harm caused by this legislation.

Accurately judging what is true or untrue is an impossible task. The nature of knowledge is constantly evolving, and what was once accepted as fact can later be proven false. The examples provided, such as the changing information on COVID-19 and its vaccines, highlight this challenge. Under this legislation, such information could easily be labeled as public health misinformation. The proposed industry code or mandatory code by ACMA is likely to require the removal of content that is not necessarily false but considered misleading or deceptive. Freedom of speech allows for open and honest discussions to take place, even when opinions differ, ultimately leading to a better understanding of the truth.

Dr. Nick Coatsworth, a former Deputy Chief Medical Officer of Australia, has raised serious concerns about the scope and application of this bill. His statement on Twitter highlights how the accusation of misinformation is thrown so readily that it would be impossible to implement this legislation without punishing things that are not, or turn out not to be, misinformation. If even an expert appointed to be a steward of truth raises concerns about the bill, it calls into question the government's claim to be on the side of truth rather than censorship.

Furthermore, the industry bodies proposed by this bill are likely to become "anti-competitive

wedges” that larger digital services will use to gatekeep their industry from new competitors. This gives the biggest players in an industry the ability to write their own regulations and damage their smaller competitors by burdening them with onerous compliance requirements. Recent evidence shows that free-market competition between platforms when it comes to misinformation and disinformation policies is effective. Users naturally migrate to platforms that fulfill community expectations in this regard, as seen by the surge of sign-ups for services like Mastodon and the release of new competitors.

This bill also fails to consider the impact on smaller platforms and websites. The legal risks imposed by the broad scope of the bill would introduce unreasonable restrictions on freedom, liberty, and the right to freedom of speech and enterprise. Owners of websites with social features may face fines of up to AU\$500,000 for individuals and AU\$2,500,000 for companies, regardless of whether they are aware of the industry codes or not. This lack of awareness raises questions about how enforcement will occur, particularly for small foreign website owners. The bill must consider the global nature of digital platforms and the practicality of enforcing these regulations.

The proposed bill is not aligned with the News Media Bargaining Code enacted in 2021. The NMBC limited digital services’ ability to address misinformation and disinformation by removing global content meeting specific criteria. This bill contradicts the NMBC by suggesting that fact-checkers and other methods involving news content can be beneficial in countering misinformation and disinformation.

For a bill that claims to protect minorities, it may inadvertently result in their persecution. Progress is achieved by challenging established beliefs and convincing people that what was once accepted as fact may no longer be true. By mandating a single code to be applied across all digital platforms, this bill leaves minorities without shelter when the system pushes back against them. This is particularly concerning as minorities are often the ones oppressed by current political realities.

Moreover, the power granted to ACMA to give legislative effect to misinformation codes and enact digital platform rules violates the implied constitutional freedom of political communication. The definitions used in the bill raise matters of public policy that are contested among political parties and interest groups, as well as scientific investigation and debate. Limiting legitimate discussions on these matters would unreasonably curtail the constitutional freedom of political communication.

The bill assumes that the Government and accredited institutions can determine what is true without taking into account the experiences and viewpoints of ordinary Australians. Diversity in viewpoints is crucial for sense-making and considering all possibilities. Silencing certain views before they can be shared undermines this process and disempowers ordinary people. The threats and impositions on digital platform providers and users further hinder the democratic process and erode trust between citizens and the government.

In conclusion, I strongly oppose the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023. It undermines freedom of speech, unfairly favors certain entities, and fails to consider the rights and voices of ordinary Australians. I urge you to reconsider this bill and work towards a solution that respects our democratic principles and upholds the values of freedom of speech and expression.

Thank you for considering my submission. I trust that you will weigh these concerns seriously and take them into account during the legislative process.

Yours sincerely,

Sarah Davis Rogers