

**LGB** ALLIANCE AUSTRALIA



**Misinformation and Disinformation:  
A Submission on the 2023 Proposed  
Communications Legislation**

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# **About LGB Alliance Australia**

## **Our Vision**

Lesbians, gay men and bisexuals living free from discrimination or disadvantage based on their sexual orientation.

## **Our Mission**

### **To advance lesbian, gay and bisexual rights**

We advance the interests of lesbians, gay men and bisexuals, and stand up for our right to live as same-sex attracted people without discrimination or disadvantage.

We will ensure that the voices of lesbians, gay men and bisexuals are heard in all public and political discussions affecting our lives.

### **To highlight the dual discrimination faced by lesbians**

We amplify the voices of lesbians and highlight the dual discrimination experienced by lesbians as women who are same-sex attracted in a male-dominated society.

### **To protect children who may grow up to be lesbian, gay, or bisexual**

We work to protect children from harmful, unscientific ideologies that may lead them to believe either their personality or their body is in need of changing. Any child growing up to be lesbian, gay or bisexual has the right to be happy and confident about their sexuality and who they are.

### **To promote free speech on lesbian, gay and bisexual issues**

We promote freedom of speech and informed dialogue on issues concerning the rights of lesbians, gay men and bisexuals. We assert that different opinions, even those we may disagree with, should be heard as part of the public debate.

You can find out more about us on our website – [www.lgballiance.org.au](http://www.lgballiance.org.au)

You can get in contact with us on email – [contact@lgballiance.org.au](mailto:contact@lgballiance.org.au)

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## **Executive Summary**

LGB Alliance Australia is Australia's largest organisation advocating solely for the rights of lesbian, gay and bisexual individuals. We started advocating for LGB rights in 2020 as many mainstream LGBT organisations shifted their focus away from LGB rights to prioritise gender identity. Now, our rights as same sex attracted people are being erased and we are subjected to new forms of discrimination.

We recognize the harms that can occur when disinformation and misinformation spread online. For example, we have been dismayed by the online smearing of individuals who advocate in good faith for the sex-based rights of women and LGB individuals. And we hold deep concerns for children – many of whom may grow up to be lesbian, gay or bisexual – who are exposed to harmful, unscientific messaging online which encourages them to believe they were 'born in the wrong body' and must change their bodies and/or their personalities.

Unfortunately, some digital platforms have silenced individuals who raised these concerns. Individuals have been banned, suspended or restricted for making statements which most people would consider factual and ordinary, such as 'Men aren't women' and 'Women don't have penises'.

Consequently, we are aware of the complexities of attempting to regulate online content. We do not believe the current exposure draft is fit for purpose. Our main concerns are:

- The absence of a clear commitment to uphold the International Covenant on Civil and Political Rights and its General Comment 34 ('Freedoms of opinion and expression').
- The failure to recognize biological 'sex' as a vulnerable category, as is necessary in order to uphold the rights of women and LGB (same sex attracted) people. The poorly defined category of 'gender' does not offer appropriate protections to women or LGB people.
- The inclusion of vague, poorly defined categories of 'harm' and 'hate'. As the United Nations Special Rapporteur on Violence against Women and Girls has noted, there has been an alarming rise in commercial and public actors using such ill-defined claims to silence reasonable, peaceful discussion of the sex-based rights of women and LGB people.
- The expectation that digital platforms will take further action to remove content which they themselves have judged to be 'false and harmful'. Some platforms already have a history of removing content for what appeared to be ideological reasons.
- The exemption from any dis/misinformation code for news media and government. While we do not wish to see these voices restricted either, we note that some have shared content on LGB issues which might be considered misleading and harmful.

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- The minimal distinction made between individual users sharing their own views online and large-scale malicious coordinated inauthentic activity – e.g. bot farms, deepfakes, spam. We believe these two categories of activity warrant different treatment.

Unfortunately, we must also note that some public bodies responsible for upholding online safety and human rights have lost trust amongst LGB people concerned with our own sex-based rights. Work is needed to restore that trust.

### **Recommendations**

1. Subject the exposure draft to further review. We do not believe it is fit for purpose in its current form.
2. Return to clear, factual, biological/natal definitions of ‘woman’, ‘man’, ‘sex’, ‘lesbian’, ‘gay’ and ‘bisexual’ in legislation and policy, and remove the conflation of ‘sex’ and ‘gender’. See the original, sex-based language of the Sex Discrimination Act (1984) before the 2013 amendments.
3. Focus on keeping the harmful aspects of the online world away from children under the age of 18 – e.g. contact with strangers, access to pornography, and exposure to content that promotes self-harm and body hatred within digital environments which were designed to be appealing, immersive and addictive for children. Issues to be addressed at the level of regulation and design include commercial algorithms, fake accounts, dark patterns, and weak privacy settings.
4. Ensure that any future attempts to legislate about dis/misinformation are guided by explicit commitments to the following:
  - Uphold Australia’s obligations under the International Covenant on Civil and Political Rights and its General Comment 34 (‘Freedoms of opinion and expression’).
  - Focus on addressing, within a human rights framework, the specific threats that can be posed to democratic life by large-scale, coordinated, malicious inauthentic activity by foreign states or private bad actors (e.g. via bots, spam, deepfakes).
  - Ensure publication of details of any information removed from digital platforms, in line with the recommendation of the Australian Human Rights Commission to the Senate Select Committee on Foreign Interference through Social Media.

## **Disinformation and misinformation: definitions in the exposure draft**

The exposure draft (7(1-2)) defines misinformation as follows:

- a) the content contains information that is false, misleading or deceptive; and*
- b) the content is not excluded content for misinformation purposes; and*
- c) the content is provided on the digital service to one or more end users in Australia; and*
- d) the provision of the content on the digital service is reasonably likely to cause or contribute to serious harm.*

Misinformation becomes disinformation if *'the person disseminating, or causing the dissemination of, the content intends that the content deceive another person.'*

According to the exposure draft (1): 'harm' means any of the following:

- a) hatred against a group in Australian society on the basis of ethnicity, nationality, race, gender, sexual orientation, age, religion or physical or mental disability;*
- b) disruption of public order or society in Australia;*
- c) harm to the integrity of Australian democratic processes or of Commonwealth, State, Territory or local government institutions;*
- d) harm to the health of Australians;*
- e) harm to the Australian environment;*
- f) economic or financial harm to Australians, the Australian economy or a sector of the Australian economy.*

The exposure draft (1) states regulation of dis/misinformation would exclude the following:

- a) content produced in good faith for the purposes of entertainment, parody or satire;*
- b) professional news content;*
- c) content produced by or for an educational institution accredited by any of the following: (i) the Commonwealth; (ii) a State; (iii) a Territory; (iv) a body recognised by the Commonwealth, a State or a Territory as an accreditor of educational institutions;*
- d) content produced by or for an educational institution accredited: (i) by a foreign government or a body recognised by a foreign government as an accreditor of educational institutions; and (ii) to substantially equivalent standards as a comparable Australian educational institution;*
- e) content that is authorised by: (i) the Commonwealth; or (ii) a State; or (iii) a Territory; or (iv) a local government.*

## **False content can pose concerns for LGB people and children who may grow up to be LGB**

LGB Alliance Australia recognizes that harm can occur when digital technologies are used to spread dis/misinformation. Like many advocates for the sex-based rights of women and LGB people, our organization has been subjected to inaccurate, damaging online ‘smear campaigns’.<sup>1 \*</sup>

More importantly, we hold deep concerns about the risks that false online messaging can pose to children, including children who might grow up to be lesbian, gay or bisexual. Nowadays, many children spend hours each day immersed in digital technologies which were designed, as part of their business model, to be quasi-addictive and to gather vast amounts of personal information about users. In these highly compelling digital spaces, young users have content ‘suggested’ to them via algorithms based on their previous activities. Some of this content is factually inaccurate and encourages high-risk pathways.

For example, vulnerable teens may be told that feeling attraction to their own biological sex is a sign that they were born in the wrong body (e.g. that a young lesbian is ‘really’ a boy), that they can change their sex using drugs and surgery, and that such interventions offer their only chance at a happy adult life.

These claims have no factual basis. Since the majority of teens presenting at youth gender clinics are attracted to their own biological sex,<sup>2</sup> the matter is of particular concern to us.

In the 2022 interim report of her independent review of the UK’s Gender Identity Development Service (GIDS), Dr Hilary Cass OBE raised concerns that vulnerable teens were being influenced by online content which gave them unrealistic ideas about gender, encouraged high-risk choices, and discouraged help-seeking for serious problems.

‘We have heard that some young people learn through peers and social media what they should and should not say to therapy staff in order to access hormone treatment; for example, that they are advised not to admit to previous abuse or trauma, or uncertainty about their sexual orientation.’<sup>3</sup>

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\* For example, LGB Alliance has been labelled as a ‘right wing hate group’ by opponents online. In fact, we have never advocated any kind of hate, our objectives are based in human rights, our organization is non-partisan, and our individual members are politically diverse and moderate, with most of our founding members from left-leaning backgrounds.

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This echoes Lisa Littman's 2018 survey of 256 parents of adolescents who developed sudden distress about gender during or after puberty. The majority of the young people were same sex attracted. Almost two-thirds showed an increase in internet or social media use just before announcing they were transgender. When asked what advice their children were given online, 34% of parents said their children had been told that their parents were 'abusive' if they did not let them take hormones; 29% said their children had been told that if they waited to transition they would regret it; 22% said their children had been told what to say to a doctor in order to get hormones; 21% said their children had been told to use threats of suicide if their parents were reluctant for them to take hormones; and 17% said their children had been told that it was acceptable to lie or withhold medical information from a doctor in order to get hormones faster.<sup>4</sup>

Thus, we hold deep concerns about children's exposure to misleading and harmful content online. However, we are not convinced this proposed legislation offers the solution.



## **Legislation should uphold the sex-based rights of women and LGB people**

According to the exposure draft (1), content may be defined as harmful dis/misinformation if shows *'hatred against a group in Australian society on the basis of ethnicity, nationality, race, gender, sexual orientation, age, religion or physical or mental disability'*.

Certainly, digital technologies can be used to reinforce real-world inequality. For example, the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has commented on the threats posed to women by dis/misinformation about sexual and reproductive health, and by the use of malicious dis/misinformation to stop women from participating in public life.<sup>5</sup>

However, the exposure draft does not recognise vulnerability on the basis of sex.

This is part of a wider trend: around Australia, legislation and policies are being changed to remove biological sex as a protected category and replace it with 'gender' – most recently via Queensland's Births, Deaths and Marriages Registration Act 2023. Of particular concern was the 2013 amendment to the Sex Discrimination Act (1984), which removed the original sex-based definitions ('man means a member of the male sex'; 'woman means a member of the female sex') and inserted a baffling definition of 'gender identity': 'the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth.'<sup>6</sup>

When the embodied, measurable reality of biological sex is replaced with a vague concept of 'gender', it becomes impossible to accurately, consistently recognize and address the forms of discrimination and abuse experienced by women and LGB people on the basis of our sex – for example, women's experiences of reproductive coercion and pregnancy discrimination, and LGB people's experience of harassment in response to our same sex partnerships.

Indeed, replacing 'sex' with 'gender' has enabled anti-discrimination laws to be weaponised against women and LGB people. LGB Alliance Australia has listed numerous lesbian events and groups which were forced to close down or open their doors to men, under threat of legal action for 'discriminating' against trans-identified biological males.<sup>7</sup>

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Conflation of sex and gender also compromises datasets, thus weakening policy-making. Reem Alsalem, United Nations Special Rapporteur on Violence against Women and Girls, states:

'Unfortunately, today there is a concerning deprioritisation of sex-related data, driven in large part by a deliberate conflation of sex and gender, which leads to erroneous conclusions, mischaracterization of problems in society, and therefore also to misinformed responses.'<sup>8</sup>

## **Legislation should commit to uphold the International Covenant on Civil and Political Rights**

The exposure draft – 37(1), 40(1), 45 – states that before the Australian Communications and Media Authority (ACMA) can register a code, register an amendment to a code, or determine their own standard, they must consider *‘whether the code burdens freedom of political communication; and ... if so, whether the burden is reasonable and not excessive’*.

We do not consider that this provision goes far enough to uphold Australia’s obligations under the International Covenant on Civil and Political Rights, including Articles 18, 19, 21 and 22, which articulate rights to freedom of thought, conscience, religion, opinion, expression, peaceful assembly, and association.

Worldwide, concerns about online disinformation have been accompanied by parallel concerns about governments using laws against ‘false news’ to suppress democratic life. UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Irene Khan, notes that many laws against ‘false news’ do not meet the test of legality, necessity and legitimate aims set out in Article 19(3) of the International Covenant. Laws may fail to define with sufficient precision what constitutes false information or what harm they are seeking to prevent, or they may not require proof of a concrete nexus between speech and harm.

‘States have the duty to ensure that companies respect human rights ... State regulation of social media should focus on enforcing transparency, due process rights for users and due diligence on human rights by companies, and on ensuring that the independence and remit of the regulators are clearly defined, guaranteed and limited by law.’<sup>9</sup>

We believe it is especially important that vulnerable cohorts, including LGB people and women, should be free to speak openly together about matters which directly affect our own rights.

Unfortunately, as discussed later, there is an international trend of state and commercial censorship of individuals who speak about sex-based rights. This censorship is rationalized on the grounds that such speech constitutes ‘harm’ and ‘hate’, even when no proof of harm or hate is present. For this reason, we are concerned by proposed legislation, such as this exposure draft and its guiding documents, which uses the terms ‘harm’ and ‘hate’ without a precise, bounded definition. In a liberal democracy, we must be able to discuss all manner of issues, even (or especially) when people disagree passionately. Bad arguments are best exposed through public debate with a strong evidence base, not through forcing one’s opponents into silence.

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The observations of Reem Alsalem, the UN Special Rapporteur on Violence against Women and Girls, are worth reproducing at length:

'I am concerned by the shrinking space in several countries in the Global North for women and feminist organisations and their allies to gather and/or express themselves peacefully in demanding respect for their needs based on their sex and/or sexual orientation.

...

'I am disturbed by the frequent tactic of smear campaigns against women, girls and their allies on the basis of their beliefs on non-discrimination based on sex and same-sex relations. Branding them as "Nazis," "genocidaires" or "extremists" is a means of attack and intimidation with the purpose of deterring women from speaking and expressing their views. Such actions are deeply troubling, as they are intended to instill fear in them, shame them into silence, and incite violence and hatred against them. Such acts severely affect the dignified participation of women and girls in society.

...

'I am also concerned by the way in which provisions that criminalise hate speech based on a number of grounds, including gender expression or gender identity, have been interpreted in some countries.

...

'According to international human rights law, any restriction on freedom of expression should be carried out strictly in accordance with the human rights standards of legality, necessity, proportionality and to serve a legitimate aim ...  
**Sweeping restrictions on the ability of women and men to raise concerns regarding the scope of rights based on gender identity and sex are in violation of the fundamentals of freedom of thought and freedom of belief and expression and amounts to unjustified or blanket censorship.** [Our emphasis]

...

'Of particular concern are the various forms of reprisals against women, including censorship, legal harassment, employment loss, loss of income, removal from social media platforms, speaking engagements, and the refusal to publish research conclusions and articles. In some cases, women politicians are sanctioned by their political parties, including through the threat of dismissal or actual dismissal.<sup>10</sup>

## **Some digital platforms have suppressed discussion of matters affecting LGB people**

We recognise the exposure draft does not propose that the ACMA would determine the factuality of individual pieces of online content. That role would sit with digital platforms, which would be required under the proposed legislation to have stronger systems, policies and practices in place to detect and remove content which the platforms assess to be dis/misinformation.

However, requiring digital platforms to become more active in removing content which they have determined to be false and harmful raises its own concerns. Digital platforms are not very accountable to the public, and unfortunately some have a disturbing record of silencing individuals, especially women, who speak about biological sex and sex-based rights.

Recently, the University of Melbourne Professor Holly Lawford-Smith described how speaking openly about her lesbianism and her gender-critical views got her banned not only from Twitter, but also from the essay-writing platform Medium and the allegedly lesbian-friendly dating sites HER and Hinge.<sup>11</sup> Unfortunately, her experience was not unusual. Many individuals have been banned, suspended or restricted from social media platforms, or have had their content removed, after using language which most people would find reasonable or factual. Their offending statements included 'Men aren't women', 'Lesbians are female homosexuals', 'Women don't have penises', and 'What is the difference between a transwoman and a man?'<sup>12</sup>

It is vital that any new legislation does not function to rationalize similar acts of censorship.

## **Public regulators have not always modelled support for the rights of LGB people**

The exposure draft proposes a key role for the ACMA in registering codes, registering changes to codes, and potentially creating new standards for industry. Presumably the ACMA would also help shape industry's understanding of dis/misinformation based on the definition in the legislation.

Public regulatory bodies have a vital role to play in helping make the online world safer. However, unfortunately we must note that some public regulators have not earned the trust of women and LGB people concerned about our sex-based rights.

We have written elsewhere of the damage done to lesbian communities when human rights legislation and regulation were used to effectively halt women-only gatherings on grounds that lesbians were 'discriminating' against biological males who identified as transgender.<sup>13</sup>

We have also expressed our dismay at the eSafety's Commissioner's creation of an online safety resource for the 'LGBTIQ+' community which ignored the common problem of male sexual harassment of lesbians and bisexual women online, failed to acknowledge that it is normal and legitimate for LGB people to go online looking for a partner of their own biological sex, and included an anecdote portraying women who want female-only spaces as 'hateful' and deserving of being reported to the authorities.<sup>14</sup> This came on top of a report by eSafety about online safety issues affecting 'LGBTIQ+' Australians, which also failed to properly address male sexual harassment of lesbian and bisexual women online, and included references to women as 'terfs': a highly misogynist slur.<sup>15</sup> More recently, activists for women's sex-based rights alleged that eSafety attempted to have their content removed from Twitter, from the feminist online magazine ReduXX, and from the feminist social media platform Ovarit.<sup>16</sup>

We urge public regulators to reflect on how such actions affect their reputation amongst LGB people concerned with our own sex-based rights and how trust can be rebuilt.

## **News media and government agencies have shared content on LGB issues that might be considered misleading or harmful**

The exposure draft exempts traditional news media and government from dis/misinformation codes. However, these sectors have not been immune from sharing content which some readers would consider false and even harmful.

For example, a recent online glossary of 'LGBTIQA' issues published by the Australian Institute of Family Studies and co-branded with the Australian Government states, as fact, that 'a woman may identify as lesbian whether she was assigned female or male at birth', and that a lesbian is 'an individual who identifies as a woman and is sexually and/or romantically attracted to other people who identify as women'.<sup>17</sup> Or to put it more clearly: a biological male can be a lesbian.

Such claims contradict measurable, physical reality – i.e. they are false and misleading. They might also be considered harmful, given the problem (which we have described elsewhere) of sexual harassment of lesbians by biological males who claim to identify as women.<sup>18</sup> Lesbians who object to these advances risk being vilified as 'discriminatory' and 'hateful', when they are in fact just defending their own rights and drawing safe boundaries. It is disturbing to see an Australian Government-branded resource helping, however unintentionally, to legitimize attitudes which underpin sexual harassment.

News media can produce worrying content, too. For example, we raised serious concerns about the representation of child gender dysphoria by the ABC's *Four Corners*, which failed to address adequately the massive overrepresentation of LGB teens at gender clinics and handled the highly sensitive topic of youth suicide in a way which we thought irresponsible.<sup>19</sup>

This is not to say that we believe government or news media should be subject to restriction either. Rather, we believe disagreement should be resolved through open, evidence-based debate.

We would be glad to discuss any of these matters further. Please contact

**[REDACTED]**

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## Endnotes

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- <sup>1</sup> See for example the experiences of the original LGB Alliance UK: 'LGB Alliance: Who, What, Why, When,' 2022, <https://lgballiance.org.uk/lgb-alliance-who-what-why-when/> ; Bev Jackson, 'LGB Alliance will never be silenced,' 2023, <https://www.spiked-online.com/2023/07/13/lgb-alliance-will-never-be-silenced/>
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- <sup>3</sup> Dr Hilary Cass OBE, 'Cass Review: Independent Review of Gender Identity Services for Children and Young People', 2022, <https://cass.independent-review.uk/publications/interim-report/>
- <sup>4</sup> Littman, 'Rapid-onset gender dysphoria in adolescents and young adults'
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- <sup>7</sup> LGB Alliance Australia, Submission to inquiry into Australia's Human Rights Framework, 2023, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/HumanRightsFramework/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Submissions)
- <sup>8</sup> Reem Alsalem, United Nations Special Rapporteur on violence against women and girls, its causes and consequences, 'Repression of women is blocking the SDGs,' 24 April 2023 <https://sdg-action.org/repression-of-women-is-blocking-the-sdgs/>
- <sup>9</sup> United Nations General Assembly, 'Disinformation and freedom of opinion and expression: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan,' 2021, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/085/64/PDF/G2108564.pdf?OpenElement>
- <sup>10</sup> United Nations Human Rights Office of the High Commissioner, Media Release, 'Allow women and girls to speak on sex, gender and gender identity without intimidation or fear: UN expert, 22 May 2023, <https://www.ohchr.org/en/press-releases/2023/05/allow-women-and-girls-speak-sex-gender-and-gender-identity-without>
- <sup>11</sup> Holly Lawford-Smith, 'Ending Discrimination by Twitter,' *Quillette*, 28 Nov 2022, <https://quillette.com/2022/11/28/ending-discrimination-on-twitter/>
- <sup>12</sup> For more examples and context, see Sex Matters, 'Freedom of Expression Online: response to the House of Lords call for evidence,' 15 January 2020, <https://sex-matters.org/posts/publications/response-to-consultation-about-freedom-of-expression-online-to-the-house-of-lords-communications-and-digital-committee-15-jan-2021/> ; Sex Matters, 'Response to Law Commission proposal on reform of Hate Crime,' 4 January 2021, <https://sex-matters.org/posts/publications/response-to-consultation-on-proposal-on-hate-crime/>
- <sup>13</sup> LGB Alliance Australia, Submission to inquiry into Australia's Human Rights Framework, 2023, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/HumanRightsFramework/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Submissions)
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Child,' 19 May 2023, *Reduxx*, <https://reduxx.info/two-australian-women-told-they-broke-the-law-after-criticizing-trans-identified-male-breastfeeding-child/>

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<sup>18</sup> LGB Alliance Australia, 'Safety for LGB Australians on Dating Apps,' 22 May 2023, <https://www.lgballiance.org.au/news/dating-apps>

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