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

To Whom it May Concern

The existing legislation requires no amendments. The digital platform providers have signed their own code, a code which is far more precise and transparent than the provisions in this Amendment Bill. Guiding Principle 2.1 of the DIGI Code is very clear but, no doubt, this section of it is unpalatable to governments: "Signatories should not be compelled by Governments or other parties to remove content solely on the basis of its alleged falsity if the content would not otherwise be unlawful."

The Code gives special attention to international Human Rights as articulated within the Universal Declaration on Human Rights, including but not limited to freedom of speech. This is a right that the Amendment Bill would weaken, if not completely disregard.

Despite their voluntary adherence to their code, digital platform providers are regulated by the government even to the extent of censoring social media platforms at the behest of the government. Senator Antic's Freedom of Information requests on this issue, and the subsequent disclosures, make this painfully obvious. This Amendment Bill seems to be more about bringing censorship out in to the open than protecting the poor gullible people of Australia.

This Amendment Bill allows ACMA the power to create 'Misinformation Codes' and 'Misinformation Standards' which would apply to anybody who disseminates information publicly, with certain exemptions (which will be discussed later). There is no detail in the proposed Amendment Bill of how these Codes or Standards would be worded; indeed ACMA may "determine standards [in] emerging circumstances". ACMA needs only to consider it "necessary or convenient" to create standards "in order to provide adequate protection for the community from misinformation or disinformation on the services". This is an open invitation to make things up as they go along with no scrutiny or safeguards. What are the implications of legislation that is incomplete, undefined, and variable?

To make matters worse, the "definitions" provided of "misinformation" and "disinformation" and many other terms are woefully inadequate.

According to the Amendment Bill, "dissemination of content using a digital service is *misinformation* on the digital service if:

(a) the content contains information that is false, misleading or deceptive "

What is "false"? Who decides? What was "false" yesterday may be found to be "true" today. Even the Bible is hard pressed to answer the question: "What is truth?"

A person may be “misled” but that may be the result of the person’s interpretation of the content.

Many things are “deceptive” including artwork that is deliberately so, viz trompe l’oeil paintings. Questions of perspective are subjective; legislation should not be.

Yet, many of the provisions in this Amendment Bill allow for subjectivity and ad hoc decision-making.

Section 7(3) of the Bill states:

“For the purposes of this Schedule, in determining whether the provision of content on a digital service is reasonably likely to cause or contribute to serious harm, have regard to the following matters:”

Even this preamble is vague and ill-defined. Who decides what is “reasonably” and what is “likely”? How much is a contribution? What is “serious”? And as for the question of “harm”, that will be gone into later.

A list of “matters” follows, the final one being “(i) any other relevant matter.” Another invitation to make things up ad hoc.

Far too much of this Amendment Bill is vague, open to interpretation, and prone to abuse. No legislation that permits a body to decide matters on an ad hoc basis should even be considered, let alone passed into law.

This is the definition of harm provided:

“**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.”

Given the current political climate in Australia, it would seem that the definition of “harm” is equal to the word “questioning”. This is, essentially, what this Amendment Bill is trying to prevent:

questioning of the decisions and assumptions promulgated by the government or mass media.

There are so many worrying things about this proposed legislation it is difficult to determine which is the worst. The list of those explicitly exempted from the Bill’s operation is certainly cause for great concern, especially:

professional media (i.e. those mainstream sources controlled by big business and governments);

content from educational institutions accredited by the government;

and Government itself.

This (partial) list demonstrates that at all costs the government, and its minions, must be protected from scrutiny or critical thinking. Conversely, governments are free to mislead the public on any issue they wish.

It is surely dangerous for educational institutions to be exempt from scrutiny with respect to misinformation and disinformation. Given that curricula all around Australia, and particularly in South Australia, are being modified to include subjects allied to the manufacture of nuclear weapons, and being heralded as a good thing, alternative points of view must be allowed to find their way onto social media.

Digital platforms provide an avenue for the open exchange of opinion, speech, information, research, debate, and conversation as well as creative and other expression.

Freedom of thought and freedom of speech are inalienable human rights; this proposed legislation seeks to curtail them and should be quashed.

Christina Emblem

