

To: The Department of Infrastructure,
Transport, Regional Development,
Communications and the Arts
GPO Box 594, Canberra, ACT, 2601

Re: Communications Legislation Amendment Bill 2023
(Combatting Misinformation and Disinformation)

SUBMISSION

This submission has been prepared on behalf of the members of **Flag on the Hill** (FotH), a South Australian based group of volunteers who have united to consider this exposure draft bill. The group's members have a diverse knowledge base and skillset. FotH's diverse membership include those from academia, law, medicine, teaching, business, IT, finance, public service and defence. The group is united around the preservation of Australia's liberal democracy and the core values that underpin it.

The exposure draft of the Combatting Misinformation and Disinformation Bill has been reviewed in full by FotH members and the group has formed the opinion that **this bill should be opposed and abandoned** on numerous grounds. The consequences of this legislation will be far reaching. It has the potential to adversely impact all Australians.

Misinformation and disinformation should not be combatted via the threat of censorship or big fines. It should instead be combatted by correct information, supported by evidence, data, and reason openly debated and discussed in the public square.

This submission will focus on the most egregious elements of the exposure draft bill.

The federal Minister for Communications Michelle Rowlands tells us that this bill is designed to protect “the safety and wellbeing of Australians” from harm caused by online misinformation and disinformation. Upon closer inspection of the details of the bill, we have formed a contrary opinion. This bill is an example of Government overreach and poses a significant threat to online freedom of expression and freedom of speech, two pillars of democracy.

The internet, and more specifically, social media platforms are the modern-day public square, where people gather to share ideas, information, and opinions. The ability to do this freely is key to our democratic way of life. Basic rights will be under threat, should this bill pass.

The **Australian Communications and Media Authority (ACMA)** will be greatly empowered by this draft legislation. Currently, their role is to set and manage rules about communications, media services, markets, management of licencing, complaints, and problems, as well as planning and managing the airwaves to make space for new services. Their remit covers internet, phones, TV, and radio content. This legislation will embolden ACMA, giving them the power to determine and impose standards to ‘protect the community from misinformation and disinformation on digital platform services.’ The new powers also allow ACMA to impose hefty fines on digital platforms if they do not comply with the standards imposed.

Should this bill proceed to law, ACMA will, by default, become Australia’s own version of a ‘ministry of truth’. ACMA will have the **power to decide what is true and what is false**. Digital platforms will over-censor in response to threats of fines and likely inhibit the ability of the Australian people to have free and frank discussions.

No one, including ACMA or digital platforms, **has the right to determine what is misinformation and disinformation**. Former US President, John F. Kennedy, once said:

“a nation that is afraid to let its people judge the truth and falsehood in an open market is a nation that is afraid of its people.”

Kennedy’s views remain true today. Our modern town square may comprise predominantly of digital platforms, but the need for free speech and a contest of ideas remains.

The Attorney-General’s Department for Australia refers to **the right to freedom of opinion** as “the right to hold opinions without interference and cannot be subject to any exception or restriction.” They also state that “the right to freedom of expression extends to any medium, including written and oral communications, the media, public protest, broadcasting, artistic works and commercial advertising.”

The right to freedom of opinion is not absolute and carries with it special responsibilities. In general, freedom of expression must be nurtured and encouraged in a democratic nation. Citizens must be trusted and empowered to debate ideas and determine the truth for themselves.

Many legal professionals have weighed in on this bill, raising valid concerns.

According to human rights lawyer, Peter Fam, this proposed bill is “inconsistent with human rights”. He describes the bill as a “poorly drafted piece of proposed legislation” that poses a threat to the rights of free expression, self-determination, freedom of thought, conscience, and religion. “Do we want a government department to have the power to impose civil and criminal penalties on users of the internet if they publish something that the Government doesn’t like?” asked Fam, of Sydney law firm Maat’s Method. “We think it proposes an unacceptable and contemptible breach of the right to freedom of speech and freedom of expression.”

Former NSW Supreme Court judge and anti-corruption advocate, Anthony Whealy, said that it would be “easy to politicise the project and equally damaging to democracy”, and that “the usual definitions of truth and untruth are very difficult to apply and it’s all very subjective,” he said. “We need to proceed with extreme caution.”

Victorian barrister Peter Clarke said it was “a disgraceful piece of proposed legislation” and was particularly concerned about the clause that captured the causing of “harm” as disinformation. He said terms used by the government including references to “hatred against a group in Australian society”, “disruption of public order or society in Australia” and “harm to the integrity of the Australian democratic process” were “**so vague as to be dangerous**”. “It’s all tied in with this vague idea of the public good. It’s a dangerous piece of legislation.”

Barrister and university law lecturer, Sophie York, said she was concerned the ACMA could become a public relation body for the government. “Allowing any unelected body to decide what is misinformation would require them to have a wisdom which is just not possible,” she said. “They can’t possess the wisdom that means they decide what every Wikipedia entry should be on every topic. It’s very hubristic for them to even think that.”

One of the most-influential thinkers in the history of classical liberalism, John Stuart Mill famously wrote in his book “On Liberty” in 1859:

“The peculiar evil of silencing the expression of an opinion is that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth; if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth produced by its collision with error.”

The **vague definitions** offered in the bill make enforcement of the proposed laws inherently subjective. This will inevitably end up in the courts, to the benefit of lawyers and the powerful, but to the detriment of everyone else.

The **excluded content** for misinformation purposes includes professional news, educational institutions, and content authorised by government. There is a clear double standard in this exclusion which implies that alternate media sources and the general population are less trustworthy and more likely to spread misinformation and disinformation. Content produced for an educational institution which is accredited by a foreign government is also surprisingly exempt.

One rule for us, another rule for them is the impression this excluded content clause leaves. A very **Un-Australian approach to governance**.

‘Harm’ can be a very subjective term. The definition of harm in this bill threatens speech and liberty. The definition of ‘harm’ includes: ‘disruption of public order or society in Australia’, ‘harm to the integrity of Australian democratic processes or of Commonwealth, State, Territory, or local government institutions’, ‘harm to the health of Australians’, ‘harm to the Australian environment’, and ‘economic or financial harm to Australians, the Australian economy or a sector of the Australian economy’.

Often, we look back on historical decisions or conventions in society and admit fault. Wrongs are only righted because people can raise their voices and express their opinions. Harm can only be identified if it is not hidden. Slavery was an accepted practice, white-Australia was government policy and women were forced to retire from the public service once married. There are countless other examples of historical norms that society no longer accepts or tolerates. If people were not able to express their opinion, organise protests, lobby government and challenge authority, these injustices would never have ended. **Censoring speech is not the answer**. This bill is certainly not the answer. Sunlight is the best disinfectant for bad ideas.

Harm is inherently subjective. **Science**, by its very nature, is **never settled**. What is thought to be harm to environment or health, may in fact turn out to be beneficial with the fullness of time. Harm can be debated, but determining the greater harm should not be left to ACMA and their workers. These people have no greater ability to determine fact from fiction than any other Australian does.

Twitter head of global government affairs, Nick Pickles, acknowledged the overreach of this bill when he said, “the pendulum was swinging towards greater censorship across the globe, with many countries implementing broad laws with high financial and criminal penalties that will have a chilling effect on free speech”.

Competition amongst digital platforms has created avenues for information sharing not seen before. At the click of a button or the swipe of a phone, information can be accessed. Many digital platforms set their own content moderation standards and consumers have a choice as to which platform they engage with. Twitter for example allows a more robust discussion to occur around health and environment, whereas other platforms such as Facebook, YouTube and Instagram have tighter controls on such issues. Naturally these platforms are evolving to meet consumer demand. Public discussions are facilitated by these platforms and good ideas are naturally rising to the top.

This draft legislation, if passed, could act as a deterrent for competition amongst digital platforms providing their services in Australia. The threat of fines of up to 5% of global turnover could act as the catalyst for them to vacate our nation completely. The Australian market is not large in a global context and may not be worth the risk for large companies. Social media companies will be left with 2 clear choices. They could over-censor by setting their moderation algorithms to a sensitive level to ensure that content which ACMA deems to be inaccurate is removed, but this will likely come at the expense of much true and accurate information. Alternatively, they could choose to simply vacate our marketplace and eliminate the risk altogether.

When it comes to censorship, the government has chosen to target misinformation and disinformation. We believe there are more serious and **important issues** that they should instead focus their attention on.

Protecting children should be their highest priority. On 1 June 2021, the previous federal government asked eSafety to develop an implementation roadmap for a **mandatory age verification** regime for online pornography. Following multiple delays, the eSafety Commission delivered its implementation roadmap report to the federal government in March of 2023. But five months later, and more than two years after the report was commissioned, Australians still have no information about what the eSafety Commission has recommended or what action the Government will take.

Evidence presented to an inquiry of the Standing Committee on Social Policy and Legal Affairs flagged the dangers of exposing children and teens to online pornography. In its report, titled 'Protecting the Age of Innocence', the Committee recommended that access to online pornography be restricted through mandatory proof of age protections.

The Communications Minister should abandon this unnecessary censorship bill, immediately release the eSafety report, and prioritise the drafting of legislation to protect children from adult content.

There is no need to legislate what is true and what is false. Government is no wiser or smarter than citizens. The real problem with this bill is the fact that there isn't a material problem.

Dr Joseph Mercola once said: "At the end of the day, the so-called "problem" of misinformation and disinformation is pure nonsense. In a free society, people debate issues and bring varying viewpoints to the table. Misinformation wasn't even "a thing" before 2020. It's a completely fabricated problem, made up by the very people who seek to control the public discourse for their own aims."

In conclusion, this Bill has the potential to restrict free expression, freedom of speech and dissenting voices. It has the potential to result in the censorship of true information and valid expression. Words like 'harm', 'misinformation', and 'disinformation' have been weaponised to shut down critics of the broader ideological agenda at work in western nations, with the recent pandemic providing many examples of how the Government can and did censor any ideas that questioned their narrative. Censorship will be an inevitable outcome of this Bill and it will likely exacerbate the problem it intends to solve.