

To whom it may concern,

I am writing to “have my say” on the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023 exposure draft.

This bill, apparently, seeks to prevent “serious harm” that could result from misinformation or disinformation. However, the term “serious harm”, while featuring in the accompanying documents, is not actually defined in the bill. Only “harm” is explicitly defined, which seems to have lower threshold. Additionally, are those presenting this bill able to give an indication of how widespread and damaging the effects of misinformation and disinformation currently are? Looking at the examples given in the Guidance Note, how many of these “harm” or “serious harm” examples have actually happened or are likely to happen? Who is currently at risk and needing the protection that this bill purports to offer?

This bill defines content as disinformation or misinformation when “the content disseminated using a digital service that is false, misleading or deceptive...”. However, it provides no details as to who will determine whether content is “false, misleading or deceptive” and how it will be so determined. How transparent will this process be? What standards will be applied? What grounds for appeal will exist? What action will be taken if content initially classed as misinformation or disinformation is later determined to be true?

Article 19 of the Universal Declaration of Human Rights states;

“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.”ⁱ

And, the Department of Foreign Affairs and Trade website states:

“Australia's commitment to human rights is enduring: we were an original signatory to the Universal Declaration of Human Rights in 1948. We have been a leading proponent of its consistent and comprehensive implementation.”ⁱⁱ

I argue that this bill would stand in opposition to Article 19 and the position given by DFAT, putting Australia in breach if of its international human rights obligations and at odds with its own national values.

Perhaps it is best to finish with the words of the Australian Human Rights Commission:

“Striking the right balance between regulating online activities and protecting free expression is an ongoing challenge. While there is a clear need to combat misinformation and disinformation online, there is also a risk that in doing so different perspectives and controversial opinions may be targeted. While reasonable minds may differ on exactly where the line should be drawn, if we fail to ensure robust safeguards for freedom of expression online, then the very measures taken to combat misinformation and disinformation could themselves risk undermining Australia’s democracy and values.”ⁱⁱⁱ

Regards,

Tim Reilly

ⁱ<https://www.un.org/en/about-us/universal-declaration-of-human-rights>

ⁱⁱ<https://www.dfat.gov.au/international-relations/themes/human-rights>

ⁱⁱⁱhttps://humanrights.gov.au/sites/default/files/submission_to_the_senate_select_committee_on_foreign_interference_through_social_media_16_february_2023_1.pdf