Submission providing feedback on the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023

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This submission responds to the invitation by The Department of Infrastructure, Transport, Regional Development, Communications and the Arts to provide feedback on an exposure draft of the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023 (**the Bill**).

I wish to register my fundamental and vehement opposition to the Bill. The Australian Government should not have the power to impose civil and criminal penalties on internet users who publish things that the Government does not like.

The Bill, if passed, would provide the Australian Government, through the Australian Communications and Media Authority (ACMA), unacceptable power to directly restrict freedom of speech of Australian citizens. It would also indirectly create a climate in which, for fear of incurring civil or criminal penalties, internet platforms, on the one hand, are incentivised to take an excessively precautionary approach to policing online speech, while on the other, citizens self-limit what they say online. In doing so, the Bill undermines the rights of Australian citizens to freedom of expression and freedom of opinion, and thereby threatens the health of our democracy.

The Bill reads as poorly conceived from the outset. Why are the powers that the Bill would confer on the Government considered to be *necessary* for the protection of national security, public order or public health? This is not addressed in the Bill, or in the accompanying "Guidance Note" and "Fact Sheet". What, for that matter, is the specific nature of the problem that the Bill is proposed to address? That is not addressed either. It is only vaguely inferred by the harms that the Bill is purportedly intended to mitigate. But what evidence is there to justify the proposed curtailment of Australian citizens' self-determination? None is offered.

The Bill's key terms of 'misinformation', 'disinformation', and 'serious harm' are vaguely and ambiguously defined, making it of dubious utility, and leaving it open for misuse, whether intentional or through negligent application. The Bill purportedly constrains the potential for misuse by limiting its scope to 'misinformation' and 'disinformation' that is "reasonably likely to cause or contribute serious harm". The matters to be considered in determining if online content meets this threshold include, though, the catch-all category of "any other relevant matter". This would allow the Government effectively unlimited scope to apply the Bill's provisions to any online speech that challenges or dissents against its positions.

Definition of the terms 'misinformation' and 'disinformation' relies on assessment of information as "false, misleading or deceptive", but the terms "false", "misleading" and "deceptive" are not themselves defined in the Bill. The Bill passes the buck for this assessment task to digital platform providers, whose decisions on whether information is "false, misleading or deceptive" may be subject to civil or criminal penalties. It is unsurprising that those drafting the Bill are unable to specify in more concrete terms how 'misinformation' and 'disinformation' are to be identified. Determining whether a statement is unambiguously true or false across the range of contexts to which it might relate is rarely, if ever, a straightforward matter.

There are few, if any, situations in which, for instance, scientific knowledge, upon which the effective functioning of Australian society is fundamentally dependent, could be considered settled to the

extent that future revisions to prevailing theory could not reasonably be expected. David Sackett, widely regarded as the "father of evidence based medicine", is reputed to have told medical students that "Half of what you'll learn in medical school will be shown to be either dead wrong or out of date within five years of your graduation; the trouble is that nobody can tell you which half—so the most important thing to learn is how to learn on your own."[1] John Ioannidis, one of the most highly cited scientists or all time, has gone as far as to suggest that most research findings are likely to be false.[2] In such an environment, how could social media platforms possibly be expected to determine the truth or falsity of online content other than on the basis of arbitrary decree?

All scientific inquiry advances through the proposal of hypotheses that are inherently speculative. A sound hypothesis may eventually overturn established scientific orthodoxy. At the time of its proposal though, prior to testing it against evidence, attributing truth or falsity to it is meaningless. And yet situations can readily be envisaged where the Bill's provisions would oblige digital platform providers to make assessments of such nature. On controversial scientific questions with high societal stakes, this would likely have the effect of stifling debate, and in doing so would have every likelihood of causing greater harms than the Bill's drafters imagine it might mitigate.

A healthy democracy relies upon an open marketplace of ideas, perspectives and opinions, and on citizens' freedom to express criticism of government positions and narratives. Today, this marketplace overwhelmingly operates in the online digital realm. That the Government would attempt to effectively grant itself the means to censor the free exchange of ideas via the threat of civil and criminal prosecution, while purporting to do so in *defence* of democracy, is unconscionable.

It is, in fact, a strength of democratic governance that what is understood to be true is also recognised as subject to continuous change. The Bill appears to rest on a mistaken view that matters of 'truth' ranging across areas including science, health, economics and environment can somehow be pegged down in a way that is universal and final. This is, frankly, reminiscent of the hubris by which totalitarian regimes convince themselves that state institutions can control societies for the benefit of their citizens.

Public trust in governance institutions is the lifeblood of flourishing democracies. Establishing and maintaining such trust relies upon free and open discourse amongst citizens, and the scope for citizens to question and challenge government authority without hinderance. This Bill is antithetical to the cultivation of such trust between Australia's citizens and its Government. The Australian Government's control over the information shared by and amongst Australia's citizens must not be allowed priority over the rights of citizens to participate freely in the open-ended process of inquiry essential to establishing the trustworthiness of the "ecology of ideas" within and by which we live together.

[1] Smith, R. (2003). Thoughts for new medical students at a new medical school. *BMJ, 327*(7429), 1430-1433. doi: 10.1136/bmj.327.7429.1430.
[2] Ioannidis, J. P. A. (2005). Why Most Published Research Findings Are False. *PLOS Medicine, 2*(8), e124. doi: 10.1371/journal.pmed.0020124.