SUBMISSION:

Public consultation on the exposure draft of the *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023*

AUSTRALIAN CHRISTIAN LOBBY

About Australian Christian Lobby

Australian Christian Lobby's vision is to see Christian principles and ethics influencing the way we are governed, do business, and relate to each other as a community. ACL seeks to see a compassionate, just and moral society through having the public contributions of the Christian faith reflected in the political life of the nation.

With around 250,000 supporters, ACL facilitates professional engagement and dialogue between the Christian constituency and government, allowing the voice of Christians to be heard in the public square. ACL is neither party-partisan nor denominationally aligned. ACL representatives bring a Christian perspective to policy makers in Federal, State and Territory Parliaments.

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20 August 2023

Dear Sir/Madam,

On behalf of the Australian Christian Lobby (**ACL**), I welcome the opportunity to make a submission to the Australian Government (**Government**) Department of Infrastructure, Transport, Regional Development, Communications and the Arts (**Department**) in relation to its public consultation on the exposure draft of the *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023* (**Bill**) and the associated Guidance Note and Fact Sheet (**Supporting Documents**).

In short, our submission strongly recommends that the Government withdraws the Bill.

The ACL would be very willing to meet with the Department to discuss these submissions.

Yours Sincerely,

[redacted]

Michelle Pearse
Chief Executive Officer

ACL Submission to public consultation on the exposure draft of the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023

EXECUTIVE SUMMARY

The ACL's submission discusses the following:

1. **Problematic rationale:** The Government has introduced the Bill on the basis that misinformation and disinformation (**mis-and-disinformation**) pose a threat to "the safety and wellbeing of Australians" and to "our democracy, society and economy". While the Bill may target some legitimate threats such as foreign interference, its overall rationale is problematic, as it equally targets general public discourse.
2. **Threat to freedom of expression:** In any case, the Bill takes a broad-brush approach to this issue, and it represents a severe and untenable threat of its own to freedom of expression in Australia. Effectively, it will stifle free speech by ordinary Australians on popular communication channels. In particular:
   a. The powers given to the Australian Communications and Media Authority (**ACMA**) are extensive.
   b. An array of Digital Platform Services (**DPS**s) are captured and the Bill has extra-territorial application.
   c. In defining mis-and-disinformation, the Bill will result in curation of truth on digital platforms.
   d. The potential scope of the codes, standards and/or rules to be developed is very wide.
   e. The severe penalties will encourage Digital Platform Providers (**DPP**s) to over-regulate content.
   f. Australians may also self-censor, knowing their activity will be monitored and reported on.
3. **Risk of ideological bias:** The Bill's broad definition of 'harm' also risks ideological bias. Expressions of minority, conservative or religious views which merely differ from the prevailing perspective of society or official Government positions could potentially be deemed 'harmful' misinformation or disinformation (**mis/disinformation**). The Bill contains no exemptions which protect against this occurring.
4. **Lack of balance and failure to protect the rights/freedoms of ordinary Australians:** Despite Government assurances, the Bill contains no explicit protections for freedom of expression (only the separate implied freedom of political communication). The Bill's exclusions also offer little protection for ordinary Australians, only professional entities and Government. Overall, the Bill does not reflect any real balance in protecting Australians from harm while upholding their rights/freedoms.
5. **Reliance on future documents:** The regulatory scheme turns on codes of practice, industry standards and/or rules which are yet to be developed. The Government cannot ensure a balance between the regulatory measures and freedom of expression when these documents are yet to even exist.
6. **The United Kingdom and Europe have a better approach:** There are better approaches which have been adopted in these jurisdictions. Australia should follow them.

Recommendations:

The ACL strongly recommends that the Government withdraws the Bill. It must be recast according to the United Kingdom or European models.

Our submissions are discussed in more detail below. All **bold** emphasis in quoted extracts is ours.

SUBMISSIONS

1. The Government has introduced the Bill on the basis that mis-and-disinformation pose a threat to "the safety and wellbeing of Australians" and to "our democracy, society and economy". While the Bill may target some legitimate threats such as foreign interference, its overall rationale is problematic, as it equally targets general public discourse.

The Government asserts in its Fact Sheet[1] that mis-and-disinformation "pose a threat to the safety and wellbeing of Australians, as well as our democracy, society and economy". It considers the Bill justified on the basis that it will "address this growing challenge".

[1] See page 1 of the Fact Sheet.

We recognise that the Bill may be intended to address some legitimate threats such as foreign interference, as the Fact Sheet also clearly indicates. [OBJ] However, we reject that it is necessary for the Bill to so do. For example, the *Criminal Code Act 1995* (Cth) already creates offences relating to foreign interference, including under Chapter 5, Part 5.2, Division 92. As such, the specific harm of foreign interference which the Bill purports to address is already addressed to some extent at least by existing legislation. If there is legitimately a need to further address the threat of foreign interference, then the Government should do so by introducing targeted security legislation, not a Bill which only addresses this issue in an unspecific way and through a broad scheme which will also result in the over-regulation of a host of other online content.

The rationale for the Bill also extends far beyond just targeting such legitimate threats, and apparently equally targets alleged 'threats' arising from general public discourse. For example, the above rationale makes no distinction between the types of mis/disinformation which pose the requisite threat, nor do statements in the Fact Sheet about "why these powers are needed".[2] The Guidance Note also confirms that misinformation will be treated in the same way whether created by a person or an automated 'bot' potentially used by a 'bad actor'.[3] In our view, the overall rationale for the Bill is overstated. Any threat posed by ordinary Australians merely sharing false information is very different to the threat posed by foreign interference. We reject that view that 'misinformation' shared by ordinary Australians could, except in extreme circumstances, threaten our "democracy, society and economy" broadly. For 'misinformation' to cause such a broad threat, surely it must sway a great majority of the population to some false idea which results in drastic action against our fundamental institutions. This is unlikely in most contexts, and in any case could be countered to a great degree by robust public analysis.

The Government also refers to 'harms' such as "disrupted public health responses" in its rationale about why these powers are so needed. [OBJ] However, there is good reason for public discourse in emerging public health crises. In fact, despite very robust public debate during the COVID-19 pandemic, the vast majority of Australians still complied with (and did not disrupt) public health responses. The Government also refers to "the undermining of democratic institutions" as another 'harm' justifying the Bill. This seems ironic, given that the Bill will itself undermine a key component of democratic society – the right of all to express their views. In fact, the scale of interference which the Bill will cause to free speech and democratic processes is in our view contrary to the democratic purposes which the Bill is itself apparently intended to advance. In any case, mitigating such 'harms' does not justify a Bill of this extent.

There will perhaps always be a minority of people who do not believe information which is even almost universally accepted as true. However, this has seemingly always been the case. There cannot be any sudden threat to our fundamental ways of life from ordinary people sharing information which is ultimately disprovable. Even if offensive or plainly wrong, this does not mean that it must threaten our safety and wellbeing. In a democratic society, we will inevitably be required to hear and engage with information with which we disagree and also some we find offensive. Information that may be false according to the prevailing understanding of society should generally still be allowed to be proffered, analysed and debated in public spheres. Preventing public discourse does not contribute to the development of knowledge in society – it only prevents consideration of other perspectives and possibilities that might deepen or change our understanding. Information which is false to any degree can simply be proven so by public analysis. Information should be combatted with other information, rather than silencing debate altogether. In fact, truth also only benefits from public analysis as well. Attempting to censor mis/disinformation is also inherently fallible. Our knowledge and understanding as a society is constantly evolving and changing. Information broadly accepted as true at one time may later be considered misleading, deceptive or false (and vice versa). For example, the information widely accepted as true regarding the origins of the Earth has drastically changed in recent centuries, and even the information widely accepted as true regarding COVID-

[2] See page 3 of the Fact Sheet.
[3] See page 11 of the Guidance Note.

19 has drastically changed over just a few years. Ultimately, any attempt to combat 'misinformation' may censor information which is potentially or actually true. Any society which believes that it can categorise information as absolutely true or false is patently wrong or willing to abandon all research, scientific query, and social or academic thought.

For such reasons, the overall rationale underlying the Bill is problematic.

2. **In any case, the Bill takes a broad-brush approach to this issue, and it represents a severe and untenable threat of its own to freedom of expression in Australia. Effectively, it will stifle free speech by ordinary Australians on popular communication channels. In particular:**
   a. **The powers given to ACMA are extensive.**
   b. **An array of DPSs are captured and the Bill has extra-territorial application.**
   c. **In defining mis-and-disinformation, the Bill will result in curation of truth on digital platforms.**
   d. **The potential scope of the codes, standards and/or rules to be developed is very wide.**
   e. **The severe penalties will encourage DPPs to over-regulate content.**
   f. **Australians may also self-censor, knowing their activity will be monitored and reported on.**

At its most basic level, the Bill purposes to amend the law relating to communications. [OBJ] As such, it evidently engages the right to freedom of expression. While this submission does not expound the source of this right, even the Government's Attorney-General's Department acknowledges its importance in international law and the very limited circumstances in which it may be restricted. [OBJ] Ultimately, it is a fundamental human right which should be upheld and promoted. It is not bestowed by Government or able to be restricted by it at will.

While the Government may be well-intentioned, the Bill takes a broad-brush approach to the issue of mis-and-disinformation. Its broadly scoped provisions will gravely interfere with the ability of Australians to freely share and access information on digital platforms. It will stifle free speech on popular channels of communication. As such, the Bill represents a severe and untenable threat of its own to freedom of expression. In our view, even if it is intended to address some legitimate threats, the Bill itself is a far greater threat than the threats allegedly justifying its introduction. Some noteworthy features are discussed below.

a) <u>The extent of ACMA's powers under the Bill</u>

ACMA is undoubtedly given extensive powers under the Bill. In our view, even the sheer extent of these powers points to the breadth of the threat which the Bill poses to freedom of expression.

As the Fact Sheet summarises, [OBJ] the proposed powers seek to engage the industry to combat mis-and-disinformation on digital platforms, and otherwise empower ACMA to act if industry efforts "are inadequate". However, the Bill ultimately gives ACMA very broad powers, including to enable and/or allow ACMA to:

- make digital platform rules (**DPR**s) requiring DPPs to keep certain records regarding mis-and-disinformation and provide reports to ACMA; [OBJ]
- gather information, documents and evidence from DPPs regarding mis/disinformation, [OBJ] as well as from other persons including fact-checkers or third-party contractors to DPPs; [OBJ]
- publish information on its website, including the identity of the relevant provider or service; [4]
- request industry to develop a code of practice covering measures to combat mis-and-disinformation on digital platforms, [OBJ] which ACMA could register and enforce; [OBJ] and

[4] See particularly clauses 25, 26 and 27 of the Bill. See also page 6 of the Fact Sheet and page 17 of the Guidance Note.

- create[5] and enforce[6] an industry standard (a stronger form of regulation), if a code of practice is (among other things) deemed ineffective in combatting mis-and-disinformation on digital platforms. OBJ

ACMA will be empowered to strictly regulate digital platforms in respect of the measures they use to combat mis-and-disinformation, regardless of which specific mechanism (i.e., a code of practice or industry standard) is used to codify them. In our view, ACMA's powers will have broad and far-reaching implications for freedom of expression on digital platforms in Australia. The communications industry will clearly be required to combat mis-and-disinformation through regulation, at risk of ACMA enforcement. The powers will inevitably result in online censorship on an unprecedented scale in Australia.

ACMA's information-gathering and record-keeping powers only expand the scope of its oversight. Even aside from the severe penalties for non-compliance with codes/standards (see below), ACMA's ability to publish information on its website identifying DPPs or DPSs may encourage excessive censorship. In our view, even just a fear of being 'named and shamed' by ACMA may compel industry into over compliance with the regime. ACMA could exercise its information powers regardless of whether a DPS is signatory to voluntary codes, OBJ so even DPSs reluctant to submit to regulation will be compelled towards compliance.

As the Bill clearly intends, ACMA's powers will have industry-wide implications.

b) <u>The Bill's application to a vast array of DPSs and its extra-territorial application</u>

Under the Bill,[7] DPSs include content aggregation, connective media and media sharing services. As the Supporting Documents acknowledge, OBJ the powers under the Bill will therefore apply "to a broad range of" DPSs, including search engines, news aggregators, instant messaging services, social media, web-forums, dating sites, online peer-to-peer marketplaces and podcasting services. The content of group chats open to the public or public channels on instant messaging services are also intended to be within scope, as are posts in a forum or message board. Even content whose access or visibility is limited to certain users or registered members is not thereby excepted. OBJ The vast array of DPSs captured only enhances concern about the Bill's threat to freedom of expression. It captures some of Australians' most popular communication channels.

There are some exceptions, including that the powers would not apply to SMS or MMS text messages, email, or broadcast or subscription video on demand (**BVOD/SVOD**).[8] However, these are essentially just excepted because they do not use the internet to deliver content (SMS/MMS) or do not have an interactive feature (email and BVOD/SVOD).[9] As such, they are hardly notable exceptions in this context.

The powers also would not apply to direct private messages on a messaging service or social media platform or the content of a closed group conversation such as a family group chat. OBJ While the Government considers this part of the Bill's "strong protections for privacy", OBJ it does not mitigate concerns about freedom of expression on every other publicly available digital forum. Further, only the *contents* and *encryption* of private messages may not be in scope of the powers.[10] The exceptions which the Bill provides in relation to private messages only exclude the actual "content of" private messages from being the subject of records made or retained by DPPs[11] or required to be given in information, documents or evidence to

[5] See particularly clauses 46, 47, 48, 49 and 50 of the Bill.
[6] See particularly clauses 53 and 54 of the Bill.
[7] See clause 4 of the Bill.
[8] See page 5 of the Fact Sheet. See also page 29 of the Guidance Note. See also clause 4(1)(e) to (g) of the Bill and clause 6 of the Bill.
[9] See page 10 of the Guidance Note.
[10] See page 12 of the Guidance Note.
[11] See clause 14(3) of the Bill.

ACMA.[12] ACMA is also only prevented from registering a code or standard with requirements relating to the actual "content of" or "encryption of" private messages.[13] As the Supporting Documents indicate:[14]

- While private messages are a key feature of instant messaging services, it is envisaged that ACMA would still use its information-gathering and record-keeping powers to understand more about platform measures to combat misinformation and how user complaints are addressed.
- The registered codes and standards could have requirements that instant messaging services have measures in places that help address misinformation without revealing the content of private messages. This could include a range of educative measures that platforms provide to assist users to critically assess information. Providers of DPSs may choose to have systems and processes in place such as user reporting tools, complaints handling and educative programs to empower users, and such requirements may be articulated in industry codes and standards made under the Bill.

Overall, the Bill's exclusions do little to offset concern about the broad scope of DPSs otherwise captured. The Minister may also later specify a digital service to be a DPS in a legislative instrument in accordance with clause 4(6).[15] This clearly entails potential for the Minister to enlarge the scope of services to which the Bill will apply in future, specifying a new subcategory of DPS as different services emerge or the risks on existing services "evolve".[16] Though the Bill already applies to an array of DPSs, its scope could clearly widen further.

Clause 12 (Extra-territorial application) of the Bill also confirms that the Schedule extends to acts, omissions, matters and things outside Australia. This only confirms the very broad potential application of the Bill.

c) <u>The definitions of 'misinformation' and 'disinformation'</u>

In even defining 'misinformation' and 'disinformation', the Bill will inevitably result in the curation of truth on digital platforms. Under the Bill, these are defined to include content with information that is "false, misleading or deceptive" and "reasonably likely to cause or contribute to serious harm" (with 'disinformation' disseminated by a person who *intends* that the content deceive). For information to be categorised in this way, a determination will need to be made about the accuracy, potential effect and/or the intent behind the dissemination of content. For DPPs to record information about and take measures to combat such content, they will necessarily need to determine what is "false, misleading or deceptive". This will clearly result in the curation of truth. Deciding what is 'false' necessarily also involves the deciding of what is inversely 'true'.

The Government's attempt to placate Australians with assurances that ACMA "would have no role in determining truthfulness"[17] are therefore empty. ACMA will at very least oversee and enforce a curation of truth by the industry. That ACMA will not have a role in taking down individual pieces of content[18] or have power to request specific content or posts be removed[19] is also not a factor which evidences the Bill's "strong protections for privacy and freedom of speech" as the Government asserts.[20] Neither assurance changes the fact that *DPPs* will be compelled to remove content under ACMA's oversight. The fact that "the Bill is directed at encouraging [DPPs] to have robust systems and measures in place to address mis/disinformation on their services, rather than [ACMA] directly regulating individual pieces of content" is no such protection either. The fact that this curation will occur at all, regardless of which particular entity performs it, is the real concern here. Even if ACMA itself stands distinct from the actual DPP-to-user interactions on digital platforms, ACMA will oversee the regulatory mechanisms which ensure this occurs. It is far from a neutral bystander. That

[12] See clauses 18(4) and 19(4) of the Bill.
[13] See clause 34 of the Bill.
[14] See page 5 of the Fact Sheet. See also page 14 of the Guidance Note.
[15] See clause 4(1)(d) of the Bill and clause 4(6) of the Bill.
[16] See page 10 of the Guidance Note.
[17] See pages 8 and 9 of the Fact Sheet.
[18] See pages 8 and 9 of the Fact Sheet.
[19] See page 1 of the Fact Sheet.
[20] See page 2 of the Fact Sheet.

ACMA itself will not directly censor content is also concerning in one other sense as well – Australians will be subject to the whims of DPPs about what 'misinformation' is, without any recourse to a government entity like ACMA to seek reinstatement of any content. As the Fact Sheet confirms, online user complaints about the policies and terms of service of a DPS will still be directed to the relevant DPP in the first instance. [OBJ] In fact, DPPs are already known to censor or downgrade conservative content on public platforms. The political asymmetry represented across digital platforms is an issue that may warrant regulation. However, a Bill which only empowers the industry to escalate such practices risks exacerbating this problem further.

Ultimately, DPPs will only increasingly censor an excessive range of content under the Bill's wide definitions of 'misinformation' and 'disinformation'. Clearly, even well-intentioned 'misinformation' may be censored if considered false, misleading or deceptive. In DPPs doing so, some legitimate threats to Australians may potentially be countered, but a range of other content is just as liable to censorship. This could include all sorts of public commentary or debate, including on matters of national importance.

d) The potential scope of codes, standards and rules

The potential scope of the codes, standards and rules to be developed by ACMA or the industry is very wide.

For example, under clause 33, misinformation codes and standards may deal with things including:

- preventing or responding to mis/disinformation, including using technology to do so;
- preventing or responding to mis/disinformation that constitutes an act of foreign interference;
- preventing advertising involving or monetisation of mis/disinformation;
- supporting fact checking or allowing end-users to detect and report mis/disinformation;
- giving information to end-users about the source of political or issues-based advertisements;
- policies and procedures for receiving and handling reports and complaints from end-users; and/or
- giving end-users and others information about mis/disinformation.

The codes and standards may provide for a broad range of measures which require content to be censored (including "preventing" it entirely), fact-checked or otherwise countered and reported on digital platforms. The Guidance Note also confirms that 'misinformation' may be subject to 'takedowns', 'content demotion' and 'the promotion of authoritative content'. [OBJ] Misinformation may be combatted in many ways.

The Fact Sheet also confirms that if "ACMA were to register a code, then it would need to draw upon the Bill's definitions". [OBJ] As such, the many concerns raised in this submission regarding the Bill's broad definitions ('misinformation' and 'disinformation', 'harm', etc.) would carry across into any registered code. This only enhances concern about their potential scope. It also seems that any code which the industry does develop will take a strong approach to combatting mis/disinformation. We expect it will wish to avoid ACMA determining a code ineffective and creating an industry standard with stronger enforcement mechanisms.

The potential scope of DPRs is also wide. Firstly, clause 64 states that they may prescribe matters "required or permitted by [the Bill] to be prescribed by the [DPRs]". This would include the matters covered in clause 14 (i.e., records to be made and retained by DPPs and reports to be prepared and provided by them to ACMA). However, they may also prescribe matters "necessary or convenient to be prescribed for carrying out or giving effect to" the Schedule. This allows other 'convenient' DPRs to also be developed. Under clause 64(3), DPRs are also "taken to be consistent with the regulations to the extent that [they] are capable of operating concurrently". This indicates that DPRs may have a wide scope, so long as they are not inconsistent with the regulations. Though they may not create an offence/civil penalty, provide powers of arrest, detention, entry, search or seizure, impose a tax, set an amount to be appropriated from the Consolidated Revenue Fund or directly amend the Bill's text, [OBJ] there seems little other practical limitations.

Overall, the wide potential scope of the codes, standards and rules amplifies concern that they will broadly affect freedom of expression. They will clearly result in mis-and-disinformation being increasingly censored,

as DPPs which already actively combat it will have more scope to do so, and those which do not will need to start doing so. Even providers who chose not to sign up to voluntary codes would be compelled to comply with a code created by the industry and registered by ACMA or any new industry standard under the Bill. OBJ

e) The severe penalties for non-compliance

The Bill's penalties for non-compliance are severe. In our view, they will do far more than just "incentivise" DPPs to have robust systems and measures in place to address mis/disinformation. OBJ They will have a dissuasive effect extending far beyond the scope of compliance strictly required by the Bill.

Firstly, the Bill provides for a range of enforcement actions including formal warnings, remedial directions, enforceable undertakings, infringement notices, injunctions and civil penalties. The maximum penalties reach into the millions of dollars in basic penalty units and even more under global turnover calculations: OBJ

Table 3: Maximum penalties on non-compliance with a registered code or standard

Registered Code – non-compliance	Industry Standard – non-compliance
Maximum of 10,000 penalty units ($2.75 million in 2023) or 2 per cent of global turnover (whatever is greater) for corporations or 2,000 penalty units ($0.55 million in 2023) for individuals.	Maximum of 25,000 penalty units ($6.88 million in 2023) or 5 per cent of global turnover (whatever is greater) for corporations or 5,000 penalty units ($1.38 million in 2023) for individuals.

In respect of some civil penalties, DPPs or persons will also commit a separate contravention in respect of each day during which the relevant contravention continues, OBJ reinforcing their deterrent effect.

Criminal penalties could also apply in respect of those knowingly making or retaining false or misleading records or giving false or misleading information or evidence. OBJ The consequences are also significant in this regard. For example, clause 22 lists a penalty of imprisonment for 12 months.

Clause 21 also abrogates the common law privilege against self-incrimination for individual natural persons who own and operate DPSs in relation to giving information, evidence or documents to ACMA.[21] As such, a person is not excused from answering a question or providing information or a document on the ground that it may tend to incriminate the person or expose the person to a penalty. The Government apparently considers that it is "necessary" to abrogate this privilege to "avoid undermining the regulatory regime and the intention and purpose of the Bill". Either way, the abrogation of this privilege only reinforces the strong stance of the Bill in relation to deterring non-compliance within the industry.

Even the Supporting Documents acknowledge[22] that DPPs face "significant" civil penalties under the Bill. They suggest that the maximum penalties are "intended to deter systemic non-compliance", but we consider that they will also greatly deter a range of other conduct too. In our view, the penalties are so severe that they will deter DPPs from conduct with even a remote chance of being considered non-compliance. The above penalties would likely be too prohibitive for many DPPs to ever risk incurring. The size of the penalties also clearly reinforces the extent and significance of ACMA's powers under the Bill. The Supporting Documents note that it is expected that ACMA "will actively seek" penalty orders against DPPs who routinely contravene provisions in a registered code or a standard or fail to comply with remedial directions. This suggests that the threat of enforcement by ACMA will be a very real threat which industry participants will wish to actively avoid.

Overall, we expect that the severe penalties will cause the industry to take an even more cautious approach to regulating content than strictly required because of the Bill. DPPs may actively and excessively censor content with any conceivable chance of being considered mis/disinformation. The result would be a broad-scale expunging of certain public commentary from digital platforms across Australia.

[21] See page 16 of the Guidance Note.
[22] See page 8 of the Fact Sheet. See also page 25 of the Guidance Note.

f) The likelihood of Australians 'self-censoring' their own online content

The fact that DPPs will be required to keep certain records and provide reports to ACMA will also have a dissuasive effects on ordinary Australians who share content online. In our view, many Australians will be intimidated into self-censoring their online content , knowing that their activity will be the subject of monitoring and reporting to ACMA.

The Bill lacks safeguards for individuals in this context. For example, clause 14(2) confirms that ACMA must *consider* the privacy of end-users before making DPRs in relation to records, but it lacks any explicit protection for such privacy. The consequential amendments in Schedule 2 also only state Parliament's *intention* that user privacy be respected, not any overt requirement:

> *"**The Parliament also intends that [DPSs] be regulated**, in order to prevent and respond to [mis-and-disinformation] on the services, **in a manner that … respects user privacy** …"*

In fact, the Bill does not seem to even expressly clarify whether information collated and reported to ACMA will be required to be aggregated and/or anonymised. The fact that ACMA must not publish 'personal information' on its website specifically under clause 27 is barely reassuring. That such information may be in the hands of ACMA at all under this new scheme may be dissuasive enough for many individuals.

Under clause 14,[23] DPRs may also require recording of a broad range of information, including relating to mis/disinformation on DPSs, measures implemented to prevent or respond to it, the effectiveness of such measures and the prevalence of false, misleading or deceptive information (separate to mis/disinformation, including a wider range of information that may not be seriously harmful[24]). DPRs may also specify the manner and form in which records are to be made, and the period for which they are retained. While content of private messages is not within scope, there seems little other safeguards for ordinary Australians.

The Bill also acknowledges that any reports made in relation to such records and provided to ACMA may even materially prejudice Australians' commercial interests. For example, clause 14(10) specifically states that DPRs must allow DPPs to identify to ACMA any information in a report "the publication of which the provider considers could be expected to prejudice materially the commercial interests of a person" and provide reasons. Clause 26 also requires ACMA to invite DPPs to identify information of this type before ACMA publishes it on its website. While ACMA is required to *consider* such reasons before publishing it, OBJ it is not prevented from going on to publish the information anyway. Australians who fear that their commercial interests may be materially prejudiced in this way seem hardly likely to continue sharing content online to the same degree. The Guidance Note also states that[25] ACMA "may disclose information to other persons and agencies should the information be relevant for efforts to combat [mis-and-disinformation]". This is enabled by consequential amendments to the definition of 'authorised disclosure information' in (and Part 7A of the regime in) the ACMA Act. Though "there are protections for privacy and commercially sensitive information", the potential for this to occur in any form may also be intimidating.

While the Guidance Note alleges that ACMA requires its new information-gathering and record-keeping powers to "provide greater transparency on the effectiveness of platform efforts in combatting [mis-and-disinformation]", OBJ any such transparency is one-sided. Online behaviours of individuals will be transparent, but that of other official entities such as the Government and professional news media will not (see below).

[23] See clause 14 of the Bill, particularly subclauses (1), (3) and (4). See also page 14 of the Guidance Note.
[24] See Footnote 2 on page 15 of the Guidance Note.
[25] See page 13 of the Guidance Note.

Overall, the broad scope of the record-keeping and reporting provisions seems likely to have a dissuasive effect on Australians who share online content. In fact, the increased and excessive censoring of online content by the industry under the Bill could also have this effect in any case – if much more content is censored, Australians may be discouraged from engaging in public discourse regardless. Either way, the result would be likely increase in 'self-censorship' by Australians online.

3. **The Bill's broad definition of 'harm' also risks ideological bias. Expressions of minority, conservative or religious views which merely differ from the prevailing perspective of society or official Government positions could potentially be deemed 'harmful' misinformation or disinformation. The Bill contains no exemptions which protect against this occurring.**

The Government asserts that the Bill's "strong protections for privacy and freedom of speech" include the "threshold" of mis-and-disinformation being "reasonably likely to cause or contribute to serious harm". While this terminology is included in the Bill, [26] we disagree that this is any such protection. How any such 'threshold' will operate is not yet clear in practice. Terms like 'harm' and 'serious harm' (as well as what is "false, misleading or deceptive" in the first place) will inevitably require interpretation under the Bill. These terms could potentially incorporate a very broad scope. In fact, even just the phrase "or contribute to" is very wide – there is no need for the provision of certain content to be the only or even dominant cause of any serious harm, only a contributor of some (potentially very small) extent.

In our view, the Bill's reliance on a 'harm' narrative also raises the risks of ideological bias. No one industry or entity should be the effective arbiter of what constitutes 'harmful' information. The risk is even greater if DPPs are the curating entities, given that they are already known to censor and downgrade conservative traffic. In any case, DPPs are hardly unbiased and neutral entities. They, like any entity, will interpret information with an ideological lens, even if they do so with good intentions.

Under the Bill, 'harm' is also broadly defined. It may mean any of the following: [27]

- hatred against a group in Australian society on the basis of ethnicity, nationality, race, gender, sexual orientation, age, religion or physical or mental disability;
- 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; or
- economic or financial harm to Australians, the Australian economy or a sector of it.

Under clause 7(3), "serious harm" has regard to the circumstances in which the content is disseminated, the subject matter of false, misleading or deceptive information, the potential reach, speed, severity of the potential impacts of and purpose of the dissemination, the author, whether information has been attributed to a source (and, if so, the authority of the source and whether the attribution is correct), other related false, misleading or deceptive information disseminated, and "any other relevant matter".

While the Guidance Note asserts that the Bill's definitions are intended to "provide guidance" on the types of 'harms' the powers are designed to address, and that the concept of 'serious harm' is intended to ensure that the powers target harms with "significant implications for the community", [28] the reality is that these definitions are open to a very wide scope of ideological interpretation. In our view, they clearly give rise to the potential for content to be considered 'harmful' which merely relates to expressions of minority,

[26] See particularly subclauses 7(1) and (2).
[27] See definition on page 6 of the Bill.
[28] See page 7 of the Guidance Note.

conservative or even religious views which differ from the prevailing perspective of society or official Government positions on a variety of contemporary matters. For example:

- Hatred on the basis of ethnicity, nationality, race, gender, sexual orientation, age, religion or disability: The Supporting Documents indicate that an example of 'serious harm' in this category is[29] "misinformation about a group of Australians inciting other persons to commit hate crimes against that group". This seems like an appropriate example of the sort of harm that a bill might justifiably address. However, we query why it would be necessary for the Bill to operate in this context. We understand that such conduct may already be prohibited under Australian criminal law, as is conduct prohibited under vilification ('hate speech') and discrimination laws. We are also concerned that the requisite 'hatred' might easily be triggered by public debate on many contemporary issues. We query whether, for example, this category could operate to classify as 'harmful' information on topics relating to gender and sexual orientation on which there are very different views among society. Though gender and sexuality may be widely accepted as fluid, many conservative and religious communities have very different beliefs. The sharing of content which advocates for gender being biological and fixed, for heterosexuality, against biological men using female facilities or participating in female sports, or about any harms that may be associated with gender transitioning, could be considered "reasonably likely to cause" or at least "contribute to" serious hatred against a group of LGBTQIA+ people on the basis of gender or sexual orientation. If so, such content could be classified as harmful 'misinformation' despite traditional views regarding gender and sexuality having existed throughout history and in accordance with religious doctrine adopted and practised for centuries. It may also be that the requisite hatred on the basis of 'religion' could be triggered by well-meaning commentary about religious matters, including other religions, doctrines or people who do not have a religion, in the context of our increasingly secular and religiously pluralist society. For example, content advocating for only one religion being correct could be considered false or misleading and "reasonably likely to cause" or at least "contribute to" serious hatred against a group of Australians on the basis of religion (e.g., people of other religions or atheist Australians).

- Harm to the health of Australians: The Supporting Documents indicate that an example of 'serious harm' in this category is[30] "misinformation which caused people to ingest or inject bleach products to treat a viral infection". While this example seems to relate to health advice which clearly might cause people physical harm if followed (though it must be said to be a farfetched example), it is not difficult to envisage a situation by which any information that contradicts the official Government position on a health matter (even if it is accepted by some health experts, or relates to novel health issues or emerging science or treatments) may be classified as harmful 'misinformation'. For example, information which challenges the prevailing gender-affirmative model in Australian healthcare might fall into this category, despite this model being increasingly discredited in the United Kingdom and other leading nations like Finland, Sweden, France and Norway which are moving away from this model. This category could also capture public commentary criticising the 'conversion therapy' legislation passed in some Australian states, despite it having attracted fierce criticism for being ideological and extending far beyond non-consensual and physically abusive medical procedures and into widely practised and/or religious practices such as prayer and the provision of consensual counselling and other requested help. Though authorised Government material is excluded from being 'misinformation' (see below), any commentary criticising official Government positions on such topics could still be censored, despite controversial areas of Government policy most needing open public debate. In the context of the COVID-19 pandemic, this category might capture content questioning official public health advice, despite the pandemic being an unprecedented event in relation to which

[29] See page 4 of the Fact Sheet. See also page 11 of the Guidance Note.
[30] See page 4 of the Fact Sheet. See also page 11 of the Guidance Note.

the relevant scientific consensus and medical advice has been novel, rapidly developed and ever-changing as new studies and technologies emerge. For example, it may capture content which questions official advice recommending COVID-19 vaccinations for cohorts of people, despite MRNA vaccine technology being relatively new, a lack of longitudinal studies in this context, and the changing nature of public health advice in relation to vaccines being fast-tracked and rolled-out over just a few years.

- Harm to the Australian environment: The Supporting Documents indicate that an example of 'serious harm' in this category is[31] "misinformation about water saving measures during a prolonged drought period in a major town or city". This seems a non-contentious example compared to other topics relating to the Australian environment which are the subject of frequent public commentary. For example, the existence of 'climate change' and the need for, utility of and urgency of actions to address it are often hotly debated in public spheres. Content that challenges the prevailing narrative that climate change exists and/or that urgent or particular action is required to address might be considered false and "reasonably likely to cause" or at least "contribute to" serious harm to the Australian environment. This seems possible considering the Government's evident acceptance of 'climate change' as a scientific issue and its international commitments to address it, even though it only became widely recognised as an issue and the subject of relevant policy efforts in recent decades.

Such examples clearly illustrate how the Bill's broad definition of 'harm' may give rise to applications with ideological bias. While the Bill's potential to curtail the freedom of expression of any Australian is concerning, the potential for it to be used as a mechanism to justify the curtailing of minority, conservative or even religious views is especially notable. The Bill contains no exemptions which would otherwise protect against this occurring. With DPPs already censoring conservative content on a broad scale, the Bill will only further justify their political asymmetry.

4. **Despite Government assurances, the Bill contains no explicit protections for freedom of expression (only the separate implied freedom of political communication). The Bill's exclusions also offer little protection for ordinary Australians, only professional entities and Government. Overall, the Bill does not reflect any real balance in protecting Australians from harm while upholding their rights/freedoms.**

The lack of explicit protections for freedom of expression

The Bill does have clauses preserving the implied freedom of political communication (**IFPC**). For example, clause 60 states that the provisions of the Schedule, DPRs and any misinformation code or standard "have no effect to the extent (if any) that their operation would infringe any constitutional doctrine of [IFPC]". If ACMA uses its reserve code registration/variation or standard making/variation powers, it will also be required to consider whether there are any potential burdens on freedom of political communication, and if so, whether they are reasonable and not excessive.[32] While including such clauses may be prudent for the Bill to be valid, these clauses seem to acknowledge some likelihood of the regulatory scheme burdening the IFPC. This is concerning and demonstrates the far-reaching potential consequences of the Bill.

Curiously, the Government seems to assert that its protection of the IFPC provides some protection for freedom of expression. It refers to ACMA being required to consider any potential burdens on freedom of political communication in the section titled 'freedom of expression' in the Fact Sheet. However, this is not actually a protection for freedom of expression. The IFPC is *not* the same thing as freedom of expression at all – it is not even an individual human right, but simply a limit on the legislative power of the

[31] See page 4 of the Fact Sheet. See also page 11 of the Guidance Note.
[32] See, for example, clauses 37, 40, 45 and 51 of the Bill.

Commonwealth.[33] The Government is misdirected if it asserts that it has upheld freedom of expression in the Bill merely by including some (limited and legislatively necessary) protections for the IFPC.

In fact, the Bill contains no explicit protections for freedom of expression at all. The only mention of this term is in the consequential amendments in Schedule 2, where a clause is proposed for a separate Act stating that:

> *"**The Parliament also intends that [DPSs] be regulated**, in order to prevent and respond to [mis-and-disinformation] on the services, **in a manner that … has regard to freedom of expression** …"*

However, this is just a passing reference to Parliament's *intent* which lacks context or explanation. No other clause in the Bill requires freedom of expression to be upheld. This includes in terms of the regulatory scheme broadly or in any code of practice, industry standard or rules developed under the Bill.

The Fact Sheet's section on 'freedom of expression' also notes that the Bill focuses on ensuring that DPPs have systems and measures in place to combat mis-and-disinformation, that they will continue to be responsible for the content they host and promote to users, and that ACMA will not have a role in "determining truthfulness" or taking down/requesting action regarding individual pieces of content.[34] However, none of these points ensure that freedom of expression will be upheld. They essentially disclaim any direct role by ACMA in the curtailing of freedom of expression which the Bill will undoubtedly cause. While the Guidance Note also asserts that the Bill "does not seek to curtail freedom of speech", OBJ the reality is that the Bill will clearly have that effect. It fails in any practical or material respect to otherwise protect freedom of expression at all, even if the Government did intend for the Bill to so do.

<u>The failure of the Bill's exclusions to protect the freedom of expression of ordinary Australians</u>

The Government asserts that the Bill has "strong protections for privacy and freedom of speech", OBJ including because the code and standard-making powers will not apply to certain types of content such as professional news and satire. The Fact Sheet also includes a point about the exclusions in the Bill regarding professional news content, authorised content and other types of excluded content in its section about 'freedom of expression'. OBJ While the Bill does contain some exclusions for these types of content, they provide very little protection for the freedom of expression of ordinary Australians.

In particular, the Bill does set out some 'excluded content for misinformation purposes' in the definitions section,[35] including content produced in good faith for the purposes of entertainment, parody or satire, professional news content, and content produced by or for accredited educational institutions.[36] However, this will provide very little protection for ordinary Australians relative to juggernaut entities such as news media giants. Individuals wishing to express their own views on topical events are not the intended beneficiary of these sorts of exclusions. In fact, the Fact Sheet even confirms that content made *in response* to these types of content is not automatically also excluded (e.g. comments on a professional news article).[37] As such, false, misleading or deceptive professional news content will not be captured as 'misinformation' by the Bill, but the comments of ordinary Australians in response to it may still be captured and liable to censorship on digital platforms. Professional news entities may peddle incorrect information unchecked, while Australians simply wishing to correct their errors may still be censored.

The Government rationalises the professional news exception on the basis that it "does not seek to influence the editorialisation and reporting by the free press". It also notes that such content will be subject to certain rules and "editorial independence" from its subjects and must satisfy criteria the same as a 'professional

[33] See information by the Australian Human Rights Commission: This link and the Victorian Government Solicitor's Office: This link.
[34] See page 9 of the Fact Sheet.
[35] See pages 5 and 6 of the Bill.
[36] See definition of 'excluded content for misinformation purposes' on pages 5 and 6 of the Bill.
[37] See page 3 of the Fact Sheet.

standards test' to be exempt.[38] However, professional news media is already well-known for producing content riddled with bias and errors despite any existing standards. Inconceivably, professional news entities are still given license to publish false, misleading or deceptive content by the Bill, even though they are supposed to be in the very business of publishing factual and evidenced information. If the existing rules and standards applying to such entities already ensured that they did not publish misinformation, the exception would be unnecessary. Still, ordinary Australians, who have far less means of (or at least an established platform for) influencing society with their opinions, are held to a far higher standard under the Bill. Even their basic day-to-day use of social media may be captured by the Bill and strictly regulated.

A similar point could be made about accredited educational institutions. By virtue of being properly accredited, and in the very business of educating the Australian public, such institutions should be held far more accountable than ordinary Australians for the accuracy of the information which they publicly disseminate. However, again, their content will not be within the scope of the new powers. The exclusion of entertainment, parody or satire content is also hardly a capitulation worth mentioning from the perspective of ordinary Australians, as by its very nature such content is not generally made for informative purposes.

Overall, any protections which the Bill does provide for freedom of expression by virtue of these exclusions are not "strong" and are in fact virtually non-existent for ordinary Australians.

The immunisation of Government content

The Government also lauds that the Bill has "strong protections for privacy and freedom of speech"[39] because the code and standard-making powers will not apply to authorised electoral and referendum content. Again, while such exclusions do exist, they are not protective of ordinary Australians. In fact, they make the Bill reek of a double standard which only immunises the Government that introduced the Bill from the risks which it considered justified in imposing on ordinary Australians.

Firstly, under clause 35, ACMA must not register a code or determine a standard with requirements relating to electoral and referendum content unless the requirements relate to preventing or responding to 'disinformation' and do not relate to authorised content. Clearly, authorised electoral and referendum content will not be regulated to the same extent as content produced by individuals. Implausibly, any threat to our democracy from 'misinformation' in authorised (and thereby authoritative) electoral or referendum content is less than the threat of 'misinformation' about such matters disseminated by the average person.

The definition of 'excluded content for misinformation purposes'[40] also excludes content authorised by the Commonwealth, State, a Territory or a local government from being 'misinformation'. As such, Government content at any level would be excluded from the Bill's scope, even if it is clearly false, misleading or deceptive. Again, content made *in response* to such content is not automatically also excluded, so any online public debate criticising or challenging authorised Government content (even if the original content is false, misleading or deceptive) is still liable to censorship. In fact, if any Government content is disseminated with some sort of protective purpose in mind, it seems even more likely that content which contradicts it will be liable to censorship on the basis that it is "harmful", even if the protective purpose of the Government is misdirected or based on any inaccuracies. Statements by other political parties not in power at the time may even be censored as misinformation for contradicting the Government narrative. This limits a vital way in which any abusive or illegitimate power may be exposed and held to account, but also mitigates the accountability of the Government for its statements more generally. Effectively, the Government of the day would be empowered to promote its ideologies or even false, misleading or deceptive claims about its policies with far less likelihood of being made accountable. This is even though Government is often accused of producing content with political bias. In our view, given its authoritative position, the Government needs

[38] See pages 12 and 13 of the Guidance Note. See also definition of 'professional news content' on pages 7 and 8 of the Bill.
[39] See page 2 of the Fact Sheet. See also page 9 of the Fact Sheet.
[40] See pages 5 and 6 of the Bill.

to be held to account for the accuracy of its content even more than the average person. Incomprehensibly, the Government considers that misinformation poses such a strong threat to our democracy and society that the Bill is warranted, yet it will not allow its own content to be scrutinised. The Bill ignores the influence of any content having been officially authorised and produced by an authoritative Government entity, even if it would contribute to the sorts of "serious harm" which the Bill seeks to prevent. The Government has the most recognised platform from which to influence society, yet it will not hold itself to account for what it publishes in the same way as it would ordinary individuals.

The Guidance Note provides an example of Government content which could be exempted – a "social media post from a state's transport department about an upcoming road project or health campaign".[41] However, there is no reason why misinformation on such topics should be excluded from the Bill's scope merely because it was authorised. Surely, information which the Government disseminates about a 'health campaign' could still be false, misleading or deceptive despite having been authorised, and could also give rise to the very sorts of serious harms the Bill seeks to prevent (e.g., 'harm to the health of Australians', discussed above). In fact, a government health campaign should be far more readily subject to scrutiny, by virtue of it having been authorised and disseminated to the Australian public as fact by the very Government appointed to advance public interests. Government health information seems far more likely to be acted upon by the public than any content disseminated by ordinary Australians online, yet it alone attracts a 'free pass'.

It is illogical and unacceptable for the Government to comprehensively immunise its own content from the Bill's scope but not that of ordinary Australians. Effectively, the Bill facilitates a politicised implementation of the regulatory scheme. Therefore, the Bill may contribute to the problem of mis/disinformation in society. For example, a Bill which censors individuals and yet immunises Government and professional entities might contribute to a public sense that official information cannot be trusted and encourage more individuals to accept and promote contradictory information or strengthen the convictions of those censored from public discourse in their 'misinformed' beliefs. In contrast, a government which legitimately upholds freedom of expression and respects the rights of all individuals to participate in public discourse, even if misinformed, appears a far more trustworthy entity. Either way, the double-standard which the Bill currently codifies is not protective of the freedoms of ordinary Australians.

The Bill's overall lack of balance

This Inquiry seeks to understand whether the Bill reflects an appropriate balance in protecting Australians from alleged harms while upholding their rights and freedoms, including in terms of freedom of expression specifically. OBJ In our view, given the above, the Bill clearly fails to reflect any real and proper balance in this regard. If freedom of expression has not been protected in any sense apart from an optimistic statement of Parliament's intent (see above), the Bill cannot strike an appropriate balance on this issue.[42] The Bill cannot have balanced freedom of expression as it barely refers to this concept nor requires it to be practically upheld in any way.

However, the Guidance Note (and Fact Sheet, OBJ) suggest that the Government considers that the Bill protects freedom of expression and appropriately balances it with other factors:

> *"The **proposed powers seek to strike a balance between the public interest** in combatting the serious harms that can arise from the propagation of [mis-and-disinformation], **with freedom of speech**."* OBJ
>
> *"**In balancing freedom of expression with the need to address online harm**, the code and standard-making powers **will not apply to** professional news and authorised electoral content, nor will the ACMA have a role in determining what is considered truthful."* OBJ

[41] See page 13 of the Guidance Note.
[42] See pages 6, 12 and 19 of the Guidance Note.

> *"**The Bill excludes certain content from the definition of misinformation to strike a balance between the public interest in combatting misinformation, with the right to freedom of expression.** [DPPs] will be responsible for determining whether pieces of content are excluded for misinformation purposes."* OBJ

> *"The code and standard-making powers will not apply to electoral and referendum content that is required to be authorised. They would also not apply to any other electoral matter content unless it is disinformation … **This approach seeks to strike a balance between the public interest in combatting the serious harms** that can arise from the propagation of [mis-and-disinformation], **with freedom of speech and political communication.**"* OBJ

The Department's Inquiry website also makes a similar assertion: OBJ

> *"The new powers will enable the ACMA to monitor efforts and require digital platforms to do more, placing Australia at the forefront in tackling harmful online [mis-and-disinformation], **while balancing freedom of speech**."*

Apart from its statements of intent to strike the appropriate balance, the Government seems to suggest that the exclusions it has included regarding the scope of the Bill strike such a balance. However, in our view, it would be misleading to suggest that the Bill protects freedom of expression merely because certain matters are excluded from being 'misinformation'. The Bill contains no explicit protections for freedom of expression for any other content captured by it. As discussed above, the exclusions also do not protect ordinary Australians, the very cohort of individuals whose human rights are at stake. The Government is willing to ignore the fact that individuals' freedom of expression is curtailed, provided its own is preserved. Either way, any intent to uphold individuals' freedom of expression which might be evidenced by the many references to it in the Supporting Documents are not reflected in the Bill.

As the Bill both practically interferes with and fails to protect freedom of expression, it does not reflect any real balance in protecting Australians from harm while upholding their rights and freedoms.

5. The regulatory scheme turns on codes of practice, industry standards and/or rules which are yet to be developed. The Government cannot ensure a balance between the regulatory measures and freedom of expression when these documents are yet to even exist.

The industry and/or ACMA are obviously yet to develop any specific code of practice or industry standard under the Bill. However, the entire scheme turns on the content of these documents. Though they will codify the regulatory measures which the industry will follow, we have no visibility of what they will contain. While there is reason to be concerned about the implications of the Bill for freedom of expression in any case, these documents will be critical in striking a specific balance between regulation and such rights. ACMA is also yet to exercise the rule-making powers which it is afforded by the Bill, so we have no visibility on what sort of rules it will eventually develop and how they will practically operate in the context of the scheme.

In our view, the Government therefore *cannot* ensure that an appropriate balance is achieved between the regulatory measures and Australians' rights to freedom of expression. Simply willing the industry and/or ACMA to eventually balance these things properly is insufficient. However, the Government is promoting that it *will* achieve this balance. For example, the Fact Sheet states that "… the government is committed to achieving a balance that upholds the rights and freedoms of Australians whilst protecting Australians from serious harm that can come from the spread of [mis-and-disinformation]".[43] , This optimistic statement is problematic. The Government *cannot* ensure that it achieves a balance between regulation and Australians' rights and freedoms by introducing a Bill which relegates the codifying of the crucial balance to documents which are yet to even exist. Neither the Government nor Australians more broadly have any real visibility

[43] See page 8 of the Fact Sheet.

into how the eventual regulations will practically limit their rights. Any such balance will not be preserved by way of restrictions introduced through law at very least. Given the lack of balance in the Bill itself, it seems reasonable to assume that these regulatory documents will also ultimately fail to strike the right balance. Either way, the Government cannot ensure that they so do.

6. The United Kingdom and Europe have a better approach

The United Kingdom *Online Safety and Misinformation Bil*l specifically specifically addresses the risk of political bias. It removes the influence governments could have. While the Bill allows censorship of lawful content, the UK Bill does not allow this.[44] The UK Bill also contains provisions which respond to concerns that it could lead to platforms over-blocking content and chill freedom of expression online. The Bill contains no such limits.

In the European Union legislation (the *Digital Services Act*[45]), and in the UK Bill, freedom of expression is preserved. In the Bill it is not.

The Bill does not support freedom of expression, rather it undermines it.

[44] https://www.gov.uk/government/news/internet-safety-laws-strengthened-to-fight-russian-and-hostile-state-disinformation

[45] https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package