

Re: New ACMA powers to combat misinformation and disinformation Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023.

Dear Officer,

I am a parent of two amazing young adults and am part of a large family and diverse friend group, with the one major uniting factor being the love of our free and welcoming country - Australia.

I am concerned with the new powers that this bill seeks to introduce, and the effect it will have upon the country which my children, and their children, will grow up in. I am deeply concerned that this is a large step away from democracy, as this bill allows power to be removed from the citizens and given to an unelected body (ACMA) - one which has the power to dictate what is considered "true" and what is not. Additionally, this bill allows penalisation of those who may publicly voice an opinion differing from ACMA's version of "truth".

From <https://www.britannica.com/topic/democracy/Features-of-ideal-democracy>

Freedom of expression. Citizens may express themselves publicly on a broad range of politically relevant subjects without fear of punishment (see freedom of speech).

Independent sources of information. There exist sources of political information that are not under the control of the government or any single group and whose right to publish or otherwise disseminate information is protected by law; moreover, all citizens are entitled to seek out and use such sources of information.

Freedom of association. Citizens have the right to form and to participate in independent political organizations, including parties and interest groups.

My concerns with the proposed legislation are as follows:

1. It conflicts with Article 19(1) and (2) of the International Covenant on Civil and Political Rights.

From ICCPR Article 19 (1) and (2):

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

2. The Bill does not explain why these proposed powers are necessary and why less restrictive approaches are not considered.

From ICCPR Article 19 (3):

3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
 - (a) *For respect of the rights or reputations of others;*
 - (b) *For the protection of national security or of public order, or of public health or morals.*

This has not been demonstrated as per the requirements from the AHRC:

From <https://humanrights.gov.au/our-work/projects/4-permissible-limitations-iccpr-right-freedom-expression>:

When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.

3. While the Fact Sheet suggests the Bill is only relevant for digital platform providers, the wording in the Bill itself allows individuals posting “misinformation/disinformation” to be targeted:

From the Fact Sheet, Page 2:

The powers apply to digital platform services that are accessible in Australia. Some examples include social media, search engines, instant messaging services (although the content of private messages will be out of scope), news aggregators and podcasting services.

From the Exposure Draft of the Bill, Pages 17 & 18:

9. When content is provided on a digital service

- (1) *For the purposes of this Schedule, content is provided on a digital service if the content is;*
 - (a) *delivered by the digital service; or*
 - (b) *accessible to end-users using the digital service*

10. When a service is provided to the public etc.

- (1) *For the purposes of this Schedule, a service is provided to the public if, and only if, the service is provided to at least one person outside the immediate circle (within the meaning of the Telecommunications Act 1997) of the person who provides the service.*

The last sentence of 10(1) where it states "*is provided to at least one person outside the immediate circle*" strongly suggests that this Bill can also target private citizens who have a social media account with followers that are not within their "immediate circle". This would likely apply to most users of social media. Allowing individuals to post only what the government deems is acceptable, apart from being an impediment to democracy, limits constructive discussion, prevents growth and the establishment of new ideas, and entrenches any erroneous 'approved' viewpoints.

4. The definitions of "Misinformation", "Disinformation" and "Serious Harm" are vague and subjective.

(i) The Bill defines Misinformation and Disinformation as follows on the Fact Sheet, Page 1:

- *Misinformation is online content that is false, misleading or deceptive, that is shared or created without an intent to deceive but can cause and contribute to serious harm*
- *Disinformation is misinformation that is intentionally disseminated with the intent to deceive or cause serious harm.*

Misinformation" and "Disinformation" can only be determined when held against what is considered to be "true" information. What is truthful can vary from person to person based on their lived experience and beliefs. Additionally, in science there is only the quest for truth, as scientific approach requires changing our understanding whenever new evidence emerges from either experimentation or observation.

"The most important thing is to never stop questioning." - Albert Einstein

(ii) The Bill defines Harm as follows on the Exposure Draft of the Bill, Page 10:

harm means any of the following:

- 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;*
- economic or financial harm to Australians, the Australian economy or a sector of the Australian economy.*

Where “harm” is defined in the document, it is an all-encompassing subjective definition, which could include any information that it is deemed necessary to suppress - for example questioning the safety of various drugs “harm to the health of Australians” (would this have prevented any discussion on the safety of Vioxx?), or the detrimental effect climate change believed to have on Australia’s coral “harm to the Australian environment” (<https://www.aims.gov.au/information-centre/news-and-stories/highest-coral-cover-central-northern-reef-36-years>), discussing legal protests - “Disruption of public order or society in Australia”, or even just questioning election integrity.

I believe this definition is concerningly open to misuse and raises serious concerns about our ongoing democratic process.

In summary, while I believe that social media can be problematic and contain a wealth of misleading and inaccurate information, to quote Barack Obama *“We have to uphold a free press and freedom of speech - because in the end, lies and misinformation are no match for the truth”*.

Instead of censoring what is believed to be inaccurate information, I believe we should be teaching all Australians from a young age discernment and the ability to critically analyze available information. We should be guiding and mentoring our youth, giving them the ability to think, learn, debate and grow. We need a generation of critical thinkers, those who can reach across differing viewpoints to arrive at a consensus, those who can debate constructively and make breakthroughs in science.

These skills require access and exposure to all available information and all viewpoints.

As such, I am passionately opposed to the proposed legislation. I believe Australians do not need protection, but instead empowerment and discernment. Preventing access to conflicting information will simply hinder our growth as a nation and as a respected world player.

“Without Freedom of Thought, there can be no such thing as Wisdom; and no such thing as public Liberty, without Freedom of Speech” - Benjamin Franklin