Submission on the *Misinformation and Disinformation Bill 2023* (Cth)

The below comments relate to clauses within Schedule 1 of the *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023*, according to their descriptors in the Exposure Draft

Clause 2 – definitions
There is no need to include "misinformation" that may concern the natural environment, as a statement about climate change could not have the immediate gravity of a statement inciting terrorism or other dangerous behaviour.

Clause 7
The exemption of government publications is concerning, as it allows the government to say whatever it pleases, while abrogating the equivalent rights of opposition politicians and ordinary members of the public.
Further, the definition of "harm" is also concerning, as what is and is not "harm" or "serious harm" is a purely subjective consideration. Though measures have been taken to define "harm" in clause 2, what is contained in the definition of "harm" is insufficient. One person's hate speech may be another person's truth-telling. The government must be careful not to endow itself or the ACMA with the function of arbiter of truth in this way. There is an obvious role where, for example, there are comments on social media attempting to incite violence against a particular group on the basis of obvious misinformation, but this does not apply in all situations contemplated by the definition of "harm" and the operative provision that is clause 7.
Considering that the purpose of the Bill is to prevent misinformation and disinformation, one questions the relevance of "hatred" towards certain peoples, and "harm" to the environment. As comments within these spheres are likely to be expressions of opinion, one questions whether they can be properly considered "misinformation" in any way.

Relatedly, I am glad that clause 6(1) excludes services that enable communication that is exclusively private, as such information must be kept private.

Clauses 14(3) and 18(4)
Very important – the government must keep a balance between protection and privacy. While it is crucial to ensure the protection of the Australian community, the privacy of messages in confidence must be maintained.

Clauses 18(3)(d) and 19(3)(d)
Concerns around clauses 18(3)(d) and 19(3)(d), as it would be dangerous to force a person to give up their documents without any due process or hurdle for ACMA authorities to overcome. Again, the privacy and dignity of the individual is essential. There should be a stronger proviso than that provided in clauses 18(1)(a) and 19(1)(a), which makes explicit reference to what must be satisfied for ACMA to be permitted to request these documents.

Clause 21(2)

Very important, as the common law presumption of innocence has been fiercely attacked by some State legislatures throughout this century, and we ought not see another incursion against this common law right. Accordingly, clause 21(2) must be maintained if clause 21 is to form part of the intended legislation.

Clause 24

Clause 24, in permitting the ACMA to take and retain possession of original documents indefinitely, goes too far. There ought to be a time constraint on possession, perhaps somewhere in the range of 3 to 5 years.

Clause 27 is of crucial importance and ought to be retained in the Bill.

Clause 32 is somewhat concerning as, in conjunction with the ambiguous definitions of misinformation and disinformation, may allow relevant bodies to make codes that may discriminate against certain groups or assess certain language as being misinformation by default.

Clauses 34 and 35 are, again, of crucial importance.

Clause 40

This clause, particularly sub-clause (1)(d), is very important. To restrict the implied freedom of political communication would be to breach the Constitution itself, and the ACMA must ensure that misinformation codes do not unreasonably burden this implied freedom. However, the right given to ACMA to consider "any circumstances the ACMA considers relevant" is concerning as it allows the ACMA discretion to consider any or no circumstances that may be of substantial importance in the case of the particular code/industry. This aspect of clause 40(1)(d) ought to be reconsidered, in order for the scope of the ACMA's discretion to be more greatly specified. Similarly, the limitation on the making of standards under Division 5, as set out in clause 45, must be likewise more specific in the scope of ACMA's discretion.

Alternatively, clause 40(1)(d) and clause 45 should provide a list of matters or circumstances to consider, either as an obligation or as a guide. There should be some base-level requirement that the most important elements of the implied freedom be considered in any balancing exercise.

Clause 40(2) ought to be altered to extend the minimum period to "at least 60 days", or a longer period. In the digital realm, such matters can appear only fleetingly, if at all, and the Australian public, but more specifically representative of the industry, should be given adequate time to become aware of chances for submissions.

Clause 55(4) is of crucial importance. In order for our society to be subject to the rule of law, it is essential that our laws, including "misinformation codes" and "misinformation standards", be accessible.

Clause 60 provided the writer with a welcome sigh of relief, though there should be some sort of redress or "easy" ability for the instruments identified in clause 60(1) to be contested. This mechanism should form part of the Schedule itself.