

Kathryn & Jeremy Woods,



To: The Department of Infrastructure, Transport,
Regional Development, Communications and the Arts,
GPO Box 594, Canberra, ACT, 2601

19 August 2023

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

Dear Officer,

I write this submission to the proposed *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023*.

I vehemently oppose the introduction of these new powers to ACMA, in principle and in practice. The suggestion that a Government regulation body should be given powers to censor the opinions and information sharing of individuals on social media platforms demonstrates vast over-reach, and a breach by government not only of the social contract and the right to freedom of speech & expression, but of international and national law.

In particular, I draw your attention to **Australia's obligations with respect to freedom of speech and freedom of expression**. Australia is a party to the seven core international human rights treaties. Of most relevance is the *International Covenant on Civil and Political Rights (ICCPR)*.

Article 19 of the ICCPR – Freedom of Expression

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.

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 (*ordre public*), or of public health or morals.

The Bill would give unprecedented & unconstitutional powers to ACMA, to litigate and penalise both individuals and social media companies, for allowing information sharing. Freedom of speech and expression is one of the cornerstones of our democracy. The powers contained in this Bill effectively set up ACMA as Australia's own Orwellian Ministry of Truth, and Thought Police to boot.

I am shocked that the Australian Government has made moves towards implementing such dystopian control of its citizens, who once enjoyed the highest standards of democratic involvement in the world.

Recommendation

1. I ask for the Government to please provide specific reasons why the various powers granted to ACMA by the Bill are necessary for the purposes outlined in Article 19 of the ICCPR, including reasons as to why less onerous approaches are not sufficient.

There are two other Articles from the ICCPR containing rights which the Bill threatens to impede. First, **Article 1 of the ICCPR** contains the right of **self-determination**, often referred to as the bedrock of human rights. That is;

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

In today's world, freely pursuing one's economic, social and cultural development is a process intertwined with and dependent on digital platforms, and the internet generally. Most individuals and most businesses use websites and social media platforms to share information. "Social and cultural development" necessarily includes the interaction with, and sharing of, ideas online. All of these processes have become integrated and intertwined. It would be a simplistic and naïve view to claim that restrictions placed on people and their businesses by ACMA with respect to what they can and cannot post on the internet would not impede on their right to self-determination.

Article 18(1) is also relevant:

1. Everyone shall have **the right to freedom of thought, conscience and religion**. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private to manifest his religion or belief in worship, observance, practice and teaching.

Freedom of thought necessarily entails the freedom to express those thoughts, and freedom of conscience necessarily entails the right to have access to a broad range of information which might inform that conscience. Forcing independent disseminators of information to comply with codes and standards imposed from on high does not facilitate an environment where freedom of thought and conscience are possible.

Recommendations

- 2. The Department and the AHRC should collaborate to ensure, as per the AHRC's statutory function, that the Bill is compatible with Australia's human rights obligations at international law;**
- 3. The Department should immediately release the Statement of Compatibility for public scrutiny, and confirm the establishment of the Parliamentary Joint Committee on Human Rights with respect to the Bill;**
- 4. Stronger, proactive protections for the implied right to freedom of political communication;**
- 5. Include Guidance Principles within the Bill that make clear the importance of freedom of speech and expression, and which force ACMA to acknowledge these rights when making decisions;**
- 6. Follow the DIGI Code's lead in ensuring that content producers should not be compelled by Governments or other parties to remove content solely on the basis of its alleged falsity if the content would not otherwise be unlawful.**

In brief, the Bill would enable ACMA three broad powers:

- a. to gather information from, or require digital platform providers to keep certain records about matters regarding misinformation and disinformation;
- b. to request industry develop a code of practice covering measures to combat misinformation and disinformation on digital platforms, which the ACMA could register and enforce; and
- c. to create and enforce an industry standard (a stronger form of regulation), should a code of practice be deemed ineffective in combatting misinformation and disinformation on digital platforms.

The Bill places unacceptable restrictions on any Individual who posts content online, and makes them subject to the severe civil and criminal penalties that the Bill implements if those codes/standards are breached. This approach is, quite frankly, an unacceptable and inappropriate imposition of executive regulation on the citizenry of Australia. It is a flagrant dismissal of the rights to freedom of speech and expression Australia has covenanted into protecting. It would render any citizen who chooses to express themselves in a digital form subject to regulatory frameworks that have not even been created yet, unilaterally imposed by ACMA, and not subject to meaningful challenge. That is not the way a democratic society works. It would signal the end of the internet as a free market of ideas and opinions and render criticism of Government, an essential element of any healthy democracy, vulnerable to civil and criminal prosecution. This is not the sort of society that I wish our teenage children to be entrapped by.

Recommendations:

7. Amend the definition of ‘digital service’ to clarify and ensure that an individual who posts on a social media platform is outside of the scope of the Bill’s operation.

8. The current definitions of ‘Misinformation’, ‘Disinformation’ and ‘Serious Harm’ within the Bill are unworkable. Given that the Bill rests upon these definitions, this renders the Bill itself unworkable. The definitions should be amended such that they are not contingent on the identification of “truth”, but are rather aimed at capturing content that is of a criminal character, or which constitutes a criminal offence.

9. The drafters of the Bill must be clear in their intentions. At present, the Guidance Note and the Fact Sheet say one thing whilst the functionality of the Bill suggests something else. This will result in complex and costly litigation;

10. If the Bill is to be allowed to pass, stronger protections for free speech must be incorporated into it, which would require a drastic re-drafting of the Bill. Anything less should not be allowed, because freedom of speech and expression are such fundamental rights in our democracy.

11. Stronger checks and balances need to be incorporated into the Bill such that ACMA is not allowed unchecked, unilateral, unchallenged power to create codes, rules and standards;

12. Statutory mechanisms for review and challenge of ACMA decisions must be incorporated into the Bill, with external and independent oversight that is timely and efficient;

13. ACMA’s discretion should be limited and couched within clear parameters for reasonable assessment by a Court;

14. The Bill must include a Clause excepting the provision of any information that would render the provider in breach of Privacy legislation.

Conclusions

When the public is no longer the arbiter of truth, and that role becomes usurped by bureaucrats and governments, history suggests that the resultant censorship erodes the public's collective trust in authority.

Governments in Australia have already seriously eroded the public's trust over the past decade, particularly the past 3 years. The ball is now in your court to try to regain that trust by serving the people, not corporate or government agendas. I ask you to cease and desist from the current path of systematically eroding the human rights that we have enjoyed in this country since Federation.

I fundamentally and vehemently oppose this Bill, and everything it stands for: Government control of its citizens. Please do not pass this Bill.

Yours sincerely,

Kathryn & Jeremy Woods