



**AFFILIATION OF AUSTRALIAN
WOMEN'S ACTION ALLIANCES
(AAWAA)**

Women's Action Alliance Canberra (WAAC)
Women's Action Alliance Tasmania (WAAT)
Queensland Women's Action Alliance (QWAA)
South Australian Women's Action Alliance (SAWAA)
Western Australian Women's Action Alliance (WAWAA)



**NEW ACMA POWERS TO COMBAT
MISINFORMATION AND DISINFORMATION**

**Submission from the
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The Affiliation of Australian Women’s Action Alliances (AAWAA) welcomes the opportunity to comment on the exposure bill for the Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023 provided by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts.

AAWAA brings together women’s liberation groups from the ACT, Tasmania, Queensland, South Australia, and Western Australia, all of whom contributed to and endorsed this submission. We advocate for women and girls in all domains that impact the lives and welfare of females, but especially where we face discrimination or are vulnerable by reason of our sex — including online. We campaign against homophobia and against gender-based stereotyping in education, the media, and on the internet, and we are keenly committed to supporting and advocating for young people impacted by gender medicine. Our groups are secular and we are not aligned with any political party or parties.

Our concerns

Two concerns inform our submission. In the first instance, social media is contributing to an alarming increase in mental health issues impacting vulnerable young people, especially girls.¹ Despite some token adjustments to what are known as ‘recommender systems’² (that is, systems that use selective algorithms to filter suggestions to end users based on the analysis of personal data), digital platform and services providers continue to direct users to particular websites and platforms that exacerbate a range of mental health problems;³ these include eating disorders and childhood gender dysphoria.⁴ Combined with this, ‘algorithmic audiencing’ (which amplifies messages to specific audiences) is contributing to the accelerating spread of extreme misogyny and homophobia, impacting people of all ages.⁵

¹ [Facebook knows Instagram is toxic for teen girls, company documents show](#), *Wall Street Journal*, 14 September 2021; [Facebook Files: 5 things leaked documents show](#), BBC, 24 September 2021; [Misinformation about COVID vaccines and women’s health is impacting girls, new report finds](#), ABC, 5 October 2021.

² [Australian Code of Practice on Disinformation and Misinformation](#), updated 22 December, 2022.

³ On Facebook continuing to target teens, see [Revealed: Facebook’s bait and switch on surveillance advertising to children](#).

⁴ [Social media as an incubator of personality and behavioural psychopathology: Symptom and disorder authenticity or psychosomatic social contagion?](#) *Comprehensive Psychiatry*, Volume 121, 2023; [WSJ series: Increased mental health problems linked to social media influence, experts say](#), *Wall Street Journal*, 11 January 2022; [Rapid-onset gender dysphoria in adolescents and young adults: A study of parental reports](#), *PLoS ONE* 13(8), August 2018.

See also [Compendium of studies and medical literature by experts](#); [Understanding the rise of transgender identities](#), Quillette, 10 February 2023; [Stop that! It’s not Tourette’s but a new type of mass sociogenic illness](#), *Brain*, Volume 145, February 2022.

⁵ On algorithmic audiencing, see [Wrong, Elon Musk: the problem with free speech on platforms isn’t censorship. It’s the algorithms](#), *The Conversation*, 18 May 2022



A second concern is that social media companies have a shameful track record of actively censoring women who have advocated for women's sex-based protections and of deplatforming critics of medical interventions for gender dysphoric children. We draw your attention to cases of Australian feminists banned from Twitter for many years;⁶ Reddit⁷ and YouTube⁸ have also censored critics of gender ideology. Detransitioners (those who regret, and believe they were harmed by, their previous medical transition) are being similarly censored.⁹ At the same time, digital platform and services providers have readily provided forums for those who advocate violence against women and especially against feminists.¹⁰ The UN Rapporteur for violence against women and girls has also noted the phenomenon of social media companies removing women from social media platforms for expressing opinions and beliefs regarding our needs, rights, and protections based on sex and/or sexual orientation.¹¹

Government measures to combat misinformation and disinformation

AAWAA notes that the former and current governments have been grappling with the challenge of regulating social media for some time and that this bill represents the latest initiative in a series of measures to that end. These include the passing of the *Online Safety Act 2021* and the *Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019*, and the creation of an eSafety Commissioner, as well as a range of non-legislative measures aimed at improving end-users' digital literacy, and the risks of misinformation.

AAWAA further recognises that this bill follows Australian Government efforts to encourage digital platform and services providers to voluntarily address misinformation and disinformation and that it aims in the first instance to mandate greater transparency on the part of the providers to demonstrate their actions to combat misinformation and disinformation. We also note that the bill provides the Australian Communications and Media Authority (ACMA) with reserve powers if industry efforts to combat misinformation and disinformation prove inadequate.

⁶ [Twitter's free speech threatens radical trans activism](#), *The Spectator*, 4 January 2023; [Twitter regularly suspends and bans feminists](#), Twitter thread on Twitter's banning of gender critical tweets since 2018; [Twitter closes Graham Linehan account after trans comment](#), *The Guardian*, 27 June 2020.

⁷ [Reddit is banning women's health subreddits under new rules](#), *Feminist Current*, 13 July 2020.

⁸ [YouTube has taken down the video "to keep our community safe"](#), Tweets by Helen Joyce.

⁹ [Etsy equates 'Detransitioner awareness' designs with hatred](#), 29 July 2023.

¹⁰ See [TERF is a slur](#).

¹¹ [Statement by Ms Reem Alsalem](#), Special Rapporteur on violence against women and girls, 22 May 2023.



Balancing freedom of expression with combatting misinformation and disinformation

AAWAA assesses that the current voluntary approach is ineffective; however, transitioning to a more interventionist approach must be undertaken with the most robust safeguards possible to insure against arbitrary censorship that would undermine our democratic principles *and* exacerbate the harms that social media companies are facilitating.

AAWAA notes that guidance to the bill asserts that, “The proposed powers seek to strike a balance between the public interest in combatting the serious harms that can arise from the propagation of misinformation and disinformation, *with freedom of speech*”¹² (our emphasis). The text of the exposure draft, however, belies this claim. In fact, the bill refers only once “to freedom of expression,” a reference that is buried in an essentially technical clause mandating an amendment to the *Broadcasting Services Act 1992*.¹³ The bill makes a handful of references to the “implied freedom of political communication” but only in the context of the development of an industry code or industry standard for combatting misinformation and disinformation — the third and final element in the graduated reserve powers that the ACMA seeks.

AAWAA notes that the voluntary industry code (the ‘Disinformation Code’ aka the ‘DIGI Code’) that this bill seeks to strengthen includes protection of freedom of expression and other rights in its ‘Guiding Principles.’¹⁴ It makes little sense, therefore, that legislation designed to lock in minimum standards for the industry should itself be so hesitant in regard to these principles. This is especially true given the industry’s patchy record of regulatory compliance.¹⁵

A human rights approach

To remedy these deficiencies, AAWAA recommends the bill set out — clearly and prominently — the protection of freedom of speech and other rights as a key objective. The title of the bill should reflect this priority, viz, the Communications Legislation Amendment (Safeguarding Freedom of Expression and Combatting Misinformation and Disinformation) Bill 2023.

AAWAA further recommends that the bill include an explicit reference to rights contained in the International Convention on Civil and Political Rights (ICCPR), to which Australia is a state party. The bill could usefully reiterate article 19 of the Convention that sets out that, “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

¹² [Communications Legislation Amendment \(Combatting Misinformation and Disinformation\) Bill 2023, Guidance note](#), p.6.

¹³ [Exposure Draft Communications Legislation Amendment \(Combatting Misinformation and Disinformation\) Bill 2023](#), schedule 2, p.53.

¹⁴ [Australian Code of Practice on Disinformation and Misinformation](#), updated 22 December, 2022.

¹⁵ [\\$20 m penalty for Meta companies for conduct liable to mislead consumers about use of their data](#), ACCC, 26 July 2023.



form of art, or through any other media of their choice.”¹⁶ We would also encourage reference to the United Nations Guiding Principles on Business and Human Rights (UNGPs) that provides a framework for businesses to promote and protect human rights.¹⁷

Freedom to ‘receive’ information is particularly important if we are to encourage and mandate transparency in the use by digital platform and services providers of algorithms to lead end-users to specific content that increases the user’s engagement and time on the platform but denies them — either intentionally or incidentally — exposure to alternative viewpoints. Reference to the ICCPR obligations and the UN Business and Human Rights Principles is preferable also to simply referencing the “implied freedom of political communication” given the uncertainty that the implied freedom applies only to public entities.

AAWAA assesses that grounding the legislation in human rights law will

- Reassure Australians of the purpose of the bill.
- Set minimum standards for industry, and in so doing ensure that digital platform and services providers apply proper diligence to the problem of social harms as well as mitigate the risk of bias, and of under- or over-reach.
- Inform those who may be called upon to interpret the legislation — including the government, administrative tribunals, and courts — that freedom of expression is properly valued.
- Make clear that Australia’s approach is different to the approach taken by authoritarian states (such as Russia, Türkiye, or Singapore) that have legislated ‘fake news’ prohibitions and have suppressed dissent under the guise of combatting misinformation.
- A human rights approach would also ensure Australia’s credibility in advocating multilaterally for human rights approaches to tackling misinformation and disinformation.

¹⁶ [International Convention on Civil and Political Rights \(ICCPR\)](#), Article 19. Our assessment of recent decisions under the *Online Safety Act 2021* reinforces our view that burying freedom of expression/communication in legislative fine print fails to provide adequate protection for free speech in practice. In that act – buried in part 16 ‘Miscellaneous’ is the caveat that, “This Act does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.” Elsewhere the act empowers the e-Safety Commissioner to require social media providers to remove content that “to the satisfaction of the commissioner” causes “serious psychological harm or distress” (which does not include “mere ordinary emotional reactions such as those of only distress, grief, fear and anger”). It is our view that the Commissioner unnecessarily curtailed the rights of gender critical feminists to advocate for single-sex sport by determining that their reference to a particular individual playing women’s sport amounted to serious harm to that individual without balancing the reality that political communication on this subject required discussion of real-world instances of male-bodied individuals impacting the safety of females in sport, as well as our rights to dignity and to fair competition. See [The eSafety Commissioner’s big, tax-funded eraser](#), 29 April 2023; see also, [Row over watchdog’s warning on Sydney trans soccer player](#), *Daily Telegraph*, 3 May 2023. It is also our view that a similar decision about an individual who was born a biological male breastfeeding their baby engaged similar issues. See [Document 1](#) and [Document 2](#).

¹⁷ [Guiding Principles on Business and Human Rights](#), UNOCHR.



Definitions of misinformation, disinformation, and hatred

The Guidance Notes sought views on the definitions contained within the bill of ‘misinformation’ and ‘disinformation’ as well as on the scope of proposed information-gathering and record-keeping powers.

AAWAA assesses that definitions of ‘misinformation’ and ‘disinformation’ are inseparable from issues of free speech, transparency, and accountability because perceptions of misinformation can be subjective and examples are intrinsically open to challenge. AAWAA commends the intent of the exposure bill to mandate digital platform and services providers’ record-keeping and reporting that — in theory — should allow Australians to assess what constitutes misinformation and harm, and whether digital platform and services provider actions to moderate content are in line with their obligations *both* to protect free speech *and* to minimise social harms.

Intent aside, however, we are concerned that imprecise terminology in the bill carries real risks for our free speech and other rights and protections. We are especially concerned about the definition of the term ‘harm,’¹⁸ which is defined by reference to “hatred” (against certain groups), “disruption of public order or society,” and “harm to the health of Australians.” These terms are themselves subjective and often contested. Women’s and LGB groups that advocate for sex-based rights have lived experience of definitions of harm being weaponised against them. Furthermore, ever-expanding definitions of harm, as seen in the manifestos of Australian political parties, go so far as to label the mere assertion of the immutability of sex as ‘harmful.’¹⁹ We further note that the bill does not list sex as a basis upon which such a harm could be experienced.

Providing reasons

To remedy this deficiency, AAWAA recommends the bill include formal guidance to require digital platform and services providers to record not just the specific actions they have taken to combat misinformation and disinformation but the basis of the claim of harm on which their actions are based, as well as their reasoned assessment that their actions are proportionate to the risk and that the risk is substantiated by evidence that itself has not been subject to misinformation or disinformation.

We would note in this context that claims of being offended are not a measure of harm; neither is the volume of complaints received nor the proclaimed ‘progressive’ nature of a cause. Guidance and/or rules need to be sufficiently clear to mitigate against the risk of politicised or vexatious claims that impact free speech.

We appreciate that the government is seeking an ‘evolutionary approach’ to the problem of misinformation and disinformation, but there seems to us little point in reserving a right to make rules for industry while also complaining of inadequacies in

¹⁸ [Exposure Draft Communications Legislation Amendment \(Combatting Misinformation and Disinformation\) Bill 2023](#), part 1, definitions, p. 6.

¹⁹ See WA Greens, Glossary, [LGBTQIA; ‘This will split us’: Victorian Greens expand party’s definition of transphobia](#), *The Age*, 23 April 2023.



industry self-regulation²⁰ without at the same time setting out expectations for those rules. It is also very concerning that this ‘evolutionary’ approach leaves the Australian public in the dark about the ACMA’s intentions regarding the rules and the process for shaping them.

Of course, mandating clearer standards of harm would have resource implications for social media companies, but these companies are some of the wealthiest and best-resourced in the world and should therefore have little difficulty in meeting resource requirements. To that end, AAWAA recognises that the civil penalties proposed in the bill must be sufficiently substantive to deter companies from dismissing them as a business cost.

Technical design

AAWAA would like to see the bill set out clearer expectations of industry to protect especially vulnerable groups through the transparency of algorithms, recommender systems, and other design features. We recognise that with generative AI, social companies may themselves be ignorant of the exact algorithms they employ. That said, we would expect at a minimum that the ACMA mandate platform and services providers to keep general quantitative and qualitative data on their use of algorithms that ‘push’ end users (identified by data ‘pulled’ from their use histories) towards specific sites and platforms.

We would similarly expect social media companies to provide regular — and upon request — reporting on these algorithms relating to specific subjects where credible experts report a strong association with mental health risks. We note the second DIGI Guidelines strengthened industry’s own reporting, but we cannot tell from the ACMA’s own account or industry reporting the degree of compliance on specific subjects,²¹ including the issues that were the subject of earlier whistleblower concerns.

AAWAA would also like to see guidelines requiring digital platform providers to engage directly with end-users of certain platforms that are popular with known at-risk demographic cohorts, proactively advising how the digital platform and services provider has amplified a user’s data in relation to certain subjects; in other words, when the provider has itself led the user into a ‘filter bubble’ or echo chamber.

Fact-checkers and experts

Of course, as with defining ‘misinformation,’ we recognise that the choice of what subject matter should be the subject of any specific information-gathering and reporting measure will engage complex judgement.

We note that the ACMA’s fact sheet states that the ACMA may work with fact-checkers and third-party contractors to assist with misinformation codes and

²⁰ [Digital platforms’ efforts under the Australian Code of Practice on Disinformation and Misinformation Second report to government](#), ACMA, July 2023.

²¹ [Report on digital platforms’ efforts under the Australian Code of Practice on Disinformation and Misinformation](#), ACMA, July 2023.



standards as well as digital platform and services provider rules.²² In fact, we urge the ACMA to consult third parties where its expertise is lacking — including medical and psychological health experts.

But equally the ACMA must — including through its own transparency measures — ensure that the fact-checkers are themselves impartial. AAWAA's experience is that on matters concerning women's sex-based protections and transgender medicine, fact-checkers have been demonstrably biased.²³ We note universities — which are often called upon to provide fact-checking services — are themselves prone to ideological capture on the issue of sex and gender.²⁴

In this regard, AAWAA is troubled that a number of Australian Public Service agencies, as well as the ABC and SBS, have compromised their impartiality on matters of sex and gender through their participation in the Australian Workplace Equality Index (AWEI) scheme. This scheme — run by the advocacy group ACON — rewards participating institutions (such as media organisations, government departments, and universities) for meeting ACON's arbitrary standards rather than the standards of evidence and impartiality that these institutions are otherwise obliged to meet.²⁵ We suggest the committee look to the experience of the United Kingdom in this regard.²⁶

The ACMA must itself avoid similar conflicts of interests and/or promulgating or reinforcing misinformation and disinformation.

Government immunity

Guidance notes to the bill also sought views on the scope of the information-gathering and recording keeping powers regarding false, misleading, or deceptive information on digital platforms and services.

²² [Communications Legislation Amendment \(Combatting Misinformation and Disinformation\) Bill 2023, Guidance note](#), p.6.

²³ [Aunty gets it wrong on kid-transing, then blames the victim](#), Women's Coee, 2 December 2022.

²⁴ [Philosophers cry freedom in gender wars](#), *Sydney Morning Herald*, 2 June 2023; [Universities must be able to debate sex versus gender identity](#), *Times Higher Education*, 31 May 2023; [Australian union censures 'transphobic' gender research](#), 11 October, 2022.

²⁵ [Concerns raised about government relationship with LGBTQ group](#), *Government News*, 17 November 2022; [ACON & the ABC](#), *Mediawatch*, 17 October 2022.

²⁶ Government entities and universities in the UK have withdrawn from a similar scheme to the AWEI (run by the charity Stonewall) to avoid "conflict [of interest] or perceived bias." In the case of the BBC, the public broadcaster noted that participation "led some to question whether the BBC can be impartial when reporting on public policy debates where Stonewall is taking an active role." See [Ofcom statement on Stonewall's Diversity Champions](#), 25 August 2021; [BBC statement on Stonewall Diversity Champions Programme](#), 10 November 2021; [Exodus over transgender advice continues as Government pulls out of Stonewall diversity training. Whitehall cuts ties over growing fears that the LGBT charity's workplace policies are at odds with the 2010 Equality Act](#), *The Telegraph*, 17 June 2021; [LSE ends affiliation with LGBTQ+ rights charity Stonewall](#), *Research Professional News*, 19 January 2023.



We note that the bill excludes government websites from its scope.²⁷ Guidance notes offer no explanation for this exclusion though we are aware that other mechanisms — including parliamentary committee scrutiny and freedom of information laws — might provide a measure of accountability for government actions.

That said, we believe that the discipline of requiring government agencies to address misinformation on their own platforms could help them safeguard Australians against, for example, the process derailment that resulted in Robodebt. We note in this context that governments are not immune from individual and class actions seeking redress for harm that results from government misinformation. Advice on the Australian Government’s Health Direct website that claims the effects of puberty blockers are fully reversible is one such egregious example of state, territory, and Commonwealth misinformation.²⁸

Duplication

We also recommend that the drafters carefully consider the potential confusion and harm this bill may create in covering matters already covered by existing laws. As already noted, the bill lists “disruption to public order or society in Australia” as an area where misinformation could cause serious harm, with guidance notes providing the example of “misinformation that encouraged or caused people to vandalise critical communications infrastructure.”²⁹ Given that police already have certain powers — with appropriate safeguards for unwarranted intrusions into people’s civil liberties — to take pre-emptive action to protect infrastructure, granting the ACMA powers for this purpose would seem questionable. Australians who value their right to peaceful protest may reasonably question the purpose of this element of the bill. Laws that overreach in this regard may in fact deter some people from airing their political views at all.

Complaint procedures

AAWAA supports the requirement that digital platform and services providers put in place rigorous and transparent policies and procedures for handling reports and complaints from end-users. We believe that the bill should also mandate that the ACMA publish its complaints procedures and report on outcomes. Poor accountability risks further alienating those distrustful of government and has a chilling effect on those seeking to freely express their political views.

It is also imperative that the ACMA receive sufficient resources to exercise any new powers as it is already inadequate to the task of meeting its existing responsibilities.³⁰

²⁷ [Exposure Draft Communications Legislation Amendment \(Combatting Misinformation and Disinformation\) Bill 2023](#), Clause 2, ‘Definitions’

²⁸ [Gender incongruence](#), Health Direct; see also, [The evidence to support medicalised gender transitions in adolescents is worryingly weak](#), *The Economist*, 5 April 2023.

²⁹ [Communications Legislation Amendment \(Combatting Misinformation and Disinformation\) Bill 2023 —fact sheet](#), p.4.

³⁰ [Action on content complaints and investigations](#), ACMA, October to December 2022.



Mandating periodic reviews

We strongly recommend that the bill include a requirement for the parliament to mandate periodic reviews, a safeguard that would protect against unintended consequences against a background of rapidly changing digital technologies such as generative AI.

Parliamentary scrutiny

A well-judged act could do much to address the problem of online harm while a poorly constructed act will exacerbate current problems and undermine trust in the ACMA. For this reason, we hope the government takes the time necessary to get this legislation right. We hope the minister recommends referring a revised bill to the appropriate parliamentary committee and that the committee chooses to conduct a public inquiry. We look forward to the minister's Statement of Compatibility with Human Rights and the scrutiny of that statement by the Parliamentary Joint Committee on Human Rights.³¹

³¹ [Human Rights \(Parliamentary Scrutiny\) Act 2011](#), Article 8.

