To whom this may concern,

My name is Rhys Adam Jarrett, a resident of South Australia and this is my public submission regarding the exposure draft of the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023.

I will start by mentioning my disapproval of the Bill, and what follows is my justification.

A principal matter contained in the draft Bill is the legal definitions of the terms Misinformation and Disinformation, which have been constructed with language that seems thorough, but in reality, is openly interpretable. Both of the aforementioned terms refer to a perceived behavioural circumstance relating to the communication of information on an understanding of truth/fact by a content creator. The significant difference between both terms is the intent of the content creator to communicate untrue or non-factual information, with Misinformation being the unintended action and Disinformation being the intended action of the content creator. However, the definition does not outline in particular what is truth or fact. Also, the Bill's purpose is to provide the Australian Communications and Media Authority (ACMA) with the legal authority to compel digital content providers to regulate content on their digital platforms, instead of legally regulating content creators (individuals and legal entities) directly. The fact sheet associated with the draft Bill states, "ACMA will not have the power to request specific content or posts be removed from digital platform services". Practically making the potential outcomes of the draft Bill the responsibility of digital content providers, such as Meta, Alphabet, or even the proprietor of a humble blog, instead of the author or creator of the digital content.

Section 18C of the Racial Discrimination Act 1975 has been a topic of much discussion among those interested in freedom of speech issues, but it is principally focused on the acts of individuals, potentially making them a party in a court case. The involvement of a court in such a matter provides a forum for all parties relating to a breach of law to have their concerns heard, with the judgement having the potential to set a precedent in future relevant court cases. Unlike the Racial Discrimination Act 1975, the exposure draft of the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023, seems to not provide the principal individual or creator of the digital content the capacity to take part in defining what is truth or fact. When someone is accused of breaching Section 18C of the Racial Discrimination Act 1975, and the matter ends up in court, they can have a bearing on defining what is truth or fact, whilst having a reasonably extensive amount of case law to work with. Because the digital content provider has the principal legal responsibility concerning the significant outcomes of the draft Bill, the author or creator of the digital content in question will most likely not have the capacity to take part in defining what is truth or fact, in court.

What is truth? And what is fact? These are staple questions that all people ponder every day of their lives, based on the unique realities we all occupy. This means that we all can come to our own unique understanding of truth and fact, for example, the 2003 "weapons of mass destruction" narrative regarding the Republic of Iraq.

In 2003 the United States government supported by the Australian government made assertions that the Iraqi government had "weapons of mass destruction", making it a justification for both of the aforementioned governments to take part in a military occupation of the Republic of Iraq. In time, it was proven that such weapons did not exist. The United States president at that time went as far as performing a comedy routine at the annual Radio and Television Correspondents' Dinner of 2004, joking about the United States' inability to find "weapons of mass destruction". According to an opinion piece by Antony Loewenstein published by The Sydney Morning Herald in March 2004: "The media was the filter through which sceptical publics were slowly convinced of the need to invade Iraq. And it was the channel

through which intelligence reports on Iraq's chemical, biological and nuclear programs were amplified and exaggerated. Too many journalists in the world's most respected publications became unquestioning messengers of their government's desired message. And Australia was far from immune."

The above "weapons of mass destruction" example provides us with a historical moment where the understanding of truth and fact distinctly changes, regarding the draft Bill there are questions that need to be asked. What happens when the hegemonic perception of truth and fact distinctly changes? And how will the authors or creators of the digital content be affected by the outcomes of the draft Bill if such a scenario were to occur? Currently, I cannot find any answers to these questions.

The aforementioned Iraq War scenario highlights another issue that I noticed in this draft Bill, the Bill defines "professional news content", and provides an exemption to the draft Bill for such media providers. Naming the major media industry codes of practice as a principal differentiator between ordinary people participating in creating media digitally, and people acting for institutions governed under those major media industry codes of practice. If we remember back to the Iraq War scenario, it was the "professional news" media that published the information that was later understood to be nonfactual, or to use the language of the draft Bill "misinformation". Having such a legislated definition for "professional news content" in this draft Bill only serves to further the notion that ordinary people can't create and publish media digitally, if their message contradicts the hegemonic understanding of reality by politicians, regulators, and major news media outlets, even if the proposed contradiction is factual. In other words, ordinary people participating in creating and distributing media digitally according to the draft Bill need to be regulated in a government-mandated structure, compared to the so-called professionals, who can be regulated by what is regarded often as industry self-regulation.

So here we are. A draft Bill, if enacted, that would provide the ACMA with the capacity to prosecute people or companies for providing user-generated content digital media distribution platforms, that don't implement a censorship mechanism, to censor user content that the ACMA thinks is "misinformation and disinformation". With exemptions in the draft Bill for Australian governments, their institutions, and "professional news content", thereby concerning this draft Bill, makes their content, by default, factual. Or to be more precise, not "misinformation and disinformation". Does such a potential law meet the personal standards of the vast majority of Australians? Given that the Australian Government thinks it does, by what quantifiable measure does the vast majority of Australians agree to this draft Bill? And if the draft Bill does not meet the standards that Australians ask of their Government, then why is this potential law being pursued? Yes, more unanswered questions.

I will conclude with the conclusion that Solicitor Robert Butler came to in his legal analyses of the draft Bill, I cannot think of a way to improve this Bill constructively.

I thank all of you for considering my submission.

From,
Rhys Jarrett.