

Submission on the

***Communications Legislation Amendment
(Combatting Misinformation and Disinformation) Bill 2023***

From the

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1. About us

The Australian Family Coalition is a grassroots movement of more than 50,000 Australians that seeks to be a positive influence on our national culture.

We believe in preserving the fundamental freedoms espoused by our democratic tradition while protecting Australia from the influence of harmful ideologies.

We do this by informing our supporters and equipping them to take meaningful action on issues that are vital to the national interest.

2. Terms of reference

From the inquiry website:

“In January 2023, the Minister for Communications announced that the Australian Government would introduce new laws to provide the independent regulator, the Australian Communications and Media Authority (ACMA), with new powers to combat online misinformation and disinformation”.

The proposed bill, accompanied by a fact sheet and guidance note, are available for public submissions until 20 August 2023 inclusive.

3. Issues with the proposed bill

Who is to determine whether alleged “misinformation and disinformation” meet the definition of harmful or not? How will such decisions remain free from subjective opinion?

Would it be considered “misinformation” or “disinformation” to state online that marriage is the union of one man and one woman, for example, and that any other definition is wrong?

Would it be considered “misinformation” or “disinformation” to state online that no amount of surgery or chemicals can change a person’s biological sex?

These are just two examples of many that could be stated by a person in good faith, but with others wilfully taking such statements as a sign of “hatred”.

The broad groups to be protected from “hatred” bear a striking similarity to groups often protected under various anti-discrimination legislation. This is fine in theory, but lived experience shows there is not always consensus on what constitutes “hatred”.

Thus, these laws have often been employed wrongly and have punished the accused by means of the process. It is alarming to consider that similar broad but vague definitions could be applied to the overwhelming bulk of public participation online.

How will “mission creep” be avoided? There is a serious risk that the already broad proposed scope granted to ACMA could be widened simply by changes to definitions (e.g. of “health” or “environment”, etc.).

ACMA may not be responsible for pulling down or asking for online content to be removed, but there will be an unavoidable chilling effect as relevant platforms crack down even on potential breaches of codes and standards for fear of fines or increased regulation.

The proposed penalties are draconian and will only add to the curtailment of healthy online discussion by companies desperate to avoid fines.

The “platform scope” of the proposed bill is also of concern. While private messages are currently out of scope, for example, messaging services are within scope.

It is not hard to envisage a future finding by ACMA, or some other voice, that imposed codes or standards “are forcing hate speech underground” (i.e. noting a shift from publicly viewable messages to private ones), accompanied by a call to expand monitoring to private messages.

The bill’s guidance note references the “constitutional doctrine of implied freedom of political expression”. The inclusion of this comment may serve to give readers a false reassurance of constitutional protection.

The fact is, as the guidance note itself states, that this “freedom” is merely “implied” and is nowhere in law clearly and substantially protected. In fact, various court rulings have interpreted such freedom in a very narrow manner, with little hindrance to statutory law.

With no Australian equivalent of the United States' First Amendment, which offers comparatively broad protection, the passage of the proposed bill leaves little protection for Australians interacting online.

Why is government exempted from these laws? Why is the media exempted? It would seem that the Government is attempting to claim infallibility for itself and for news outlets – a bizarre assertion.

Why should government and commercial media be beyond the reach of laws which will impact all other Australians?

4. Australia's international obligations

In creating an online surveillance regime of this type, Australia would be discarding its longstanding international obligations. Worthy of note is the *Universal Declaration of Human Rights* (UDHR):

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance" (UDHR, Article 18).

*"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas **through any media** and regardless of frontiers" (UDHR, Article 19) **(emphasis added – "through any media" most clearly includes the internet).***

Also of particular relevance is the and the *International Covenant on Civil and Political Rights* (ICCPR).

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. (ICCPR, Article 18).*

While it may be argued that the ICCPR (as quoted above) gives sufficient scope for the introduction of this bill, it can easily be demonstrated otherwise.

The *Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR*, while recognising burdens on governments, nevertheless found that:

“[F]reedom of thought, conscience and religion... These rights are not derogable under any conditions even for the asserted purpose of preserving the life of the nation” (Siracusa Principles, Article 58).

5. Conclusion

Where is the evidence that ACMA needs such powers as this bill would grant? Why not consider the need for such powers after evidence has been demonstrated, rather than put the cart before the horse?

The Government says it is introducing the proposed bill in response to an ACMA 2021 report. Surely due diligence and independent review should be undertaken into the need for such laws. In consequence, this inquiry should be asking “should?” rather than “how?”.

In conclusion, the bill should not proceed. The need for it has not been sufficiently shown, its measures are draconian, and the effect it would have on online discussion – perhaps even flowing into real time – would be chilling to say the least.