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**Submission on new ACMA powers to
combat misinformation and disinformation**

Feminist Legal Clinic Inc. is a community legal service established to advance the human rights of women and girls. We are also the Australian country contact for Women's Declaration International.

The definitions in the draft Bill are both prolix and unclear. It seems the only difference between the two definitions is that 'disinformation' requires an intent to deceive in addition to the other elements. But there is no indication of the process and criteria to be applied in determining what constitutes either misinformation or disinformation. Who will be the arbiters of truth?

False, misleading or deceptive conduct that occurs in the course of trade or commerce is already unlawful under Australian Consumer Law. If anything, this proposed legislation detracts from the extent of that protection, since it is defined in a manner that is subject to extensive exclusions. For example, false, misleading or deceptive conduct by way of email or by a '*media sharing service that does not have an interactive feature*' is not captured by these provisions. Surely fraudulent messaging should be captured regardless of the mode of communication used?

Furthermore, it seems that mainstream entertainment and news content as well as information disseminated by educational institutions and government are all excluded from the reach of this proposed legislation. In effect, this is legislation squarely aimed at alternative sources of news and information and as such would seem to be politically motivated. This legislation ensures government and corporations with control of major media outlets are not only free to mislead and deceive but are also empowered to effectively shut down all dissent.

Another element of the definitions is that it must be "*reasonably likely to cause or contribute to serious harm*". '*Serious harm*' is not defined and may be difficult to either establish or disprove. '*Harm*' is defined in the proposed Bill's Exposure Draft, but the criteria for assessment of both misinformation and disinformation is '*serious harm*'. Clearly it is a matter of degree, but how is the relevant level of 'seriousness'

to be determined? Some claim their hurt feelings are a serious harm when another fails to use their preferred pronouns. Meanwhile, widespread and systemic abuse of women's rights through the publication of violent and under-age pornography is routinely overlooked by both social media corporations and government regulators.

Further, the Exposure Draft defines 'harm' as, among other things –

'hatred against a group in Australian society on the basis of ethnicity, nationality, race, gender, sexual orientation, age, religion or physical or mental disability'.

Harms visited upon women and girls on the basis of their sex via so-called misinformation and disinformation are not considered worthy of legislative consideration. 'Sex' is not a protected attribute in the proposed Bill, in the same way that it is increasingly overlooked, or rendered inferior to 'gender identity' in the operation of anti-discrimination laws and policies of several Australian jurisdictions.

The draft legislation is not only unnecessarily repetitious and torturous to read but holds little promise to do anything other than ordain arbitrary censorship of social media and alternative news content. It would be preferable to see conscientious application of existing laws, rather than the introduction of further complex legislation which ultimately relies on the industry to self-regulate. Such provisions risk being applied by corporations to unreasonably constrain freedom of expression in a manner motivated by commercial or ideological considerations rather than protection of the vulnerable from unscrupulous operators.

Having seen how mainstream media has been used to saturate society with gender ideology so that no one now dares question the mantra that 'transwomen are women' or the fallacy of sex change, it is chilling to consider how this legislation may be misused to further silence dissent expressed on alternative media platforms. Please do not take this next step towards an Orwellian dystopia.

Yours faithfully



Anna Kerr
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Feminist Legal Clinic Inc.
*Organization in Special Consultative Status with the Economic and Social Council
(ECOSOC) since 2023.*