Submission to Australian Government's consultation on the Misinformation and Disinformation Bill

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Department of Infrastructure, Transport, Regional Development, Communications and the Arts
Have your say consultation on new ACMA powers to combat misinformation and disinformation

By email to: information.integrity@infrastructure.gov.au

Re: Submission regarding the Communications Legislation Amendment (Combatting Misinformation and Disinformation) draft Bill 2023 ('the draft Bill')

Introduction

Family First Party welcomes the opportunity to make a submission to the Australian Government's consultation on the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023 (the draft Bill).

The Family First Party is a movement of 30,000 supporters including 4,000 party members seeking to stand for elected office women and men who will fight for and sustain the social and economic well-being of the nation by promoting family, life, freedom and enterprise in the parliaments of Australia. Family First is a political party for Australians of all faiths and none but recognises that the Judeo-Christian ethic best provides freedom and tolerance for all. This ethic underpins the party's policy-making for the common good.

Concerns with the draft Bill:

1. **The draft Bill is dangerous and unnecessary, does not incorporate adequate safeguards and should not be enacted:**

- Family First Party is concerned that the draft Bill is like cracking an egg with a sledgehammer. It will result in digital platform services shutting down valid evidence and information, important discussions, debate and commentary, whistle-blower information, and emerging scientific evidence. It will therefore have a significant adverse effect on both free speech and freedom of

expression of Australian citizens. Australia is a democracy, and these are important freedoms for citizens of democracies.

- The Government and social media platform fact-checkers are not always accurate and are already blocking factually correct information. For example, a recent Family First Party social media post referring to the 26-page Uluru Statement was blocked on social media for not being accurate. The post has not been unblocked despite the fact the Uluru Statement has now been proven to exist and a full copy has been publicly released by the media.
- Having a 'Ministry of Truth', where the Government of the day, unelected public servants and unknown digital platform employees determine and control what is 'truth' and can or can't be published has significant consequences for the rights of Australian citizens. This is a characteristic of Communist and totalitarian regimes and has no place in democratic societies.
- The draft Bill and the existing regulatory regime involving a voluntary industry Code do not contain adequate protections for free speech nor provisions to ensure digital platforms do not over-block content. In contrast, The United Kingdom's Misinformation Bill contains does contain some such protections.
- If enacted, the draft Bill will provide the legislative tool for a future Government to improperly seize and control communications in Australia, and this is already fuelling community concerns about Government oppression.
- Rather than the Government creating a costly regulatory regime that impinges upon citizens' rights, and shutting down deemed 'misinformation/disinformation', a better, more cost-effective, alternative option would be for the Federal Government to provide a website containing factual, up-to-date information and evidence addressing key information/disinformation issues that emerge. This will result in less administrative burden, reduced regulatory cost, and won't impinge on Australian citizens freedoms of speech and expression. This could be similar in nature to information provided regarding online scams, where anyone can check the information and post that it is a scam.

2. Definition of misinformation and disinformation should require that the content is 'materially' false, misleading and deceptive not just false, misleading and deceptive.

Sub-sections 7 (1) (a) and 7 (2)(a) of the draft Bill, which contribute to the definitions of misinformation and disinformation, provide that 'the content contains information that is false, misleading or deceptive'. These are well-recognised concepts in Australian legislation.

There should be a materiality threshold test incorporated into these definitions, similar to *false and misleading* provisions in other legislation such as the Corporations Act, to ensure that action is not taken in relation to minor or immaterial matters, and to deter actions to weaponise the legislation.

3. The 'Harm' test in the definition of both misinformation and disinformation should be removed as it is unnecessary and highly subjective, may result in duplicative regulation and may potentially be misused to silence valid social commentary and policy debate.

Sub-sections 7 (1)(d) and 7(2)(d) of the draft Bill also provide in the tests for determining if content is misinformation or disinformation that 'the provision of the content on the digital service is reasonably likely to cause or contribute to serious harm'.

'Harm' is defined in Section 2 of Schedule 1 of the draft Bill to be any of the following:

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

(b) disruption of public order or society in Australia;
(c) harm to the integrity of Australian democratic processes or of Commonwealth, State, Territory or local government institutions;
(d) harm to the health of Australians;
(e) harm to the Australian environment;
(f) economic or financial harm to Australians, the Australian economy or a sector of the Australian economy

- It is unnecessary to have the 'harm' test at all. It should be sufficient to determine that the content is materially false, misleading or deceptive. Numerous other legislations governing different types of false, misleading and deceptive conduct do not have a similar 'harm' test, even though their purpose is to effectively protect against different types of harm, depending on the context of the particular legislation.
- Any legislative test should be objective and be able to be resolved based on consideration of available facts, information and evidence. Family First Party is concerned that the legal test of 'harm' in the draft Bill is highly subjective, not objective and sets a very dangerous low bar. It relies on subjective, personal opinion that 'harm' may likely occur, not even that it has been claimed to occur based on personal feelings of an individual, let alone proven to have occurred. It also is not subject to a robust 'reasonable person' test. This leaves it open to serious abuse and misuse.
- Such subjective tests can be easily weaponised and used to silence genuine debate on social policy issues in the public sphere or to punish political enemies or advocates who hold different perspectives. There are already a number of cases in Australia where activists for particular issues are using legislation to claim they have felt 'harmed' by a comment made by an advocate with an alternative perspective as part of genuine debate and discussion on current and complex social issues. This creates enormous cost, stress and expense for the subjects of such complaints. For example, currently a number of women raising concerns regarding women's rights and opportunities due to the unfair advantage and safety issues of males who identify as women competing in women's sporting competitions have had legal action taken against them.
- A number of the types of *harms* specified in the definition are matters already covered by existing legislation. It is unnecessary and duplicative, and will create a material administrative burden and costly red tape to have the same types of matters regulated under more than one regulatory or legislative regime. Federal and State Governments have been working to unravel and eliminate such legislated regulation duplication, as it is inefficient and costly and provides uncertainty, and will likely give rise to inconsistent approaches, and differing views and interpretations on similar matters.

4. **'Excluded content' exemptions should include recognised religious texts and teachings of recognised faiths, such as the Bible, the Torah, the Koran and other faith-based texts, and quotes and excerpts from these texts, plus teachings based on and aligned with these texts.**

- Section 2 Definitions in the Exposure Draft provides that 'excluded content for misinformation purposes' which are exempt from the requirements is entertainment, parody and satire, professional news content, content from educational institutions, and Government authorised information. This is insufficient.
- There have already been cases in Australia where legal actions have been brought against Australian citizens for quoting from recognised, long-standing faith religious texts which other individuals have claimed have 'harmed' them. One high-profile example is Israel Folou which

resulted in him losing his job. Any legislation needs to specifically exclude such teachings so this legislation cannot be used by activists to attack people of faith and their beliefs.

5. **Any legislation should incorporate strong protections, including robust independent review and administrative appeals processes, to protect Australian citizens and small businesses that have had their content or accounts incorrectly blocked or removed:**

- Whilst it is indicated that "The ACMA would have no role in determining truthfulness, nor will it have a role in taking down or requesting action regarding individual pieces of content." The Australian Communications and Media Authority ('ACMA') will effectively have a role in determining what is accurate or not through its ability to fine digital platforms for not addressing information deemed as misinformation or disinformation.
- The proposed two-step process between a Government agency and digital platforms leaves Australian citizens and businesses who have had their content wrongly blocked or accounts disabled with little protection and none of the normal appeal rights that would apply under other legislation which incorporate false, misleading or deceptive provisions, including the ability to appeal in the Administrative Appeals Tribunal.
- In addition, the draft Bill, if enacted, will likely result in non-specialists in digital platforms and ACMA making determinations about whether technical content matters of a specialist nature, such as what is false, misleading or deceptive and what is harmful to a person's health or the economy or environment. The current Voluntary Code system and what is reflected in the draft Bill do not provide any transparency about this or decisions made, nor are there adequate and transparent appeal processes for Australian citizens and small businesses who have been negatively impacted by content removal or account disablement. In contrast, other agencies who regulate false, misleading and deceptive conduct under particular legislations usually have specialist knowledge and expertise available to assess the particular information of concern.
- The digital platform industry has established a complaints process, with an independent committee to consider 'valid' code complaints. ACMA reports that this facility has only received a limited number of complaints to date, and none have been valid[1] so the independent committee has had no matters to consider. Given the large volume of content being blocked, this suggests that the current industry complaints process may be tokenistic and may not be providing a viable, user-friendly, fair or effective dispute resolution process for impacted individuals or small businesses.
- Australian citizens and small businesses should not be at the whim of unaccountable fact-checkers and administrative staff of digital platforms.
- Given the significant impacts on individuals and small businesses, who may have invested considerable time and effort building their 'brand' which is lost when content is invalidly removed or accounts disabled:
    - The current industry complaints process should be formally evaluated, to ensure there is an effective, timely, cost-effective complaints and appeals process and to consider the impacts of content and accounts being incorrectly blocked or disabled and protection to ensure that these impacts can be avoided and effectively minimised.
    - There should be a legislated independent complaints process that not only provides an effective review process, but there also should be requirements for transparent decision-making, and provision for formal administrative review.

[1] https://www.acma.gov.au/sites/default/files/2023-07/Digital%20platforms%20efforts%20under%20Code%20of%20Practice%20on%20Disinformation%20and%20Misinformation.pdf

- There should also be a requirement on digital platforms to ensure accounts and content are restored quickly if they are found to have been removed inappropriately. The legislation should provide for such review and restoration to occur within a maximum number of days.

6. Transparency and accountability:

In the interests of transparency and accountability, any legislation should incorporate a requirement that any written or verbal instructions from the Minister, the Government, ACMA, or any other Government Agency to digital platforms in relation to classifying particular content as being 'false, misleading, deceptive or harmful' be disclosed publicly at the same time.

In summary:

Family First Party is opposed to this Bill being enacted at all. It is unnecessary as the issues can be addressed in other effective ways such as providing factual information, and without creating a large, costly, subjective regulatory regime that will impinge dangerously on free speech and freedom of expression.

There needs to be strong protections in any legislation to protect both the rights of Australian citizens and businesses from having their content or accounts wrongfully blocked or disabled, and to protect freedom of expression and free speech, as outlined above. The proposed draft Bill is woefully inadequate in this regard. The existing complaints handling processes under the Voluntary Code should also be evaluated from this perspective and it should be ensured that Australia has a fast, effective, complaints, appeals and restoration process for Australians who have been impacted by their content or accounts being incorrectly blocked or deactivated.

Whether something is false, misleading or deceptive should also be subject to a materiality test or threshold.

There should be no highly subjective and dangerous 'harm' test for determining if content is misinformation or disinformation. Any legal test should be based on objective information and evidence. Subjective tests are dangerous and can be weaponised to silence or attack others with differing views.

The 'excluded content' exemptions in any legislation should include religious texts, and quotes, excerpts and teachings based on these.

Yours sincerely,

Lyle Shelton
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Family First Party