



SUBMISSION ON THE COMMUNICATIONS LEGISLATION AMENDMENT (COMBATING MISINFORMATION AND DISINFORMATION) BILL 2023

Introduction

1. Women's Forum Australia (**WFA**) is an independent think tank established in 2005 that undertakes research, education and policy advocacy on issues facing women and girls. Our primary focus is advocating and promoting good policies that will deliver strong economic, social and health policy outcomes for Australian women and girls, with a particular focus on addressing behaviour and practices that are harmful and abusive to them. We are a national organisation with supporters across Australia.
2. Women's Forum Australia welcomes the opportunity to address the Department of Infrastructure, Transport, Regional Development, Communications, and the Arts in relation to the exposure draft of the *Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023 (Bill)*, which is said to have been introduced to combat the harms that can arise from the propagation of misinformation and disinformation online.
3. We are concerned that the proposed Bill will have unintended consequences of limiting free speech and freedom of expression, stifling discussion on important issues facing Australians. Legislation that inhibits these fundamental democratic rights will result in poorer policy outcomes for all Australians, particularly women and girls.

Concerns regarding the Bill

4. The Bill gives powers to the Australian Media and Communications Authority (**ACMA**) to impose heavy penalties on social media companies (and other digital platform providers) who fail to crack down on misinformation on their platforms. This will inevitably lead to heavy-handed censorship on social media – even more so than we already have – by companies afraid of incurring millions of dollars in fines.
5. Companies without the means to contest decisions by ACMA will be powerless to defend their publication and will be forced to remove or restrict information even if it is factual. Alternatively, they will also be able to use the legislation as a shield to shut down content they disagree with.

6. Free speech and freedom of expression are cornerstones of all Western liberal democracies. By its very design, this Bill gives ACMA, a government agency, the power to determine and regulate 'misinformation and disinformation'. Essentially, this is an arm of the Federal Government giving itself the power to decide what is true and what is not, and whether or not that information can be made available to the public in Australia.
7. The definitions of harm, serious harm, misinformation, and disinformation are broad and vague in the drafting of the Bill. **Misinformation** is described as '*online content that is false, misleading or deceptive, that is shared or created without an intent to deceive but can cause and contribute to serious harm*'. **Disinformation** is defined as '*misinformation that is intentionally disseminated with the intent to deceive or cause serious harm.*' The legislation does not define '**serious harm**', but there's a broad category of issues that it relates to, including inciting hate towards citizens based on ethnicity, nationality, race, gender, sexual orientation, age, religion or physical or mental disability.
8. The issue with broadly worded legislation is that it can be liberally applied to ensure that there is no dissent to accepted ideological narratives when it comes to social, health, and economic policies, giving ACMA the power to suppress genuine discussion and robust debate across healthcare, human rights, education, the environment, and our legal system where debate and discussion are critical for producing better policy outcomes.
9. This will particularly disadvantage women fighting to have their voices heard and rights protected in a time where many legislators, academics and parts of the media are disregarding them in favour of gender identity and gender expression. Would ACMA ban social media platforms from airing the voices of lesbian women who reject self-identification as the opposite sex as harmful? Given that the Human Rights Commission in Tasmania ruled that lesbians could not hold female-only events, describing the rejection of biological males who identify as lesbian 'transwomen' as discrimination,¹ we fear this is possible with the Bill providing the mandate for it.
10. 'Hate' is a subjective term often weaponised by activists, politicians, and journalists to shut down debate across various issues. Women's Forum Australia has had posts removed and censored on social media platforms under the guise of combatting 'hate speech'. For example, last year, we were censored on Facebook for making a post including the factual statement that men cannot give birth.² The post was deemed by Facebook to be hate speech, was removed, and our page was subject to 30 days of reduced visibility with the threat of being removed from the platform entirely. Facebook reversed the

¹ Jessica Hoyle and LGB Alliance Australia (Review of Refusal of an Application for Exemption) [2022] TASCAT 142

² Women's Forum Australia, 'Facebook censors Women's Forum Australia for post saying men can't get pregnant', www.womensforumaustralia.org/facebook_censors_womens_forum_australia_for_post_saying_men_cant_get_pregnant

ban after media reported on the unjust censorship restrictions,³ but not before our visibility and post engagement decreased dramatically, significantly hampering the reach of our advocacy for women and girls on a wide range of critical issues.

11. This Bill further empowers both social media companies to censor content they disagree with, and activists within Government and the media to use the law against social media platforms and organisations online that permit opposing views to be debated and discussed on contentious issues. The effect of all this is to ultimately suppress the voices of individuals who engage on those platforms.
12. Since the passing of the *Online Safety Act 2021*, there has been an increase in the forced removal of content under Australian law by the e-Safety Commissioner in what appears to be extraordinary abuse of their powers to combat crime and abuse online. The office of the e-Safety Commissioner sits under the umbrella of ACMA.
13. An example of this is from May 2023, where the e-Safety Commission used its powers to force the removal of tweets from long-term Australian Breastfeeding Association counsellor Jasmine Sussex, which expressed concern about biological men attempting to induce lactation to 'breastfeed' babies. Twitter advised Ms Sussex that they had been informed by an Australian Government entity that her tweets had violated Australian Law and would no longer be available in the country.⁴
14. Biological males attempting to feed infants is a new phenomenon. It cannot be done without the support of drugs that stimulate lactation, and there has been minimal scientific investigation into its impact on the baby, particularly when a trans-identified male is attempting to feed while also on cross-sex hormones. It is an important topic that requires discussion, research, and debate, yet the e-Safety Commissioner determined discussion of it to be harmful information to be banned.
15. This Bill creates two classes of citizens. Government, Government accredited educational institutions and approved media outlets are exempt from the Bill. This means politicians, journalists and academics have the right to publish and share information regardless of whether it is factually correct. At the same time, private citizens and independent organisations can be censored for challenging the narrative. This creates a power imbalance and puts ordinary people at a significant disadvantage.

³ Clarissa Bye, Daily Telegraph, 'Facebook reverses ban on women's group post for saying men can't be pregnant', 11 August 2022, <www.dailytelegraph.com.au/news/nsw/facebook-censors-womens-group-for-saying-men-cant-be-pregnant/news-story/249b24736933a6976758f20db9b2e4ca>

⁴ Clarissa Bye, Daily Telegraph, *Controversial breastfeeding tweets removed from Australia at behest of the government*, 25 May 2023 <www.dailytelegraph.com.au/news/controversial-breastfeeding-tweets-removed-from-australia-at-behest-of-the-government/news-story/cc0f2b3e95c2ccb4b0cc92bba2271088>

16. The role of the media and the public is to scrutinise Government. The public is also entitled to call out media bias and examine academia. The Bill has the power to shut down this vital part of our democracy. Would opposition to a government policy be deemed 'misinformation' or 'harmful to democracy' and banned by the Government through ACMA? Would independent institutions be restricted from calling out flaws in a study from a government institution? It is deeply problematic that the Bill gives ACMA the power to enforce this type of censorship.
17. Earlier this year, Queensland passed 'self-ID laws', which allow individuals to change their legally recognised sex and be protected as their newly identified sex under discrimination laws. This means that men who self-identify as women under the new laws can now access female-only spaces and services, including bathrooms, changing rooms, prisons, and domestic violence shelters. During the lead-up to the vote on the *Births, Deaths and Marriages Registration Bill 2022*, women's rights activists and organisations submitted volumes of evidence demonstrating the risk this legislation posed to the rights and safety of women. During her speech, Minister for Women Shannon Fentiman declared, "There is no evidence, from any jurisdiction, to suggest that women will have fewer rights or be less safe as a result of these changes."⁵
18. This statement is blatantly false. In our submission to the Legal Affairs and Safety Committee⁶ and in our supplementary evidence,⁷ we provided well-documented evidence that women were being harmed due to self-identification laws and policies, both in Australia and overseas. If the Government determines that our position is 'harmful or misinformation', should it have the power to censor our work from being available online? Absolutely not, and this is why the Bill is dangerous.

Conclusion

19. Neither politicians, government agencies, nor approved media outlets should have the power to determine what is true or accurate. New information and research are constantly emerging, challenging established facts. The power to challenge the established positions has led to women being given the right to vote and stand for parliament, it has resulted in ground-breaking medical research and changes to societal attitudes particularly when it comes to social justice causes.

⁵ Legislative Assembly, *Births*, Parliamentary Debates, *Deaths and Marriages Bill 2022 (QLD)*, 14 June 2023 <https://documents.parliament.qld.gov.au/events/han/2023/2023_06_14_WEEKLY.pdf>

⁶ Women's Forum Australia, Submission to the Legal Affairs and Safety Committee on the *Births, Deaths and Marriages Registration Bill 2022 (QLD)* <<https://documents.parliament.qld.gov.au/com/LASC-C96E/PPROLAB202-EF1C/submissions/00000304.pdf>>

⁷ Women's Forum Australia and Sall Grover, Supplementary evidence to the Legal Affairs and Safety Committee on the *Births, Deaths and Marriages Registration Bill 2022 (QLD)* <https://assets.nationbuilder.com/wfa/pages/497/attachments/original/1676607157/Men_as_Women_-_HARM.pdf?1676607157&fbclid=IwAR0X4BTDrgmoziM6n_BT1YdGUAUfR5xMyb16WVPZocTp-mF8VHGYSj2k_Ng>

20. While there is unfortunately a lot of false information online, there is sadly at times also false information shared by both our governments and media. With this Bill, 'truth' and 'fact' will be determined by the ideology of the Government of the day.
21. The best way for Government to counter misinformation online is to be a trustworthy and reliable source of information and to encourage free and open discussion and debate. If the Government needs to censor its way into managing 'truth', it will further erode the trust of the Australian people, despite this being one of the very things the Bill seeks to promote.
22. This Bill seriously undermines our democracy, and Women's Forum Australia strongly urges the Government to abandon it altogether.