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Dear Ms Sullivan,

Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023

We welcome the opportunity to provide feedback on the exposure draft of the *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023* (the draft Bill).

TikTok is the world's leading destination for short-form mobile video, and is home to a community of over 8.5 million Australian users and more than 350,000 Australian businesses. As a founding signatory of the *Australian Code of Practice on Disinformation and Misinformation*, TikTok shares the Australian Government's commitment to combating mis- and disinformation, and welcomes the Government's statements in support of strengthening the voluntary code arrangements currently in place. The feedback contained in this submission is intended to add to the comments and recommendations provided by our industry association, the Digital Industry Group Inc (DIGI), into whose submission we have provided input.

While misinformation is not a new phenomenon, misinformation law remains novel. Many of its core concepts are inherently contestable, or involve making difficult trade-offs over which reasonable people can and will disagree. For platforms such as TikTok, keeping our global community of users both safe and vibrant is important work that requires our team of 40,000 Trust & Safety professionals to strike the right balance between enabling free expression and preventing harm.



In light of the Government's focus on ensuring digital platform providers have robust systems and measures in place to address these issues on their services, we have also taken this opportunity to provide an update, contained in Part 2 of our submission, on TikTok's continued efforts to keep our community and our platform safe from harmful mis- and disinformation. As industry participants in Australia's successful existing misinformation code, and as global platforms currently tackling the propagation of harmful misinformation at scale, the digital industry has important experience and expertise for Government to draw upon as it approaches this important area of law reform.

We trust that the feedback we have provided will assist the Government in its deliberations and again extend our thanks to the Department for its open and collaborative approach to the consultation process to date.

Yours sincerely,



Ella Woods-Joyce
Director of Public Policy
TikTok Australia and New Zealand





I TikTok Australia's Submission on the *Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023*

1. Strengthening Australia's industry code

Our feedback on the draft Bill has been informed by our experience as a signatory of Australia's existing voluntary misinformation code framework, *the Australian Code of Practice on Disinformation and Misinformation* (the Australian code). Now in its third year of operation, the Australian code is a blueprint for addressing the complex and multifaceted challenge of harmful online mis- and disinformation at scale. At the core of the framework are the signatories' commitments under the code to:

- publish and implement policies on misinformation and disinformation;
- provide users with a way to report content against those policies; and
- implement a range of scalable measures that reduce misinformation's spread and visibility.

Each signatory has also agreed to publish annual transparency reports about those efforts to improve understanding of both the management and scale of mis- and disinformation in Australia, in addition to opt-in commitments that platforms adopt where relevant to their business model.

The eight major technology companies that together comprise the signatories of the code represent a diverse array of platforms and businesses, from news and content aggregation services to hardware manufacturers, e-commerce marketplaces and entertainment apps, each with their own unique service offering and risk profile. As the Government considers options for future reform in this field, maintaining the flexibility, transparency and principles-based approach that have been hallmarks of the voluntary Australian code will help ensure that regulation keeps pace with new technologies as they emerge, that the rules are relevant and adaptable to diverse platforms, and that our digital economy continues to foster innovation and free expression while protecting Australians from harm.

To this end, and noting the Government's statement that "the [draft] Bill seeks to incentivise and strengthen the voluntary framework" currently in place, we would welcome further clarification from Government regarding the status and future of the Australian industry code, including whether Government wishes for DIGI to apply to the ACMA for the current code to be registered, and whether its intention is to eventually supersede the voluntary code via one of the mechanisms available to Government in the draft Bill.

2. Departures from the existing Australian code should be supported by evidence

While we appreciate the Government's expressions of support for the existing voluntary framework, we note that a number of the draft Bill's key definitions depart from those contained in the Australian code. To the extent that the draft bill departs from Australia's existing misinformation framework in



how it defines core concepts, we would welcome clarification from Government on the rationale for doing so.

Of particular note are the draft Bill's definitions of "disinformation" and "harm". In the case of "disinformation", we note that the draft Bill has defined this as misinformation that is intentionally disseminated with the intent to deceive or cause serious harm. By contrast, the existing Australian code distinguishes between mis- and disinformation by reference to whether the verifiably false, misleading or deceptive content "is propagated amongst users of digital platforms via Inauthentic Behaviours". "Inauthentic Behaviour" is further defined as including:

spam and other forms of deceptive, manipulative or bulk, aggressive behaviours (which may be perpetrated via automated systems) and includes behaviours which are intended to artificially influence users' online conversations and/or to encourage users of digital platforms to propagate Digital Content.

In our view, the existing Australian industry code's focus on harmful misinformation propagated via inauthentic behaviours should be preserved in any future legislation. This would provide a clearer legislative basis for digital platforms to take action against content which exhibits the observable features of inauthentic behaviour, rather than requiring them to speculate about the state of mind of individual platform users. It is also a definition that signatory platforms have already demonstrated can be operationalised and reported against in a meaningful way, and would enable continuity of reporting for participating signatories to the industry code.

With respect to the proposed definition of "harm", we note that the exhaustive list of captured conduct set out in s 2 of the draft Bill includes "(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". While we agree that combatting hate speech is a legitimate public policy goal, just as we prohibit hateful speech and behaviour in our [Community Guidelines](#), we would query whether the draft Bill, which is confined to addressing certain categories of "false, misleading or deceptive" information, is the best vehicle for accomplishing this goal.

3. Free speech-preserving safeguards should be enshrined in legislation

We note that the guidance material released alongside the draft Bill refers to a number of free speech-preserving safeguards, including:

- that the ACMA "would have no role in determining truthfulness", and will instead "focus on ensuring digital platform providers have systems and measures in place to combat misinformation and disinformation on their services which pose a risk of serious harm";
- that the ACMA will adopt a "graduated approach" to exercising its proposed new powers; and
- that Government intends for the regulator to "generally use the minimum power or intervention necessary to achieve compliance".



We agree with Government that the proper focus of any harmful mis- and disinformation framework should be on ensuring platforms have strong integrity measures in place, rather than assuming the role of “arbiter of truth”. We also agree that the law must contain robust safeguards and strike an appropriate balance between protecting Australians from harm while ensuring strong protections for privacy and free speech. As a general principle, the public should not have to rely upon the maturity or discretion of the regulating authority to have confidence that their rights will be protected. For this reason, we are concerned at the extent to which the draft Bill appears to rely on the regulator’s subjective judgement alone in determining whether its significant powers may be exercised, rather than enshrining objective safeguards and criteria that must be satisfied in the text of the legislation.

For example, while the guidance material stipulates that the ACMA will be able to request an industry code “where voluntary efforts provide inadequate protection and the ACMA is satisfied that it is necessary to address systemic issues in relation to misinformation or disinformation on digital platform services”, s 38(3)(a) of the draft Bill provides that, in addition to addressing systemic issues, the regulator may also make such a request if it considers it “necessary *or convenient*” to “prevent or respond to misinformation or disinformation on digital platform services”.

Similarly, while the guidance material only contemplates that the regulator will exercise its power to develop a mandatory industry standard “in the event of industry failing to develop a code, or if a code is failing to protect Australians”, and only “as a last resort”, s 50 of the draft Bill provides that the ACMA may determine a standard to respond to “emerging circumstances” where it is satisfied that:

- it is “necessary or convenient” to do so in order to provide adequate protection for the community;
- that “there are exceptional and urgent circumstances” justifying such a determination; and
- that “it is unlikely that a code dealing with that matter or matters could be developed...within a reasonable period in the circumstances”.

In the absence of objective criteria that must be satisfied before the regulator can claim that “exceptional and urgent circumstances” exist to warrant a standard, it is unclear what, if any, legal limitations exist that would prevent the regulator from bypassing the “graduated approach” that Government clearly intends to implement.

In our view, empowering the ACMA to impose a code or standard whenever it deems it “convenient” to do so is overly broad, and does not accurately reflect the Government’s stated intention for the regulator to “generally use the minimum power or intervention *necessary* to achieve compliance.” We would also welcome clarification from Government as to how it envisages that the ACMA will be able to deem it “necessary or convenient” to respond to misinformation on a digital platform service without first determining the truthfulness or otherwise of individual pieces of content on that service.

In order to more closely align the draft Bill with the Government’s stated intention for the code- and standard-making provisions to function as genuine “reserve powers”, the ACMA should first be required to satisfy objective, legislated criteria in order to compel platforms to regulate legal speech



via a code or standard, rather than merely forming a view that exercising its power would be “necessary or convenient” in the circumstances. While we note that the ACMA has described its intended approach to regulation through its [Statement of Intent](#), generally speaking, we do not consider unenforceable statements of this nature, or broad references to regulatory priorities, to be a sufficient legal safeguard against the risks to freedom of expression that could result from their misuse at some point in the future.



II Our work to keep our community and our platform safe

We treat misinformation with the utmost seriousness and take a multi-pronged approach to stopping it from spreading, while elevating authoritative information and investing in digital literacy education to help get ahead of the problem at scale. Set out below is a detailed summary of the policies, partnerships and other initiatives we have progressed to counter misinformation and coordinated inauthentic behaviour on our platform.

1. Our misinformation policies

The rules and standards for using TikTok are set out in our [Community Guidelines](#). Within these guidelines, our [Integrity and Authenticity policies](#) prohibit content that could mislead our community about civic processes or that may cause significant harm to individuals or society. For instance, we do not allow misinformation about voting, or content that undermines public trust in civic institutions and processes such as elections and scientific bodies. These policies can be applied to a wide range of content, and that's by design; this content is constantly changing, often based on what's happening in the world.

At TikTok, a combination of technology and more than 40,000 safety professionals based in Australia and across the world work together to enforce our Integrity and Authenticity policies and our broader Community Guidelines. To do this effectively at scale, we continue to invest in technology-based flagging as well as human moderation. However, we also recognise that misinformation is different to many other content issues. Context and fact-checking are critical to consistently and accurately enforce our Misinformation policies. So while we use machine learning models to help detect potential misinformation, ultimately we rely on our moderation teams to assess, confirm and remove misinformation violations.

We have more than a dozen fact-checking partners around the world that review content in over 40 languages. All of our fact-checking partners are accredited by the International Fact-Checking Network as verified signatories of the [International Fact-Checking Network's code of principles](#). In Australia, our fact checking partners are [Australian Associated Press](#) (AAP), Australia's only independent newswire service.

Along with our policies prohibiting harmful misinformation, we also remove content and accounts that involve spam, fake engagement, impersonation or coordinated inauthentic behaviour, such as the use of multiple coordinated accounts to exert influence and sway public opinion while misleading individuals, our community or our systems about the account's identity, location, relationships, popularity or purpose.

We know there is no finish line when it comes to building a safe and secure platform for our users, which is why we continually work to improve our tools and settings with safety and user experience



in mind. Over the past year, we undertook [the most comprehensive updates to our Community Guidelines to date](#), to strengthen our rules and respond to new threats and potential harms. Key changes we've made include:

- Advancing our rules for how we treat [synthetic media](#), which is content created or modified by AI technology, including through dedicated policies to support moderation efforts where content is detected or reported;
- Adding 'tribe' as a protected attribute in our hate speech and hateful behaviour policies; and
- More detail about our work to protect [civic and election integrity](#), including our approach to government, politician and political party accounts.

2. Election integrity and political accounts

TikTok has long prohibited [political advertising](#), including both paid ads on the platform and creators being paid directly to make branded content. We apply these restrictions at both an ad policy and an account level. This means accounts belonging to politicians and political parties will have their access to advertising features turned off, which helps us to more consistently enforce our strict policies.

These restrictions are complemented by our policies regarding state-affiliated media, which we apply where there is evidence of clear editorial control and decision-making by members of the state. We use the policy to [label accounts](#) run by entities whose editorial output or decision-making process is subject to control or influence by a government, providing context and transparency around information sources to TikTok users.

However, we also recognise that there will be occasions where governments may need access to our ad services, such as to support public health campaigns. We will continue to allow government organisations to advertise in those and similar circumstances, working alongside a TikTok representative to ensure compliance with our strict platform integrity policies.

To ensure potential misinformation can be addressed in a timely way during periods of heightened political activity in Australia, TikTok has established dedicated escalation channels with the Australian Electoral Commission (AEC) and State and Territory electoral commissions. During the 2022 Federal Election, TikTok worked with the AEC to deliver [our in-app election guide](#). The guide promoted the importance of enrolling to vote, and provided detailed, authoritative information on the election process, including information on where and how to vote and preferential voting explainers developed by the Commission.

Along with Microsoft, TikTok is a [founding signatory](#) to the Electoral Council of Australia and New Zealand (ECANZ)'s Statement of Intent concerning election management arrangements with social media and other digital services companies (online platforms). The Statement is designed to support Australian electoral management bodies and online platforms to address breaches of Commonwealth, State and Territory electoral-related laws and breaches of online platforms' terms of service related to electoral integrity.



3. Transparency and misinformation reporting

As noted above, TikTok Australia is a founding signatory to the *Australian Code of Practice on Disinformation and Misinformation*. Over the life of the Code, we have been active participants in the associated reporting processes, including through engagement with the ACMA. Our three transparency reports under the existing code are [available online](#), and provide considerable additional information about our approach to mis- and disinformation on our platform.

In addition to our reporting under the *Australian Code of Practice on Disinformation and Misinformation*, we also publish quarterly [Community Guidelines Enforcement Reports](#) to provide regular updates and insights into the volume and nature of content and accounts removed from our platform. Our most recent Community Guidelines Enforcement Report for Q1 2023 provides a detailed summary of a range of issues related to authenticity and platform integrity, including detected spam account activity, fake engagement and covert influence operations.

As well as publishing detailed periodic enforcement reports, in order to give outside experts and policymakers an insight into how our safety teams go about the day-to-day work of moderating content on our platform, we provide virtual and in-person tours of our [Transparency and Accountability Centre](#). These tours provide an opportunity for participants to see up close how we moderate and recommend content, TikTok's user privacy and platform security measures, as well as our source code and how our algorithm operates. We have one such centre currently operating in the United States, with another centre in Singapore under construction. We would welcome the opportunity to provide DITRDCA and the ACMA with a tour of the centre, as has already been undertaken by a range of Australian Government officials and parliamentarians.

We are continually working to build on our transparency efforts, and to improve ease of access to public and anonymized data about content and activity on our platform and our moderation system. In 2022, we announced a [range of updates and initiatives](#) to support this goal. [This includes providing API access to research the TikTok platform](#). We've also continued to build on our efforts to provide our community with additional transparency around our recommendation system, including through the introduction of a ['why this video' tool](#), building on a range of existing features that enable our users to understand and make adjustments to their experience on TikTok.