

**Re: New ACMA powers to combat misinformation and disinformation (the Communications Legislation Amendment [Combatting Misinformation and Disinformation] Bill 2023)**

Dear Officer,

I write to express our concern at the Bill which is antithetical to the liberal democratic principles on which this country was founded. The Bill is in direct contravention of the International Covenant on Civil and Political Rights, to which Australia is a signatory.

**The Bill is unnecessary and illiberal.**

The Fact Sheet on the draft bill states that *"Misinformation and disinformation pose a threat to the safety and wellbeing of Australians, as well as our democracy, society and economy"*. We would need to see evidence for this if there is evidence to this claim.

The government already has the means to act on genuine threats to national security, fraud, and speech which incites violence. Government has no mandate, or capacity, to be the arbiter of what is "false, misleading or deceptive", except in narrowly defined circumstances such as financial fraud and scams. In seeking to silence detractors and dissenters, such a government proposal amounts to taking dangerous steps on the road to totalitarianism.

This proposed law would see the censorship of any online commentary that claimed to be "false" and "harmful" .... this could include:

- Stating that a man cannot be a woman.
- Expressing concerns about experimental vaccines, medicines, and medical procedures.
- Criticising climate change policies or questioning claims around climate change; and
- Anything else that doesn't suit their narrative!

...this proposed law is a great threat to free speech in Australia

**The Bill is badly drafted, and its key terms are poorly defined**

*The draft Bill gives ACMA the power to "make digital platform rules requiring digital platform providers to keep records and report to the ACMA on matters relating to misinformation and disinformation on digital platform services" and to "develop codes in relation to measures to prevent or respond to misinformation and disinformation on digital platform services" to which those platforms must comply, on pain of both civil and criminal penalties.*

At no point in discussing these rules and codes does the Bill make clear *who* will be responsible for determining what constitutes mis- and disinformation, and *how* this determination will be made. It is unacceptable that the government is seeking to regulate the speech of Australians; the fact that this regulation will be enforced using a completely non-transparent process is completely unacceptable.

The key terms in the draft legislation are "misinformation", "disinformation" and "serious harm", and all three terms are so poorly defined as to be open to serious abuse.

"Misinformation" is defined as "*information that is false, misleading or deceptive*". But we have no definition of "information" provided. The draft bill does not rule opinions and hypotheses out.

Very little that qualifies as "information" is incontestable. Who could consider themselves qualified to discern all "true" information from "misinformation"? That there is more evidence to support one interpretation of the facts than any other interpretation of those facts is shaky ground indeed!

"Disinformation" has an extension on "misinformation" - that "*the person disseminating, or causing dissemination of, the content intends that the content deceive another person*". The draft bill gives no indication of how *intent* will be determined. Only an arrogant person would consider themselves capable of discerning the intent behind any individual's decision to share a piece of content online.

"Harm" is another problematic key term ... the draft bill gives six instances of "harms", four of which are circular definitions.

The first instance of "harm" is "*hatred against a group in Australian society on the basis of ethnicity, nationality, race, gender, sexual orientation, age, religion or physical or mental disability*". Any attempt to police or regulate people's emotions is/should be entirely outside the scope of government. Legislation already exists to deal with incitement to violence against persons.

The second objection in defining "hatred" as a type of harm generated by online mis- and disinformation is that there is no conceivable way to demonstrate that viewing various types of content online will cause an individual to engage in actions that cause *actual* harm (as opposed to the imaginary harms formulated in the draft legislation). The mere reading or holding of deplorable beliefs does not cause actual harm to anyone; and individuals can choose whether to take offence to views of others or ignore them.

The third instance of harm is "*harm to the integrity of Australian democratic processes or of Commonwealth, State, Territory or local government institutions*". It is a foundational principle of democratic societies that citizens have the right to raise concerns about the integrity of the processes and institutions employed in governance. The responsibility of government is to respond to such concerns by ensuring that processes are transparent, and institutions are accountable. If a certain proportion of the population remains sceptical, that is none of the government's business.

The fourth instance of harm is "*harm to the health of Australians*". It is not government's responsibility to police the information that people use to make health-related decisions.

The fifth instance of harm is "*harm to the Australian environment*". No definition of this type of harm is offered, however harm in the form of, for example, arson, is already covered by existing legislation.

Likewise, there is no mechanism by which the sixth instance of harm, "*economic or financial harm to Australians, the Australian economy or a sector of the Australian economy*" could be definitively attributed to information shared online. Industries do not need government to manage business risks on their behalf.

The lack of proper definitions of key terms, and lack of transparency in the draft Bill leaves open the possibility - probability? - that the legislation will be weaponised against individuals or groups who hold positions contrary to government policy. There is no mechanism to prevent such weaponization. The Bill is a threat to free speech.

**The Bill contravenes multiple articles of a key human rights treaty.**

The second instance of harm is "*disruption of public order or society in Australia*". The right to peacefully protest – which is inherently disruptive of public order and society - is enshrined in the [International Covenant on Civil and Political Rights](#) (ICCPR, Articles 21 and 22), to which Australia is a signatory. As there are laws in place to prevent or halt *violent* protest, there is no justification for adding restrictions on Australians' right to express themselves, to the legal code.

Article 19 of the ICCPR enshrines the following rights: "the right to hold opinions without interference" and "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".

The draft Bill directly contravenes the second of these rights, by seeking to impose restrictions on the types of information that individuals can seek, receive and share, based on poorly defined categories of potential "harm". The attack on the first right is indirect; by policing the information available to Australians, government appears to be covertly seeking to influence, and even control, the opinions we hold.

In summary, this Bill represents an assault on the pillars of our democracy: the right of citizens to hold and express opinions, and to seek information from a wide diversity of sources. There are many examples from history where governments sought to control the flow of information within their borders, and regulate actions, speech and thoughts of their citizens. Such examples are presented to students as a warning of what can happen when governments place more value on compliance and ideological conformity than on the rights of the individuals whom they are tasked with serving. This draft Bill signals a dangerous turn toward totalitarianism.

Australians do not need government to protect us from information; we need government to protect our human rights.

Sincerely

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11-8-2023

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