Thursday 13/07/2023

To the Minister for Communications, Australian Prime Minister, Australian Opposition Leader, Shadow Minister for Communications, and whomever else it may concern.

I write to you in response to the request for consultation and feedback regarding the proposed ***Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023***.

I want to state my strong opposition to these proposed amendments, in both their express worded form and overarching intent.

I will address my specific concerns below, however, I'd like to start with some feedback on the broader intent of your proposal, that being, to utilise a government agency (ACMA) to deem what information and opinions are allowed to be shared in the media, on social media and other communications platforms by members of the Australian public.

There is no greater danger to a strong and democratic society, than for a government to silence alternate views. Only through the broad filter of society can the good ideas be sifted from the bad. The incredible danger of preventing opposing opinions from being heard and allowed to survive or die in the open, is that they may survive illegitimately without challenge, or be forced underground, unexposed and unchecked by common reason. Worse yet, when a nations government is exempted from the misinformation and disinformation laws it seeks to apply to its citizens, one can't help but wonder what that government fears from its own laws and whether it has perhaps slipped into an authoritarian state. Many a government has erred, but when they cannot be corrected from their errant path by the people they're dutybound to represent, because that government and their agencies alone, determine right from wrong, then we no longer live in a democracy.

In regard to this proposal, the interpretations of what is 'truthful' and therefore not 'misinformation' or 'disinformation' may be enforced at arm's length, however, there is clear intent for the ACMA to have a controlling hand in defining these terms, and as such, act as the arbiter of right-think and wrong-think for the Australian people. The application of ACMA's decree will then be enforced via Codes of Practice required to meet ACMA/Government desired standards, accompanied by active monitoring, recording, and record keeping of shared information and platform provider responses. Punishment for what ACMA deem to be non-compliance with their determination of what is 'truth' V's 'misinformation' or 'disinformation', will then be met with substantial fines and restrictions. By this manner, you appear to not be protecting Australians, but rather, controlling us, suppressing undesired opinions or facts, and limiting what we are allowed to see, hear, say and share, to that which you approve.

Whilst concern that misinformation or disinformation may endanger the health and safety of Australians does have some merit, the proposed amendments in this Bill do not. Any attempt to control free speech and undesired information sharing between Australian Citizens, whereby a single source of truth agency determines the validity and context in which information can be shared, is a gargantuan overreach of governmental control, exiting the realms of reasonable governance in aid

of safety and entering into an authoritarian space. No individual group or agency, government or otherwise, should have the right to independently determine what is or is not 'truthful' in the context of mis or dis-information, sharable in the public or semi-private space.

Misinformation and disinformation are by definition, the accidental or intentional misrepresentation of information or facts. If the quality of information being shared relies on the inherent truth of a statement, and truth relies on facts and facts are determined through a rigorous process of assessment and scrutiny, then all opinions are valid until proven otherwise via this airing process and must be allowed to be shared in the public space. That remains true, whether they are perceived to pose a threat or not.

Neither, the government nor its agencies have a direct conduit to the 'truth' and they should not be censoring what and how people are allowed to debate it. If information and it's sharing does not constitute a crime, then we should never be prevented from sharing it. It's that simple. Anything else is blatant suppression of free speech.

Notable issues with the proposed legislation:

1.3 We seek your views on the Exposure Draft Bill

- *The Bill aims to incentivise digital platform providers to have robust systems and measures in place to address misinformation and disinformation on their services, rather than the ACMA directly regulating individual pieces of content. The Bill does not seek to curtail freedom of speech, nor is it intended that powers will be used to remove individual pieces of content on a platform.*
- *The concept of 'serious harm' is intended to ensure that the ACMA's use of its powers, and the platforms' systems and processes, are targeted at harms with significant implications for the community.*
- *Digital platform providers will continue to be responsible for the content they host and promote to users. In balancing freedom of expression with the need to address online harm, the code and standard-making powers will not apply to professional news and authorised electoral content, nor will the ACMA have a role in determining what is considered truthful.*

The above excerpts from Section 1.3 of the Overview, which sets out the intent of the Bill upon which you seek feedback, is painfully untruthful and misleading in itself. Whilst you state an intent not to regulate individual pieces of content, it's very clear you intend to do just that. The seeking of unlimited powers to impose restrictions and fines on companies you deem not to meet ACMA standards with regard to the handling of what you determine to be 'misinformation' or 'disinformation' shared on their sites, can only be with regard to individual pieces of content or broad concepts. Just because you punish the media platform rather than the individual sharer of the information, does not separate you from the action.

Similarly, you cannot be separated from defining what is considered to be 'truthful' by outsourcing this responsibility to content platforms, while still punishing what you consider to be unsatisfactory reaction to the information you oppose. If you do not know what is or is not truthful, you cannot punish the reaction or lack thereof. Semantics should not offer you a legal separation from the suppressive actions you take.

The same can be said for the use of the term 'serious harm' to qualify the need for the ACMA powers, with the potential that 'serious harm' may come to the community resulting from the share of information. Noting that 'serious harm' and 'significant implications to the community' are ambiguous terms, there is virtually no limit to how you might justify the use of these powers. You might consider that serious harm may come to the community if a new vaccine isn't pushed by government on social media platforms. Therefore, despite the fact that serious harm may also come to the community from the use of these vaccines, would you allow them to be pushed unchallenged, and yet deny any opposition on the basis of 'serious harm'?

I personally believe that the intent of this Bill, as made clear from *Section 1.3,* is not only misleading in itself, but infringes upon *Section 16* of the *Human Rights Act* and the right to freedom of expression. The ambiguous nature of the terms such as 'serious harm' used to justify, the proposed powers and amendments are so poorly defined and open to interpretation by the unchecked control of one government entity, as to no longer be 'reasonable limits' and given the extent of the powers being sought, certainly not 'demonstrably justifiable', nor the least restrictive means.

2.1.2 Misinformation, disinformation and serious harm

Table 1 - Harms

- *Harm to the integrity of Australian democratic processes or of Commonwealth, State, Territory or local government institutions.*
- *Misinformation undermining the impartiality of an Australian electoral management body ahead of an election or a referendum.*
- *Economic or financial harm to Australians, the Australian economy or a sector of the Australian economy*
- *Disinformation by a foreign actor targeting local producers in favour of imported goods*.

Given that electoral bodies should by their nature never be free from scrutiny, it's incredibly undemocratic and authoritarian to suggest that they should not be able to be challenged or scrutinised in the context of upcoming or ongoing elections or referendums.

Australian citizens have every right to question and query in the public forum, those institutions and agencies tasked with protecting us. An attempt by this Bill to quash that ability, is a clear violation of our rights to free speech, not to mention incredibly patronising and parental. The Australian public is quite capable of taking in and assessing information for ourselves, we should not be prevented from seeing it, or be banned from saying it, by an arrogant, distrustful and overreaching government agency.

When you are banned from questioning the integrity of a supposed impartial body or process, it certainly raises questions about their impartiality. Particularly when another government agency (ACMA) is the sole arbiter of what is or is not allowed to be said.

Furthermore, the Bill later claims to protect against foreign influence in the election and referendum process. Given than most if not all of the information sharing platforms are foreign owned, and under your governance, it will be they who set the specific limitations for information sharing, you are in fact not avoiding, but enforcing foreign influence in these scenario's. This is plainly undemocratic and flies in the face of the purported intent of this Bill, to protect Australian citizens.

It's also notable that nowhere I this Bill does it say you would review what is being suppressed and demand the suppressions be lifted so that true free speech is restored. Again showing that the intent here is to suppress, not to protect.

2.1.3 private messages (Clause 2)

Posts in a forum or message board hosted by a digital platform service are not considered instant messages and are therefore not intended to be covered by the private messages exemption, even if access to this content is limited to certain users. Examples of services intended to be outside the scope of the private messages exemption include:

• messages *in a publicly open conversation sent using an instant messaging service*
• *a social media group for a particular interest or hobby*
• *a local community marketplace on a social media platform*
• *a forum or message board on a blogging site where its members post content to facilitate group engagement that is visible only to its members, and may involve user registration to join.*

It's quite clear from the content of section *'2.1.3 … (Clause 2)'* that not only is this Bill aiming to determine what is 'truthful' and what is 'misinformation' but also to gain the powers to surveil and control content and conversations between interest and community groups. It is not now, nor should it ever be the place of government agencies to determine what is allowed to be said between consenting Australian citizens in the relative privacy of common interest groups, so long as the information being shared does not constitute a crime.

No doubt the proponents of this Bill would contend that they would only target the sharing of information or opinions deemed to have the potential to cause 'serious harm' or 'significant implications to the community'. However, previous government and social media platform collusion, suggests otherwise.

During the recent Covid-19 pandemic, government and technology/media companies colluded to suppress information that had neither the potential to cause 'serious harm' or 'significant implications to the community' but was simply in opposition to, or questioning of the official government position. Not only did these platforms, government representatives and media personalities engage in highly abusive and derogatory conduct that was both allowed and promoted by these colluding agencies, but they blocked, suppressed, and deplatformed alternative opinions, (many of which turned out to be correct), in the very same manner this Bill intends.

This Bill then, would appear to be less about misinformation and disinformation, and more about information control in support of a single source of unquestionable truth.

The only thing more dangerous than opinion couched as fact, are facts that cannot be challenged in the public forum. Whether those facts turn out to be true or not, is not within the ACMA's power to predict. Therefore, what people choose to share or say within interest groups that people freely choose to join, should not be policed or suppressed by the ACMA. Suppression of free speech and democratic process should not be the policy of Australian government agencies.

2.1.4 excluded content for misinformation purposes (Clause 2):

Professional news content will not be within the scope of the new powers. This means we do not expect or envisage platforms to determine if professional news content is misinformation or disinformation. The Australian Government does not seek to influence the editorialisation and reporting by the free press.

Professional news content, which is defined as 'news content' produced by a 'news source' who is subject to certain rules and has editorial independence from the subjects of the news source's news coverage, will be exempt from the powers. Content produced by a person or organisation that purports to be a professional news organisation, but that does not adhere to such recognised editorial standards, will not be exempt.

By seeking to become the arbiters of truth for personal and individual opinion sharing, but allowing 'Professional News Content' potentially controlled by bad actors, to run unabated, you are intentionally weakening the ability for Australian society to judge for themselves, self-regulate and defend against bad ideas and ideals being pushed by global operators who may seek to deem new and dangerous moral guidelines for us all.

The Australian public has no control over the owners and angles presented by 'professional news organisations' yet we are expected to accept their reporting as true, with no ability to combat misinformation they present via reasonable public discourse. A current example being The 'Voice' referendum, where many media, business and sporting organisations have come out supporting the 'yes' vote, while openly demeaning and demonising opponents of the proposed question. If a media organisation chooses to support or represent one side of a political or referendum debate and deny fair response to, or allow demonisation of the alternates, without opportunity for recourse from the public, then the ACMA would by extension be performing the same duties as a communist state controlling the media narrative, whether they agreed with it or not.

Worse still, under your proposed draconian measures, we the public would be powerless to combat seriously harmful misinformation presented by 'professional news organisations' of which recent examples include the appalling and demeaning treatment of those not willing to receive a Covid vaccine, whom the 'professional news organisations' vilified openly, whilst presenting dangerous misinformation about the ability of those vaccines to prevent the contracting and transmitting of the virus, risks from the vaccines themselves, alternative treatments and the effectiveness of masks.

A press pass does not make one impervious to the risks of misinformation or disinformation, nor should it give it's holders a right to dictate the course and approved perception of local and global events with the public having no right to freely challenge these concepts without fear of punishment. This in itself prevents your stated aims in preventing the harms listed in '*Table 1: Harms',* specifically points 1,2,3 & 5.

This is not to mention the fact that professional media organisations are a captive industry with only a few parent companies controlling the vast majority of operators. This makes them highly unlikely to deviate from or challenge the messaging of their partner platforms or offer a balanced viewpoint that represents the broader Australian community.

Like all businesses, professional news outlets are subservient to the mighty dollar, funded and guided by advertising monies, leaving them open to the risk serious influence in order to survive. The proposed amendments mean that media organisations may be influenced by, for instance, a large drug company who spends vast amounts on advertising, to report favourably on their products, despite them being known to cause serious harm to individuals, communities and nations (see the impacts of prescription opioids in the USA). How exactly could you justify excluding this from scrutiny, and yet, disallow questions or assertions by members of the public about the safety and quality of these drugs, because at the time, you might deem them to be mis or disinformation?

Without the freedom for ordinary Australians to openly challenge the information we are presented, media organisations should not be allowed to operate as they see fit. Real world evidence has proven that they are very often wrong, and only through the unfettered access to free speech and information sharing, can they be held to account. It is the freedom to share information that

protects the Australian people, not the suppression of alternate information. Uneven access, leaves us dangerously open bad actor influence and control.

Don't forget, the term for someone aware of both the context and spectrum of opinions on a matter is 'Informed'. The term for someone only offered one opinion as if it is the only truth is 'Indoctrinated'.

Authorised government content in Australia

Content authorised by the government of the Commonwealth, a State, a Territory or a local government area will be exempt from the powers. For example, this could be social media post from a State's transport department about an upcoming road project or health campaign.

The above suggests the potential that you will allow propaganda advertising by governments which would not be subject to misinformation and disinformation laws, despite the fact that the government has been a leader of disinformation in the recent past. In particular, the Australian government engaged in seriously misleading and dangerous dialogue about vaccines and other medications such as Ivermectin during the Covid period. Most notably, when entire states were placed into lockdown, incurring enormous amounts of national and state debt, costing lives due to unattended non-covid illnesses, costing many thousands of jobs and eroding public trust in government and professional institutions. All that, while we were subjected to semi-forced vaccinations of experimental vaccines and the unscientific wearing of masks. During this period anyone who opposed the totalitarian controls being employed and advertised by both the governments and the media were silenced with no opposition allowed, in the same manner that this Bill intends to make permanent. This left Australians to endure phenomenal financial, personal and community harm. Meanwhile, without any evidence to support their actions, governments repeatedly and openly punished and derided Australians for wanting to exercise their basic human rights.

Since that time, strong and consistent evidence has emerged of the careless, authoritarian and unqualified takedown of lockdown and vaccine mandate opponents, with ministers both here and abroad joking about how they'll lock everyone down and scare the hell out of them. Would you allow these jokesters purporting to represent the Australian people to carry on in this manner, while preventing open public discourse?

In non-covid times, governments regularly mislead the public about the costs of funding and timelines for road, rail and energy projects, etc, actively engaging in political spin campaigns, which is another term for disinformation. Actions for which they are never held to account.

How is it that the public will be held to a standard which the government is not subjected? These are the actions of an authoritarian state, not a democratically elected government.

What safeguards will be put in place to ensure that the Australian public is not unduly suppressed and punished by the ACMA ,via media, government and information sharing platforms?

3.1.1 Electoral and referendum content is in scope of the information powers

The ACMA will be able to use its information powers in relation to election and referendum matters. For example, the ACMA would be able to request information on the length of time it takes for platforms to respond to complaints about misinformation about an electoral matter during a federal election. This will help

to inform policy decision-making by government agencies on strengthening the integrity of Australian democratic processes and government institutions.
***Note:** Authorised electoral communications and electoral and referendum content will be out of scope of the **code and standard-making powers**, with the exception of disinformation from an unauthorised source as per clause 35 of the Bill.*

And*;* ***4.3.3 Limitation – electoral and referendum matters with the exception of disinformation from an unauthorised source (Clause 35)***

The code and standard-making powers will not apply to electoral and referendum content that is required to be authorised. They would also not apply to any other electoral matter content unless it is disinformation, for example, disinformation spread by a foreign state actor on a digital platform service to influence the outcome of an election in Australia.

This approach seeks to strike a balance between the public interest in combatting the serious harms that can arise from the propagation of misinformation and disinformation, with freedom of speech and political communication.

Noting that current referendum information for the ATSI 'Voice' is heavily biased by the government who proposed it, misleading in both its intent and capabilities, with proponents utterly refusing to consider an alternative option (e.g. a no vote), any government agency seeking to allow an authoritarian spread of misleading information or information intentionally lacking in content, whilst supressing the rights of Australians to openly disagree with it, is the very definition authoritarian. A democratic nation should never create such laws or offer a government irrefutable powers to determine the truth in an open debate between opposing parties. Particularly, when that same government gets about accusing people who question their proposal as "Chicken Little's", "racists" or "obstructive". When a government can get about slandering anyone who disagrees with them unchecked by open public discourse, we no longer live in a western democracy, instead entering a dystopian nightmare.

How would the information sharing platforms, or by extension the ACMA actually determine what information is 'misinformation' or 'disinformation' with regard to political statements or referendum proposals anyhow. The 'Voice' for instance, a concept left intentionally undefined by the government proposing it, cannot have any opinions deemed as misinformation or disinformation because there is no detail as to what specifically the Voice will entail. It is a broad proposal and people are entitled to assess and make their own determinations of what it will mean for them. That's the whole purpose of having a referendum, for Australian citizens, shareholders in the nation, to assess and make a choice based on whether they agree or disagree with the proposal. You cannot create a scenario where a government agency can determine what can be heard, said and shared with this question, without being guilty of directly trying to influence the outcome.

As with the general concept of what is 'truthful', neither the ACMA, nor information sharing platforms have the power to determine what will turn out to be true with regard to the powers and operation of the 'Voice'. The ability to debate this openly is not dangerous, but critical to the airing of genuine concerns and questions of the Australian public, to ensure that all angles are considered before a decision is made. It is not for the government to determine what is reasonable for us to say, see or hear in this context.

Neither the ACMA, nor the platform sharing entities have the right to curate what opinions and information are allowed to be shared by simply banning or punishing the actions. Only an authoritarian state would employ this utterly unreasonable level of control.

3.1.2 The contents of private messages are out of scope

To protect the right to privacy, the ACMA will not be able to use its powers to require a person to produce information, evidence or documents that would reveal the contents of private messages (subclause 18(4)).

The ACMA will also not be able to make rules that require digital platform providers to make or retain records of the content of private messages (subclause 14(3)).

The key concern with the above is what is says by default. By allowing only directed private messages to be free from overbearing control, you are effectively and intentionally isolating people from being able to utilise the platforms for their intended purpose of sharing information and ideas with likeminded people on issues important to them. What right does the government have to interfere on these relationships and relationship building and the fair and reasonable sharing of content just because it isn't aligned with the approved narrative as determined by you?

This is information capture which will stifle societal growth and response to national and international events. A governments job is to govern, not to dictate what information is approved, or not approved, to be shared. This is blatant government overreach and no longer fits within the bounds of reasonableness, as it significantly infringes on people's rights to freedom of speech and freedom of association.

3. Part 2 of Schedule 9 – Information

The Bill provides the ACMA with information powers that will apply to the digital platform industry. The information powers will allow the ACMA to make record keeping and reporting rules, gather information on an as needed basis and to publish information obtained from digital platforms.
These new powers will provide greater transparency and insights on the effectiveness of platform measures to combat misinformation on their services. Information gathered by these powers may be used to inform investigations into potential breaches of misinformation codes and/or standards. The ACMA may take, and retain for as long as is necessary, possession of a document produced.
Additionally, the ACMA may disclose information to other persons and agencies should the information be relevant for efforts to combat misinformation and disinformation. This is enabled through consequential amendments to the definition of 'authorised disclosure information' in the ACMA Act made by this Bill, and correspondingly by Part 7A of the regime in that Affect. There are protections for privacy and commercially sensitive information.

And; ***3.2 Division 2 – Record keeping and reporting***

Scenario 1: Record keeping rules

Signatories to a voluntary code have committed to report annually about the volume and nature of content that is being reported and complained about on their platforms. This is considered an important indicator of user confidence and can help inform policy development and response on a range of issues across government.

Signatories commit to meet this obligation through the release of annual transparency reports on their measures to combat misinformation. However, the ACMA's review of successive reports finds that this qualitative and quantitative data is not included, or is only provided at a global – and not national – level. Multiple platforms advise the ACMA that they do not currently report on this information, and do not provide it, despite the ACMA requesting it voluntarily.

The ACMA is also concerned about the lack of this data from platforms who are non-signatories of the voluntary code. The ACMA publicly consults on the draft record keeping rules which will apply to signatories and non-signatories. Under the proposed rule, platforms will need to regularly collect and report on Australia-specific data about reports and complaints, broken down by subject matter categories outlined in the rule. This

information will be an important input to monitoring the effectiveness of the industry code and confidence in the process.

And*;* ***3.2.1 The ACMA may make digital platform rules in relation to records (Clause 14)***

The ACMA will be provided with the power to make rules to require digital platform providers to make and retain records relating to:

- *misinformation or disinformation on the digital platform service*
- *measures implemented by the digital platform provider to prevent or respond to misinformation or disinformation on the service, including the effectiveness of the measures*
- *the prevalence of false, misleading or deceptive information[1] provided on the digital platform service.*

The ACMA may require digital platform providers prepare reports consisting of information contained in the records, and require providers to give any or all of these periodically to the ACMA. This will enhance transparency and allow tracking of digital platforms' progress in addressing misinformation. For instance, digital platform providers of certain services specified in the rules may be required to keep records of complaints and reports related to misinformation, and the measures taken in response, and provide this information in the form of a regular report to the ACMA.

And; 3*.3.1 The ACMA may obtain information and documents from digital platform providers and other persons (Clauses 18 and 19)*

The ACMA will have information-gathering powers that could be used to compel digital platform providers to give information, documents and evidence relevant to the same matters as the record keeping rules in section 3.2.1. These powers may be exercised on an as needed basis.

The ACMA may also request information from other persons on the same matters. These persons could include fact-checkers or other third-party contractors to digital platform providers, to assist the ACMA monitor compliance with misinformation codes, misinformation standards and digital platform rules.

[2] False, misleading or deceptive information has been included separate to misinformation and disinformation. False, misleading or deceptive information may not necessarily be seriously harmful, however to make complete assessments, the ACMA will be empowered to gather a wider range of information

And*;* ***3.3.2 Self-incrimination (Clause 21)***

This section of the Bill only applies to individual natural persons who own and operate a digital platform service. The vast majority of providers of digital platform services are body corporates, which have no privilege against self-incrimination.

The common law privilege against self-incrimination entitles an individual to refuse to answer any question, or produce any document, if the answer or the production would tend to incriminate that person – broadly referred to as the privilege against self-incrimination.

The Bill provides that a person is not excused from answering a question or providing information or a document on the ground that the answer to the question, or the information or document, may tend to incriminate the person or expose the person to a penalty. This abrogation of the privilege is necessary to avoid undermining the regulatory regime and the intention and purpose of the Bill. Enabling the ACMA to have the information necessary for it to undertake work to encourage digital platform services to protect the community

[1] False, misleading or deceptive information has been included separate to misinformation and disinformation. False, misleading or deceptive information may not necessarily be seriously harmful, however to make complete assessments, the ACMA will be empowered to gather a wider range of information.

against the harms from misinformation and disinformation is an important objective necessitating abrogation of this privilege.

However, any information or evidence or producing document cannot be used against the individual in criminal proceedings other than proceedings for an offence for giving false or misleading information under the Criminal Code and subclause 22(1) of this Bill.

This part of the Bill does not intend to abrogate legal professional privilege.

And*;* ***Scenario 3: Information-gathering powers***

Platforms A, B and C are social media services, each with a significant Australian user base. Platforms A and B are signatories to a voluntary code, while Platform C is a non-signatory.

As part of public reporting under the code, Platforms A and B both report seeing an increase and amplification of objectively false user-generated material relating to an ongoing geopolitical conflict, that appears like it may be part of a co-ordinated disinformation campaign. Platforms A and B outline the steps they have taken to identify, review and moderate this content on their services, according to their respective community guidelines.

The ACMA has reason to believe that similar false content is being amplified on Platform C, however despite being asked, Platform C is unwilling to voluntarily provide information about its moderation activities.

In order to understand the scale of this potential disinformation campaign, the ACMA exercises its information-gathering powers to request information from Platform C about whether it has similarly seen an increase in false statements regarding the conflict, and what steps, if any, it has taken in response to this content.

Collectively, the above parts of '*Section 3*' of the proposal are basically an authorisation to surveil, compile evidence against, share, and request information about, any Australian or group of Australians using digital platforms, with the sole intent of empowering the ACMA to independently deem people or groups as 'bad actors' based on their own interpretation of what is mis or dis-information.

This flies in the face of every Australian citizens' rights to privacy and the governments requirement to have reasonable suspicion of illegal activity in order to conduct surveillance, which must be approved and documented. You certainly have no right to outsource that to 3rd party operators. The very fact that the above would require unspecified amendments to the 'authorised disclosure of information' guidelines, is evidence of the dangerous powers this imposes. Who exactly could our information be shared with, and what is to stop the communications and media platforms from taking matters into their own hands and sharing information about Australians with foreign entities?

The fundamental principles underlying this are anti-free speech, anti-democratic, anti-privacy and provide absolutely no safeguards for the privacy and reasonable freedoms of Australian Citizens. What right does the Media and Communications Authority have to request information with respect to Australian Citizens and the information they share, from the dubiously termed 'other persons'?

Whilst you couch these powers in wording that suggests these recording's and requests relate to responses by the platform, you also demand records be kept as to what is being responded to (e.g. the individual shared content) with the line in section *3.2.1 'misinformation or disinformation on the digital platform service'*. This is nothing but an attempt to legalise unwarranted surveillance and information gathering, in every aspect of our lives for no other reason than authoritarian control over the information flow between Australian citizens.

As with the entirety of this proposed Bill, the crucial flaw is that you have placed in one entity, the power to determine what is or is not true, and on the basis of that subjective opinion, what people cannot say, see or hear. This seems like an attempt to return society to the dark ages where they were utterly reliant on governments for news and information with no alternate available. That is not a move that any Australian government should ever be allowed to make. Societal regression is not in anyone's best interests and should not be enforced at the behest of a government agency.

4.2 Division 2 – Interpretation

4.2.1 Sections of the digital platform industry (Clause 30)

The misinformation code and standard-making powers could apply to one or more sections of the digital platform industry, comprising content aggregation services, connective media services, and media sharing services.

The Minister under subclause 4(6) would have the power to specify new kinds of digital platform services, which would then fall within scope of the misinformation codes and standard powers.

Providing open ended powers for one person to determine what they would like to apply these compulsory codes to, is a severe risk to privacy, freedom of speech and the trust of the Australian people. That our ability to access and share information, particularly that which is not aligned with the official position of government or the personal leanings of the individual holding this ministerial position, would be dictated by an individual without apparent oversight, would be extraordinarily unfair, unreasonable, undemocratic and utterly lacking in objectivity.

This is far too open ended, with the potential for serious subjective leanings. Any powers granted, of which there should be none, must be restricted to the absolute minimum necessary, and even then, must have significant multi-group oversight.

***4.4 Division 4 – Misinformation codes (*ALL OF IT)**

And*;* *4.5.1 General requirement – consideration of freedom of political communication (Clause 45)*

The ACMA will be required to be satisfied of the following general factors before determining a standard:

• whether the standard would burden freedom of political communication; and
• if so, whether the burden would be reasonable and not excessive, having regard to any circumstances the ACMA considers relevant.

And; ***4.5.2 The ACMA may determine standards when a request for a code is not complied with or no industry body or association has been formed (Clauses 46 and 47)***

The ACMA may determine a standard if a request for a code is not complied with, indicative targets for code development were not met or the ACMA otherwise refuses to register a code; and the ACMA is satisfied that it is necessary or convenient to determine a standard in order to provide adequate protection for the community from misinformation or disinformation on the digital platform services.

If no industry body or association exists and none has been formed following the ACMA publishing a notice under clause 39 inviting one to be formed for the purpose of creating a code, the ACMA may determine a standard for the unrepresented section of the digital platform industry.

And; 4.5.3 The ACMA may determine standards when an existing code fails (Clauses 48 and 49)
Should a registered code exist, and the ACMA has determined that it is partially or wholly deficient in protecting Australians from misinformation or disinformation on the services, the ACMA will give a notice to the body that developed the code requesting that the deficiencies be addressed in a specified period. If the body is unable to address the deficiencies to a satisfactory standard, the ACMA may determine a standard that supersedes the deficient code (or parts of it in the case of a partial failure).

And; 4.5.4 The ACMA may determine standards due to emerging circumstances (Clause 50)

There may be exceptional and urgent circumstances where Australians are at significant risk of harm from misinformation or disinformation (e.g. a time of war). If the ACMA determines a code or standard is necessary or convenient to provide protection, and the ACMA considers a code may not be able to made in a reasonable time period, then the ACMA could determine an industry standard.

And; 4.5.5 Variation of standards and revocation of standards (Clauses 51 and 52)

The ACMA will have the ability to vary or revoke a misinformation standard, including by adding or removing sections or amending or strengthening requirements.

Governments are meant to facilitate and enable the lives of their citizens, not dictate to, or control them. No government agency should be given free licence or autonomy to apply suppressive and subjective 'misinformation' and 'disinformation' codes to any communication or media platform, on the basis that they want to restrict the information sharing on those platforms to what the ACMA deems as truthful or acceptable.

As with the entirety of this Bill, it's very clear that the powers being sought by this Bill are not for the protection of the Australian people from the supposed risks of 'serious harm' or 'significant implications to the community' but purely for the possession of greater power and control of what information is allowed to be shared.

Noting the evidence of huge government overreach and suppression of truthful and reasonable information during the recent pandemic, as well as other recent issues including 'Trans rights', 'religious freedoms of speech', 'Climate Change' and many other issues, it is clear that the government cannot be trusted as the moral or contextual arbiter of the inherent truth, intent or quality of information being shared in the media and communications space. The Australian government and ACMA should stay well away from the significant powers this Bill requests in limiting the free speech of the Australian people, and should certainly never have the power to compel 3rd party agencies, most of which are foreign owned, to act in surveiling and curating the free flow of information between the Australian People's.

The simple fact is this. You do not have the power to determine the truth and you cannot be trusted to moderate it.

With regard to the proposed *'Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023'*, I have some key questions I would ask you to answer:

1. If the ACMA was granted the powers sought in this Bill, who or what group would be accountable for the oversight of the ACMA?

2. What powers of oversight will the body that monitors the ACMA have to repeal unwarranted sanctions and fines and override what the ACMA deems to be Misinformation and Disinformation?

3. What responsibility will the ACMA have to support and protect the freedom of speech, freedom of association, and inherent democratic rights of the Australian people to put forward our opinions and arguments to our fellow Australians in the public forum without censorship or suppression?

4. What powers and obligations will the ACMA have to ensure that free speech is maintained and supported where it is being overly suppressed by these communication and media platforms? E.g. to ensure that the free sharing of political opinion and information is not being unduly suppressed, such that it may influence the outcome of an election.

5. What happens when the ACMA gets their determinations on what is 'truthful', 'misinformation', 'disinformation', 'serious harm' or 'significant implications to the community' wrong?

6. How will the ACMA themselves be held to account and penalised for potentially significantly harmful actions such as, agency overreach, unwarranted suppression of information, undue influence on the outcomes of elections, referendums, pandemic's, climate, and other societal issues?

7. What limitations, checks and balances will be put in place with regard to the ACMA's access to request, record and share personal and posted information by and about Australian Citizens?

8. Why should the ACMA be granted <u>any</u> powers to record, request, or share information about Australian citizens and the information we share via media and communication platforms? Surely this would only be reasonable in the context of a crime, and even then only by official law enforcement agencies, not communication and media authorities.

9. How will the ACMA determine what is or is not reasonable for media and communication platforms to suppress? This includes;
    - By what means/standards will they determine what is misinformation or disinformation on a concept by concept basis?
    - What expert opinions will be sought and how will they make sure these opinions are balanced and not biased?

- Will the ACMA be required to reveal the sources and the detail of opinions used to identify misinformation and disinformation? Where and how will these be shared?
- What powers of foresight do the ACMA possess that will allow them to determine what will or will not be proven to be true in future?
- How will the ACMA avoid the potentially dangerous impacts of suppressing information they deemed at the time to be mis or disinformation that later turns out to be true? Will they be then held responsible? If not, how will reasonable consideration before the application of their powers be ensured?

10. How will the ACMA determine where the line is between authoritarianism, public safety, and the right to free speech, with regard to the application of their powers on political and referendum content? Remember that both 'misinformation' and 'disinformation' require a factual basis before one can be said to be misleading or disinforming people, a key element that is often lacking in questions of politics and referendums that focus on promises and desired outcomes rather than facts.

As stated at the beginning of my letter, I strongly oppose the proposed legislation amendments, which confer far too much power and autonomous determination of right and wrong onto a single government body. No Australian should be prevented from sharing information or opinions that do not constitute a crime. Any attempt to do so, is simply an authoritarian suppression of our basic human rights to freedom of speech and freedom of association.

The powers sought by this Bill have no place in a democratic Australian society and must not be allowed to proceed.

I look forward to your response to my letter and the specific responses to my individual questions.

Sincerely

Thomas Talarico
Australian Citizen