

Dear Sir/Ma'am

SUBMISSION - EXPOSURE DRAFT OF THE COMMONWEALTH
COMMUNICATIONS LEGISLATION AMENDMENT (COMBATTING
MISINFORMATION AND DISINFORMATION) BILL 2023

Thank you for the opportunity to provide a submission regarding the Exposure Draft of the Commonwealth Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023. The Draft provides for a Bill for an Act to amend the law relating to communications, and for related purposes. The simplified outline highlights the purpose as a graduated set of powers regarding 'misinformation and disinformation' on certain kinds of digital platforms. With a stated aim to prevent or respond to 'misinformation and disinformation' using a 'code' that platforms must comply with.

As context, the Department of Home Affairs identified Australian values as: 'respect for the freedom and dignity of the individual'... 'freedom of religion, freedom of speech, and freedom of association'. Australia is a founding member of the United Nations and an original signatory of the Universal Declaration of Human Rights (UDHR). Article 19 reads: *'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'*

The Government argues that 'misinformation and disinformation' (fake news) (but is silent on mal-information (correct, but inconvenient information)) sows division within the community, undermines trust and threatens public health and safety. The Government's solution to keeping Australians 'safe' online, is to ensure the Australian Communications and Media Authority (ACMA) has the powers to hold platforms accountable for 'misinformation and disinformation' on their services. It is very difficult if not impossible to reconcile the values raised by Home Affairs, the text of the UDHR and the proposed legislation. Therefore, as conceived and written the Exposure Draft is unsatisfactory, illegitimate and contrary to Australia's so called values; and should be abandoned.

The proposed law deals with a complex area of people's lives and is susceptible to significant government over reach. The fundamental concern with misinformation seems to be **that once people have heard it, they tend to believe it and act on it, even after it's been corrected.** Even in the best of all possible worlds, correcting misinformation is not an easy task. Legislatively, the issue central to the idea of 'misinformation and disinformation' and potentially all the variation (mal-information etc) is what is – **'the truth of a matter'**. The legislation does not seek to ensure the 'truth of a matter' is discerned and promulgated. The main underpinning issues of this legislation are: what is 'misinformation and disinformation', who decides what is 'misinformation and disinformation', who would be subject to the legislation and who would be exempt from the legislation; and finally let's address the idea of 'harm'. For each of those issues, within the legislation, there is nothing but unsatisfactory answers.

What is 'misinformation and disinformation'? According to the draft bill, misinformation is defined as 'unintentionally false, misleading or deceptive content' and disinformation as 'misinformation intentionally disseminated to cause serious harm'. That is 'misinformation' and 'disinformation', 'hate speech' or 'fake news' is a label applied to statements, claims or depictions that are considered by some entity as inaccurate; while disinformation, is a subset

of misinformation intended to mislead or harm. Unfortunately, we have statements, claims, or depictions that were considered inaccurate by ‘reputable’ entities, which subsequently have been proven to be true. It is also true that individuals, organisations and even governments have been shown to use ‘misinformation, disinformation and mal-information’ for their ends; ends that are not in the interests of individuals or the community. Of those entities the worst has been the government, often through its bureaucracy and at times through its armed elements – the police and armed forces. The solution to ‘misinformation, disinformation and mal-information’ has always been to ventilate the claims and prove them false or true using robust argument, based on evidence - not fiat. Ventilating claims to dispute them through: its compatibility with other known information, the credibility of the source, whether others believe or agree with it, whether the information is internally consistent, and whether there is supporting evidence; has worked well. That process of discernment is one of the great lessons of the Enlightenment. The Labor Government, either by design or incompetence means to take us back to the Dark Ages.

Who decides what is ‘misinformation and disinformation’? The legislation has a registered ‘code’ deciding what is true or not. That is the decision on who decides is left to the platforms, who are self-interested, motivated by profit and susceptible to government coercion. Susceptible to government coercion, significant encouragement and joint participation, is evident in the 4 Jul 2023 ruling by Judge T. Doughty, who wrote: *“The government [The Federal Government of the USA] likes to claim that social media platforms acting on their own would apply their policies and censor all this content. ... The Louisiana Court found that the platforms would not have suppressed this speech, but for the fact that the federal officials were pushing for it.”* So, is using a code developed by potentially, probably or actually compromised platforms really possible or sensible? I don’t believe the ‘code’ can, nor is it an appropriate mechanism to discern truth and therefore, there is a significant concern that the legislation is ill-considered. To illustrate, are we going to be confronted with the battle between the Ptolemaic and Copernican views of the place of the world in the solar system all over again? In some respect the debate surrounding COVID is a prominent example of the search for truth; a search, which might have caused less angst and physical and mental harm, if openness, transparency and debate had been allowed and encouraged from the beginning. There are many more examples that highlight that ideas can’t be fixed; and must be worked through using evidence, logic and reason, not emotion, rhetoric or fiat. Truth matters more than feelings or desires. Seeking truth takes time and must be worked through, warts and all. Citizens must be brought into the discussion and inoculated against fear by explaining to them what is known at the time, how they might be misled and told what caveats apply to that knowledge. When confronted with a situation, information evolves or bifurcates before stabilising into a trustable range. So keep our citizens well-informed, well-educated and thus well-prepared.

Who would be subject to the legislation and Who would be exempt from the legislation?

The two questions will be dealt with together. The legislation separates the community into two groups. The groups are the ‘truth-tellers’ (Government, news media and their believers) and the ‘untrustworthy’ (everyone else). The legislation applies to all, except those exempt and the exemption is essentially to the Government and ‘news’ organisations. Unbelievably the single most concerning aspect of the Exposure Draft is that “content that is authorised by the Commonwealth or a State” along with “professional news content” would have immunity from the proposed ACMA powers. How are the supposed ‘truth-tellers’ to be disciplined for lying? There is no answer in the legislation. The proposed bill invites comparisons to George Orwell’s 1984, a novel where governments allow only their functionaries and state-

sanctioned news media to 'guide' the public discourse. The Government and its agencies have lied or used 'misinformation', 'disinformation', 'fake news', 'hate speech' and mal-information on the community and individuals. Trusting 'experts' is not a function of science. It is also not a function of democracy. It is a function of totalitarianism, and it does not make for a healthier nation. We have seen the soul of our Government through its actions. During times of war, we've experimented with troops (chemical weapons trial in WW2), lied about weapons of mass destruction in Iraq, and altered official photographs (in Afghanistan); during medical queries, such as Thalidomide or RAAF Deseal/Reseal programs the government lied and obscured the truth, costing lives; the loyalty of people of German, Italian and Japanese origin and descent was questioned during both world wars, leading to interment and abuse; and the safety, effectiveness and rigor of the testing of the COVID 'vaccines' is now being exposed as a lie, leading to excess Australian deaths well above the norm. It is inconceivable that similar lies and actions would not occur again; and the proposed legislation would make it harder to get to the truth, deal with wrong doers and compensate the abused.

Let's address harm. The legislation provides the following meaning to harm (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. **Nowhere does it say that the 'harm to truth' is the principle wrong that is being addressed.** The failure to address the truth as the core element that must not be harmed undermines the legislation and invalidates it. We must search for truth, wherever it leads. We must not privilege institutions or individuals over the truth.

In a democracy it is the obligation of the Government, institutions, organisations and individuals to let citizens speak freely and express ideas even if those ideas might initially or ultimately run counter to the majority viewpoint, on any given subject. Disagreement and dissent is not violence, but a search for truth. Hurting people's feelings is not violence, only physical violence is violence. It is not the role of the Commonwealth to prevent the people of Australia from saying silly things, or even things that might - in the eyes of government or its agencies - cause 'harm'. The impulse to decide which speech constitutes 'misinformation', 'disinformation', 'hate speech', 'fake news' or mal-information and must be censored is, at heart, totalitarian. While Australia remains a democracy, it must not embrace totalitarian practices.

In conclusion, by proposing the bill the Government enters murky waters. Terms like 'misinformation', 'disinformation', 'fake news', 'hate speech' or 'mal-information' are frequently used by critics, regulators, bureaucrats and political actors to smear ideas they don't like and to restrict people's freedom to express those ideas. Very often, the use of such terms betrays more about the people wielding them than the speech they wish to prohibit. The enhanced powers of the proposed bill would grant the ACMA the power to effectively silence countless individuals and organisations whose views on issues are subject to being falsely characterised as 'misinformation' and / or 'disinformation' by Commonwealth agencies, politicians, commentators, community leaders and media figures. If a government can censor

its critics, that's a license for even greater atrocities. It is the beginning of totalitarianism and once you start censoring, you're on your way to dystopia and totalitarianism.

As a result, I am strongly opposed to the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023.

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Postscript. Let's embrace the 'truth', regardless of how uncomfortable it might be for some people. The truth can be a tough thing to bring out, especially late in the game, but it is powerful and a great healer. Ultimately, there is a harmony, energy and resonance to the Truth.