25 July 2023

Ms Nerida O'Loughlin PSM, Chair of the ACMA,
Ms Creina Chapman, Deputy Chair
And part-time, full-time, and associate members
Australian Communications and Media Authority
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Dear Authority Members,

We write in response to the ACMA's request for feedback on the proposed Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023 (the Bill). Within the supporting documentation provided for the Bill, ACMA represents disinformation and misinformation as posing "a threat to the safety and wellbeing of Australians, as well as our democracy, society and economy." To deal with this purported issue, at ACMA's recommendation, the Australian Government has proposed amendments within the Bill that confer the following powers to the ACMA:

- enable the ACMA to gather information from, or require digital platform providers to keep certain records about matters regarding misinformation and disinformation
- enable the ACMA to request industry develop a code of practice covering measures to combat misinformation and disinformation on digital platforms, which the ACMA could register and enforce
- allow the ACMA to create and enforce an industry standard (a stronger form of regulation), should a code of practice be deemed ineffective in combatting misinformation and disinformation on digital platforms.

Upon consideration of the Bill, numerous issues emerge. In this submission, we will focus on four key concerns.

1- The Vague Definition of Misinformation and Disinformation
2- The Inadequate Definition of Harm
3- A Deficiency of Excluded Content
4- The Worrying Extent of Control Over Digital Platforms

We will deal with each of these in turn.

1- The Vague Definition of Misinformation and Disinformation

Under the provided definitions for the two terms, to be classified as either misinformation or disinformation, a given content must contain information that is false, misleading or deceptive, not be excluded content, must be shared with end users in Australia, and be reasonably likely to cause or contribute to serious harm. In the case of Disinformation, there is an added element of an intent to deceive by the person disseminating the information.

We contend that this definition is unacceptably broad, particularly given the extent to which the powers conferred within this Bill will come to infringe on the public's ability to not only speak, but have access to information, and think freely. It utterly fails to provide, either through gross oversight or deliberate omissions, details on:

a) what constitutes false or misleading information, i.e.: how is this determined?
b) Who decides whether the content satisfies the harm component and what determinants will be used to do so?
c) What are the checks and balances to guard against arbitrary determinations in regards to the above?
d) Who determines what subject matter will fall within the purview of this act? What would their selection criteria be? I.e.: on what basis will these topics be qualified?
e) How is the severity gauged for the potential impact of the dissemination of the identified information?

Without answers to these pertinent questions to clarify the definition of these two terms upon which the Bill is premised, the powers conferred by this Bill in essence amount to:

- Arbitrary powers to dictate and curtail speech,
- Infantilising the public, with the implication that they are incapable of thinking and reasoning for themselves; and too stupid to effectively assess a given information and gauge its veracity.
- A collusion of the public and private realm in a manner no different to fascism to control the ability of the public to contribute and access a variety of information and opinions, particularly from sources not directly regulated or controlled in some way by the state (as demonstrated by the fact that independent media is not listed under the *excluded content for misinformation purposes* category).

Other than the obvious danger to the effective running of our democracy that this causes, between 2020 and 2022, countless people were shadow-banned, deplatformed, or otherwise censored by these media companies for making statements that later proved to be correct. And they were

censored for no other reason than that their posts went against the narrative of the state, against that of the major corporations who stood to profit from the fear, and that of multinational organisations with their own agendas.

The following is a clear example. The CDC came out with the following:

> *"The CDC's COVID-19 prevention recommendations no longer differentiate based on a person's vaccination status because breakthrough infections occur, though they are generally mild, and persons who have had COVID-19 but are not vaccinated have some degree of protection against severe illness from their previous infection."* [1]

A year before and the year following this release, anyone who stated this fact was deplatformed, called a conspiracy theorist, and otherwise ridiculed. One can therefore see how the powers of this bill will be utilised to censor those who have opinions and positions contrary to what the government and other interested institutions want them to have, regardless of the truth of a post.

The censorship regime that will be effectuated by the powers in this Bill will prevent the public from alerting their fellow members of the community to valid information that may not yet be known to the state and its agents. This has an added cost to the governmental response system to crises and to the economy at large by stunting the public's ability to work together and look after one another thereby reducing the burden on public infrastructures.

2- The Inadequate Definition of Harm

Under Schedule 1, point (b) of the definition of harm, it is stated:

- (b) disruption of public order or society in Australia;

What is considered a disruption of public order or society? Does this cover lawful public demonstrations or protests? If not, does this not violate point (c) under the same definition?

- Point (c) states the following: harm to the integrity of Australian democratic processes or of Commonwealth, State, Territory or local government institutions;

Is it not the case that by not adding protests and advertising for protests under '*the excluded content for misinformation purposes'* heading, will result in harming the integrity of the Australian democratic process? Is it not the case that protests are an important format for the public to express opinions and grievances on a particular topic where other attempts at being heard have failed? It

[1] https://www.cdc.gov/mmwr/volumes/71/wr/mm7133e1.htm

is indisputable that protesting is an essential mechanism that allows the people to bring matters of concern to the attention of those in positions of authority as well as to the broader public. Any action that inhibits the public's right to voice their issues falls afoul of the liberal democratic process.

3- A Deficiency of Excluded Content

As is currently provided, the list of *excluded content for misinformation purposes* has a set of glaring and concerning omissions.

1- Independent News Organisations that are not regulated or controlled by the state either directly or indirectly.

2- Independent Journalists.

3- Content relating to the undertaking and discharging of democratic rights.

There is no freedom of the press, nor can Australia's purported democratic system of governance be properly implemented where the only information the public is able to access is that which is sanctioned by the state and its ancillaries. The importance of independent journalism goes without saying, particularly when much of the truth that the greater public accesses often comes from sources independent from the state.

It is an insult to our intelligence to pretend that state sanctioned communications have been or are for any purpose other than to paint a narrative that benefits the state's interests and the interests of those the state aligns with. It is also an insult to our collective intelligence to pretend that the state and legacy media themselves are not some of the biggest peddlers of lies, half-truths, deceptive information, disinformation and misinformation.

This bill is nothing other than a poorly concealed effort to shut down and control any voices that would otherwise unveil the lies, propaganda, and manipulations of the state and its various apparatus of control. If the three years of covid-19 and the ensuing state abuses of power have taught us anything, the state and its controlled institutions do not have the best interest of Australians at heart; the Australian government is willing to lie and in so doing cost thousands of Australians their lives, cost countless others their livelihoods and mental health, not to mention the overall stability of the Australian society.

One can therefore say that it is instead the Australian public who needs a mechanism to fact check and verify any and all information propagated by all governmental and state institutions using sources not connected to, controlled by, nor influenced by the state.

Although the Bill includes Section 60 which acknowledges a protection of the implied right of political communication, the rulings in the High Court on this topic have made it clear that this is not a personal right to free speech. It is instead restrictions on legislative and executive power in

regards to laws and actions that would interfere with free communication about government in so far as said communication jeopardises the structure of government as reflected in the constitution (i.e.: that the Commonwealth parliament being directly chosen by the people and the people changing the constitution by vote…).

Thus, section 60 will not provide any protection to disenfranchised members of the public with the need to express political views that may be contrary to the mainstream and institutional political position.

Although part of the amendment recommended for parts following subsection 4(3AB) of the *Broadcasting Services Act 1992*, is to:

(a) have regard to freedom of expression;

This is meaningless given that there is neither an implicit nor explicit right to freedom of expression in the Constitution of Australia.

4- Extent of Control Over Digital Platforms (and by extension over all content on all digital platforms of import to public discourse)

At Division 2, Section 14, it is posited that the ACMA may make digital platform rules in relation to records. The parametres provided give no specifications on what exactly is meant by '*records*.' Would the records be of the names and other private details of the users? Would it include all or some of the posts of the users? Or would the records include the posts considered to be of issue? The lack of details around this is in itself telling. This forces a substantial burden onto digital platforms to not only track, but also record all engagements on their platforms and provide it to the state at the state's behest. Needless to say, this can and will easily be abused to target and silence political dissidents. It will also be an irresistible target for scope creep.

Other questions arise upon further considerations of this section:

1(d) says digital platforms may be required to make and retain records relating to "*measures implemented by the provider to prevent or respond to misinformation or disinformation on the service, including the effectiveness of the measures*;"

What is the extent of the measures expected from the platforms to prevent/respond to "misinformation" and "disinformation"? How are these balanced in relation to the privacy of the users? Where are the considerations for the public's best interest? What guarantees or processes have been provided for the public to appeal a finding and control their own data? What guarantees have been provided for the judicious use of the public's data?

The stipulations under section 14(2) regarding reporting in essence make the social media platforms ancillary to the state. The latter having absolute say over what records must be kept, how they are kept, and how those records are to be reported to the government and when.

Further, being private entities, their required activities under the Bill will be beyond the scope of the Freedom of Information requests and the associated scrutiny. This is of great concern given that the subject matter is clearly an issue of great import and interest to the public.

Below are further questions raised by other sections of the Bill:

Section 33, under examples of matters that may be dealt with by misinformation/disinformation standards; subsection (f) mentions supporting fact checking.

- Who decides what is fact and what is not?
- Who fact checks the fact checkers given how absolutely wrong many fact checks have been discovered to be once provable contrary information has come to light? And considering that the fact checking has been utilised to censor information that contradicts the state position regardless of their veracity, how can this process be trusted without the public's ability to appeal and fact check these supposed arbiters of truth?

Section 37, regarding the registration of codes, it proposes that where an industry body can come up with their own codes to regulate misinformation on the platforms, the ACMA will review in order to see whether the code "burdens freedom of political communication, and if so whether the burden is reasonable and not excessive having regard to any circumstances the ACMA considers relevant…"

- What is a reasonable burden on freedom of political communication? How is this determined?
- How is this standard applied to the codes the ACMA will develop given that protests, which are part and parcel of political communication, are not excluded content for the purposes of misinformation and disinformation? It is granted that section 45 has a general requirement for the consideration of freedom of political communication. However, how will this be applied when, as previously discussed, this freedom is not an individual freedom of speech?

Section 49 proposes that the ACMA may determine standards and impose significant civil penalties for a digital platform's failure to remedy a partial failure of their misinformation code.

- Can the ACMA, following approval of a code developed by an industry body, change their standards at a later date, then take the existing code to be deficient and then request for the code to be updated?
- If so, under what circumstances will the ACMA amend its codes?
- Will there be a public consultation in regards to those amendments?

Section 50 partially answers one of the previous questions raised by section 49 in regards to the changing of standards. It offers that the ACMA can determine a new standard where they deem it necessary or convenient that "(b) there are exceptional and urgent circumstances justifying the determination of the standard under this clause; and (c)- it is likely that a code dealing with that matter or matters could be developed under this Part within a reasonable period in the circumstances.

- What criteria will be used to determine a circumstance as "urgent" and or "exceptional?"
- What guarantees do the public have that this clause will not be utilised without just cause to declare emergencies and wield the power of the state against the public and political dissidents?

Conclusion

Overall, this is an ill-conceived bill whose primary purpose is to establish a 'ministry of truth' that will ensure that no opposing voices to the political apparatus can utilise public spaces or any other effective digital communications platform to speak; whilst propping up all structures and organisations that will act as the mouthpiece for the state. This bill renders onto ACMA the type of powers that mirrors the CCP's chokehold on the dissemination of information in China. It is hard to believe that powers such as these are being proposed in a "liberal democracy." Perhaps it is time that the Australian government drop the pretence, and admit to the Australian people that they now live under a communist inspired government, that the government's role model is the Chinese system, and that the Australian government moving forwards will be controlling what the public sees, hears, thinks, choses, what opinions we are allowed to have, and which ones will result in persecution.

Needless to say, the Australian people strongly oppose this bill and everything it stands for, regardless of what it purports to be. The truth is explicit in the omissions and the lack of clarifications on key sections that have been left open for what can only be assumed to be nefarious use and abuse. Additionally, there is a clear lack of a structure that actually gives the public the power and freedom to judge for themselves what information they believe and which ones they do

not. We utterly reject the presumption that we are too stupid to make such calls for ourselves, and resent the imputation of such.

This bill is an abomination and if it is to pass, it will see the descent of this great nation into fascism the likes of which even Stalin and Mao could not conceive of in their wildest dreams. We the Australian people have noted this ill-disguised attempt at control over our minds and every thought.

The circulation and availability of potentially conflicting information in public spaces is akin to foreign items that would cause a person's immune system to respond. The mopping up of these items is what a functioning immune system does on a daily basis, and it is these regular challenges that strengthen the immune system. By contrast, an immune system that is not exposed to pathogens becomes weakened. In the same way, the community needs to be able to compare and evaluate information for themselves, and to do their own active critical thinking without being babied by the state.

For the sake of our communities and the national interest in addition to the concerns listed earlier, **this Bill should be either amended to provide public safeguards or discarded in its entirety**.

Regards,

THE PEOPLE'S REVOLUTION

Adam of the HEATON family