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Department of Infrastructure, Transport,
Regional Development, Communications and the Arts

Via email: information.integrity@infrastructure.gov.au

To Whom it May Concern

Submission on the Exposure Draft of the Communications Legislation Amendment (Combating Misinformation And Disinformation) Bill 2023

Catholic Education Tasmania (CET) welcomes the opportunity to provide a submission in response to the Exposure Draft of the *Communications Legislation Amendment (Combating Misinformation And Disinformation) Bill 2023*.

CET directly operates 35 Catholic schools in Tasmania and has oversight of 3 other Catholic schools in Tasmania, those being operated by Edmund Rice Education Australia and the Salesians of Don Bosco.

There are approximately 16,500 students enrolled in Tasmanian Catholic schools for the school year 2023. Approximately 3,500 Tasmanians are employed (full and part-time) in our organisation.

Accordingly, please find attached a submission in response to the Exposure Draft of the *Communications Legislation Amendment (Combating Misinformation And Disinformation) Bill 2023*.

Yours in Christ



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Attachment: Catholic Education Tasmania - Submission on the Exposure Draft of the Communications Legislation Amendment (Combating Misinformation And Disinformation) Bill 2023

Catholic Education Tasmania

Submission on the Exposure Draft of the Communications Legislation Amendment (Combating Misinformation And Disinformation) Bill 2023

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1 Introduction

Catholic Education Tasmania (CET) welcomes the opportunity to provide a submission in response to the Exposure Draft of the *Communications Legislation Amendment (Combating Misinformation And Disinformation) Bill 2023 (Bill)*.

CET directly operates 35 Catholic schools in Tasmania, and has oversight of 3 other Catholic schools in Tasmania, those being operated by Edmund Rice Education Australia and the Salesians of Don Bosco. There are approximately 16,500 students enrolled in Tasmanian Catholic schools for the school year 2023. Approximately 3,500 Tasmanians are employed (full and part-time) in our organisation.

2 Overview

“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”.

United Nations Universal Declaration of Human Rights

While there is no doubt that deliberate spreading of disinformation can be harmful to individuals and society as a whole, it is fundamental to a free and functional democracy that there is freedom of speech.

CET has serious concerns that the Bill will unduly impact on the legitimate exercise of free speech.

We hold these concerns notwithstanding the exemptions contained for educational institutions, which are addressed specifically later in this submission.

Our objection stems from our concerns about the impact the bill would have in general on the exercise of the fundamental freedom of expression, as well as the impact on the important and associated freedom of religion.

In CET schools robust, truthful and respectful debate and discussion is strongly

encouraged. We aim to equip our students to think critically. This includes the ability to assess different arguments and to make judgements about what is true and what is false. It involves being exposed to a wide variety of ideas and opinions, and subjecting them to the objective judgement of faith, reason and natural law. In teaching the scientific method, our students are encouraged to test hypotheses and expose them to rigorous scrutiny. They learn that history has shown that some assertions or conclusions which are considered to be false by most in society are later proven to be true, and that the reverse has also occurred on many occasions, including in recent memory.

Further, we believe in the importance of the free expression of views whether they are popular or unpopular. The Catholic Church throughout the centuries has articulated its beliefs about the world in which we live and the nature of truth and the transcendent. Sometimes these views are unpopular.

Accordingly, we are concerned that due to the broad nature of the Bill and the manner in which 'harm' is widely construed in some parts of society, that views that are merely unpopular could be deemed to be harmful and ultimately, censored. The incentive structure of the proposed Bill will be for digital operators to suppress information, if in doubt. It would not be fanciful to envisage a scenario where these digital operators choose to censor views which are merely unpopular - all under the guise of complying with the law against misinformation.

Freedom of Religion

Catholic Education Tasmania (CET) is a formal, legal and legitimate outreach of the Catholic Church. We have a strong commitment to the fundamental right of all people to freedom of religion. Essential to freedom of religion is the freedom to express deeply held religious beliefs, including in the public square. The bill, as currently drafted, has the potential to impact on these fundamental rights.

We support and endorse the views expressed by Archbishop of Hobart Julian Porteous in his submission indicating opposition to the Bill. It is unfortunately a matter of public record that Archbishop Porteous was subject to a discrimination claim for simply expressing the Catholic Church's long-standing teachings about marriage. It is an example of where perfectly reasonable speech is deemed by some to be 'harmful' to others. Seen in this context, the Bill has the potential to act to suppress legitimate speech on the basis that individuals or digital platform operators or ACMA deem speech, *which they happen to disagree with*, to be 'harmful'.

Exemptions for Educational Institutions

CET notes that educational institutions are purportedly exempt from the operation of this Bill. While this does not change our fundamental disagreement with the Bill, and (as detailed further below) we believe this exemption does not go far enough, nevertheless, we welcome the exemption.

If the Bill is to proceed, the exemptions for education institutions must be maintained and clarified to ensure that individuals within education institutions are also exempt. There is always a risk, with the passage of such a Bill containing these exemptions, that over time the law creeps into more and more areas of speech regulation by gradually removing these exemptions as being seen to be no longer necessary or unfair.

Further, the very need for exemptions for groups such as educational institutions and government highlights the problematic nature of the Bill itself. If the proposed legislation will not do anything other than ensure that misinformation and disinformation is less prevalent on digital media, then it is reasonable to ask why government for instance would need a special exemption from the operation of the legislation.

However, if the Bill is to proceed, and re-iterating our in-principle opposition, CET would argue that in addition to the current exemptions in the Bill, exemptions should also be provided for other types of speech, including religious speech.

3 Concerns in detail

Our primary concerns about the Bill are outlined as follows:

- (a) Generally, the prospect of a statutory regime whereby a government agency is empowered to actively monitor content on the internet to determine what amounts to “*misinformation*” or “*disinformation*” that is “*reasonably likely to cause or contribute to serious harm*” speaks against a society that values freedom of expression, and one which already operates within the bounds of anti-discrimination legislation.

There are 2 key issues in this regard.

First, the Bill provides for a regulatory body, the Australian Communications and Media Authority (**ACMA**) to be invested with a coercive function, and the practical power to determine what is, and isn’t “misinformation” (as defined) on the internet, whether or not the information is on an Australian website.

The possible punishments where the Bill is breached are potentially extremely high. There appears to be limited built in ‘checks and balances’ on ACMA’s use of this power. For example, ACMA would be given the power to obtain information and documents from *any person* ACMA has a reason to believe has information or a document relevant to misinformation or disinformation on a digital platform.¹ This is obviously an exceptionally broad power. The privilege against self-incrimination is abrogated such that a person is not excused from providing documents or evidence on the basis that it might tend to incriminate them². This abrogation is tempered only in respect of *criminal proceedings* against the person³. However, many of the penalties under the Bill are civil penalties; meaning that a person may be compulsorily required to give information or evidence which could then be used against them in civil penalty proceedings.

Second, the Bill provides that content that is “*authorised by the Commonwealth or a State or a territory or a local government*” by definition *cannot* be misinformation.⁴ There appears to be no limit on how such ‘authorisation’ may be granted by a relevant government.

This application of “authority” creates an inherently uneven playing field where information, no matter how false, misleading, or otherwise objectionable, that is authorised by the state cannot fall foul of the Act. Indeed, some content may be authorised by, by one local council, but not by another creating the potential for conflicting “authority” by a local government.

¹ The Bill, clause 19.

² The Bill, clause 21 (1)

³ The Bill, clause 21 (2)

⁴ The Bill, clause 2, definition of “*excluded content for misinformation purposes*”, par (e)

- (b) The definition of “*misinformation*” in the Bill is conceptually problematic:

The Bill defines misinformation as follows:

(1) *For the purposes of this Schedule, dissemination of content using a digital service is misinformation on the digital service if:*

- (a) the content contains information that is false, misleading or deceptive; and*
- (b) the content is not excluded content for misinformation purposes; and*
- (c) the content is provided on the digital service to one or more end-users in Australia; and*
- (d) the provision of the content on the digital service is reasonably likely to cause or contribute to serious harm.*

Disinformation is then similarly defined, except that it includes a requirement for an intent to deceive or mislead.

There are several problems with this definition:

- (i) How is ACMA to decide what content contains “*information*” that is false misleading or deceptive”, as opposed to content continuing “opinions”, “comment”, “facts”, “suppositions”, or “hypotheses” (or indeed a combination of such things) which may be false or misleading?

Moreover, it is unclear how such “information” caught by the Bill would be distinguished from other content such as opinions or statements of faith, particularly in the context of the sheer volume of information available and being produced each day on the internet. It is more concerning as to how the ACMA is expected to arbitrate those matters.

- (ii) How is ACMA to decide what is “*false, misleading, or deceptive*”, without reference to some objective standard? Many statements are made that others will consider to be false or misleading. Moreover, many statements are neither clearly “false” or “true” in any truly measurable or objective sense. Many reasonable and fair statements about matters touching on religion, art or politics clearly fall into this category where large sections of the public have different and respectful views, a situation to be encouraged and nurtured in a free and democratic society. None of those domains is subject to an exemption.
- (iii) How is ACMA to determine whether such information is reasonably likely to cause or contribute to ‘serious harm’?

- (c) Though we are opposed to the Bill in principle, the definition of “*excluded content for the misinformation purposes*” provided for within the bill is too narrow to properly protect individuals within an education institution, or within other religious institutions:

Though it is certainly necessary and welcomed that “*content by or for an*

*educational institution*⁵ is excluded, the exclusions in the Bill are not sufficient to avoid the negative consequences of the Bill's regime.

In the context of CET, the exclusion for educational institutions does not appear to cover content containing views expressed by individuals within the institution, or in the case of the Trustees of the Archdiocese of Hobart (being the body that ultimately governs CET) statements made by the Archbishop to members of the Catholic school community, and the Tasmanian Catholic community more broadly. For example, it appears that this exclusion would not cover statements made by priests or by the Archbishop to parents and staff within the Tasmanian Catholic education system.

Moreover, the Bill contains no general exclusion for information published by a recognised religions in the exercise of faith.

This is contrasted with Anti-Discrimination legislation which, in all jurisdictions in Australia (state and federal), contains limited exclusions for religions, along with other legitimate exceptions around education, employment, political groups, artistic expression and the like. There are sound reasons why each of those areas is exempt from the application of anti-discrimination laws, which are generally intended to balance freedom of expression with protection of people from unlawful discrimination.

This will surely have a significant negative impact on the free expression of religion, a freedom long recognised as a key tenet of Australian society. The same can also be said in respect of political and artistic expression, given there is no corresponding exclusion in the Bill. Digital service providers will understandably seek to stifle and censor any such content to the detriment of society as a whole.

- (d) The definition of "harm" is both artificially narrow yet nebulous and open to interpretation on the basis of value judgements by ACMA, in its proposed role essentially monitoring the internet for "misinformation" and "disinformation":

Concerningly, under the Bill, what would be defined as being "harmful" is left up to ACMA to determine.

This is problematic particularly given that the Bill defines misinformation as content that is "...*reasonably likely to cause or contribute to serious harm*"⁶. This requires value judgements as the definition is not limited to content that in fact causes such harm. The Bill grants ACMA too broad a power to make that value judgement as to what might cause harm.

- (e) The concept of "disinformation" under the Bill will be essentially impossible to enforce:

Under the Bill, "disinformation" is simply content that contains "misinformation" that the "*person disseminating, or causing the dissemination of, the content intends that the content deceive another person.*"⁷

There is no explanation in the Bill, Guidance Note, or Fact Sheet as to how ACMA is intended to determine how a person disseminating content "intends" that it deceive another person. Reaching such a conclusion would ordinarily require evidence to be provided from which the inference of the

⁵ The Bill, clause 2, definition of "*excluded content for misinformation purposes*", par (d)

⁶ The Bill, Clause 7(1)(d)

⁷ The Bill, Clause 7(2)(e)

necessary intent could rationally be drawn. The person accused of doing so (or the service accused of not doing enough to prevent it) should be entitled to answer the allegation and respond to the allegation. How this is intended to be achieved by ACMA is unclear.

4 Conclusion

In consideration of all of the above, CET has specific and grave concerns about the detrimental impact of the proposed Amendment.

We appreciate that the present intention in the Amendment is to provide exemptions for educational organisations is commendable, however we must assert our view that such exemptions need to be both necessary and enduring.

We believe that the proposed *Communications Legislation Amendment* is inimical to religion in general and would impose unjust restrictions on the basic human right of freedom of speech.

In addition to this, is the sure and certain risk that certain small but vocal minorities will seek privileged status under such an Amendment, to the detriment of long-established religious and educational institutions in Australia.

CET does not support the *Communications Legislation Amendment* as it presently stands.

Yours Faithfully,

A black rectangular box redacting the signature of Dr Gerard Gaskin.

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