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Preamble

The National Civic Council thanks the Environment and Communications Legislation Committee for the opportunity to respond to the Government's *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 [Provisions]*. We note the Government has made some important clarifications and adjustments from the previous draft exposure bill.

We are keenly aware of the dangers posed by disinformation to Australian democracy; however we believe this Bill will aid disinformation operations due to the mechanisms it uses and undermine Australian democracy by creating a 'chilling effect' on the expression of speech in Australia.

Our Submission is focused on these two factors. While we have concerns for other areas highlighted in the bill, such as the granting of particular powers of data collection to a regulator without evidence of oversight, we are focusing our submission on the big issues – disinformation and democratic engagement.

About the National Civic Council

The National Civic Council (NCC) has been involved in research and analysis, public policy commentary, and community organising since the 1930s.

The NCC has been a key advocate for civil society, Australian democracy and national sovereignty since that time with an active focus on countering communist, fascist and other threats from a grassroots community level.

The NCC is proud of its work advocating for a robust, resilient, and inclusive democracy as shown by its early opposition to the White Australia Policy and support for the 1967 Referendum, as well as its opposition to efforts to prohibit the Communist Party of Australia – despite the Communist Party being a primary antagonist of the NCC.

The NCC has maintained its support of democracy activists around the world in the decades since – behind the Iron Curtain, through Tiananmen Square, and more recently in support of Hong Kong.

This long history informs the NCC's position on this Bill. This submission is the result of NCC discussions with legal, intelligence, and information warfare scholars and practitioners.

Executive Summary

- Disinformation is a serious threat to Australian democracy.
- However, the Bill presented is unlikely to effectively combat disinformation operations.
- If this Bill is adopted, disinformation operations have greater opportunities to be effective.
- While also having a chilling effect on democratic engagement and civil society.
- Better options would be to focus on boosting media literacy via civil society – not government – groups. Such methods reduce the impact of disinformation campaigns.
- And having intelligence and security services focus on revealing and disrupting disinformation operations.
- This could be further aided by creating more opportunities for non-government civil society groups to boost social resilience.

Disinformation and Democracy

Disinformation poses a serious threat to democracies because disinformation is the deliberate and intentionally selective use of narrative, facts, truth, data and other aspects of communication to support hostile political objectives. Disinformation is part of what is variously called information warfare, psychological warfare, political warfare, cognitive warfare, or entropic warfare. Contrary to popular belief, disinformation relies on either verifiable – i.e. “facts” – or non-testable – i.e. emotional appeals – elements for its success. Disinformation does not rely on lies or falsehoods, but leverage half-truths and arguable positions to achieve particular political objectives.

This poses a particular threat for democracies, because democracy relies on the free exchange and testing of ideas and policy positions to function. Democratic governance is about all citizens engaging in the process of governance via democratic institutions – such as this exact process. Democracy is not a fragile system of government; however, it relies on citizens believing in the efficacy of the process to ensure its vibrancy and impact. Democratic forms of government are based on checks and balances. They are meant to be self-correcting to ensure overall stability and opportunities for all to engage.

Disinformation operations are almost always run by entities, foreign and domestic, that are hostile to the state. They are multi-layered with multiple objectives. The common view that foreign influence operations are designed to make citizens more open to that foreign power is only partly true. This is an objective of foreign influence operations, however the more achievable objective – which can be seen overseas – is neutralising democratic states’ effectiveness to act in a timely and concerted way against sub-kinetic military and intelligence aggression.

This objective is achieved by creating and servicing multiple narratives in opposition to each other. The outcome is meant to be inertia and lack of trust between different political groups. Crucially, these narratives are all plausible. They can all be argued for by people of good will based on evidence.

A brief glance at debates within politics, the media, and the academy shows that people of good will, who are experts in their own fields, can disagree quite strongly on what particular evidence means and whether or not it matters based on their own perspective.

This is a feature of a vibrant and democratic civil society, not a bug. Such debates may not always be pleasant for those involved in them, however this process evolved as an alternative to intrastate violence and religiously and ideologically motivated civil war and revolution. Shutting down debate does not result in competing understandings disappearing. Instead, it forces them underground where they can be exploited by bad actors who seek violence and state breakdown.

Acting against disinformation operations in a democracy is therefore a nuanced art that is not open to heavy-handed responses. It is important to note that disinformation does not exist in a vacuum. It is a deliberate act by sophisticated actors seeking to use democracy against itself. Heavy-handed censorship responses – outside of actual war zones – provide those running disinformation operations with an additional avenue to act on their targets by proposing that their ‘truth’ – their narrative – is so demonstrably true that the only way to stop it is through the use of repression.

A note on misinformation is useful here. The Bill classes misinformation essentially as unintentional disinformation. In other words, it is individuals and groups repeating narratives and ‘facts’ they believe to be true without realising they are actually repeating the results of someone else’s disinformation operation. While this classification may be reasonable, it thus expands the Bill’s targeting from bad actors to anyone on the basis of their repetition of contested claims.

The way the Bill gets around this, and gets around claims of censorship, is through the mechanism it uses to police the exchange of information on digital platforms, i.e. social media. Rather than the Australian Communications and Media Authority engaging in censorship of individual posts and users, it has the platforms themselves do so, under threat of significant legal action. This shifts the onus of censorship onto the platforms themselves on the principle that these are ultimately ‘private’ media platforms that already engage in content moderation.

The problem with this is that these platforms are seen as de facto public squares. They are spaces in which individuals and groups express their views on contentious, and non-contentious, issues. Digital platforms already find content moderation to be borderline impossible due to the volume of content and the speed with which it is produced, which is intensified by the global nature of the platforms themselves. While certain content moderation – such as that of violence, child exploitation material, pornography etc – is broadly supported by the populace, the same does not apply for the moderation of ideas.

The easiest response by digital platforms will be to over-moderate and engage in more aggressive censorship. This censorship will be seen as the result of government decisions, especially with the lack of an effective appeals process. There are no consequences for the platforms if they over-moderate content, while there are heavy consequences if they fail to engage in adequate censorship, making heavy censorship more likely.

This has two likely consequences. The first is that it increases the effectiveness of disinformation operations that are geared around damaging trust in democracy as it gives those running such operations additional arguments for the significance of their arguments. The second is that it degrades democracy itself. It risks ‘destroying democracy to protect it’.

The effectiveness of democracy relies on every individual feeling that they could engage in the democratic process. Unlike Stalinist models of ‘democratic centralism’ which commit all members to courses of action once a vote has been taken, liberal democracies rely on citizens always having freedom of expression – not just at the ballot box. The point of liberal democracy as a form of government is that it is meant to be continually responsive to circumstances and citizens, at least in terms of responding to their questions and concerns.

Like it or hate it, social media has become a de facto public square for individuals and groups to express these concerns and ask questions. We are emphatically not saying it is a perfect medium, but neither is the public square itself. We find many views expressed to be offensive, mistaken, or dangerous. There are no guarantees that people promoting views or policies are sincere or well-informed. However, this is a feature of human existence. People disagree over principles and policy at every level and in every way. Restricting this free exchange of ideas can only result in people feeling disempowered and opening them up to manipulation by genuinely bad actors.

If citizens feel disempowered, then democracy becomes less effective, and people will turn more to alternative micro-communities where they feel they can trust and respect each other. The result is a further breakdown in civil society, an increasing lack of trust in civil institutions, and greater difficulty in working together to achieve meaningful change for the better. Such an outcome feeds into the objectives of disinformation operations, making this Bill counterproductive.

This outcome would not be felt straight away and may never be seen in its entirety. However, it does not need to be. We are already seeing the outcomes of disinformation operations and heavy-handed attempts to respond to them. We can already see the breakdown in social and institutional resilience that is enabling disinformation and Bills such as this that are the result. We do not need to fall into the trap set by the disinformation actors to respond to it.

What is to be done?

The NCC does not want this submission to be an entirely negative critique. We are keenly aware of the dangers of disinformation due to our history and commitment to democracy. Nonetheless, we are aware that the thinking on countering disinformation is a rapidly evolving space for both practitioners and academics. Our general view is that civil society and liberal democracy are good things, and we need more of them. Furthermore, the concepts and practices of liberal democracy and civil society contain within themselves the answers to this conundrum.

Therefore, we propose greater engagement with the public from the government via civil society groups and educational campaigns. We think that providing more opportunities for people to express their views and to see those views evaluated in a respectful way will be much more effective than restricting their ability, or perceived ability, to express themselves. This does not have to be via direct funding and government sponsorships – which can be counterproductive, as this once again establishes an opposition between the governed and the governing – but could also be stimulated with tax incentives and greater opportunities for community forums. These approaches could include greater, but also more sophisticated, educational programs focused on understanding and assessing how media works and related areas regarding information literacy.

An area which is largely beyond the scope of ACMA is a greater targeting of disinformation actors via the intelligence and security services, focusing on revealing and disrupting their operations and methods. There is also potential here for more independent actors using open-source intelligence to verify and investigate various information campaigns, as can be seen with the current conflict in Ukraine.

Conclusion

There is no silver bullet that will take out disinformation. However, some actions, like those proposed by this Bill, are more likely to increase the impact and effectiveness of disinformation. We do not think it is worth doing something for the sake of being seen to do something with such a critical issue – especially when there are possible actions which will have a more beneficial effect in the long run.