SUBMISSION:

Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024

AUSTRALIAN CHRISTIAN LOBBY

About Australian Christian Lobby

Australian Christian Lobby's vision is to see Christian principles and ethics influencing the way we are governed, do business, and relate to each other as a community. ACL seeks to see a compassionate, just and moral society through having the public contributions of the Christian faith reflected in the political life of the nation.

With around 250,000 supporters, ACL facilitates professional engagement and dialogue between the Christian constituency and government, allowing the voice of Christians to be heard in the public square. ACL is neither party-partisan nor denominationally aligned. ACL representatives bring a Christian perspective to policy makers in Federal, State and Territory Parliaments.

acl.org.au

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600
By email: ec.sen@aph.gov.au

1 October 2024

Dear Sir/Madam,

On behalf of the Australian Christian Lobby (**ACL**), I welcome the opportunity to make this submission in response to the ***Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024***. Our strong recommendation is that this Bill should be rejected in its entirety.

The ACL would be very willing to meet with the Committee to discuss this submission.

Yours Sincerely,

Michelle Pearse
CEO, Australian Christian Lobby

INTRODUCTION: The Bill is flawed in principle as to damage Australian society, and the functioning of Australian democracy

The premise of this legislation is that power to determine the accuracy or truth of information and to distinguish it from "misinformation" can safely be entrusted to government, an independent statutory authority, digital platforms and/or regulated media outlets. That should be anathema to anyone who cherishes the freedoms that underpin liberal democracy. Australians must be free to access information and engage in the public discourse that shapes political opinion. It is essential that Australians should be able to express personal views, to critique the evidence and arguments of others and to act in accordance with their individual conscience and personal beliefs. This is vital as a matter of personal freedom and for the proper functioning of democratic institutions.

ACL is acutely aware that political opposition to Christian perspectives on certain issues from certain quarters is increasingly intense. It is clear the *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024* ("the Bill") could be used to silence Christians on many issues where Biblical teaching contradicts the doctrines of powerful secularist lobby groups. Our defence of the freedom to express beliefs and opinions is not limited to a concern that Christians must be free to voice opinions consistent with their faith and to bring a Christian perspective to bear on political issues. This same freedom should be the birthright of all Australians; all should be free to share their views, and access the views and information of others. This freedom is so basic to western democracy that it is normally taken for granted, until it is threatened, as it is now by this Bill. In a pluralist society, it is accepted that different people will come to different conclusions about what is true and good and what is false, deceptive or harmful. Trusting that the truth will eventually prevail, and do so through mechanisms that allow information to be tested, the ACL strongly affirms the need for open dialogue and free access to information (with very narrow exceptions that are closely prescribed) that enable people to come to their own conclusions.

Freedom to express opinion, and share information, is crucial to holding abusive power to account. Government transparency and a willingness to be held accountable is an essential prerequisite for the trust that enables democracy in Australia. In proposing to limit that transparency to the extent proposed, this Bill undermines the necessary preconditions for a functioning democracy in a way that is unsupportable. ACL rejects the proposals put forth in the Bill for their sheer excess, their uncertainty, their propensity to official abuse, and the power they have to control official narratives and drown out opposition. That in itself is alarming.

It is not possible, given the impractical constraints imposed (particularly in view of the timetable set by the government and the complexity and length of the Bill), to do justice to the many, profound and strongly-felt objections we would like to raise. Here is a summary of just some of them:

1. The Bill proposes a solution that is not justifiable on human rights grounds, is not proportionate or necessary to answer the problem identified. The justifications given for the restrictions on rights in the Bill are implausible and discrediting.
2. The Bill will license the violation of freedom of expression, privacy and other fundamental rights so extensively, and in a way that has no comparison in other jurisdictions, that it should shock Australians that its government is proposing it, and pressing it upon Australians right now in a way that allows no practical opportunity for them to respond. The manner in which the Bill is being advanced is in keeping with the overreach of the Bill itself.

3. The definitions of “misinformation” and “harm” are excessive; the exemptions are inadequate and unworkable. There has been no material improvement to the Bill in response to severe backlash from the earlier consultation. Any claim that substantive issues, such as the freedoms of religion and expression, are improved upon, suggest governmental reliance on the gullibility of Australians that is misplaced. The Bill is not remedied in any way that matters in this new iteration.
4. The Bill gives the government, Big Tech and incumbent news media power that needs curtailment rather than expansion.
5. The human rights analysis that supposedly supports this legislation is defective.

These are discussed in turn.

1) The Bill proposes a solution that is disproportionate to the identified problem

According to the rationale provided in Minister Rowland’s second reading speech, the Bill has been developed to answer the problems of “seriously harmful mis- and disinformation [which] poses a significant challenge to the functioning of societies around the world.”

The Minister acknowledged the fundamental importance of “the free flow of information to inform public debate, and the integrity, diversity and reliability of information” as “fundamental to our democratic way of life”[1], but then pointed to the recent stabbing attacks in Bondi Junction and in Southport, UK, to “illustrate the need for digital platforms to do more to prevent and respond to” the spread of mis- and disinformation. Minister Rowland cited two reports – the Digital News Report: Australia 2024, and an Australian Media Literacy Alliance report on adult media literacy, released in August 2024 – to explain that 75%–80% of survey respondents “want the spread of misinformation in Australia to be addressed.” This rationale assumes that a) the censorship of stabbings by authorities concerned to control the reaction of the public to this news is an uncontroversial proposition and b) that the evidence of these two studies justifies the contents of this Bill. Both of these contentions are clearly open to debate.

Leaving those questions aside, however, the implication that either of these studies prompted the development of the current Bill is, with respect, incorrect. The initial motivations for this Bill are found in concerns that “misinformation” disseminated online in the context of the pandemic might undermine government messaging. These concerns gave new urgency and focus to an issue that had previously assumed a lower order of importance. This background is explained in the Australian Communications and Media Authority’s (ACMA’s), June 2021: *A report to government on the adequacy of digital platforms’ disinformation and news quality measures*.[2] This report drew on mixed-method research conducted by the News and Media Research Centre at the University of Canberra, published in 2022 as *COVID-19: Australian news and misinformation longitudinal study*.[3]

This study has not aged well. As better information has emerged, it is clear that the basic classifications of “truth” and “falsehood” used by the researchers to designate some opinions as

---

[1] Michelle Rowland, Second Reading Speech, *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024*, House of Representatives Hansard, Federal Parliament of Australia, Thursday, 12 September 2024, 7.

[2] *A report to government on the adequacy of digital platforms’ disinformation and news quality measures*, Australian Communications and Media Authority, June 2021

[3] COVID-19: Australian news and misinformation longitudinal study, NMRC, University of Canberra, 21 March 2022.

"misinformation" were incorrect.[4] Far from demonstrating the need to suppress "misinformation", this study demonstrates the dangers of stifling information while knowledge is still developing. As Graham Young, Director of the *Australian Institute for* Progress, explained recently, "misinformation" may simply be a hypothesis that is wrong, or only partially correct. Testing hypotheses and discarding or correcting them is how we learn.[5] Stifling this learning process means that knowledge does not progress beyond what the government says is true at any given time. Neither the government, nor an unelected "expert" class, is qualified to posture as the arbiter of all truth.

As Dr Nick Coatsworth, who served as deputy Chief Medical Officer and Senior Medical Advisor on Covid during 2020 and 2021, has expressed so well:

> *"It's quite astonishing to me that after the pandemic, when we are all becoming acutely aware of 'facts' that changed over the course of the pandemic (yes, including the nature of airborne spread, amongst many others), that we would find our parliament debating a Bill where any number of legitimate concerns about public health policy could be branded misinformation by the government or the scientific orthodoxy of the moment.*
>
> *Misinformation causes harm. The weaponisation of misinformation as a term to shut down debate causes even greater harm. This bill does the latter.'"*[6]

Any belief on the part of the government that Australians are calling for new laws to combat "misinformation" is abundantly contradicted by the 2,265 submissions and over 20,000 comments, the overwhelming majority of which were very, very negative, received in response to the 2023 exposure draft.[7]

The Bill proposes limiting free speech on a great number of topics, far beyond debate about COVID, or different aspects of the government's response to the pandemic. The incursions on free speech without clearly defined limits might reach into almost every aspect of public discourse and, even if this were not so, they would be objectionable in principle as an illegitimate use of government power. No government that asks for such powers should expect to retain the trust of its citizenry. Many will find the inference insulting that citizens cannot be trusted to exercise their own critical thinking skills, such that a benevolent government must intervene to keep them "safe".

2) The Bill violates freedom of expression

"Freedom of expression" is the term used at international law to refer to "the right to hold opinions without interference" including "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers". It is reflected in treaty form, binding on Australia, in article 19 of the International Covenant on Civil and Political Rights (ICCPR).[8]

---

[4] See the comments of Graham Young, Director of non-partisan think tank the Australian Institute for Progress, quoted in Rebekah Barnett, "'Shoddy attempt at censorship': New misinformation laws still unworkable despite revisions", *Canberra Daily*, 13 September 2024.
[5] Ibid.
[6] Dr. Nick Coatsworth, @nick_coatsworth, X, 24 September 2024.
[7] Nell Fraser, "Misinformation Legislation", FlagPost: Media regulation - what to expect in 2024, Communications and Media, Parliament of Australia, 25 March 2024.
[8] Article 19

In her second reading speech, Minster Rowland assured the Parliament (and the Australian public) that care had been taken to preserve this freedom:

> *"To ensure it strikes the right balance between upholding freedom of expression and combatting mis- and disinformation, the bill has carefully calibrated definitions of serious harms that align with Australia's international human rights obligations."*[9]

With respect, this statement is highly misleading. The Bill contrasts unfavourably with the careful attention given to that freedom in the previous government's regulation of digital through the 2021 voluntary code of conduct devised by industry stakeholders (DIGI) which explicitly referred to international law standards of protection for that freedom.

Rather than identifying legitimate areas where censorship – observing the need for proportionality and necessity as established in international law, and carefully ensuring that the intervention is the least restrictive method of achieving the stated purpose of the intervention – the Bill establishes potentially limitless powers of censorship, tethered to vague and subjective definitions of "serious harm" (which defines aspects of "serious harm" merely in terms of "harm"!) from which identified items are then excluded. The exclusions are:

- *"content that would reasonably be regarded as parody or satire";*
- *"professional news content" [regulated by other codes]; and*
- *"reasonable dissemination of content for any academic, artistic, scientific or religious purpose."*[10]

By comparison with the scope for freedom of expression provided by the ICCPR, these exceptions are miserly. They rely on nebulous, unstable and debatable interpretations of what is "reasonable" – an increasingly uncertain benchmark susceptible to different interpretation depending on ideological viewpoint. The Bill proposes creating a limited set of "rights holders" who can claim "academic, artistic, scientific or religious" reasons for expressing an opinion. It is wrong in principle for so foundational a right as freedom of expression to be inverted legislatively as if it existed somehow by governmental concession, in a narrow exception from a smothering ban on the freedom. The freedom should be presumed. It is the restriction on the freedom that requires strict justification (not the exercise of the freedom). That is how freedom of expression works. The burden rests with the government to justify any and all restrictions on it, and it has barely attempted to do so in connection with this Bill.

The very proposition should be rejected that the freedom does not belong, as of right, to all Australians. The right itself demands that the government must justify restrictions on the freedom

---

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
(a) For respect of the rights or reputations of others;
(b) For the protection of national security or of public order (ordre public), or of public health or morals.

[9] Rowland, op. cit., 9.

[10] *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024*, s.16(1)(a)-(c).

according to the principles laid down by international law. The Declaration of the Human Rights and the ICCPR, which defines the legal scope of these rights, recognises fundamental human rights as pre-existent, inherent in all humans. They are not conferred by international human rights treaties and they are not gifted by the State. Rather, having ratified the ICCPR, the Australian government is bound to ensure the enjoyment of the full range of human rights to all under its jurisdiction. The circumstances in which rights may be limited are set out in applicable human rights treaties, especially the ICCPR, as explained more fully e.g. in the Siracusa Principleson the limitation and derogation provisions in the ICCPR. The Siracusa Principles are a well known reference point for the government, so it is worth considering them in more detail here.

The Siracusa principles have not been observed

In preparing this Bill the government has paid inadequate substantive regard to paragraphs 2 to 12 of the Siracusa Principles (reproduced in bold below):

2. The scope of a limitation referred to in the Covenant shall not be interpreted so as to jeopardize the essence of the right concerned.

Though Australia is bound to secure freedom of expression for everyone under article 19 (this includes access to information, as well as self-expression), current legal protections are inadequate. “Free speech” exists mainly in the absence of regulation that limits it. This Bill severely encroaches on the little scope for “free speech” that currently exists.

Where the Bill and explanatory documents refer to “freedom of expression” there is no acknowledgment that the freedom is not secured in law in Australia. Such references therefore serve to mislead. If freedom of expression were protected as it should be in Australian law, it would operate as a restraint on the excesses of the Bill. The essential protective mechanism supporting freedom of expression (in the ICCPR sense) does not exist in Australia, and the Bill is therefore not comparable with misinformation measures in other jurisdictions.

There is a crucial difference between this Bill and equivalent “misinformation” measures in jurisdictions like the EU, for example. EU measures are explicit in affirming that principles of freedom of expression, as understood under the European Convention, are to be upheld. This is mentioned repeatedly in the *Strengthened Code of Practice on Disinformation 2022* (the EU Code).[11] In order to achieve the same result as the EU Code, in upholding freedom of expression, the Bill would have to specify in some way that it explicitly preserves protection equivalent to article 19 of the ICCPR. Since it does not do this, and cannot do so without instantiating article 19 in some way in law, the Bill cannot pretend to uphold freedom of expression, in the way the ICCPR demands (or that is equivalent to the EU Code).

Nothing at all in the Bill legally requires freedom of expression to be respected, whether in the regulatory scheme it establishes, in a code, in any ACMA rules, in ACMA oversight, or anywhere else. The entire thrust of the Bill is about establishing a powerful framework for eroding the little remaining scope for free speech that exists in Australia. The Statement of Compatibility with Human Rights, and any guidance officially issued, should freely admit this rather than suggest that certain limited exclusions in the Bill bring is in compliance with the freedom of expression, because:

- such exclusions are no substitute for preserving freedom of expression;

[11] The European Commission’s *Communication on the European Democracy Action Plan* informed the EU *Strengthened Code of Practice on Disinformation 2022*.

- they put anyone relying on an exclusion to proof that they fall within its terms;
- it is wrong in principle to reverse the onus of proof when it is for the government to provide the necessary justification (which it has failed to do so far) for every restriction on freedom of expression.

3. All limitation clauses shall be interpreted strictly and in favor of the rights at issue.

4. All limitations shall be interpreted in the light and context of the particular right concerned.

5. All limitations on a right recognized by the Covenant shall be provided for by law and be compatible with the objects and purposes of the Covenant.

There is nothing in the Bill to suggest it will operate in favour of the rights at issue. The opposite, rights denial, is powerfully operative and self-evident.

This is a Bill which purports to defend democracy, and democratic freedoms. It is a fundamental requirement of article 19 and other provisions of the ICCPR that restrictions on freedoms are "provided by law". The scope for restriction in the Bill is so great, and vague, as not to satisfy basic prerequisites of certainty required by this condition. Also, the crucial question of balance in the law, relegated to the code, and ACMA's rule-making, is concealed, in the sense of not being visible and transparent in this Bill. The restrictions that occur within the daily, large-scale fact-checking and other content clearing procedures of the Big Tech companies are not clear, are not accessible to the public, and there is no effective public accountability for over-censorship.

The Bill empowers, incentives and rewards over-censorship and offers nothing in restraint of it.

6. No limitation referred to in the Covenant shall be applied for any purpose other than that for which it has been prescribed.

7. No limitation shall be applied in an arbitrary manner.

The Bill places a stranglehold on access to information, as well as expression, by ordinary Australians in their day-to-day use of social media, through strict regulation of digital platforms by the media watchdog, the Australian Communications and Media Authority (ACMA). The Bill relies on an exaggerated and unclear harm narrative, which lends itself to arbitrary application.

8. Every limitation imposed shall be subject to the possibility of challenge to and remedy against its abusive application.

9. No limitation on a right recognized by the Covenant shall discriminate contrary to Article 2, paragraph 1.

There has been a generalised problem of bias on the part of digital platforms in censoring conservative traffic or downgrading it from view. This warrants regulation, but this Bill offers no answer to the problem. Rather, this Bill makes matters worse by incentivising digital platforms (by exposure to massive fines) to filter out an excessive range of content, providing a further opportunity for platforms to put a covert thumb on the scales of Australian political discourse. The impact of the Bill would be discriminatory, in light of the established political bias shown by digital platforms. The e-Safety Commissioner is also shown to exhibit bias in recent litigation against X-Corp, over the take-down notices concerning video coverage of the attack on Bishop Mar Mari Emmanuel and posts made on X by Billboard Chris, a Canadian campaigner, concerning an Australian individual named Teddy Cook.

10. Whenever a limitation is required in the terms of the Covenant to be "necessary," this term implies that the limitation: (a) is based on one of the grounds justifying limitations recognized by the relevant article of the Covenant; (b) responds to a pressing public or social need; (c) pursues a legitimate aim; and (d) is proportionate to that aim. Any assessment as to the necessity of a limitation shall be made on objective considerations. II. In applying a limitation, a state shall use no more restrictive means than are required for the achievement of the purpose of the limitation.

The limitation clause for the freedom of expression article 19 requires that restrictions on the right "shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals." The operative requirement is for restriction to be "necessary". The Explanatory Memorandum does not explain why this Bill – and the ensuing restrictions – are necessary, including why the existing protective legal mechansims are inadequate (identified below under "The human rights analysis is incorrect"). If any further protection is needed, why?; and why is this the most appropriate model? It is like no other in a modern democracy.

To meet the limitation requirements of article 19.3 (according to General Comment 34 by the UN Human Rights Committee,[12] in line with the Siracusa Principles):

- Restrictions on freedom of expression have to be justified as "necessary" for a legitimate purpose;
- Restrictions must not be overbroad. They must be the least intrusive means to achieve their protective function; they must be proportionate to the interest to be protected, both in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law;
- The government must demonstrate in specific and individualised fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.

No explanation had been provided in any human rights analysis that satisfies these requirements.

12. The burden of justifying a limitation upon a right guaranteed under the Covenant lies with the state.

See above comments on how the Bill is ill-conceived, on the presupposition that free expression, access to information, and the freedoms on which our democratic society is based, are bestowed by the state.

To align with the ICCPR (and Siracusa principles), the law restricting a right itself must be ICCPR-compliant. The Bill is not remotely compliant.

15. No limitation on the exercise of human rights shall be made unless provided for by national law of general application *which is consistent with the Covenant* and is in force at the time the limitation is applied.

16. Laws imposing limitations on the exercise of human rights *shall not be arbitrary or unreasonable*.

17. Legal rules limiting the exercise of human rights *shall be clear and accessible to everyone*.

[12] CCPR/*C/GC/34.*

18. Adequate safeguards and effective remedies shall be provided by law against illegal or _abusive imposition or application of limitations on human rights_.

The emphasis added to the above quoted text illustrates just some areas where this Bill is out-of-step with basic human rights principles. The restrictions on freedom of expression under the Bill are extensive and unjustifiable. They are an inversion of Australia's obligation to guarantee freedom of expression (article 2 of the ICCPR). They are unreasonable, vague and unclear. They are an abrogation of the obligation to provide adequate safeguards and effective remedies by law against abusive imposition or application of limitations on that freedom. They should expose the government to claims for remedies by abusive imposition or application of limitations.

Further observations on limitation principles

The Explanatory Memorandum also fails to engage with the following clear guidance from the UN Secretary-General in August 2022, on countering disinformation:[13]

- "State responses to disinformation must themselves avoid infringing on rights, including the right to freedom of opinion and expression."
- "responses to the spread of disinformation should comply with international human rights law and promote, protect and respect the right of individuals to freedom of expression, including the freedom to seek, receive and impart information."
- "State efforts to address the impacts of disinformation should avoid approaches that impose an undue burden on the freedom of expression or are susceptible to politicized implementation. Not all inaccurate information is harmful, and only some harms – such as those that in fact implicate public health, electoral processes or national security – may warrant State intervention. Even when there is a legitimate public interest purpose, the risks inherent in the regulation of expression require a carefully tailored approach that complies with the requirements of legality, necessity and proportionality under human rights law."
- "States bear the primary responsibility to counter disinformation by respecting, protecting and fulfilling the rights to freedom of opinion and expression, to privacy and to public participation."
- "To be effective in countering disinformation, responses need to be multifaceted and context-specific, and should be grounded in respect for the right to freedom of expression."

The Secretary-General recommended that States:

- "Recognize that a multifaceted approach anchored in the protection of and respect for human rights, in particular the right to freedom of expression, is indispensable for combating disinformation."
- "Invest in meaningful, inclusive and safe participation at all levels, from local to global, and respect the rights to freedom of opinion and expression, to association and to peaceful assembly, in recognition of the role of community engagement and civil society involvement in enhancing societies' resilience to polarization."
- "States should adhere to international human rights principles when countering disinformation and ensure that any restrictions on the right to freedom of expression are

[13] Report of the Secretary-General, Countering disinformation for the promotion and protection of human rights and fundamental freedoms, A/77/287, 12 August 2022, paras 10, 11, 42, 56, 57, 60.

provided for by law, serve a recognized legitimate interest, and are necessary and proportionate to protect that interest."

The Bill fails to heed any of these serious appeals.

3) The definitions of "misinformation" and "harm" are too broad; the exemptions are inadequate and unworkable

The Bill will empower regulation of two types of online information, "misinformation" and "disinformation". A differentiating feature between these terms is whether there is an intention to cause harm:

- "Misinformation" is content that is considered "reasonably verifiable as false, misleading or deceptive", which regardless of intention is reasonably likely to cause or contribute to serious *harm*.
- "Disinformation" is a subset of misinformation, that is disseminated deliberately or with an intent to deceive or cause serious *harm*.

The Bill is predicated on a broad conception of "harm". "Harm" includes the following:

- vilification of a group in Australian society *distinguished by* (not even on the basis of) ethnicity, nationality, race, gender, sexual orientation, age, religion or physical or mental disability". There is no problem with the Bill addressing serious harm caused, for example, by incitement to commit *hate crimes* (the example given in the "Guidance note" on the Bill, published by the Government in June 2023). That is the criminal standard in equivalent EU measures against "hate speech" and "hate crime". This Bill is completely different in its much wider application, beyond such extreme "hate speech" and "hate crime" (already prohibited in Australian criminal law), and reaching to vilification (often loosely termed "hate speech"), which for example in different Australian jurisdictions prohibits speech which "offends". Given the uncertainly of the terminology it could even go beyond that. The Bill is so extensive in removing content at source that it eliminates even the possibility that vilification laws can operate to test whether content should be excluded by the operation of those laws.

- "harm to the health of Australians" could foreseeably prevent open discussion e.g. on gender transitioning, challenging the "affirmation-only" model in light of available science and reporting the findings of the Cass inquiry in the UK. Any online public debate criticising or challenging the preferred narrative (even if not emanating directly from the government) is liable to censorship. The same goes for comments questioning health advice from the chief medical officer and other officials. Public discussion on the inappropriateness of any health measures could similarly be shut down.

"Harm" also means any of the following, which are capable of politicised application, to advance particular ideological objectives:

- harm to the operation or integrity of an Australian electoral process;
- harm to public health in Australia;
- vilification of a group in Australian society distinguished by race, religion, sex, sexual orientation, gender identity, intersex status, disability, nationality or national or ethnic origin, or vilification of an individual because of a belief that the individual is a member of such a group;

- imminent damage to critical infrastructure or disruption of emergency services in Australia
- imminent harm to the Australian economy.[14]

The claim is made that the legislation will capture only "[reasonably] verifiably false, misleading or deceptive content disseminated on digital communications platforms will cause or contribute to one of these types of harm" and that "these harms align with the purposes for which international human rights law allows restrictions to be placed on the freedom of expression."[15] With respect, and for reasons stated above under the heading "Siracusa principles", these claims might be described as "[reasonably] verifiably false". It is not immediately clear which subjects would *not* be open to curation by government or digital platforms; the justification for intervention is not tethered to any of the requirements about necessity and proportionality that would be required as a first step.

It is true that s.16(1) of the Bill lists the following as excluded from the definition of "misinformation":

- "content that could reasonably be regarded as parody or satire"
- professional news content;
- "reasonable dissemination of content for any academic, artistic, scientific or religious purpose".

The Explanatory Memorandum elaborates on the last of these as follows:

> *"Dissemination that might be considered to be for an academic, artistic, scientific or religious purpose (putting aside the question of 'reasonableness') could include:*
>
> - *informed commentary by an academic on a matter relevant to their expertise, for example, commentary by a legal academic regarding a recent judicial decision or academic publication in their field*
> - *a post by a researcher sharing the results of a scientific study, for the benefit of others working in the same field*
> - *a post by a religious leader, promoting or explaining religious practices or doctrine.*
>
> *For the purposes of paragraph 16(1)(c), whether the dissemination of content is 'reasonable' dissemination for an academic, artistic, scientific or religious purpose is intended to be an objective test which will be informed by contextual factors.*
>
> *It is intended that the reasonableness standard in paragraph 16(1)(c) be interpreted similarly to the way in which Australian courts have considered the standard of reasonableness for the purposes of section 18D of the Racial Discrimination Act 1975. In relation to section 18D, in the Federal Court of Australia, French J in Bropho v Human Rights and Equal Opportunity Commission (2004) said that 'a thing is done reasonably in one of the protected activities in … s 18D [including the distribution of an artistic work, or a statement made for any genuine academic, artistic or scientific purpose] if it bears a rational relationship to that activity and is not disproportionate to what is necessary to carry it out'. French J said that the test 'imports an objective assessment', which 'means a*

[14] Explanatory Memorandum, 6.
[15] Ibid.

> *judgment independent of that which the actor thinks is reasonable'. Thus, whether the dissemination would be 'reasonable' would depend on contextual factors and the circumstances of the dissemination."*[16]

This is an extravagantly onerous standard to apply to the free speech of Australians. There is simply no justification for it. Speech generally should be unrestricted, but for narrow, carefully-confined limitations that are necessary and proportionate to the objective of the limitation.

This Bill creates broad grounds for suppression and narrow exemptions. The burden of proof then rests with the content creator/sharer to demonstrate they have a legitimate academic, artistic, scientific or religious justification for their message, to standards that might be accepted by a court. The effect is to create two tiers of freedom where "rights holders" (professional journalists, artists, scientists, academics and religious people) enjoy – subject to restrictions – greater freedom of speech than "non rights holders" who have no recourse if their views offend the faceless arbiter of what is "reasonable". Would religious views in general be exempt from restriction, or only the views of professional religious people? Would religious views require textual authority to be demonstrated as "reasonable"? If so, why? If not, why not when other non-religious views (also not grounded in textual authority) could be subject to restriction? How are scientists, academics, artists, religious people and even professional journalists to form educated opinions if the normal diversity of information and opinion from which they may draw has been restricted?

4) The Bill gives too much power to Big Tech and to incumbent news media

Regrettably, events of the last few years have demonstrated that Australians cannot trust the government, digital platforms, third party interests or mainstream media to respect the rights of freedom of information and freedom of expression that belong to every citizen of a free country. Some of the events that have eroded public trust include:

- The Department of Home Affair's abuse of anti-terrorist powers to suppress information that was not illegal during the pandemic. This behaviour, was subsequently exposed by Senator Alex Antic in what became known as "the Australian Twitter Files".[17] Much of the content censored as dangerous "misinformation" was later demonstrated to be correct.[18]
- The Australian government has been collaborating at an international level with a global effort, led by the World Health Organisation, to control "the infodemic", supressing information that conflicted with preferred messaging about the pandemic management.[19]
- Formerly trusted Australian news media – including the government-funded ABC and SBS – joined the Trusted News Initiative, which enables mainstream media organisations from around the globe to collaborate in curating the information market.[20]
- RMIT FactLab's selective suppression (in collaboration with Meta) of opinion not favourable to the "Yes" campaign in the recent Voice referendum was exposed by citizen journalists and

---

[16] Explanatory Memorandum, 63.
[17] Senator Alex Antic, @SenatorAntic, X, 22 July 2023.
[18] Chris Kenny, "Banned Covid posts 'totally factual'", *The Weekend Australian*, 20-21 July 2023.
[19] "Cross-Regional Statement on "Infodemic" in the Context of COVID-19", United States Mission to the United Nations, 12 June 2020.
[20] Trusted News Initiative [website], BBC. Accessed 17/09/24.

later, more fully, by Sky News.[21] This same scandal later embroiled the ABC, which – had also, for a period of seven years, been using RMIT Factlab's services.[22]

- Prime Minister Anthony Albanese openly acknowledged to the press that photoshopped memes featuring himself had been censored as part of a successful effort to combat "misinformation".[23]
- The fact that the eSafety Commissioner has been issuing an unknown number of "take down" requests to digital platforms came to light following Elon Musk's purchase of Twitter (now X.corp). Where previously, digital platforms had silently complied with these requests, X began alerting end users to the fact that a "take down" request had been made.
    - Posts critical of gender ideology or concerned for the sexualisation of children (posted by, for example, @Billboard Chris, @Celineagainstthemachine and Jasmine Sussex) were identified as "cyber abuse" by the eSafety Commissioner, giving rise to concern that public discourse was being selectively curated on ideological grounds to suppress particular viewpoints, against the public interest.[24]
    - The Free Speech Union of Australia provided a tool for individuals to submit Freedom of Information requests if they were concerned that their accounts were being surveilled by the eSafety Commissioner and many found that they were.[25]
    - It came to public attention that the eSafety Commissioner had ordered digital service providers to block 65 nominated urls in the wake of the stabbings of Mar Mari Emmanuel and, separately, of shoppers at Bondi Junction.[26]

Given the myriad ways in which information is, even without the new powers proposed by this Bill, subject to selective suppression in ways that are not always visible, there is no comfort in the assurance offered by the Explanatory Memorandum that the proposed law:

> *"does not provide the ACMA with powers to directly regulate content on digital communications platforms itself. Nor does it empower the ACMA to require digital communications platform providers to remove content or block end-users from their services, except in the case of content that involves inauthentic behaviour (for example, coordinated bots, troll farms or fake accounts). The ACMA would not have a direct takedown power for individual content or particular accounts."*

The reason the Bill is so disturbing is that it gives more power to those who have been involved in excessive and biased censorship, when the law should ensure control is exerted to bring better protection for freedom of expression. It empowers more wrongdoing when it should bring correction.

---

[21] "'Blatantly false': RMIT FactLab exposed after silently deleting 'egregious' fact check", *Sky News*, 8 September, 2023.
[22] Jack Houghton, "'Embarrassing scandal': ABC axes lucrative contract with disgraced RMIT fact checking unit", *Sky News*, 21 February 2024.
[23] "Albanese wants to ban memes of himself", *Daily Telegraph New Zealand*, 27 September 2023
[24] Rebekah Barnet, "'Spectacular backfire': Australian government's attempt to censor trans post draws heat", *Dystopian Downunder* [substack], 27 March 2024.
[25] Disclosure log: The Freedom of Information Act 1982 (FOI Act) gives individuals a legally enforceable right of access to government documents, subject to specific exemptions, Office of the eSafety Commissioner [website]. Accessed 27/09/24.
[26] Rebekah Barnet, "Big Mother is listening: Australia's eSafety monitors what you say about Julie Inman Grant online", *Dystopian Downunder* [substack], 21 May 2024.

Because trust is already low, moves to formalize expansive powers can be expected to prompt significant public consternation. This Bill proposes to grant new powers to ACMA:

- to hold platform providers to give an account of their efforts to combat misinformation or disinformation, including:
    - risk management
    - media literacy plans
    - complaints and dispute handling;
- to make rules requiring digital platforms to keep records and report;
- to obtain information and documents from digital platforms relating to those matters;
- digital platforms can develop codes but ACMA approves them and digital platforms must then comply with these codes;

Further, ACMA may determine its own standard with which digital platforms must then comply. This is more power than any democratic government should seek. It is open to abuse, which would be difficult to detect, let alone correct. This is why censorship powers are the hallmark of authoritarian dictatorships, not democracies.

The Bill will erode public trust in our democratic institutions

The Bill incentivises digital platforms to over-censor. The threat of civil penalties for failure to screen out "harmful misinformation" will predictably incentivise an overly cautious stance, leading to the removal of lawful content that could be contentious but not harmful. This could disproportionately affect political, social, or minority viewpoints, stifling public discourse. Where government intervention is needed to ensure that freedoms of information and expression are appropriately protected from such third-party censorship, this Bill moves the needle in the wrong direction, cementing the power of Big Tech to influence information systems and, thus opinions and behaviours of the greater portion of the Australian population. This Bill would regularise and incentivise behaviours that have already been shown to have the potential to influence election outcomes and therefore the direction of Australia as a nation. No such powers should ever be outsourced to foreign-owned entities.

Efforts to counter the disruptive effect of digital technology on traditional news media markets and to prop up incumbent media revenues by making social medial platforms pay for hosting Australian news content – including the initially (but no longer) successful *Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Act 2021* – form an important part of the backdrop to this Bill.[27] The government's efforts to support the financial viability of incumbent media was justified on the grounds that maintaining a vibrant Australian news media sector is essential to a well-functioning democracy. It is true that a free press is a *sine qua non* of democracy. On the other hand, to the extent that it is indebted to government for its continued financial viability, the genuine independence of that press is open to question. It is for this reason, that the independence of the government-funded ABC has been so jealously guarded, to ensure undue influence is not brought to bear by the government, which holds the purse strings.

One of the unfortunate effects of this Bill, however, would be to create an anti-competitive media environment that will favour "professional news content" (provided by incumbents) at the expense

---

[27] News media bargaining code, ACCC [website]. Accessed 27/09/24; Annika Burgess, "Meta is ending its deals to pay for Australian news content. This is how it could change your Facebook and Instagram feeds" *ABC News*, 2 March 2024.

of new entrants, citizen journalists and popular vloggers, that rely on digital platforms to reach their audience. Encouraging digital platforms to censor “misinformation” will predictably create barriers for new entrants to the media market, and therefore also limit the range of local information and viewpoint diversity that is available to Australian media consumers. The protection of government-approved (because regulated) “professional news content” at the expense of alternative perspectives, will naturally give rise to speculation (whether justified or not) that the genuine freedom of the press, so essential to democracy, has already been compromised.

The Australian people are entitled to get their information from whatever source they see fit. The belief that government effort is correctly applied to controlling what Australians may receive as “accurate news content” ignores centuries of history in which tyrannical regimes – and only tyrannical regimes – have sought to control information in this way. The result of information suppression is not *greater trust* in the curated government-approved content that results. It is a population that is awake to the fact that “news” or “officially approved content” in whatever form, has been curated, may be incomplete or fabricated to elicit behaviours favourable to the government’s agenda. Such a readership will become inherently *mistrustful* of government-approved content.

The work of government-run “Behavioural Insights Units”[28] that have sprung into being in recent years already represents a grey area between the legitimate objectives of facilitating efficient government communication with the public, conducting public education campaigns or encouraging good civic behaviour, and the illegitimate objectives of manipulating information to propagandistic effect and with the objective of producing behavioural outcomes desired by the government. Public trust, once abused, is not quickly recovered. It will not be recovered without complete transparency, made impossible by this Bill.

Arguably, it is because Australians have already lost trust in formerly-respected news media – not simply the ease of accessing alternative information over digital platforms – that accounts for the steep decline in incumbent media revenues in recent years. In a free market of information, consumers who are dissatisfied with the content offered by incumbents are free to seek their information elsewhere, which is what many have done. The subversive inversion of “my ABC” to render it “their ABC”, for example, speaks to a level of disaffection in the mainstream viewership with what many perceive has ideologically driven content, which resonates with an increasingly narrow portion of the population. Where incumbents have the same opportunity as new entrants to adjust their editorial settings to (re)build their viewership, the fact that they have instead entered into co-ordinated efforts like the Trusted News Initiative, leveraging market dominance in an effort to control the global information space, will only re-enforce public resistance to being force-fed an unpalatable diet.

5) The Human Rights analysis is incorrect

The human rights analysis undertaken in the Explanatory Memorandum and other official sources (such as the Government’s Guidance Note), is misdirected, misplaced and where relevant is inadequate. It amounts to not much more than naming and claiming a plausible ground for encroaching deeply on the freedom of expression of Australians, without performing the essential task of making out the necessary justifications in a substantive and convincing way. No mention is

[28] See, for example “Behavioural Insights Unit | NSW Government” [website]. Accessed 17/09/24.

made of freedom of religion, even though religious expression can and frequently does occur online and is obviously relevant. That is a signal failure.

Human rights ostensibly protected by the Bill

The justifications for restricting freedom of expression are said to lie in:

- the right to personal security,
- the right to participate in public affairs,
- freedom from discrimination,
- the right to health.

The human rights analysis in the Explanatory Memorandum to the Bill demonstrates that the rights relied on to justify the restrictions on freedom of expression are implausible.

Article 9 (ICCPR) – Security of person

According to the Statement of Compatibility with Human Rights:

> *"Article 9 of the ICCPR provides that 'everyone has the **right to liberty and security of person'**. The United Nations (UN) Human Rights Committee has said that this right protects individuals against the '**intentional infliction of bodily or mental injury'**. This obliges States Parties to, for example, '**take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors**'."*
>
> *"The dissemination of content on a digital service will be considered misinformation or disinformation if, in addition to meeting the other criteria specified in clauses 13 and 14 of Schedule 9 to the BSA, **it is reasonably likely to cause or contribute to the intentional infliction of physical injury to an individual in Australia** … False, misleading or deceptive information that is likely to result in physical injury to individuals might include the **incitement of violence, or smear campaigns targeting prominent individuals for political or personal reasons, or content incorrectly framing an individual or individuals for wrongdoing, provoking public outrage**."*

This is simply pretext, not justification, and demonstrates a failure to apply the necessary principles of international human rights law. In particular, why is it necessary to invoke such extensive powers as are contemplated by the Bill, at the cost of freedom of expression and democratic principles (especially of accountability, clear and predictable law, and transparency) on the basis of article 9, when adequate provision already exists in law as follows:

- S. 474.17 of the *Commonwealth Criminal Code Act 1995*, providing an offence to use a carriage service to harass, menace or cause offence to a person, or make an express or implied threat, and other provisions in the criminal law in all jurisdictions concerning threats of violence;
- Defamation provisions of the uniform defamation laws in Australia;
- Consumer protection legislation in the Australian Consumer Law;
- Vilification laws at Commonwealth and state/territory levels;
- The *Online Safety Act 2021*.

Some of the matters referred to under the heading "right to security of the person" have nothing to do with article 9 of the ICCPR, e.g. "smear campaigns targeting prominent individuals for political or

personal reasons". For certain items that are relevant to article 9, e.g. death threats, it may be more important that the target know that they are being threatened, so that appropriate steps may be taken with the criminal law enforcement authorities, rather than have the content removed systematically, without them knowing death threats have been made against them.

Article 25 – the right to participate in public affairs

According to the Statement of Compatibility with Human Rights:

> *Article 25 of the ICCPR provides, inter alia, that 'every citizen shall have the right and the opportunity, … without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; [and] (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors'.*

The consequences of the Bill extend well beyond issues of freedom of expression, to the related right to participate in public affairs. It is not just about censorship. The Bill strikes at the very heart of democracy in a profoundly negative way, because:

- it intimidates users of social media channels, who will be aware that steps taken to combat misinformation and disinformation will be monitored and officially available to the regulator;
- it terrifies digital platforms into not carrying anything that could conceivably be regarded as information which would attract an exorbitant penalty based on a percentage of their turnover; and,
- it inhibits the vital means by which abusive or illegitimate power is exposed and held to account.

The Impact Analysis acknowledges, but then ignores, the likelihood of overreach:

> *"Although the Bill does not require 'over-censorship', it is possible that digital communications platform providers could decide, in response to the Bill, to operate their platforms in a manner that goes beyond what the Bill requires of them. As operators of digital platforms, digital communications platform providers already have the ability to govern the type of content on their platform."*

The Impact Analysis also demonstrates how uncalibrated Labor is with the real world, and democratic principles, or possibly how keen it is to shut down particular material. Under the heading "Benefit discussion and break-even analysis", and on the subject of "Physical injury to individuals" it provided the following illustrations of "gendered misinformation and disinformation" that has the potential to incite more violence and physical harm towards women[29]:

- "making harmful claims that a person's gender makes them less capable – for example, posting a false story online that a high-profile woman engineer only got her job by sleeping around, or that a woman of colour who receives a promotion is taking the rightful place of a white man". Labor cannot be oblivious to the online accounts in the US about Kamala Harris, and in particular her relationships, that are relevant to her

[29] "Online misinformation and disinformation reform: Impact Analysis", Department of Infrastructure, Transport, Regional Development, Communications and the Arts, September 2024, 47.

career progression, and her suitability to hold high office. Or does Labor want the power to prevent such disclosures?

- "spreading false information that attempts to undermine and reverse the rights of women and LGBTIQ+ people – by implying that these rights are coming at the expense of other groups". Labor cannot be oblivious to democratic issues behind Senator Pauline Hanson's legislation to re-insert definitions for biological men and women in the Sex Discrimination Act 1984. She was denied her right to speak in the chamber by Labor and the Greens. They refused the debate. It may be assumed that online content must also be banned if it argues that the rights of LGBTIQ+ people under the same Act are at the expense of the rights of religious schools to operate in accordance with their ethos.

The claim is made that:

> *"Misinformation and disinformation can undermine the right of Australians to participate in the conduct of public affairs, or to vote and be elected at genuine periodic elections,* ***if it is disseminated at such a scale that it harms the operation or integrity of an Australian electoral process.****"*[30]

This risk has hitherto been met by the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act* 1984, which makes it an offense to publish or distribute anything likely to mislead or deceive an elector in relation to the casting of a vote, during the election/referendum period. The government sees it as a problem, however, that "there is currently no obligation imposed on digital communications platform providers to themselves take steps in relation to the risk of this type of content being disseminated on their platforms."[31]

While this has not, as yet, been a demonstrable problem with Australian elections, as the Statement of Compatibility with Human Rights explains,

> *"experience from around the world suggests that misinformation and disinformation of this nature can influence public opinion and sway voter behaviour to such an extent that the outcome of an electoral process can no longer be said to represent the free will of the electorate. The World Economic Forum's 2024 Global Risks Report warns that 'misinformation and disinformation may radically disrupt electoral processes in several economies over the next two years'."*[32]

One problem with this suggested solution (to a speculative problem) is that big tech platforms have been implicated in the distortion of election results in the US[33] – they are part of the problem and therefore cannot be trusted to provide the solution.

The Bill operates to undermine article 25 rights severely, by crippling the ordinary freedom of expression rights by which public officials and governments are held to account. It is vital that counter narratives can be heard to dispute and challenge every aspect of policy, and even the prevailing narrative itself, of which the digital platforms are the most significant channels worldwide. The extent to which article 27 rights are damaged by the Bill are well beyond anything that can be remotely supported in terms of necessity or proportionality.

---

[30] Explanatory Memorandum, 8.
[31] Explanatory Memorandum, 9.
[32] Explanatory Memorandum, 9.
[33] Miranda Divine, "How Google manipulates search to favor liberals and tip elections", *New York Post*, 24 May 2023.

Articles 2 and 26 of the ICCPR and Article 2(b) of CEDAW – the right to freedom from discrimination

According to the Explanatory Memorandum, the Bill promotes the right to freedom from discrimination established in the *Convention on the Elimination of all forms of Racial Discrimination* (CERD) and the *Convention on the Elimination of All forms of Discrimination Against Women* (CEDAW).[34] However, since a Labor government removed definition of "woman" consistent with CEDAW from the *Sex Discrimination Act 1984* – an act that was passed with the intention of giving domestic effect to CEDAW - in 2013 and the present Labor government voted, in September 2024, to block a reversl of this change, they are not in a strong position to posture as the guardians of women's sex-based rights as established by CEDAW.

The Statement of Compatibility with Human Rights' invoking discrimination serves the purpose of justifying within the definition of "serious harm" anything that fits its description of "vilification". It is accepted that there is a certain relationship between hate speech and discrimination. However, the Explanatory Memorandum fails to distinguish between vilification laws which are so far-reaching as to violate freedom of expression rights, and have little justification by virtue of the "harms" that entails (and that is the case with the incorporation of vilification within the definition of "serious harm"), and on the other hand hate speech laws which operate at a sufficiently high threshold and are suitably targeted to meet the requirements of the ICCPR, especially as regards the justification is needed under article 19.3.

Article 12 (ICESCR) – the right to health

It is extraordinary that the right to health is being invoked in the way it is in this Bill, given the vital importance of public discussion, including of available scientific evidence, whether regarding the appropriate response to the COVID-19 pandemic, or to emerging science concerning the best medical approaches to gender-related issues.

The Bill's intention is clear, that such debates be curtailed:

> *"Pursuant to the regulatory scheme set out in Schedule 9 to the BSA, the dissemination of content on a digital service is considered misinformation or disinformation if, in addition to meeting other criteria specified in clauses 13 and 14,* ***it is reasonably likely to cause or contribute to harm to public health in Australia, including to the efficacy of preventative health measures in Australia*** *(paragraph 14(b)). The reference here to* ***public health is intended to include the government system for providing for the health needs and services of all Australians, including preventative health measures****, on the understanding that, if this system and these measures are undermined, the health of Australians will consequentially be undermined." …*
>
> *"The potential for health-related misinformation and disinformation to undermine the right to the highest attainable standard of health has been firmly established since the COVID-19 pandemic. Misinformation and disinformation that might have this effect could relate to how a disease is spread, the safety and effectiveness of vaccines or other preventive health measures, or health treatment options not supported by clinical data. Many studies have found that misinformation and disinformation of this nature can undermine public trust in*

[34] Explanatory Memorandum, 7.

> *expert guidance and government-led public health interventions, and consequently influence peoples' behaviour in a way that negatively impacts public health outcomes."*[35]

The fact that this government report has, with the benefit of better information, now been discredited as relying on incorrect co-ordinates for what constitutes "misinformation" has been noted in Section 1 above, but the more important point is one of principle.

Considerations of public health need to be weighed in conjunction with the personal autonomy of individuals, which would be compromised by the impact of the Bill. The pre-conditions of informed consent require that individuals should be able to access a full range of information about alternative treatments, risks and benefits and make individual choices about their health. Healthcare providers should also be free to research and impart the full range of information to their patients without hindrance from regulatory bodies that are not positioned to provide individuated patient advice. The fact that these considerations were disregarded during the covid pandemic is a matter for ongoing concern. This Bill proposes to regularise the use of state power which many would regard as over-reach.

Human Rights limited by the Bill

Article 17 (ICCPR) – Privacy

The Explanatory Memorandum asserts that "the right to privacy may be restricted to the extent that such restrictions are prescribed by law, reasonable, necessary, and proportionate to the achievement of a legitimate objective", without, however, recognising that the terms "reasonable", "necessary", "proportionate" and "legitimate" all have defined meanings that disallow the interpretation they are given in this Bill.

As the Explanatory Memorandum acknowledges:

> *"The UN High Commissioner for Human Rights has considered that any form of systematic monitoring and analysis of public online discourse is a form of surveillance, and thus, interferes with the right to privacy. This includes the collection and analysis of social media posts, even on publicly accessible communications platforms. This is because even though these posts may be in the public domain, 'individuals should have a space free from systematic observation and intrusion, particularly by government entities'. The Bill's regulatory regime therefore burdens the right to privacy, to the extent that it imposes obligations on digital communications platform providers (and provides the ACMA with regulatory powers) that pertain to information disseminated on digital communications platforms."*[36]

Individuals are exposed, since digital platform providers can be required to keep records of complaints and reports related to misinformation, and the measures taken in response. According to the "Guidance note", ACMA needs its information-gathering and record keeping powers to understand more about how user complaints are addressed, and the platforms can be forced to disclose these records to ACMA on demand, in the interests of "enhancing transparency". (As with Orwell's Ministry of Truth, ordinary English usage is inverted. "Transparency" in this sense does not

---

[35] Explanatory Memorandum, 13.

[36] Explanatory Memorandum, 15–16.

render officialdom “transparent” (and thereby accountable) but draws attention to the activities of individuals allegedly involved in the carriage of “misinformation”.

If transparency reports are merely to improve metrics and key indicators to help combat misinformation, the Bill should provide comfort (but does not) that details concerning an individual’s online activity will only be used for that purpose, and e.g. be aggregated to anonymise users. At present, awareness that such official information gathering and record-keeping can occur without suitable safeguards is likely to stifle free speech by individuals.

Article 19 (ICCPR) – Freedom of Expression

In addition to the comments made in Section 2 above it is necessary to observe that there is nothing like this Bill in other jurisdictions. The EU Digital Services Act specifically requires freedom of expression to be upheld, according to the treaty meaning derived from the European Convention. This contrasts with the Bill, which does not even operate in an environment where there is freedom of expression, to the standards required by the International Covenant on Civil and Political Rights (ICCPR), binding on Australia. There is only free speech, until that is drowned out by legislation like this.

There are some obvious parallels between certain provisions of the Bill and European Union measures addressing misinformation, such as the European Commission’s Communication on the European Democracy Action Plan, and the EU Strengthened Code of Practice on Disinformation 2022. However, there is a crucial difference. All EU measures uphold and maintain protection for freedom of expression, as understood under article 11 of the European Convention. The equivalent to article 11 of the European Convention is article 19 of the ICCPR which would, if it were incorporated into Australian law, provide free access to, and expression of, information by Australians (including on digital platforms). The deficiencies of Australian law with regard to the implementation of article 19 were noted in Section 2 above.

The question which the government’s human rights analysis must answer, but has not even properly attempted, is whether all of the limitations achieved by the Bill on the rights identified above can be justified, applying the basic principles the need to be observed in any human rights analysis, as outlined in Section 2.

CONCLUSION: This Bill is incompatible with liberal democracy. It should be rejected.

In the name of defending democracy, this Bill proposes its demolition. Trust in our government depends upon acceptable and realistic transparency. Without this, the public cannot hold the government to account, expose corruption or the abuse of power. By reducing transparency, this Bill will, inevitably, reduce the trust of the Australian people in our government and our democratic institutions. The result is not a “safer” Australia. In threatening our democracy, this Bill threatens the peace, prosperity and freedom of all Australians.

Australian law is already deficient in terms of protections for freedom of expression. This freedom – a right recognised in the ICCPR to which Australia is signatory – is increasingly eroded by domestic anti-discrimination and anti-vilification legislation. This Bill would continue that downward trend by extending the scope of prohibited speech to include the expression of opinions or beliefs that are regarded as “harmful”, according to subjective, vaguely defined terms. It exacerbates something

that is already problem. We need laws that protect speech, not laws that further constrain free speech.

This Bill could enable the suppression of conservative, religious or minority viewpoints on a range of different issues – including, for example, the Christian gospel, abortion, gender ideology, euthanasia, the family, child protection, immigration, the economy, health, environmental conservation – on the spurious grounds that these are "harmful".

The ACL agrees with the opinion stated by the Shadow Minister for Communications, David Coleman, when the Bill was first introduced:

> *"Instead of trying to impose this new law on Australia, the Government should bin the Bill. They should rip it up into little pieces and apologise for proposing it in the first place."*[37]

The Bill would change Australian society radically and irreversibly. If it passes, many of the assumptions Australians make about their beloved country will no longer hold. We hope that this Bill is so roundly rejected that it serves as a strong reminder to this and future governments that fundamental democratic freedoms are not negotiable and may not be legislated away.

---

[37] David Coleman, "This is a bill that needs to be thrown into the bin now", *Daily Telegraph*, 13 September 2024.