

CNIWA SUBMISSION Misinformation & Disinformation Bill

Responding to the invitation, dated 24 June 2023, from Department of Infrastructure, Transport, Regional Development, Communications and the Arts to 'have a say' on the Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023 (the Bill), the Council for the National Interest states:

The Bill does not strike an appropriate balance on a number of issues as follows:

- 1** Freedom of Speech – under the legislation the Australian Communications and Media Authority (ACMA) will be charged with the obligation to ensure that digital platform providers (DPPs) put in place codes to exclude dissemination of “misinformation” and “disinformation” from their platforms and monitor content, keep records of and report on the incidence of such posts. They are then required to censor or remove posts on their platforms that they decide are false, misleading or deceptive information.
- 2** ACMA will be responsible for ensuring that DPPs do have the codes of practice in place to prevent the dissemination of “misinformation” and “disinformation”. If a DPP does not then ACMA has the capacity to impose very large fines so large as to provide an incentive for the DPP to err on the side of caution when deciding what may be misleading or deceptive resulting in the probability that perfectly legitimate views might be censored as misinformation because they are contrary to a popular view.
- 3** It is a total rejection of “free speech” to allow organisations such as the DPPs to be the deciders of what is true or not true and to then censor as misinformation.
- 4** Although it is claimed that the ACMA would have no role in determining truthfulness such a claim is unsustainable. The only way the ACMA could properly overview the DPPs is for ACMA to assess the truth or falseness of the information DPPs have allowed on their platforms or have censored.
- 5** The objective of the Bill to allow censoring is that “misinformation” or “disinformation” is reasonably likely to cause or contribute to serious harm. Clause 2. Of the Bill defines harm at points (a) to (f) in such broad and vague terms as to make it impossible to judge what is misinformation and thus will interfere with freedom of speech.
- 6** The Government funds ACMA to the tune of about \$1billion per year. Our understanding is that the Governor General has a role in the appointment of the Chair, Deputy Chair and members, based on the recommendation of the Government. The government of the day could recommend, for appointment as members, persons who are supportive of the policies of the government and opposed to the policies of the Opposition of the day. It is not inconceivable that, in such circumstances, the Opposition policies could be censored as “misinformation”.

CONCLUSION In many ways, the Bill if passed into law, would be a major threat to free speech and the powers conferred on the DPPs and ACMA as detailed above, would not strike an appropriate balance in the matters of communication and the media. Abuse of persons, groups or organisations must be prevented and there is an obligation on DPPs to be conscious of and censor such abuse. This can also be pursued through criminal law when necessary. The most appropriate way to deal with possible misinformation and disinformation is to allow response and vigorous debate so that, over time, what is misinformation or disinformation and what is not, will be accurately established. The Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023 should be withdrawn.

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