

## **Inquiry into Misinformation and Disinformation**



**Submission of the Media Entertainment & Arts Alliance (MEAA)**

**August 2023**

MEAA makes this submission in response to the Australian Government's draft *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023*.

MEAA is the leading voice in the media and cultural sectors and represents over 15,000 workers, over a third of which are journalists and media workers.

Throughout the COVID pandemic our members performed extraordinary work to inform and educate Australians about a rapidly evolving global situation. Australians relied on the up-to-date, accurate and verified reporting that our members provided but their work was constantly undermined by misinformation and disinformation. Some of it was coordinated and targeted, while some of it was unwittingly picked up by ordinary Australians who did not check the source of the information nor question the motives of those posting it. While this was an acute situation during the height of the pandemic, we continue to see deliberate campaigns distributing incorrect, misleading, and damaging information, for example, as part of The Voice to Parliament debate.

In combatting misinformation and disinformation, it is important to achieve a balance between protecting the public from serious harm from misinformation and disinformation and ensuring fundamental rights and freedoms are protected.

ACMA's proposed powers would enable it to:

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

It is unclear to us whether ACMA has, or will have, the resources and expertise to determine what constitutes "misinformation" and what does not.

### **Serious Harm**

The proposed powers will only apply to misinformation and disinformation that is reasonably likely to cause or contribute to "serious harm."

The types of harm are captured by the legislation, including harm to the health of Australians, and hatred against a group based on ethnicity, nationality, race, gender and the like.

While many of the harms listed under Schedule 1, section 2 ("harm") are vague and overly broad (e.g. subclause (e) - "harm to the Australian environment"), subclause "(b) disruption of public order or society in Australia" is particularly concerning.

MEAA believes the inclusion of this “harm” is dangerous and open to misuse and exploitation. Indeed, there is a long history of important social movements being considered “disruptive” by governments and powerful interests.

Many of our journalist members are regularly subject to racist, sexist, and other discriminatory based trolling while trying to do their jobs. We note that race or sex-based discrimination (among other forms of discrimination) causing or contributing to serious harm, while falling within the scope of the legislation, would not deal with a specific individual who is the subject of such trolling (this would still fall within the remit of the eSafety Commissioner).

## Scope

The scope of the proposed legislation is wide, only excluding content produced in good faith for the purposes of entertainment, satire or parody, and professional news content as well as content produced by or authorised by, respectively, educational institutions and governments.

While professional news content is excluded, it is essential in maintaining and renewing trust in the media that news organisations be transparent about their stances on issues, and ensure their own ethical codes and complaints procedures (including how they deal with misinformation/disinformation) are easily accessible to consumers.

Moreover, it is important that these organisations are transparent in the information they provide - by clearly labelling opinion and commentary pieces so that they are readily distinguished from news and information content.

It is unclear whether freelancers and smaller digital, particularly independent, publications would be excluded from the operation of the proposed laws. Many of these freelancers or organisations may not necessarily be subject to the rules and codes that appear in the current definition. However, our members working in this space are bound by MEAA’s ethical code – the *Journalist Code of Ethics* - which was created in 1944 and applies to MEAA journalist members, promoting a commitment to the highest standards of honesty, fairness, independence, and respect for the rights of others.

MEAA suggests that the proposed definition “professional news content” in the Bill be amended to specifically refer to adherence to MEAA’s *Journalist Code of Ethics*.

MEAA believes the exclusion of content produced by federal, state, territory or local governments is concerning. It is simply unreasonable that the view of governments be protected from the reach of this Bill’s definition of “misinformation” and paves the way for government to politicise valid criticisms of it while engaging in misinformation of its own.

It is also unclear why the code and standard-making powers will not apply to authorised electoral and referendum content. Disinformation and misinformation in these forms of information has the capacity to contribute to the undermining of our democratic institutions. By way of a current example, “Yes” and “No” vote documents are being

distributed to voters by the AEC as part of the Voice to Parliament referendum process without any independent fact-checking. It's almost certain those documents will be posted on digital platforms, but the creators (politicians and bureaucrats) would be exempt from the provisions of the proposed law.

While the laws would apply to a broad range of digital platforms, their application in relation to private messages appears more complex. ACMA powers would not apply to direct private messages sent from one user to one or more other users or the content of a closed group conversation, but group chats open to the public would be within scope. ACMA would also still be able to use its information gathering and record keeping powers in relation to the operations of private messaging services.

The Guidance Note at 3.1.2 (p14) states:

*“While private messages are a key feature of instant messaging services, it is envisaged that the ACMA would use its information-gathering and record keeping powers to understand more about platform measures to combat misinformation and how user complaints are addressed. The registered codes and standards could have requirements that instant messaging services have measures in place that help address the harm of misinformation on their service without revealing the content of private messages. For example, this could include a range of educative measures that platforms provide to assist their users to critically assess information.”*

MEAA has long advocated for the importance of media literacy, particularly in relation to misinformation and disinformation, and suggests this “range of educative measures” contemplated in the Guidance note be applied across the board to all platforms.

These should include undertaking education campaigns and training programs relating to media literacy, working with education institutions to share data, and partnerships with independent fact-checking organisations.

### **ACMA Powers**

ACMA has the power to have digital platforms keep records of misinformation and disinformation on their platform and the measures implemented to prevent this occurring.

ACMA would also have powers to obtain other information from persons to assist it in monitoring compliance, which could include fact checkers. MEAA believes that fact checkers are an essential component of any processes digital platforms should put in place. MEAA believes fact checkers should be a mandatory requirement of any code or standard developed.

The Bill requires public consultation by the industry body or association producing a code prior to ACMA registering it. If ACMA were to make a standard the Bill also provides for consultation prior to this occurring. MEAA believes that as the union and professional body for the media and cultural sectors, we should be part of any consultation process undertaken.

## **Enforcement**

MEAA notes that formal enforcement actions in relation to non-compliance of information gathering and record keeping rules and codes or standards are proposed to be applied in a graduated manner.

It is important that civil penalties are utilised by ACMA to incentivise compliance and ensure digital platforms take these obligations seriously. However, this presupposes that the other concerns identified in this submission can be resolved satisfactorily.

## **Privacy and Freedom of Speech**

While MEAA recognises the dangers of disinformation and misinformation and the corrosive effects it has on the Australian polity, it is important that fundamental rights around privacy and freedom of speech are protected in any legislation.

We note that ACMA will not have the power to request specific content or posts be removed from digital platform services, and the Bill is directed at encouraging digital platform providers to have appropriate systems in place to combat disinformation and misinformation rather than directly regulating specific pieces of content.

Further, ACMA would have no role in determining truthfulness or requesting action regarding individual pieces of content, instead focussing on systems and measures to combat misinformation and disinformation.

However, these protections are undercut by ACMA being the ultimate decision maker as to what constitutes “misinformation” and “disinformation.”

## **Conclusion**

MEAA believes the Australian Government has a responsibility to combat the very real problem of misinformation and disinformation. It is essential that digital platforms be accountable for the often deliberately misleading or fabricated information online. These lies undermine legitimate reporting and news organisations and the public’s faith in democratic institutions.

However, we are concerned about the breadth of the legislation, particularly around what constitutes “serious harm” as well as the scope of the Bill, and the protections around freedom of speech.

Consequently, MEAA believes the Bill as currently drafted requires appropriate amendments for it to properly realise its aims.