



Inquiry into the Communications Legislation Amendment (Combatting Misinformation and Disinformation Bill) 2024

Submission to Inquiry

by:

**First Nations Peoples
Aboriginal Corporation
(ICN: 9520)**

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PART ONE – OPENING STATEMENT

Thank you for the opportunity to present this submission on behalf of the First Nations Peoples Aboriginal Corporation. We wish to express our deep concerns regarding the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024. While the intention behind this Bill may be to protect the public from harmful misinformation, we believe it has far-reaching and unintended consequences that could silence Indigenous voices, hinder political activism, and erode our ability to share our stories and advocate for our rights.

One of our primary concerns is the **sweeping powers given to the Australian Communications and Media Authority (ACMA)** under this Bill. ACMA will have unprecedented authority to regulate online content, yet there is a troubling lack of Indigenous representation within ACMA. The absence of Indigenous voices in these regulatory bodies raises the very real risk that content related to Indigenous politics, activism, and cultural storytelling will be misunderstood or unfairly categorized as misinformation by ACMA. Without cultural understanding, Indigenous perspectives—especially those that challenge the mainstream narrative or government policy—may be disproportionately targeted.

This leads to another crucial concern: **silencing Indigenous political activism**. Historically, Indigenous movements have often been labelled as dissent when confronting institutional power and systemic injustices. From advocating for land rights to challenging policies that affect our communities, we have frequently found ourselves at odds with prevailing structures. The Bill's vague definitions of misinformation and disinformation may be used to stifle these necessary critiques, diminishing our ability to hold the government accountable and protect our people's rights.

Furthermore, **Indigenous-owned media and online platforms** that provide alternative narratives and critically engage with Indigenous issues are at serious risk under this legislation. Indigenous media plays a vital role in amplifying the voices of our communities and providing culturally relevant information. However, this Bill could place Indigenous media under unfair scrutiny, potentially branding legitimate content as misinformation simply because it presents a viewpoint that is not aligned with the dominant discourse. This will not only limit our freedom of expression but also impede our efforts to raise awareness about the challenges we face.

The Bill also **undermines Indigenous movements and storytelling**, which are integral to our identity and cultural preservation. Indigenous knowledge systems, including Dreamtime stories and oral histories, have been passed down through generations and serve as the foundation of our cultural heritage. These narratives often reflect critiques of colonization and systemic inequality, yet the broad and ambiguous definitions of misinformation and disinformation in the Bill could risk the suppression of these stories. Our voices could be censored simply because our history challenges the mainstream narrative.

Finally, we must emphasize the **lack of Indigenous representation in regulatory decision-making** as a critical issue. Without Indigenous leaders and experts within ACMA or similar institutions, decisions about what constitutes misinformation will be made without the cultural sensitivity and understanding needed to appreciate the context of Indigenous content. This gap in representation leaves our communities vulnerable to decisions that could erase our narratives and further marginalize our voices.

In conclusion, the First Nations Peoples Aboriginal Corporation opposes the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 in its current form. We urge the Committee to consider the profound impact this legislation could have on Indigenous political activism, media, and storytelling. It is imperative that any legislation aimed at regulating misinformation and disinformation be crafted with careful consideration of Indigenous perspectives, ensuring that our voices are protected rather than silenced.

PART 2 – INTRODUCTORY STATEMENT

The **Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 [Provisions]** is designed to regulate online content and protect the public from harmful misinformation and disinformation, particularly in the context of public health, safety, and elections. However, the broad and ambiguous definitions of "misinformation" and "disinformation" in the Bill raise concerns that it may also indirectly serve to shield the government from criticism or challenging narratives.

While the stated aim of the Bill is to enhance trust and protect individuals from misleading information, there is a significant risk that it may disproportionately affect marginalized voices, including Indigenous communities. The Bill does not specifically address how it will protect Indigenous people or their narratives from being censored, which raises concerns that Indigenous voices — especially those questioning government policies or challenging mainstream views — could be unfairly suppressed under its broad scope.

The lack of specific protections or considerations for Indigenous perspectives under this legislation suggests that while the Bill is aimed at protecting against misinformation, it may fail to safeguard the rights of Indigenous Australians to engage in free expression. **Consequently, it could inadvertently prioritize the interests of the government over those of Indigenous communities.** (Refer to Part 4 of the document for examples).

This concern highlights the need for more precise definitions and safeguards within the Bill to ensure that Indigenous cultural, historical, and spiritual narratives are not marginalized or censored under its framework.

PART 3 – ISSUES OF CONCERN

3.0. SWEEPING POWERS – LACK OF REPRESENTATION.

- 3.1. The Australian Communications and Media Authority (ACMA) does not appear to have an Indigenous-specific section or formal representation specializing in Indigenous affairs within its organizational structure. ACMA operates broadly as Australia's communications regulator, overseeing areas such as telecommunications, broadcasting, and online content, with its functions mainly focused on enforcing regulations and codes of practice under the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill and other related laws¹.
- 3.2. Given the lack of dedicated Indigenous expertise or advisory roles within ACMA, this raises concerns about the ability of the body to appropriately regulate content that relates to or impacts Indigenous communities. This gap could result in unintentional censorship or misinterpretation of culturally significant narratives or issues important to Indigenous Australians, especially when dealing with content that might be misinterpreted as misinformation or disinformation under the broad definitions proposed in the new legislation².
- 3.3. A non-Indigenous government department, managed by public servants lacking knowledge or experience in Indigenous history, enforcing the provisions outlined in the **Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024** raises significant concerns about the potential censorship of Indigenous spiritual, historical, and culturally significant information. The lack of representation risk stems from several factors:

- 3.3.1 **Lack of Cultural Understanding:** Non-Indigenous public servants, without a deep understanding of Indigenous culture, spirituality, and oral traditions, may lack the context to differentiate between Indigenous knowledge systems and what could be mistakenly labelled as "misinformation" or "disinformation" due to lack of cultural understanding and might be dismissed or misinterpreted through a Western lens of empirical evidence and accuracy, leading to inappropriate censorship.

For instance, Dreamtime stories, cultural teachings, and oral histories—integral to Indigenous identity—may be misunderstood by regulators unfamiliar with Indigenous epistemologies, leading to their potential removal from online platforms. Such censorship not only silences Indigenous voices but also threatens the **cultural preservation and transmission** of traditional knowledge systems.

Evidence from historical precedents shows that when Indigenous perspectives challenge state policies or historical records, they are often labelled as dissenting or subversive, which could increase the likelihood of regulatory action under the Bill. Without appropriate safeguards, ACMA's powers could disproportionately target Indigenous online content, contributing to the ongoing **erasure of Indigenous cultural and political narratives**.

- 3.3.2 **Top-Down Control:** The Bill centralizes authority in a government agency, giving it the power to determine what constitutes misinformation. If these decisions are made by individuals or departments unfamiliar with Indigenous knowledge systems, there is a real risk that Indigenous voices, histories, and stories—particularly those that challenge mainstream perspectives—could be flagged, restricted, or censored.

Here is an analysis of the potential impacts of Top Down Control:

- **Legal Framework and Marginalisation:**

The Bill empowers ACMA to regulate online content with a focus on combating misinformation and disinformation, but without proper legal safeguards, this could lead to **overregulation** of Indigenous voices. Indigenous organisations often challenge dominant narratives, particularly regarding their **sovereignty, land rights, and historical injustices**. Without an appropriate legal framework that acknowledges and protects Indigenous political expression, there is a risk of Indigenous content being wrongly flagged or removed as misinformation.

For example, many Indigenous communities use online platforms to **advocate for land reclamation** or to challenge governmental policies, such as the response to the Uluru Statement from the Heart. These conversations, essential to **Indigenous self-determination**, might be perceived as controversial or threatening to social cohesion. Without legal protections or clear exemptions for **political dissent**, this could lead to the silencing of crucial Indigenous narratives, preventing Indigenous people from fully exercising their **right to free speech**, a right protected under both Australian law and international human rights instruments like the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**³.

- **Cultural Misunderstanding and Discrimination:**

ACMA's broad centralised powers, when exercised without **Indigenous representation** or advisory input, risk reinforcing **cultural misunderstandings**. Indigenous storytelling, Dreamtime narratives, and oral traditions are central to **Indigenous identity** and knowledge transmission, but they may be unfamiliar to non-Indigenous regulators. Content related to these stories could be **misinterpreted** as mythical, exaggerated, or factually incorrect, leading to unwarranted censorship.

Further, **Indigenous political activism** that critiques government actions, policies, or historical inaccuracies, could also be perceived as **misinformation**. Historically, Indigenous voices advocating for rights have been labelled as dissent, and a similar pattern could emerge under the regulatory control of a centralised body like ACMA, which may lack the **cultural competency** to properly assess the context of Indigenous content.

- **Technological and Resource Constraints:**

The centralisation of content regulation under ACMA could also present **technical barriers** for Indigenous organisations, particularly those in remote or under-resourced areas. Contesting a decision made by ACMA, such as the removal of online content, requires navigating a **complex bureaucratic system** that many Indigenous organisations may not have the resources to engage with effectively. This can result in **disempowerment**, as Indigenous organisations may struggle to appeal content removal or to challenge decisions made by a body that is distant from their cultural and community needs.

Moreover, Indigenous organisations may lack access to the **legal and technical expertise** required to understand and respond to ACMA's decisions. This further tilts the balance of power, as ACMA, a well-resourced government body, holds significant authority to regulate and remove content, while Indigenous organisations, which often rely on **grassroots advocacy and community-based initiatives**, may not have the capacity to fight back.

- **Censorship of Indigenous Media and Movements:**

The top-down control of ACMA over online content regulation threatens to **stifle Indigenous-owned and operated media**. These platforms are critical for Indigenous communities to **share their stories**, express political dissent, and engage in community-building. Indigenous media outlets, like **IndigenousX⁴** and **Koori Mail⁵**, are often at the forefront of advocating for Indigenous rights and providing perspectives that challenge mainstream media.

With ACMA's centralised authority, there is a risk that these platforms will be disproportionately targeted if they are seen as spreading content that is critical of government actions or that **questions institutional power**. The **vague definitions** of misinformation and disinformation in the Bill exacerbate this risk, as Indigenous movements may inadvertently fall under the scope of content deemed problematic. This could lead to the **undermining of Indigenous activism** and reduce the ability of Indigenous organisations to **engage in public discourse** on important social and political issues.

- **Historical Precedents and Ongoing Distrust:**

There is a long history of **Indigenous voices being marginalised** in Australia, particularly when those voices challenge systemic injustices. Indigenous organisations have historically been excluded from political decision-making processes, and the lack of Indigenous representation within ACMA is a continuation of this exclusion. The **centralisation of power** within ACMA, without proper consultation or participation of Indigenous peoples, risks deepening the existing **distrust between Indigenous communities and government institutions**.

Given that Indigenous communities have often been the target of **institutional censorship** and **surveillance**, the expansion of ACMA's regulatory powers could be perceived yet another mechanism for controlling Indigenous narratives. Without appropriate safeguards, there is a real possibility that **Indigenous perspectives** will be disproportionately targeted, contributing to the ongoing **silencing of Indigenous voices** in the public sphere.

Comment:

The **top-down control** and centralisation of content regulation under ACMA through the **Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024** could have serious repercussions for Indigenous organisations. The legal, cultural, and technical challenges presented by this Bill include the risk of **misclassification of Indigenous content, lack of proper representation in decision-making, and technical limitations** that prevent Indigenous organisations from contesting ACMA's decisions.

Without **explicit protections** and meaningful inclusion of Indigenous voices in the regulatory process, the Bill could stifle Indigenous political activism, undermine Indigenous-owned media, and exacerbate the historical marginalisation of Indigenous people in Australia. The need for **cultural competency, consultation, and inclusion** of Indigenous perspectives in ACMA's decision-making process is crucial to ensuring that the Bill does not unintentionally harm Indigenous organisations or communities.

- 3.3.3 **Colonial Framework:** Indigenous history, including spiritual and cultural knowledge, has often been marginalized by colonial frameworks. The enforcement of such laws by non-Indigenous departments may perpetuate this dynamic, as Indigenous perspectives may not fit neatly within established definitions of "truth" and "accuracy" held by these officials. This could lead to the erasure or suppression of Indigenous narratives that do not conform to mainstream standards.

Here is an analysis of the potential impacts of the Colonial Framework:

- **Legal Framework and Overreach:** ACMA operates under laws and regulations that have been developed primarily within a Western legal framework. This framework does not necessarily account for the unique legal status and rights of Indigenous Australians as articulated in various treaties, declarations, and Indigenous rights movements.
- **Impact on Cultural Expression:** The legal definitions of misinformation and disinformation are broad and can be interpreted in ways that threaten the expression of Indigenous cultural narratives, especially those that critique mainstream societal structures. Indigenous organizations could face legal repercussions for disseminating information that challenges the status quo, which might be labelled as misinformation by the authorities.
- **Precedent in Regulation:** Historically, Indigenous voices have often been marginalized within Australian law. This is evident in cases where Indigenous groups have challenged land use, natural resource exploitation, and other forms of colonial encroachment, often facing legal barriers that prioritize corporate or state interests over Indigenous rights (Australian Human Rights Commission, 2020)⁶. The risk is that ACMA's regulatory approach may perpetuate this trend by imposing sanctions or requirements that Indigenous organizations are unable to meet, thereby silencing them.
- **Cultural Context and Community Narratives:** Indigenous knowledge systems and storytelling traditions are fundamentally different from Western paradigms of information dissemination.
- **Cultural Sensitivity:** Indigenous communities have unique ways of understanding truth, which may not align with the definitions imposed by a regulatory body like ACMA. The risk is that cultural expressions could be misclassified as misinformation or disinformation, leading to suppression of vital community narratives. This can stifle important dialogues about social injustices, land rights, and historical grievances that are critical to Indigenous identity and community cohesion.

- **Historical Context:** Indigenous narratives often encompass a spiritual and collective understanding of history that challenges colonial narratives. If these narratives are not recognized as legitimate, there is a danger that Indigenous organizations will be further alienated from public discourse. The regulation of online content could serve to reinforce existing power imbalances, sidelining Indigenous perspectives in favour of dominant narratives.
- **Technical Barriers and Resource Limitations:** The operational demands placed on Indigenous organizations to comply with ACMA regulations may pose significant challenges.
- **Lack of Resources:** Many Indigenous organizations operate with limited funding and resources. The financial burden of compliance, including potential fines for non-compliance, could threaten the sustainability of these organizations. Moreover, the technical know-how required to navigate complex regulatory environments can be daunting, especially for organizations focused on community service rather than regulatory compliance.
- **Access to Technology:** The disparity in access to technology and digital literacy within Indigenous communities could exacerbate the effects of the legislation. If Indigenous media outlets are expected to implement sophisticated measures to combat misinformation and disinformation, their limited access to technological resources could hinder their ability to operate effectively

Comment: The colonial framework of ACMA, combined with the ambiguous definitions of misinformation and disinformation, presents significant challenges for Indigenous organizations. The risk of stifling Indigenous voices, misclassifying cultural expressions, and imposing undue financial and operational burdens could undermine the autonomy and agency of these organizations. Protecting Indigenous rights in the context of this regulatory landscape requires a reconsideration of how ACMA engages with Indigenous communities and incorporates their perspectives in the regulatory process.

3.3.5 Summary – Lack of Representation

Indigenous communities already face challenges in ensuring that their voices are heard in national discourse. By placing the power to enforce laws around misinformation in the hands of non-Indigenous public servants, the Bill may further marginalize these communities, preventing the sharing of culturally significant information, and disempowering them from controlling their own narratives.

The deep spiritual significance of Indigenous stories and their role in preserving history and identity may not be fully understood by those enforcing the law. This could result in decisions that disproportionately censor Indigenous content under the guise of fighting misinformation, even when that content is a vital part of Indigenous cultural heritage.

By allowing non-Indigenous public servants to enforce this legislation risks undermining Indigenous voices and traditions due to their lack of cultural competency. This imbalance could result in the unfair censorship of Indigenous spiritual, historical, and cultural information, which would have a profound impact on preserving and transmitting Indigenous knowledge.

3.4. Enforcement Powers:

3.4.1 The **Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024** grants significant enforcement powers to the **Australian Communications and Media Authority (ACMA)**, which includes the ability to issue substantial fines for online platforms, including Aboriginal-owned media and other online platforms, that fail to comply with the new regulations.

The punishments and fines outlined in the Bill include:

- **Fines:** ACMA has the authority to impose **financial penalties** on platforms that do not take appropriate measures to combat misinformation and disinformation. These fines can be substantial, with figures in the millions depending on the severity of non-compliance.
 - For instance, large platforms can be fined up to **\$6.88 million AUD** or **5% of their global turnover**, whichever is greater, for severe breaches of the code. This could be **devastating** for smaller Aboriginal-owned media outlets or online platforms that lack the financial resources of larger corporations.
- **Enforceable undertakings:** ACMA can require platforms to make **enforceable undertakings** that involve specific commitments to improve their efforts in reducing misinformation or disinformation. **Failure to adhere** to these undertakings can lead to further penalties.
- **Sanctions:** In addition to fines, platforms that continually violate the terms of the Bill or fail to act on misinformation and disinformation may face **other sanctions, including content removal or restrictions on their ability to operate**.
- **Compliance notices and action plans:** ACMA has the power to issue **compliance notices** to online platforms, requiring them to follow certain standards or develop action plans. These notices could **create administrative burdens for Indigenous-owned media outlets**, which may already face resource constraints.

3.4.2 Summary – Enforcement Powers

The Bill introduces significant financial and operational risks for Aboriginal-owned media and other online platforms, potentially leading to censorship, fines, and sanctions if they do not comply with ACMA's requirements on combating misinformation and disinformation.

The Bill's broad definitions of misinformation and disinformation mean that Indigenous-run platforms could inadvertently fall foul of these rules, particularly when they challenge mainstream narratives or present culturally significant information that could be misinterpreted by regulators unfamiliar with Indigenous issues.

3.5 Broad and Ambiguous Definitions

3.5.1 The **broad and ambiguous definitions** of "misinformation" and "disinformation" in the **Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024** have the potential to significantly impact Indigenous organisations, both culturally and legally, particularly in relation to how the **Australian Communications and Media Authority (ACMA)** is empowered to regulate online content.

Here are some key concerns and arguments:

- **Legal Risks and Ambiguity:** The Bill defines misinformation as content that is "inaccurate or misleading" and disinformation as false content disseminated with harmful intent. These terms are not precise and lack clear thresholds, leaving ACMA with **discretionary power** to

determine what constitutes harmful misinformation, potentially leading to inconsistent or subjective enforcement.

For Indigenous organisations, this poses a risk as their **historical, political, or cultural narratives**—particularly those challenging mainstream governmental or societal viewpoints—might be targeted even when they are based on long-standing oral traditions or perspectives that differ from official narratives.

For example, Indigenous communities often assert narratives regarding **sovereignty, land rights, and historical injustices** that conflict with government interpretations. These narratives, which are integral to Indigenous identity and political movements, could be viewed by non-Indigenous regulators as "misleading" due to their divergence from **state-sanctioned histories or policies**. This is particularly concerning in a legal environment where Indigenous voices have historically been marginalised or dismissed as dissent, further exacerbating **legal uncertainty** for Indigenous organisations.

- **Cultural Misinterpretation:** Indigenous storytelling and oral traditions have been integral to the transmission of cultural values, spiritual beliefs, and community cohesion. The lack of **Indigenous representation** within ACMA raises the risk that regulators may lack the **cultural competency** to fully understand or appropriately evaluate Indigenous content. This could result in the **misclassification of cultural stories**, which may be labelled as misinformation if they are perceived through a Eurocentric or bureaucratic lens.

For instance, **Dreamtime stories** and other spiritual narratives might not align with Western notions of factual accuracy but are foundational to Indigenous cultural identity. The application of broad misinformation regulations could unintentionally stifle the **expression of Indigenous spirituality** and cultural heritage online, further eroding the visibility of Indigenous voices in public discourse.

- **Cultural and Historical Context:** Indigenous perspectives often draw on lived experiences, oral traditions, and community history, which may not always align with widely accepted or "official" versions of events. By applying a one-size-fits-all approach to what is deemed credible, the bill risks invalidating these culturally significant viewpoints, marginalizing Indigenous ways of knowing and communicating.

3.5.2 Political Activism and Freedom of Expression

- Many Indigenous organisations and media platforms are engaged in **political activism** and advocacy, particularly around issues of **land rights, cultural preservation, and government policy**. These activities often involve critiquing **institutional power** or challenging governmental actions. The broad definitions in the Bill may allow ACMA to regulate or remove content that it deems to be misleading or harmful, which could disproportionately impact Indigenous organisations that operate outside of mainstream political structures.
- Historically, Indigenous voices advocating for rights have been dismissed as **"radical"** or disruptive to public order. With ACMA's enhanced powers, there is a real concern that **Indigenous political expression** could be censored or suppressed under the guise of combating misinformation, further marginalising Indigenous perspectives on critical social justice issues.
- **Censorship of Minority Voices:** Indigenous communities often advocate for narratives that diverge from mainstream views on issues such as land rights, cultural heritage, and political autonomy. If these perspectives are categorized as misinformation due to their divergence

from government or media positions, this could lead to censorship, suppressing vital Indigenous discourse.

- **Impact on Advocacy:** Indigenous organizations, activists, and leaders often rely on social media and digital platforms to share their stories and advocate for their communities. The Bill may inadvertently stifle these channels by requiring platforms to remove content flagged as misinformation, even if it represents legitimate criticism or a call for policy change.

3.5.3 **Lack of Appeal Mechanisms and Resource Constraints**

Indigenous organisations, particularly those in **remote or under-resourced areas**, may lack the legal and technical capacity to challenge decisions made by ACMA. The Bill does not clearly outline the appeal mechanisms available to organisations whose content is regulated or removed, placing a disproportionate burden on Indigenous communities that may already face significant barriers to accessing justice. This creates a risk of **disempowerment**, as Indigenous organisations may struggle to contest decisions made by ACMA regarding the removal or suppression of content related to Indigenous rights or cultural narratives.

3.5.4 **Potential for Overreach**

The combination of broad definitions and the wide-ranging powers granted to ACMA could lead to **overreach** in content regulation, disproportionately affecting minority voices, including Indigenous peoples. The centralisation of content regulation in a single authority, with no mandatory involvement of Indigenous voices in the decision-making process, could lead to **systemic bias**. Indigenous organisations may be forced to engage in **self-censorship** to avoid regulatory scrutiny, limiting their ability to engage in **advocacy and public discourse** on critical issues affecting their communities.

- 3.5.5 **Bias in Enforcement:** The enforcement mechanisms of the bill could disproportionately affect Indigenous peoples if authorities or platforms favour mainstream narratives. This could result in the **silencing of voices** that highlight social and political issues affecting Indigenous Australians, effectively reducing the space for open dialogue and protest.

3.5.6 **Summary – Broad and Ambiguous Definitions:**

The **broad and ambiguous definitions** within the Bill, coupled with the sweeping powers granted to ACMA, present significant risks to Indigenous organisations. The Bill threatens the ability of Indigenous Australians to engage in free expression, particularly when their narratives challenge prevailing structures or perspectives.

Without clear guidelines or Indigenous representation in regulatory bodies, there is a danger that Indigenous political activism, cultural storytelling, and historical narratives will be misunderstood, misclassified, or censored. This could undermine Indigenous movements, diminish freedom of expression, and exacerbate the historical marginalisation of Indigenous voices in Australia.

Safeguards must be introduced to protect Indigenous organisations from **disproportionate regulation** and ensure that their **rights to political expression and cultural preservation** are maintained. Protecting Indigenous voices from undue censorship is crucial in maintaining the diversity of discourse and addressing systemic issues.

PART 4 – RECOMMENDATIONS

4.0 RECOMMENDED CHANGES TO THE BILL

To ensure that the **Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024** fairly and inclusively regulates online content, particularly concerning Indigenous Australians, several key recommendations should be considered. These suggestions aim to refine the broad and ambiguous definitions of "misinformation" and "disinformation" and ensure the process is culturally sensitive, equitable, and transparent.

4.1. Refinement of Definitions for Misinformation and Disinformation

The current definitions of misinformation (inaccurate or misleading content) and disinformation (intentionally false content) are too broad, leaving much to interpretation. To ensure fairness:

- **Clearly differentiate between harmful and non-harmful content:** The Bill should define misinformation and disinformation based on the demonstrable harm caused rather than simply being incorrect. Content should only be regulated if it poses a tangible threat to public safety, national security, or public health.
- **Cultural Exemptions:** Indigenous oral histories, spiritual beliefs, and cultural narratives must be exempt from being categorised as misinformation, given their intrinsic role in cultural identity. Dreamtime stories or historical accounts of colonisation may not align with mainstream views but are vital for Indigenous cultural transmission.

4.2. Legal Reasoning: Defining misinformation based on actual harm would align with principles of **proportionality** in law, which requires that restrictions on expression be justified by the level of harm caused (UN Special Rapporteur on Freedom of Expression reports).

4.3. Incorporation of Indigenous-Led Panels in Content Regulation

Given the history of marginalisation of Indigenous voices, ACMA must have **Indigenous representation in regulatory processes** to avoid misinterpretation of Indigenous content.

- **Establish a First Nations Advisory Panel within ACMA:** Indigenous Australians should be involved in decision-making, particularly when content related to Indigenous issues is under review. This panel could act as a cultural intermediary, ensuring that content vital to Indigenous political activism and cultural expression is not unfairly censored.
- **Cultural Competency Training for ACMA staff:** All ACMA staff should undergo regular training to better understand Indigenous cultural practices, political movements, and historical narratives.

4.4. Cultural Argument: Indigenous knowledge systems differ from Western paradigms of evidence and truth, and ACMA must respect these systems to avoid erasing Indigenous stories. The inclusion of Indigenous perspectives in content regulation can prevent **cultural misinterpretation**, ensuring that content is judged appropriately.

4.5. Creation of an Indigenous Appeals Mechanism

Indigenous organisations and individuals must have the ability to appeal decisions made by ACMA if their content is removed or flagged.

- **Establish a transparent and independent appeals process:** This process should be easy to navigate and must include Indigenous representatives who understand the cultural context of the content in question. The appeals system must guarantee that no content is removed until the appeals process is concluded.

- **Legal Aid for Indigenous Organisations:** To help with challenges, Indigenous organisations should have access to legal support and resources to challenge decisions by ACMA.

Legal Reasoning: The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) guarantees Indigenous peoples' rights to freedom of expression and access to media without discrimination. Without a robust appeal system, this right could be undermined.

4.6. Protection of Political Speech and Activism

Indigenous voices have historically been targeted when advocating for their rights. The Bill must ensure that political activism is protected.

- **Explicit Protection of Political Activism:** Content that involves political activism or critiques institutional power must be exempt from the Bill's misinformation framework, if it does not incite violence or harm. Indigenous movements frequently challenge government policy, and such content should not be classified as misinformation simply for questioning mainstream narratives.
- **Safeguards for Indigenous-Owned Media:** Indigenous-run media outlets should be protected from undue content regulation. These platforms are crucial for giving a voice to Indigenous Australians and their unique perspectives.

Legal and Cultural Reasoning: Political speech enjoys special protection under international law, and Indigenous activism often serves as a counterbalance to the **structural inequities** Indigenous communities face. The government must respect these protections to ensure Indigenous political expression is not unduly stifled.

4.7. Distinguish Between Satire, Parody, and Genuine Disinformation

Indigenous Australians often use satire, humour, and parody to critique government policies and social conditions. These forms of expression must be protected.

- **Exemption for Satirical Content:** The Bill should clarify that satire and parody are not subject to misinformation regulation, provided they are not intended to cause harm. Indigenous comedians and activists use satire as a means of resistance, and the Bill must protect this important form of expression.

Cultural Argument: Indigenous humour is a tool for survival and critique. Censoring satirical content would stifle Indigenous ways of communicating dissent and engaging the public in meaningful discourse.

4.8. Regional and Cultural Variability in Assessing Misinformation

The cultural and regional diversity of Indigenous Australia requires that misinformation regulations be adaptable to local contexts.

- **Regional Offices for Indigenous Consultation:** ACMA should set up regional offices or partnerships with Indigenous communities to ensure that local contexts are considered when regulating online content.
- **Devolution of Power to Local Indigenous Organisations:** Instead of a top-down regulatory approach, ACMA should partner with local Indigenous organisations to assess and manage content related to their communities.

Technical Reasoning: Centralising content regulation within a single body risks overlooking regional differences, which are crucial to Indigenous cultural expressions. Decentralising

decision-making to involve local Indigenous organisations would provide a more nuanced and context-sensitive regulatory process.

4.9. Summary – Recommended Changes to the Bill

To ensure the **Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024** is inclusive and fair to Indigenous Australians, definitions of misinformation and disinformation must be refined, Indigenous voices must be represented within ACMA, and protections for Indigenous political activism and cultural expression must be codified. These changes are necessary to prevent the unintended consequence of silencing Indigenous perspectives and to promote a regulatory framework that is **equitable, culturally aware, and legally just**.

PART 5 – POTENTIAL MISINFORMATION/DISINFORMATION FROM GOVERNMENT

5.0 EXAMPLES

5.1. Providing concrete examples of misinformation and disinformation specifically against Indigenous people by the Australian Labor Government since their election can be challenging, as these terms involve intentional or unintentional falsehoods. However, here are five alleged cases of **misinformation** and **disinformation** that have surfaced in relation to Indigenous issues:

5.1.1 Examples of Misinformation:

- **Misinformation on Closing the Gap:** The government has claimed significant progress in areas related to Indigenous disadvantage. However, Indigenous leaders and experts have argued that the "Closing the Gap" targets remain far from being met, with little improvement in health, education, and employment outcomes in many Indigenous communities.
- **Voice to Parliament Engagement:** Claims that the government had adequately consulted all Indigenous groups regarding the Voice to Parliament proposal have been challenged by some Indigenous leaders. They argue that consultations were insufficient or selective, leaving out key community voices.
- **Truth-telling Programs:** Labor has expressed its commitment to "truth-telling" programs about Australia's colonial past. However, there is concern that these programs are not adequately resourced, and that the government has overstated the depth of its engagement with Indigenous communities on this matter.
- **Indigenous Housing Initiatives:** Announcements about significant funding for Indigenous housing have been interpreted by some as misleading, with critics arguing that the actual allocation of resources does not match the scale of the housing crisis many Indigenous communities face.
- **Indigenous Health Spending:** The government has stated that it is investing heavily in Indigenous health, yet some Indigenous health organizations claim that the funding is insufficient or misdirected, resulting in little improvement in health outcomes.

5.1.2 Examples of Disinformation:

- **Opposition to the Voice as Anti-Indigenous:** During the campaign for the Indigenous Voice to Parliament, there were suggestions that those who opposed the Voice were against Indigenous rights. However, some Indigenous groups themselves have voiced concerns about the Voice and its structure, showing that opposition to the proposal is not inherently anti-Indigenous.
- **Representation of Indigenous Support for the Voice:** The government has at times portrayed broad Indigenous support for the Voice to Parliament, but many Indigenous communities, particularly in remote areas, have expressed concerns about whether the Voice will truly represent them. This oversimplification has been accused of distorting the diversity of Indigenous opinion on the issue.
- **Funding for Indigenous Communities:** Statements from the Labor government that significant funds have been allocated to improve living conditions in Indigenous communities have been criticized as misleading. Some reports indicate that these funds are either not reaching the communities or being directed to ineffective programs, leaving the actual impact minimal.
- **Youth Detention Reforms:** The government has claimed to be working on youth detention reforms to address the overrepresentation of Indigenous youth in detention. However, many critics argue that these reforms are slow or inadequate, and the government's statements exaggerate the extent of action being taken.
- **Indigenous Employment Programs:** The Government's promotion of its Indigenous employment programs suggests substantial improvements in Indigenous employment rates. However, some reports and studies have shown that many of these initiatives have not been as effective as the government claims, with employment gaps remaining a significant issue.

5.1.3 These examples reflect the complexities of Indigenous policy and communication in Australia. The way the government frames its achievements and initiatives can sometimes conflict with the lived experiences and feedback from Indigenous communities.

PART 6 – CLOSING STATEMENT

On behalf of our Board Members, we sincerely thank the Committee Members of the **Inquiry into the Communications Legislation Amendment (Combatting Misinformation and Disinformation Bill) 2024** for providing the First Nations Peoples Aboriginal Corporation the opportunity to submit our concerns and perspectives.

It is crucial that Indigenous voices are heard in this important discussion, and we appreciate the time and consideration you have extended to our submissions. We hope that our input can contribute to shaping a framework that is equitable, inclusive, and respectful of the diverse experiences and narratives within Indigenous communities.

Thank you for your attention and commitment to this process.

Daniel Willis

CEO & Specialist Board Member

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