(2021) 33 SAcLJ 600
(Published on e-First 25 September 2020)

NO NEWS IS GOOD NEWS, BUT "FAKE NEWS" IS BAD NEWS

A Comparative Analysis of Singapore's and Australia's Measures to Combat Misinformation on Social Media

This article will shed light on efforts to deal with the growing issue of fake news in Australia and Singapore. First, this article will attempt to define "fake news" in the context of its spread on social media. Then, it will outline how the inadequacy of social media companies' efforts and high levels of social diversity incentivised both countries to clamp down on fake news. This will be followed by a comparative analysis and evaluation of Australia and Singapore's measures. From this analysis, it is evident that Singapore's approach is more cautious and paternalistic, while Australia's is more focused on engaging with and involving industry players in solving the problem of fake news.

TAY JingYi[1]
LLB (Hons) (National University of Singapore),
LLM Student (University of Melbourne).

I. Introduction

1 "Fake news" has become a hot-button topic that policymakers have been increasingly concerned about. Recent events have shown how social media can exacerbate the issue of "fake news", to the point that it threatens public order.[2] Further, the spread of COVID-19 and the subsequent lockdown of many cities have increased people's reliance on online sources for up-to-date and accurate information. This makes the spread of fake news an even more important and relevant issue.

1 The author would like to thank her family and friends for their encouragement and guidance. Additionally, she would like to thank Bill Lim, Fabian Terh, Jonathan Gill, Law May Ning, Vardev Singh Sachdev and Walter Wan and the anonymous reviewer for their invaluable help and feedback. All errors and omissions are the author's own.

2 For example, ethnic tensions between Muslims and Buddhists in Myanmar in 2018 were arguably exacerbated due to the spread of false stories on Facebook. These included allegations that a Muslim shop owner had raped his Buddhist employee. See Timothy McLaughlin, "How Facebook's Rise Fuelled Chaos and Confusion in Myanmar" *WIRED* (7 June 2018).

2 Consequently, governments have tried to find ways to effectively clamp down on fake news, such as by regulating how content is shared on social media. This is especially the case for democratic governments, because fake news impedes the electorate's ability to make an informed decision about who to vote for. Further, reliable news sources are crucial in impartially holding the Government accountable.

3 In light of the above, this article will compare two recent approaches to dealing with the spread of fake news on social media. These are two developed countries that have a democratic political system.[3] Consequently, both countries have high Internet usage and thus, greater potential for exposure to fake news. On one hand, there is Australia's proposed approach to dealing with fake news which focuses mainly on creating guidelines to be enforced by an independent regulator for large digital platforms to minimise the spread of fake news. On the other hand is Singapore's legislative approach, enforced by the Government, which aims to minimise the creation and spread of fake news through criminalisation and several *ex post* measures to eradicate fake news.

II. What is "fake news"?

4 At the outset, it should be noted that there is no single, universally-accepted definition of "fake news".[4] However, in order for any meaningful analysis to be done, a working definition of fake news should be formulated for the purposes of this analysis. After all, the effectiveness of a solution can only be evaluated if the problem is clearly defined.

5 Broadly speaking, "fake news" refers to information that is *deliberately* and *verifiably* false.[5] For example, in June 2019, a video of Facebook CEO Mark Zuckerberg talking about how the company was making use of stolen data surfaced online.[6] The contents of this video were false, and was actually a "deep fake". This means that it was constructed using artificial intelligence to create an image or video of a person doing

3 Geoffrey Miller, "Singapore, Australia, 'The Quad' and ASEAN: Same Same but Different" *Australian Institute of Internal Affairs: Australian Outlook* (16 January 2018).

4 Richter Andrei, "Fake News and Freedom of the Media" (2018) 8 *Journal of International Entertainment & Media Law* 1 at 5–6.

5 Allcott Hunt, & Matthew Gentzkow, "Social Media and Fake News in the 2016 Election" (2017) 31(2) *Journal of Economic Perspectives* 211 at 213.

6 Lisa Eadicicco, "There's a Terrifying Trend on the Internet That Could Be Used to Ruin Your Reputation, and No One Knows How to Stop It" *Business Insider* (11 July 2019).

something they never actually did.[7] Evidently, the video was deliberately doctored to contain false information.

6 That said, from a pragmatic standpoint, "fake news" cannot and should not be taken to mean *all* forms of deliberately false information. That would encompass an indeterminate amount of content, from jokes posted on Twitter to hate speech inciting violence. Consequently, regulation would be near impossible, given the volume and velocity at which content on social media is created. Thus, some narrowing down must be done for a more practical working definition.

7 Fake news is seen as a problem not only because it propagates false information, but also because it has harmful "offline" effects. The problem is amplified due to social media; fake news can now go viral and cause harm in a short time,[8] by manipulating people to act on untrue information. For example, as the COVID-19 death toll continues to increase, people have become increasingly desperate to find a cure for the illness. This has resulted in the spread of false information on social media, with substances like alcohol and the malaria drug hydroxychloroquine being touted as cures.[9] In fact, within weeks of hydroxychloroquine being mentioned on social media as a potential cure for COVID-19, people began to act upon the information with near-fatal consequences.[10] For example, it was reported in March 2020 that a Vietnamese man nearly died after ingesting a large dose of chloroquine – his life was spared because he was hospitalised in time.[11]

8 As such, given that the *raison d'être* for concerns about fake news is its impact on public order and safety, the working definition of "fake news" should be limited as such. Therefore, "fake news" for the purposes of this article refers to deliberately and verifiably false information which can threaten public order and stability. This definition will be used unless quoting or referring to the specific terminology used in each country's measures.

---

7 Lisa Eadicicco, "There's a Terrifying Trend on the Internet That Could Be Used to Ruin Your Reputation, and No One Knows How to Stop It" *Business Insider* (11 July 2019).

8 Lee Kaye Howe, "True or False or Misleading? '[A]dequate Judicial Oversight' over Part 3 Directions under the Protection from Online Falsehoods and Manipulation Act" (2019) 1 *Singapore Comparative Law Review* 239 at 239.

9 Marianna Spring, "Coronavirus: The Human Cost of Virus Misinformation" *BBC News* (27 May 2020).

10 Elyse Samuels & Meg Kelly, "How False Hope Spread about Hydroxychloroquine to Treat COVID-19 – and the Consequences That Followed" *The Washington Post* (13 April 2020).

11 Marianna Spring, "Coronavirus: The Human Cost of Virus Misinformation" *BBC News* (27 May 2020).

III. Why regulate, why now, why (t)here?

9 It has been established that fake news is harmful. Additionally, the harm caused by fake news is further exacerbated when people act on it.

10 Beyond that, both Australia and Singapore also share context-specific motivations for wanting to eradicate fake news. First, public opinion in both Australia[12] and Singapore[13] appears to be in favour of the Government doing more to handle the problem of fake news because of the inadequate efforts of Internet companies. This incentivises the governments of both states to clamp down on fake news. After all, being responsive to public opinion is likely to increase popular support for the Government, which helps entrench its power.

11 Second, although to varying extents,[14] both Australia and Singapore are democracies.[15] This gives them the incentive to clamp down on fake news to ensure the legitimacy of democratic processes like elections. Fake news impedes the electorate's ability to make an informed decision about who to vote for. The impact of Russian operatives spreading false information[16] during the 2016 US elections[17] served as a warning to democracies like Australia and Singapore to guard against fake news. In addition, reliable news sources are crucial in impartially

12 James Hennessy, "A New Study Has Revealed a Majority of Australians Want Political Advertising on Social Media to Be Banned Outright" *Business Insider* (25 November 2019).

13 Carol Soon & Shawn Goh, "Fake News, False Information and More: Countering Human Biases" (2018) *Institute of Policy Studies* (Working Paper No 31) 1 at 21.

14 According to the Economist's Democracy Index (2019), Singapore is a "flawed democracy" whereas Australia is a "full democracy". The Index is based on five main criteria: (a) electoral processes and pluralism; (b) functioning of government; (c) political participation; (d) political culture; and (e) civil liberties. This difference can largely be attributed to the dominance of Singapore's ruling party which is tied to the first criteria as well as the level of citizen engagement and interest in politics. Interestingly, the passing of the Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) also caused Singapore's Democracy Index score to decrease in 2019 as well, due to its alleged incursion on civil liberties. See The Economist Intelligence Unit, "Democracy Index 2019 – A Year of Democratic Setbacks and Popular Protest" (2019) at pp 26–28 and 52–64.

15 Geoffrey Miller, "Singapore, Australia, 'The Quad' and ASEAN: Same Same But Different" *Australian Institute of Internal Affairs: Australian Outlook* (16 January 2018).

16 US Department of Justice, *Report on the Investigation into Russian Interference in the 2016 Presidential Election* (by Special Counsel Robert S Mueller III) (March 2019) at p 22.

17 "Russia-Trump Inquiry: Russians Charged Over US 2016 Election Tampering" *BBC News* (17 February 2018).

holding the Government accountable.[18] Allowing fake news to be spread on social media can result in false impressions of the Government, which also impedes the electorate's decision-making ability.

12 That said, it should be noted that both countries have significantly different legal bases for clamping down on fake news. On one hand, Art 14(2)(*a*) of the Constitution of the Republic of Singapore[19] allows Parliament to restrict free speech if doing so is "necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order … or to provide against contempt of court, defamation or incitement to any offence". Given the potential harm to public order that fake news can cause, any legislation to militate against it falls squarely within this constitutional exception. In contrast, Australia's Constitution does not expressly protect free speech. However, the Australian High Court has stated that the "freedom of political communication" is an implied freedom that the Government cannot curtail.[20] This refers to the "freedom of communication between the people concerning political or government matters which enables the people to exercise a free and informed choice as electors".[21] Thus, barring this narrow exception, the Australian government has an implied right to restrict speech collectively known as "fake news".

13 Third, Australia and Singapore are both socially diverse countries.[22] Hence, any fake news designed to divide people amongst sociocultural or religious lines is likely to be especially damaging to the stability of either country.

14 These factors show that fake news is a pertinent threat to both Australia's and Singapore's stability. However, these same conditions make it a delicate task to develop a measure to deal with the issue. As democracies, both Australia and Singapore need to balance the goal of protecting society from the harms caused by fake news and the freedom of speech and of the press to contribute to the marketplace of ideas. Also, as diverse societies, both Australia and Singapore have to be extra vigilant for fake news aimed at pitting different social groups against each other. However, they also need to ensure that different or fringe viewpoints are not falsely equated to fake news. Otherwise, measures taken against fake

18 Katrin Voltmer, "The Media, Government Accountability, and Citizen Engagement" in *Public Sentinel: News Media and Governance Reform* (Pippa Norris ed) (Washington, DC: World Bank Publications, 2009) at p 141.

19 1999 Reprint.

20 *Lange v Australian Broadcasting Corp* (1997) 189 CLR 520 at 560.

21 *Lange v Australian Broadcasting Corp* (1997) 189 CLR 520 at 560.

22 Julian Meyrick, "In a Glass Clearly: Singapore and Australia Compared" *The Conversation* (26 July 2016).

news would amount to *de facto* censorship of merely fringe or unpopular views.[23]

IV. Setting the stage: Basis of comparison

15 For a meaningful comparative analysis, the measures being compared must serve the same function.[24] As such, this article will focus on comparing Australia's proposed Digital Platforms Code to Counter Disinformation ("Code of Conduct" or "Code") with Singapore's Protection from Online Falsehoods and Manipulation Act 2019[25] ("POFMA"). This is because the express purpose of both measures is to counter fake news, although not phrased as such. The Australian Competition and Consumer Commission ("ACCC") noted that the Code of Conduct was a recommendation to deal with *disinformation* on digital platforms, which negatively affects the quality of online journalism.[26] Similarly, POFMA's preamble states that the purpose of the Act is, *inter alia*, to counteract the negative effects of the communication of false statements of fact online.[27]

V. A tale of two approaches

A. Australia

16 The ACCC is a statutory body responsible for the regulation of markets and competition in Australia.[28] This includes the digital platforms and online journalism markets. In 2017, the ACCC was tasked by the Australian government to research on and recommend measures to cope with the rise of digital platforms and their impact on, *inter alia*, news and journalism.[29] One of these measures recommended by the ACCC is

23 *The Online Citizen Pte Ltd v Attorney-General* [2020] SGHC 36 at [35].
24 Jaako Husa, "Methodology of Comparative Law Today: From Paradoxes to Flexibility?" (2006) 58(4) *Revue Internationale de droit compare* 1095 at 1098.
25 Act 18 of 2019.
26 Australian Competition and Consumer Commission, *Digital Platforms Inquiry (Final Report)* (2019) at pp 368–370.
27 Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) Preamble.
28 Australian Competition and Consumer Commission, *Digital Platforms Inquiry (Final Report)* (2019) at pp 1–2.
29 Australian Competition and Consumer Commission, *Digital Platforms Inquiry (Final Report)* (2019) at p 2.

a voluntary Code of Conduct to deal with disinformation disseminated on digital platforms.[30]

17 At present, this recommendation has received government approval.[31] However, the Australian government has yet to set a deadline for the Code of Conduct to be drafted.[32] That said, the ACCC has stated that this Code of Conduct will be based on an *ex ante* co-regulatory approach.[33] As such, the Code of Conduct will be drafted by players in the digital platforms industry. In this case "digital platforms" refers to "digital applications that serve multiple groups of users simultaneously and provide value to each group of users based on the existence of other groups".[34] However, it will be enforced by an independent regulator such as the Australian Communications and Media Authority ("ACMA").[35] The ACCC has also recommended that legislative changes be made to give the independent regulator investigative and evidence-gathering powers to allow it to effectively enforce the Code of Conduct.[36]

18 The Code of Conduct will require digital platforms to tackle "disinformation",[37] which is defined as false or inaccurate information that is "*deliberately* created and spread to [cause] harm" [emphasis added].[38] This terminology is borrowed from the Council of Europe's framework to deal with the spread of false information.[39] Additionally, the disinformation in question must be sufficiently severe to have the *potential* to cause "serious public detriment".[40]

---

30 Australian Competition and Consumer Commission, *Digital Platforms Inquiry (Final Report)* (2019) at p 370.

31 Australian Government (Treasury), *Regulating in the Digital Age: Government Response and Implementation Roadmap for the Digital Platforms Inquiry* (2019) at p 16.

32 Australian Government (Treasury), *Regulating in the Digital Age: Government Response and Implementation Roadmap for the Digital Platforms Inquiry* (2019) at p 16.

33 Australian Competition and Consumer Commission, *Digital Platforms Inquiry (Final Report)* (2019) at p 372.

34 Australian Competition and Consumer Commission, *Digital Platforms Inquiry (Final Report)* (2019) at p 41.

35 Australian Competition and Consumer Commission, *Digital Platforms Inquiry (Final Report)* (2019) at p 370.

36 Australian Competition and Consumer Commission, *Digital Platforms Inquiry (Final Report)* (2019) at p 371.

37 Australian Competition and Consumer Commission, *Digital Platforms Inquiry (Final Report)* (2019) at p 370.

38 Australian Competition and Consumer Commission, *Digital Platforms Inquiry (Final Report)* (2019) at pp 352 and 370.

39 Australian Competition and Consumer Commission, *Digital Platforms Inquiry (Final Report)* (2019) at p 370.

40 Australian Competition and Consumer Commission, *Digital Platforms Inquiry (Final Report)* (2019) at p 371.

19 Also, the Code of Conduct imposes two main requirements for digital platforms: (a) a satisfactory feedback mechanism to deal with user complaints about potential disinformation; and (b) satisfactory measures to deal with legitimate complaints, such as removing the content.[41]

20 If the independent regulator is of the opinion that a digital platform has not implemented satisfactory measures, the latter will face monetary sanctions.[42] However, given the relative newness of the Code of Conduct as a recommendation to combat disinformation, the monetary amount of the sanctions has not been specified.

B. Singapore

21 POFMA is a legislation passed into law in 2019 which regulates both end-users and "internet intermediaries". Broadly speaking, the latter refers to an entity which facilitates the access or transmission of third-party content to end-users online.[43] These include: search engines, social networking services, video-sharing services and Internet messengers.[44]

22 With regard to internet intermediaries, POFMA targets "false statements of fact". Specifically, POFMA allows any[45] minister to request that the competent authority (the POFMA Office)[46] have three possible types of directions issued against Internet intermediaries under Pt 4 of the Act:

> (a) *Targeted Correction Directions*, which require the Internet intermediary to publish a notice that a specific subject material communicated on its site contains a false statement of fact. This notice must be issued to end-users who have accessed the offending material;[47]

41 Australian Competition and Consumer Commission, *Digital Platforms Inquiry (Final Report)* (2019) at p 371.
42 Australian Competition and Consumer Commission, *Digital Platforms Inquiry (Final Report)* (2019) at pp 371–372.
43 Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) s 2(1).
44 Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) s 2(1).
45 Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) s 20(1).
46 Aaron Chong, "Ministers Issuing Directives, With Scope for Judicial Oversight, Strikes Best Balance in Combating Fake News: Iswaran" *Channel NewsAsia* (8 May 2019).
47 Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) s 21.

(b) *Disabling Directions*, which require the Internet intermediary to disable access to the offending material by end-users in Singapore;[48] and

(c) *General Correction Directions*, which require Internet intermediaries to communicate a correction notice to their end-users, even if these platforms are not carrying the offending material.[49]

Any of these notices can only be issued on the condition that the minister deems it "in the public interest" to request that the POFMA Office (a statutory board or a member thereof appointed by the minister)[50] do so.[51] These directions will henceforth be collectively referred to as "Part 4 Directions".

23 Non-compliance with a Part 4 Direction "without reasonable excuse" by an Internet intermediary may lead to a fine of up to $1m.[52] Additionally, if the Internet intermediary continues to breach a Part 4 Direction after being convicted, it can face a fine of up to $100,000 for every day or part thereof during which the offence continues.[53]

VI. A comparative analysis of the Australian and Singaporean approaches

A. The definitional issue: What fake news is

24 Notably, neither Australia nor Singapore has chosen to use the specific phrase "fake news" in their measures. Instead, as mentioned, they have chosen the terms "disinformation" and "false statements of fact" respectively. One possible reason for this is that the phrase is tied to negative, emotive sentiments, especially after its frequent use by current

48 Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) s 22.

49 Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) ss 23(1)(*a*) and 23(2)(*a*).

50 Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) s 6(1).

51 Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) s 20(1)(*b*).

52 Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) s 27(1)(*b*).

53 Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) s 27(1).

US President Donald Trump during the 2016 US Elections.[54] As such, both states opted for alternative, more value-neutral terminology to ensure that the tone of their chosen measure is objective.

25 There are two main distinguishing factors between the Australian and Singaporean approaches to this definitional issue. First, Australia's proposed Code of Conduct requires a higher degree of severity in terms of its negative impact on the public interest before any obligations on digital platforms arise. Australia's Code of Conduct requires potential for *serious* public detriment, as compared to POFMA's requirement that it be "in the public interest" (in the Minister's opinion)[55] for the POFMA Office to issue a Direction against an internet intermediary. This refers to, *inter alia*, the security of Singapore, public health, Singapore's relations with other countries, sanctity of elections, social harmony and confidence in the Government.[56]

26 Second, Australia's Code of Conduct has a mental element for the spread or creation of disinformation. The proposed scope of the Code expressly excludes false or inaccurate information created without "*intention* of causing harm".[57] The situation is more complex under Singapore's POFMA, because of the relatively wide range of obligations contained in this one Act. While POFMA makes it an offence for an *individual* to communicate false statements of fact "*knowing* or having to reason to believe that" it is false, this mental element does not apply to the provisions governing *Internet intermediaries*. Instead, Singapore's POFMA defines a false statement of fact as something that is misleading or false "whether wholly or in part" and "whether on its own or in the context in which it appears".[58] Put differently, Internet intermediaries can be issued a Direction as long there is a false statement on their website, *whether or not* such content was knowingly falsified for a malicious purpose.

27 Singapore's approach has the specificity that Australia's Code of Conduct lacks, in terms of what kind of impact the offending false statements must be capable of causing. Section 4 of POFMA has a list

54 Evandro Cunha *et al*, "Fake News As We Feel It: Perception and Conceptualization of the Term 'Fake News' in the Media" in *Social Informatics* (Steffen Staab, Olessia Koltsova & Dmitry I Ignatov eds) (Springer International Publishing, 2018) at p 13.

55 Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) s 20(1)(*b*).

56 Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) s 4.

57 Australian Competition and Consumer Commission, *Digital Platforms Inquiry (Final Report)* (2019) at p 370.

58 Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) s 2(2)(*b*).

of examples of what is "in the public interest". These include things like public health, the prevention of ill-will between races, and confidence in the Government.[59] Although this list is non-exhaustive,[60] these examples show that POFMA imposes obligations on intermediaries only in cases of fake news that can cause widespread harm. However, one notable part of Singapore's definition of "public interest" is that it specifically includes maintaining "public confidence in the performance of any duty or function of, or in the exercise of any power by, the *Government*".[61] Considering the fact that the Government drafted and is responsible for enforcing POFMA, this can potentially create a conflict of interest. Put differently, although the Singapore government may not choose to ever do so, it can technically use POFMA to protect its reputation and other vested interests.

28 Unlike Singapore, the ACCC did not elaborate on what rises to the level of "serious public detriment". While this might afford the Australian independent regulator greater flexibility when enforcing the Code of Conduct, it simultaneously creates uncertainty for digital platforms as to what content they ought to be monitoring. This makes it more difficult for companies to internally assess if they have complied with their obligations under the Code.

29 On the other hand, the Australian Code of Conduct's definition of "disinformation" is narrower and more aligned with the concept of fake news. As mentioned, fake news refers to information that is falsified with the *intention* of achieving some harmful aim, like rigging an election or pitting social groups against each other. This is almost completely aligned with the Code's definition of "disinformation", which has the mental element of "intention to cause harm". In contrast, Singapore's use of "false statements of fact" is an over-inclusive approach to tackling the issue of fake news specifically, because it includes *all* false statements of fact, regardless of the intention behind their creation.

30 One possible reason for Singapore's broader approach is that the intention (or lack thereof) and the context behind content created and spread on social media is not easy to prove. This is especially because many social media sites have features that allow their users to copy and share another person's content wholesale with a click of a few buttons. Some examples of such features include the "retweet" function on Twitter

59 Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) s 4.

60 Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) s 4. See also Lim Min Zhang, "Why List of Public Interest Grounds is Non-exhaustive" *The Straits Times* (9 May 2019).

61 Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) s 4(*f*).

and the "share" function on Facebook. The ease with which a person can share another party's content makes determining intention behind a post difficult. Without a significant amount of contextual information, it is difficult to accurately determine if a person had the requisite intention to cause harm (under the Australian Code of Conduct) when they pressed the "retweet" button.

31 That said, just because something is difficult to assess does not make it unimportant or dispensable. Determining the existence of any mental state is usually a complex process, not just for posts on social media. Yet, some legal systems still require proof of a person's intention for them to be guilty under criminal law. This is because of the generally held belief that the severity of criminal punishment meted out to an accused person *should* vary according to their mental state when they committed a crime.[62] Similarly, if respecting people's freedom of speech means that only online content created and spread with the intention to cause harm should be regulated, then having a mental element is crucial. This is regardless of the fact that intention (or lack thereof) is difficult to assess.

32 On the flipside, from a consequentialist standpoint, false information can have harmful effects, regardless of whether it was intentionally created and spread. For example, in light of the spread of COVID-19, the Singapore government developed various initiatives and infographics on the importance of safe distancing to minimise the spread of the illness. Consequently, there were numerous posts on social media falsely alleging that there were "Safe Distancing Ambassadors" who would impose fines on people who sat on seats in food establishments marked out as not to be occupied.[63] The dissemination of such falsehoods could potentially lead to people being tricked by the parties seeking to capitalise on this false rumour. Also, *regardless* of whether such posts were intentionally spread or done so ignorantly or in good faith, the spread of such information has the potential to cause harm in Singapore. In light of this, not having a mental element when it comes to obligations on social media companies is a more preferable approach to preventing harm.

33 Ultimately, whether Australia's or Singapore's approach to the definitional issue is better depends on which ethical framework one subscribes to. Australia has chosen to adopt the deontological approach;

62 Andrew von Hirsch, "Proportionality in the Philosophy of Punishment" (1992) 16 *Crime and Justice* 55 at 71.

63 Gov.sg, "Clarifications: Misinformation, Rumours Regarding COVID-19" (23 April 2020) <https://www.gov.sg/article/covid-19-clarifications> (accessed 13 June 2020).

the Government has a duty not to interfere with freedom of expression on social media, except in the most drastic circumstances involving archetypal "fake news" being created and spread with an intention to harm. Singapore's approach is more consequentialist, the consequence in question being the prevention of actual harm.

B. The definitional issue, continued: What fake news is not

34 Aside from defining what "fake news" is, both the Code of Conduct and POFMA have also clarified what "fake news" does *not* include.

35 The ACCC has expressly stated that the proposed Code of Conduct will not deal with content such as: satire, parody and "commentary and analysis that is clearly identified as having a partisan, ideological or political slant".[64] Although Singapore's POFMA does not have a defined list of exclusions, Singapore's Minister for Law has clarified during the second reading of the Protection from Online Falsehoods and Manipulation Bill that certain types of content are excluded from the ambit of POFMA. These include: satire, parody and statements of opinion.[65]

36 Here, both states are in agreement that social media websites should not be required to clamp down on parody and satire. The ordinary meanings of "parody" and "satire" are humorous exaggeration and humorous or sarcastic critique respectively.[66] Based on these definitions, excluding them from regulation is a logical move, because parody and satire are not categories of information masquerading as the truth. Although the inclusion of different categories of online expression in each country's measures requires the drawing of more metaphorical dividing lines, such divisions are arguably necessary. This is especially since both the governments of Australia and Singapore, to varying extents, have a legal obligation to protect free speech. Excluding parody and satire prevents the Government from limiting freedom of expression to the point of preventing effective citizen participation in public policy discussions.[67] Parody and satire are frequently used means to express legitimate criticism, particularly against the Government. Therefore, to

64 Australian Competition and Consumer Commission, *Digital Platforms Inquiry (Final Report)* (2019) at p 371.

65 *Singapore Parliamentary Debates, Official Report* (8 May 2019) vol 94 (K Shanmugam, Minister for Home Affairs and Law).

66 *Singapore Parliamentary Debates, Official Report* (8 May 2019) vol 94 (K Shanmugam, Minister for Home Affairs and Law).

67 Eric Barendt, *Freedom of Speech* (Oxford and New York: Oxford University Press, 2nd Ed, 2007) at pp 6–21.

require social media companies to clamp down on such content would essentially be censoring criticism against the Government. This is similar to the silencing of political dissidents favoured by autocrats and dictators alike, which is contrary to the purpose of free speech and the concept of a democracy.[68]

37 Where the two states differ is *what else*, on top of parody and satire, falls outside the ambit of the measures. Superficially, the two approaches seem the same. After all, "commentary and analysis" and "opinion(s)" refer to information that is *based on* fact, but is not disguising itself as fact.

38 However, on closer inspection, Australia's proposed Code of Conduct seems to exclude a narrower range of information. The Code excludes commentary and analysis specifically with a "partisan, ideological or political slant". Therefore, if the content in question has a slant that falls outside the three above-mentioned types, then social media companies are *not* exempt from their duties under the Code. In contrast, under POFMA, a Part 4 Direction cannot be issued to a social media company so long as the content in question is a statement of opinion, regardless of its "slant".[69]

39 These exceptions appear to have been created to allow people to be able to express their views (no matter how incorrect), as long as they are not intentionally equating them with the truth to mislead others. This sentiment was raised by those involved in drafting the Code of Conduct[70] and POFMA.[71]

40 In light of the purpose of these exceptions, Singapore's approach is preferable because it attempts to be neither under nor over-inclusive. Under POFMA, Part 4 Directions cannot be issued in relation to statements of opinion, precisely because diversity of opinions is what drives public discourse. In the event that a person airs an opinion based on false information, the Government cannot get social media companies

68 *Singapore Parliamentary Debates, Official Report* (8 May 2019) vol 94 (Png Eng Huat).

69 *Singapore Parliamentary Debates, Official Report* (7 May 2019) vol 94 (K Shanmugam, Minister for Home Affairs and Law).

70 Australian Competition and Consumer Commission, *Digital Platforms Inquiry (Final Report)* (2019) at p 371.

71 *Singapore Parliamentary Debates, Official Report* (7 May 2019) vol 94 "Second Reading Bills: Protection from Online Falsehoods and Manipulation Bill" (K Shanmugam, Minister for Home Affairs and Law). As stated by the Minister for Law, "public discourse will help citizens understand complex policy issues. It will guide policy-makers to make optimal decisions … But public discourse can only take place when there is free and responsible speech".

to deny access to it. Instead, it allows other opinions to be aired online and this in turn facilitates public discourse.

41 In contrast, the Australian approach makes a distinction between content with different types of "slants". This distinction does not appear to have a relevant link to the stated purpose of enabling public discourse whilst clamping down on misinformation. Regardless of people's motive or "slant", the sharing of their commentary or personal analysis on topics ultimately contributes to public discourse.

42 In addition, differentiating between commentary and analysis according to their slant will not be an easy process. There does not seem to be case law that expounds on the statutory interpretation of "partisan, ideological or political slant". In contrast, while "statements of opinion" is not defined in POFMA, "statement of fact" is defined in s 2(2)(*a*) as "a statement which a reasonable person seeing, hearing or otherwise perceiving it would consider to be a representation of fact". On top of this, the Singapore High Court has recently clarified that statements are either statements of fact or opinion for the purposes of POFMA.[72]

43 That said, the ACCC might have drafted a "partisan, ideological or political slant" exception because of constitutional law considerations. As mentioned above, the Australian government has a duty not to curtail the "freedom of political communication". In other words, the Government must refrain from preventing communications about government and political matters that are necessary for a representative democracy to function.[73] Arguably, "commentary and analysis with a partisan, ideological or political slant" falls within this category of communications. After all, these forms of commentary keep viewers updated on politics and current affairs. This ensures that viewers, who form part of the electorate, can make educated choices when it comes to voting or other forms of political participation. While it is curious why the ACCC did not just use "political communication" as formulated by the Australian High Court as the exception, the proposed exception is understandable in light of Australia's constitutional law.

C. The means to the end: Mechanisms used to combat fake news

44 There are two significant differences between the type of mechanism used by Australia and Singapore to deal with the issue of fake news.

72 *The Online Citizen Pte Ltd v Attorney-General* [2020] SGHC 36 at [48].
73 *Coleman v Power* [2004] HCA 39 at [89].

(1) Ex post versus ex ante *regulation*

45 First, Australia's proposed Code of Conduct is focused on *ex ante* regulation. Specifically, the Code aims to guide digital platforms on how to improve their operations to deal with complaints of disinformation. In contrast, Singapore's POFMA consists of *ex post* rules for intermediaries to follow *after* a false statement of fact contrary to the public interest is posted. For instance, Facebook recently became the first Internet intermediary to receive a Targeted Correction Notice from the Singapore government.[74] This came after fringe news site *States Times Review* made a post on the platform alleging that a whistle-blower who exposed the Christian affiliations of Singapore's ruling party had been arrested. After *States Times Review* refused to comply with the Government's orders to correct the post, the Government resorted to getting Facebook to issue a Correction Notice.[75]

46 That is not to say that POFMA does not have *ex ante* measures at all. Section 48 of POFMA states that the POFMA Office *may* issue codes of practice applicable to internet intermediaries. However, the scope of the codes of practice mainly pertains to issues that are peripheral to the problem of the spread of false information. For example, codes of practice can be issued to regulate the use of fake or troll accounts and political advertising on internet intermediaries and to ensure that credible sources of information are given prominence.[76] Unlike the Australian approach, these possible subject matters for codes of practice do not directly deal with the issue of identifying and preventing the spread of false information on social media.

47 On one hand, the *ex ante* rules in the proposed Australian Code of Conduct appear more likely to be effective in the long-term. *Ex ante* regulation in this context requires an entire industry to implement systemic changes to their operations to be in line with the rules in the Code. In contrast, Singapore's *ex post* obligations on intermediaries only require individual companies to comply with one-off directions issued by the Government. Although such one-off directions will deal with individual instances of harmful fake news, it is less effective at creating long-term change to how social media companies curate content compared to the Australian Code of Conduct.

74 "Facebook Issues Correction Notice on States Times Review's Post" *Channel NewsAsia* (30 November 2019).

75 "Facebook Issues Correction Notice on States Times Review's Post" *Channel NewsAsia* (30 November 2019).

76 Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) ss 48(2)(*a*) and 48(2)(*b*).

48 On the other hand, Australia's Code of Conduct gives less weight to the economic efficiency of social media companies. Implementing systemic change to complaint mechanisms is a more intrusive and costly obligation than simply taking down content about a particular subject matter at the direction of the Government. That is, Australia's approach places the onus on the social media companies to monitor content whereas the onus is on the Singapore government to monitor content and issue directions where necessary.

49 That said, placing the onus on social media companies is not necessarily a bad thing. After all, social media companies tend to have greater technical expertise than government agencies. Also, unlike government agencies, social media companies face competition and have a greater incentive to be economically efficient. Therefore, they are better placed to take on the burden of monitoring suspect content than a government agency would be under an *ex post* approach like Singapore's. Further, social media companies are likely to have more resources and manpower available to tackle their proportion of the "burden". It is true that a government is likely to have more resources than a single company. Be that as it may, the relevant government agency will have to monitor content across various different platforms once it becomes aware of a possible incident of fake news which threatens the public interest. As such, the Australian method of using *ex ante* rules is a more economically sound approach than Singapore's *ex post* laws.

(2) Voluntary versus *mandatory rules*

50 Another key difference between the countries' approaches is the kind of compliance that is expected. For Australia, compliance with the proposed Code of Conduct is likely to be voluntary. Pursuant to s 51ACA of the Competition and Consumer Act 2010, industry codes like the proposed Code can either be voluntary or mandatory.[77] However, the ACCC has recommended that if a Code is not submitted to the independent regulator within nine months of the Government's decision to accept the ACCC's proposal, "the regulator should introduce a *mandatory* industry standard" [emphasis added].[78] This implies that the proposed Code is likely to be a voluntary one, unless the industry chooses not to draft a code within the timeframe given. Thus, digital platforms are only bound by the Code if they agree to it. As for Singapore, compliance is mandatory. So long as a website or entity is an "internet intermediary" as defined in s 2 of POFMA and operates in Singapore and the offending

77 Consumer and Competition Act 2010 (Cth) s 51ACA.

78 Australian Competition and Consumer Commission, *Digital Platforms Inquiry (Final Report)* (2019) at p 370.

content on it "has been or is being communicated in Singapore",[79] it is bound by POFMA.

51 Fake news can cause harm regardless of the platform that it is created and spread on. Platforms from Facebook[80] to Reddit[81] have been used by malicious actors to spread disinformation. Logically, then, measures to deal with fake news should apply across *all* social media websites. This would make Singapore's approach more appropriate, since social media companies have no way of "opting out". Australia's voluntary approach allows regulatory blind spots to be created if a social media company does not opt in to being bound by the Code of Conduct for whatever reason. Although this matter could be addressed by the independent regulator developing a mandatory standard, it is likely that the digital platforms industry will draft a code to prevent compliance from becoming mandatory.

52 That said, one could argue that a voluntary approach would encourage compliance with less resistance or dissent, since social media companies will be *willingly* bound by the rules. However, the implementation of POFMA shows that prompt compliance is not necessarily compromised just because it is mandatory. Facebook, arguably the most influential social media company, complied with the Singapore government's Correction Notice within a day of the Direction being issued. This was done without much resistance on Facebook's part. If such a company can quietly comply with the mandatory rules of POFMA, most (if not all) other companies will likely behave similarly.

53 Overall, in order to ensure that private companies internalise the potential social costs of fake news online, Singapore's choice of having mandatory rules is a more sensible approach. Although one could argue that such an approach limits people's freedom of expression, there is an argument to be made that such a limitation is a necessary one in democratic societies like Australia or Singapore.[82] As stated earlier, the spread of fake news can have damaging consequences for democratic processes.

---

79 Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) s 20(1)(*a*).

80 "Russia-Trump Inquiry: Russians Charged Over US 2016 Election Tampering" *BBC News* (17 February 2018).

81 Laura Hautala, "Reddit Was a Misinformation Hotspot in 2016 Election, Study Says" *CNET* (19 December 2017).

82 This counterpoint is in line with international human rights texts, including Arts 19 and 29(2) of the Universal Declaration of Human Rights (10 December 1948).

(3) Who writes the rules?

54 Australia and Singapore require differing levels of participation from social media companies in creating the rules that govern their behaviour. The ACCC has expressly stated that the Code of Conduct will be drafted by players in the digital platforms industry. If the code-drafting process of traditional broadcasters is anything to go by, the industry will do so in consultation with ACMA.[83] In contrast, the process of developing Singapore's POFMA did not involve social media companies as much. Rather than involve these companies in the actual drafting process, the Singapore Parliament set up a Select Committee on Deliberate Online Falsehoods ("Select Committee"). This Select Committee then sought the opinions of various stakeholders through public hearings and written representations. For instance, representatives from Twitter, Facebook, Google and local content websites like *Mothership.sg* and *The Online Citizen* gave feedback during the public hearings.[84] Following these hearings and the publication of the Select Committee's recommendations, the drafting of POFMA was ultimately left to the Attorney-General's Chambers.

55 Involving social media companies in the formulation of measures against fake news is a double-edged sword. On one hand, involving the parties being regulated in the drafting process of the Code of Conduct will likely lead to greater compliance.[85] When social media companies have a bigger say in the rules governing them, such rules are likely to be less of a hindrance to their efficiency and profitability. As such, social media companies will likely be more willing to comply. This helps further the goal of clamping down on fake news on social media.

56 On the other hand, giving social media companies a bigger say in the rules governing them can also lead to rules being less effective. Social media companies, after all, are self-interested and profit-driven. As such, they would likely use their influence in the drafting process to ensure that the rules are as lenient as possible. This is so that their efficiency and profitability are not negatively affected. This sort of self-interestedness was evident when representatives of social media companies gave evidence during public hearings in 2018 before Singapore's Select

83 Broadcasting Services Act 1992 (Cth) s 123(1).

84 See Written Representation Nos 104 (Facebook), 138 (Google), 153 (Twitter), 154 (The Online Citizen) and 159 (Mothership.sg) in *Report of the Select Committee on Deliberate Online Falsehoods – Causes, Consequences and Countermeasures* (Parl 15 of 2018, 19 September 2018).

85 Daniel Castro, "Benefits and Limitations of Industry Self-Regulation for Online Behavioral Advertising" *Information Technology and Information Foundation* (December 2011) at p 4.

Committee. Representatives of Twitter, Facebook and Google agreed that Singapore should not go forward with legislation but, rather, allow firms to self-regulate. Facebook's representative opined that "prescriptive legislation … would make it harder for other online platforms to find the right technical solutions".[86] Similarly, the Asia Internet Coalition ("AIC") comprising, *inter alia*, Apple, Google LinkedIn, Twitter and Yahoo stated that a legislative approach would not be sustainable and that a "collaborative … stringent self-regulatory approach, executed in close coordination and cooperation with authorities" would be a better solution.[87]

57 On the surface, the points raised by social media companies about Singapore's legislative approach seem legitimate; legislation like POFMA could have a negative impact on the sustainability and efficiency of social media businesses. However, closer inspection reveals that these companies are mainly trying to justify why their *current* initiatives to deal with fake news are sufficient and require no government intervention. To illustrate, in its written representations, the AIC raised the point that an alternative to POFMA would be to improve media literacy. Subsequently, the AIC noted that its members "are working in that direction".[88] Similarly, when AIC raised its proposal for "self-regulation that works", it also mentioned "AIC members *have* in place wide-ranging Community Standards, Rules and Policies" [emphasis added]. Essentially, the AIC's proposed alternative to POFMA is what its members are *already* doing, rather than something new and better than POFMA. Facebook took a similar approach to the AIC. In its written representations, Facebook stated that "an innovative and iterative approach" would be preferable to legislation like POFMA. It then elaborated on this "innovative and iterative approach" by stating what it had *already* started to implement, such as monitoring purveyors of misinformation and demoting false news (as identified by fact-checkers) on users' Facebook feeds.[89]

58 These examples show that even when social media companies are given a limited role in the drafting process, they will still try to

86 Facebook, "Written Representation No 104" in *Report of the Select Committee on Deliberate Online Falsehoods – Causes, Consequences and Countermeasures* (Parl 15 of 2018, 19 September 2018) at p 6.

87 Asia Internet Coalition, "Written Representation No 119" in *Report of the Select Committee on Deliberate Online Falsehoods – Causes, Consequences and Countermeasures* (Parl 15 of 2018, 19 September 2018) at p 3.

88 Asia Internet Coalition, "Written Representation No 119" in *Report of the Select Committee on Deliberate Online Falsehoods – Causes, Consequences and Countermeasures* (Parl 15 of 2018, 19 September 2018) at p 2.

89 Facebook, "Written Representation No 104" in *Report of the Select Committee on Deliberate Online Falsehoods – Causes, Consequences and Countermeasures* (Parl 15 of 2018, 19 September 2018) at p 6.

ensure as little intervention as possible in their operations. This is likely to be more apparent in a situation where social media companies are the ones actually drafting the rules that will govern them, as proposed by the ACCC. While such an approach by social media companies is understandable, given that these companies have their own economic interests in mind, it can be an impediment in dealing with the problem of fake news.

59 As such, Singapore's approach of limiting the influence and involvement of social media companies in the rule-drafting process seems preferable. This is because it will ensure that the measures focus on preventing the spread of fake news and its societal harms, rather than on protecting the financial and reputational interests of social media companies.

(4) Who enforces?

60 Whereas Australia's Code of Conduct will be enforced by an independent regulator (such as ACMA), the rules governing internet intermediaries under Singapore's POFMA can be enforced by *any* minister.[90] As stated above, a Part 4 Direction will be issued to an internet intermediary based on whether the minister is of the opinion that it is in the public interest to do so.

61 Australia's approach will likely be less prone to misuse for political gain. After all, an independent regulator has less incentive to misuse fake news regulation for political purposes or authoritarian ends. In contrast, a minister might make use of POFMA to pursue their own vested political interests, rather than the good of the country.

62 History has shown that legitimate dissent can be stifled under the guise of the Government regulating free speech intermediaries. For example, in 2018, Saudi Arabia's Communications and Information Technology Commission requested that Netflix disable local users' access to one particular episode of the comedy talk show *Patriot Act*.[91] This episode was an unflattering exposition of the Kingdom's human rights abuses, including the country's Crown Prince's involvement in the murder of journalist Jamal Khashoggi. The Commission's justification for its request to Netflix was that the episode violated Art 6 of the country's anti-cybercrime law, which criminalises the "transmission … of materials

90 Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) s 20(1).

91 Jim Rutenberg, "Netflix's Bow to Saudi Censors Comes at a Cost to Free Speech" *The New York Times* (6 January 2019).

impinging on public order [and] morals" online.[92] This vague provision essentially allowed the Saudi government to censor content just because it was unfavourable to itself. In other words, regulation which deals with free speech on social media and the "public interest" can be exploited to turn a government body into a *de facto* "Ministry of Truth". This will distort the marketplace of ideas, because only what the Government approves of can exist online. Further, there will be a chilling effect on speech because of people's fear of facing sanctions and being silenced for speaking out.

63 Notably, POFMA has tempered ministerial discretion to issue Part 4 Directions against social media companies through the medium of judicial review. POFMA allows a Part 4 Direction to be challenged via an appeal to the Singapore High Court.[93] In addition, s 29(5) of POFMA stipulates four cases where the High Court can set aside a Part 4 Direction:[94] (a) where the allegedly false statement was not communicated in Singapore; (b) where the statement is not in fact false; (c) where the statement is not a statement of fact; and (d) where it is "not technically possible" for the social media company to comply with the Part 4 Direction issued against it.

64 That said, the Singapore High Court has recently stated that the burden of proof lies on the party challenging the minister's decision to issue a Correction Direction under POFMA to show that the Part 4 Direction should be set aside.[95] This evidential burden will make successfully challenging a Part 4 Direction more difficult for an internet intermediary. However, it should be noted that the High Court stance is being challenged, and whether the Singapore Court of Appeal upholds it remains to be seen.

65 As such, although the Singapore Parliament has sought to temper ministerial discretion under POFMA, successfully challenging the minister's decision is likely to be an uphill climb. Rather than have the minister justify the legitimacy of their Part 4 Direction, the onus is upon the Internet intermediary to prove that one of the four s 29(5) grounds applies.

---

92 Jim Rutenberg, "Netflix's Bow to Saudi Censors Comes at a Cost to Free Speech" *The New York Times* (6 January 2019).

93 Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) s 29(1).

94 Protection from Online Falsehoods and Manipulation Act 2019 (Act 18 of 2019) s 29(5).

95 *The Online Citizen Pte Ltd v Attorney-General* [2020] SGHC 36 at [29]–[31].

66 That is not to say that Australia's independent regulation of social media companies will be flawless. Currently, plans for the Code of Conduct and its implementation are still in their infancy. This accounts for the dearth of information on it. This is unlike Singapore's POFMA, which has already been passed into law and implemented.

VII. Putting it all together

67 Taking all the elements of each country's measures together, Australia and Singapore evidently have significantly different views on how to tackle the issue of fake news on social media.

68 Singapore seems to have taken a more interventionist approach. The Singapore government played a central role in drafting POFMA, and it is the one that enforces its provisions as well. In contrast, the Australian approach gives more weight to the input of the digital platforms industry, and the Government is not involved with the enforcement of the proposed Code of Conduct. Further, the scope of POFMA is broader than that of the proposed Code.

69 One possible explanation for this is the difference in the governments' long-held attitudes toward free expression and the media. The Singapore government is known to exercise relatively tight control over the press and media,[96] so it is unsurprising that it is taking the same approach to social media and online platforms that are essentially the modern-day "press". In contrast, ever since the Australian telecommunications industry moved away from government-owned monopolies in the 1990s, regulation was always done by an independent body.[97] Perhaps this is why Australia chose to once again rely on independent regulation through a proposed Code of Conduct for today's version of the "press".

70 Another explanation in the difference in approaches is how each country views the relationship between its chosen measures and freedom of speech. In its report, the ACCC made it clear that it did not want enforcement of the Code of Conduct to result in "government interference with the rights of individuals to hold and express personal views and beliefs".[98] This can account for Australia's higher threshold for

96 Tey Tsun Hang, "Confining the Freedom of the Press in Singapore: A 'Pragmatic' Press for 'Nation Building'?" (2008) 30(4) *Human Rights Quarterly* 876 at 877–878.

97 Holly Raiche, "A History of Australian Telecommunications Policy" *Cyberspace Law (AUSTLII)* (1997).

98 Australian Competition and Consumer Commission, *Digital Platforms Inquiry (Final Report)* (2019) at p 371.

regulation – only intentionally false statements fall within the ambit of the Code of Conduct. It shows that Australia views the regulation of fake news online as necessary, but nevertheless at odds with freedom of speech. This might seem discordant with Australia's constitutional text, which lacks an express freedom of speech provision. However, one possible explanation for Australia's stance on freedom of speech is that Australia has voluntarily undertaken international human rights law obligations to uphold this freedom. Unlike Singapore, Australia has ratified the International Covenant on Civil and Political Rights ("ICCPR") and accepted the individual complaint mechanism under the First Optional Protocol to the ICCPR.[99] Article 19(2) of the ICCPR protects the freedom of expression, including the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers". Therefore, while any measures to clamp down on "fake news" may not be subject to constitutional challenge, an affected individual can still bring a complaint before the Human Rights Committee.[100]

71 As for Singapore, the Government's stance is that some forms of speech should be regulated so as to "foster trust and confidence that what we see and what we hear is reliable [and] trustworthy".[101] This trade-off, in the Government's opinion, *enables*, rather than restricts, people's freedom of speech.[102] Put differently, clamping down on fake news and freedom of speech are on the same side – to the Singapore government, the former enhances the latter.

72 Ultimately, neither approach is definitively better or worse. For one, these measures are still extremely new, so insufficient time has elapsed to thoroughly evaluate their effectiveness. In addition, as mentioned, the measures have been tailored to suit the different sociocultural contexts of Australia and Singapore.

73 In addition, whether one approach is to be preferred over the other hinges on which factors one deems to be most important in the context of regulating freedom of expression. Singapore's approach seems

99 United Nations Office of the High Commissioner of Human Rights, UN Treaty Body Database <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=9&Lang=EN> (accessed 13 June 2020).

100 First Optional Protocol to the International Covenant on Civil and Political Rights (999 UNTS 302) (16 December 1966; entry into force 23 March 1976) Art 2.

101 Eustance Huang, "Minister Says Singapore's Fake News Law is about 'Enabling' Free Speech" *CNBC* (2 October 2019).

102 Eustance Huang, "Minister Says Singapore's Fake News Law is about 'Enabling' Free Speech" *CNBC* (2 October 2019).

to be a consequentialist, "*kiasi*"[103] one – as long as the Government can eradicate fake news which threatens the "public interest", it matters little that mandatory compliance is required of social media companies. This is reflective of the cautious approach of Singapore's current leadership, which seeks to ensure that Singapore's diversity is not used against itself.[104] On the other hand, Australia's approach seems to have been developed in a way which attempts to balance the interests of both social media companies and its users. This can account for the collaborative approach taken to drafting the Code of Conduct and the focus on only misinformation deliberately created to cause serious harm.

VIII. Conclusion

74 Fake news is a threat to democracy that has become harder to clamp down because of social media. This article has outlined the measures taken by Australia and Singapore respectively. Australia's *ex ante* regulation focuses on the impact of fake news on journalism and it gives significant weight to the views of the digital platforms industry. In contrast, Singapore has chosen a more cautious and interventionist approach.

75 Each country's approach is reflective of the prevailing sociocultural attitudes concerning the freedom of speech. That said, there are parts of each country's measures that are worth learning from. For example, Australia's Code of Conduct only imposes obligations on digital platforms relating to content that is *intentionally* falsified. This keeps the scope of the Code of Conduct as narrowly aligned with the common understanding of "fake news" as possible to prevent internet intermediaries from unnecessarily censoring their content. As for Singapore, POFMA is clear about the type of false statements that fall within the ambit of the Act. It does so by having a detailed definition of what is "in the public interest". Ideally, these learning points can help policymakers develop even more effective measures to deal with fake news going forward. After all, no news is good news but fake news is *bad* news.

---

103 This is a Hokkien phrase which means "scared to die". In this context, it refers to being risk-averse.

104 Lim Yan Liang, "4G leadership Will Build Future of Hope and Progress for Singaporeans: DPM Heng Swee Keat" *The Straits Times* (20 January 2020).