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**Our Ref:** LS/RLR/Gen/2019/COU(OnlineFalsehoods)/GG/jt/lf

30 April 2019

Legal Policy Division  
Ministry of Law  
100 High Street, #08-02  
The Treasury  
Singapore 179434

**BY EMAIL AND POST**  
(sarala\_subramaniam@mlaw.gov.sg)

**Attention: Ms Sarala Subramaniam**  
**Director (Civil and Legislative Policy), Legal Policy Division**

Dear Sarala,

**THE LAW SOCIETY OF SINGAPORE'S MEMBERS' CONSOLIDATED FEEDBACK –  
CONSULTATION ON THE PROTECTION FROM ONLINE FALSEHOODS AND  
MANIPULATION BILL**

1. On 17 April 2019, some of the Law Society Council members, together with Law Society Secretariat representatives, attended a consultation meeting with Senior Minister of State Mr Edwin Tong, SC on the matter (the "Meeting"). In addition to the points shared during the Meeting, it was agreed that the Law Society would consolidate its members' views on the Bill and send the same to the Ministry of Law.
2. Please find enclosed, a table setting out our members' consolidated feedback in response to the Bill, for the Ministry's consideration.
3. In general, the members' feedback takes the view that:-
  - (a) there are insufficient safeguards to prevent the power given to a Government Minister, to order an immediate "take down" or carry out an online correction, from being used for political rather than genuine national security reasons;
  - (b) the remedy through the Courts, i.e. that civilians can go to Court to overturn an executive sanction, is insufficient to reverse the potential culture of fear and/or is an insufficient answer in that it is not easy to proceed in Court on such cases; and
  - (c) the definition of when a statement of fact is false as per section 2(2)(b) of the Bill is vague and potentially overly-broad, which could end up potentially criminalizing more than just deliberate falsehoods and capturing legitimate public discourse.
4. Please feel free to reach out to Ms Genie Sugene Gan, Director and Head of Department, Representation and Law Reform, should you require clarifications.

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**Partnership and Sponsorship**  
Sharmaine Lau

**Publications**  
Sharmaine Lau

*The Law Society of Singapore*

5. The Law Society sincerely hopes that our members' views will be taken into consideration, and remains available to engage in further discussion and dialogue with the Ministry in this regard as considered appropriate.

Yours faithfully,



Mr Gregory Vijayendran, SC  
President, The Law Society of Singapore

(Enclosure)

# CONSOLIDATED VERBATIM FEEDBACK ON PROTECTION FROM ONLINE FALSEHOODS AND MANIPULATION BILL

Final copy updated 26/4/2019

Protection from Online Falsehoods and Manipulation Bill – Consolidated Feedback

No.	Topic	Feedback	Reference
1	Safeguards on Ministerial powers	<p>I have four main concerns about the Protection from Online Falsehoods and Manipulation Bill (“the Bill”). All the concerns overlap with each other:</p> <ol style="list-style-type: none"> <li>1. That a Government Minister decides what is true or false and decides the action to either order an immediate “take down” or have an online correction. There are insufficient safeguards to prevent the power from being used for political rather than genuine national security reasons.</li> </ol>	Protection from Online Falsehoods and Manipulation Bill, s. 10 <i>Conditions for issue of Part 3 Directions</i>
	Remedy through the Courts	<ol style="list-style-type: none"> <li>2. It is not a sufficient answer or really a safeguard that the courts have the final say. It is not easy to proceed in court on such cases, as one saw from the ISA cases such as the Operation Spectrum cases, where detainees could challenge the detentions only with extremely great difficulty and expense (whilst the government has the AGC and substantial resources), and then only to be answered with court decisions which basically said the courts could not challenge executive decisions on such matters of purported national security.</li> </ol>	Protection from Online Falsehoods and Manipulation Bill, s. 17 <i>Appeals to High Court</i>
	Scope of the Bill	<ol style="list-style-type: none"> <li>3. There is also an uneven-ness in dealing with the media on falsehoods. Often, the mainstream media, particularly SPH and Mediacorp, present local political and social news in such a manner that tilts the reporting of selective details in favour of one side (usually the ruling party’s) against the other- which is manipulative and creates false pictures to the reading and viewing public. The mainstream hard copy paper and broadcast media (such as the Straits Times and CAN) also do not seem to come under the purview of the Bill. There is therefore a very uneven treatment of “true” and “false” information, which will be exacerbated by this proposed new Bill.</li> </ol>	
	Potential for misuse V.S. Public good	<ol style="list-style-type: none"> <li>4. It is insufficient answer to the above concerns to say that other countries also have measures. Those measures are mainly to protect the public.</li> </ol>	

	<p>Whereas the concern here is that the measures under the Bill have the potential of being used against the public (which, with respect, is what happened in the use of the ISA against peaceful civil activists and lawyers rather than being used against violent terrorists which was the original purpose of the ISA). There is the same potential for misuse of this intended new Act.</p>		
2	Remedy through the Courts	<p>I support the idea by Mr Thio Shen Yi, SC that putting the burden on the civilian to go to Court to overturn an executive sanction is insufficient to reverse the potential culture of fear. Any executive action should have only temporary effect, and it should be up to the executive, with its vast resources, to apply for judicial validation within a stipulated period of time.</p>	Protection from Online Falsehoods and Manipulation Bill, s. 17 <i>Appeals to High Court</i>
3	Definition of 'false' statements	<p>1. I would like to provide my views on the Protection from Online Falsehoods and Manipulation Bill (the "Bill"). In summary, I believe that the definition of when a statement is false per s 2(2)(b) is vague and potentially overly-broad.</p> <p>2. Even before the Bill was presented to Parliament, it has always been the intention of the government to only target deliberate falsehoods. This was clearly set out in the Ministry of Law's Green Paper on "Deliberate Online Falsehoods: Challenges and Implications" (Green Paper, <i>Misc 10 of 2018</i>, 5 January 2018) and reinforced during the ensuing Parliamentary debates. There is no doubt that deliberately spread falsehoods can have significant and far-reaching consequences, but care must be taken not to stifle genuine public discourse, even if mistaken or biased. Indeed, this was implicitly acknowledged in the terms of reference of the Parliamentary Select Committee on Deliberate Online Falsehoods, in that the focus was on "the phenomenon of using digital technology <u>to deliberately spread falsehoods online</u>" (emphasis added).</p> <p>3. However, s 2(2)(b) of the Bill is drafted in an overly-broad manner that could potentially criminalise more than just deliberate falsehoods. This is</p>	Protection from Online Falsehoods and Manipulation Bill, s. 2 (2)(b) <i>General Interpretation</i>

because of the manner in which s 2(2)(b) is drafted. S 2(2)(b) defines a statement as a false one if it is “*false or misleading, whether wholly or in part, and whether on its own or in the context in which it appears*”. On a literal reading, it would appear that so long as even a small or insignificant part of a statement of fact contains something that is “false or misleading”, this renders that statement false in law. Clearly, this could not be the intention of the draftsman, but “*whether wholly or in part*” is somewhat vague and does not explain how much of a statement has to be false before it is actionable.

4. The fact that s 2(2)(a) defines a statement of fact as one which a “*reasonable person*” would regard as a statement of fact is also insufficient protection. This is because s 2(2)(a) provides an objective test (i.e., what a reasonable person would think) of whether a statement is one of fact or opinion, rather than a subjective one (i.e., what the person is actually thinking). However, if the purpose of the Bill is to only deter or punish those who deliberately spread falsehoods, then their true state of mind should be examined. After all, falsehoods can sometimes be spread recklessly or negligently, but that the aim of the Bill is to only target those which are spread deliberately.

5. As such, I am of the view that s 2(2) of the Bill is drafted in a somewhat vague and ambiguous manner that could potentially criminalise conduct that should not otherwise be criminalised. The aim of the Bill is to deter and combat deliberately spread falsehoods, but an overly-broad definition of what constitutes a false statement of fact could end up capturing legitimate public discourse.