



AWARE's statement on the Protection from Online Falsehoods and Manipulation Act

23 April 2019

Introduction

While fake news is indeed a problem that all societies have to address, we are concerned that the proposed Protection from Online Falsehoods and Manipulation Act ("POFMA") grants the Government overly broad discretionary powers to suppress, or inhibit, the expression of alternative views.

AWARE, like other advocacy NGOs, sometimes offers alternative readings of data that contributes to new knowledge and ways of thinking. Our research and advocacy has contributed to enhancements in public policy such as increased protection against sexual and domestic violence.

Our concern is that our work - which may offer alternative interpretations of data and challenge government policy at times - might be adversely affected under POFMA.

A clearer picture

AWARE has encountered situations where a person might not disclose the full truth to an official, but will do so to a perceived neutral entity, like an NGO. This happens, for example, with sexual assault victims, who, for a variety of reasons, might feel uncomfortable sharing the full details of their experience with the police; but might later disclose important details to case workers, counsellors and researchers. In these cases, AWARE's additional information and deeper understanding can be useful and valuable to officials.

In some cases, it is not possible or accurate to draw quick conclusions from initial data. This is particularly so in situations involving discrimination and abuse where it is useful to allow time and space for differing accounts to circulate. Short-circuiting this process from above could jeopardise true discovery.

Who decides?

POFMA gives unprecedented discretion to all government minister to demand corrections or removals of statement he declares to be false or misleading. It also gives police powers to authorised officers - including stat board employees, public officers - to administer the Act. Further, ministers have the power to exempt anyone

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from any provision of POFMA. These broad powers can easily be misused, especially by those who are not trained to carry out police procedures.

POFMA, as drafted, gives rise to real issues for AWARE.

For example, AWARE publishes a qualitative research report quoting the experience of respondents that reflect negatively on the implementation of certain Government policies.

AWARE has no reason to believe that the account given by the respondent is untrue but is also not able to verify the experience with additional corroborative evidence.

Will the Government allow AWARE this justification or use POFMA to take down the research report?

Enough regulations in place

In our submissions to the Select Committee last year, we stated that the Government already has sufficient powers under existing legislations to manage fake news and other abuse of information. These include the Public Order Act, Telecommunications Act, and Info-Communications Media Development Authority Act.

However, if POFMA is to be passed, we offer the following suggestions to sharpen its focus and avoid inhibiting freedom of speech and the work of NGOs.

1. Revise Definition of “Statement of Fact”

POFMA defines “Statement of Fact” as “a statement which a reasonable person seeing, hearing or otherwise perceiving it would consider to be a representation of fact”.

This definition is difficult to apply in practice, as there is no obvious convergence by “reasonable persons” on many matters. For example, “reasonable persons” that we asked could not agree on whether the following illustrations by Minister Shanmugam in his media statements were “facts” or not.

“Protests are not allowed in Singapore.” (Minister: Not Fact).
“The Government is not giving back my CPF.” (Minister: Not Fact)

We recommend that the definition of “statement of fact” be amended to be more specific and to reflect the intention of the Government as explained in the recent media statements. For instance, it needs to be clearer how the statements designed as “opinion” by the Minister (that “Government is incompetent”, “Free speech is not allowed in Singapore” and “The government is to be blamed for rising inequality”) would in fact be allowed.

We suggest that the definition of “statement of fact” be revised as follows:

“Statement of a thing or event which exists or has happened. It does not include opinions, comments, critiques, satire, parody, generalisations, statements of experiences or interpretations of another party’s views, intentions or priorities.”

2. Revise Definition of “False”

POFMA states that “a statement is false if it is false or misleading, whether wholly or in part, and whether on its own or in the context in which it appears.”

In our view, this is too broad as:

- a) it could capture statements where an immaterial or insignificant part of the statement is false or misleading (e.g. an event happened on Tuesday but is said to have happened on Wednesday); and
- b) it could also capture statements that are true in their context but not true if taken out of context.

We propose that the definition be revised as follows:

“A statement is false if it is materially false or misleading in the context in which it appears, taken within all relevant circumstances”.

A possible falsehood must be assessed in context, with a complete view of the circumstances surrounding the communication.

3. Limit Definition of Public Interest

POFMA provides a broad definition of public interest. The problematic part of the definition is sub-section (f) which extends “public interest” to include not diminishing public confidence in the Government.

The issue with sub-section (f) is that it allows the Government to use POFMA to shield itself from criticism, which would undermine our democratic system and government accountability. Public confidence should be organically accorded by the public and not treated as an end to maintain in itself.

To avoid actual and perceived conflict of interest issues and instances of POFMA being implemented to enable the Government to evade accountability and silence critics, we recommend that sub-section (f) be deleted.

4. Increase Court’s Role as Arbiter of POFMA and Shift Onus of Proof

Currently, POFMA provides for the affected parties to challenge correction or take-down directives in the High Court. Presumably, the onus would be on the party to prove that the statement is true.

Given the extensive powers under POFMA to curtail freedom of speech, and that the only safeguard against abuse is the High Court, we would recommend that the court mechanism be amended to place the onus of seeking Court approval on the Government. Further, it is more appropriate for the party alleging that the statement is false, i.e. the Government, to prove its falsehood.

Thus, we would recommend that POFMA be amended to provide that where the Government issues a directive, it will apply to the Court, within two weeks, to confirm that the directive was correctly made. The onus should not be on the affected party to initiate the court action and to prove that the statement is true.

Conclusion

In summary, AWARE feels no need for POFMA and is concerned that POFMA might hinder its work as well as that of other NGOs. However, if POFMA is indeed passed, we hope our concerns will be reflected in the adoption of the amendments suggested.