

CAPE's Quick Summary of:

The Protection from Online Falsehood & Manipulation Bill

1. What is a falsehood?

(according to the proposed Bill)

A "statement of fact" is defined as one which a reasonable person would consider to be representation of fact when seen, heard, or perceived.



A falsehood is defined as a **statement of fact** that is **false or misleading**, whether in part or wholly, and whether on its own or in the context it appears.



Opinions, satire, and parodies are NOT considered *statements of fact* and hence are not governed by this proposed legislation.

However, as the Court of Appeal has observed in Review Publishing v Lee Hsien Loong [2010] 1 SLR 52 at [140], "It will often be very difficult to decide whether a given statement expresses a comment or [an] opinion, or by contrast constitutes an allegation of fact. The same words published in one context may be statement[s] of fact, yet in another may be comment[s]"

2. What kind of falsehoods are criminalised?

According to Section 7(b), falsehoods that are criminalised are those that are:



Prejudicial to national security



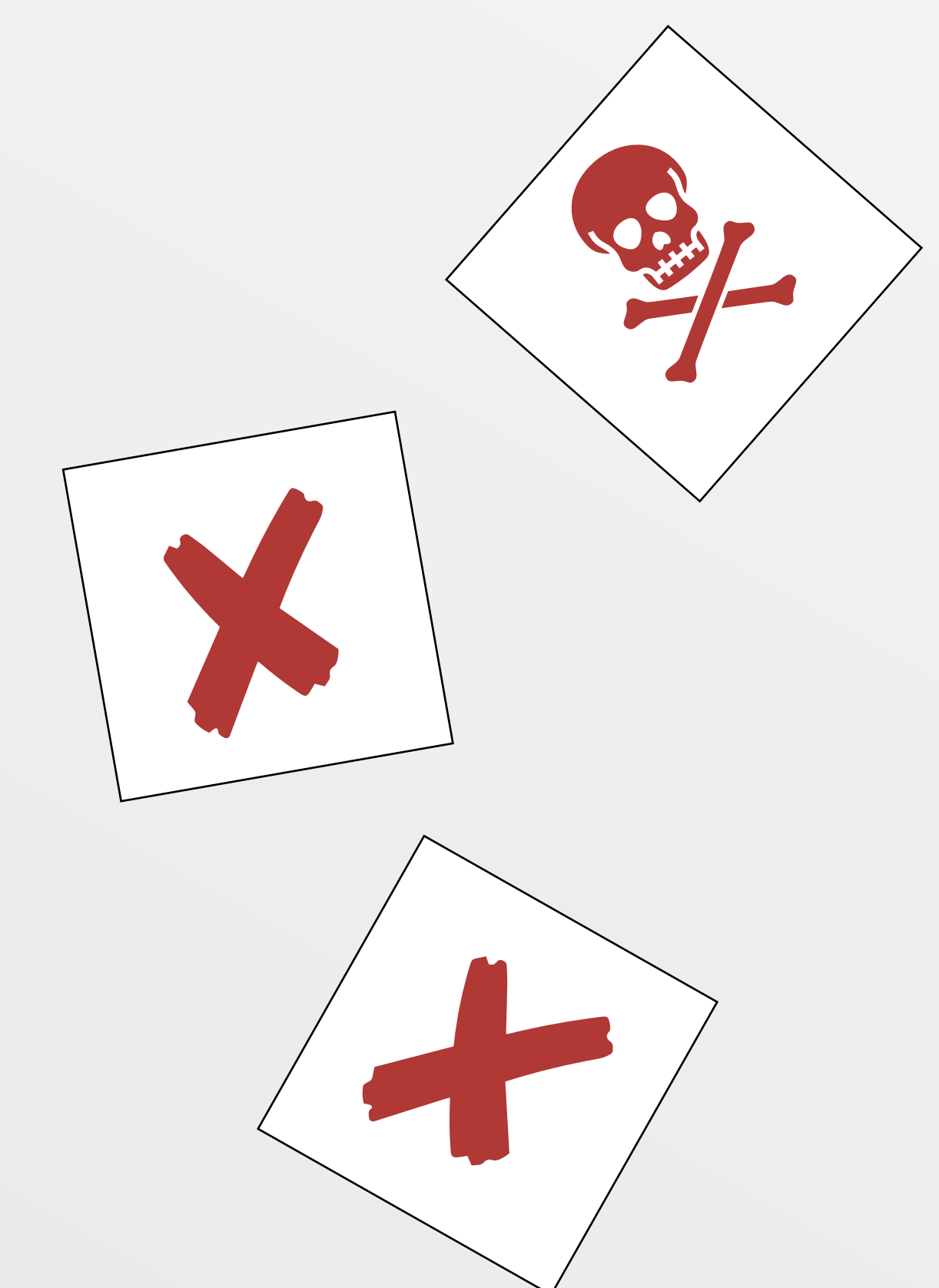
Prejudicial to public health, safety, tranquility, or finances



Prejudicial to our foreign relations



Capable of inciting enmity, hatred, or ill-will between different groups of persons or against the government and its agencies or organs



Capable of influencing elections or referendums



Capable of diminishing public confidence in the performance of the government, public officials, state organs or agencies



Punishments for communicating such false statements include fines of up to \$100,000 and/or imprisonment of up to 6 years. Companies, social media services, news publications and other entities may be fined up to \$1 million

3. Who determines what's fake?



ANY Minister has the power (if relevant to their Ministry) to determine a statement or material to be, or contain a falsehood that satisfies conditions in Part 2, under the proposed to act. Ministers may also empower other organs and entities of the government to issue directives.

4. How to appeal?



Individuals, web services, news publications and other entities **may appeal any of the issued orders at the High Court**. However, they must have first made an appeal to the Minister.

An appeal to the High Court may incur court hearing fees if the hearings stretch beyond three days. The **cost per day of hearing after three days can range from \$2,000 to \$6,000**. This excludes cost orders that may be made against the applicant should they lose the appeal as well as lawyers' fees if lawyers are engaged for the appeal.



In **Tan Seet Eng v Attorney-General** [2016] 1 SLR 779, the Court of Appeal explained at [99], "Where the Executive is acting within the ambit of the powers that have been vested in it by Parliament, then the court's concern is not with whether it agrees with the way in which the powers have been exercised. To suggest otherwise is to displace the choice that has been made by Parliament as to which branch of the government is to be entrusted with the powers in question. The court's role in judicial review which engages the manner in which the power is exercised will then be limited to such things as illegality, irrationality, and procedural impropriety."

What this means is that in adjudicating appeals against a Minister's decision, the courts will not investigate whether the Minister had made the right decision in ascertaining that a falsehood falls into the criminalised categories. Instead, **the court will only determine whether the Minister had reached the decision in a legal and proper manner** and whether the decision was "so absurd that no reasonable decision-maker could have come to it" (Tan Seet Eng at [80]).

5. Government powers



A. Correction Directive

Requires persons to issue a **correction declaring that their statement was false** or its published material contains a false statement of fact. A statement of the factual information may also be required to be issued along with the correction notice. The false statement or published material is **NOT required to be removed or deleted**.



*This directive has been stated by MinLaw to be **the primary mechanism that will be used**, implying that the other Directives below, including take-down orders, being reserved for falsehoods that of more severe public harm.*

B. Stop Communication Directive

Requires the person to delete or remove the false statement, and also take steps to ensure the statement is no longer available nor circulated online.

E. Disabling Direction

Requires social media services and other internet intermediaries, that was used to communicate false statements or material, to disable access of users in Singapore to the material.

C. Access Blocking Order

Orders IMDA to disable internet access to a website containing the false statement.

F. General Correction Notice

Requires social media services, internet intermediaries, news publications, or any other person, to issue a correction notice, like in A, but to all its users.

D. Targeted Correction Directive

Requires social media services and other internet intermediaries to issue a correction notice, like in A, to all users who had accessed the false information.

G. Account Restriction Order

Requires a social media service or any other internet intermediary to disable the account of a specific individual.

6. Fake news laws around the world



The **Communication Directive**, which mandates the communication of a correction notice, without removing the original content, is **a core innovation that is distinct** from other fake news laws.

Fake News Law

- In **France**, their laws are intended to stop false information and only comes into effect during the three months before an election. Candidates and political parties must appeal to courts to take down false information.
- In **Germany**, social media sites have to remove hate speech and other banned content within 24-hours, or face fines of 50 million Euros.

Key Differences

A Judge must first qualify content as false. While, in Singapore, Ministers have the powers to qualify what is false and causes public harm.

The law is **only** applicable for social media sites of over 2 million users.

Malaysia's fake news law makes it an offense to create, publish or disseminate any fake news or any publication containing fake news. The law was widely criticised for being a political move to suppress the Opposition ahead of the May 2018 General Elections.

Russia passed a law, in March 2019, criminalising fake news or online information that was disrespectful to the state. Websites that do not adhere to take-down requests can be blocked, and offenders can be fined under the law.



These laws have been highly controversial in their countries. The laws in France and Germany have been challenged and the current Malaysian government has been seeking to repeal their fake news laws.

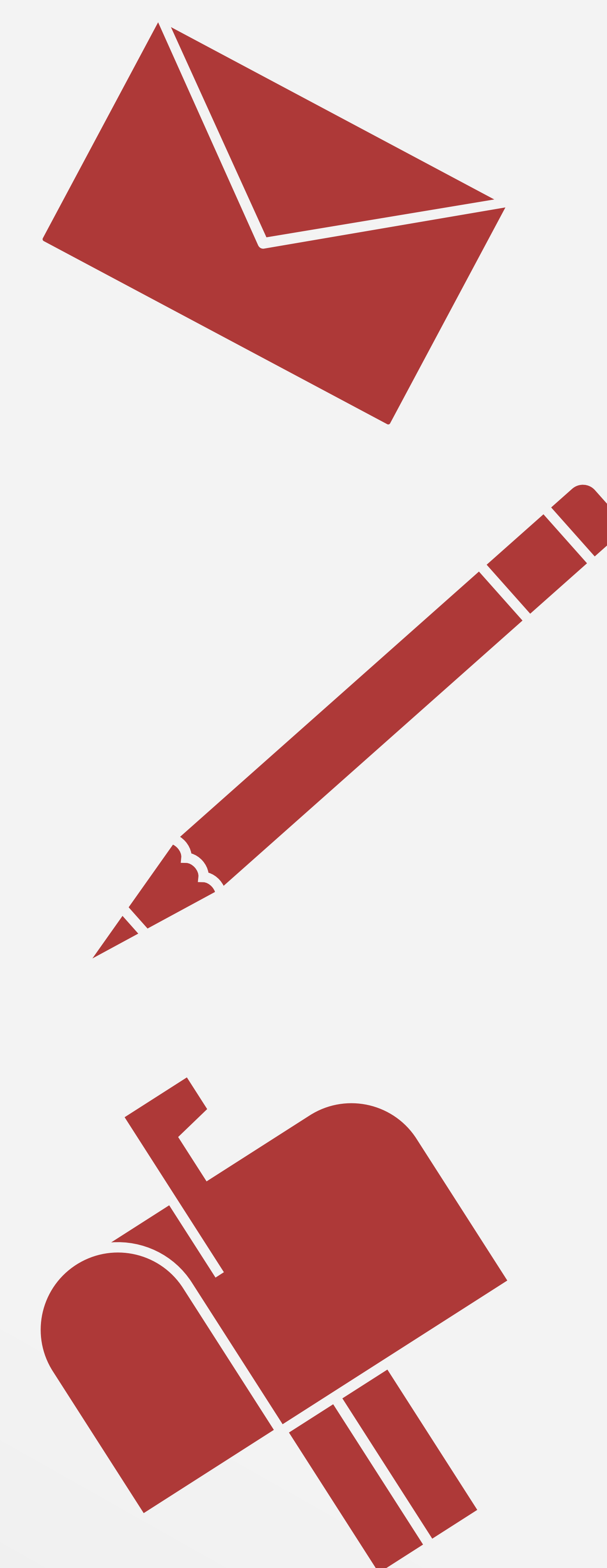
7. What you can do?

The bill is due for a second reading before it is voted into law in the next Parliament sitting



In the meantime...

- You can **write in to your Member of Parliament (MP)** about your concerns about the bill. It is the role of your MP to hear your concerns and have them represented in Parliament.
- CAPE is also organising a **feedback session** with MPs in late April to gather public feedback about the bill. Keep a look-out for it!



References

1. Ministry of Law. 1 April 2019. Press Release: *New Bill to Protect Society from Online Falsehoods and Malicious Actors*.
2. Parliament of Singapore. 1 April 2019. *Protection from Online Falsehoods and Manipulation Bill*. Bill No. 10/2019.
3. EuroNews. November 2018. *France passes controversial 'fake news' law*.
4. Yeung, J. August 2018. *Malaysia repeals controversial fake news law*, CNN.
5. The Straits Times. March 2019. *Russia's Putin signs law banning fake news, insulting the state online*.



CAPE, or the **Community for Advocacy & Political Education**, a student organisation based in Yale-NUS College, was founded in 2017 by a group of students from Yale-NUS College and NUS Law. We examine local civic affairs, build political literacy, increase access to civil participation, and provides avenues for Singaporeans to contribute constructively. We envision a Singapore where citizens are politically conscious and proactively engaged in civil society, policy making and social change.

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