



## **The *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023***

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**This proposed legislation is ill-conceived. Even applied in a well-meaning and good faith manner, it will inflict harm greatly exceeding what the legislation aims to reduce. The legislation will gravely undermine the trust that exists between the Australian citizenry and its governing elites, already at a low ebb due to the policy failures of recent years.**

**It would be a challenge to identify any place or time where similar forms of censorship improved the society in which it occurred. By contrast, history is replete with examples where narrative control led to untold repression and human suffering.**

**The proposed legislation should be abandoned for the following reasons:**

- 1. It is impossible for the Australian public to read the Bill as anything other than an assault on freedom of expression, despite the assertions of the Guidance Note. Regardless of the Bill's intention, the proposed legislation will have a chilling effect on legitimate democratic discourse and debates on matters of public importance. It shifts the balance between individual liberty decisively towards state control in a totalitarian manner.**
- 2. Examples of serious harm listed in the Guidance Note extend far beyond legitimate constraint in a liberal democracy. Reasonable restrictions on freedom of expression would include immediate incitement to violence, instruction on criminal activity (such as manufacturing weapons or narcotics), and the promotion of self-harm. Under no circumstances should legislation restrict the free exchange of views on matters of legitimate public concern.**
- 3. Another category may be wilful disinformation perpetuated by foreign governments, or companies publishing false and misleading information in bad faith. Examples might include misrepresentations of a foreign power about Australia's policies and actions, or a tobacco company falsely claiming its cigarettes are safe for human consumption. In both of these cases, however, these may be dealt with under existing legislation.**

4. What defines misinformation will invariably be determined along political lines, and not be made on fact alone. It is hard to imagine beliefs and assertions that support Government policy being labelled misinformation by ACMA. In this way, as in many others, the application of misinformation sanctions will not be applied equally under the law, but rather be used prejudicially, leading to bitter resentment and resistance among segments of the Australian public.
5. ACMA cannot be seen to arbitrate what is legitimate discourse in the public square. Any use of its powers that sit outside the narrow scope of imminent incitement and foreign interference will be apprehended by the Australian people, rightly, as persecution. ACMA will no longer be viewed as an independent regulator but rather an Orwellian Ministry of Truth. Indeed it is possible, even inevitable, that ACMA will change its position on the same issue as circumstances change, with no recourse for those who experienced harm under the previous censorship dogma.
6. The proposed legislation effectively makes social media platforms publishers. The telephone carrier cannot be held liable for something you or I say on the phone, because the carrier does not editorialise, but rather provides a service that individuals use for their own purpose. Once you hold social media companies responsible for the content of individual users, then it is no longer a platform, but rather an editorialising syndicate such as the Sydney Morning Herald or The Australian newspapers. Social media companies would then be within their rights to push their own editorial line, and may simply choose to suppress Australian government messaging entirely.
7. As the Government will be exempted from this legislation, it will have the power to compel while silencing opposition. ACMA may deem information that contradicts the Government's line to be false, deceptive or misleading under the Act, even if the information expressed is objectively and scientifically correct. Take for example Covid-19 vaccines. I took my vaccines and booster early at a time when doing so was entirely voluntary. However I later witnessed with dismay as Governments across Australia systematically coerced the population to endure involuntary penetration and absorption of an experimental therapeutic on pain of job loss, financial insecurity, travel restriction, social ostracism, and public vilification. This breaches the most foundational principle of medical ethics, that of informed consent. This proposed legislation would facilitate such human rights violations to be repeated in future, not constrain them.
8. The exemptions in the proposed legislation can only be read as a means of preserving establishment power structures at the expense of community engagement and civil society. The proposed legislation excludes: Government, News media, and Educational institutions while applying to the communication of ordinary citizens. Unambiguously this is state-orchestrated repression. We would challenge the Government to explain what entitles these established bodies to engage in 'misinformation and disinformation', but not the Australian citizens whom they wish to deceive.

**Additionally, the proposed legislation will weaponise state power to stifle debate on current matters of public concern and debate. Including:**

9. Gender identity and medical transition. A legitimate debate is ongoing regarding the medical validity of gender affirming care for minors, competition in women's sport, and access to female only spaces. Under the proposed legislation, a woman who dismisses the idea that a biological male can be a woman might be perpetuating 'misinformation' online, regardless of the evidence used in support of the assertion.
10. Climate action. I strongly believe in the need for climate action. However it is dangerous for those who dissent to have claims labelled misinformation when they are expressed in good faith. If a person/s is persecuted for genuinely held beliefs then they are not living in a free society, even if ACMA is of the view that those beliefs will lead to policies that are socially harmful. Ultimately it is the right of every individual to advocate and seek support for their preferred policies and worldview, even where the Government considers these ideas contrary to the national interest.
11. The Voice Referendum. It is impossible for Australians to ignore the timing of this proposed legislation, coming as it does when polls show the Voice referendum likely to fail. The Albanese government supports the Yes campaign and is exempting itself from the legislation, while the grass-roots No campaign has outperformed across social media platforms. It would appear that the Government, through ACMA, wishes to harness the powers of the state to suppress the opposing campaign on the Voice. The consequence would be No supporters being labelled as spreading misinformation, even if the claims being made simply fill the void left from an absence of detail. It would be extremely harmful to Australian democracy were ACMA to exercise powers to influence an ongoing referendum debate in any way.
12. Covid-19. History will not judge the Government's actions kindly with regard to the pandemic. Information was suppressed online for misinformation which later proved to be correct, including with respect to vaccines. First it was claimed that the vaccine would prevent you from getting the disease, then that it would prevent infection spread. Both proved to be false, meanwhile people were being removed from social media for saying things that were later vindicated. After this experience, social media companies should be rightly sceptical of Government claims on matters of public importance, and must empower citizens to resist censorship efforts and exercise legitimate protest.

## Recommendations

Ultimately, any attempt by centralised authority to restrict the free communication of information is an illegitimate use of state power. The whole exercise should be entirely abandoned, and the philosophy which drives it roundly criticised.

1. **Abandon the legislation in its entirety and withdraw it from consideration.**

**OR**

The above is definitely the preferred. However if the Government were to proceed with legislation to restrict misinformation and disinformation on social media, it must be on the following basis.

2. **Amend the proposed legislation to include all of the following:**
  - **All institutions to be covered by the legislation, without exemption for Government, Educational institutions or News Media; and,**
  - **Remove any control by ACMA or other statutory body determining what is misinformation or disinformation. Instead this should be determined solely by the Australian public. Twitter's new "Community Notes" feature is a good model for this; and,**
  - **Once a community note has been added and validated, the public to determine whether the information should be deboosted or suppressed based on the level of perceived harm.**

In short, in determining whether information is to be classified as misinformation or disinformation, and what to do with it, the Government should have no role.

## Conclusion

It is always a temptation to defer to one's own expertise, assuming your own judgement should have primacy in defining the truth. It is equally tempting to presume the reason why the Australian people do not agree with a prescribed narrative is because the ignorant masses are easily misled by malevolent actors pushing misinformation. Less likely is a self-appointed authority to believe the fault lies in their own messaging, much less their actual ideas. A wise government would be more humble than this, more fearful of the power it wishes to seize, and more cognisant of the enormous misery inflicted whenever such power has ever previously been used.