

Submission on Draft Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill, 2023

During the recent pandemic, various governments, particularly State governments of different political persuasions, needed no encouragement to censor free speech. The Victorian Government's actions in this regard, in an alleged attempt to suppress misinformation and protect the public, provide an outstanding example of what not to do. Much of what was regarded as misinformation then has now been shown to be true information.

Free speech is a precious thing not to be negated or diminished by faceless bureaucrats from ACMA. It is an essential part of a body politic governed by the rule of law. The proposed *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill* is misconceived and malign. It should be withdrawn as it is not susceptible to correction. Posts to social media and other platforms which incite violence or harm to a person are adequately dealt with by the existing criminal law.

In particular, this proposed bill is infected with several vices:

- The words 'misinformation' and 'disinformation' as defined in the Bill are extremely wide and vague. The definitions are, no doubt, derived from trade practices and consumer protection law where there is an encyclopaedia of precedent. However, in cases where courts have found misleading or deceptive conduct proved, the conclusions are based on fact and evidence following a process of proper court procedure.
- A finding of misinformation or disinformation without a proper process is necessarily subjective; that such a finding may be influenced by government, either directly or indirectly, is inevitable; that such a finding may be influenced by the orthodoxy du jour is likewise inevitable.
- By what qualification are bureaucrats from ACMA equipped to define what is misinformation or disinformation?
- A finding of misleading or deceptive conduct in consumer law is a finding of fact. Under this Bill, expressions of opinion may amount to misinformation or disinformation. Aside from expressions of opinion which constitute a breach of the criminal law, expressions of opinion should be made without fear of censorship or modification by some unaccountable body. A right to a free opinion is a non-negotiable right in a liberal democracy governed by the rule of law.
- Many social media platforms fall within the purview of this Bill and many or most of these platforms are politically aligned. Some social media platforms already engage in self-censorship and are prone to cancelling persons posting opinions and comments with which they do not agree. This Bill is likely to increase such

unwelcome behaviour. It will become all too easy for a social media platform to censor opinions and comments which, so it will be argued, are likely to attract the attention of ACMA with consequent fines and penalties.

It is a strange coincidence that the *Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill, 2023* was introduced for public comment about the same time as the decision in *State of Michigan v Joseph Biden* where Judge Doughty's judgment confirmed what had already been revealed by the twitter files opened up for public scrutiny by Elon Musk. The decision acknowledged political interference at the highest level in that government and government agencies ordered or demanded/requested various social media platforms to censor or remove postings critical of government policy or otherwise expressing views which were deemed contrary to the then current orthodoxy concerning political, scientific and medical matters. In the United States, such censorship of free speech has been ruled unconstitutional. In Australia, it seems that the reverse is true.

The *Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill* should be denounced and must be withdrawn.