

Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023

Government Response and Implementation Roadmap for the Digital Platforms Inquiry

Any response to the proposed legislation dealing with ‘misinformation’ and ‘disinformation’ comes up against the problems of definition, free speech, and the wisdom of allowing a government agency to police information spaces; these spaces should by necessity be robust and contested forms of public debate. It also brings into question the very structure of power in society; who are defined as sources to be trusted, and who are to be the guardians of the discourse of digital platforms.

From the outset, the draft Bill decides in advance the only scope of so-called ‘misinformation’ it intends to combat by its exclusionary definitions:

excluded content for misinformation purposes means any of the following:

- (a) content produced in good faith for the purposes of entertainment, parody or satire;
- (b) professional news content;
- (c) content produced by or for an educational institution accredited by any of the following:
 - (i) the Commonwealth;
 - (ii) a State;
 - (iii) a Territory;
 - (iv) a body recognised by the Commonwealth, a State or a Territory as an accreditor of educational institutions;
- (d) content produced by or for an educational institution accredited:
 - (i) by a foreign government or a body recognised by a foreign government as an accreditor of educational institutions; and
 - (ii) to substantially equivalent standards as a comparable Australian educational institution;
- (e) content that is authorised by:
 - (i) the Commonwealth; or
 - (ii) a State; or
 - (iii) a Territory; or
 - (iv) a local government.

Given that journalists and politicians are among the least trusted professions in Australia, trailing at 21% and 12% respectively in the 2022 IPSOS Global Trustworthiness Index

<https://www.ipsos.com/sites/default/files/ct/news/documents/2022-07/Global%20trustworthiness%202022%20Report.pdf>

they appear to be strange exemptions from being held to account according to any standard of ‘misinformation’. Indeed, in the ACMA 2021 report “A report to the government on the adequacy of digital platforms’ disinformation and news quality measures” they make the assertion that, firstly, there is “no established consensus” on disinformation or misinformation yet seek powers to determine the punishments for social media companies who cause ‘harms’ by allowing such content on their platforms. Undeterred by being unable to come up with an adequate definition of misinformation, the draft Bill persists in building upon ACMA’s desire for a draconian infrastructure of penalties for social media companies.

The ‘harms’ in the Bill are defined as:

- (a) hatred against a group in Australian society on the basis of ethnicity, nationality, race, gender, sexual orientation, age, religion or physical or mental disability;
- (b) disruption of public order or society in Australia;
- (c) harm to the integrity of Australian democratic processes or of Commonwealth, State, Territory or local government institutions;
- (d) harm to the health of Australians;
- (e) harm to the Australian environment;
- (f) economic or financial harm to Australians, the Australian economy or a sector of the Australian economy.

When they are not already dealt with under current Australian law, such as the *Racial Discrimination Act 1975* or laws on defamation, they are vague to the point of being legally indefinable. Indeed, ACMA itself claims that an ‘empirical assessment’ of the nebulous terms of misinformation and disinformation by a study of Australians who believe they have experienced it on social media is sufficient to know that it is a problem. The argument with this is that there is no further analysis of what harms this misinformation actually does, or its sources. It could be argued that the only way some of these ‘harms’ are mitigated is through their exposure to the light. For example, through people sharing their experiences of opioid dependency on social media, the community as a whole becomes aware of the dangers of overprescribing of pain medication. The medical establishment who previously ignored this ‘harm to the health of Australians’ and the government department who supported them, are forced to acknowledge this harm. Under the proposed Bill, social media companies would be under threat of sanction were it to allow the undermining of an establishment ignoring a problem in favour of what later comes out to be ‘misinformation’. The official narrative changes. What was once misinformation becomes ‘information’.

Similarly with more contentious issues such as ‘war and peace’ does the spectre of censorship loom over this proposed Bill. It has become an article of faith in the Australian political and journalistic sphere to define the military conflict in Ukraine as an unjustified invasion by Russia

against a sovereign nation. The Maidan Coup of 2014 and the war against ethnic Russians in the Donbass perpetrated by the Ukrainian nationalist government have all been forgotten by a media which once reported on the complexities of the conflict. In much the same way, Australian media subsequently admitted that the so-called Iraqi Weapons of Mass Destruction were a deceit perpetrated by Western governments as a rationalization for the invasion of that sovereign country, despite peddling the misinformation contemporaneously. If there were another deception that were to put Australians at war, it is highly possible that the clause proscribing the harms of ‘disruption of public order or society in Australia’ would be invoked to deter social media companies from allowing on their platform citizens exposing any such fabrications. This is the danger of allowing public debate being defined as to its perimeters by the government through ACMA and a compliant media. Through its proposed penalties on social media companies, ACMA becomes a *de facto* censor leading to a less-informed public.

ACMA’s determination that there must be an assessment related to the “range of chronic harms, such as reductions in community cohesion and a lessening of trust in public institutions” then it is clear that the issue to be addressed is not misinformation, but information which does not emanate from, or conform with the official narrative. In the world of ‘fact checkers’ and ‘misinformation experts’, all of whom, like [First Draft](#)’s discredited [Bellingcat](#) (who are either openly or covertly financed by governments and corporations), the information space is becoming a stultifying morass. It becomes a circular logic, illustrated in this Bill by ‘fact-checkers’ who are financed by Western states and corporations defining the ‘truth’ in conjunction with governments and corporations. This truth then becomes sanctified by officially sanctioned purveyors of ‘professional news content’; the circle is completed, and disinformation becomes, by definition, any contrary account of the world.

This Bill is an ill-conceived attempt to stifle public debate on the most important issues of the day. By defining ‘misinformation’ as inconvenient challenges to official narratives, the government has shown that it has given up on convincing people of its case and has decided to use ACMA to impose censorious demands on social media companies. The proposed legislation is illogical, authoritarian, and a danger to public debate in Australia. As such, it should be discarded in its entirety.