

# New ACMA powers to combat misinformation and disinformation

I care about freedom of speech and freedom of expression. As a country we're also supposed to care about freedom of speech and freedom of expression. As a country that upholds these values we are obliged to care about freedom of speech and expression via the International Covenant on Civil and Political Rights which, at article 19, says that everybody has the right to hold free opinions, and everybody has the right to freely express those opinions through any medium that they choose. Australia also purports to uphold those human rights expressed in the Universal Declaration of Human Rights, which, at article 19, says everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. The proposed *Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023* will severely restrict freedom of speech and expression in Australia. It will essentially allow the Australian Communications and Media Authority (ACMA) to unilaterally and arbitrarily decide what information is true and false and therefore, what information should be allowed on the internet and what shouldn't. Massive civil and criminal penalties will be meted out to any person or platform that makes publicly available information that they deem to be misinformation or disinformation. This is a typical piece of crisis legislation. Generally crisis legislation is such that it tends to allow authority more power than would usually be allowed to government. There is no crisis; any such claim that there is a crisis is fabricated in the name of moral outrage when the government narrative is challenged.

The proposed bill creates two classes of citizens:

Class 1: Made up of politicians, journalists, members of educational institutions, all who will have the power to spread what is (correctly or incorrectly) judged as false/misleading information online.

Class 2: The second group is everyone else; regular citizens in our democracy who often have more knowledge about topics than anyone in the previous category, such as industry insiders.

The Internet is the most powerful democratic invention humanity has ever created. It has given a voice to regular people, and this proposed bill risks harming the "Class 2" group of citizens disproportionately. Due to the excessive fines, digital services will be much more restrictive of speech than even the most restrictive digital services currently. The harm will be compounded by the fact that the code applies across the entire industry and there are no "pressure escape valves" on the system.

The words misinformation and disinformation contained in the bill are problematic. How are those words defined? Section 7, misinformation and disinformation for the purposes of this schedule, is dissemination of content using a digital service if the content contains information that is false, misleading or deceptive, and the content is not excluded content for misinformation purposes, and the

content is provided on the digital service to one or more end users in Australia and the provision of the content on the service is reasonably likely to cause or contribute to serious harm.

There is no realistic definition of false, misleading or deceptive in this bill. That's because it would be almost impossible to define information that is false, misleading or deceptive. In science there is only the best currently available theory based on the best currently available evidence and data. All of this is subject to regular change, which inevitably occurs. In every field of study experts can disagree on theories derived from the same set of data. Utilising different methodologies can produce contradicting outcomes and theories. This is the foundation of scientific study such that theories are produced and peer reviewed and debated. To propose that the ACMA is to become some sort of "ministry of truth" who can determine what is truth and what is not is utterly preposterous. For misinformation and disinformation to be covered by the Draft Bill, it must be '*reasonably likely that it would cause or contribute to serious harm*'. For harm to be serious, it is intended that it must have severe and wide-reaching impacts on Australians. Examples provided include inciting hatred, vandalising critical communications infrastructure, serious financial or economic harm or serious harm to the health of Australians. The state governments of Australia imposed vaccination mandates and lockdowns upon the population that have caused immeasurable harm. The negative mental health outcomes of these alone have been extraordinarily damaging and have contributed to significantly elevated crisis response service utilisation throughout the country. Will these policies be subject to prosecution for causing or contributing to serious harm?

Governments and people proposing bills like this like to pretend they are on the side of truth, and not the side of censorship. However, even Dr. Nick Coatsworth, who was once a Deputy Chief Medical Officer of Australia has raised serious concerns about the scope and application of this bill via his personal Twitter account. On 25th of June 2023, following the announcement of this bill, he posted the following tweet:

*"Misinformation is an accusation thrown so readily that such legislation would be impossible to implement; and if it was implemented, would inevitably lead to fines being levied on things that are not, or turn out not to be."*

Dr. Nick Coatsworth, 25 June 2023

This proposed bill would give the ACMA the power to obtain information and documents from individuals. This makes the ACMA into a quasi tribunal who can hold hearings where an individual can be forced to appear before the ACMA at a time and place specified in a notice issued to an individual. They might also be compelled to give any evidence and produce any documents as required by the ACMA. It also proposes that when providing that evidence there is no right against self incrimination. So unlike criminal proceedings, where you have the right not to incriminate yourself, in these cases an individual is not excused from giving information or evidence or producing a document or a copy of a document on the grounds that giving it might tend to incriminate the individual in relation to an offense. What an absurd power to give the ACMA!

We want the primary means of information sharing in our current society to remain censorship free, and indeed, to remain an open marketplace of ideas so that we don't fall into corrupt, hegemonic ideologies that cannot be shifted, or that can only be governed and controlled by the authority of the government.