

Feedback to an exposure draft of the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023. <https://www.infrastructure.gov.au/have-your-say/new-acma-powers-combat-misinformation-and-disinformation>

This exposure draft is a precursor to the proposed introduction of new laws to provide the Australian Communications and Media Authority (ACMA) with powers to combat misinformation and disinformation. It appears that the new laws are intended primarily for reducing harm that may arise from the promulgation of false information.

In my view, there are two main approaches for reducing such harm. One is to identify and limit false information. The other, in contrast, is to encourage any opinions to be advanced so that truth can be discovered through debate.

This exposure bill is founded on the first of these two approaches. I object to this approach for the following reasons.

General reasons:

First, freedom to speak allows opinions to be challenged and provides ingredients for creativity and for synthesising new ideas. In this way, freedom to speak is a foundation for the processes of democracy and science. Further, freedom to speak is essential for withstanding the ever-present tendency of a few to impose autocracy or totalitarianism.

However, laws against misinformation or disinformation necessarily inhibit freedom to speak. Even though there may be an intention declared in Schedule 2, Clause 7 (on p53) that these laws will be regulated in a manner that "has regard to freedom of expression", in my view, good intentions can only yield such freedom in the complete absence of laws against misinformation or disinformation.

Second, we have no need for laws against misinformation or disinformation, because we already have laws against causing harm, inciting violence, discrimination, defamation, and libel.

Particular concerns with the draft:

Schedule 1

Clause 7 definition of misinformation and disinformation (p12)

7 (1)(a). My focus here is on the term 'false'. A difficulty arising from including the term 'false' in the definition of misinformation and disinformation is that truth or falseness is an opinion. At the time that an opinion is designated as true or false, it cannot be known whether that opinion will later be considered true or false.

Further, since opinion may be influenced by personal interest, there is a risk that laws enabling opinions to be designated as misinformation may enable the interests of some to be imposed over the interests of others. This raises the risk that the interests of the more powerful may prevail over the interests of the less powerful.

However, this exposure draft goes even further than merely carrying such a risk, and leaves no question as to whether the interests of the more powerful may prevail over the interests of the less powerful. This is because, as shown in Clause 6 (page 11), any service specified by the minister is excluded from the proposed law. Further, in Clause 2 as discussed below, a number of powerful groups are specifically excluded.

Clause 2 Definitions

- Definition of excluded content for misinformation purposes (page 5)

The list of excluded content does not define the content. Instead it defines those producers of the content who are excluded from the laws under discussion. In particular, those excluded include professional news media organisations, educational institutions accredited by government, and the government itself.

We do not need to rely solely on philosophy or ethics to understand that opinions imposed by government authorities may turn out to be false. We can turn to history. Indeed, we can see this with recent events during the declared pandemic. It is salient to observe over these years that opposing opinions have often been censored, and those in authority have often been vociferous in labelling opposing opinions as misinformation or disinformation.

Some of the many opinions that have been imposed by those in power in a number of countries have been:

1. The covid virus is definitely not produced in a laboratory involved in enhancing gain of function
2. The virus is highly dangerous
3. The virus does not discriminate, and there is no way of knowing in advance who is vulnerable. It can kill young, fit, healthy people as readily as those with fragile immune systems
4. It would be too difficult to focus protection on only those vulnerable who wished to be protected
5. There are no existing prophylactics or early treatments for reducing the effects of infection. In particular, hydroxychloroquine and ivermectin are useless and even dangerous for humans. Ivermectin is merely a horse de-wormer
6. Natural immunity following infection is less effective than vaccine-induced immunity
7. Vaccine-induced immunity is the only available way to control the risk of harm. (Use of supplements such as zinc and vitamins D3 and C was underemphasised)
8. Masks are effective against transmission
9. Only short-term lockdowns of 2 or 3 weeks are needed
10. The spike protein component of the virus particle is non toxic, which means that vaccinations that introduce just the spike protein will be safe
11. The gene-based mRNA and DNA covid injections are safe, even for children and pregnant women
12. The injected material remains in the muscle near the site of the injection, where an immune response will be mounted. The material will not spread to other parts of the body
13. An injection into the main immune compartment of the body, which bypasses the mucosal membranes of the upper airways, can provoke immunity against a respiratory virus
14. The spike protein is relatively stable against mutation, and so a vaccine that introduces it will provoke immunity (in the form of IgG antibodies) which will remain effective even if other components of the virus particle mutate. Thus, a course of at most two injections will give enduring immunity
15. The injections will stop transmission of the virus. So, by accepting the injections a person can be confident that they will not infect vulnerable people. Those who do not accept the injections are selfish and risk becoming Grannie Killers
16. The injections will save an injected person from severe illness and death.

Many opinions once imposed by those in authority have turned out in hindsight to be false. And many of the opinions of those who challenged the authorities have turned out to be true. Nevertheless, opinions that challenged the authorities were restricted and labelled misinformation or disinformation.

Furthermore, the consequential harm of those imposed opinions has been significant both at national and personal levels:

- a) Mass lockdowns slowed economic activity, which necessitated historically-high short-term monetary expansion. Now we have inflation, increasing interest rates, and impending recession
- b) Mass lockdowns caused social isolation, leading to mental illness, and may have led to harms from lack of normal care
- c) Underemphasis of enhancing our immune systems and failure to treat early symptoms led to unnecessary health risks for individuals
- d) Mass vaccination failed to prevent the spread of the virus
- e) The population now carries the inherent harms of a medical procedure. The nation suffers high excess deaths at a phase in a pandemic cycle when we would expect *lower* than normal deaths
- f) The opinion that the injections would prevent transmission led to vaccines being mandated for employment, leading to loss of income, and hardship in many cases. Vaccine passports were used to prevent access to services. The adoption of this opinion also brought many Australian citizens close to believing that unvaccinated people should be kept in indefinite isolation in camps. Such camps were actually constructed in some states
- g) Despite the proportion of those vaccinated in the population being high, covid is still being recorded as the cause of death in many instances

Clause 21 Self incrimination p24

Under the Common Law, we have the privilege to refuse to answer questions that may incriminate ourselves. My understanding is that this privilege was established during the 12th and 13th centuries. A concern with forcing people to provide evidence that may incriminate themselves under compulsory interrogation and threat of penalty is that it gives an incentive to exert pressure, which may lead to conviction of innocent people. Some Star Chamber confessions in the 17th century were exacted in this way. I object strongly to its removal.

Conclusion

This exposure draft carries proposed legislation for enhancing the power of government to censor opinion.

However, we can see from the recent past that censorship of opposing, or dissenting, opinion has allowed government authorities to impose actions founded on their own opinion, much of which has turned out to be arguable if not false. This has led to harm.

In my view, any attempt to identify and limit dissenting opinion carries a risk of harm if the authorised opinion turns out to be false. One could take the view that laws should be introduced to prevent governments and other authorities from making false statements or taking action based on false information. However, since it is often not clear at the time which statements and what information are true, I feel a better way to reduce the risk of harm is to enable and bolster the freedom to speak, so that we can work to seek truth through debate, together.