

To: The Department of Infrastructure, Transport, Regional Development, Communications and the Arts

August 2023

Dear Department,

Please find following my submission to the Inquiry into the proposed **Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023**.

I make this submission as a private citizen with an interest in public affairs, alarmed at the potential consequences of this proposed legislation.

In this submission I provide a high-level overview comment on the Bill, rather than analyse definitions of terms or the specifics of how the legislation would be administered or the size of penalties for breaching the code, etc.

Thank you for the opportunity to make a submission to this important Inquiry.

Yours faithfully,

**David A W Miller.**

## **SUBMISSION**

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

#### **Department of Infrastructure, Transport, Regional Development, Communications and the Arts**

##### Introduction and Summary

We know that there is a great deal of informed and uninformed opinion expressed in society, and that there is also so-called “fake news”, and that the internet has magnified the access and penetration of all such information to citizens.

While there is some information that is the simple dissemination of facts, and other information that is plainly false or deceptive, there is also much information in between, that is one of many “shades of grey”, and that expresses various opinions and perspectives on various issues. Opinion varies greatly on the validity of much of this information (or one might say, there are opinions about opinions). This is life and reality.

In this respect I believe that it is unrealistic to simply call out various information and opinions expressed, and neatly classify each expressed text or video as either “True/Factual”, “Misinformation”, or “Disinformation”. Life is not like that.

In this regard I believe that the simplistic, heavy-handed approach that this proposed legislation takes, is the wrong approach to combatting misguidance in various media, particularly the internet.

Furthermore, I believe the proposed legislation, if implemented, will have serious negative consequences for public debate and Freedom of Speech. And I gather from what I read, that many other people have reached the same conclusion.

In summary, the effective introduction of censorship that this Bill proposes, including fines to various entities for failing to censor, introduces a worse problem than the problem the legislation is trying (probably clumsily and ineffectively) to solve.

I will elaborate below.

##### Problems with the Proposed Legislation – Free Speech

The document entitled “Guidance Note”, which accompanies the draft Bill on your website, states “The Bill does not seek to curtail freedom of speech” (pages 6 & 7). But isn’t curtailing freedom of speech the whole purpose of the Bill? That is, that the government (indirectly, via the Australian Communications and Media Authority – “ACMA”) will decide what is Fact, what is Misinformation, and what is Disinformation, and suppress the latter two categories respectively as “harmful”. On what basis will ACMA (or the media platforms acting on ACMA’s behalf) objectively and definitively decide which category all information falls into? So, this statement is self-contradictory.

A similar self-contradictory statement is contained at the top of page 9 of the document entitled “Fact Sheet”, which accompanies the draft Bill on your website. There it states “The ACMA would have no role in determining truthfulness”. But isn’t determining the supposed truthfulness of information the very purpose of the legislation – for ACMA to distinguish what information it considers to be Truthful (factual), from what it considers to be

Untruthful (ie false – as either “Misinformation” or “Disinformation” and therefore “harmful” and should be suppressed).

As well as the fact that much information cannot simply or easily be categorised into one of the three categories as I mentioned earlier, what is “Factual” is often implicitly defined as the majority opinion of the time. The problem with this is that the majority opinion is not always right.

I think that majority opinion often does distill the best way forward, but there are exceptions and aberrations, and the majority opinion is not necessarily or automatically right. As majority opinion may not be right, it is important to let minority opinions be heard, and of course which opinion is the most correct, is often only known in hindsight. This is one of the dangers of censorship.

Let me give some examples from history.

In nineteenth-century London, there was a cholera epidemic, and many people were dying. Many people suspected that the disease had something to do with sewage, and London often stank with the smell of untreated and improperly disposed-of sewage, and because of this smell nearly everyone believed that the disease was airborne transmitted. As a result, on occasions when the smell got really bad, people were advised to get out of London if they possibly could, to avoid catching the disease from the smell.

This situation went on for years – until someone discovered and proved that cholera was not transmitted via the air or caught from the odour, but was waterborne transmitted, and that people were catching it by unwittingly drinking water from contaminated wells.

If one small voice, disagreeing with the majority opinion that cholera was transmitted via the air, had been suppressed as “dangerous misinformation or mischievous disinformation” then the true cause of cholera would have been lost to common knowledge for a long time, and the big sewer building projects in London may not have happened for who knows how long. And a lot more people would have died.

Here is another example. In the 1930s, the majority of German citizens thought that Adolf Hitler and the National Socialist German Workers’ Party (Nazi Party) was the most visionary and inspirational political option, and would be the best choice to lead Germany out of the Great Depression and into the future. Thus, the people elected the Nazi government. Well, we all know how that ended...

“Truth” alternatively can sometimes be defined as government dogma, which again, is not necessarily always right.

#### Problems with the Proposed Legislation – “Hatred” etc

The document entitled “Fact Sheet”, which accompanies the draft Bill on your website, states in the very first point in the table on page 4, that information that conveys “hatred” towards certain or various categories of people should be suppressed.

But isn’t labelling information as “hate speech” not part of the solution but part of the existing problem? What do activists accuse anyone who disagrees with them of? Yes, that’s right, hatred and bigotry. But disagreement is not hatred, bigotry, vilifications, etc.

By such tactics activists have already had a great deal of success in shutting down legitimate public debate and silencing those who disagree with their agenda. The proposed legislation would exacerbate this.

The same table on page 4 also states that information encouraging such things as vandalism to public infrastructure, should be suppressed. The folly of such censorship struck me when someone pointed out that people of that mindset, who have their views censored, are likely to say “Ah-ha, the government is censoring what we are saying so we must be right - the government has some secret evil agenda for this infrastructure”. Rather than trying to suppress such information, the law should be applied - if such people commit a crime, such as destruction of public property, then they can (and should be) prosecuted for it. The government should issue a statement factually refuting the false rumours about the particular infrastructure, and warn that the law would be applied to anyone damaging the infrastructure.

The same table also states that information that causes “harm to democratic processes” should be suppressed. The great irony is that this proposed legislation is what is going to cause the most harm to democracy.

The table also states that information that causes “harm to health” should be suppressed. This is very pertinent because during the recent Covid pandemic there was a lot of effective censorship of information opposing the Covid vaccines, despite there being no legislation of the proposed sort in place at the time. Yet it is now coming out that the Covid vaccines are not as safe as we were originally led to believe. While the vaccines probably have prevented some people from becoming more seriously ill, and saved some lives, a lot of people have also been permanently injured by these vaccines, and some people have died from them, and I note that the Australian government has set up a vaccine compensation fund. So, there was at least some truth in the warnings about the Covid vaccines. Some of the other suggested alternative treatments for Covid, which were at first labelled as dangerous quackery, have also gained validity since the pandemic.

So, such censorship is, and has been, counterproductive – and potentially dangerous. It would have been far better for the government at the time to state its position on the vaccines, rather than labelling anti-covid-vaccine information as “misinformation” (even though it was not complete misinformation) and trying to coerce people into having one of the vaccines, and instead to let people make up their own minds on the advantages and risks of the vaccines and whether to be vaccinated.

The table states that information that causes “harm to the Australian environment” should be suppressed. This is pertinent to such issues as the Murray-Darling River, where there has been heated 3-way debate between state governments, agriculturalists, and conservationists, regarding water extraction from the river. The conservationists say that most of the water should stay in the river for the sake of the river’s health and so that the river’s fish will not die. The agriculturalists say they need a lot of this water for irrigation to grow their crops. Both groups probably have a point and aim to protect certain interests including nature. The state governments have an interest both ways and are also interested in the viability of agricultural industries. How is ACMA supposed to take sides and say who is most right and which side least protects the “Australian environment”?

A similar situation could occur with the issue of forest conservation groups versus the logging industry.

In this way ACMA will have effectively appointed itself as arbiter of many controversial issues – including issues for which it has no expertise.

The table finally says that information causing “economic or financial harm” should be suppressed. Again, how is ACMA going to decide this? Once you start to interfere with market forces you are applying a type of protectionism. Again, the great irony is that this

interference is what would be most damaging to the economy. A far better approach is for the government to simply refute deliberately false information.

### The Solution

The solution to suspected Misinformation and Disinformation is not suppression or censorship, but **Counter Information**.

Let me give some potential examples that could occur in the future.

(Note – when I say that censorship is not the solution, I am not referring to the screening out of information that is slanderous, libelous, defamatory, obscene, or is vilification, harassment or abuse of individuals, or explicitly incites violence.)

Currently there is a public debate about the proposed Indigenous “Voice” to Parliament. The current government supports the proposed “Voice”.

Suppose someone put in the internet an opinion saying:

“The Voice will be a racist curse – a miniature version of apartheid in reverse – that would ultimately require everyone to be classified according to race, to determine who was eligible to participate in the Voice. [REDACTED]

[REDACTED]

[REDACTED] People who wished to stand for election or appointment to the Voice would need to [REDACTED] and thus able to be classified as

‘Indigenous’.”

Instead of suppressing that opinion as “racist misinformation” causing “harm” to some unknown group, and imposing huge fines on the media, it would be better for the government to counter, by issuing a statement such as:

“The Voice will not be racist, will not require classifying people by race, and will simply be an advisory body providing advice to government on how the government can best accommodate the interests of First Nations people.”.

The Voice may be a great success. But what if it isn’t? That would be a case of government agenda and majority opinion being proved incorrect, and if ACMA had taken the suppression-and-fines approach, then it could be accused of censoring legitimate opinions that ultimately proved to be largely correct and of suppressing appropriate public debate, causing an error in public judgment.

Here is another potential example that could occur in the future. Suppose someone published on the internet the following sentence concerning same-sex marriage:

“The majority of the world’s population and countries still believe that marriage is only between a man and a woman, and oral and anal sex are not in the nature’s design, and the Bible states that homosexual behaviour is ‘an abomination to God’.”

How can ACMA classify this as “hate speech” causing “harm” to homosexuals, and impose huge fines on the media, which I am sure that some would urge ACMA to do, when no opinion is expressed by the sentence, and all the sentence does is to neutrally state 3 indisputable facts?

There is no case to classify such information as “Misinformation” (because it is factual), or as “Disinformation” (because there is no evidence that any harm was intended), and it is

redundant and unnecessary to classify it as “Fact”. There is no need to classify it as anything.

A far better approach would be for the government to counter by issuing a statement such as:

“In the 2017 Same-Sex Marriage Plebiscite Australians voted to reject a biological or theological definition of marriage, and instead to make homosexual relationships able to be equal to heterosexual marriage, and by implication give oral and anal sex full status as being equal to traditional sexual-intercourse-and-childbirth.”

I actually think that it would have been beneficial for the government to have taken a more proactive, Counter-Information approach in the past, particularly with controversial issues such as Climate-Change/Global-Warming.

In regards to that issue, most people now seem to accept as “gospel” truth the current narrative that the earth is warming and that this is going to cause weather problems in the future. However, the issue is still very debatable and many scientists and climatologists have very real doubts about whether the issue is real (but are often penalised for saying so). The more scientific reading one does, the less evidence there seems to be for any developing “climate catastrophe”.

However, politicians are now held captive to public opinion on this issue, even though many of them probably realise that the evidence for catastrophic climate change is doubtful. As a result, whole industries have been built on combatting the supposed carbon “villain”, and peoples’ livelihoods are now dependent on the climate-change “industry”.

If the government had entered the debate earlier and issued a simple statement such as “The Global Warming issue is controversial even among scientists and there is no firm evidence that human activity is causing global warming – or even that long-term global warming is definitely occurring.”, then the issue might have been scientifically monitored instead of having money and effort poured into “climate control”, which might turn out to be a pointless and wasteful – and possibly counterproductive - exercise.

## Conclusion

The documents on the submissions website say that the government wants feedback on whether the Bill provides an appropriate balance between harm reduction and freedom of expression. My opinion is that the Bill does NOT provide an appropriate balance - and indeed that providing an appropriate balance may not even be possible. This type of legislation always negatively impacts legitimate personal freedoms. Therefore, this legislation should be abandoned.

And assessments of exactly which information is “Misinformation” and which information is “Disinformation”, and what is “harm” and “what or how much harm will result” are often subjective and debatable and speculative.

This legislation is a type of indirect censorship and such legislation is open to abuse, difficult to administer, and very difficult to apply in an objective way.

This legislation is unsafe, unnecessary, counterproductive, and dangerous.

The legislation is likely to stifle legitimate public debate, including the expression of minority opinions which may ultimately prove to be correct.

One of the principles in producing a socially healthy society with a robust public debate is to DRIVE OUT FEAR. This proposed legislation does the opposite, threatening huge fines, encouraging media to censor (to “play it safe”), and encouraging individuals to self-censor.

The legislation is supposedly about “harm reduction”. The only real harm to persons is caused by things such as slander, libel, defamation, obscenity, vilification, deliberately inciting violence, and the harassment or abuse of individuals, which there are already laws and measures against.

The only real harm that is likely to be done to democracy and society, is by this legislation itself.

Totalitarian regimes often justify taking away individual freedoms as being necessary “for the overall good”. This proposed legislation is an echo of that thinking, and implementing it never ends well.

I would urge the government to abandon this legislation in its entirety.

Thank you.