

SUBMISSION

Re Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023.

As an Australian citizen, I have been alarmed at reports of the contents and the implications of this Bill, as regards freedom of speech and democratic rights in general. My reading of much of the Bill has resulted in my sharing these concerns. They involve freedom of speech, the nature and likely effects of the penalties stated, the obscure definitions of the two key terms, and the quite sinister matter of exemptions for government and kindred organisations.

Freedom of speech.

While we in Australia do not have a specific safeguard such as the US First Amendment, we already regard freedom of speech as a given, subject only to existing laws addressing libel, slander and obscenity. Cyber security in the face of an external threat is a different matter altogether, and I welcome action in this area, but this Bill inflicts a new level of control over our lives. That is, it deprives us of information by government fiat. This Bill not only empowers ACMA to detect and punish digital platform providers for infringements of a vaguely defined nature but would force them to play safe in order to avoid penalties. Freedom of speech is already curtailed in universities, where cancel culture prevails against the expression of any opinion which does not accord with the progressive canon concerning race, gender and even the environment.

The passage of this Bill might only be the first step towards what amounts to censorship of the mainstream media, the content of which might just as easily be deemed as “misinformation” or “disinformation”. It could also limit the freedom of expression for private citizens, in letters to the editor and talk-back radio. There is a slippery slope here, as was evident in 2011 when then Prime Minister Julia Gillard demanded that a News Limited article involving her be withdrawn and expunged from the website. This precipitated the sacking of journalist Glenn Milne when the newspaper caved in to pressure. Her threat of a far reaching enquiry into News Limited was enough to muzzle that organisation, and suppress information which was only aired in 2013.

Content Exemptions.

The presumption involved in exempting government, state-licensed news media, academics and entertainers from this oppressive regime is breath-taking. Propaganda is stock in trade for governments and politics in general. Is the exemption a recognition of this or is it a wholly unjustifiable “get out of gaol card” for the political and academic class? Whether in good or bad faith, governments regularly misinform and cause harm, as we have seen in the pandemic lockdown regimes imposed on Australian citizens by politicians, in the name of medical advice which has never been confirmed. The truth is not always evident at the time, but may later be established with more certainty – after the harm has been done to the digital platform providers who have been prosecuted or cowed into submission.

Even with the vague and open-ended explanation of the terms “misinformation” (ie false) and “disinformation” (ie intended to deceive) there is an obvious problem with having exemptions. The Minister can also, it seems, exclude by regulation any digital platform service from investigation for misinformation. It presumes that only these sources of information are above suspicion. Whether the “harm” this Bill is intended to prevent is to incite hatred, disrupt public order, threaten the integrity of Australia’s democratic processes (sic), or be detrimental to the health, environment or economy of the nation, it is difficult to imagine that information from those exempted from the remit of the Bill would have exclusive access to the truth. How can governments be infallible in their stance on information which they promulgate in any of these areas?

An example of shifting nature of the truth can be found in current announcements on the health of the Great Barrier Reef. Some years ago, UNESCO congratulated Australia on the good health of the

coral cover, only for local conservation groups to demand a recall of this report. For some years since, a Coalition government has devoted large sums of taxpayers' money to scientific restoration of alleged damaged areas, while activists, Labor and the Greens have continued to claim that the reef is endangered. Yet only this week, Conservation Minister Tanya Plibersek and Prime Minister Anthony Albanese have congratulated their own government for having (miraculously in 13 months) saved the reef, after receiving another UNESCO report of its good health. Within days, the same activists have called on UNESCO to revoke this report, as it conflicts with their *raison d'être*.

Penalties

When I read of the penalties prescribed for providers not meeting ACMA's requirement for evidence or documents relating to supposed misinformation or disinformation by knowingly omitting any matter, it seemed like a hangover from one of the Soviet block countries such as the misnamed German Democratic Republic. Imprisonment for 12 months! Similarly the fines are designed to be repressive and to force providers to police their sites and to act as censors of any information which they believe might be deemed "misinformation" or "disinformation" in the view of ACMA. What guarantee is there that it will be truly independent of the government of the day? This would amount to censorship performed by compliant providers out of fear of crippling fines, monitored by ACMA and inspired by the ideology of the government of the day.

The Meaning of Terms in the Bill

While the wide range of areas where misinformation and disinformation might do harm are spelled out in the draft Bill, the key terms remain vague. This is partly because of reliance on the very elastic language of the racial vilification legislation enacted in 1996. The words "reasonably likely to cause or contribute to serious harm" borrow from the "reasonably likely to offend" terminology which has led to uncertainty in the human rights area. The only difference between the two definitions in this Bill is the addition of the word "intend" in the case of disinformation (Schedule 1: 7). The attempt to unpack the phrase "reasonably likely" is vague, signposted by the final "any other relevant matter", but lists nine possible elements such as speed and reach of dissemination and the severity of potential impacts. Nevertheless, the term has no specific meaning and is open to subjective interpretation.

Conclusion

This Bill is eerily similar to the Democratic Party's attempts to circumvent the Second Amendment to the US Constitution. Freedoms must be protected from government over-reach, and we in Australia have already experienced encroachments in recent years, on the pretext of protecting the population by restricting our movements, our employment opportunities, our leisure time activities, and even our freedom of speech. The Victorian lady who was arrested in her own home for advertising on Facebook a demonstration against some bizarre lockdown restrictions (eg children's playgrounds, beaches, golf courses, presence in parks except for exercise etc) would have necessitated her digital provider censoring her content – or face a fine. Perhaps the Albanese government believes that Australians are now so afflicted with the Stockholm Syndrome that they will accept the totalitarian aspects of this Bill with equanimity?

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