

Submission for *Have your say: New ACMA powers to combat misinformation and disinformation on digital platform services*

I oppose this Bill because it does not strike an appropriate balance on freedom of speech and expression. The powers given to ACMA in the *Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023* violates the principles of our Australian democracy.

According to the Parliament of Australia website [1], Australia is a democracy, and there are six key principles of our democracy, and this Bill violates three of those principles.

1. Respect for and tolerance of opposing ideas

The principle of respect and tolerance says that “In society, listening to different points of view and the voices of minorities strengthens our democracy” [1]. The Bill is in opposition to this principle because it proposes that some views and voices will not be respected or tolerated; that they can be arbitrarily deemed ‘misinformation’, ‘disinformation’, ‘hatred’ and ‘harmful’, and therefore be censored.

The Bill’s ambiguous definition of the terms: ‘misinformation’, ‘disinformation’ and ‘harm’, leave them wide open to interpretation by those granted decision-making power. The powers given to ACMA by this Bill have the potential to be abused in order to silence and censor inconvenient questions and dissenting information or views posted by Australian citizens, whistle-blowers and independent journalists.

The broad and ambiguous definition of ‘harm’ allows censorship to be applied to anything that ACMA and government does not like and approve of. For example, citizens posting information opposing the government’s decision to build a mine, because of their environmental concerns, can be censored on the basis that it causes “economic or financial harm to Australians, the Australian economy or a sector of the Australian economy” [2] because the government says building the mine would be an investment and create jobs. Likewise, people opposing the premature shut down of coal-fired power plants, because it could harm the economy, could be censored by the ACMA because their views promote “harm to the Australian environment” [2].

Organising protests on important issues could be censored because it could be deemed a “disruption of public order or society in Australia”, and independent journalists or whistle-blowers reporting on real electoral corruption could be silenced on the account that it causes “harm to the integrity of Australian democratic processes or of Commonwealth, State, Territory or local government institutions” [2].

Hatred is not defined in the Bill, therefore any criticism online could potentially be labelled 'hatred'. For example, criticism of religious or medical practices that are objectively harmful to people could be censored because they are deemed "hatred against a group in Australian society on the basis of ethnicity, nationality, race, gender, sexual orientation, age, religion or physical or mental disability" [2]. Important debates on topics like abortion, medically assisted dying and gender 'affirming' care could be banned from being discussed online; these discussions could arbitrarily be deemed 'harm' or 'hatred' because somebody, somewhere, from some group, might be offended by critical questions or differing views, and seek to silence any debate.

Examples of the potential abuse of this Bill are endless because it essentially gives ACMA the power to silence anyone for any reason, and this power violates the key principle of respecting and tolerating opposing ideas in our democracy.

A listed benefit of our democracy is that we have "the freedom to act, speak and think freely" and we supposedly value freedom of speech and belief, and tolerate differences and opposing ideas [1], and yet, this proposed Bill has the power to shut down freedom of speech and enable intolerance of opposing ideas.

The whole point of freedom of speech is to allow public discussion on important topics, but this cannot occur if anything can be arbitrarily labelled as 'misinformation', 'disinformation' or 'harm' and be censored as a result. We cannot make informed decisions about any topic if we cannot access and share different or opposing information on that topic. Giving the government any powers to regulate speech is dangerous, and such powers have been abused by totalitarian governments throughout history, which did not end well for the people of those societies. ACMA, nor any single person, organisation, government or group, should ever have the power to be the sole arbiter of truth, online or in the physical world.

2. Responsible government

The principle of responsible government says that "the Australian Government is accountable to the Australian Parliament and through the Parliament, accountable to the people" [1]. The Bill is in opposition to this principle because it proposes that the government is exempt from being accountable for publishing misinformation. The Bill states "content that is authorised by: (i) the Commonwealth; or (ii) a State; (iii) a Territory; or (iv) a local government", or "content produced by or for an educational institution accredited by" a government, is excluded for misinformation purposes [2]. If the levels of Australian government are meant to be accountable to the Australian people, then they cannot be exempt from laws that allow them to be held accountable for their actions.

One of the benefits of our democracy is that we are supposed to have "government that is efficient, transparent, responsive and accountable to citizens"[1], but how can this be achieved if the government exempts itself from the laws it makes?

Additionally, there is meant to be “equality before the law”[1] which is violated by this proposed Bill because “professional news content”[2] is also excluded content for misinformation purposes. This can be interpreted in a way that mainstream media outlets also cannot be held accountable for publishing misinformation, but independent journalists and Australian citizens can be. This is not “equality before the law”. No one can be above the law in a democratic society, but this proposed Bill has the ability undermine equality before the law, and government accountability, by exempting government and professional news outlets from the rules.

This Bill is also problematic in terms of transparency and accountability because of the ambiguity of the defined terms and their application to online content. ACMA may label and require the censorship of “content [that] contains information that is false, misleading or deceptive”, but will they be required to provide specific justification for their claims about specific content? Or can ACMA label something as ‘misinformation’ or ‘harmful’ simply because the content opposes the government’s approved talking points?

Will there be any transparency requirements on how ACMA reached the decision that specific content was misleading, deceptive, or harmful? Or do ACMA get to be the unopposed arbiter of truth, with no justification required, and with no questioning allowed, or appeal of their decisions permitted?

Employees at ACMA, making these decisions about what is ‘true’, are not experts in every topic and cannot be expected to be so. How, then, can they accurately judge something as false, misleading, deceptive or harmful? It sounds like ACMA employees will have to apply the rules to online content using very broad criteria, and this blanket application could mean that legitimate information may be censored. For example, important new scientific research could be erroneously labelled as false by AMCA if the government hasn’t yet recognised these new findings as ‘true’ in its official criteria.

Additionally, we have already seen such powers misused by the federal government to silence factual content that it did not approve of. I draw your attention to an article titled, *Banned Covid posts ‘totally factual’*, published in the Weekend Australian on 22-23 July 2023.

The article states:

“Many of 4000 social media **posts secretly censored by government** during the height of the Covid-19 pandemic **contained factual information and reasonable arguments rather than misinformation**, new documents reveal.

...

[G]overnment sought the removal of an Instagram post... that claimed “Covid-19 vaccine does not prevent Covid-19 infection or Covid-19 transmission”. That statement clearly was accurate yet the official intervention via the Home Affairs Department claimed it breached Instagram’s community guidelines because it was ‘potentially harmful information’ that was ‘explicitly prohibited’ by the platform.

...

[T]he federal government...intervened more than 4000 times seeking the removal of social media posts by digital giants such as Twitter, Facebook, Instagram and YouTube, using the companies own community standards as its trigger. The information came to light as a result of FOI applications.” [3]

This news article demonstrates the potential for abuse and error in censorship powers, and the lack of government transparency and accountability in its exercise of them. This proposed Bill, formally granting ACMA such powers, poses a threat to our democracy because it goes against the principle of responsible, accountable and transparent government.

Humans are fallible: they don't know everything; they are prone to making errors; they are inherently bias and they are also corruptible – therefore, no single person, organisation or group should ever be granted the power to be the sole arbiter of truth, online or in the physical world.

3. Principle of liberal democracy

The principle of liberal democracy says that “as a nation, we support the development and well-being of individuals” and that we have “respect for individuals and their right to make their own choices” and that we value “all people and [support] them to reach their full potential.” [1]

The proposed Bill is in opposition to this principle because it allows for some information to be arbitrarily censored, which steals an individual's ability to freely learn about a topic, by accessing a broad range of information and viewpoints, so that they can make their own choices. By censoring information, ACMA removes the ability for Australian people to be fully informed about important topics, and thus they cannot make fully informed decisions in voting, or in any other areas of their lives.

Additionally, this Bill has the power to steal people's ability to speak freely online. Limiting freedom speech limits an individual's ability to develop their skills of reasoning, communication and civilised social interaction. Through freedom of speech online we enable and promote discussions about important topics that affect our society, and this discussion requires people to:

- logically evaluate their ideas and position on a topic;
- practice articulating their ideas effectively to others;
- learn to receive criticism and handle others' questions of their views;
- learn to see the errors or biases in their thinking;
- learn to consider other perspectives on a topic, and tolerate differences; and,
- learn to re-evaluate, correct and refine their ideas and views.

In observing and participating in online discussions, individuals also learn important lessons in social etiquette: how to conduct themselves in a civilised manner when interacting with others.

These lessons in social skills learned in the online space can then be applied to physical world interactions as well.

As a society, we automatically correct inappropriate social behaviour, and promote appropriate social behaviour, by giving and receiving feedback on each other's conduct. We also naturally ask questions, point out biases and errors in thinking, so that together we can reach logical conclusions and promote helpful ideas. Thus our society already comes with a natural regulatory function to correct misinformation and stamp out harmful ideas, and we should enable and encourage individuals to participate in this process as part of their development, rather than outsourcing this function to the government. By limiting freedom of speech online, this Bill would steal important opportunities from the Australian people to develop their critical thinking, communication and interpersonal skills, which prevents our people from developing their full potential.

Therefore, this Bill violates the principle of liberal democracy. It does this by disrespecting the right of individuals to make their own choices through its ability to censor alternative views and information; and, by limiting the development of an individual's potential through shutting down free and open discussion online.

In summary, I oppose the *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023* and the granting of ACMA any additional powers to decide what can and cannot be said online. I oppose this Bill because it is a threat to our democracy, in that it violates the democratic principles of:

- respect for and tolerance of opposing ideas (by being able to arbitrarily censor different/opposing views and ideas);
- responsible government (by not ensuring equality before the law, and not ensuring transparent and accountable government); and,
- liberal democracy (by not respecting individual rights to make decisions, and limiting the development of their potential).

ACMA should NOT have the powers proposed in this Bill, nor should any other group be given these powers. This Bill should not be passed into law.

References

[1] **Parliament Explained: Democracy.** Parliament of Australia.

https://www.aph.gov.au/About_Parliament/House_of_Representatives/About_the_House_News/News/Parliament_Explained_Democracy

[2] **Exposure Draft: Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023**

[3] Banned Covid posts 'totally factual'. The Weekend Australian. 22-23 July 2023.

<https://www.theaustralian.com.au/nation/many-censored-social-media-posts-did-not-contain-covid19-misinformation/news-story/c47a8217ffada2cf576475aef3c12c63>

4 THE WEEKEND AUSTRALIAN
JULY 22-23, 2023
theaustralian.com.au

THE NATION

Banned Covid posts 'totally factual'

EXCLUSIVE

CHRIS KENNY

Many of 4000 social media posts secretly censored by government during the height of the Covid-19 pandemic contained factual information and reasonable arguments rather than misinformation, new documents reveal.

Digital posts released after Freedom of Information applications show the censored information shared facts such as the ineffectiveness of vaccines in preventing Covid-19 infection and transmission or argued against measures such as mask mandates and lockdowns.

For instance, the then Coalition government sought the removal of an Instagram post in April 2021 that claimed "Covid-19 vaccine does not prevent Covid-19 infection or Covid-19 transmission".

That statement clearly was accurate yet the official intervention via the Home Affairs Department claimed it breached Instagram's community guidelines because it was "potentially harmful information" that was "explicitly prohibited" by the platform.

'This is gravely concerning for all Australians who care about freedom of speech'

ALEX ANTIC
LIBERAL SENATOR

A large proportion of posts the government targeted for removal by the digital platforms promoted wild conspiracy theories and misinformation but many others simply questioned the effectiveness of lockdowns and masks, shared information now accepted as accurate and urged people to protest against pandemic measures.

An April 2021 tweet was challenged because it claimed "Covid-19 was released or escaped from Wuhan laboratory in China and that it was funded by the US government".

The Home Affairs Department claimed this was "explicitly prohibited" under Twitter's rules because it might "invoke a deliberate conspiracy" by malicious and/or "powerful forces", yet American intelligence agencies have found the most likely source of the virus was the Wuhan Institute of Virology, and it has been revealed that some work at the laboratory was funded by the US.

Over three years up until last month, the federal government paid World Services Australia, an arm of London-based global communications firm M&C Saatchi, more than \$1m to monitor Covid-19 posts online and alert it to controversial material.

INSIDE

The more power and money governments get – and we've never given them more of either – the less concerned they seem to be with the truth and their basic responsibilities.

CHRIS KENNY P18

visually revealed how the federal government, under the Coalition and later Labor, intervened more than 4000 times seeking the removal of social media posts by digital giants such as Twitter, Facebook, Instagram and YouTube, using the companies own community standards as the trigger.

The information came to light as a result of FOI applications by Liberal senator Alex Antic. Questions on notice from Senator Antic have now produced details of these interventions, revealing extensive efforts to suppress even factual information.

Senator Antic said this had confirmed his worst fears. "During the Covid period, Home Affairs actively sought censorship of true statements such as 'lockdowns are ineffective' and compelled social media companies to penalise dissent from the government's position," Senator Antic said.

"This is gravely concerning for all Australians who care about freedom of speech."

One Facebook video post in January 2021 was targeted for removal because it encouraged "civil disobedience".

It depicted a "recognised misinformation influencer" in Melbourne's Royal Botanic Gardens "blatantly walking up to signs that ask people to maintain physical distancing and hiding them from view".

Many other social media posts were censored for opposing mask mandates and questioning the effectiveness of lockdowns and vaccines.

This was censorship on an industrial scale, with the private contractor tasked to trawl through social media posts 24/7. Senator Antic said the revelations were "gravely concerning" to all Australians who cared about freedom of speech.

He said this amounted to a "censorship industrial complex" and raised fears about this type of intervention being expanded under the proposed Misinformation Bill that would allow for the issuing of multimillion-dollar fines against platforms found to be hosting "misinformation or disinformation".

"It's never been more imperative that we protect freedom of speech in Australia and reject this

GOING VIRAL

Social media posts and the reasons the federal government sought to censor them

- The Covid-19 vaccine does not prevent infection or transmission
- Potentially harmful information explicitly prohibited by Instagram
- Covid-19 was released or escaped from the Wuhan Laboratory in China and was funded by the US government
- False or misleading information about the pandemic of Covid-19 vaccines that invoke a deliberate conspiracy by malicious and/or powerful forces
- A vaccine so safe you have to be threatened to take it ... for an illness so bad you have to be tested to know you have it
- Potentially harmful information ... that contribute(s) to vaccine rejection
- Lockdowns are ineffective
- False or misleading information
- Covid-19 has a 99.97% recovery rate
- Designed to undermine public confidence in Covid-19 vaccination programs and related public health measures
- Face masks are ineffective against Covid-19
- Contradict official information on the proven efficacy of the imposed public health order, and undermines public confidence in the Covid-19 vaccine
- Contradicts official government advice on the mandated wearing of face masks in certain environments
- 'No masks'
- Unverified medical advice
- Covid-19 can be easily cured using the drugs Ivermectin and Hydroxychloroquine

Extracts from a Department of Home Affairs spreadsheet

Kennedy warning on 'censoring' powers

EXCLUSIVE

ADAM CREGGITT
WASHINGTON
CORRESPONDENT

Democrat presidential candidate Robert F. Kennedy has warned Australia of the risks of empowering the federal government to police speech on social media, arguing "totalitarian elements" in liberal societies were amassing too much power.

Mr Kennedy, a free speech advocate and long-time vaccine critic, said democracies were "very rare in human history and difficult to maintain", when asked about looming bills in the UK and Australia that would empower governments to censor "misinformation" and "disinformation". "Every country that wants to

needs to understand the indication of powerful totalitarian elements in society that want to leverage "crazies", concocted or real, in order to eliminate constitutional basic rights, and increase their power and wealth," he told The Weekend Australian on Friday (AEST).

Mr Kennedy's first cousin of US ambassador to Australia Caroline Kennedy and nephew of assassinated US president John F. Kennedy, was speaking after a fiery congressional hearing to which he was called by Republican to talk about alleged censorship of him by the US government during the pandemic.

Congress Democrats aggressively targeted Mr Kennedy, who came under attack this week as a racist and anti-Semite after comments he made at a dinner emerged, suggesting races

'Powerful totalitarian elements in society ... want to leverage "crazies", concocted or real'

ROBERT F. KENNEDY
DEMOCRAT CONTENDER

Covid-19, which could have been a bioweapon.

"I have never uttered a phrase that was either racist or anti-Semitic," he told the Weaponisation of Government committee set up by Republicans to probe alleged bias against conservatives within the federal government.

Mr Kennedy, an environmental lawyer turned trenchant critic of Covid-19 vaccines and mandates, launched his campaign in April on a platform of ending the

against what he calls "regulatory capture" of US government agencies by large corporations.

A Louisiana court this month struck down the US government's ability to pressure or request social media companies to take down "misinformation", citing the first amendment of the US constitution, prompting a political firestorm and an appeal by the Biden administration.

"I'm aware that the same thing is happening in the EU, and I'm aware that in fact the US has signed a national security order that encourages Western nations to co-ordinate controlling messaging," he said, referring to the growing number of new and pending laws in the West seeking to curb certain "dangerous" speech.

"It shocked me, it shocked me," he added, when asked for his view on Australia's Covid-19 response,

claim from Florida Governor Ron DeSantis, a Republican challenger for president polling about the same level as Mr Kennedy in the opposing party.

The government has proposed a misinformation and disinformation bill, along the lines of a similar bill in the UK, that would give it power to order social media companies to censor speech it believed posed a threat to Australians' health, the environment or any economic or financial harm.

Mr Kennedy, 69, said Western societies were becoming more like China, which strictly controls online speech.

He had been polling just under 20 per cent nationally among Democrats, but a recent poll in New Hampshire, a critical early state in the primary calendar next year, put him at 19 per cent.