

The Honourable Michelle Rowland MP
Minister for Communications
House of Representatives
Parliament House
Canberra ACT 2600

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

I strongly oppose this proposed Bill. The proposed Communications Legislation Amendment (Misinformation and Disinformation) Bill 2023 is vague in its definitions and intent and accordingly consider that it poses a threat to our democracy, society, and economy.

The ACMA Fact sheet is misleading. While stating that “Misinformation and disinformation pose a threat to the safety and wellbeing of Australians, as well as our democracy, society and economy” it fails to state how existing Legislation is inadequate. Legislation and Regulations dealing with the Harm described by the Bill includes Telecommunications Act (without this amendment), Online Safety Act, Criminal Code and Crimes Acts, Australian Consumer Law, Australian Security & Investments Commission Act, Foreign Interference (Countermeasures) Act and environmental, anti-discrimination and anti-terrorism legislation. This list does not purport to be exhaustive; I am not a lawyer.

This then begs the question as to why is this Bill necessary? Misinformation and disinformation are defined in part as “the content contains information that is false, misleading or deceptive; and the content is not excluded content for misinformation purposes;” It is noted that Government authorised misinformation and disinformation is excluded content.

A clue to the expanded powers sought can be found in the document “A report to government on the adequacy of digital platforms’ disinformation and news quality measures” (ACMA June 2021).

“Over the previous 18 months, we have seen increasing concern within the community over the ‘infodemic’ of online disinformation and misinformation, particularly in relation to the real-world impacts of COVID-19. The propagation of these falsehoods and conspiracies undermines public health efforts, causes harm to individuals, businesses, and democratic institutions, and in some cases, incites individuals to carry out acts of violence.”

“Belief in COVID-19 falsehoods or unproven claims appears to be related to high exposure to online information and lack of trust in news outlets or authoritative sources”

This is an unfounded opinion. Misinformation? A report by the Museum of Australian Democracy in 2018, preCOVID-19, states that “levels of trust in government and politicians in Australia are at their lowest levels since time series data has been available.” Could a further decline in trust in Government and news outlets be due to lack of transparency around the factors driving decisions or failure of news outlets to properly investigate media releases? Or innate Australian scepticism of politicians?

Recalling 2021, the Government was running a scare campaign but with no definitive data or evidence justifying its position. This was a novel virus; the vaccines had “emergency approval”. It was guessing. Anyone questioning its narrative or voicing scepticism was accused of spreading misinformation and disinformation and called derogatory names. In fact, the word “sceptic” came to be used as a derogatory term. AHPRA was threatening and deregistering medical professionals for asking questions. The media ran in lock step telling us to believe “The Science”. It appears ACMA considered any information contrary to the Government narrative were “falsehoods”.

Two years later, the narrative has changed; the vaccines do not prevent transmission (Dr Nick Coatsworth: this was an assumption), do not prevent one getting COVID-19 but reduce hospitalisations. We also now know the risk of serious but rare adverse events from the vaccines – unknown to the public at the time of vaccine mandates. The Senate Select Committee on COVID-19 report has criticised the lack of transparency around the factors driving decisions. Government has not acknowledged nor apologised for the harm to the economy and social cohesion caused by its secrecy, advertising campaigns and lack of trust in the community to form opinion based on facts.

In June 2021, the Federal Court ruled ROBODEBT unlawful. It took a Royal Commission to reveal how good governance was compromised.

We have also learnt that the Australian Pesticides and Veterinary Medicines Authority (APVMA) was "captured" by industry interests and subject to regular complaints of misconduct. It called its critics conspiracists spreading misinformation and disinformation harmful to the economy - repeating agricultural chemical industry lobby misinformation.

One expects that information is based on sound data, facts, or at least some form of evidence. Otherwise, it is just an opinion. Everybody has at least one. Scientific knowledge, however, is not based on belief or opinions. There is no such thing as “The Science”. A hypothesis is tested by rigorous observation and analysis of data. It is subject to sceptical review and challenge before it can enter the realm of scientific information. We rely on scientific method to debunk the hypotheses of Eugenics. Science underpins all engineering. Unpublished works purporting to be science but not submitted for peer scrutiny and review are still just hypotheses – opinions. Modelling the effectiveness of a vaccine to reduce transmission in the absence of any data, based on invalid assumptions is not science. In advertising, it is disinformation -intended to deceive. It is alarming when politics steps in to make a mockery of science.

When dealing with uncertainty and a dearth of data to frame Public Policy, one would expect a thorough, open and transparent assessment of risks to public health, wealth and happiness (considering the “effect of uncertainty on objectives” :ISO 31000) and proposed risk mitigation strategies across the whole of government. The Government failed to recognise the risk of locking people in aged care facilities, apartments and hotels with inadequate infection management and recirculated unfiltered air. This resulted in a “disproportionate number of deaths”. In my professional field of engineering, failure to conduct a comprehensive risk analysis has been deemed to be a breach of duty of care - Negligence.

ACMA claims “The Bill includes strong protections for privacy and freedom of speech”. “The Bill is directed at encouraging digital platform providers to have robust systems and measures in place to address misinformation and disinformation on their services, rather than the ACMA directly regulating individual pieces of content”. Do I trust the technology platforms to judge what is misinformation and disinformation when they profit from disseminating opinions on anything and everything but have penalties for misreading the Government narrative of what constitutes harm? What a dilemma. Who decides what is “(d) harm to the health of Australians”? The pharmaceutical industry lobby paying for advertising on the digital platforms? Who decides what is “(e) harm to the Australian environment”? The chemical industry lobby also paying up? Who decides what is “(f) economic or financial harm to Australians, the Australian economy or a sector of the Australian economy”? The Defence Industry lobby? The Coal lobby? The climate-change lobby? Or all the above?

I have no problem with digital platform providers having robust systems and measures in place to detect content that breaches or incites a breach of Australian laws. The term “misinformation” is subjective and open to abuse by Government, lobbyists, and special interest groups. Information is based on facts and evidence and open to sceptical scrutiny; otherwise, it is a belief or opinion. Some parts of Government (Federal, State and Local Government) appear quite capable of arbitrary and selective use of “facts” - and getting them wrong - influenced by lobbyists and special interest groups. Why does a citizen have to rely on Freedom of Information requests and Royal Commissions to penetrate the veil of secrecy behind Government decision making?

A definition of Harm that would be capable of being tested by the Judicial process would be content that breaches Australian laws. Why does ACMA seek powers to limit content beyond this? I would have thought that existing legislation provides the necessary definitions, framework and safeguards to deal with the Harm envisaged by this proposed Bill. Administration of the Criminal, consumer, prudential, environment, anti-discrimination, and anti-terrorism legislation is obviously not within ACMA’s remit. Perhaps it needs to develop “robust systems and measures” to liaise with those parts of Government that do have responsibility for those Acts.

We do not know if this proposed Bill is a child of the Parliament or the bureaucracy. However, ACMA might want to review its objectives. Is it intended to protect an assumed undiscerning general public incapable of reasonable thought? Is the intention to restrict debate – to further lower the veil of secrecy over Government narratives? Is the intention to censor opinions the Government does not like? It should consider the Attorney-General’s Department Public Sector guidance on Right to freedom of opinion and expression. (<https://www.ag.gov.au/.../right-freedom-opinion-and-expression>). ACMA might also consider the Royal Commission into the ROBODEBT debacle, lessons learned and its duty of care to provide “frank and full advice”.

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