

Public Submission to

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

Re: Exposure Draft of

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

SUBMITTED BY:

Rev Peter Abetz B.Agric.Sci.(Hons); B.D.

Former Member of the WA Legislative Assembly (2008-2017)

Councillor City of Gosnells (2017 to present)

WA State Director, Australian Christian Lobby (2018 to present)

PO Box 5472

Canning Vale 6155

Mobile: [REDACTED]

E: [REDACTED]

INTRODUCTION

When the printing press was invented, it allowed people such as Martin Luther to publish their views relatively cheaply using pamphlets. His views were at odds with those of the Catholic Church at the time, but by means of his pamphlets his views gained widespread acceptance, much to the chagrin of those in authority.

There were calls at that time that before anything could be printed and published, it should have to be checked by those in authority on the grounds that people could easily be misled and that the authorities had a responsibility to keep the community from coming to harm by the circulation of false ideas. This led to laws which allowed authorities to even make it a capital offence to being in possession of some of Martin Luther's writings!

Thankfully, however, Western civilization embraced the concept of freedom of speech and such laws were consigned to the dustbin of history.

But freedom of speech is not an absolute freedom. It must have boundaries. Defamation laws emerged to provide protections from the misuse of the right to freedom of speech. Likewise making threats of physical harm against a person is not permitted.

Digital platforms, like the printing press, are a disruptive technology, which has made it much easier for people to communicate their ideas to a broad audience at minimal cost.

While it is agreed that there is potential for harm to come to society through the dissemination of mis and disinformation via various digital platforms, this potential harm needs to be weighed against the alternative harm that would be caused to society by placing new legal limitations on freedom of speech.

If society is to go down the path of limiting freedom of speech on the grounds of 'protecting people from harm' as is the intent of the *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023*, (the Bill) it will require society to appoint a person or body, who will have the authority to determine what is disinformation or misinformation. Needless to say, any organisation or individual that is given the power to determine what is misinformation or disinformation and to limit the dissemination of anything it considers to be dis or misinformation, will be handed enormous power to shape society by having the power to silence the voices of those who do not share their view of the world.

DEFINITIONS OF MISINFORMATION AND DISINFORMATION

Section 7 of the Bill defines misinformation and disinformation as follows:

Disinformation

It is noted that Section 7(2)(e) is the clause that defines the difference between disinformation and misinformation, namely that disinformation involves malicious intent – namely that the **intent** is to **deceive another person**. In other words, the writer/communicator deliberately provides information that they know to be false and are providing it all the same for the specific purpose of seeking to deceive another person.

It is accepted that platforms have an obligation to do their utmost to prevent the dissemination of such deliberate deception (e.g. financial scams), that they have a responsibility to establish methods for identifying them and whereby they can quickly remove such posts automatically, as well as when the platform is made aware of the nature of a post by a third party.

Misinformation

The [Fact Sheet](#) provided on the Departments website states that misinformation differs from disinformation in that with misinformation there is no intent to deceive. In other words, the person doing the posting genuinely believes that the information being posted is factually correct and true.

Requiring a platform to have a system to prevent (or quickly remove) what ACMA considers to be misinformation, will result in the person posting having cause to claim that their post has been deleted or made 'unavailable' because those in authority want to hide the truth contained in their post from the public.

The person posting, genuinely believes they are disseminating 'truth' to their fellow citizens, but someone in authority can thwart their attempt to inform fellow citizens, because that body has the power to declare this person's understanding of truth to be 'false or deceptive' and likely to cause 'serious harm'!

I note that [The Fact Sheet](#) disingenuously claims that *ACMA will not have the power to request specific content or posts be removed from digital platform services*. However, ACMA has the power to impose massive penalties if it deems a platform's system for controlling dis and misinformation to be inadequate. ACMA clearly would assess a platform's systems based on whether that system is able to keep 'misinformation' off the platform. Thus a platform must have a system that prevents posts appearing which ACMA considers to be mis or disinformation. The platform may consider the posts to be true and not harmful, but if ACMA has a different view, inevitably ACMA's view will prevail. It would be a brave digital platform that would defy ACMA's views as they would risk massive fines. Thus, the Bill in effect sets up ACMA to be the arbiter of truth.

Giving ACMA (or any other body) this power will only serve to erode confidence in government and in public servants and create a situation where the free interchange of ideas and information is no longer possible, unless the platform deems the information to be correct in the view of ACMA.

The Bill ultimately makes ACMA the arbiter of what is "**false, misleading or deceptive**, (Section 7(1)a) and the arbiter as to what is **reasonably likely to cause or contribute to serious harm** (Section 7(1)(d)).

The best way to combat misinformation is to allow open and free debate, not censorship of ideas that someone subjectively considers likely to cause or contribute to serious harm.

I provide several examples below to highlight this:

COVID 19

I witnessed how Facebook blocked/deleted posts in the early months of the pandemic which claimed that the virus had escaped from the Wuhan laboratory. This was because the health authorities claimed that this narrative was not credible and had the potential to cause ‘harm’ in the community, and perhaps adversely impact our relationship with China. Yet as a result of a current US Congressional inquiry, which subpoenaed the emails of various bureaucrats, it now emerges that they were well aware at the beginning of the pandemic, that there was very strong evidence that the pandemic was caused by a virus which had undergone ‘gain of function’ manipulation in the Wuhan laboratory, and that this was the most likely origin of the virus (see front page of The Australian 29-30 July 2023). Facebook blocked the posts at the time because Government sources wanted to suppress that view, as it did not align with the messaging our health authorities felt was best for the community, and so it was deemed to be ‘harmful’ for this view to get traction in the broader community.

The emergence of this information only serves to further undermine confidence and trust in our health authorities and government in general.

Had the provisions of the Bill been in force at the time, a platform whose systems did not block or censure such posts, and which refused to accept a directive from ACMA to adjust their system to block these posts, would have exposed itself to potentially massive fines. From a commercial risk perspective, a platform would simply capitulate to the demands of ACMA. Thus ACMA would take on the mantle of being the final arbiter of truth on digital platforms.

VOTE COUNTING AT THE LAST ELECTION

After the last election some of the volunteers of the so called ‘Freedom Parties’ were claiming that there was widespread fraud in the vote counting at polling booths. The basis of their claim was that at the polling booths only the two-party preferred vote was being determined, and so there was no count of the primary vote of the minor parties. And furthermore, that there was no distribution of preferences. These posts clearly were casting doubt on the integrity of our voting system, and thus falls under definition of *harm* used in the bill, namely:

(c) harm to the integrity of Australian democratic processes or of Commonwealth, State, Territory or local government institutions.

As a former MP I engaged with these ill-informed people on social media and went to considerable length to explain to them (by repeatedly commenting on their ‘false’ posts) how the vote count is done and why – that preferences can only be distributed at the central counting place when all ballot papers from an electorate have been pooled. It took some backwards and forwards on social media before most of them accepted that what had occurred at the polling booths was in keeping with proper procedure.

Had Facebook blocked or deleted their posts, it would only have confirmed to these ill-informed people that the authorities were corrupt, colluding with the tech giants to keep the truth from the public. That would have caused far more harm than allowing these mistaken people to express their views.

I cite the above two examples to highlight that in a free and open society, truth ultimately wins through.

TREATMENT OF CHILDREN WITH GENDER DYSPHORIA

Relying on so called 'fact checkers' is fraught with danger too. When gender clinics began to use puberty blockers to treat children with gender dysphoria, claiming on their websites that the effects of these puberty blockers were completely reversible, some medical doctors objected, saying this was untrue, and that they had permanent, long-lasting side effects.

However, the big gender clinics, such as Tavistock in the UK and the Royal Children's Hospital (Melbourne) repudiated these claims. Those who were sounding the warnings, were said to be causing harm to gender dysphoric children, by sowing seeds of doubt into the minds of parents of these children.

Now it is well established that the effect of puberty blockers is not reversible, and that they have long lasting detrimental side effects. Allowing free and open debate has resulted in the truth eventually winning out.

Had the provisions of this Bill been in force a few years ago, the claim that puberty blockers were not reversible, would have been deemed "**false, misleading or deceptive**, (Section 7(1)a) and that, according to the gender clinics, was **reasonably likely to cause or contribute to serious harm**.

It would have been a brave executive at a digital platform to resist any push from ACMA to adjust their systems to block the posts warning of the detrimental impact of the puberty blockers.

Fact-checking bodies, basing their views on those espoused by leading gender clinics around the world, assured us that the claims of the alarmists were false.....but now it is almost universally accepted that they were on the right track.

Indeed, if authorities could have shut down the views that are not those of the prevailing authorities, we would all still believe that the earth is flat!

CONCLUSION

There is good reason for digital platforms to have a legal obligation to take down scams and similar posts that are **deliberately designed to mislead** by providing information that the posting person knows to be false and misleading. This aspect of the legislation is supported.

However, the attempt by the Bill to limit the right of persons to give expression on digital platforms to views or facts that they genuinely believe to be true, is a serious attack on freedom of speech, and should be rejected.

The provisions of the Bill to control 'misinformation' will stifle free and open debate, and effectively ensure that certain deviations from the narrative that a government wants to maintain, cannot be challenged on the spurious claims of protecting society from 'serious harm'.

The best remedy to misinformation is free and open debate.

Respectfully submitted

Peter Abetz
