

Submission/Feedback on an exposure draft of the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023

I'm writing in regard to the proposed Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023. I understand that following a number of widely publicised events occurring in recent years, authorities have become concerned regarding the potential for misinformation and disinformation to be harmful and feel this necessitates amendments to laws in order to reduce these occurrences.

However I will argue that the interpretation of mis/dis information often depends on which side of the information you stand. All people/institutions/government bodies are liable to base their position on information they choose to support their beliefs, and disregard opposing information. *"Confirmation bias often happens when we want certain ideas to be true. This leads individuals to stop gathering information when the retrieved evidence confirms their own viewpoints, which can lead to preconceived opinions (prejudices) that are not based on reason or factual knowledge"*¹ As a result, the ruling establishment throughout the world have historically worked to ensure that those whom they consider to be incapable of comprehension should have limited access to information and education, so as to prevent 'disruptions' that could 'harm' the establishment's view of 'public order'. With the benefit of hindsight, it could be argued that these repressive policies have caused much suffering throughout history. Therefore I will argue that rather than limit access to information, governments and societies should endeavour to encourage open and transparent debate and discussion on all issues through better educational opportunities.

To illustrate this I will use the two main examples as given in this Bill:

"Misinformation and disinformation spread via digital platform services is a major issue worldwide. The rapid spread of false, misleading and deceptive information online has resulted in a multitude of harms from (1) disrupted public health responses to (2) foreign interference in elections and the undermining of democratic institutions."

Example 1(a) disrupted public health responses

As an example of disrupted public health responses I will use a specific example found in Table 1, under section 2.1.2 Serious Harm (subclause (7(3))): ***"Misinformation that caused people to ingest or inject bleach products to treat a viral infection"***

This appears to relate to an alleged suggestion in 2020 made by the then US President Donald Trump, that injecting bleach could be a potential treatment for COVID19. These suggestions were reported by Main Stream Media (MSM) worldwide and according to a survey done by USA Centre for Disease Control (CDC) some people misunderstood the reported conversation and attempted to drink the bleach.

The remark was made by Trump in response to information given by William Byran, head of the Homeland Security's Science and Technology Division, during a press briefing regarding

research into measures Byran's team had been working on to control the spread of SARS-COV2. Trump's actual remark was as follows:-

*"I see the disinfectant that knocks it out in a minute, one minute. And is there a way we can do something like that by injection inside or almost a cleaning? As you see, it gets in the lungs, it does a tremendous number on the lungs, so it would be interesting to check that."*²

Trump did not actually use the word bleach, he mentioned the study's use of disinfectant and queried the official as to whether there might be a way of using something inside the body to clean out the virus. He admitted that he did not have any medical knowledge but explained that he liked to think up ideas. *"I'm not a doctor. But I'm, like, a person that has a good you-know-what."*² It was later claimed that Trump had used the word bleach. The media sensationalised this, suggesting Trump was advocating for people to try it.

Did people actually drink bleach?

A survey done by the Centre for Disease Control (CDC) to ascertain how people were using cleaning products for the control and treatment of coronavirus, reported 4% of people surveyed did apparently ingest bleach.³ Expanded out to the population this would amount to 12 million Americans.⁴ However, according to the Harvard Business Review (HBR), this survey may in fact have had its limitations. According to prominent psychiatrist Scott Siskind and others, this 4% figure is a recurring number relating to similar rapid turn-around/opt-in Internet Panel Survey studies about a variety of topics. The figure may or may not suggest a phenomenon of inattention and mischievousness on the part of respondents. This phenomena has been called the 'Lizardman's constant' - referring to the well known Public Policy Polling report in 2013 that found 4% of respondents believed shape-shifting lizard people were controlling the world.⁵ A study further examining this phenomena, in particular how it relates to the claims that people ingested bleach and household cleaners, found that *"these respondents report impossible claims such as 'recently having had a fatal heart attack' and 'eating concrete for its iron content' at a similar rate to ingesting household cleaners"*⁶

According to the Harvard Business Review (HBR) "it is essential to validate results with basic quality control interventions, such as the attention and reality checks described" (as per the HBR article). HBR concluded that, perhaps due to the publishing of these results and the ensuing media hype claiming that 12 million people may have ingested bleach the *"claim was likely not only false, but also potentially harmful, as it may have served to normalize these dangerous behaviors and thus increase the number of people who might actually engage in them."*⁵

So from this example we can see that choosing what is, and who is responsible for misinformation/disinformation and subsequent serious harms is not straight forward – did people *"ingest or inject bleach products to treat a viral infection"*, was it President Trump or the CDC, or MSM, who caused this potential for serious harm? What is clear however, is that once information is repeated enough times and so widely, it will be accepted as fact. The guidance note for this Amendment Bill on combatting mis-information perpetuates this

disputed 'fact' as an example of multiple harms that have "*disrupted public health responses*" in order to garner support for this Bill.

Social Media platforms, Media corporations, Governments and working groups within governments such as ACMA, are made up of people and all people are susceptible to confirmation bias, by impact (fear being a major factor) and by perpetuation. Trump is a controversial figure. It is easy to see why this confirmation bias would occur, but the limiting of people's access to information can in itself be a cause of serious harm. If people don't have the opportunity to look for information outside of the bias of those distributing the information they will only ever be able to follow that which they are given and hence subject to the law and order imposed by those distributing the information.

Example 1(b) disrupted public health responses

In another example of what some consider to be "*harms from disrupted public health responses*" Dr Jay Bhattacharya, professor of medicine at Stanford University Medical School, a physician, epidemiologist, health economist, and public health policy expert focusing on infectious diseases, vulnerable populations and health research policy as director of Stanford's Centre for Demography and Economics of Health and Aging, was an early dissenter opposing government measures that were used during the Covid pandemic. Based on his considerable expertise he voiced his concerns about these measures by co-authoring the Great Barrington Declaration (GBD), along with two other epidemiologists from Harvard and Oxford. In the declaration they claimed the results of these measures "*(to name a few) include lower childhood vaccination rates, worsening cardiovascular disease outcomes, fewer cancer screenings and deteriorating mental health – leading to greater excess mortality in years to come,*"⁷ The declaration has been signed by 937 000+ people, including 2780 Medical and Public Health Scientists.

In 2023, it would appear that the predictions made in 2020 by the GBD are becoming a focus of health authorities and governments. For example, in Tasmania this week (22nd July 2023), the front-page news of our local newspaper reported the unprecedented excess death numbers in this state this year despite high COVID vaccination rates, compliance with lock downs and late pandemic exposure to COVID, ie the omicron variant. Certainly these excess deaths warrant investigation and sound scientific analysis. At this stage it is obvious that the scientific community must return to being open to discussion and sharing of views and information regardless of bias. Public health messages should be open to critical thinking.

However, when Bhattacharya joined Twitter in 2021 so that he could share his knowledge and concerns he was blacklisted and his tweets were "prevented from trending" on the social media platform. This came to light when Elon Musk took over Twitter and gave the independent journalist Bari Weiss access to the 'twitter files'. According to Weiss "*in the internal view of Bhattacharya's account, a yellow label reading "Trends Blacklist" appears, which would have excluded his tweets from "Trending Topics."* Another label reads "*recent abuse strike.*"⁸ In emails made public, government officials issued a 'take down' order to stop "*all the attention*" the GBD authors were getting.⁸ Bhattacharya is one of the plaintiffs

in a lawsuit currently underway against the US Federal government accusing the government of a breach of the US first amendment protecting freedom of speech.⁹

Whilst the exact interpretation of the term 'shadow banning' is debated, 'de-amplifying' and 'reducing reach' does occur.¹⁰ As the Washington Post columnist Geoffery Fowler explains *"most social media companies now employ moderation techniques that limit people's megaphones without telling them, including suppressing what companies call "borderline" content"*¹¹ According to Jenin Younes, litigation counsel at the New Civil Liberties Alliance, *"at least 11 federal agencies, and around 80 government officials, have been explicitly directing social media companies to take down and remove certain accounts that violate the government's own preferences and guidelines for coverage on topics ranging from COVID restrictions, to the 2020 election, to the Hunter Biden laptop scandal"*¹² It appears from this example that during the pandemic, government bodies did already employ strategies similar to those described in this Bill albeit from platforms that were in agreement with the public health policy.

Under the discussion of 'Freedom of Expression', this Bill determines that the ACMA would have *"no role in determining truthfulness, nor will it have a role in taking down or requesting action regarding individual pieces of content"* However, almost in contradiction to that statement, under 'Graduated Approach to Enforcement' it says *"the ACMA will have access to powers under Part 13 of the BSA to enforce compliance with proposed new Schedule 9 outlined in the Bill. This will include powers to seek information and conduct investigations into any matters relevant to ACMA's content functions, such as in relation to potential breaches of misinformation codes and standards... Where breaches are found, the ACMA will be able to take regulatory action"*. This regulatory action involves large penalties for corporations of up to 2% of global turnover for breaches of codes or 5% for breaches of standards. Individuals are also penalised on a smaller but nonetheless hefty scale. These penalties serve as strong incentives for players to comply and thus allowing ACMA to claim to be allowing freedom of expression whilst in truth, limiting expression by enforcing compliance via digital platforms.

Of course it could be argued that in a country like Australia, the sort of regulations this Bill imposes will always be used in good faith, and that in our democratic society we are unlikely to ever need be concerned that our government will abuse laws like these. However, we should never forget that Hitler was elected by a democratic society, as indeed was Trump, and democratic elections can be manipulated by individual candidates, parties and the media, depending on how information is staged and viewed. This leads to the second example

Example 2(a) *"foreign interference in elections and the undermining of democratic institutions"*

As alluded to in the Bill when discussing *"foreign interference in elections and the undermining of democratic institutions"* Trump is again the obvious target. During the lead up to the 2016 elections, information was stolen from the Democratic National Committee

(DNC) and its supporters by the units of the Russian Federation's Main Intelligence Directorate of the General Staff (GRU), "through two fictitious online personas that it created—DCLeaks and Guccifer 2.0—and later through the organization WikiLeaks".¹³ These files were reported to be an attempt by the Russians to discredit the Clinton campaign so as to influence the American voters to vote for Trump rather than Clinton. The emails released by WikiLeaks, expose interference in the primary process at the DNC, "the acrimonious split between the Democratic National Committee (DNC) and Clinton's former rival, Senator Bernie Sanders" with "DNC officials scoffing at Sanders and his supporters, and in one instance questioning his commitment to his Jewish religion." saying "Does he believe in a God. He had skated on saying he has a Jewish heritage. I think I read he is an atheist. This could make several points difference with my peeps."¹⁴

Earlier hacks into the DNC server revealed critical information about Donald Trump which was posted on the internet in the week the media claimed to be one of the "worst weeks" of Trump's campaign, claiming "Republican lawmakers in Washington are continuing to back away from their party's presumptive nominee and some are refusing to even mention his name"¹⁵. The timing of the posts prompted Trump to accuse the DNC of masterminding the hacks as an attack on him. This was found to be untrue when Special Counsel Robert Mueller was authorized in 2017 to investigate "the Russian government's efforts to interfere in the 2016 presidential election".¹⁵ The counsel established that Russia had interfered in the 2016 presidential election by releasing documents stolen from the Clinton Campaign in a computer-intrusion operations. The investigation determined that the "Russian government perceived it would benefit from a Trump presidency and worked to secure that outcome" and that the Trump Campaign expected it would benefit from the Russian interference.¹⁵ However the Mueller report concluded "there was no evidence of a criminal conspiracy between Mr Trump's 2016 campaign and Russia". The recently released Durham Special Counsel Investigation Report (May 15th 2023) concluded "that US intelligence and law enforcement did not possess any "actual evidence" of collusion between Mr Trump's campaign and Russia"¹⁶

So was it foreign interference that led to "the undermining of democratic institutions" or was it internal interference that highlighted faults in their own democratic process? WikiLeaks founder Julian Assange defended the release of the DNC information by WikiLeaks in an interview in 2017, where he pointed out the DNC and its attempt to rig the election to exclude Bernie Sanders, saying "what is WikiLeaks to do? Sit on and suppress evidence of interference in the DNC process?" "at the heart of this issue is whether people were told the truth about Hillary Clinton and the DNC. If there hadn't been an ugly truth there, it wouldn't have made any difference. There was an ugly truth. And we published, accurately and fairly, that ugly truth... if it had been from a (Russian) state, would we have suppressed that information before an election, or would we have accurately and fairly published it? Of course we would have published it." "I would argue it would be deeply unethical for any media organization. But for this organization, it would be deeply unethical. We have a commitment to the public that we will not suppress information like that."¹⁷

Can the USA really claim the moral high ground, or is it also guilty of "the undermining of democratic institutions"? According to a Channel 4 FactCheck that referred to research by

Dov Levin of the Institute for Politics and Strategy at Carnegie Mellon University, the scale of election interventions by both the US and Russia is enormous. Between 1946 and 2000 *“there were 117 “partisan electoral interventions”. That’s around one of every nine competitive elections held since Second World War. The majority of these – almost 70 per cent – were cases of US interference.”*¹⁸

Example 2(b) “foreign interference in elections and the undermining of democratic institutions”

As an example of this, according to Wikipedia, USA was responsible for a variety of programs and strategies in Chile, ranging from funding political campaigns to funding propaganda, aimed at impeding the presidential aspirations of leftist candidate Salvador Allende and culminating in the military coup led by Pinochet. Although it is disputed as to whether the CIA actually had direct influence in bringing Pinochet to power, a document released by the U.S. Central Intelligence agency (CIA) in 2000, titled *“CIA Activities in Chile”, revealed that the CIA actively supported the military junta after the overthrow of Allende (the democratically elected president) and that it made many of Pinochet’s officers into paid contacts of the CIA or U.S. military, even though some were known to be involved in human rights abuses.”*¹⁹

Another perhaps better known example of US influence on governments worldwide, perpetuated by disinformation, was that of the Iraq war, a war, which lasted for 8 years, and began on the false premise of “weapons of mass destruction”. As we can see from these examples it is not only digital platforms but perhaps more importantly, politicians (and MSM) who should be held accountable for spreading mis/disinformation, as well as withholding crucial information.

Does Limiting/Influencing Distribution of Information Cause Societal/Public Harm?

Laws that limit the availability of on-line information are the equivalent to burning books historically. This was a means utilised to limit a population’s access to alternative information whilst giving certain individuals and governments the power to disseminate their own choice of ‘information’ and undertake the making of laws (such as this Bill) to push their own agenda. In an Amnesty International article celebrating UNESCO’s World Book Day this year, the author states, *“Books, according to those who censored them, were considered a weapon, a dangerous thought provoker, whose destruction was a means to silence opposition, eradicate a culture, and further the ideology of those in power.”*²⁰ Oscar Wilde is quoted as saying that *“there is no such thing as a moral or an immoral book”,* and that *“an idea that is not dangerous is unworthy of being called an idea at all.”* Critical thinking is an important benchmark for educated people, and education is what free societies espouse. However, limiting access to educative material it is not only the domain of dictators and communists. The article goes on to describe how in 1953, Senator McCarthy of the USA, was given the go ahead *“to dispatch aides to hunt for “Communist” and “fellow traveller” books in US Information Service Libraries throughout Europe and Asia”* Despite a lack of guidelines,

libraries were forced to adhere to a blacklist and books were discarded and indeed, burned.²⁰

In addition to harming the individual or promoting a particular societal ideology, making laws that limit the availability of information can be considered to be a means of 'state capture'. According to the Anti-Corruption Helpdesk, a group operated by Transparency International and funded by the European Union, *"state capture can broadly be understood as the disproportionate and unregulated influence of interest groups or decision-making processes, where special interest groups manage to bend state laws, policies and regulations"* In their examples of where we can see state capture the Anti-Corruption Helpdesk cites, *"Past investigations into the influence of pharmaceutical industries on US law-making show that money spent on lobbying and campaign financing may have helped favourable laws be adopted at the federal level, and led to a more industry-friendly regulatory policy at the Food and Drug Administration, the agency that approves pharmaceutical products for sale and most directly oversees drug companies"*²¹

We should never forget that our democratic society has emerged over a very short period of history, and it was through exposure to information, which may have seemed in breach of certain societal values at that time, that we were able to make these changes. Many countries continue to operate in a vastly different governmental/social model to that of our own but nevertheless value their own cultural integrity. Interference, or *"disruption of public order or society"*, by sharing of information we consider important and truthful, would be considered by some to be harmful to those countries/cultures.

As an example of this I would point to the Amnesty International campaign for the Saudi woman, Salma Al-Shehab, who has been jailed for 34 years for retweeting about women's rights. From the perspective of the Saudi government and the Saudi society in general, women don't have rights. For Salma to be tweeting about women's rights would be considered misinformation at best but more likely, deliberate disinformation. In her country they have a law that says such disinformation is punishable by jail sentence. This has been a long-standing situation in their country, which has resulted in women maintaining their low status as per their cultures' beliefs and expectations for many, many generations. This is their culture and heritage, their *public order and society*. It is what they know and understand and have always respected (in the main) until the internet and social media brought thoughts and beliefs of other cultures in to question their own. From our perspective, now that we have made great moves away from that era of oppression of women (albeit only recently) such draconian laws seem unconscionable. It is obvious that their treatment of women is unfair, violent even, and women should have a voice to question this treatment. We know that our judgement of the situation is the right path, but they are equally certain of theirs.

Who Decides?

Who judges what is mis/dis-information? Who decides what is harm and which action has potential for harm? This Bill does not define who makes a determination on what is mis/dis-

information. Is it Elon Musk and Mark Zuckerberg or the 'independent' government regulator? Is it the Stanford epidemiologist or the government official? Is it Trump or the CDC? Is it Wikileaks/Russians or the Democrats; Communists or Capitalists; The Saudi Prince or the suffragettes?

Given the examples from organisations we have respect for, of misconduct by a country we should have great respect for, can we be confident that our own government and these amendments to our laws will serve our best interests? Are the people who form our governments and committees, now and into the future, immune from the impacts of such influences as cognitive bias and state capture? Will it be our leaders, our laws, our media, who, by limiting our exposure, will protect us from serious harm? Or will it be our education that encourages us to expose ourselves to the type of information necessary to engage in critical thinking - with more emphasis on the thinking and less on the criticism (which is led by our biases)? I believe it is by informing ourselves and sharing freely with others that ensures everyone has the opportunity to analyse all the information and decide for themselves.

Conclusion

We seriously need to consider the role of any legislation in limiting our freedoms. Education may be a more beneficial path to follow; teaching people how to seek credible evidence and avoid biases. We, the individuals, need to be the ones who judge and make our own decisions based on free and unfiltered information. We need to employ rigorous and open scientific methods in our own search for facts. It is important to reiterate that critical thinking should embrace thoughtful thinking but without so much criticism and division. It is our government's responsibility to provide us, through our education system, the means to make educated decisions through inclusiveness rather than dissension or censorship. Our political system and our media need to take responsibility for their role in creating the current divisive culture we have been returned to - Tribalism/Us and Them. We need to desist from this 'mob morality', as Charles Eisenstein says, and the way to do this is to *"establish and spread the understanding of the full and equal humanity of each human being. It is to refrain from convenient disparaging caricatures and stereotypes that reduce people to labels. It is to hold, instead, a story of each other that makes room for the highest expression of our humanity. It requires a kind of unrelenting courtesy, an insistence on generosity of interpretation, and a willingness to put something else above victory."*²²

This Bill must be withdrawn and emphasis placed on education that will enable our society/communities to evaluate information in a fair and all encompassing manner. It is not only digital platforms but also governments and media who should be encouraged to view all information as essential for democratic vitality.

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