

Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023: Exposure Draft Feedback

Thank you for the opportunity to provide feedback on the exposure draft of the Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023, which was requested of the public on 24th June 2023.

I'd first like to say I'm writing this as a concerned citizen, and the views outlined in my submission are entirely my own and I share no affiliation with any organisation.

In my submission, I will focus on the following problematic aspects of the bill as I see them: -

- a) **Determining what is the truth** - The Australian Federal Government determining what is truthful information on digital platforms.
- b) **Legalisation of the truth** - Any information not aligning to the government's determination of truthful on digital platforms will be deemed illegal.
- c) **Exemptions** - Australian Governments, and government recognised media outlets (professional news content) will be the only entities exempt from this law.
- d) **Responsibility for Enforcing the law** - The responsibility of the monitoring and censorship of information is to be outsourced to the digital platforms themselves.
- e) **The Scope** - The new laws would apply to a broad range of 'platforms' including search engines, news aggregators, social media and podcast services

Is there a Problem that need fixing?

First, we should ask ourselves the question, is there an existing problem for the Australian people that this law seeks to address and if so, how much of a problem is it?

This law is primarily targeting social media giants such as Facebook and Twitter.

So, how serious of a problem is misinformation and disinformation on social media platforms for the Australian people?

According to Edelman, a global communications firm who study influence of trust across society, stated in their annual "Trust Barometer" 2023 titled "*Australia on a Path to Polarisation: Edelman's Trust Barometer 2023*"

In the section: -

"In Australia, No News Source Trusted" (page 15)

Social Media's trustworthiness is only 25%.

<https://www.edelman.com.au/sites/g/files/aatuss381/files/2023-02/2023%20Edelman%20Trust%20Barometer%20Report%20-%20AUS%2002-2023.pdf>

So, this law seeks to address potentially un warranted trust in social media by curtailing freedom of expression and speech for every Australian on a digital platform, despite 63% of the Australian population already not trusting Social Media.

Based on this alone, it appears that the vast majority of Australians already successfully deal with this issue without the need for government intervention or involvement.

This is how a mature free country operates.

So again, is there an existing problem with misinformation and disinformation on the social media platforms for the Australian People? It doesn't look like it, as the Australian public seems to be astute in determining misinformation and disinformation already.

In Edelman's Trust Barometer 2022, it cited –

“A majority of Australians (55%) say their default tendency is to distrust something until they see evidence it is trustworthy.”

<https://www.edelman.com.au/trust-barometer-2022-australia>

This is also how Australia's judicial system works, by evaluating all available evidence (not just one view) before making a judgement.

The Australian people should be afforded this same right.

Legalising what is the truth (with exemptions for some)

I believe that in a free country, such as Australia, all should be equal under the law, without exception.

However, this legislation seeks to exempt the following from the new disinformation and misinformation laws, allowing lies and embellishments without challenge or prosecution -

- Government agencies,
- professional news content
- authorised electoral materials
- satire

All other bodies and materials would fall under this law, which is based on subjectivity and definitions so broad that they literally could be applied to anything, opening the door for the potential to be abused by the Governments or the digital platforms, current or future.

To quote the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023 – Guidance Note

The key distinguishing feature between misinformation and disinformation in the Bill is intent. Disinformation is intended to capture 'misinformation that has been disseminated with the intention of deceiving another person'

<https://www.infrastructure.gov.au/sites/default/files/documents/communications-legislation-amendment-combatting-misinformation-and-disinformation-bill-2023-factsheet-june2023.pdf>

As stated in the guide, the key is intent. There is no mention of requiring any supporting evidence to determine intent or even what is the truth.

In Australian law the matter of intent is often contentious.

An example of this is the difference between Voluntary Manslaughter (killing with intent but without premeditation) and Involuntary Manslaughter (causing a death unintentionally).

The courts require proof to determine intent, this proposed law does not. So, without accompanying proof how can intent possibly be determined fairly? It can't.

Subjectiveness also applies to the bills' definition of harm.

- Simple things like having an opinion on immigration could be seen as racial 'hate'.
- An independent economist warning of an impending market crash could be classified as 'talking the market down' which could be seen as potentially causing economic harm to the Australian economy.
- Or how about someone telling the age-old joke 'How do you tell if a politician is lying, their lips are moving!' This could be chosen to be seen as a comment and not satire, which could be seen as harmful to Government and undermining our democracy.
- Even Australian political opposition parties could be blocked on digital platforms for opposing government policies on such things as health, economy, the environment, or any other topic if it is not deemed "authorised electoral content"

There are existing laws that cover these issues, but they are tried in an Australian court and require the burden of proof.

This proposed law seeks to curtail our existing freedom of expression and freedom of speech without the requirement of proof by sidestepping Australia's legal processes.

If the government and the media are truly serious about combatting misinformation and disinformation, then it would not be seeking to make it legal for itself to lie.

In Edelman's Trust Barometer 2022 it cited –

“Moreover, a majority of Australians believe that journalists (65%), government leaders (61%) and business leaders (61%) are actively trying to mislead them by saying things they know are false or grossly exaggerated”

<https://www.edelman.com.au/trust-barometer-2022-australia>

Recently, the Australian Federal Government had an opportunity to lead by example with respect to outlawing misinformation and disinformation during The Voice to Parliament referendum campaign, but chose not to.

As reported by The Guardian newspaper on 10 July 2023

Parliament decided to allow lies during the campaign

The federal parliament passed up an opportunity to ban misinformation and disinformation during the voice to parliament referendum campaign. In January the parliament's joint standing committee on electoral matters rejected calls to do this.

The committee said “the forthcoming referendum is not the right time to establish a truth-in-political-advertising regime”.

But the same committee recommended in June (2022) that Australia adopt federal truth-in-political-advertising laws that would apply to all future federal elections and referendums.

https://www.theguardian.com/commentisfree/2023/jul/10/voice-to-parliament-referendum-politicians-campaigns-lies?trk=public_post_comment-text

I can't think of a more important occasion that truthful information be mandatory than voting on proposed changes to the Australian constitution, which is the highest law of the land.

Information and views posted on digital media, including social media sites, pale into insignificance compared to changing the Australian constitution.

As the Government didn't see the need for legislative truthfulness to be applied to the Voice to Parliament referendum campaign, I can see absolutely no justification for these new laws at all.

At all times, elected members of governments should be striving to provide the most accurate and truthful information to their constituents. This approach would encourage the Australian people to turn freely to their government for the truth. This is how trust is built and democracy prospers.

Forcing a Government approved view on the people is not the way.

How does truth win in this environment? It doesn't, the only winner would be distrust.

As Charles S. Lauer once said – “Leaders don’t force people to follow, they invite them on a journey.”

Responsibility of Enforcement the Censorship

In this law, the Australian government will not have direct control of the policing of misinformation and disinformation on the digital platforms.

The digital platforms themselves will be self-governing and they will determine what is the truth.

This presents the very real possibility that in order to remain compliant with the Australian Government’s official standing on a given topic or topics, the digital platforms will censor more heavily than the government intends or has flagged. In effect they will likely err on the side of caution out of fear of falling foul of the law, leading to the over-censorship of legitimate views and options that will not be easily prevented.

This is not a positive outcome for a free and informed Australia, and the suppression of views and opinions is anti-democratic.

We have been given assurances by the Communications Minister Michelle Rowland who said "*the government has no intention of stifling freedom of speech*"

But I feel that this is exactly what this law will do, either directly or indirectly.

It would appear that the government is seeking to outsource the policing responsibilities to the digital platforms, in order to allow it to say that they are not "*stifling freedom of speech*"

When determining what is the truth for Australian citizens, international corporations will become judge, jury and executioner.

The Scope

The scope of this law is very large, encompassing a broad range of digital ‘platforms’ including search engines, news aggregators, social media and podcast services. This proposed law is so pervasive, that it even encompasses private messaging!

These platforms are the digital equivalent of books and newspapers found in the last century.

This sort of law, where it attempts to legitimise a single source of truth through the control of the media has been used exclusively by what we would categorise as Totalitarian or Authoritarian Governments.

Below are two examples from history (current and past), but sadly, there are many more.

The 2022 New York Times article “**Russia Strengthens its Internet Censorship Powers**” it states the following: -

The process, underway since 2019, represents the start of perhaps the world’s most ambitious digital censorship effort outside China.....

“This is something the world can copycat,” said Laura Cunningham, a former head of State Department programs on internet freedom. “Russia’s censorship model can quickly and easily be replicated by other authoritarian governments.....”

Russia is using the censorship technology to gain more leverage over Western internet companies in addition to other strong-arm tactics and legal intimidation. In September, after the government threatened to arrest local employees for Google and Apple, the companies removed apps run by supporters of Mr. Navalny ahead of national elections.

Roskomnadzor, the country’s internet regulator overseeing the effort, can now go further. It has threatened to take down YouTube, Facebook and Instagram if they do not block certain content on their own. After the authorities slowed down Twitter this year, the company agreed to remove dozens of posts deemed illegal by the government.

<https://www.nytimes.com/2021/10/22/technology/russia-internet-censorship-putin.html>

And from the BBC’s historic article “**Nazi control of Germany.**” It cites

Josef Goebbels was appointed Minister of Propaganda in 1933.

- *Goebbels controlled the media and arts, making sure that Germans were fed Nazi ideology while censoring other information. . . .*
- *Any media that conveyed anti-Nazi ideas or even other ways of life, were censored. Censorship of newspapers, radio, cinema and the theatre was enforced. Only books which agreed with the Nazi point of view were allowed. All other books were banned and many were publicly burned from May, 1933.*

<https://www.bbc.co.uk/bitesize/guides/zn8sgk7/revision/3>

Though the technology differs in the examples, digital/physical, this bill shares very similar aspects to both of these examples. The main thrust is Government control of the flow of information in the media, while stifling dissenting information and views that deviate from the Government’s approved information.

This law opens the door for a government to legally produce propaganda, weaponizing official information without challenge.

I believe we have seen a glimpse of this sort of behaviour by an Australian Government already with its handling of Robodebt.

As reported in the Guardian Newspaper article, from 7 July 2023 titled: -

“How the Coalition collaborated with ‘friendly media’ to silence Robodebt victims”

- Alan Tudge’s office planned to use sympathetic outlets such as News Corp to counter reporting on scheme, royal commission report reveals

<https://www.theguardian.com/australia-news/2023/jul/07/how-the-coalition-collaborated-with-friendly-media-to-silence-robodebt-victims>

This law would have made the Government’s actions legal, meaning there would be no recourse for lying, the coverup or the damage done to innocent individuals and no voice from the people of Australia.

Obviously, taken to extremes, this sort of behaviour would potentially jeopardise Australia’s democracy and democratic process, just as the Australian Human Rights Commission has warned in a submission dated February 2023 to the parliamentary inquiry into foreign interference through social media –

“There is a real risk that efforts to combat online misinformation and disinformation by foreign - actors could be used to legitimise attempts to restrict public debate, censor unpopular opinions and enforce ideological conformity in Australia”.

In closing, for the reasons stated above, I would argue that Australia should never be following the lead of either of these countries policies.

This bill is an attack on both our democracy and on our human rights.

Having full and unfettered access to a variety of information sources should not be a privilege, but remain a right. It allows Australians the ability to exercise their free will and independence.

This is regressive legislation that allows for the suppression of Australians to be informed on topics important to them. Being exposed to a variety of viewpoints and not just from some Government approved list is how we as a society grow and mature.

Who in their right minds would have ever thought they would see the day where an Australian Citizen would need to be granted permission from their Government to state a belief in public and not have it removed on the basis that the view is not shared by the Australian Government!

Please, do not pass this bill into law, I believe it will be a massive mistake.

Thank you again for the opportunity to provide feedback in regards to this proposed bill.

Yours Sincerely

A solid black rectangular box used to redact the signature of the sender.