



ENVIRONMENTAL PROGRESS

NATURE, PEACE, & PROSPERITY FOR ALL

To: The Department of Infrastructure,
Transport, Regional Development,
Communications and the Arts,
GPO Box 594
Canberra ACT 2601

Re: New ACMA powers to combat misinformation and disinformation (the *Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023*)

Dear Officer,

SUBMISSION

Introduction

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (**the Department**) have invited input on an exposure draft of the *Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023 (the Bill)*.¹

¹ "Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023." Department of Infrastructure, Transport, Regional Development, Communications and the Arts, 2023, <https://bit.ly/45b005K>.

This is a submission by [Environmental Progress](#), a US nonprofit research organization with a mission of achieving nature, peace, and prosperity for all. We believe every human has a right to affordable energy, a healthy planet, and urban environments that enable citizens to thrive. Our strategy involves organizing grassroots movements to defend these human rights, and to fund research into why they are threatened.

Environmental Progress works closely with [Public](#), a media outlet that uncovers big stories on the most important issues of the day, from censorship and cities to mental health and addiction to energy and the environment. Public has broken a wide range of groundbreaking stories, including [the Twitter Files](#), [revealing the first people sickened by Covid at the Wuhan lab](#), and the [Proximal Origins](#) scientific paper fraud weaponized to dismiss the now favored lab leak theory.

We are writing to oppose the *Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023*, as it would allow the Australian Communications and Media Authority (ACMA) undue authority to censor political speech and public discourse while doing little to address the most accurate sources of disinformation, state, and corporate actors. Despite assurances to the contrary, the Bill violates Australia's commitment to freedom of opinion and expression, as laid out in Article 19 of the UN Universal Declaration of Human Rights, to which Australia is a signatory.²

Furthermore, imprecise language plagues the Bill, leaving it open to abuse by the government of the day and unelected bureaucrats. We urge the government to reject the Bill.

Background

The concept of “mis”- and “disinformation” is being increasingly weaponized by governments, academics, media, and NGOs to censor legitimate speech. Public has been at the forefront of uncovering what Environmental Progress founder Michael Shellenberger named the

² "The Core International Human Rights Treaties." Office of the United Nations High Commissioner for Human Rights, <https://www.ohchr.org/sites/default/files/documents/publications/coretreatiesen.pdf>.

“Censorship-Industrial Complex.”³ Discoveries in the Twitter Files and subsequent reporting have revealed a vast network of state and non-state actors working together to censor ordinary citizens and the highly credentialed alike.

In May 2023, Michael Shellenberger testified before the United States Congress on his Twitter File findings and the vast censorship complex developed under the guise of combatting “disinformation.” Shellenberger stated, “Censorship ideology holds that the censors are able, at least better than most people, to determine the truth and falsity of something and the intention of the person or organizations. As such, censorship ideology is fundamentally elitist.”⁴

The ideology driving the counter-misinformation industry is fundamentally anti-democratic and violates our rights to freedom of expression.

Foreign disinformation between states is a real issue. However, agencies designed to combat these threats, such as the US Cybersecurity and Infrastructure Security Agency (CISA), are increasingly being turned inward against the public. This is also the case in Australia. Through the Twitter Files, reporter Andrew Lowenthal discovered that the Department of Home Affairs Extremism Insights and Communication office had requested the removal of 222 tweets, including jokes, commentary, scientific debate, and information that turned out to be true.⁵ FOIA documents revealed there were, in fact, more than 4000 such requests.⁶ Accounts with just 20 followers were requested to be censored, as were accounts that did not even belong to Australians but were “circulating a claim in

³ Schmidt, Susan, Andrew Lowenthal, and et al. "Report on the Censorship-Industrial Complex: The Top 50 Organizations to Know." *Racket News*, May 10, 2023. <https://www.racket.news/p/report-on-the-censorship-industrial-74b>.

⁴ "The Censorship Industrial Complex: Testimony by Michael Shellenberger to the House Select Committee on the Weaponization of the Federal Government." March 9, 2023, <https://bit.ly/3YDMk0r>.

⁵ Lowenthal, Andrew. "Twitter Files Extra: The Covid Censorship Requests of Australia's Department of Home Affairs." *Racket News*, 2023. <https://www.racket.news/p/twitter-files-extra-the-covid-censorship>.

⁶ "Australian Government Censored over 4,000 Covid-19 Posts." *Rebel News*, May 21, 2023. <https://www.rebelnews.com/australian-government-censored-over-4-000-covid-19-posts>.

Australia's digital information environment." Rather than relying on Australian scientists, the DHA referred Twitter to Yahoo! News and USA Today to justify censorship requests.

The recent track record of the Australian Government agencies using the guise of "disinformation" for censorship makes us highly concerned that the proposed Bill will only further exacerbate an existing array of bad practices and give ACMA even more coercive power.

Wide-scale exposure of the censorship activities of so-called "anti-disinformation" organizations has generated a large-scale popular backlash in the United States and growing sections of civil society. In addition, the Missouri vs. Biden anti-censorship suit looks set to go to the United States Supreme Court and win.⁷ Recent revelations regarding Facebook's willingness to engage in censorship at the behest of the White House to protect access to valuable data is yet another example of large-scale corruption in the sector.⁸

Meanwhile, Australia is drafting legislation well behind the shift in public sentiment.

Imprecise, Ill-defined Language

One of our key concerns is the imprecise, ill-defined language in the Bill, especially the definition of "harm" that leaves the legislation open to weaponization.

The Bill defines "harm" as any of the following:

- (a) hatred against a group in Australian society on the basis of ethnicity, nationality, race, gender, sexual orientation, age, religion or physical or mental disability;
- (b) disruption of public order or society in Australia;

⁷ Gutentag, Alex, Leighton Woodhouse, and Michael Shellenberger. "Free Speech to the Supreme Court — and Beyond!" *Public* August 11, 2023. <https://public.substack.com/p/free-speech-to-the-supreme-court>.

⁸ Shellenberger, Michael, Alex Gutentag, and Leighton Woodhouse. "New Facebook Files Expose Biden Censorship-for-Spying Scheme." *Public* August 7, 2023. <https://public.substack.com/p/new-facebook-files-expose-biden-censorship>.

- (c) harm to the integrity of Australian democratic processes or of Commonwealth, State, Territory or local government institutions;
- (d) harm to the health of Australians;
- (e) harm to the Australian environment;
- (f) economic or financial harm to Australians, the Australian economy or a sector of the Australian economy.

All of these are exceptionally broad. The mention of the “disruption of public order or society” is particularly concerning, given the vital role of protest in raising key issues of concern and dissent more broadly.

The conflation of hate speech with disinformation is especially problematic, as it seeks to justify the Bill by referencing speech that largely falls outside the concept of disinformation. In addition, Australia already has legislation regarding online and offline discrimination.

The weaponization of an incredibly loose conception of “harm” to promote censorship is precisely the kind of weaponization we fear. We believe this violates Article 19 of the UN Universal Declaration of Human Rights. Open discourse is the central pillar of a free society and is essential for holding governments accountable - it protects and empowers vulnerable groups.

Mis- and Disinformation

But what is mis- and disinformation? The Bill falls short of a good definition. As stated in Clause 7 of the Bill, “dissemination of content using a digital service is *misinformation* on the digital service if:”

1. the content contains information that is false, misleading or deceptive; and
2. the content is not excluded content for misinformation purposes; and
3. the content is provided on the digital service to one or more end-users in Australia; and
4. the provision of the content on the digital service is reasonably likely to cause or contribute to serious harm.

The means to determine “whether the provision of content on a digital service is reasonably likely to cause or contribute to serious harm” are also alarmingly subjective. Included in this list are:

- (a) the circumstances in which the content is disseminated;
- (b) the subject matter of the false, misleading or deceptive information in the content;
- (c) the potential reach and speed of the dissemination;
- (d) the severity of the potential impacts of the dissemination;
- (e) the author of the information;
- (f) the purpose of the dissemination;
- (g) whether the information has been attributed to a source and, if so, the authority of the source and whether the attribution is correct;
- (h) other related false, misleading or deceptive information disseminated; and
- (i) any other relevant matter.

The most concerning matter on the list states “any other relevant matter.” This broad definition opens the door for misuse by those in power. Likewise, identifying particular authors could lead to a kind of permanent black-listing, not based on content, but on the individual.

The Bill even requires providers or messaging services to monitor their platforms for misinformation, though thankfully providing an exemption for private messaging.

Fact-checking and Enforcement

The Bill proposes that ACMA outsource the process of determining what is mis- and disinformation to social media platforms and a host of fact-checking enterprises. In this way, the government seeks to avoid the accusation of setting up a Ministry of Truth by instead hanging the Sword of Damocles

above the heads of the technology companies. But this slightly removed step does not absolve the Government.

Beyond the impossible challenge of acquiring the omnipotence required to determine the truth (particularly on quickly evolving news and science), this system has two key problems. Firstly, the fines are so significant that technology companies will minimize their risk by over rather than under-censoring. The government can fine noncompliant companies \$2.75 million or 2 percent of their global turnover, whichever is more. This is a huge sum for content that can often be true or debatable. Even when the content is false, it rarely reaches the level of harm that could justify such an imposition.

The second key problem is the track record of the “fact-checking” organizations that have gotten a swathe of things wrong. For example:

1. It was considered misinformation to state that Covid-19 vaccines didn’t stop viral transmission.⁹
2. It was considered misinformation or a conspiracy theory to suggest the Covid-19 virus escaped from a lab.¹⁰
3. The now-verified Hunter Biden laptop was also labeled misinformation.¹¹

In fact, Stanford University’s Virality Project went further and advised seven Big Tech partners to consider “true stories of vaccine side-effects” as “Standard Vaccine Misinformation.”¹²

⁹ "Fact Check-Preventing Transmission Never Required for Covid Vaccines' Initial Approval; Pfizer Vax Did Reduce Transmission of Early Variants." Reuters, October 14, 2022, <https://reut.rs/3QGRlIk>.

¹⁰ "Still No Determination on Covid-19 Origin." FactCheck.org, March 2, 2023, <https://www.factcheck.org/2023/03/scicheck-still-no-determination-on-covid-19-origin/>.

¹¹ "Did Trump Spread Russian Disinformation During the Debate?" CNN Politics, https://www.cnn.com/factsfirst/politics/factcheck_036fb62c-377f-4c68-8fa5-b98418e4bb9c.

¹² Taibbi, Matt. "Stanford, the Virality Project, and the Censorship of "True Stories"." *The Twitter Files* April 12, 2023. <https://twitterfiles.substack.com/p/stanford-the-virality-project-and>.

Fact-checkers have a tarnished record and, despite their claims, are not a reliable means to determine what is true and false.

The Twitter Files and other investigations reveal that counter-disinformation and fact-checking organizations are involved in disinformation campaigns. One of those organizations, “anti-disinformation” experts First Draft, helped draft the voluntary disinformation code developed by industry and DIGI.¹³ The Twitter Files revealed that First Draft was a leading organization in the Censorship-Industrial Complex.¹⁴ Director Claire Wardle was a participant in the now infamous Hunter Biden laptop table-top exercise.¹⁵ That exercise occurred in the northern summer of 2020, when the verified laptop was in the possession of the FBI and was not known publicly. However, the Aspen Institute organized an exercise to practice responding to a theoretical hack-and-leak related to the Burisma energy company in Ukraine involving Hunter’s laptop. How did the Aspen Institute know such a hack-and-leak was likely?

Along with First Draft, a host of media and Big Tech companies attended the exercise, as did a representative from the Poynter Institute (the largest fact-checking network in the world) and Alan Rusbridger, former Editor in Chief of the Guardian and member of Facebook’s oversight board.¹⁶

First Draft’s participation in the table-top was part of a subsequent disinformation campaign to discredit and censor this true story in the last weeks of a presidential election. Given this and First Draft’s close involvement with leading actors in the Censorship-Industrial Complex, their frequently

¹³ "The Australian Code of Practice on Disinformation and Misinformation." DIGI, December 22, 2022, <https://digi.org.au/disinformation-code/>.

¹⁴ Schmidt, Susan, and et al. "Report on the Censorship-Industrial Complex," 3.

¹⁵ "When the Hunter Biden Laptop Story Broke, the Existence of the Recent Tabletop Exercise Became Instant Important News...." Twitter, April 25, 2023, <https://twitter.com/NAffects/status/1650954065176588297>.

¹⁶ "Here Is a List of the Journalists and Organizations That Allowed Themselves to Be Programmed into Violating the Pentagon Papers Principle...." Twitter, March 10, 2023 <https://twitter.com/shellenberger/status/1634274509690753048>.

incorrect “fact-checks,”¹⁷ and the fact that “the Bill seeks to incentivize and strengthen the voluntary framework,” reviewing the flawed development of the voluntary code should be the first step.

Furthermore, who will oversee creating and implementing misinformation codes and standards for modes such as fact-checking? According to the Bill, ACMA will be the exclusive overseer of the rules they establish.

Additionally, ACMA themselves consider “whether the code burdens freedom of political communication” and “if so, whether the burden is reasonable and not excessive, having regard to any circumstances ACMA considers relevant.” There is no mention in the Bill of another entity to check if said code impedes a digital platform’s freedom of speech or expression.

Clauses 48-49 mention ACMA alone will monitor and address instances when the misinformation code fails, either partially or totally. ACMA removes a misinformation code or a provision of a misinformation code when “ACMA is satisfied that the code is totally deficient.” A code is considered totally deficient “if, and only if, the code is not operating to provide adequate protection for the community from misinformation or disinformation on the services.” The Bill does not state they will remove the code if it “burdens freedom of political communication.”

If this Bill passes, this will be one of the few pieces of legislation that grant the escape of necessary checks and balances, creating an unmonitored authority. This raises significant concerns about the unchecked rules that will be placed over most digital media sources in Australia.

¹⁷ "Our Work on Public Health " First Draft January 2023,
<https://firstdraftnews.org/bucket/our-work-on-public-health/>.

Exemptions and Scope

Another deeply problematic aspect of the Bill is the exemptions it gives to the government, media, and academia. This again points to the elitism of the Bill and the counter-disinformation industry more broadly, where there is one rule for the powerful and another for the citizenry.

Such an exemption protects the government from legitimate criticism while also giving a pass to major media, who have a long-standing track record of spreading disinformation - we could point out the Iraq war and weapons of mass destruction fallacy just to begin with. Exempting academics from this censorship regime is positive in many respects, given the current wide-scale censorship of the academy. However, our investigations in the Censorship-Industrial Complex revealed that academic institutions are also at the forefront of the new restrictions on free speech.¹⁸

Additionally, the Bill's scope encompasses "digital services," defined in Clause 3, where "any of the content accessible using the service, or delivered by the service, is accessible to, or delivered to, one or more end-users in Australia." Given the Department of Home Affairs' previous attempts at censorship beyond Australian borders (as revealed in the Australian Twitter Files), we are concerned there are inadequate protections for non-Australians. Will they be targeted for "circulating a claim in Australia's digital information environment?"¹⁹

Summary of Recommendations

Although stated otherwise, the Bill's underlying premise directly contradicts freedom of speech in principle and practice and will negatively impact Australia's democratic process. For those reasons, we urge you to reject the Bill. If that proves impossible, we would recommend immediate amendments, including:

¹⁸ Schmidt, Susan, and et al. "Report on the Censorship-Industrial Complex," 3.

¹⁹ Lowenthal, Andrew. "Twitter Files Extra," 3.

1. Removal of “harm” as the trigger to define whether content is considered to have a negative impact, and its replacement with much more specific terms that focus on disinformation produced by large-scale actors, not ordinary citizens or those with unpopular ideas
2. Expansion of the scale of any enterprise to be considered under the Bill to be at least 10,000 users
3. Inclusion of an external authority to ensure the legislation adheres to its intentions rather than allowing ACMA to oversee the role themselves
4. Addition of explicit protections for freedom of speech and expression
5. Removal of the exemption for Government
6. Assurances that the legislation will not impact content distribution outside Australia
7. Ensuring “misinformation” labels cannot be arbitrarily placed by fact-checkers
8. A robust system of appeal so that the censored can seek to redress

Individual speech and expression protections are not just for views we agree with; we must strenuously protect speech for the views we most strongly oppose. Only in the public square can these views be heard and properly challenged. Leaders of the Censorship-Industrial Complex fear that the Internet and social media amplify populist, alternative, and fringe voices or perspectives.

Time and time again, unpopular opinions and ideas have often become conventional wisdom. By labeling certain political or scientific positions as 'misinformation' or 'malinformation,' our societies risk getting stuck in false paradigms that will rob humanity of hard-earned knowledge and obliterate the possibility of gaining new knowledge.

Our best weapon against disinformation is free speech. What is truly needed is legislation that better protects that right.