

Submission to The Communications
Legislation Amendment (Combating
Misinformation and Disinformation) Bill
2023

By Chris Baxter, 19 August 2023

The Communications Legislation Amendment (Combating Misinformation and
Disinformation)

Bill 2023 would impose a regime of pre-censorship, censorship, monitoring,
discriminatory

categorisation and reporting on the public speech of Australian citizens.

In providing feedback to this Bill I feel akin to a child who's being threatened
to be locked in their

room indefinitely, to keep them safe from the kids at the park.. then asked for
feedback. So

please forgive me for being to the point.

This Bill is authoritarian and Marxist in character and must be withdrawn.

From First Reading the Misinformation Bill Until Now

I was on holiday in late July when I first heard about a "Misinformation Bill".

As a long time

advocate of Free Speech my initial reaction was one of both curiosity and
concern. Later that

evening, after the kids were put to bed, I grabbed my laptop to see if I could
find a copy of the

Bill online.

As I started to read the Bill I was astonished as clause after clause showed
ideologically Marxist

characteristics. I began to tweet a thread of my initial reactions, a thread
that has now (as of 19

August) received over 157,000 views and 888 retweets. It was clear to me that
the concerns I

raised were and are echoed by ordinary Australians.

I want to reproduce these tweets, prior to arguing the case less emotively, to
present to

legislators and politicians the absolute disgust Australians have towards this
authoritarian

overreach.

The Creation of an Advocacy Group Against the Bill

Over subsequent weeks, Australians from all walks of life reached out to me,
asking what I

thought we should do about this Bill. I encouraged them to make submissions. The
number of

people reaching out to me continued to grow and so I founded, alongside about 10
others, the

advocacy group <https://www.stopaussieensorship.org> to raise public awareness of
the Bill. The

information we have provided and misinformation (provided in the Guidance Note
and by some

Media Outlets) that we have corrected, has led to many bespoke submissions being
made.

The original due date for feedback was 4 August (a little over a month from when the draft Bill was released). The onus on regular Australians to learn this process, and write their own submission from scratch, within this time period, was of course very burdensome. The extension of the submission period to 20 August did not significantly lessen that burden. Therefore, alongside encouraging people to write their own submissions, we created a Submission Assistant Tool to address this burden. The Tool has now assisted many Australians who did not have the confidence to, or otherwise, felt unable to write a submission from scratch. Using our tool, Australians have been able to choose the concerns that they want to convey to the Government about the Bill and be provided with a first draft. We sincerely hope that submissions that have used AI will not be viewed as less authentic than those that do not. To believe that a submission that has been generated using AI, in part or in whole, is less authentic, without understanding the individual circumstances of the submitter, would of course be quite presumptuous and inequitable.

Why Am I Writing This Submission? A personal perspective
My way of brief introduction, I am a Christian, an IP attorney, advisor to the Baxter Charitable Trusts (two of the larger family charitable trusts in Australia), husband and father to three. If this Bill is implemented, it will significantly affect my day-to-day life. As do many others, I like to explore what is true and false behind matters on my Twitter/X profile. If this Bill is implemented I would expect some of my posts to be pre-censored by digital platforms looking to reduce misinformation to avoid fines. Yet it is those posts that might contain debate of most usefulness to society. These posts are an important aspect of my contribution, as a member and thinker, to Australian society. Removal of my posts would stop me from expressing my identity and contributing to society in this way.

Equally concerningly, censorship of posts will restrict my access to many controversial or “narrative-incorrect” posts which may be helpful as an aspect of my sense-making process, to properly understand the world around me. Therefore, this Bill stands to fundamentally alter my quality of life as an Australian citizen.

I will now move from personal reflections and experiences to briefly discuss the principle of free speech, why it matters and then provide 12 reasons why this Bill should be withdrawn.

What is Free Speech and Why Does it Matter?

Free speech is not a matter of whether someone can say what they think without going to jail.

Rather, it is whether someone can say what they think in public without any Government

coercion, intimidation, belittling, threats or censorship, whether carried out directed or indirectly

via one or more intermediary bodies, organisations, codes or companies.

Free speech is extremely important. Western society has rarely existed without it, so it is easy to

forget what an important role it plays in safeguarding society from authoritarians and tyrants. A

quote from Scanlon, below, sums it up best.

I have many other concerns about this Bill. I will now address 12 concerns in particular:

Concern 1 - This is a Bill of inequitable and politically partisan assumptions

This Bill divides citizens into two classes:

1. Those whom the Govt. deems trustworthy to participate in public forums without being

monitored and reported on, and

2. Those whom the Govt. deems cannot be trusted.

The former group, I will call the Viewpoint Elites, because they are those who are not required to

have content they produce, known as Excluded Content, monitored. Their content is excluded

from consideration under this Bill by s7(1)(b).

The latter group, consisting of ordinary citizens, I will call the Deplorables, because the Govt. is

proposing that they are treated as not having any viewpoint worthy of consideration.

The Viewpoint Elites

The Viewpoint Elites include, according to the definition of Excluded Content in the Bill,

Government authorised journalists (“professional news content”), Government authorised

educators (Govt. accredited “educational institution[s]”) and the Government bodies themselves.

It doesn’t take much imagination to realise that the Govt. approved journalists are effectively

being “bribed” for favourable news coverage and/or being incentivised for continuing supportive

perspectives, such as for support for this Bill.

As this “MisSpeak” legislation comes into full swing, and misinformation and disinformation

reports proliferate about their non-approved competitor journalists, such Govt. authorised

journalists and their respective publications will stand to benefit financially in the long-term. This

is because misinformation and disinformation reports stand to have a significant negative effect

on the reputation of non-approved competitor publications.

Educators and Government bodies are primarily on the Government payroll, mostly viewpoint

partisan (left-wing) in their operations and commonly accepted to be employers

of people who
are left-leaning politically.

In other words, the Viewpoint Elites are:

1. Either being “bribed” by being offered non-interference and stand to gain financially (in the case of Govt. approved journalists) or existing Government beneficiaries (in the case of those on Government payroll); and
2. Are almost entirely politically aligned on the side of the Government.

Therefore, the data collected and reports made under s18 & 19 of the Bill will be primarily directed towards those whom the Govt. does not stand to benefit from (e.g. by receiving favorable news coverage), those who are not existing beneficiaries, or those who are not on the same side of politics as the Govt.

Accordingly, this Bill introduces a substantial moral, financial and political division of citizens into two classes. This is highly inequitable.

Has the Government found that the perspectives of the Viewpoint Elites are more trustworthy or

more true than those of the Deplorables? If so, we would like to see the

evidence for this.

Key Points

- A. Govt. is primarily rewarding its journalist supporters with non-interference and a commitment to interfere with others, some of whom are their non-Govt approved competitors.
- B. Existing public servant beneficiaries of Govt are suggesting legislation that is for the benefit of themselves because it supports their left-leaning political allies.
- C. Govt. has introduced a Bill that seeks to divide citizens into two classes with one class receiving greater financial and political benefits from the legislation than the other class.

Concern 2 - Intimidation at every level

Intimidation strategies are well known and typically have not been used by Western

Governments against their own citizens.

However, this changed in 2020. During the Covid period, State and Federal Governments

practiced various intimidation tactics against those who wanted to maintain their freedom of movement, freedom of political communication, freedom to work and freedom of bodily autonomy.

Large protests ensued and a significant portion of the Australian population is still highly

resentful of how they were intimidated into taking risks to their personal health, with what were

essentially experimental medicines, and how their freedoms were impinged upon.

One form of intimidation is dis-empowerment. Dis-empowerment occurs when rules

are made

which pre-suppose fault by an individual, a group or an entire "class" of citizen as is the case with the Deplorables. The individual and group level psychological effects of dis-empowerment are well known.

But how does this Bill pre-suppose fault of the Deplorables? It achieves this by making

numerous unsubstantiated presuppositions. Two of the most concerning are:

1. That the Deplorable class of citizen is incapable of engaging in a public sense-making

process without a likelihood of causing serious harm in a range of ways, the likelihood of

this being so significant that they need to have their viewpoints monitored and reported

on; and

2. That the viewpoints of the Deplorables are more likely to cause serious harm to people

than the viewpoints of the Viewpoint Elites.

Key Points

D. This Bill intimidates the Deplorables by dis-empowering them.

A second form of intimidation comes in the form of threat to interfere. The threat is leveled to

two parties: Digital Platform Providers and the Deplorables, who are ordinary users of digital

platforms or services. Threats are made at multiple levels to each of these two parties.

The threats made to the Digital Platform Providers include:

1. A threat to make highly negative or reputationally damaging records about their

platforms or services under s18(3),

2. A threat to make an imposition on the business to identify, find, gather and format the

required information on the Govt.'s behalf under s14 and to inconvenience the party by

having the records made in the format the Govt requires, not the format that is most

convenient for the party s14(4) & (7). A further imposition can be made under s14(5)

requiring additional investigative reporting; and

3. A threat of a civil penalty under a designated infringement notice provision for a failure to

abide by the rules on a very harsh, day-by-day compounding basis under s 15(3).

Therefore, the threats to the Digital Platform Providers are in relation to reputational damage,

financial penalties and business inefficiencies that could easily cause significant financial loss or

insolvency.

The threat to interfere is also being leveled at the Deplorables. Specifically, the threat is to haul

them before ACMA under s19. It is highly likely this action would cause the citizen a high level

of stress, perhaps distress, interrupt their life and waste their time.

These people, who ACMA deems might possibly have relevant information or a

relevant

document, will most likely be Deplorables, as described above, because these are primarily the people who use the relevant digital platforms.

Furthermore, many of the Deplorables use these digital platforms on an anonymous basis and

this legislation threatens that privacy.

In ordinary circumstances often there will be some relationship between the person being

required to appear before ACMA and the author of the so-called mis or disinformation. In these

cases people will be asked to do-in or "snitch" on their friends, families or political co-agitants.

This style of government is reminiscent of the Soviet Union and entirely un-Australian in

character, where mateship is a commonly held value.

Many people will fail to comply because their personal values or faith (which, by definition,

overrides obedience to Government laws in the case of a conflict) require them not to do so.

They will be fined. Something that is entirely unjust.

Key Points

E. This Bill intimidates the Digital Platform Providers by threatening them with reputational, financial loss or insolvency.

F. This Bill intimidates the ordinary citizen and in particular, the Deplorables, by

threatening them with potentially time consuming and stressful investigatory processes, loss of identity privacy and potentially damage to their personal relationships.

Concern 3 - Legislation too costly to administer equitably

There are thousands of digital platforms Australians use and tens of thousands (if not more) of

chat groups. Chat groups, such as on Whatsapp or Signal, are highly likely to be deemed as

Digital Services because they have "Interactive Features" under s5, and can hardly be

described as private messaging where there are more than a few people in the group.

Despite the fact that much of the reporting will be required to be carried out by the Digital

Platforms, how does the Government expect ACMA to monitor and review these reports without

spending millions of hard-earned tax payer dollars doing so? Does the Government really have

this money to burn on solving a problem that can be solved by simply allowing Australian

citizens to talk freely on digital platforms without intimidation?

Key Points

G. This Bill cannot be administered without significant Federal funding. It is unclear whether Govt. has considered the scope of what it is actually proposing, let alone the budget required to administer it.

Concern 4 - The beginning of the end of religious freedom

Religion often forms the bedrock of an adherents worldview. For example, I am a Christian and I

believe the Bible is true. The Bible sets out teaching and wisdom on a wide variety of matters

that are relevant to life. For illustrative purposes, the Bible teaches that:

1. life begins in the womb; and that
2. various actions are sinful, such as committing adultery, the practice of homosexuality and dishonoring your parents.

These beliefs are aspects of my faith. They are religious beliefs. However, the author has little

doubt such beliefs would be regarded as misinformation or disinformation by ACMA.

There are dozens of other teachings in the Bible that ACMA would likely regard as

misinformation or disinformation including in relation to the roles of men and women in family and church life.

Assuming the Govt does not intend to report on the religious lives of its citizens (or am I being

too optimistic?), then why are religious services not excluded under s6 and why is religious

content not included in the definition of Excluded Content?

Key Points

H. Without amendment, this Bill will result in situations where citizens' religious

lives will be monitored and reported, and citizens will be required to report on matters of their personal faith. This is highly discriminatory. There must be an exclusion for religious services under s6 and religious content must be incorporated in the definition of Excluded Content.

Concern 5 - Inadequate definitions, inadequate law

I will keep my comment here brief because I expect you will receive a proliferation of responses

on the very obvious point that "Harm" and "Serious Harm" are severely inadequately defined.

In respect of the definition of "Harm": Point (b) in relation to "disruption of public order or society"

could be used to mean absolutely anything. And, where definitions are loose like this, it is an

absolute certainty the legislation will be used as a partisan political bludgeon by whichever

political party is in power.

Almost comically, "Serious Harm" is not defined in the Bill at all.

The following examples may fall under the definition of "Serious Harm" given how broadly

"Harm" is defined:

1. a tweet with an alternative perspective on experimental medicines (see (d))
2. a WhatsApp group post saying the culling of cows makes no appreciable difference to the environment (see (e))

3. a post on an alternative news site arguing that Australians should invest in cryptocurrency (see (f))

The intention of the Bill is therefore extremely unclear.

Key Points

I. Definitions within this Bill have been left dangerously broad, so much so there is

a high likelihood they will be used as political bludgeons.

Concern 6 - Political speech will become ever so quiet

This Tweet posted on 1 July 2023 explains the point succinctly:

The irony of dissuading people from controversial public speech by heavy handed regimes of

monitoring and reporting is that society will never know what harm has been caused by doing

so.

For example, what medical remedies were never aired? What injustices remained hidden? What

resentment was never defused before it eventually resulted in violence?

Key Points

J. This legislation will have a chilling effect on Free Speech.

Concern 7 - What is unnecessary can be dangerous

Free speech is the most inexpensive, time-tested and equitable solution for solving

misinformation and disinformation. It has worked for centuries in the western world.

Digital platforms have led to a proliferation of viewpoints but I would like to urge the Govt. to

“have a little faith” in its constituents.

It is an old adage that sunlight is the best disinfectant and whilst this is true, the reciprocal is

also true - lack of open communication infects a society with misinformation.

When Governments act like tyrannical controlling parents all they achieve is resentful and

increasingly disobedient children. The brightest talent will find less dystopian countries to move

to and those who remain will only become increasingly embittered. This is already taking place

in Canada with many free thinking professionals and intellectuals moving to countries where

they can access a free, unhindered press.

Freedom is at the heart of Western democracies, it allows the dialectic that self-regulates

society.

The authoritarian act of breathing down citizens' necks will only drive controversial

conversations underground and offline. There, they can fester and become dangerous.

Key Points

K. Free Speech will be more effective in eradicating misinformation and disinformation over time than what is being proposed in this Bill. Furthermore, this Bill will simply drive that extremely small percentage of dangerous conversations underground. This will put society at greater risk.

Concern 8 - Breach of UN Convention on the Rights of the Child

It is well recognised that the act of formulating a thought and expressing it is part of the human

learning process. This Bill would filter information in such a way that children could not carry out

their own sense-making process based on as-diverse-as-possible viewpoints.

Imagine children's

first thoughts and ideas posted online only to be labeled as "misinformation".

What do you think

that is going to do to a child's confidence? Would they bother writing publicly again after

receiving a message like that?

Concern 9 - The Guidance Note has misled the public

The Guidance Note states on Page 7:

However, there are multiple clear pathways to the Bill becoming legislation that would require

digital platforms to remove individual pieces of content. A post by Thomas Reid, included below,

describes these pathways very clearly. I summarise:

1. ACMA selects the organisations that write the misinformation code under s32.

2. The code binds the platforms.

3. ACMA may require remedial action for non-compliance with the code under s44.

4. Remedial action can include removal of posts because this action is not excluded, or

preventing them altogether as referred to in s33(3)(a).

Concern 10 - The Bill will cause Pre-Censorship

Digital Platforms will not risk breach of the Misinformation Codes by putting themselves in a

position where they cannot control whether they meet the code or standards under Section 44

or Section 54. Accordingly, it is highly likely that platforms that are able to, will create

AI-powered systems to pre-censor posts before they are published to the site.

This will cause a huge amount of frustration and resentment amongst people who have

something they feel that is important to say but are unable to.

This is already happening in Canada, with Facebook banning news on its platform, in a practical

response to Bill C-11. Here are two examples:

For smaller platforms, it simply will not be financially viable to create the systems, policies and

software to carry out the enforcement, recording and reporting that the code and standards

require. These platforms will disappear or become insolvent. The diversity of digital media,

particularly news media, will shrink significantly towards those with the capital to develop

automated compliance systems.

Concern 11 - Indigenous Voice

My family has supported Indigenous causes for three generations.

Indigenous stories and beliefs go back hundreds to thousands of years. It is well understood

that these form an important part of the worldview of many indigenous people.

Indigenous knowledge is sometimes scientifically validated but other times it is more of a belief

set which indigenous people understand as true in a practical or, according to their own

perspective, spiritual sense.

I am concerned that the latter is not excluded content. I don't think any indigenous person wants their indigenous knowledge classified as misinformation because it is not scientifically untrue or contested.

Concern 12 - Potential for catastrophic public health implications

I quote a tweet by Professor Kerryyn Phelps AM that is self-evidently true and extremely important:

Knowledge evolves over time.

How does it evolve?

Step 1: It is communicated

Step 2: It is listened to

Step 3: It is disagreed with

Step 4: It is responded to

Step 5: A new proposition is devised

(repeat)

The censorship and intimidation that will follow the enactment of Misinformation legislation will

kill this process at Step 1.

The concern appears to have been best put forwards by AMPS VP, Dr Duncan Syme when he

recently told Canberra Weekly, "What is thought to be correct in medicine one day will be wrong

the next and vice versa."

This concludes my 12 reasons and I thank you for taking the time to read my submission to the end.

There is perhaps only one more thing to say at this time..

Please Anthony Albanese, I plead with you, withdraw this Bill.