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

To Whom It May Concern,

SUBMISSION: THE COMMUNICATIONS LEGISLATION AMENDMENT (COMBATTING MISINFORMATION AND DISINFORMATION) BILL 2023 – HAVE YOUR SAY

Introduction

In a country where elected officials can't even agree on how many pages long the Uluru Statement from the Heart is, the Government should think twice before dropping a hammer on things it considers to be "misinformation" or "disinformation".

Misinformation began when the serpent whispered to Eve in the garden and hasn't slowed down since.

There is no real doubt that the rise of the internet and social media has inevitably amplified its reach.

However, the "Combatting Misinformation and Disinformation" Bill is a deeply concerning legislative overreach that effectively mandates the active censorship of Australian citizens.

The Bill is founded upon pandemic-specific research with woefully small cohorts that ought not to be the foundation for a political, ideological tilt towards silencing open discussion of issues in this country by its populace. The research itself fails to reach any conclusion that would support the implementation of this legislation, despite the apparent pretence otherwise.

The Bill itself seeks to force already powerful companies to take even more control and power over their users. This provides an easy foundation for obvious politically motivated weaponization – a use that any cursory glance at the events of recent years should confirm will readily be embraced.

Finally, the Bill offers a definition of “harm” that moves well beyond any possible sensible interpretation of that word. The subject matter of this purported “harm” is transparently political, overly broad, and fundamentally disinterested in protecting users from actual harm in its ordinary sense.

Any well-meaning government seeking to serve its citizens diligently should abhor this legislation. Government attention would best be focused on a self-reflective assessment of why trust in government and news media is at an all-time low. If it did so, it would more likely than not find that government mistrust is a function of the actions and statements of the Government itself and that embracing so-called misinformation in the manner sought to be addressed by this Bill is putting the cart before the horse. It is far more likely that those who ALREADY lack trust in the Government and mainstream media who seek out this information and spread it rather than the information being the cause of that.

The predictable and inevitable impact of this Bill and its implementation, if passed, will only be to lower institutional trust further, drive “misinformation” into other places where it cannot be scrutinized as easily, and foster further malcontent among those who already had it.

The Underlying Research

The research that supposedly forms the foundation for the Code previously, and now the Bill:

1. Is underpowered;
2. Is based on unproven assumptions;
3. Fails to establish the causation that the Bill depends upon for efficacy;
4. Demonstrates that the true concern is not really about “misinformation” as much as it is about “did not accept the Government position”.

The Research Cohort

To establish the supposed importance of this topic (which in turn notionally warranted the development of the Code of Conduct previously, and now justifies the implementation of the Bill), the ACMA report¹ substantially depends on an earlier N&MRC report.²

The N&MRC report itself was a:

1. Quantitative study conducted via online survey on 2,659 people, half of whom had done a near identical survey previously; and
2. Quantitative study conducted on merely 60 participants.

No obvious attempt (at least, not one that this mere mortal can find) was made in the N&MRC data to express the statistical significance of the outcomes.

The ACMA report, for its part, included reference to and reliance upon the “We are Social” report. Again, a quantitative report based on a tiny sample of data available, and subject to limitations that even the ACMA report accepted as being relevant.

So the Bill is a piece of legislation drafted in substantial reliance on a survey or interview conducted on something like 0.01% of the Australian population in terms of identifiable numbers.

If the topic was less serious, then such an approach might be acceptable.

But where the topic involves not just handing power, but mandating it, to large international tech companies who have a history of data theft, manipulation and agenda-driven decision-making, then surely someone should be enquiring whether the underlying report requires more questioning or broader research before it is given such authorization?

¹ *A report to government on the adequacy of digital platforms’ disinformation and news quality measures – June 2021*

² Park, S., McCallum, K., Lee, J., Holland, K., McGuinness, K., Fisher, C. & John, E. (2022). Covid-19: Australian News & Misinformation Longitudinal Study. Canberra: News & Media Research Centre.

In terms of the qualitative study, the sample size is frankly so small for such an apparently important issue that the study barely qualifies as a pilot, and it is almost outrageous that any action at all is being considered in reliance on it. If I was to ask 60 people I know their views on a complex topic (let alone 26m, the number of people who will be impacted by this Bill), I am almost certainly going to receive a diverse range of views and not ones that be boiled down to something as trite as “true” or “not true”, even though that is fundamentally what this study has attempted to do.

Unproven Assumptions

The ACMA report from 2021 commences its Environmental Assessment with the dramatic declaration that “disinformation and misinformation has become an increasingly overt threat to Australia, and of growing concern to nearly all Australians”.

The source for this bold proposition is, bafflingly, an ABC news article about how we don’t trust Instagram influencers. The article does not discuss the “increasingly over threat” nor even start to consider what “threat” actually means. And, in truth, the fact that we don’t trust Instagram influencers is an indication that misinformation isn’t really a threat at all, and that the majority of people have mechanisms in place to automatically be sensitive to the potential for being misled by such people.

Is misinformation a “threat”? How? What precisely is meant by this word? How is it a threat to the entirety of Australia? The drama inherent in the proclamation is clear, but its backing is non-existent.

Surely these questions must be answered before government intervention on a topic is even warranted for consideration, let alone taking the dramatic and concerning step of encroaching on the ability of public discourse to occur?

No, instead the ACMA seems to have simply started from the underlying assumption that the mere existence of misinformation and the exposure of people to it is, in fact, a “threat” (whatever that means). That is neither proven nor is it demonstrably true.

What is demonstrably true, however, is that governments of the past who have attempted to control information to the extent now contended for have been inevitably governments we now consider to be fundamentally evil. The concept of controlling misinformation in the way being encouraged here (albeit through the hands of corporations that have no duty to the citizens of this country)) has been well tested

through propaganda of the past and the results for the citizens of those countries have always been bad.

Causation

The underlying premise behind the Bill is this:

1. People are exposed to “misinformation” (in this case, meaning information that does not accord with government messaging on a given topic);
2. As a result, this lowers trust in a government;
3. Therefore if we control (or force others to control) their exposure to the alleged misinformation, that will lower the amount of mistrust and avoid the “threat” (see above) that misinformation holds.

Nothing in either the ACMA report nor the N&MRC study begin to attempt to establish this type of causation, despite it being foundational to the Bill.

Defining Misinformation

The Bill itself defines misinformation broadly as set out in clause 7.

However, the ACMA report and underlying study give us slightly more insight into how the concept of misinformation is more likely to be treated as a matter of practical implementation.

What we see is that the idea of “misinformation” was not as much referred to a standard of objective truth, but rather to whether an individual agreed with the government's position. Thus our questions were:

1. I am confident that official medical guidelines and treatment for COVID-19 in my State or Territory
2. COVID-19 vaccines that are approved by the health authorities in Australia are safe
3. In most cases COVID-19 can be prevented or treated by simple remedies such as taking vitamins and supplements;
4. The risks posed by COVID-19 are being exaggerated by people in power who want to take advantage of the situation
5. Wearing a mask does not significantly reduce your risk of infection or spreading the virus.

Those who answered “wrong” (ie – different from the government line) were considered misinformed.

Of course, each question is so monumentally subjective that they are nearly useless for any probative value. Dozens of studies exist on the medical aspects of each question (with nuanced answers in each direction, sometimes supportive and other times not), none of which were considered or referred to in the study.

No, the apparent “right” answer to these questions cannot lie in subtly or nuance – what is right is, it seems, whatever the Government tells you (ignoring for a moment that different governments took different views on some issues, and so two people in different States could answer question 1 the same despite different recommendation in their State).

The concept of objective truth as it relates to disinformation or misinformation was not present in the study, at all. Nor is it present in the ACMA report, and that underlying philosophy (as we will see) has flowed through to the Bill.

The Bill

We have spent some time looking at the underlying basis for the Bill, because knowing where something has come from gives us a good idea of how it will be used. Now we turn to the language of the Bill itself.

Specifically:

1. The wide and political definition of “harm” (and the lack of any definition for “serious”)
2. The baffling decision to give legislative power to tech companies;
3. The inevitable weaponization of the Bill.

“Serious Harm”

The Bill, as discussed above, is predicated on the unproven idea that misinformation itself constitutes a “threat”. Flowing from that, the Bill seeks only to combat misinformation or disinformation where the “provision of the content on the digital service is reasonably likely to cause or contribute to serious harm”.

What is Harm?

Which begs the immediate question – what is harm?

Apparently, in this Bill, harm is something that is far more wide ranging than any normal person would possibly define it. While the Bill follows the pattern of the Code previously drawn, its definition of harm is, itself, deeply concerning.

Of course, if we look to the dictionary, it tells us that “harm” when used as a noun means:

1. “physical injury, especially that which is deliberately inflicted”³ or
2. Physical or other injury or damage⁴

But harm, according to the Bill, means:

- (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;
- (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.

First and foremost, using the word “harm” inside its own definition is nonsensical – four out of six of these defined terms say “harm means harm”. Does the word “harm” in sub-clause (c) mean the defined term harm, or the ordinary dictionary definition of harm? The former would make no sense, and simply send us on a neverending roundabout of the same defined term being used to explain itself. The latter defeats the purpose of defining “harm” in the first place, and given the requirement for physical injury also makes no sense.

³ OxfordLanguages online retrieved 20/8/23

⁴ Cambridge online retrieved 20/8/23

So right from the outset we have a core drafting problem with the definition.

Given the definition of “harm” is absolutely critical to the foundation of the Bill and its impact, it is fundamentally important to define it properly, in a way that makes sense. The drafters have failed to do that, and that isn’t even the biggest problem.

Everything is Harm

Even if we can make sense of the defined term at all, it seems that the drafters have attempted to capture basically everything in the definition of harm.

The topics identified in the defined term “harm” range so widely that arguably any discussion on any topic of any kind, ever, will ultimately fall within one of the categories.

And if nothing else seems to apply, you can feasibly rely on the stated concern about harm to the category of “disruption of society in Australia”, whatever that means.

What is Serious?

Ah, but surely we are protected from trivial implementations of this mandated Code by the defined term misinformation requiring a threshold of “serious” harm?

No, we’re not.

Serious, an undefined term, is near impossible to quantify, especially when apparently something can apparently cause “serious” harm to “society in Australia”.

If I lose, or could lose, \$10 is that serious harm to my finances? What if my unemployed friend who has \$15 total in his bank account loses \$10 – is that serious?

What about \$100? Or \$1000?

What if a collection of 1,000 people each lose \$10 – is that serious, even though each of them is completely fine?

If someone gets upset because of something they read, is that harm? What if they get REALLY REALLY upset?

What is serious is a subjective term, and applying it meaningfully to the word “harm” as it is used in this Bill is practically impossible. It is open to wide ranging interpretation,

and will be subject to the whim of the platform in question and the regulator that notionally monitors them.

Caused or Contributed To

Finally, our definition of misinformation (and disinformation) require the content in question to “cause or contribute to” serious harm.

The children’s story “Who Sank the Boat” by Pam Allen illustrates the principle well enough. After the pig, the cow, the donkey and the sheep all alight on the vessel in question, it remains afloat.

And yet the tiny mouse hops in, and the boat sinks.

Did the mouse “cause” the boat to sink? Probably not.

Did the mouse “contribute” to the boat sinking? Yes.

The threshold of “contributed to” is such a low one that it will be used to capture every single incidence of content imaginable, irrespective of its reach or impact.

The Terms are All Encompassing

Based on these poorly defined terms, the situation the Bill is setting up is that any view expressed on social media that does not accord with the government view (which, as we have seen, will inevitably be used as the yardstick of what constitutes misinformation irrespective of the language used in the Bill itself) on a given topic will be captured by the legislation.

Untrustable Tech Companies

The underlying research founded its findings on concepts that:

1. government was trustworthy;
2. authorized news was trustworthy (which is ironic given that media outlets regularly report completely opposite things);
3. news on social media was not trustworthy.

So it is baffling that the Government is prepared to entrust to technology companies the process of being arbiters of the concept of information and misinformation.

This is despite the fact that these same companies have a demonstrated history of censoring information that did not accord with their corporate political alignment.

One classic example is the Hunter Biden laptop – a news story that was demonstrably true, and has since been accepted as such, but was censored across the board by technology companies in a critical time leading up to the 2020 United States presidential election.

No justification has been given for how or why these companies are being empowered in this way.

The Weaponisation of the Bill

The definition of “harm” hits all the relevant debated political topics that exist now and will likely exist into the foreseeable future.

Tech companies have a demonstrated history of political bias in one direction or another.

Governments have made it clear, and this Bill seeks to legislate, that government intervention and direction about what Tech companies who own these platforms should and should not allow to be published is acceptable.

Government, of course, is exempt from the operation of the Bill – though it’s not clear how that can be a functional exemption in circumstances where different individuals within Government could well hold different views on the relevant topics covered by “harm”.

It is, however, inevitable that the tools and codes set up by these companies, or if not those set up by the Government of the day⁵, will be utilized to advance a political agenda. Already we have seen this occurring (together with the relevant platforms’ willingness to cooperate) in the United States.⁶

⁵ Bearing in mind the Bill allows the ACMA to inflict a Code if one is not implemented or is not acceptable

⁶ <https://apnews.com/article/social-media-protected-speech-lawsuit-injunction-148c1cd43f88a0284d5a3c53fd333727>

This leads us to an inevitable problem – the changing nature of what constitutes misinformation.

Today's Misinformation is Tomorrow's Fact

Oceania has always been at war with Eastasia.

We learn things over time. As a result, our views can change. Things we understood to be true in the past we might now consider to be false. That is the nature of things.

For a few small examples:

- From the 1930s to the 1950s, tobacco brands recruited medical professionals to spruik their particular brand of cigarettes to patients and buyers generally as being entirely fine for you medically. We now understand that was a bad idea.
- During the pandemic it was widely stated by Governments of Australia, and some News outlets, as definitive fact, that the COVID-19 vaccines developed in 2020/21 would prevent you from catching the virus. That was not true as we now understand it.
- Subsequently, it was stated that while it would not prevent you getting the virus, it would prevent you spreading it. This, at least in part, was used as the foundation for many of the restrictions faced by people in this country during that time. That was also not true as we now understand it.

The Bill, however, seeks to declare an absolute truth at a point in time and require enforcement and protection of it. It will inevitably be used to silence or prevent public questioning, interrogation or even contrary hypotheses about the topic in question.

And yet, progression in studies and “truth” have only ever occurred through such questioning that went against the status quo.

Things that people have taken absolutely for granted at a given point in time are now considered preposterous by the majority of people on the planet.

What happens to those credible individuals who share contradictory information that later turns out to be true?

That's not clear. In the meantime, hopefully their careers and businesses have survived the implementation of the “code” by the relevant tech company in question.

Forceful Subjugation Decreases Trust

The reason that public trust of Government is low is because the Government of the day has not demonstrated itself to be trustworthy.

That's the simple truth.

Every time government spin takes priority over frankness and candour, forceful positions take priority over reasoned discourse, and name-calling takes priority over issues – trust decreases even further.

Sadly, however, those things now form the mainstay of government communications. Spin over candour, force over reason, names over issues.

If the Government wishes to increase public trust, and in doing so offer a real solution to its concerns about “misinformation and disinformation”, then it should look harder at itself in the mirror, put more effort into becoming a trustworthy institution, and worry less about tactics to silence the voices of its own population.

Regards,

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