Combatting Misinformation and Disinformation Submission

Posting the truth—more powerful than censorship

Truth is powerful.

The very best way to counter misinformation and disinformation on any digital service is to put up the truth, to contest side by side and correct each falsehood as it appears, to shine a clarifying light on each misleading claim.

It is never enough to pull harmful material down from digital platforms allowing the harm to fester underground or on the dark web.

Much better to confront and disarm error with the truth.

To actually defeat harmful deception, we must reason and argue each case promptly, point by point, right out in the open on those instantly accessible digital platforms which today constitute our public square.

The authentic role for the ACMA should not be censorship. Rather, the most valuable duty of the ACMA should be to draw the Australian public's attention to the most serious of possibly harmful posts and to protect our access as citizens to make reasoned responses that can best mitigate potentiality for harm.

Two services that might be useful: the ACMA may be able to

(1) provide regular bulletins to alert all Australians to the newest posts exhibiting what they consider might be the most menacing misinformation or disinformation; and

(2) ensure that ordinary Australians from all walks of life are allowed and encouraged to post responses on these platforms either correcting arguments or supporting arguments.

Intolerance of dissent is never wise or justified. Open debate on difficult issues is always more challenging but ultimately proves more worthwhile.

The ACMA should not be commissioned to shut down debate on controversial issues with decrees from on high targeting for instant deletion those posts on which have been slapped a misinformation or disinformation label.

The Parliament needs to promote democratic debate and encourage ordinary Australians to have their say, to use reason, logic and common sense in this new vastly expanded public square.

In 7 subsection 4 (3AC) of the Exposure Draft, the Parliament is on the right track in acknowledging a concern that any regulation of digital platform services seeking to prevent or respond to misinformation and disinformation on those services:

> (a) has regard to freedom of expression; and
> (b) respects user privacy; and
> (c) protects the community and safeguards end-users against harm caused, or contributed to, by misinformation and disinformation on digital platform services; and
> (d) enables public interest considerations in relation to misinformation and disinformation on digital platform services to be addressed in a way that does not impose unnecessary financial and administrative burdens on digital platform providers…

These are all good intentions in theory.

But they cannot be best served by conferring censorship powers on the ACMA bureaucracy and/or their scrutinised and approved digital platform providers.

Ensuring these digital platforms are kept open to robust rational argument is a better way to go.

Bureaucratic control over our freedom of expression, speech and communications on the internet is likely to exacerbate harm not ameliorate or limit it.

Surely to educate end-users and to encourage them to research and test for the truth is the best way to protect the community and safeguard end-users against harm caused, or contributed to, by misinformation and disinformation on digital platform services.

Using dubious definitions of "harm" to limit free speech on digital platforms

The definition of "harm" in this proposed legislation is so extensive in its potentiality and its reach that Parliament itself could not agree on or arrive at a comprehensive definition of what constitutes harmful misinformation and disinformation—not in a hundred years.

Yet Parliament is asking for an almost immediate execution of this massive task to be assigned to a single body of unelected bureaucrats who are to decide and to stipulate on behalf of the whole Australian population what constitutes "harm" anywhere and everywhere.

The real folly is that the Exposure Draft defines "harm" so broadly that it is practically limitless:

> ***harm*** means 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;
>
> (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.

The entire legal system in Australia, with all its experienced judiciaries, established networks, extensive academic scholarship and research resources, could not handle that task with the all-encompassing competence and objectivity immediately required.

The Parliamentarians commissioning this over-ambitious Exposure Draft that attempts to remove everything that is potentially harmful from digital platforms may have good intentions.

But they seem to lack practicality and common sense in regard to the most fundamental level of protections needed to maintain and protect our constitutional freedoms.

The dangers of authorizing special bodies to exercise censorship

What is this Exposure Draft really seeking to do? To create a special bureaucracy dedicated to pushing Big Tech companies to root out thorny facts?

Unfortunately, neither Big Tech nor government bureaucracies can be trusted to deliver even-handed censorship across endless fields of knowledge and opinion. At any point in time, each may bring its own bias into play when deciding what is true and what is false.

What carries even more menace is the possibility that ACMA and Big Tech, each member of which have their own quasi-religious, ideological prejudices, will be deciding and defining for us all what is morally right and what is morally wrong.

Indeed, there is horrendous scope for unethical collusion in the proposed unrestricted power of two small groups to define what constitutes "hatred" in Australian society.

Just who is to decide if a post is motivated by "hatred against a group…on the basis of ethnicity, nationality, race, gender, sexual orientation, age, religion or physical or mental disability"? Perhaps the offending post could have been motivated by a search for truth or is based on some other sincere or innocuous postulation?

Is it prudent to bestow broad censorship powers that will be based solely on an official authority to claim to be able to detect from a distance the real presence of "hatred" in the person who is posting from a distance? May this not serve to embolden the parties in power and our entrenched government institutions to control popular criticism simply by labelling it as hate speech?

Arbitrary censorship, using facile labels, should not be allowed to curtail open debate or even vigorous but civil confrontational debate. In a free and open democracy, censors must not be

empowered to decree what we may discuss or what we may not discuss in the digital public square.

There is a latent danger in a government bureaucracy like ACMA co-ordinating too closely with the biggest social media corporations—our digital platforms may be in danger of becoming propaganda platforms that stifle unwelcome anti-government or anti-ruling-party-line criticisms.

Who checks the fact checkers?

If penalties are to be levied in order to crack down on "harmful" postings, who decides what is "harmful"?

Is the ACMA to be empowered to levy punitive fines for spreading false "facts'?

But *quis custodiet ipsos custodies?* Who guards the guards?

Who is there to demand accountability from the ACMA?

Who indeed will check the fact checkers?

There can be little doubt that the integrity of a government body's fact checking decisions will need to be checked regularly.

Neither arrogant government bodies nor dominant Big Tech corporations should be given dangerous new tools and powers to monitor our online communications, to constrain or to control our legitimate freedoms. Such tools pose a threat to the safety and well-being of all Australians and to the foundation principles of our democracy.

We need to ask…

In these times of turbulent social change under the heady influence of new ideologies, are radical 'reformers' introducing new federal laws to coerce "new" protections against ideologically designated "harm"? Is this misinformation/ disinformation gig really and truly legal progress when it outlaws public dissent, branding as "harmful" public expression of some of the language of traditional rights and freedoms that now appears to offend, as misperceived

"hate speech", the sensibilities of the proponents of the 'new' politically correct "woke" language?

Ideologically driven classification of misinformation and disinformation may seek in at least some cases to purge the public square of the traditional freedoms of speech, conscience and association and to impose penalties on those who would uphold an individual's right to decline to adopt the new language of these newly-coined 'rights'.

Critics of new ideological demands should not be intimidated or silenced

Perhaps crude social innovations should not be so hastily codified into misinformation and disinformation laws that empower empathetic ideologues to intimidate and to silence those who would publicly criticize and challenge these new social 'norms' and their sometimes-preposterous allegations.

Instituting absolute protections for the new "woke" language opens the way to mis-characterize the genuine human right to freedom of religion and belief as something evil to be subverted and reduced by a committee to only what the Committee deems is not "hate" driven. It is both mischievous and untruthful to misrepresent "freedom of religion and belief' as impinging on others' rights. Everyone, including atheists, have beliefs and have the right to hold such beliefs and to speak them on digital sites in good conscience.

Danger of overriding religious believers' constitutional rights

It is imperative that this proposed legislation does not introduce the seeds of destruction of the very rights that it professes to be wanting to protect more fully. It is the antithesis of human rights protection to introduce this mendacious idea that anti-religious people have the right to condemn as hate speech and remove from digital platforms civil and open expression of religious values, beliefs, and matters of conscience.

Regrettably today, these "protection" laws being proposed now may be attempting to introduce and enforce suppression of speech that a government-authorized bureaucracy or a digital site manager is empowered (or persuaded) to proclaim with unassailable pomposity to be 'harmful'.

Will it be possible, for example, for a government body like ACMA to employ coercive charges

Will genuine religious based moral opposition to these new "rights' be punished with fines and shut down as "hate" speech? Would not such charges encroach unacceptably on the original right to religious freedom promised in our Constitution?

For example, there is dangerous potential here for removing our constitutional protection for each of us to engage in free speech in one's own religious language.

Religious language and speech that express basic concepts of what is good and what is evil, what is virtue and what is sin, what is right and what is wrong, must not be restricted, banned or punished as "misinformation" or "disinformation".

Will these proposed new laws enable government bureaucrats and digital website operators to decide and remove what is, in their opinion, misinformation and disinformation? This proposed law is being drafted, implemented and designed to operate in practice in a positivist legal milieu that adheres to the philosophy of utilitarianism. These new 'rights' eschew the true deontological basis of our Constitution's norms that were identified from the beginning as natural law rights recognized through reason as inalienable, as inherent in every human being without exception, applicable across time and cultures.

Increasingly, our state legislatures, misled by radical new ideologies, are introducing laws aimed at coercing religious and cultural affiliation to conform to new pieties. Raw power plays are being used to delete common law values that upheld traditional rights and freedoms that protected the most vulnerable and maintained the common good.

Will new misinformation and disinformation laws soon exploit the confusing flux of radical new aberrations? Will new laws be employed to replace our traditional, tried and true family protections with faulty novel theoretical values tossed up by virulent new ideologies which trespass grievously against the most vulnerable, especially the children?[1]

…relying humbly on the blessing of Almighty God

Our Constitution declares unequivocally right at the start that we Australians are a people *relying humbly on the blessing of Almighty God.*

Constitutional hermeneutics confirm a commitment by the original framers of the Australian Constitution to a moral philosophy that recognizes objective moral truth laid down by a higher authority, and to a natural law that upholds human dignity and human rights.

This preambular agreement governs the whole text of the Australian Constitution and is to be applied by the Parliament to all law making—*The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth…* (Section 51)

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[1] Indoctrination of children in new gender theories and perverse sexual mores that contradict the tenets of their parents' religion or beliefs is contrary to Article 18 (4) of the *International Covenant on Civil and Political Rights* (ICCPR) to which Australia is a party:

"The States Parties to the present Covenant undertake to have respect for the liberty of parents and...to ensure the religious and moral education of their children in conformity with their own convictions."

Clearly, operative provisions must be read *consistently* with the preambular paragraphs, which set out the themes and rationale of the Constitution. They are to be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the Constitution in their context (*i.e.*, in the context of its preamble in addition to the text). The power of the Parliament to make laws (including and especially laws that protect religious freedom) is "subject to the constitution" and that power is to be exercised in a humility that relies on the blessing of Almighty God.

Parliament is not a law unto itself

Regrettably, however, right now there is an underhand push towards "cleansing" the Constitution, the Parliament and the current body of established law of any recognizable religious-based remnants of morality and ethics.

But to remove the religious foundations of our Constitution cannot be done without destabilizing the social and moral integrity of the Commonwealth of Australia which right from the beginning has maintained a specific commitment "to humbly rely on the blessing of Almighty God".

So, what does this mean to humbly rely on the blessing of Almighty God?

It means that the Parliament is not the highest authority. It means that Parliament is not a law unto itself. It means that Parliament must humbly defer to and comply with the natural law that underwrites human dignity and human rights. For this is the essence of what our founders committed us to—that we would seek always the blessing of Almighty God by respecting always the natural law—the universal law written in all hearts, across all faiths and able to be acknowledged even by atheists and agnostics—an objective natural law established by some higher authority—however one may wish to name that higher authority.

Natural law obligations embedded in Constitutional text

Our Australian Parliament, constrained by our Constitution, must humbly recognize the moral and ethical limits of human authority. The solemn opening agreement in the *Commonwealth of*

Australia Constitution Act 1900 : *the people… humbly relying on the blessing of Almighty God, have agreed…*[2] signifies that public recognition of natural law obligations established by a higher authority was part of the original intent of the framers of the Constitution and remains always part of the text.

Australia—not established as a secular state

The Australian Constitution makes it very clear that Australia was not established as a secular state.

Section 116 of the Constitution prohibits only the establishment of a single religion. But our constitution also prohibits instalment of obstacles to the free practice of any religion and forbids specific religious tests as a requirement for any office or public trust under the Commonwealth. Unfortunately, some of the quasi-religious woke-speech tests being administered to public servants and employees of big companies have some distinctly unconstitutional overtones.

Section 116 of the Constitution provides:

> *The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.*

When read consistently with the opening commitment of the Preamble to the Constitution (that we are a people *relying on the blessing of Almighty God*), it should not be misinterpreted to mean that Australia is a secular state.

On contrary, the Constitution declares unequivocally that we are a people relying humbly on the blessing of Almighty God. It does not require, for example, that Parliament to remove from Australian institutions, work placers or communities all reference to Almighty God, and all opportunities for spiritual guidance and religious knowledge.

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[2] **Whereas** the people… humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth… under the Constitution hereby established… Preamble

A Parliament that make laws "humbly relying on the blessing of Almighty God", cannot be chastised for seeking to provide Australian children with opportunities to seek to understand something of the Supreme Authority that lies behind these laws. It is hard for children to obey and respect those same laws without a least some reference to what it means to humbly rely on the blessing of Almighty God, to recognize with our reason and accept with our will the moral and ethical requirements of a Higher Authority that transcends individual feelings and subjective opinions.

Only anti-religious extremists could read into the constitution an authority to deny Australians a right to post religious speech on the grounds that it as "hate" speech. Nor can it be read as a blueprint to impose atheism on digital platforms: it is logically invalid to argue that because no one religion is to be established by law, then no spiritual exploration and development is to be encouraged.

In fact, the values of the Constitution encourage humble reliance on Almighty God and respect for the natural law found across all faiths and belief systems, including atheism, for these commitments are deeply embedded and remain historically present in the text of the Australian Constitution.

Natural law—the only objective rational basis for deciding morality

What did the authors of the Constitution understand by the phrase, "humbly relying on the blessing of Almighty God"? The ordinary meaning of the phrase at that time included the accepted wisdom that good government and the well-being of our citizens depends on respecting the natural law. For a people to be blessed, it was understood that peace and order and good government are based in humility, in obeying the natural law which is instilled in us by a higher authority which in humility we accept and respect. Two of these natural law principles are the universal principles of conscience: the golden rule that we may not do unto others what we would not have done to ourselves; and the principle that we may not do evil even that good may come of it.

To fail to uphold and teach these fundamental principles is to abandon the only objective rational basis we have for deciding morality. It is to resort to the primitive mob methodology of cannibals and pirates—a naïve facing off the numbers, sizing up two opposing forces with the bigger force having its way in deciding what is morally right.

History has shown again and again: a moral law that changes with each passing trend or with each fickle, alternating majority vote, offers no enduring protection of the dignity and human rights of the very young, the very old, the unwanted, the disabled and the most vulnerable.

Core set of natural law values underpin our democratic system

No public institutions should ever fail to teach any of the core set of fundamental natural law values for these spiritual values underpin the whole democratic system. Genuine democracy is built on a solid foundation of essential and unchangeable moral principles which should never be subjected to the changing winds of ideology or the shifting sands of politics.

If Australia is to remain a true democracy, our children must not be denied the opportunity to explore freely and to discuss openly the great questions of life. Why are we here? Why do we have to die? Why do bad things happen to good people? Where did we come from? What is our destiny?

Australian children should not be denied access to development of the spiritual side of their lives. Freedom of religion must not be destroyed by those who set up a new counterfeit human right to "freedom from belief'. Teaching our children humble reliance on Almighty God and respect for the natural law upholding human dignity and rights is a very good initiative. Historically rooted in the Australian Constitution, these concepts can only help, not harm, the building of Australia as a true Commonwealth.