



**Submission to Department of
Infrastructure, Transport,
Regional Development,
Communications and the Arts
on Communications
Legislation Amendment
(Combating Misinformation
and Disinformation) Bill 2023**

August 20, 2023

The Director General
Department of Infrastructure, Regional Development,
Communications and the Arts
CANBERRA ACT 2600

Dear Director General,

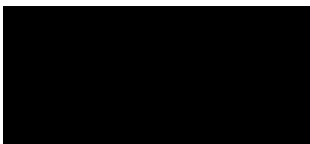
This submission has been made on behalf of the Australians for Science and Freedom.

The organisation is an Australian association which has the purpose of promoting proper scientific inquiry and was founded by a number of academics and public intellectuals, initially as a response to policy adopted during the COVID-19 pandemic.

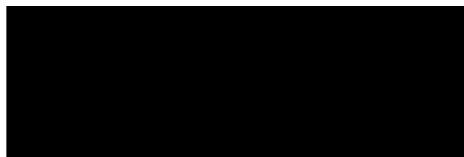
The ASF has concerns about the proposed amendments to the act and believes it would be against the interests of scientific advancement and democracy for it to be passed.

Our submission follows.

Yours faithfully,



Rebekah Barnett



Graham Young

1. Onus on proponents to show the need for the legislation.

a. Not established on the research commissioned by ACMA

In seeking to limit freedom of speech the onus should be on ACMA to sufficiently demonstrate that there is a problem. They have failed to do this. In the first place, as discussed in section 1.B., the initial research on which the legislation is based is flawed. It doesn't demonstrate any increase in misinformation and disinformation (however they are defined)¹, nor does it demonstrate that significant harms flow from any misinformation and disinformation currently available on digital platforms.

Further there is a need to show that alternative and currently existing legislation is not adequate to police false and misleading information and any harms stemming from it.

We currently have trade practices, competition law, and other legislation which should be used to police the material disseminated by companies on digital platforms. For example a real danger could be said to exist from false advertising of products, but this is a trade practices matter. Or someone might be ramping a share price, but this can be handled by the securities code.

If that policing is not being done effectively at the moment, the question should be raised as to why that problem wouldn't be best tackled by resourcing the existing agencies designed to tackle it, rather than implementing entirely new legislation and giving resources to an organisation not designed to police it.

To the extent that the material covers matters of personal reputation or harm, then the defamation, human rights and anti-discrimination laws would appear to give individuals and corporations the ability to enforce their rights including having material removed.

This is self-regulating and removes the matter to the legal system, which is where appropriate judgments about harm and damage can most appropriately be made, along with preservation of legal rights, including that of due process.

b. No further research is relied upon, but there is nothing which we are aware of which justifies this legislation.

In a report² to the Australian Government justifying the need for its proposed expanded powers, ACMA does not sufficiently demonstrate the scale and volume of misinformation and disinformation nor the nature of the harm with which it can be associated.

ACMA states that, "the true scale and volume of misinformation in Australia in

¹ Australians for Science and Freedom does not accept the definitions of misinformation and disinformation put forward by ACMA, which is inconsistent with the dictionary definitions of these terms, as addressed in Section 1.C. Accordingly, any further mention of misinformation or disinformation are as 'however defined' and should not be taken to indicate that we accept the definitions put forward by ACMA.

² 'A report to government on the adequacy of digital platforms' disinformation and news quality measures', June 2021, <https://www.acma.gov.au/sites/default/files/2021-11/Adequacy%20of%20digital%20platforms%20disinformation%20and%20news%20quality%20measures.pdf>

currently unknown.” The report references “increasing concern” about a perceived increase in “misinformation” online, measured by survey respondents reporting how much misinformation they believe they have seen. However, this conflates *reports* of misinformation with *actual* misleading or factually inaccurate information, failing to demonstrate that the concern is founded.³

Conflating subjective user reports with actual instances of misleading material and online harm is common in government and peak body reporting in this field. Other potential factors that may give rise to an increase in reports of misinformation and online hate, such as increased social sensitivity, better promotion of reporting tools, and the impacts of cultural developments (e.g.: political polarisation) are rarely explored.

It bears noting that government officials frequently stress that reports of perceived physical harms on pharmacovigilance databases associated with, say, Covid vaccines, should not be misconstrued as instances of *actual* harm. Alternative explanations for reports of perceived harm are typically proffered, with the onus of proof being put onto those who wish to demonstrate a causal link between reports of harm, and actual harm.

By the same token, it is incumbent on ACMA to demonstrate that perceptions of an increase in misinformation online, and perceptions of resultant harm, correspond with an actual increase in misinformation and harm.

Furthermore, research underpinning ACMA's findings is based on an error of categorisation. Content that contradicts the official position on a range of issues is categorised as misinformation, regardless of its veracity or contestability. This will be discussed further in section 1.C.

To demonstrate the harmful impact of online misinformation and disinformation, ACMA references the US riot on 6 Jan 2021. However, its quantification of the harm caused by this event includes misinformation – ACMA attributes the unrelated deaths of several people who died of natural causes to the riot – raising questions about ACMA's ability to reliably discern true information from misinformation.⁴

ACMA refers to research showing that anti-vaccine content, even if true and accurate, can sway people's vaccination intentions, but does not demonstrate how this causes harm, and to what extent.

A case study on the real-world impacts of anti-5G content makes a more convincing demonstration of fiscal harm resulting from information classified by researchers and ACMA as misinformation.

However, it is unclear as to how the proposed measures in this bill will prevent such harm – there appears to be an inherent presumption that online censorship of certain information will reduce real world harm, but research shows that censorship simply

³ P. 21, Finding 3. <https://www.acma.gov.au/sites/default/files/2021-11/Adequacy%20of%20digital%20platforms%20disinformation%20and%20news%20quality%20measures.pdf>

⁴ P.30 <https://www.acma.gov.au/sites/default/files/2021-11/Adequacy%20of%20digital%20platforms%20disinformation%20and%20news%20quality%20measures.pdf>
<https://www.snopes.com/fact-check/capitol-riot-deaths/>

encourages users to find work-arounds, a fact acknowledged by ACMA in the report.⁵

Moreover, as the ACMA bill does not include content produced by the government in its definitions of misinformation and disinformation, it will not address the arguably far more considerable harms perpetrated by misleading information disseminated by the government. For example, case studies quantifying the impacts Australian Government's Covid response, including the propagation of misinformation such as 'the vaccines will prevent transmission' and 'lockdowns save lives' have demonstrated astronomical fiscal, life-year and social harm, yet under this bill, such harm would not be mitigated.⁶

c. Circular definition of misinformation and disinformation

The bill relies on a circular definition of misinformation and disinformation, whereby the official position is the 'true' one, and contradictory information is 'misinformation or disinformation.'

This circular definition is arrived at in two ways:

1. First, the study by the News & Media Research Centre (University of Canberra)⁷ that was commissioned by ACMA to inform the development of the bill categorises beliefs that are contradictory with official government advice as 'misinformation', regardless of the veracity of the advice. For example, in Table 14 showing the coding of 'Misinformed Groups', respondents are coded as misinformed if they:
 - a) Agree that wearing a mask does not significantly reduce your risk of infection or spreading the virus;
 - b) Disagree that the Covid-19 vaccines that are approved by the health authorities are safe; or,
 - c) Agree that in most cases, Covid-19 can be prevented or treated by taking vitamins and supplements or other over the counter medicines.

As all three of these positions are supported by peer-reviewed scientific literature, it is incorrect to categorise these respondents as misinformed. A better description would be to categorise these respondents as believing information that contradicts the official position.

⁵ <https://pubmed.ncbi.nlm.nih.gov/36250528/>

⁶ <https://ipa.org.au/wp-content/uploads/2022/09/220921-IPA-Report-Hard-Lessons-Reckoning-the-economic-social-and-humanitarian-costs-of-zero-COVID.pdf>, [Do Lockdowns and Border Closures Serve the 'Greater Good'?](https://www.thegreatcovidpanic.com/_files/ugd/23eb94_33b4f30ef8fa4e6eaf1a7e62d571a9a7.pdf)
https://www.thegreatcovidpanic.com/_files/ugd/23eb94_33b4f30ef8fa4e6eaf1a7e62d571a9a7.pdf

⁷ <https://apo.org.au/sites/default/files/resource-files/2022-03/apo-nid316582.pdf>

TABLE 14 MISINFORMED GROUPS RECODING

| | Percentage in the sample | | | |
|--|--------------------------|---------|-----------|------------|
| | Disagree | Neither | Agree | Don't know |
| Wearing a mask does not significantly reduce your risk of infection or spreading the virus. | 60 | 17 | 21 | 2 |
| Covid-19 vaccines that are approved by the health authorities in Australia are safe. <reverse> | 9 | 28 | 56 | 8 |
| I am confident that official medical guidelines and treatment for Covid-19 in my State or Territory are based on evidence and best practice. <reverse> | 6 | 16 | 74 | 3 |
| The risks posed by Covid-19 are being exaggerated by people in power who want to take advantage of the situation. | 53 | 20 | 24 | 3 |
| In most cases Covid-19 can be prevented or treated by simple remedies such as taking vitamins and supplements or other over the counter medicines. | 66 | 15 | 16 | 3 |

It is noteworthy that the second publicly-funded study commissioned by ACMA, a social media content and network analysis by creative consultancy We Are Social, remains inaccessible to the public on the justification that it “contains sensitive information pertaining to public figures and user accounts.”⁸ This underscores the existing asymmetry of the information environment, wherein public resources are used to produce and conceal information, while at the same time, ACMA seeks more power to demand transparency from and control over digital platforms and their users.

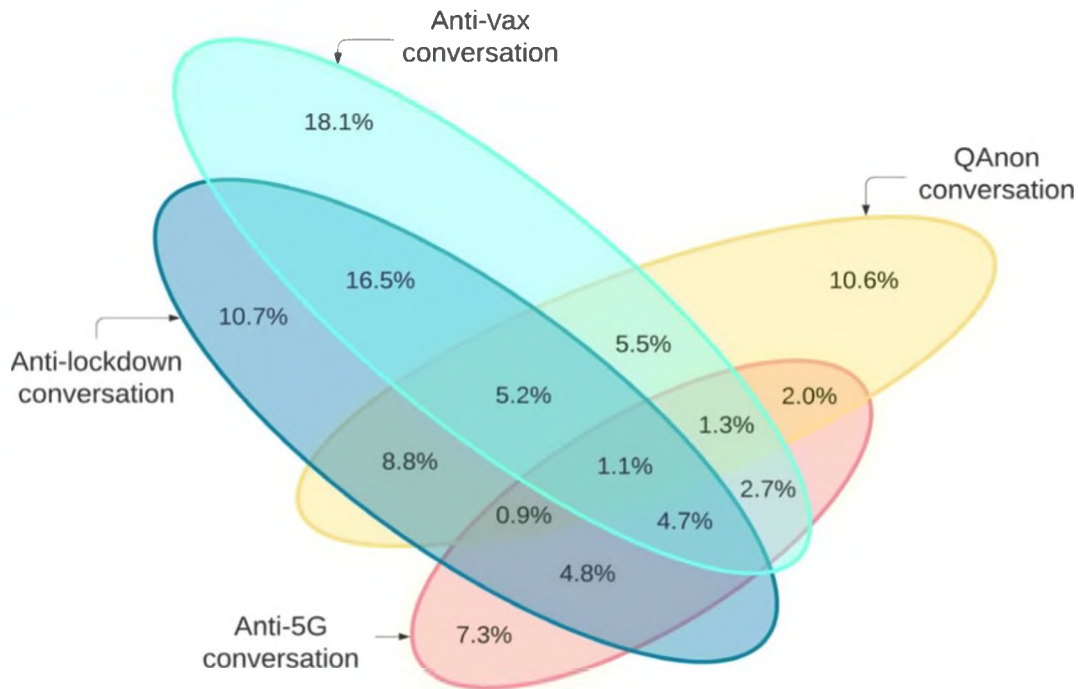
However, the few snippets of the We Are Social report shared by ACMA indicate that the researchers make the same error as the N&MRC study, by mislabelling scientifically-supported concerns as ‘conspiracy’ and ‘misinformation.’⁹ For example, ACMA details four “misinformation narratives” examined in the We Are Social study, including ‘anti-lockdown conversation’ and ‘anti-vax conversation’ (by which we presume that We Are Social has forgone the traditional meaning of ‘anti-vax’ – anti-all vaccines – for the new meaning in common parlance, i.e., ‘sceptical of the safety and/or efficacy of Covid vaccines’, which is itself disinformation).

The fact that at least two of the four identified “misinformation narratives” are supported by a body of scientific literature and observational reports, such as cost-benefit analyses, again highlights the faulty logic on which the research informing the misinformation and disinformation bill is based.

⁸ https://www.acma.gov.au/sites/default/files/2022-03/ACMA%20misinformation%20report_Fact%20sheet%201%20-%20key%20research%20findings.pdf

⁹ Page 23, Fig. 12, <https://www.acma.gov.au/sites/default/files/2021-11/Adequacy%20of%20digital%20platforms%20disinformation%20and%20news%20quality%20measures.pdf>

Figure 12: Share of conversation by selected narrative within selected conspiracy-driven groups and accounts, April 2020 to April 2021



Source: We Are Social, *Social media insights into how online misinformation and disinformation are being spread across social platforms in Australia, May 2021* [unpublished].

Note: Based on share of conversation across a sample of 100 Facebook groups, 100 Facebook pages and 91 Instagram accounts. Diagram is illustrative and not proportionate. Does not equal 100% due to rounding.

ACMA states that, “Belief in COVID-19 falsehoods or unproven claims appears to be related to high exposure to online misinformation and a lack of trust in news outlets or authoritative sources.” This should be rephrased, “Belief in positions alternative to the official position appears to be related to high exposure to alternative viewpoints and a lack of trust in news outlets or authoritative sources.”¹⁰ We suggest that serious introspection by the latter on why this is so would be the better remedy.

Thus, it is clear that the conceptual foundation for ACMA’s definition of misinformation and disinformation is ‘information which contradicts the official position.’

2. Second, the bill explicitly excludes content produced by government, accredited educational institutions, and professional news from the definition of misinformation and disinformation. This is a departure from the traditional definitions for misinformation and disinformation, which encompass *all* information that is false or misleading, either unknowingly (misinformation) or

¹⁰ <https://www.acma.gov.au/sites/default/files/2021-11/Adequacy%20of%20digital%20platforms%20disinformation%20and%20news%20quality%20measures.pdf>

with the intention to deceive (disinformation), and do not exclude information/content based purely on its source.

Why misinformation and disinformation disseminated by government, accredited institutions and professional news outlets should be excused from laws purportedly intended to minimise the digital proliferation of such content is not justified within the bill. Nor is a rationale offered for the bill's departure from the traditional definitions of misinformation and disinformation.

The specification that misinformation and disinformation are content that could imply a broad range of harms further compounds the problem. Harm by what measure? If a government says its policies save lives or perform some other social good, and content produced by the government is immune from misinformation and disinformation regulation, it is highly likely that 'harm' in the context of this bill will be determined to be any outcome that runs counter to that intended under the policies of the government of the day.

2. Legality

a. Breaches implied freedom of political expression

The High Court has found an implied freedom of political expression which is based on the idea that for a democracy to function there must be a free exchange of ideas.

While the bill attempts to sidestep this freedom it is highly likely that there will be challenges, and that these challenges will be successful. Classifying government information as free from an imputation of misinformation or disinformation would seem to guarantee that, as it would potentially disadvantage the communications of those who wish to challenge the government, but challenge of government is of the very essence of democracy.

b. Breaches natural rights and due process

The bill sets up a situation where what is, or is not, misinformation or disinformation is determined by codes of conduct applied by either industry organisations, or social media platforms. These may be quite arbitrary and given the potential punishments for publication of opinions the ACMA regards as untrue, are likely to be conservatively framed and favour official narratives, no matter how unlikely these narratives may be.

The amount of data that social media platforms are required to police means that "infringements" will be determined in the first place, and in most cases and probably ultimately, by AI. The lack of human judgment means that natural rights and due process will not be given to most of those who produce material deemed to contravene the legislation.

It should be noted that the Robodebt scheme was deemed illegal because it alleged a debt on the basis of statistical likelihood. What is the difference between that, and how social media will need to police this law?

3. Anti-Democratic

a. Platforms will play safe

ACMA says that it will not be the arbiter of what is true and what is misinformation or disinformation, outsourcing the adjudication of content to the platforms. However, platforms will be penalised if ACMA determines them to be in breach of industry standards and guidelines set by ACMA, by allowing misinformation and disinformation to be disseminated on their platforms. Therefore, platforms will be incentivised to 'play it safe'.

In practice, this means that digital platforms will remove or restrict content that counters official positions, or that falls into the 'grey' area between obviously true vs. obviously false. Platforms will take the official government position as *de facto* for 'true information', judging anything that contradicts the official position therefore as 'misinformation.' This is already happening.

As example, YouTube's medical misinformation policy defines misinformation as, "content that poses a serious risk of egregious harm by spreading medical misinformation that contradicts local health authorities' (LHAs) or the World Health Organization's (WHO) guidance about specific health conditions and substances."¹¹

The real-world consequence of platforms taking official positions as *de facto* for 'true information' is the censoring of valid, and often true information. For example, YouTube cited this policy as grounds for the removal MP John Ruddick's maiden speech to the New South Wales Parliament from its platform.¹²

In another example, platforms including Twitter, Facebook and Instagram censored over 4,000 social media posts during the pandemic years at the behest of the Australian Government, many of which contained true (factually correct) information.¹³

b. Avoid risk by outsourcing to "fact checkers" which is dangerous

ACMA states that it will not determine the truthfulness of individual pieces of content, but that digital platforms will be encouraged to use a range of tools including Fact Checkers.

Fact Checkers are engaged by digital platforms as independent arbiters of truth. However, they are not independent, and they have no greater claim to truth than anyone else.

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https://support.google.com/youtube/answer/13813322?hl=en&ref_topic=10833358&visit_id=638281030439977920-3807964568&rd=1

¹² <https://www.zerohedge.com/political/youtube-censors-australian-politicians-maiden-speech-parliament>

¹³ <https://www.theaustralian.com.au/nation/many-censored-social-media-posts-did-not-contain-covid-19-misinformation/news-story/c47a8217ffada2cf576475aef3c12c63>

In court proceedings, Facebook has claimed First Amendment protections for its Fact-Checker decisions, a tacit admission that fact-checks are just opinions.¹⁴

Unfortunately, these opinions are frequently wrong on matters of fact. Additionally, Fact Checkers routinely misrepresent contestable topics as 'settled science' and conflate the absence of evidence (due to undone science) with categorical evidence of absence.

For example, AAP falsely claimed that the Australian Government had not tried to hide reports of Covid vaccine adverse reactions.¹⁵ Documents released under FOI request revealed that the Therapeutic Goods Administration (TGA) did in fact hide child deaths reported following vaccination, due to concerns that disclosure, "could undermine public confidence."¹⁶ In another document release, the Department of Health was shown to have actively sought for the removal of Facebook posts describing users' adverse reactions to Covid vaccines.¹⁷

The RMIT Fact-Lab unit falsely debunked claims that Covid vaccines were affecting women's menstruation, only for the claims to be proven true when evidence was published in the peer reviewed scientific literature.¹⁸ RMIT Fact-Lab has not corrected its erroneous 'debunk'.¹⁹

It has also come to light that 'independent' Fact Checkers are not necessarily financially independent from commercial interests. It was recently announced that Meta (parent company of Facebook) will pay an undisclosed amount to Fact Checkers including AAP and RMIT Fact-Lab for the purpose of safeguarding the online information environment in the lead up to the Voice to Parliament referendum.²⁰

Moreover, documents obtained in legal discovery show that Meta has, or has had, a commercial agreement with RMIT Fact-Lab whereby RMIT Fact-Lab receives USD \$800 from Meta per fact check, for up to 50 fact check articles per month.²¹ However, this commercial arrangement is not listed on RMIT Fact-Lab's funding disclosure page on its website.²²

RMIT Fact-Lab has not responded to multiple emails asking for comment on this issue. This kind of opacity is counter to the spirit of transparency that is considered to be fundamental to the democratic process of testing truth claims.

¹⁴ <https://nypost.com/2021/12/14/facebook-admits-the-truth-fact-checks-are-really-just-lefty-opinion/>

¹⁵ <https://www.aap.com.au/factcheck/hidden-covid-19-vaccine-reactions-data-is-far-from-secret/>

¹⁶ <https://news.rebekahbarnett.com.au/p/breaking-australias-drug-regulator>

¹⁷ <https://news.rebekahbarnett.com.au/p/breaking-the-australian-government>

¹⁸ <https://bmjmedicine.bmj.com/content/1/1/e000297>

¹⁹ <https://www.abc.net.au/news/2021-04-30/coronacheck-menstruation-periods-vaccines-misinformation-facts/100099778>

²⁰ <https://www.theaustralian.com.au/business/media/social-media-company-meta-said-it-will-roll-out-measures-to-stamp-out-misinformation-in-the-lead-up-to-the-voice-referendum-vote/news-story/1c495cfe2f70f4bda5b691116b7be1f4>

²¹ <https://twitter.com/therealrukshan/status/1680736713851928577?s=20>

²² <https://www.rmit.edu.au/about/schools-colleges/media-and-communication/industry/factlab/about-rmit-factlab>

It is thus evident that the framing of Fact Checkers as unconflicted arbiters of truth by both digital platforms and by government is inappropriate. It is also potentially dangerous. [and additional examples of government disinformation]

While other forms of misinformation are left to battle it out in the information environment on their merit, misinformation and disinformation disseminated by Fact-Checkers are conferred with a degree of legitimacy because of their moniker, and the authority that they have been given by the platforms that engage them. This power imbalance has the potential to make citizens more vulnerable to harms perpetuated by misinformation and disinformation disseminated by Fact Checkers than harms perpetuated by misinformation and disinformation from sources perceived to be less authoritative.

4. Impractical and favours legacy media

a. Impossibility of policing sites fairly

The bill puts an onus on social media platforms to moderate misinformation or disinformation to avoid harm. But how much misinformation or disinformation equals harm? Is this just one instance of 'suspect' content? Should it be measured in absolute terms – no more than a certain number of comments? Or relative terms – a certain percentage? Absolute terms might make more sense on a large site where even a small percentage of overall comments might represent a large enough pool to plausibly create "harm", but percentage might make more sense on a smaller site.

How then should platforms monitor content to avoid being fined? AI is only a partial solution. Users of social media platforms have ways of disguising what they are saying, or inventing novel terminologies, all of which will temporarily defeat AI, or put innocent communications at risk because the AI net will have to be cast too wide.

A further problem is when the 'facts' change. If misinformation and disinformation are to mean anything other than 'what is not government information', then understandings will change as new data and insights emerge over time. Are platforms to retrospectively change rulings, or will they be subject to the risk of civil proceedings for defamation or other torts?

And as governments are deemed to be incapable of misinformation and disinformation, what happens when there is a change of government?

b. Barriers to entry to new entrants

The rules will also be more onerous on small sites and new entrants who lack scale. The cost of moderation via human or artificial means will be significant, and the potential penalties even larger.

While professional news organisations are exempted from the laws, sites such as those run by the Australians for Science and Freedom, while producing high quality, evidence-based content, could be defined by the ACMA as sources of disinformation.

Open access journals or other innovations in discussing and disseminating scientific information would also be at risk, and at a disadvantage against established journals.

In these cases, such channels could be open to penalties that would put them out of business. For example, for contravening an industry code the penalty for a corporate is up to 2 per cent of annual turnover, or \$2.2 million with ACMA making the decision.

The act also allows ACMA to impose codes on digital platforms, but this does not appear to be a risk that legacy media runs.

ACMA can also vary “misinformation standards” on grounds it finds “reasonable” (S51). This adds an additional layer of risk to any digital media businesses not faced by their competitors.

c. Establishing voluntary rules of conduct as effectively legislation, but without proper democratic and accountable processes for establishing them.

This bill extends a tendency in legislation to delegate to bureaucrats via regulations powers which ought to be exercised by legislatures. This bill would effectively allow ACMA to extend definitions of harm under various state and federal human rights and anti-discrimination legislations, as well as potentially encroaching on consumer and defamation law.

There is no evidence that ACMA has the expertise or is properly resourced to do this, or that codes of conduct should be decided outside the normal democratic process.

5. Economic and scientific cost

Societies work best and grow when there is an open and competitive structure. Regulation and uncertainty are the enemies of economic growth and human flourishing. This bill will introduce both. It will also reduce the innovation that is the key to growth.

Digital media platforms are in one sense a source of collective thought in that they facilitate a collective conversation where different ideas can be explored and old ones replaced by better ones. By allowing a governmental instrumentality to determine what is and what isn't disinformation and misinformation rather than the cut and thrust of conversation, and preferencing government narratives over all others, this bill guarantees that it will be more difficult to discuss and disseminate advances.

This will come not just at a social cost, but an economic and scientific one. In an emergency situation, like a pandemic, it will tend to stifle the “gifted amateurs” who blog on these issues, and who are often the best analysts of the data that is

available, but who would struggle to be published in mainstream media or scientific journals.

Even for those analysts who can find mainstream publishing outlets, it still slows the process down. Scientific journals are notoriously slow to publish.

6. The legislation will not work, and will simply increase regulatory burden to nil effect

Legislation of the ACMA bill will increase regulatory burden without meaningfully reducing the amount of misinformation and disinformation being shared online.

Misinformation research conducted during the pandemic found that increased social media censorship of vaccine-sceptical content was associated with an increase in subscription to vaccine-sceptical sites and news services.²³

Similarly, ACMA reports that,

“Content removal or de-platforming feeds into the general belief that platforms are involved in a deep-state ‘cover-up’. It also encourages members of conspiracy-driven communities to take steps to pro-actively avoid detection or automated content moderation tools. We Are Social found widespread use of intentionally misspelling keywords in posts, such as ‘v8ccine’ and ‘vackseen’.”²⁴

We predict that users will simply move to private messaging channels, the dark web, and other avenues to continue sharing information, a possibility acknowledged by ACMA,

“Widespread content moderation by the platforms may also drive these conversations further underground, by encouraging mass migrations to smaller alternative social media or encrypted messaging apps.”²⁵

The only measurable outcome this bill can achieve is the ACMA's expansion requiring considerable human and financial resources.

RECOMMENDATIONS

We recommend that the bill be abandoned entirely. The need for it has not been sufficiently demonstrated, and the types of harms that it seeks to mitigate can, as far as we can tell from the details provided, be dealt with in almost all cases using existing structures in ways which guarantee individual rights are protected, without choking the necessary free flow of information. Should there be some individual harms, then they should be addressed directly and in legislation rather than through an extra-parliamentary system such as this.

²³ <https://pubmed.ncbi.nlm.nih.gov/36250528/>

²⁴ P. 25 <https://www.acma.gov.au/sites/default/files/2021-11/Adequacy%20of%20digital%20platforms%20disinformation%20and%20news%20quality%20measures.pdf>

²⁵ P. 25 <https://www.acma.gov.au/sites/default/files/2021-11/Adequacy%20of%20digital%20platforms%20disinformation%20and%20news%20quality%20measures.pdf>