

## Comment on the "Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023 No. , 2023"

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My concern about this proposed legislation amendment is it is clearly retreading old ground applying censorship via an intermediary, which in my view was most strongly prosecuted by Senator Stephen Conroy during his tenure as the Minister for Communications. I view this latest proposal as trying to apply a new slant to something several Federal Labor Governments have been pushing for 15 years or more.

This legislation is likely to result in the credibility gap further widening between what the Government and state apparatus communicates to the electorate and what the electorate experiences during their daily lives. High profile British documentary filmmaker Adam Curtis has produced a number of series about the use of perception management and its corrosive effect on democracy, but also delved deeply into the appalling abuse of power by the state in the USSR, named amongst other states, to manipulate public discourse. His analysis in "HyperNormalisation" (a preview of which is hosted by the BBC YouTube channel, [HyperNormalisation: A new film by Adam Curtis - BBC iPlayer – YouTube](https://www.youtube.com/watch?v=AUiqaFIONPQ), <https://www.youtube.com/watch?v=AUiqaFIONPQ> and a discussion with the filmmaker on the comparison to modern Britain drilling down on these issues is also available, [Adam Curtis on the fall of the Soviet Union's worrying parallels with modern Britain - YouTube](#) ) is particularly applicable to the sort of interventions being proposed by this legislation and he makes comparisons with the sorts of interventions occurring in western liberal democracies due to ideological tendencies.

In effect, you end up with a situation where an aloof state apparatus, is offering up policy prescribed around highly introspective paradigms, tainted by preexisting biases without any policy response being adequately tested for people's consent. Curtis' analysis reaches the conclusion that people then perceive their lived reality and the proclamations of the state as bearing little correlation to each other. By framing this legislation around terms open to highly subjective interpretation, *misinformation*, *disinformation* and *harm*, rather than actual *quantifiable damages* as our Court system applies, there is enormous risk the government and the institutions of state will no longer align with the interests of the people being represented. As Curtis argues, that situation will eventually become terminal to the institutions of the state, the democratic state will cease to do what people expect of it and it may even fail at its own accord.

There is inherent danger to democracy applying the terms *misinformation*, *disinformation* and *harm* as the standard to take punitive action against a third party that can in effect suppress opinions of citizens through a proxy. We all know citizens get things wrong, but we have a process of the public debate to demonstrate to these people why those opinions are wrong and indefensible. Failing to do this will more likely end up with creating groups of people being more fanatical and believing there has been some sort of cover up with respect to the content of their views rather than pacifying their views.

I end my submission by qualifying some of the problems I see relying on the proposed terms, which seem to be globally now overused across many countries as states attempt to quell dissent due to poor, predominantly economic, policies resulting in substantively worse living conditions for many.

- *Misinformation* should never be permitted to be based on an assertion which then is interpreted as facts on the ground with little possibility of any effective mechanism of review prior to enforcement actions. Giving any state body the power to, what is effectively

an ability to economically cripple another party with arbitrary fines based on subjective material, not hard evidence, is not the sort of thing Australians expect will occur in a reputable democratic state. It should be up to the agency making an accusation to put any accusation to a Court at the agency's expense. Simply offering a party an appeal to the Administrative Appeals Tribunal, as the way to respond to an accusation, places the burden on the accused or their proxy platform. The definitions offered in this legislation are wide open to the arbiters applying their, or other *excluded entities* cited, biases and undue influence on procedural fairness. A position may have been constructed on flawed beliefs of the person prosecuting the case, as has been apparent in the recent Sofronoff Inquiry reviewing the conduct of the ACT Director of Public Prosecutions. For this reason alone, anything clearly identifiable as opinion, should, in the same way as satire/parody/entertainment, not open the door to claims of misinformation. It seems this whole *misinformation agenda* is simply an alternative tack to push through a censorship regime that Australia clearly rejected in 2012 and in practice will not differ much in effect to former Communications Minister's Stephen Conroy's Mandatory Internet Filter Plan ( <https://apnews.com/article/womens-college-basketball-australia-stephen-conroy-censorship-pornography-7a1e2a74217c40e28ee3dbedb5dbd2c3> ):

"Critics had said the proposed legislated filter would have put Australia in the same censorship league as China. Even the U.S. State Department expressed concerns about the proposed regulations, which would have been some of the most restrictive among the world's democracies.

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But the opposition said the government realized it had no hope of getting the filter legislation through Parliament. The Greens party, a key government ally, joined the opposition in condemning the mandatory filter proposal as a serious restriction of free speech."

- *Disinformation* should only be applicable to state actors and state supported organisations with the intent to subvert the stability of the Commonwealth of Australia and expose it to external threats, not tempering Australian pluralism by throttling public discussion and allowing opinions only to be publicly propagated by gate keepers of the state, corporate Australia or education institutions, which are being politicised and in some instances it would seem subject to regulatory capture by sectional interests. In cases where the state, corporate entities or education institutions advance arguments known by them to be intended as disinformation, as evidenced by written or verbal communications restating claims that do not align with their public utterances, then representatives of these entities should be subject to sanction as determined by relevant criminal legislation. The state, corporate entities and education institutions should be held to a higher standard than any individual citizen as they influence the discourse without having voting rights themselves.
- *Claims* of harm should demonstrate actual damage has occurred to a party. Our legal code is based on damages having had occurred. It is not good enough to manipulate discourse claiming harm will be done if preemptive action is not taken in the absence of any proof that such an outcome was inevitable. We have an entire civil and criminal code that can be used to prosecute actual or reputational harm caused by someone's intent and actions against another party and every week we see these prosecuted in Court. However, the existence of the criminal code has not stopped the Courts being filled with accused criminals. This amendment may permit that opinions are prosecutable against a third party (the platform provider) and prevent the originator of that opinion having it heard. The greatest travesty would be the opinion held may actually turn out to be correct in the due course of a public debate, a debate that will eventually flush out the facts of the matter.