



**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,

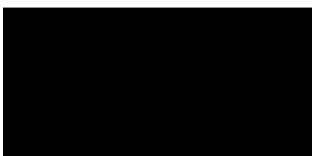
This submission has been made on behalf of the Australians for Science and Freedom.

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.

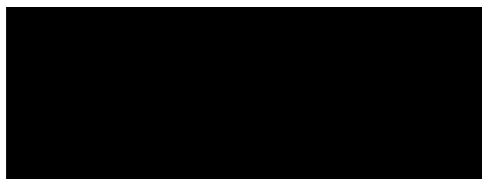
The ASF has concerns about the proposed amendments to the act and believes it would be against the interests of scientific advancement and democracy for it to be passed.

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)<sup>1</sup>, 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 report<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> '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.<sup>3</sup>

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.<sup>4</sup>

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

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

<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

### **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) <sup>7</sup> 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.

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

<sup>6</sup> <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](https://www.thegreatcovidpanic.com/_files/ugd/23eb94_33b4f30ef8fa4e6eaf1a7e62d571a9a7.pdf)

<sup>7</sup> <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	<b>21</b>	2
Covid-19 vaccines that are approved by the health authorities in Australia are safe. <reverse>	<b>9</b>	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>	<b>6</b>	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	<b>24</b>	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	<b>16</b>	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.”<sup>8</sup> 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.

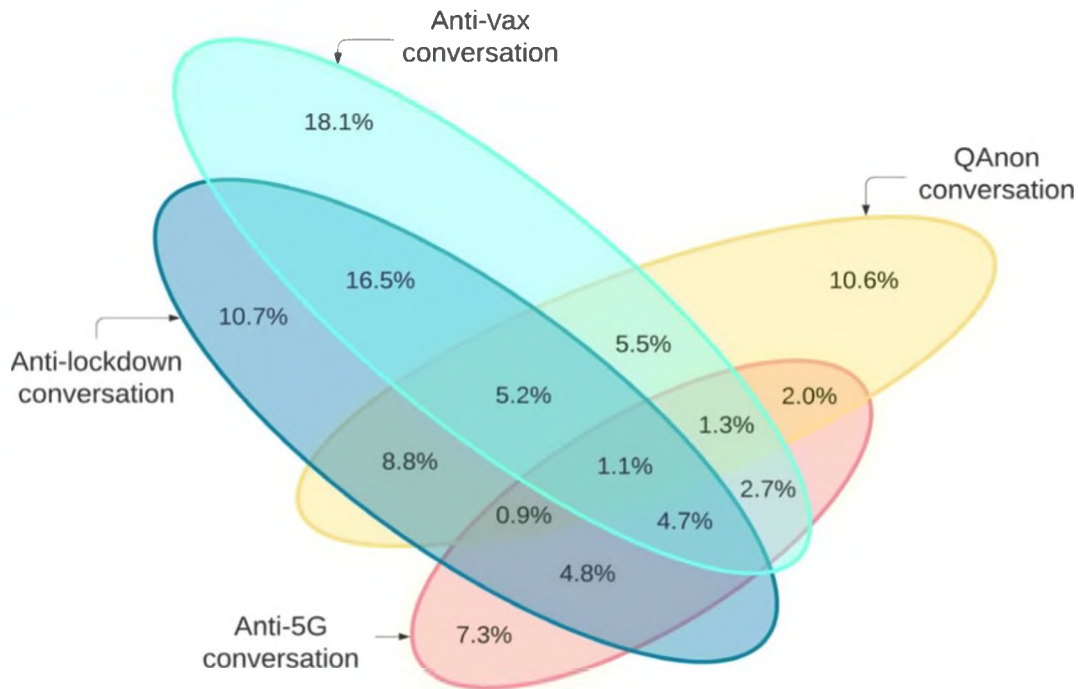
However, the few snippets of the We Are Social report shared by ACMA indicate that the researchers make the same error as the N&MRC study, by mislabelling scientifically-supported concerns as ‘conspiracy’ and ‘misinformation.’<sup>9</sup> For example, ACMA details four “misinformation narratives” examined 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.

<sup>8</sup> [https://www.acma.gov.au/sites/default/files/2022-03/ACMA%20misinformation%20report\\_Fact%20sheet%201%20-%20key%20research%20findings.pdf](https://www.acma.gov.au/sites/default/files/2022-03/ACMA%20misinformation%20report_Fact%20sheet%201%20-%20key%20research%20findings.pdf)

<sup>9</sup> 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.”<sup>10</sup> 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.’

- 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

<sup>10</sup> <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."<sup>11</sup>

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.<sup>12</sup>

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.<sup>13</sup>

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

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

<sup>13</sup> <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.<sup>14</sup>

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.<sup>15</sup> 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."<sup>16</sup> 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.<sup>17</sup>

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.<sup>18</sup> RMIT Fact-Lab has not corrected its erroneous 'debunk'.<sup>19</sup>

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.<sup>20</sup>

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.<sup>21</sup> However, this commercial arrangement is not listed on RMIT Fact-Lab's funding disclosure page on its website.<sup>22</sup>

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.

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

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

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

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

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

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

<sup>20</sup> <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>

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

<sup>22</sup> <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.<sup>23</sup>

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’.”<sup>24</sup>

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.”<sup>25</sup>

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.

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

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

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

Date: 20 August 2023

Submission to the Department of Infrastructure,  
Transport, Regional Development, Communications  
and the Arts

# **Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023**

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# Introduction

## **Reasons and evidence showing the potential risks associated with the proposed new powers provided to ACMA via the passage of the Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023.**

The Australian Medical Professionals' Society (AMPS) comprises a collective of medical and allied health experts united by a core mission: safeguarding and advancing the interests of our members and their patients, while advocating optimal health outcomes across Australia. We deeply cherish the tenets of medical ethics, prioritising patient well-being and community welfare. As staunch proponents of these values, AMPS enthusiastically embraces the chance to offer input to the Department of Infrastructure, Transport, Regional Development, Communications, and the Arts on the Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023.

In an era marked by the rapid dissemination of information through various channels, the regulation of misinformation and disinformation has gained importance. Misinformation refers to the dissemination of false or inaccurate information, often without intent to deceive. On the other hand, disinformation involves the deliberate spread of false information to deceive and manipulate. The potential harm stemming from misinformation and disinformation is well understood, as it can erode public trust, misguide decision-making, and undermine societal well-being.

As governments grapple with addressing the challenges posed by misinformation, the proposed bill's focus raises questions about potential consequences arising from censorship. Considerations such as intellectual freedom, freedom of expression and the right of political communication are paramount in democratic societies. Any legislation intended to address misinformation must carefully consider the potential effects on these values. By potentially curbing these freedoms and the ability of people to engage in open political discourse, the bill could unintentionally infringe upon these rights, harming core pillars of our democracy.

Moreover, of concern are the bill's potential implications on healthcare practitioners' capacity to fulfil their code of conduct requirements, duty of candour and international obligations to protect the public. Healthcare professionals have an ethical and legal obligation to provide patients with accurate and transparent information, enabling informed decision-making. If the bill inadvertently hinders practitioners' ability to provide unbiased and evidence-based guidance, it could undermine the trust between medical professionals and patients, compromising the integrity of healthcare systems.

In the pursuit of combating misinformation, it becomes crucial to assess how information control measures might inadvertently succumb to conflicts of interest. In the intersection of healthcare and commercial interests, a careful balance must be struck to ensure that profit motives do not dictate the determination of truth at the expense of public health. The risk of science itself becoming a threat to overall public health and safety, as a result of undue political or financial influence or manipulation, underscores the need for measures that prioritise evidence-based best practices over financial gains.

Transparency and accountability are the bedrock of a functioning democracy. The access to accurate information empowers citizens to make informed decisions, while the suppression of information or manipulation of facts can lead to a pandemic of censorship and misinformation, posing substantial threats to health and safety. In navigating this complex landscape, it is paramount that any



legislative efforts prioritise the preservation of democratic values, transparency of data, the protection of public health, and the integrity of information dissemination.

## Defining Misinformation and Disinformation

According to the ACMA bill, misinformation is characterised as information that is untrue, misleading, or deceitful and is likely to result in harm or contribute to it. Disinformation, on the other hand, is identified as information that is false, misleading, or deceitful and is shared with the intention to mislead, along with content that has the potential to cause or contribute to harm.

The draft bill fails to outline the criteria by which ACMA will determine the accuracy or misleading nature of information, as well as the assessment of intent and harm. The scope of the parameters appears excessively wide and unpractical, fostering the impression that anything not endorsed by the government qualifies as misinformation or disinformation. Effectively, this bill seems to criminalise any content criticising government communications, irrespective of supporting evidence. Such a notion is disquieting and carries a chilling undertone of a dystopian scenario, demanding profound introspection and reconsideration<sup>1</sup>.

The prospect of a government-appointed independent body wielding the authority to categorise information as misinformation or disinformation raises substantial concerns. Such power gives rise to the risk of stifling dissenting viewpoints and suppressing critical discourse. In an arena where scientific understanding is perpetually evolving and often influenced by vested interests, determining what constitutes accurate information becomes exceedingly complex. The potential for bias and manipulation becomes pronounced when an entity is asked to make these determinations, potentially sacrificing objectivity in favour of political or economic agendas<sup>2</sup>. The fluid nature of scientific discovery and the presence of diverse perspectives necessitate caution when vesting a single entity with the power to define truth, as this approach could inadvertently curtail the intellectual freedom and right of political communication of practitioners and hinder open dialogue essential for societal progress.

Governments must be aware of the often deceptive practices of large pharmaceutical companies that have paid gigantic fines for fraud, illegal marketing, ghost writing and misrepresentation of research results. The influential power of the pharmaceutical industry to control what constitutes mis and dis information must not be dismissed as Peter Gøtzsche, founder of the Cochrane Collaboration, discusses in his book *Deadly Medicines and Organised Crime: How Big Pharma has Corrupted Healthcare*.

“There can be no doubt that its business model fulfills the criteria for organised crime”. Gøtzsche is not alone in comparing the pharmaceutical industry to an organized criminal enterprise. In a striking passage, Gøtzsche quotes Peter Rost, a former Pfizer marketing vice president, as follows:

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<sup>1</sup><https://www.theaustralian.com.au/nation/misinformation-laws-elitist-self-serving-academic-suri-ratnapala-says/news-story/4dd2415121590f8021c06c87a5f54efb#:~:text=Professor%20Ratnapala%20described%20the%20legislation,also%20an%20admission%20of%20failure>.

<sup>2</sup> <https://pubmed.ncbi.nlm.nih.gov/33187972/>

It is scary how many similarities there are between this industry and the mob. The mob makes obscene amounts of money, as does this industry. The side effects of organized crime are killings and deaths, and the side effects are the same in this industry. The mob bribes politicians and others, and so does the drug industry....<sup>37</sup>

Recommendation: It is our stance that the bill should not be approved. Establishing precise definitions for misinformation and disinformation is a formidable challenge given the ever-evolving landscape of scientific knowledge and increasing financial conflicts of interest.

## Defining Harm

AMPS as a collective of committed health professionals and scientists, hold serious concerns regarding the potential repercussions of granting a government-appointed entity the authority to regulate the open dissemination of information under the vague guise of harm mitigation.

For example, throughout the course of the COVID-19 pandemic, any scepticism toward government-endorsed public health messaging was promptly labelled as the dissemination of misinformation or disinformation. Unfortunately, with the passage of time, it has become evident that much of the officially sanctioned government communication — spanning from the lab leak theory to mask usage, lockdowns, and the effectiveness of vaccines in stopping transmission — was riddled with inaccuracies and misdirection, whether by oversight or design. The submission by AMPS to the Independent Panel Review outlined our conviction that the coercive measures taken in response to the pandemic contradicted both historical precedents and scientific consensus<sup>4</sup>. The rationale behind implementing societal interventions that were both unscientific and unjustified remains puzzling. Not only did the secret health advice seem to contradict established international and national pandemic strategies, but it also transgressed medical ethical standards and Australia's obligations to uphold civil and political rights.

These ACMA powers, purportedly established to avert "harm," come with a vagueness in defining harm and an absence of clarity regarding the threshold. Nevertheless, as exemplified by the response to the pandemic, entrusting the government as the sole purveyor of truth for the sake of public "safety" carries the potential to result in harm, especially in cases of policy missteps that evade questioning<sup>56</sup>. The suppression of scientific discourse stifles the open exchange of scientific ideas and undermines evidence-based medicine, impeding scientific advancement and the continual pursuit of best practices. Further, it exposes policy makers to the risk of being influenced by potent political and financial forces, especially when the capacity for information sharing among frontline workers and less influential member-based associations is severely restricted<sup>78</sup>.

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<sup>3</sup><https://kiej.georgetown.edu/peter-c-gotzsche-deadly-medicines-and-organised-crime-how-big-pharma-has-corrupted-healthcare-crc-press-2013/>

<sup>4</sup><https://8630368.fs1.hubspotusercontent-na1.net/hubfs/8630368/AMPS/Independent%20Panel%20Response.pdf>

<sup>5</sup><https://www.theaustralian.com.au/inquirer/shameful-fearmongering-leaders-should-pay-for-covid-lockdown-insanity/news-story/>

<sup>6</sup><https://www.news.com.au/national/australias-huge-covid-lies-finally-exposed/news-story/>

<sup>7</sup> <https://www.spectator.com.au/2023/07/gambling-with-australian-lives/>

<sup>8</sup><https://www.theaustralian.com.au/inquirer/health-disgrace-bureaucrats-in-bid-to-silence-our-doctors/news-story/>

Employing the threat of disciplinary measures will inevitably induce silence through the imposition of compliance driven by fear. However, healthcare professionals bear a responsibility to exercise their intellectual autonomy and the right to political expression, voicing concerns to safeguard patients and the general public when their clinical insight and the most pertinent evidence suggest potential harm stemming from governmental policies<sup>9</sup>. The notion that upholding the perception of government-declared truths is of paramount importance to preserve public stability, even when data and evidence highlight issues, marks a distressing departure both from the principles of ethical evidence based medicine and from the foundations of democracy.

In a recent ruling involving the Biden vs. Missouri case, Judge Doughty meticulously expounded upon the collaboration between the government and social media platforms aimed at dictating the permissible content for the public to consume. Recent Freedom of Information documents unveiled that our Department of Home Affairs employed tactics to suppress information, controlling Australians' access to informed decision-making about policies and medical interventions<sup>10</sup>. Judge Doughty reaffirmed that the primary objective of free speech is to safeguard an open marketplace of ideas, where truth prevails without hindrance. Within the context of this case's verdict, he presented compelling evidence that supports the claims brought forth by the plaintiffs, stating:

“Defendants, through public pressure campaigns, private meetings, and other forms of direct communication, regarding what Defendants described as “disinformation,” “misinformation,” and “malinformation,” have colluded with and/or coerced social media platforms<sup>11</sup>.”

The ruling vividly underscores the perils that arise when citizens are denied unfettered access to information, hindering their ability to make autonomous decisions. The stifling of speech, intellectual freedom, and political expression has a cascading effect on nearly all other liberties. It's evident that governments globally, including the Australian government, leveraged their authority to quash any opposition to their Covid-related policies. Amid a period of profound uncertainty, rather than engaging with frontline healthcare professionals as laid out in our pre-pandemic preparedness strategies, government regulatory bodies instead persecuted medical and health experts who exercised their clinical judgement and relied on the best available evidence to scrutinise policies they deemed potentially hazardous to the well-being of all Australians<sup>12</sup>. The AMPS contends that this approach has indeed led to harm among Australians.

The censorship of scientific discourse via the politicisation of the scientific method, as we have witnessed during the COVID-19 era, holds the potential to cause severe actual and potential harm to public health and well-being<sup>13</sup>. When a government-designated body dictates the dissemination of information, controlling what citizens perceive as true despite emerging data and evidence, it suggests that the integrity of our democratic processes has already been compromised.

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<sup>9</sup><https://8630368.fs1.hubspotusercontent-na1.net/hubfs/8630368/AMPS/AMPS%20Submissions%20to%20HE%20Comm%201June2022%20Final.pdf>

<sup>10</sup><https://www.theaustralian.com.au/nation/many-censored-social-media-posts-did-not-contain-covid19-misinformation/news-story/c47a8217ffada2cf576475aef3c12c63>

<sup>11</sup> <https://ago.mo.gov/docs/default-source/press-releases/missouri-v-biden-ruling.pdf>

<sup>12</sup><https://8630368.fs1.hubspotusercontent-na1.net/hubfs/8630368/AMPS/AMPS%20Submissions%20to%20HE%20Comm%201June2022%20Final.pdf>

<sup>13</sup><https://www.theaustralian.com.au/commentary/misinformation-bill-is-australia-taking-a-different-path-to-us-on-free-speech/news-story/>

Recommendation: It is our stance that the bill should not be approved. The outline of what constitutes harm is vague and very much open to interpretation by industry and government making it very open to capricious judgements that pose a risk to overall well being.

## Constitutional considerations

The proposed ACMA bill raises important constitutional concerns, particularly in relation to potential censorship of health professionals. The bill's provisions that seek to combat misinformation might inadvertently infringe upon the constitutional freedom of political communication, which is considered implied in the Australian Constitution<sup>14</sup>. This could have far-reaching implications, especially for health professionals engaging in public discourse about critical health matters, such as COVID-19. The right of health professionals to provide evidence-based information and opinions is crucial for informed public debate and decision-making. Censorship of such communication could hinder the public's access to accurate health information, thereby conflicting with the democratic principles that underpin Australia's legal framework<sup>15</sup>. To strike a balance between curbing misinformation and upholding the constitutionally protected right to political communication and free expression remains a complex challenge that necessitates careful consideration and thorough legal analysis.

Furthermore, the proposed ACMA bill has the potential to damage intellectual freedom, a cornerstone of democratic societies. By providing authorities with the power to determine and censor content deemed as misinformation, the bill risks stifling diverse perspectives and legitimate discourse. Intellectual freedom thrives on the unrestricted exchange of ideas, even those that challenge prevailing norms. If the bill were to impose restrictions on information sharing, it could deter people from expressing unconventional viewpoints or engaging in critical discussions for fear of reprisal. This is a legitimate fear of many practitioners who have seen the personal career consequences of speaking out following the adoption of the 9 March 2021 position statement from AHPRA and National Boards; it threatened registration investigation and disciplinary action for saying anything that would undermine the government public health messaging and vaccination rollout.<sup>16</sup> A robust democracy relies on the ability of citizens to engage in open debates, form their opinions, and contribute to collective decision-making. Curtailing intellectual freedom not only limits the growth of knowledge but also undermines the essence of democratic values and citizen participation in shaping their society's future. It is imperative that any legislative efforts to combat misinformation are carefully crafted to avoid inadvertently infringing upon this fundamental aspect of democracy<sup>17</sup>.

Intellectual freedom is one of the modern marvels of living in a liberal democracy and brings tremendous benefit to society, as affirmed by the High Court:

“Once developed, justification for intellectual freedom is instrumental. The instrumental justification is the search for truth in the contested marketplace of ideas, the social importance of which Frankfurter J spoke powerfully about.<sup>18</sup>”

<sup>14</sup> <https://www.spectator.com.au/2023/02/censorship-a-threat-to-public-health-and-safety/>

<sup>15</sup> <https://quadrant.org.au/opinion/free-speech/2022/11/the-menace-of-medical-censorship-in-australia/>

<sup>16</sup> <https://www.spectator.com.au/2022/10/confidence-through-censorship-the-medical-ministry-of-truth/>

<sup>17</sup> [EMERGENCY-POWERS-COVID-19-RESTRICTIONS-MANDATORY-VACCINATION](#)

<sup>18</sup> <https://www.spectator.com.au/2023/01/saving-medicine-from-the-health-bureaucracy/>

Recommendation: We advise against the passage of this bill because of the constitutional risks it poses to free expression, intellectual freedom, and the right of political communication. Undermining these foundational principles of our democracy will inhibit the free flow of ideas and evidence in the continuing search for evidence based best practice.

## Conflicts of interest must be considered in defining Misinformation and Disinformation.

Granting a government-appointed entity the authority to label information contradicting official messaging as misinformation or disinformation establishes an alarming and precarious precedent<sup>19</sup>. This becomes especially concerning considering the growing awareness of the effect of corporate conflicts of interest, leading to biased reporting within academia, biased media content, skewed therapeutic guidelines, and profit-driven public policies. History is replete with instances showcasing the consequences of authorities making decisions without being held accountable or having to be transparent about their actions. This is particularly concerning when policies, based on concealed health advice for instance, are determined by those in power without the requirement for empirical validation, effectively bestowing them the power to define what qualifies as true information.

The extensive sway exerted by pharmaceutical companies' financial interests across medical academia and public policy presents a notable jeopardy to the credibility of healthcare and societal welfare. The involvement of pharmaceutical companies in financing research, regulation, education, and policy endeavours introduces an intrinsic susceptibility to bias, potentially undermining the impartiality of scientific investigation and policy development<sup>20</sup>. This dynamic could result in an undue prioritisation of profit-centred incentives, overshadowing the imperative of prioritising patient well-being and the broader public health.

Professor Ioannidis describes what he calls a "misinformation mess" where he claims much published research is not reliable. Having to negotiate such a mess in deciding exactly what is misinformation offers no benefit to patients or decision makers. It is a risk to public health.<sup>22</sup> The government must consider that many prominent journal editors have drawn attention to the pervasive influence of financial conflicts of interest on the reliability of research findings. "Financial conflicts can compromise the integrity of research," warns Dr. Fiona Godlee, editor-in-chief of The BMJ, stressing the potential bias that can result from industry funding<sup>23</sup>. Dr. Jerome Kassirer, former editor-in-chief of the New England Journal of Medicine, notes in his book, *How medicine's complicity with big business can endanger your health*, the "shocking extent of these financial enticements and explains how they encourage bias, promote dangerously misleading medical information, raise the cost of medical care, and breed distrust," highlighting the distortion such conflicts can introduce into the scientific record<sup>24</sup>. Dr. Virginia Barbour, founding editor of PLOS

<sup>19</sup> <https://www.theaustralian.com.au/commentary/misinformation-bill-will-only-feed-conspiracy/news-story/>

<sup>20</sup> <https://www.bmj.com/content/382/bmj>

<sup>21</sup> <https://www.bmj.com/content/377/bmj.o1538>

<sup>22</sup> <https://onlinelibrary.wiley.com/doi/10.1111/eci.12834>

<sup>23</sup> <https://www.bmj.com/company/newsroom/time-to-stop-commercial-distortion-of-healthcare-evidence-and-practice-experts-urge/>

<sup>24</sup> <http://data.lib.hutec.edu.vn/mucluc/fc5d4d6f0d04cfaef9dc5c8fcf689829.pdf>

Medicine, adds, disclosure alone is insufficient to address conflicts, emphasising the need for greater transparency and safeguards against undue influence<sup>25</sup>. Dr Maria Angell, long time editor in chief of the NEJM resigned more than 20 years ago after 20 years as editor because of what she described as the rising influence of the Pharmaceutical industry. She said in her book, *The truth about drug companies: How they deceive us and what to do about it*, “Now primarily a marketing machine to sell drugs of dubious benefit, big pharma uses its wealth and power to co-opt every institution that might stand in its way, including the US congress, the FDA, academic medical centers and the medical profession itself<sup>26</sup>.” These editorial voices collectively emphasise the imperative of robust disclosure mechanisms and stringent evaluation of financial conflicts to maintain the integrity and credibility of research in the face of commercial interests.

The AMPS would argue that the demonisation of ivermectin during the pandemic is a prime example of how financial conflicts of interests that claimed extensive evidence demonstrating the effectiveness of ivermectin in the treatment and prevention of COVID-19 resulted in harm. Our submission to the TGA’s rescheduling of ivermectin showed how statistically significant the evidence base is to support the clinical improvements in time to clinical recovery, time to viral clearance and reduction in hospitalisation and death from this cheap, safe, fully approved, WHO essential medicine<sup>27</sup>. This medication was banned by the TGA claiming safety and efficacy concerns when their own 2013 Australian Public Assessment Reports (AusPAR) demonstrated safety and instead recommended for example the use of provisionally approved very expensive Remdesivir. Remdesivir in the WHO Solidarity Trial reported in the NEJM was found to have “little or no effect on hospitalised patients with COVID-19, as indicated by overall mortality, initiation of ventilation, and duration of hospital stay<sup>28</sup>”. In fact, in 2020 the WHO recommended against the use of remdesivir in COVID-19 patients<sup>29</sup>. A study in the Lancet from September 2021 found, “No clinical benefit was observed from the use of remdesivir in patients who were admitted to hospital for COVID-19, were symptomatic for more than 7 days, and required oxygen support<sup>30</sup>.” The banning of ivermectin in favour of antivirals such as remdesivir appears to make little evidentiary or clinical sense.

Dr Mike Magee, former physician spokesman for Pfizer, published in 2019 his book *Code Blue: Inside America’s Medical Industrial Complex*. He powerfully describes the corruption of the US healthcare system.

“Cozy relationships and generous gratuities have demonstrated a remarkable ability to corrupt even those we would instinctively put on the side of the angels, including members of the biomedical research community, deans of medical schools, directors of continuing medical education programs, officers at the NIH and FDA, and even seemingly altruistic patient advocacy organizations like the American Cancer Society<sup>31</sup>.”

The AMPS has also written quite extensively about our concerns about the conflict between the government safety and efficacy claims for the COVID-19 vaccinations and the lack of

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<sup>25</sup> <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1001210>

<sup>26</sup> [Truth-about-Drug-Companies-Deceive](#)

<sup>27</sup> <https://8630368.fs1.hubspotusercontent-na1.net/hubfs/8630368/AMPS/TGA%20AMPS%20Ivermectin%20Submission.pdf>

<sup>28</sup> <https://www.nejm.org/doi/10.1056/NEJMoa2023184>

<sup>29</sup> <https://www.who.int/news-room/feature-stories/detail/who-recommends-against-the-use-of-remdesivir-in-covid-19-patients>

<sup>30</sup> [https://www.thelancet.com/journals/laninf/article/PIIS1473-3099\(21\)00485-0/fulltext?](https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(21)00485-0/fulltext?)

<sup>31</sup> [Code-Blue](#)

comprehensive safety and efficacy data surrounding these novel immunisations. While the accelerated development and emergency approvals were motivated by the global health crisis, some experts caution that the available data are not yet as extensive as in standard vaccine development processes. The AMPS has written about our concerns with these vaccines especially for children<sup>32</sup>. According to our Therapeutic Goods Administration (TGA) AusPAR long-term safety data remains a critical gap in our understanding, emphasising the importance of continued post-vaccination pharmacovigilance. Dr. Peter Doshi, an associate editor at The BMJ, underscores the need for transparent and thorough reporting of clinical trial results to ensure the public's confidence in these vaccines<sup>33</sup>. Amid the urgency to address the pandemic, it remains essential to strike a balance between expediency and the collection of robust data to provide a comprehensive understanding of the safety and efficacy profiles of COVID-19 vaccines<sup>34</sup>.

Financial conflicts of interest can erode trust in medical research, undermine the credibility of academic institutions, restrict access to transparent data and ultimately result in the promotion of treatments or policies that prioritise corporate gain over the impartial pursuit of knowledge and the advancement of public welfare. Stricter safeguards and transparency measures are essential to mitigate these dangers and ensure that medical academia and public policy remain steadfastly committed to unbiased and evidence-based decision-making when seeking to define what constitutes mis or dis information.

Recommendation: We advise against the passage of this bill in light of the growing corporate conflicts of interest. Such conflicts can lead to biased reporting in academia, media content, skewed therapeutic guidelines, and profit-driven public policies which pose a clear and present danger to public health and safety.

## International obligations and national code of conduct requirements

The Australian Health Practitioner Regulation Agency sets out codes of conduct under section 39 of the National Law. The Good Medical Practice Code of Conduct complements the Australian Medical Association Code of ethics and is aligned with its values. It is also consistent with the Declaration of Geneva and the International code of medical ethics, issued by the World Medical Association<sup>35</sup>.

It is important that practitioners and policy makers are aware of the national and international duties and obligations of health professionals in the care of patients and their community. The AMPS is of the belief that these new powers will likely result in a conflict between patient advocacy and adherence to government policy. The code states, In clinical practice, the care of your patient is your primary concern. The Declaration of Geneva and the International code of ethics as well as the UNESCO Universal Declaration on Human Rights and Bioethics repeatedly highlight the critical importance of the individual patient, to act honestly with integrity, valuing human life and promoting

<sup>32</sup> <https://amps.redunion.com.au/stopvaccineinfants4yo>

<sup>33</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7717257/>

<sup>34</sup> <https://www.bmj.com/content/376/bmj.o102>

<sup>35</sup> <https://www.medicalboard.gov.au/codes-guidelines-policies/code-of-conduct.aspx>

and safeguarding the health of patients and the public. Consequently, where the data and evidence are demonstrating policy error leading to harm to individual patients and the public practitioners have an ethical obligation to share that information. It is dangerous to conclude that because the information contradicts the government or the so-called consensus it is misinformation<sup>36</sup>.

Doctors hold a crucial international obligation to provide their patients with informed consent, a cornerstone of medical ethics and human rights. Informed consent ensures that patients have the right to make autonomous decisions about their healthcare by being fully informed of the risks, benefits, and alternatives to a proposed medical intervention. This principle is enshrined in international ethical guidelines, including the World Medical Association's Declaration of Helsinki and UNESCO's Universal Declaration on Bioethics and Human Rights. Respect for patients' autonomy and dignity demands that healthcare professionals communicate transparently, allowing patients to weigh the potential consequences of their choices. This commitment transcends national borders and cultures, reinforcing the global imperative for doctors to uphold the right to informed consent as a fundamental aspect of responsible and patient-centred medical practice<sup>37,38,39</sup>.

Doctors also have a duty of candour which is a vital ethical principle that underscores their responsibility to maintain open and honest communication with patients. Rooted in the commitment to patient welfare and respect for autonomy, this duty requires physicians to provide accurate, comprehensive, and understandable information to patients about their medical condition, treatment options, potential risks, and benefits<sup>40</sup>. By fostering transparency and promoting informed decision-making, the duty of candour builds trust between doctors and patients and empowers individuals to actively participate in their healthcare journey. This obligation reflects the fundamental respect for patient autonomy, ensuring that people have the information necessary to make well-informed choices that align with their values and preferences<sup>41</sup>.

The AMPS in consultation with our membership have tried to engage with our political and medical leaders as well as engage with the public to share scientific information that shows harmful public health policies. We, like many others, have found ourselves fighting the censorship-political complex, in an attempt to protect the public<sup>42</sup>. It defies comprehension that AHPRA and national boards, entrusted to ensure public safety, have stated it is not within their mandate to evaluate the scientific validity of statements or exemptions, but only to assess whether the statements or exemptions go against the Public Health Orders<sup>43</sup>. As an association of dedicated health practitioners that have become more and more aware of the effect of financial conflicts of interests on the integrity of medical academia, media reporting, pharmacological policy and guidelines, we have serious concerns that this corruption of science is a threat to public health and safety. It is critical that regulators evaluate presented evidence with an awareness of potential corrupting influences to fulfil their mandate to protect the public.

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<sup>36</sup> <https://brownstone.org/articles/scientific-consensus-a-manufactured-construct/>

<sup>37</sup> <https://www.wma.net/policies-post/wma-declaration-of-helsinki-ethical-principles-for-medical-research-involving-human-subjects/>

<sup>38</sup> <https://www.unesco.org/en/ethics-science-technology/bioethics-and-human-rights>

<sup>39</sup> <https://www.wma.net/policies-post/wma-declaration-of-geneva/>

<sup>40</sup> <https://www.safercare.vic.gov.au/support-training/adverse-event-review-and-response/duty-of-candour>

<sup>41</sup> <https://onlinelibrary.wiley.com/doi/10.1111/ijcp.13795>

<sup>42</sup> <https://www.bmj.com/content/371/bmj.m4425>

<sup>43</sup> <https://8630368.fs1.hubspotusercontent-na1.net/hubfs/8630368/AMPS/AMPS%20Submissions%20to%20HE%20Comm%201June2022%20Final.pdf>



Our association's concerns were outlined clearly in a BMJ article by executive editor Kamran Abbasi titled Covid-19: Politicisation, “corruption,” and suppression of science. When good science is suppressed by the medical-political complex, people die.

“Science is being suppressed for political and financial gain. Covid-19 has unleashed state corruption on a grand scale, and it is harmful to public health. Politicians and industry are responsible for this opportunistic embezzlement. So too are scientists and health experts. The pandemic has revealed how the medical-political complex can be manipulated in an emergency—a time when it is even more important to safeguard science...

... Importantly, suppressing science, whether by delaying publication, cherry picking favourable research, or gagging scientists, is a danger to public health, causing deaths by exposing people to unsafe or ineffective interventions and preventing them from benefiting from better ones. When entangled with commercial decisions it is also maladministration of taxpayers’ money....

...The medical-political complex tends towards suppression of science to aggrandise and enrich those in power. And, as the powerful become more successful, richer, and further intoxicated with power, the inconvenient truths of science are suppressed. When good science is suppressed, people die<sup>44</sup>.”

Recent years have unveiled the extent of corruption within the scientific realm, demonstrating the perils of censorship and underscoring the vital necessity of practitioners preserving their codes of conduct in harmony with intellectual freedom and the right to political communication, all to ensure the safeguarding of the public. Without strong medical and ethical boundaries it is easy to see how science itself can be weaponised by financial and political entanglement to become a threat to public health. There must be transparency and accountability and open scientific discourse in the search for ethical evidence based best practice.

The expansion of ACMA powers could exacerbate the erosion of public trust in the government, particularly as increasing numbers of citizens recognize the extent of orchestrated information manipulation and concerning conflicts of interest that have shaped policy decisions throughout the Covid era. Censorship and the tenets of science stand in fundamental opposition. Healthcare professionals must retain the freedom to exercise their clinical discernment, guided by the most robust evidence and data, aligned with ethical codes and international principles, all without fear of retaliation, in order to safeguard their patients and society at large.

Recommendation: We advise against the passage of this bill as we believe that any well intentioned perceived benefits from censoring information are outweighed by the risks posed by information corruption which undermines practitioner obligations. Transparent open access to evidence and raw data is vital to provide patients with valid informed consent and to ensure public protection through accurate policy formulation unhindered by financial, corporate and political interests.

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<sup>44</sup><https://www.bmj.com/content/371/bmj.m4425>

# Truth and transparency in public health are important for public trust and safety

In a period where the contentious nature of the Covid policy response has become evident, and the enforced communication has been marred by inaccuracies while stifling opposing voices to the detriment of public trust, it becomes apparent that the notion of "public health and safety" has been manipulated by regulators to encompass any statement conflicting with government health directives or messaging, regardless of the scientific backing presented. These authorities have wielded these powers to exert control over healthcare professionals, thereby clashing with their ethical responsibilities and code of conduct commitments. If these ACMA powers are introduced, they possess the capability to further solidify the trends observed during the Covid era, where adhering strictly to "the science" often entailed suppressing open dialogue.

Transparency and accountability serve as cornerstone principles in maintaining trust within the realm of public health. By openly sharing information, data, and decision-making processes, authorities foster an environment of clarity and honesty, reassuring the public that decisions are made with their best interests in mind. When actions are grounded in transparency, individuals can evaluate the basis for policies, interventions, and recommendations, leading to informed consent and a greater sense of agency. Furthermore, accountability ensures that those in positions of authority remain responsible for their decisions and actions, deterring unethical practices and fostering confidence in the integrity of the public health system. Ultimately, transparency and accountability collectively contribute to the establishment of a trustworthy foundation upon which individuals can confidently rely for the protection and promotion of their well-being<sup>45</sup>.

Recommendation: We advise against the passage of this bill because transparency of data and evidence is required to maintain trust in the validity of policy recommendations. Censorship has been used liberally during the pandemic to create support for government messaging and this has been disastrous for public confidence in public health.

## A Pandemic of Censorship

The government's response to the COVID-19 pandemic has been marred by an unprecedented level of censorship and the stigmatisation of dissenting viewpoints grounded in scientific evidence. While the intention behind tightly controlling public information was likely to prioritise people's safety, the unintended consequence has been an erosion of the principles of informed consent and the infliction of harm<sup>46</sup>. Troublingly, it's becoming increasingly evident that contentious narratives, such as the origin of COVID-19 from the Wuhan wet market and the effectiveness of vaccines in curbing transmission, were suppressed in favour of what might be termed as well-intentioned falsehoods, aimed at preserving public order and social cohesion. The orchestrated manipulation of scientific consensus highlights a concerted effort by politicians, medical authorities, and governments to bolster public trust in official communications and alleviate vaccine hesitancy.

<sup>45</sup><https://brownstone.org/articles/what-it-means-to-lose-trust/>

<sup>46</sup><https://onlinelibrary.wiley.com/doi/full/10.1111/jep.13876>

Nonetheless, within the realm of science, achieving absolute consensus is a rarity; indeed, the very essence of science hinges on its perpetually evolving nature. As underscored by Aaron Kheriaty, an Ethics and Public Policy Center fellow and former Associate Professor of psychiatry and human behaviour at the University of California, "Science represents an incessant pursuit of truth, and such truth remains largely detached from consensus. Progress in significant scientific breakthroughs invariably entails the questioning of established norms. Those who uphold scientific consensus over specific empirical discoveries aren't championing science but rather embracing a form of bias<sup>47</sup>."

The policies formulated, executed, and subsequently enforced in reaction to COVID-19 stood in stark contrast to the pre-pandemic readiness strategies. Measures like lockdowns, border closures, mask mandates, school shutdowns, and compulsory vaccine directives were not part of the initial recommendations<sup>48</sup>. Similarly, the utilisation of dubious and ethically questionable psychological tactics through nudge units, aimed at invoking fear, shame, and guilt to increase compliance, was not advised<sup>49</sup>. The actions demonstrated by authorities in recent times are undeniably disconcerting and represent an evident and imminent risk to public confidence and trust in matters concerning public health.

The health guidance forming the foundation for policy decisions has remained concealed, a secrecy that persists. This lack of transparency, coupled with the absence of open scrutiny of the scientific evidence, has done more than just erode trust in numerous institutions, authorities and healthcare experts. We need to remember Abassi's warning, that it is nothing less than the loss of life that all too often follows the merging of medical and political forces. Sustaining public and professional trust hinges on the availability of science for critical examination, devoid of political influence, while maintaining transparency and preventing conflicts of interest from tainting the system<sup>50</sup>.

Practitioners who dared to question "the science" or offered a risk-benefit analysis, discussing potential pandemic policy drawbacks, faced and continue to face threats of investigation and punitive measures from AHPRA and National Boards. Regulatory bodies have targeted them as threats to public health and safety as a result of their failure to unquestioningly adhere to public health directives. Questioning policy or providing patients advice using clinical judgement and the best available evidence is perceived as undermining the authority's stance on promoting COVID-19 vaccination and eroding public confidence in government health messaging<sup>51</sup>. However, regulators, as per their own statements, do not deem it their responsibility to assess the scientific credibility of statements or exemptions. Instead, their role is solely to ascertain whether such statements or exemptions contravene the Public Health Orders.

It is a contradiction to both logic and ethics, as well as a departure from the scientific method, that these healthcare professionals are confronted with threats for scrutinising policies that many now acknowledge as unscientific, baseless, and detrimental. Health indicators underscore that the pandemic measures implemented with extensive censorship have led, and continue to lead, to more

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<sup>47</sup><https://sciencebasedmedicine.org/why-antivaxxers-reject-the-concept-of-scientific-consensus-as-a-manufactured-construct/>

<sup>48</sup><https://www.health.gov.au/resources/publications/australian-health-management-plan-for-pandemic-influenza>

<sup>49</sup> <https://nakedemperor.substack.com/p/open-letter-to-the-uk-prime-minister>

<sup>50</sup><https://pubmed.ncbi.nlm.nih.gov/33187972/>

<sup>51</sup> <https://support.mips.com.au/home/12-commandments-to-avoid-ahpra-notifications>

harm than good<sup>52</sup>. Presently, we are observing alarming levels of excess mortality, reduced fertility rates, setbacks in education and development, the devastating effect on small businesses and the economy — outcomes that can largely be attributed to many of these enforced pandemic policies. The emerging data might be revealing the most substantial damage to public health, the economy, and overall societal well-being witnessed in a generation. In a recent paper featuring the esteemed Stanford Professor Ioannidis, it is highlighted that the myopic and sometimes biased viewpoints of certain scientists and "influencers" played a role in justifying COVID-19 policies that imposed sacrifice, deprivation, and suffering across all segments of society, affecting millions of lives<sup>53</sup>.

Digital platforms at the behest of governments engaged in removing, shadow banning, or concealing content that governments deemed misinformation or disinformation. Much of this content, however, turned out to be accurate at the time or subject to continuing scientific discourse. Material that challenged the officially endorsed public health messages was dismissed as false or conspiratorial, even when supported by evidence. With the passage of time, it's become evident that the primary source of misinformation emanated from the government itself — encompassing topics like the lab leak theory, mask efficacy, lockdowns, and the effect of vaccines on transmission<sup>54</sup>. This misinformation disseminated from the government subsequently permeated the media and the healthcare sphere. Through tactics involving threats, coercion, fear, and shame, a systematic campaign of suppression was orchestrated to stifle scientific discussion and engineer a contrived scientific consensus<sup>55</sup>. Government officials effectively positioned themselves as the sole arbiters of truth, and anyone — be it scientists, doctors, politicians, or citizens — who challenged this authoritative narrative with scientific evidence and data were met with shaming, deplatforming, and suspension, all under the guise of safeguarding public safety<sup>56</sup>.

An orchestrated campaign of censorship holds the potential to intricately mould messaging, thereby swaying a population's perception of what constitutes accurate information. While such measures might ostensibly contribute to maintaining societal harmony, they do so at the expense of individual liberty, to say nothing of truth. Managing information to manipulate public perception into accepting government policies as safety-enhancing stands in stark contrast to enabling the unimpeded exchange of information, which empowers individuals to assess evidence and data autonomously, leading to informed decision-making.

According to a 2012 report commissioned by the Gillard government and written by Federal Court Judge Ray Finkelstein, it was noted that "citizens must have the capacity to engage in debate, in the form of relevant critical reasoning and speaking skills..." He went on to say there is "real doubt as to whether these capacities are present for all, or even most, citizens<sup>57</sup>." In recent years, our political, bureaucratic, and medical authorities have utilised governmental entities and funding to oversee and regulate the information accessible to the public. AMPS asserts that if the government appoints bodies like ACMA as their public relations and marketing team because of a perceived inability of the public to differentiate between differing viewpoints, it could be argued that damage to the integrity of Australia's democratic processes has already made substantial headway. Censorship is inherently

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<sup>52</sup><https://www.actuaries.digital/2023/04/06/covid-19-mortality-working-group-confirmation-of-20000-excess-deaths-for-2022-in-australia>

<sup>53</sup> <https://onlinelibrary.wiley.com/doi/full/10.1111/jep.13876>

<sup>54</sup>[https://www.realclearpolitics.com/video/2023/03/01/dr\\_marty\\_makary\\_the\\_greatest\\_perpetrator\\_of\\_misinformation\\_during\\_covid\\_was\\_the\\_us\\_government.html](https://www.realclearpolitics.com/video/2023/03/01/dr_marty_makary_the_greatest_perpetrator_of_misinformation_during_covid_was_the_us_government.html)

<sup>55</sup> <https://www.amazon.com.au/New-Abnormal-Biomedical-Security-State>

<sup>56</sup><https://www.spectator.com.au/2023/02/censorship-a-threat-to-public-health-and-safety/>

<sup>57</sup><https://www.spectator.com.au/2023/07/free-speech-dying>

non-democratic; it aligns with the sentiment of German-American political philosopher Eric Voegelin who stated that it's "the common feature of all totalitarian systems...the prohibition of questions<sup>58</sup>."

Recommendation: We strongly recommend not proceeding with the enactment of this bill, primarily as a result of the substantial inherent risks it poses to ethical evidence-based medicine and the broader public health. This viewpoint is substantiated by the Actuaries Institute's remarkable excess mortality data, which appears to have a tight temporal link between these rising mortalities and the measures adopted during the pandemic.<sup>59</sup>

## Conclusion

In conclusion, the battle against misinformation and disinformation is a critical endeavour that requires a delicate balance between preserving constitutional values, upholding professional ethics, and safeguarding public health. The bill's potential damage to constitutional principles like intellectual freedom and the right of political communication must be carefully scrutinised. Equally important is the consideration of how healthcare practitioners' ability to fulfil their obligations and responsibilities might be affected. Striking this balance involves a keen awareness of the potential for conflicts of interest to sway the pursuit of truth and best practices.

Transparency and accountability are the cornerstones of a functioning democratic society. It is imperative that any measures taken to control information uphold these foundational principles, and ensure that information dissemination remains free from undue influence and manipulation. Ultimately, the convergence of misinformation, constitutional considerations, and healthcare responsibilities underscores the complexity of the issue at hand.

As societies navigate the evolving landscape of information in the digital age, it is essential to preserve democratic values, uphold professional ethics, and prioritise public health. Censorship is anathema to a free and democratic society. The only way to cope with mis or disinformation is to encourage more debate and create a society where critical thinking and intellectual curiosity is the norm. The AMPS believes the censorship risks associated with the proposed ACMA bill do not outweigh the benefits and therefore it should not be adopted.

The concluding Judgment's in the Biden vs Missouri case succinctly encapsulates the concerns held by AMPS members regarding the authority vested in government-appointed independent entities to determine the validity or appropriateness of information accessible to the public.

"As a government commits to stifling opposing voices, it inevitably descends down a path of increasingly authoritarian measures, leading eventually to becoming a source of terror<sup>60</sup>."

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<sup>58</sup> <https://brownstone.org/articles/we-landed-a-major-blow-against-the-censorship-leviathan/>

<sup>59</sup> [https://www.actuaries.digital/2023/04/06/covid-19-mortality-working-group-confirmation-of-20000-excess-deaths-for-2022-in-australia/?utm\\_source=substack&utm\\_medium=email](https://www.actuaries.digital/2023/04/06/covid-19-mortality-working-group-confirmation-of-20000-excess-deaths-for-2022-in-australia/?utm_source=substack&utm_medium=email)

<sup>60</sup> <https://ago.mo.gov/docs/default-source/press-releases/missouri-v-biden-ruling.pdf>

My recommendation is that this “ Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023....” bill be abandoned entirely.

I support both (a) Australians for Science and Freedom submission dated 20 Aug 2023 and (b) the Australian Medical Professionals' Society (AMPS ) submission dated 20 Aug 2023 prepared by Associate Professor Christopher Neil MBBS FRACP PhD, Kara Thomas BNurs GCertNurs MIntl&ComnDev, Dr Duncan Syme MBBS FRACGP DROCG Dip Prac Dermatology (University of Cardiff), Dr Jeyanthi Kunadhasan MD(UKM) MMED(UM) FANZCA MMED(Monash) on behalf of the Australian Medical Professionals Society

I add the following extra points

- (1) The solution and answer to bad/ poor/ wrong speech is MORE speech so that the truth will come out in the marketplace of ideas  
Free speech is paramount without boundaries.
- (2) The government does not have a monopoly on truth as the government just as the rest of society is composed of fallible humans (none of who are perfect)  
Hence absolute Free speech will enable the truth to be tested in the marketplace of ideas

- (3) The exclusion of information from government, approved institutions and the press from the regulatory reach of the bill, coupled with the assumption that misinformation and disinformation (from non-government or non-institutionally-approved sources only) can cause a broad range of harms, implies practical application that looks something like,

‘The policies of governments and peak/governing bodies save lives and are intrinsically good for the nation, or the world. Ergo, any information counter to these policies threatens lives and causes harm.’

When adopted in the marketplace, policies underwritten by such logic read like YouTube’s medical misinformation rules, which categorise as misinformation any information that, “contradicts local health authorities’ (LHA’s) or the World Health Organization’s (WHO) guidance about specific health conditions and substances.”

As Michael Shellenberger pointed out earlier this week, if YouTube had existed over the past 200 years, then under such a policy they would have banned criticisms of blood-letting, thalidomide, lobotomies, and sterilising the mentally ill, all of which were recommended by official health authorities at one point in time.

Should ACMA’s bill pass in its current form and become law, digital platforms will be compelled to take a similar line. This is not only flawed, it’s dangerous.

I commend to the committee the

- (a) Australians for Science and Freedom submission dated 20 Aug 2023

and  
(b) the Australian Medical Professionals' Society (AMPS ) submission dated 20  
Aug 2023  
which are attached .

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