

Submission re ACMA bill: Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023

This submission touches on only some of the defects of this profoundly unsatisfactory proposed legislation [Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023] (hereafter, Bill).

The Bill is fundamentally misconceived, an implicit if not explicit attack on free speech, radically anti-democratic, multi-flawed and should be withdrawn. The Bill is so fundamentally defective it is difficult to believe it could have been conceived in good faith by persons of sound mind. The Bill flies directly in the face of one of the central ideological advances of Western Civilisation over the last two millennia, namely, the right of individuals to freely believe, speak, hear, read, and write; in short the right of individuals to communicate with one another freely publicly without the supervision or intermediate of the authorities of the day.

Misconceived: One of the misconceptions upon which this Bill rests is the notion that the problem which this Bill ostensibly seeks to address can be solved by legislation. Another major conceptual flaw in this Bill is that while it is ostensibly offered as a benefit, it does so without any sound cost/benefit analysis with respect to its impact upon the welfare of individuals or of the Australian people as a whole or upon the well-functioning of Australian democracy, Australian society, or the organs and institutions of Australia society.

Problems of definitions and specification, of arbitration, knowledge, judgement and enforcement: At a practical level, there are huge difficulties with the specification of types of content (e.g. opinion, commentary, information, misinformation, etc.), what constitutes harm, etc., etc. The Bill does not deal adequately if at all with the monumental problem of how ACMA will acquire the god-like omniscience to know what is information and what is mis- or dis- information. A person minimally attentive to the Australian electronic media landscape over the last few years will know that “facts” transition from true to untrue or from information to misinformation or vice versa, and back, with almost dizzying speed. ACMA is not only going to have to acquire God-like omniscience, but the wisdom of Solomon. How shall this miracle of knowledge and wisdom be wrought? Presumably by fiat – that is, by a pronouncement from The Central Committee. And who guides The Central Committee? The executive government of course!

How can public servants be made the arbiters and enforcers when the Robodebt enquiry has shown that senior public servants cannot be relied upon to be constrained by either good judgement or decency, for either would have avoided the Robodebt debacle? We have conducted the experiment -- we now know we cannot trust the good judgement or morality of senior public servants who will supervise the more junior public servants.

The enforcement of legislation such as this, with flagrant breaches occurring everywhere, and there being veritable continents of grey area, enforcement will inevitably be both subjective and highly selective which leaves the enforcement wide open to the influence of political and social ideology and to de facto if not overt political interference.

Radical: This Bill appears to rest upon a most radical proposition, namely, that in an open democratic society, subject to certain exemptions only material which will not be at risk of giving rise to harm is to be allowed to be presented and discussed in public without being subject to editorial or curatorial supervision. Depending upon how harm is defined there is a great deal of material covered in the media which is psychologically disturbing not only to children, but to adults also. Presumably, under this Bill only those outlets which have the imprimatur of an agency of the executive government will be allowed to present material which may be psychologically disturbing to children. Since so very much material is harmful in some way, this Bill in effect gives the state the power to proscribe material unless it issues from or via a state approved media vehicle. [REDACTED]

To put it another way, should informed democracy be based upon only material which can be presented without risking harm to children or vulnerable adults (unless that material comes from or via a state-approved source or channel)? That this should be so is one of undergirding propositions upon which this bill is based. I cannot think of a more profoundly radical proposition in the history of Western political thought. Though the history of Western Civilisation records many attempts to muzzle free speech and to protect government and others from exposure in the media of the day, I know of no attempt to restrict what may be freely asserted and conveyed outside approved media channels to only that which will not cause harm to

some person, including children and vulnerable adults. If a democracy is to be more than a Potemkin village, prima facie the implicit assertion that such a proposition is a suitable foundation upon which to base a democracy is preposterous! And profoundly radical!

Anti-democratic: Large media players will have more freedom but this Bill clearly discriminates against small media voices. This discrimination against lesser voices is so obvious that it is presumably a deliberate intention of the Bill. Many observers of changes in the Australian media landscape over the last few decades, even before the rise of the Internet to significance in the media domain, have been troubled by and decried the loss of media diversity. Media diversity is fundamental to a well functioning democracy.

Governments' exemptions: So much deceit, misrepresentation, half-truth, and falsehood has issued forth from governments and their agencies in Australia over the last few decades (but of course it began long ago) it is no wonder the Bill exempts governments in Australia at all levels. Why should a government be privileged in its lying over the lying of other parties? It is like telling an habitual criminal upon release from gaol that despite his past record, he has legal immunity for future transgressions. It is like a scene from Monty Python.

It is often lamented that people nowadays have little faith in their government, that most no longer trust it implicitly, and that no small number do not trust it at all. With government proposing legislation such as this, loss of trust in government should not be a surprise, especially as this legislation is crafted so as to hold executive branches of government unaccountable. This brazen ploy is enough to make Machiavelli blush.

Betrayal of trust: Federal politicians have a sacred duty to preserve and strengthen Australian federal democracy; they are its stewards and guardians. By its attack on free speech, de facto if not by intent, this Bill betrays the people of Australia and Australian democracy. It is certainly an affront to liberal values.

Regulatory burden: This Bill will impose considerable compliance burden on those it seeks to regulate, and a huge burden upon ACMA unless the legislation is only enforced very selectively. Selective enforcement cannot avoid being discriminatory and will be influenced by, inter alia, the biases of the enforcer and the "riding instructions" given to the enforcer by the executive government – given formally or informally. Serious observation of media-government interaction in the USA over the last decade, including of the deliberately covert informal regulation of the electronic media by agencies of the executive government, shows this is not a mere hypothetical risk, but has become an entrenched perversion and corruption of the fourth estate, which has been and is greatly damaging to the functioning of American democracy.

Chilling effect: In order to reduce the risk of falling foul of the provisions of this Bill, there will be a degree of self-censorship on the part of those the Bill seeks to regulate. Those platforms, channels, persons, etc. which are not well funded, if they operate in an area which is controversial or contested, are obviously going to self-censor to a significant degree simply because they will not be able to afford the financial risk of falling foul of ACMA. Note that this will have relatively greater chilling effect upon small independent outlets and channels.

Unaccountability: The Bill seeks to hand over to essentially unaccountable bureaucrats powers to make highly influential decisions about what is harm, what is harmful, about what is true and what is not true. In doing so it radically shifts the power balance between individuals and the state, for ACMA is an organ of the state. It allows usually anonymous individuals who serve the state and who are almost always beholden to the state for their economic security to determine what is acceptable "information" and what is not acceptable "information".

Bogus defence: It may be expected that those who support this Bill will claim that the Bill will not be used to detrimental effect. Even if the current government does not misuse the powers this Bill gives, supporters cannot claim truthfully those powers will not be misused in the future by another government. We know from commissions of enquiry (including Royal Commissions), from hearings of committees of the Australian senate, from enquiries conducted by other parliamentary chambers within Australia, from FOI enquiries, from whistleblowers, from media investigations and exposes, among other sources, that it is common for governments and their agencies and instruments to abuse their powers. And if we widen our consideration to the anglophone world, governmental abuse of power is on continuous florid display.

Suppression of dissent: This Bill, while masquerading as legislation to protect the public, despite whatever was in the minds of its progenitors and framers, is in fact an instrument further empowering the executive government to suppress dissent from approved “facts”, narratives, and opinions. By its provisions and their inevitable consequences it effectively limits dissent to larger and more powerful media vehicles with which the executive government has an enmeshed relationship -- that is, to media vehicles which will or may be induced to “toe the party line”.

In simple terms: This deceptive and pernicious Bill purports to be a legislative instrument which will help protect Australians but it will in fact harm Australians by impairing the functioning of Australian democracy.

Finally: Not all problems can be solved. Not all of society’s problems can be even mitigated by legislation. False and inaccurate information on the Internet and other electronic media is only one of many problems with which our society contends. Any intelligent and responsible attempt to mitigate a problem by passing legislation requires a serious in depth analysis of the benefit versus harm of enacting that legislation. This proposed legislation appears to have been formulated and proposed without adequate in depth harm/benefit analysis.

There is a problem in the media – mainstream, alternative, and social media – of misinformation, disinformation, and outright drivel and rubbish, but this legislation is not a proper fix for that problem.

This Bill is a practical example of de facto if not by intent the stealthy incremental introduction of tyranny; reminiscent of the nurse who purports to care for the vulnerable elderly patient but who, when the relatives have gone, smothers the patient with a pillow.

Many people forget or failed to notice that George Orwell, familiar with fascism, Stalinism, and the British state and Raj situated Minitrue (The Ministry of Truth) not in Moscow or Berlin but in London!

By those whose minds are informed by an adequate knowledge of the historical and thematic evolution of Western Civilisation, including of its retrogressions along the way, and who value a free open just democratic society, this Bill will be recognised for what it is – a dark, dangerous, anti-democratic proposal, fit to be rejected.

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20/8/2023