

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

Regarding the Communications Legislation Amendment (Combating Misinformation and Disinformation) Act 2023

“... a nation that is afraid to let its people judge truth and falsehood in an open market is a nation that is afraid of its people”.

John F. Kennedy, 35th President of the United States of America

[Remarks on the 20th Anniversary of the Voice of America; Department of Health, Education, and Welfare, 26 Feb 1962]

Feedback has been sought on specific aspects of the Draft Communications Legislation Amendment (Combating Misinformation and Disinformation) Act 2023 (henceforth referred to as “the Bill”). This Bill grants powers to the Australian Communications and Media Authority (ACMA) to take certain actions if it determines that digital platform industry efforts in regard to misinformation and disinformation are inadequate.

Modifications to the aspects of the Bill upon which feedback has been requested amounts to nothing more than tinkering around the edges of what is, at its core, not only a censorial instrument, but one that paves the way for online dissemination of only narrow ideological and political narratives to the exclusion of dissenting views - at the expense of truth.

Reasons for introducing the Bill¹

Hold Big Tech Companies to Account for Content

In any other context, the individual, or the organisation, is responsible for what they say, write or do. A digital platform is not responsible for the content produced by its end users any more than the manufacturers of paper are responsible for the words printed upon it. It is simply easier to impose compliance rules upon digital platforms because that is the entity that can be identified, and, arguably, one of the greatest faults of digital platforms is that they allow anonymity of their end users.

Social media and other digital platforms have been described as a modern ‘Town Square’ where ideas have been exchanged freely, until recent years. The intent of the Bill clearly isn’t to hold the right people or groups to account, but to coerce digital platforms, through threats of financial penalty and imprisonment, to censor content and thus control the messaging on the single most powerful medium for information dissemination available today.

¹ <https://www.infrastructure.gov.au/department/media/news/new-disinformation-laws>

The growth of misinformation and disinformation erodes trust in democratic institutions

There has been widely reported mistrust in democratic institutions, and the events of the Covid-19 era are a good example.

“During the COVID-19 pandemic, rampant disinformation and misinformation on social media undermined public health efforts to contain and treat the virus. More than 4 in 5 Australians reported having experienced COVID-19 misinformation in the 18 months to June 2021.²”

The statement quoted above makes a valid point – there has been content expressing differing points of view regarding public health messaging and actions relating to Covid-19. Any Australian who used online platforms in the 18 months to June 2021 will have experienced Covid-19 misinformation. Much of it was produced by Australian democratic institutions and elected representatives. Examples of such falsehoods include:

- *The wearing of face masks is an effective protection against Covid-19.*
 - The lived experience of many Australians was that masks didn't prevent infection with or transmission of the illness caused by the Covid-19 virus.
- *The Covid-19 vaccines are safe and effective.*
 - What health data shows, and has since been acknowledged as a known phenomenon, is that the mRNA vaccines can cause myocarditis and pericarditis, particularly in young men.
 - The vaccines are not effective at preventing infection with or transmission of the virus. Despite high vaccination rates among the Australian public, Covid infections still occurred in the thousands. Further messaging from the Department of Health³ stated that the Covid-19 vaccines provided significant protection against infection, transmission and severe disease from earlier variants, but despite lack of vaccine efficacy against Omicron, vaccines continue to provide significant protection against disease. This assertion is not supported by data such as the NSW Health Covid-19 Weekly Data Overview for the two weeks ending 31 December 2022⁴ which shows a correlation between increasing numbers of Covid-19 vaccine doses, and separately, increasing age, with increasing numbers of admissions to ICU and deaths.
 - Thousands of vaccine injuries have not been acknowledged by public health authorities. Some of these injuries present as neurological disorders resulting in life-changing disabilities and financial hardship for many Australian families.
- *Lockdowns were necessary to keep the public safe from Covid-19.*
 - Lockdowns did not prevent infection with or transmission of Covid-19. Eventually, the CCP, which has no compunctions about using any means to control the population, abandoned lockdowns as a measure to control the spread of Covid-19 because of the damaging impacts upon the Chinese economy.

To suggest that the presence of misinformation and disinformation on social media undermined public health efforts to contain and treat the virus is unjust. The vast majority of Australians did

² <https://www.infrastructure.gov.au/departments/media/news/new-disinformation-laws>

³ <https://www.homeaffairs.gov.au/foi/files/2022/fa-220200215-document-released.PDF>

⁴ <https://www.health.nsw.gov.au/Infectious/covid-19/Documents/weekly-covid-overview-20221231.pdf>

exactly as they were told during the 18 months to June 2021 and beyond. There was a high vaccination rate and most people acted according to lockdown and curfew rules most of the time. If the measures imposed upon Australians didn't have the desired outcome it is because the measures didn't work rather than because of the presence of content that was in opposition to the authorities' narrative.

The reasons for the erosion of trust in Australian democratic institutions following the Covid-19 era is no mystery. Public institutions have betrayed the trust of Australians by disseminating material which contradicted peoples' lived experiences and enforced actions which resulted in negative consequences, some of which are still being played out and will continue to do so for decades to come. Evidence to support the extreme health-related Governmental policy decisions throughout 2020-2022 has not been produced.

Statements were issued by some Australian democratic institutions as if they were fact, when common sense should have made it clear that some things could not have been known at the time, e.g. that Covid-19 vaccines were safe and effective for the broader population, even though they had only been in existence for a short period.

This Bill will not only fail to help Australian democratic institutions to regain trust but will deepen the mistrust in them.

The way to gain trust is to be trustworthy. Tell the truth.

The growth of misinformation and disinformation causes harms to individuals and businesses

The digital landscape is a mixture of views and opposing views, useful content and useless content, truth and falsehood, advice on anything from self-help to violence and destruction, material from trolls and good Samaritans and everything in between. End users of digital platforms may choose to act upon something they see on the internet, the same way they can choose to act upon something that is read in a book or heard in a conversation. That is the choice of the individual for which they must take personal responsibility and own the consequences.

If the Australian education system is robust enough, the population will have the tools to be able to make decisions for themselves think though the consequences of their own actions.

Examples of harm that it is expected the Bill will address are⁵:

- Hatred against a group in Australian society on the basis of ethnicity, nationality, race, gender, sexual orientation, age, religion or physical or mental disability
- Disruption of public order or society in Australia
- Harm to the integrity of Australian democratic processes or of Commonwealth, State, Territory or local government institutions
- Harm to the health of Australians
- Harm to the Australian environment
- Economic or financial harm to Australians, the Australian economy or a sector of the Australian economy

⁵<https://www.infrastructure.gov.au/department/media/publications/communications-legislation-amendment-combatting-misinformation-and-disinformation-bill-2023-guidance>

Examples of serious harm are:

- Misinformation about a group of Australians inciting other persons to commit hate crimes against that group
- Misinformation that encouraged or caused people to vandalise critical communications infrastructure
- Misinformation undermining the impartiality of an Australian electoral management body ahead of an election or a referendum
- Misinformation that caused people to ingest or inject bleach products to treat a viral infection
- Misinformation about water saving measures during a prolonged drought period in a major town or city
- Disinformation by a foreign actor targeting local producers in favour of imported goods

The greatest potential for harm is when governments force or coerce people to act upon untruths, as the State has Law Enforcement, and other instruments, at their disposal. There are numerous examples where governments have made bad decisions, based upon incorrect assumptions or information, that have created widespread personal, political, public health, economic or environmental harm.

Examples of historical harmful consequences of government policy include:

- The starving of millions in the USSR with the Soviet famine of 1930-1933 following the implementation of Stalin's collectivist farm policy;
- China's one child policy, which ran from 1980 to 2016 in an attempt to limit population growth, and has resulted in issues including proportionally greater numbers of elderly people and fewer younger people to support them, a shrinking workforce, skewing of the sex ratio such that there are more males than females and therefore fewer females available for marriage and millions of males without a female partner, and a significant drop in fertility rates to below replacement value;
- Argentina's raising of wages without commensurate raising of taxes or increase in productivity in the latter half of the 20th Century, excessive government spending and a high foreign debt to GNP ratio, printing money and other actions compounded to produce an inflation rate of around 100% p.a. and interest rates of up to 97% p.a. in 2023.

An example of government action that caused harm to individuals and business in Australia occurred during the Covid-19 era. The lockdowns caused suffering for many Australians who endured experiences such as decimation of businesses, loss of employment, inability to earn a living and subsequent financial distress, diminished mental health, diminished physical health and wellbeing, loneliness and damaged socialisation through social isolation, removal of activities and interactions that give meaning to peoples' lives, inability to access goods due to supply chain disruption, gaps in education, and many other forms of suffering not listed here. In many cases these consequences will continue to be felt and/or manifest themselves for decades to come. The economic impact of the expansion of Australia's sovereign debt will be felt for generations to come.

This Bill would not have prevented such harm from occurring, but would, instead, have exacerbated it.

It is the job of Government to take multiple factors into consideration when determining how to address a particular problem. Focusing on a unidimensional issue, that being deaths due to Covid-19, the governments of many Western countries, including Australia, utterly failed their citizens by not making allowance for the impact upon their mental and broader physical health, social needs and a plethora of other aspects, as well as the economy, supply chains, etc.

The imposition by government of actions that caused harm to Australia and Australians has added to the mistrust in Australian democratic institutions.

Exceptions from the ACMA's Code and Standard-Making Powers

Exceptions from the ACMA's code and standard-making powers are:

1. Content authorised by the Australian or a, State, Territory or Local Government,
2. Content produced by a professional news source that is subject to particular recognised industry standards, codes of practice or similar rules and has editorial independence from the subjects of the news source's news coverage,
3. Content produced by or for an accredited educational institution and
4. Content produced in good faith for the purposes of entertainment, parody or satire.

Holding Government bodies to a different standard around the dissemination of material paves the way for propagandist activity, removes any expectation of justifying their policies and actions with evidence and stifles opposing argument despite what is true and what is false.

Governments make mistakes, too.

Misinformation and Disinformation

For the purposes of the Bill, the definitions⁶ of misinformation, disinformation and harm are as follows:

- Misinformation encompasses content that contains information that is false, misleading or deceptive, and that the provision of the content on the digital service is reasonably likely to cause or contribute to serious harm.
- Disinformation incorporates misinformation but with the intent to deceive.
- Harm includes hatred against any group in Australian society, disruption of public order or society in Australia, harm to the integrity of Australian democratic process, harm to the health of Australians, harm to the Australian environment, and economic or financial harm to Australians, the Australian economy a sector of the Australian economy.

Conspicuously absent from the Draft Bill is the definition of 'truth'. In fact, the word doesn't appear anywhere in the text of the Draft Bill. In order to correctly identify misinformation and disinformation, the truth, or at least part of it, must be known.

Truth and who possesses it

There are many issues that are the subject of discussion and argument within Australian society and politics today. They are deep and complex. They cannot be accurately summarised in brief. They do not have simple solutions, and there is not consensus on them.

⁶ <https://www.infrastructure.gov.au/department/media/publications/communications-legislation-amendment-combatting-misinformation-and-disinformation-bill-2023> subclauses 7(1), 7(2) and 2.

The truth is not necessarily a binary of true or false. It is complex, nuanced and takes time to ascertain. The notion that the whole truth of any matter is absolute and known at any point in time during its exploration is flawed – there can be information that comes to light after a protracted time period that can completely change previous perceptions about the truthfulness of the matter. Such is the nature of political, historical, scientific and other complex topics that society grapples with today.

When deciding whether something is true or false, time frame needs to be taken into account.

The truth can only be determined through investigation, research, discussion and debate via the free-flowing, open exchange of ideas amongst lots of individuals – over time. It may take months, years or even decades to discern fact from fiction.

The Bill does not take into account the nature of truth, the process of finding it or the time required to discover it.

The Arbiter of Truth

The Draft Bill⁷ and its supporting documentation, the guidance note⁸ and the fact sheet⁹, are crafted to state that the ACMA will not be the arbiter of truth, nor will the ACMA's powers include the ability to request that specific content or posts be removed from digital platform services. Rather, the ACMA's powers will be to:

“...enforce industry codes or make industry standards to encourage platforms to be ambitious in addressing the harms of disinformation and misinformation. These will provide ACMA with the ability to hold platforms to account should their voluntary efforts prove inadequate or untimely.¹⁰”

To paraphrase, the threat by the ACMA of pecuniary penalties and incarceration will be used to coerce digital platforms to censor content. Furthermore,

“A Misinformation and Disinformation Action Group will be established, bringing together key stakeholders across government and the private sector to collaborate and share information on emerging issues and best practice responses.¹¹”

Nowhere amongst the documents related to the Bill is there an explanation of how misinformation or disinformation will be identified, the time frames over which such determinations will be made and revised, the responsibilities or charter of the Misinformation and Disinformation Action Group (MADAG) or the make-up of that group.

The method of identification of misinformation and disinformation is further confused by the following:

⁷ <https://www.infrastructure.gov.au/department/media/publications/communications-legislation-amendment-combatting-misinformation-and-disinformation-bill-2023>

⁸ <https://www.infrastructure.gov.au/department/media/publications/communications-legislation-amendment-combatting-misinformation-and-disinformation-bill-2023-guidance>

⁹ <https://www.infrastructure.gov.au/department/media/publications/communications-legislation-amendment-combatting-misinformation-and-disinformation-bill-2023-fact>

¹⁰ <https://www.infrastructure.gov.au/department/media/news/new-disinformation-laws>

¹¹ <https://www.infrastructure.gov.au/department/media/news/new-disinformation-laws>

“The ACMA may investigate potential breaches of codes or standards made under the Bill. Complaints about systemic or a regular pattern of misinformation or disinformation on a service may be a trigger for the ACMA to investigate a digital platform provider’s compliance with a code or standard.¹²”

It is highly unlikely that the truth about complex issues can be possessed by any single entity, be that entity an individual person or an organisation, but it is distributed across multiple such entities. To assign the authority to be the arbiter of truth to a single entity is not likely to result in the accuracy of the determination of what is true and what is false.

How the ACMA will ascertain the adequacy of the systems and processes that platform providers have in place to combat misinformation and disinformation¹³ is unclear. Perhaps the ACMA will rely on the MADAG – a group of unelected individuals with backgrounds and qualifications that are unknown to the Australian public and the selection process of which is also unknown. Perhaps the ACMA will rely upon complaints from end users by platforms or the ACMA: whether the number or content of complaints is used to determine the adequacy of platforms’ systems and processes for dealing with misinformation and disinformation, or investigations as to whether the complaints are vexatious, uninformed or genuine will be conducted, is all unknown.

Material that reflects truth will inherently stand up to scrutiny and will have evidence to support it. Material that does not reflect the truth will be shown for what it is through debate in the public domain and lived experience. If the publishing of any assertion is met with suppressive penalties such as fines, incarceration, defunding, deplatforming, “cancellation” or threats of these and similar acts upon the author, publisher or platform, it suggests the inability or unwillingness of those opposing the assertion to debate or legitimately disprove the assertion.

The truth will speak for itself.

Conclusion

Threats of pecuniary or other severe penalty instill fear in those who would otherwise speak up about an issue of concern or weigh in on a discussion. This is a tactic of totalitarianism.

This Bill paves the way for totalitarian control over the modern-day Town Square.

George Orwell’s “1984” is a warning, not a blueprint. It is a literary work that does not end with a positive outcome – it paints a picture of a dystopian society in which no reasonable person would choose to live.

For the sake of Australians and the future of Australia, this Bill cannot be allowed to pass.

¹² See Complaints Mechanisms in <https://www.infrastructure.gov.au/department/media/publications/communications-legislation-amendment-combatting-misinformation-and-disinformation-bill-2023-fact>

¹³ Where voluntary efforts provide inadequate protection and the ACMA is satisfied that it is necessary to address systemic issues in relation to misinformation or disinformation on digital platform services, the ACMA will be able to request the industry make a new code. That code will become mandatory and enforceable following registration. [from Section 1.2 of the Bill Guidance Note]