

Submission

Communications Legislation Amendment (combatting Misinformation and Disinformation) Bill 2023

The Australian government's proposed Bill for combatting misinformation and disinformation, far from protecting Australia and its citizens from harm, has a real and disconcerting potential to harm the intellectual freedom of Australians. The proposed Bill includes a number concerning inconsistencies and dangerously leaves much room for interpretation in its definitions. I make this submission as an Australian citizen who deeply values the freedom of speech enjoyed in this country and wishes to see this right respected and upheld by the Australian government.

Loose definitions and possible abuse of power

The definitions provided for misinformation, disinformation and harm leave too much room for interpretation, creating the possibility for abuse of power by the ACMA.

Reasonable burden on freedom of political expression

It is stated that this Bill cannot infringe on freedom of political communication, yet it seems highly unlikely that this Bill could achieve what it is intended to achieve without damaging freedom of speech. Considering there are no specific guidelines on what is to be considered 'reasonable and not excessive', it is concerning that, in registering codes and developing standards, the ACMA may follow a rather liberal definition of 'not excessive'.

Defining serious harm

Subclauses 7(1)(d) and 7(2)(d) require the content to be capable of causing 'serious harm', yet the concept of serious harm is not clearly defined. If an individual expresses concerns about Australia's net zero policy, for example, could this be considered a serious threat to the Australian environment? Or might content expressing doubts about the Voice to Parliament be deemed capable of leading to 'serious' hatred against Indigenous Australians? If such content were removed from digital platforms under the new legislation, many Australians would not see that as a necessary move for their country's protection but rather as a stifling of freedom of political communication.

Defining truth

The documents accompanying the draft Bill claim that the ACMA will not have a role in determining what is considered truthful, yet in order to determine what is 'false, misleading or deceptive' there must be some standard of truth to refer to. Developing such a definition would be no easy task, considering philosophers have been debating this question for thousands of years without reaching any consensus.

Truth has been wrongly defined by governments and authoritative bodies many times in the past. Galileo Galilei correctly stated that the Earth revolves around the Sun, however this contradicted the accepted idea of 'truth' at the time and Galileo was placed by the powers of the Catholic Church under house arrest for the rest of his life. More recently, in relation to the COVID-19 pandemic governments have upheld stances which they have later needed to change as more evidence has become known. Some examples of stances which have now been proven incorrect are that the virus could not have originated in a lab (Lawton 2021, Salzman et al 2023), and that masks were effective at reducing infections (Jefferson et al 2023). In effect, it would be highly imprudent, if not misleading in itself, to brand as false any content communicating or disputing scientific theories, which by definition are liable to change as investigation continues.

Moreover, there are many cases in which it is impossible to define truth on an objective basis. Current theories of gender, for example, provide highly subjective definitions of gender based solely on the convictions of one individual. It is not possible, then, to accurately designate 'true' or 'false' to any statement about what defines a given gender.

If the ACMA takes it upon itself to create misinformation standards which in some way designate as false information which may turn out to be true, or state that something is true or false when it cannot be unequivocally proven so, then the ACMA would become something dangerously similar to an Orwellian Ministry of Truth.

Defining misleading or deceptive

It is disconcerting that content need not be strictly 'false' to be considered misinformation, but may be merely 'misleading' or 'deceptive'. These terms are even more elusive than the term 'truth' and create even more room for possible abuse of power by the ACMA. It is conceivable that content which mentions health problems experienced after receiving a vaccine, for example, might be labelled 'misleading' or 'deceptive' since it may imply that the vaccine caused these issues, even though this claim may not be explicitly made. There is a real danger that any content of this kind, which may in some way suggest that widely accepted opinions need to be reevaluated, may be seen as 'misleading' by the ACMA and required to be removed. This Bill threatens to hinder the free and honest conversations which are crucial to the wellbeing of Australian society. The more such conversations are monitored and filtered, the more Australia will resemble a totalitarian state.

Other issues

The ACMA 'will not monitor content directly'

The fact that the ACMA will not be directly monitoring content or creating misinformation codes will in effect make little difference if the ACMA has both the final say on whether a code is acceptable and the ability create standards which are more powerful than the codes. In fact, it is more likely that digital service providers will err on the side of censoring *too much* information when faced with penalties of millions of dollars for non-compliance. This poses a grave threat to freedom of expression in Australia.

No acquisition of property 'otherwise than on just terms'

There are no criteria presented for determining exactly what would be considered 'just terms'. This could provide room for varying interpretations and abuse of power.

Excluded content and services

It is not clearly explained why content is not to be included in the scope of this legislation if it is authorised by a political party, published by a professional news source or broadcast on national television, for example. It is disconcerting that under this legislation political parties would not be restrained from publishing misinformation as part of an electoral campaign whilst non-authorised content which criticises some aspect of that political party may be censored. Likewise, it is concerning that content broadcast on television and radio networks cannot be considered misinformation, and yet posts on digital platforms which disagree with the content broadcast by these networks could be labelled misinformation and taken down. Once again, this could open up the dangerous possibility of creating a Ministry of Truth-type scenario in which the official narrative cannot be wrong and citizens cannot disagree with it.

Fact-checkers

It is not explicitly stated how digital platform services or the ACMA are to determine whether information is true or false, but it is suggested both in subclause 33(f) and in the Guidance Note that this will involve fact-checkers. If this is the case, it should be ensured that these fact-checkers are as unbiased as possible.

Censoring may not have the intended effect

It should not be overlooked that removing content which is considered misinformation might not prevent the public from believing this information. In fact, if people are aware that certain content is being removed, this may give them even more cause to believe that the censored information is in fact correct but that the government, for its own interests, wishes it not to be known. For this reason it would be more effective to combat misinformation with true information, allowing users to see and evaluate both sides, rather than simply silencing some of the voices.

The general problem with censoring misinformation

This Bill is presented under the assumption that misinformation and disinformation pose a significant threat to Australians, and therefore the government needs to take steps to protect its citizens from it. However, there is no evidence to suggest that misinformation or disinformation on its own is dangerous. When people believe misinformation this may in some way lead them to inflict harm, but removing misinformation from digital platforms will not prevent many people from believing misinformation (or from spreading it through channels not covered by this Bill). This is not by any means a call for stricter regulations regarding misinformation, but rather a call for the opposite.

The best protection a person can have against misinformation is the ability to think critically, examining and evaluating all available information. Critical thinking is enriched when open conversation is encouraged, not when people are told what to think. Excessive censorship such as that proposed in this Bill would effectively create a 'nanny state' scenario in which critical thinking becomes unnecessary and perhaps even discouraged. The consequences of this are horrifying to imagine.

List of inconsistencies

- The ACMA is said to not have a role in determining truthfulness, yet there is an implied requirement to have some standard of truth to refer to when developing misinformation standards, an action which is to be performed by the ACMA.
- The draft Bill itself includes the requirement to not 'infringe any constitutional doctrine of implied freedom of political communication' (subclause 60(d)), yet this new legislation would likely have little effect if it were completely faithful to this requirement.
- One definition of harm is 'harm to the integrity of Australian democratic processes'. Censoring information on digital platforms is likely to negatively affect the open discussions necessary for a true democracy to function.
- Content authorised by a government body is exempt from any rules about misinformation. Thus, the very content of this draft Bill could be presenting false information without any repercussions.

Conclusion

Despite being presented as necessary for the good of Australians, it would be inappropriate and dangerous for a government body such as the ACMA to have powers to control online information as proposed in this draft Bill. The proposed legislation provides possibilities for abuse of power and totalitarian-style control of the Australian population and has various other issues which would prevent this legislation from having any positive influence on the lives of Australians.

References

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