

Submission to draft misinformation bill by John O'Donnell

1 Draft exposure bill

Introduction

This is your chance to have a say on the proposed laws to hold digital platform services to account and create transparency around their efforts in responding to misinformation and disinformation in Australia.

We are seeking your views on the draft Bill and whether it strikes an appropriate balance on a range of issues, including:

- freedom of expression*
- the complexity of content exemptions*
- the scope of the private message exemption*
- the size of the penalties and any other issues.*

My submission is outlined below.

2 Concerns in relation to the Draft exposure bill

Concerns in relation to this draft legislation are outlined below.

1 Simplified outline of this Schedule

The ACMA has a graduated set of powers in relation to misinformation and disinformation on certain kinds of digital platform services. The ACMA may make digital platform rules requiring digital platform providers to keep records and report to the ACMA on matters relating to misinformation and disinformation on digital platform services. The ACMA may obtain information, documents and evidence from digital platform providers and others relating to those matters. The ACMA may publish information relating to those matters on its website. Bodies or associations representing sections of the digital platform industry may develop codes in relation to measures to prevent or respond to misinformation and disinformation on digital platform services. If the ACMA registers a misinformation code, digital platform providers in the relevant section of the digital platform industry must comply with the code. Where there is no registered misinformation code, a registered misinformation code is deficient or there are exceptional and urgent circumstances, the ACMA may determine a standard to provide adequate protection for the community from misinformation or disinformation on digital platform services. Digital platform providers are required to comply with misinformation standards that apply to them.

This is excessive government in action, I believe a misuse of government and a restriction on expression of speech for important issues across Australia.

The digital platform service providers should be allowed/ encouraged to have their own register in relation to harassment/ misuse of this legislation by ACMA and any others misusing these powers.

The names of complainants to ACMA in regards to bill issues must be publicly available.

This will soon assist in highlighting government organisations, politicians and individuals up to no good.

Excluded content for misinformation purposes means any of the following:

- (a) content produced in good faith for the purposes of entertainment, parody or satire;*
- (b) professional news content;*
- (c) content produced by or for an educational institution accredited by any of the following:*
 - (i) the Commonwealth;*
 - (ii) a State;*
 - (iii) a Territory;*

(iv) a body recognised by the Commonwealth, a State or a Territory as an accreditor of educational institutions;

(d) content produced by or for an educational institution accredited:

(i) by a foreign government or a body recognised by a foreign government as an accreditor of educational institutions; and

(ii) to substantially equivalent standards as a comparable Australian educational institution;

(e) content that is authorised by:

(i) the Commonwealth; or

(ii) a State; or

(iii) a Territory; or

(iv) a local government.

This excluded list is very disappointing and does not cover independent experienced people nor retired people in their fields, that provide expert opinion and just as importantly alternative opinion.

It is essential to understand that government at any level, education institution, news organisations don't know the best in every case, noting many governments have agendas and in some cases they want to remove alternative views. Many universities and media are left wing, many have activist personnel on board, this is not hard to find. A small amount of this has been identified through retractions, a lot more to be identified. So why are these groups placed on this pinnacle, this highlights how risky this legislation is to our society.

This is a massive restriction against independent experienced people and retired people in their fields, that provide expert opinion in papers and articles and provide important alternative opinion.

harm means any of the following:

(a) hatred against a group in Australian society on the basis of ethnicity, nationality, race, gender, sexual orientation, age, religion or physical or mental disability;

(b) disruption of public order or society in Australia;

(c) harm to the integrity of Australian democratic processes or of Commonwealth, State, Territory or local government institutions;

(d) harm to the health of Australians;

(e) harm to the Australian environment;

(f) economic or financial harm to Australians, the Australian economy or a sector of the Australian economy

A lot of retired land and fire managers write about fire issues, including on digital platforms. Can such articles recommending increased mild burning across Australia and associated issues be misconstrued against the environment? Aboriginals did this burning for 60,000 years. I am sure someone will find a way to complain about such free speech under these misguided arrangements.

A lot of universities undertake research to stop native forestry and mild fire programs and at times write articles with selective quotes that aren't correct. Will this be still allowed under these misguided arrangements? Probably, because they are an education institution. This arrangement is a total abuse of power and restrict alternative views under freedom of expression. Are universities totally untouchable, if so, this is a disgrace to our nation.

2.1 ACMA 7 Misinformation and disinformation

(1) For the purposes of this Schedule, dissemination of content using a digital service is misinformation on the digital service if:

(a) the content contains information that is false, misleading or deceptive; and

- (b) the content is not excluded content for misinformation purposes; and*
- (c) the content is provided on the digital service to one or more end-users in Australia; and*
- (d) the provision of the content on the digital service is reasonably likely to cause or contribute to serious harm.*

(2) For the purposes of this Schedule, dissemination of content using a digital service is disinformation on the digital service if:

- (a) the content contains information that is false, misleading or deceptive; and*
- (b) the content is not excluded content for misinformation purposes; and*
- (c) the content is provided on the digital service to one or more end-users in Australia; and*
- (d) the provision of the content on the digital service is reasonably likely to cause or contribute to serious harm; and*
- (e) the person disseminating, or causing the dissemination of, the content intends that the content deceive another person. Note: Disinformation includes disinformation by or on behalf of a foreign power.*

(3) For the purposes of this Schedule, in determining whether the provision of content on a digital service is reasonably likely to cause or contribute to serious harm, have regard to the following matters:

- (a) the circumstances in which the content is disseminated;*
- (b) the subject matter of the false, misleading or deceptive information in the content;*
- (c) the potential reach and speed of the dissemination;*
- (d) the severity of the potential impacts of the dissemination;*
- (e) the author of the information;*
- (f) the purpose of the dissemination;*
- (g) whether the information has been attributed to a source and, if so, the authority of the source and whether the attribution is correct;*
- (h) other related false, misleading or deceptive information disseminated;*
- (i) any other relevant matter. Note: See the definition of harm in clause 2. (4) Subclause (2) does not limit subclause (1).*

This is legislation/ regulation gone mad, and will restrict expression of speech. Refer comments throughout this document.

Disinformation by or on behalf of a foreign power is an issue that needs to be addressed.

ACMA variation of misinformation standards

51. Variation of misinformation standards

1) The ACMA may, by legislative instrument, vary a misinformation standard that applies to participants in a particular section of the digital platform industry if it is satisfied that it is necessary or convenient to do so to provide adequate protection for the community from misinformation or disinformation on digital platform services of those participants.

(2) Before varying the standard, the ACMA must consider:

- (a) whether the standard (as varied) would burden freedom of political communication; and*
- (b) if so, whether the burden would be reasonable and not excessive, having regard to any circumstances the ACMA considers relevant.*

This is also legislation/ regulation gone mad, and will restrict expression of speech. Refer comments throughout this document. ACMA is the whole arbiter in this and can be easily influenced by the Minister in charge or the PM. These things happen all the time.

2.2 ACMA Tips to spot misinformation or disinformation

Online misinformation ACMA pdf

- *ACMA information addresses this matter, reporting or making a complaint about online misinformation:*
- *Look for the facts. Is the story factual, or is it just someone's opinion or personal experience? Is the story plausible? Be extra careful if the material is related to an emotionally charged or divisive issue.*
- *Read the full story. Headlines and images can be misleading and may only give part of the story. Check the date of publication to see if the story is current.*
- *Look at images and videos closely. See if they have been or could have been manipulated.*
- *Verify the information. Check **official sources** or visit a fact-checking website. Try RMIT ABC Fact Check AAPT Fact Check and AFP Fact Check*
- *If in doubt, don't share it. You can also contact the platform directly if you have concerns.*

There are a lot of divisive issues in our society, but freedom of expression needs to remain in place. There is increasing eco activism in some government departments, universities and media at times equal to conservation groups, and it is essential that freedom of expression remains in place to assist in balancing this issue.

The comment re fact checking websites is extremely disappointing. Many of the fact checks are wrong, based on journalists' opinion or they check with others of known views. Check on recent fact checks, including political fact checks, the voice fact checks and fire fact checks. In a number of cases, the authors have not corrected wrong information that has been raised in the fact check. Journalists may have skills in media, but most have never worked in applicable sectors and are definitely not experts, and what makes it worse many have extremely green views questioning objective thinking.

2.3 Reporting or making a complaint about online misinformation

If you come across something online that you think is misinformation, you can report it directly to the platform. Click on the name of the platform below to see the relevant page:

- Apple News
- Facebook (Meta)
- Google Search
- Instagram (Meta)
- Linked In (Microsoft)
- Bing (Microsoft)
- Tic Tok
- Twitter
- You Tube (Google)

It is my opinion is that it will be misused, particularly by left leaning groups, media and some universities, some governments against other independent and opposite views.

There needs to be balances against misuse of this arrangement.

3 Major concern areas

I have identified a number of major concern areas below.

3.1 Excessive powers to ACMA

The bureaucrats at ACMA will have the final say on what is or isn't the truth. And anyone can complain to ACMA about what you write or say online. ACMA may not accept what you believe to be the truth which may lead to ACMA accusing you of spreading "misinformation" or "disinformation" and you then have to face the consequences.

Shadow Minister for Communications David Coleman raised some concerns about the new proposed law, noting, "This is a complex area of policy, and government overreach must be avoided."

I totally agree with that. This legislation is overreach.

3.2 Excessive fines

The Communications Legislation Amendment (Combatting Misinformation and Disinformation) Act 2023 could see fines of 10,000 penalty units (\$2.75 million currently) or 2 per cent of global turnover (whatever is greater) for corporations, or 2,000 penalty units (\$0.55 million currently) for individuals who are noncompliant with registered code.

Greater penalties await those deemed to be in non-compliance with the industry standard facing a maximum of 25,000 penalty units (\$6.88 million currently) or 5 per cent of global turnover (whatever is greater) for corporations, or 5,000 penalty units (\$1.38 million currently) for individuals.

According to the bill, misinformation is defined as information that is false, misleading or deceptive.

The bill outlines the potential harm caused by non-compliant content as hatred against a group in Australian society, the disruption of public order or society in Australia, or harm to the integrity of Australian democratic processes or the Commonwealth, state, territory or local government institutions, harm to the health of Australians, harm to the Australian environment, economic or financial harm to Australians.

These fines are excessive and beyond a joke. What governments, and particularly left leaning governments, fail to realise is that more and more regulation never solves major issues.

3.3 What could a government determine as misinformation would it depend on who is in power at the time?

What could a government determine as misinformation would it depend on who is in power at the time? Yes, that is what I asked. Of course, governments will push ACMA against issues the government doesn't like, this won't solely be about ACMA. I believe that there is going to be a lot of left leaning action behind the scenes.

3.4 Against sensible freedom of expression

Excluded content for misinformation purposes includes content produced in good faith for the purposes of entertainment, parody or satire, professional news content, but also all content produced by or authorised by commonwealth, state or territory governments or bodies recognised by the Commonwealth, a state or territory as an accreditor of educational institutions.

Could harming the Australian environment be as simple as discussing carbon in a non-demonising way? Or could harm to the integrity of a commonwealth, state or local government be pointing out corruption or misleading and deceptive behaviour or inadequate approaches to land and fire management?

Another example is against the mining sector. The world cannot afford for Australia to delay development as a critical minerals supplier, an international mining conference has been told. Calling out "misinformation", federal opposition resources spokeswoman Susan McDonald warned delegates that the future of the sector is at risk if antimining sentiment is allowed to flourish.

It will be very interesting to see if the Labor party address all the concerns raised in relation to this bill, or not, and only support left side so called misinformation.

3.5 Does not cover independent experienced people nor retired people in their fields that provide expert opinion and just as importantly alternative opinion

This legislation is very disappointing and does not cover independent experienced people nor retired people in their fields that provide expert opinion and just as importantly alternative opinion.

It is essential to understand that government at any level, education institution, news organisations doesn't know best in every case, governments/ many universities and media have agendas and, in some cases, they want to remove/ stop alternative views.

This is a massive restriction against independent experienced people and retired people in their fields that provide expert opinion in papers and articles and provide important alternative opinion. It is a massive restriction against freedom of expression.

3.6 In many cases Government is what we need to watch

It is sinister that this left-wing government has exempted itself from the bill. So the government can say whatever it wants digitally online and never be accused of spreading "misinformation" or "disinformation" or influencing discussion.

As noted in Jo Nova in regards to US government intervention into digital platforms:

The Judge explained that the government had used its power to silence the opposition: "Opposition to COVID-19 vaccines; opposition to COVID-19 masking and lockdowns; opposition to the lab-leak theory of COVID-19; opposition to the validity of the 2020 election; opposition to President Biden's policies; statements that the Hunter Biden laptop story was true; and opposition to policies of the government officials in power. All were suppressed," Doughty wrote.

These are serious matters and I suspect some of them are happening in Australia. Not only is expression of speech essential, but it is essential that governments do not suppress true information, saying it isn't.

During the recent Covid-19 pandemic, governments around the world conspired with tech giants to remove, suppress and even deplatform the accounts of experts whose views differed from the government line.

Labor's "Orwellian" misinformation bill could lead to bureaucrats censoring any social media posts critical of the government, while the government's own posts are exempt.

In truth, as I have got older, I am even more wary of governments, particularly when they undertake approaches such as this draft bill that reduces expression of speech for many.

3.7 Information can and does change over time

There are many cases where the truth changed over time. An example is the likely source of covid. Others are in relation to different and new treatments for covid.

When new information comes out, the truth can change.

4 Key digital sector concerns in relation to the legislation

Concerns by digital providers in relation to this draft legislation are outlined below.

4.1 Human Rights Commission doesn't want draft misinformation laws

Sky News Opinion Sharri Markson 19 July 2023:

The Australian Human Rights Commission has weighed in to the debate about Labor's proposed misinformation laws, says Sky News host Sharri Markson.

"The laws that will fine social media companies millions if they don't take down content deemed to be misinformation or even just 'harmful'," Ms Markson said.

"The nation's top human rights body says there are inherent dangers in any body, be it government, a government taskforce or a social media platform, becoming the sole arbiter of truth, this in the Australian today.

"The Human Rights Commission said in a submission:

"There is a real risk that efforts to combat online misinformation and disinformation by foreign actors could be used to legitimise attempts to restrict public debate, censor unpopular opinions and enforce ideological conformity in Australia'.

"All efforts to combat misinformation and disinformation need to be accompanied by transparency and scrutiny safeguards to ensure any limitations imposed upon freedom of expression are no greater than absolutely necessary and strictly justified'."

I couldn't agree more.

4.2 Major digital providers don't want draft misinformation laws

Labor's draft misinformation laws could undermine 'legitimate political expression', warns US tech giant Meta 11 July 2023 Sky News:

Facebook and Instagram's parent company has warned a parliamentary committee that Labor's proposed misinformation crackdown could inadvertently chill "free and legitimate political expression."

"We can see some potential for that power to be abused, or for it to be used in a way that inadvertently chills free and legitimate political expression online."

I also understand that Twitter and the nation's top lawyers have described Labor's proposed crackdown on misinformation and disinformation "inherently wrong" and a "dangerous piece of legislation" that could chill freedom of speech in Australia.

I share all these concerns.

4.3 Other articles

There have been a mass of articles criticising this legislation, absolutely necessary. I note a very good article by Ken Andrews in the Spectator titled "ACMA and bad law. The new misinformation law is a disgrace" dated 1 August 2023. I agree with the heading and contents, it is recommended reading.

5 Opportunity areas in relation to the draft legislation

I have identified a number of opportunity areas:

5.1 The legislation does not cover independent experienced people nor retired people in their fields that provide expert opinion and just as importantly alternative opinion

This legislation is very disappointing and does not cover independent experienced people nor retired people in their fields that provide expert opinion and just as importantly alternative opinion.

It is essential to understand that government at any level, education institution, news organisations doesn't know best in every case, governments have agendas and in some cases they want to remove alternative views.

This is a massive restriction against independent experienced people and retired people in their fields that provide expert opinion in papers and articles and provide important alternative opinion in our society.

5.2 There are no guardrails, complaints about ACMA and appeal

An important guard against unintended consequences is to ensure ACMA's powers are carefully defined along with terms and likely circumstances requiring action, with mechanisms for appeal

5.3 Digital platform services own register that can be used to highlight government/ ACMA/ other misuse of powers

The digital platform service providers should be allowed/ encouraged to have their own register in relation to harassment/ misuse of this legislation by ACMA and any others misusing these powers.

5.4 Let digital platforms have a colour code when mis or disinformation could apply and let people make up their own mind

One opportunity area may be to let digital platforms have a colour code when mis or disinformation could apply and let people make up their own mind if mis or disinformation applies, except for foreign interference.

5.5 Australian Human Rights Commission Inquiry into the risk posed to Australia's democracy by foreign interference through social media 16 February 2023

The Australian Human Rights Commission Inquiry into the risk posed to Australia's democracy by foreign interference through social media made 9 recommendations in regards to foreign interference through social media on 16 February 2023.

Recommendations

Recommendation 1

The Australian Government should establish a permanent whole-of mis and disinformation government taskforce dedicated to preventing and combating foreign interference by way of cyber-manipulation in Australia.

Recommendation 2

The Australian government should establish clear and mandatory requirements, and pathways, for social media organisations to report suspected foreign interference. Such reports should be made to the proposed entity noted above in Recommendation One, whose activities in this area must incorporate robust safeguards to protect freedom of expression.

Recommendation 3

There must be greater investment in incorporating digital literacy into the Australian education curriculum, including information about online safety, data privacy, identifying misinformation and disinformation and the role algorithms play in a users' online experience.

Recommendation 4

The Australian Government should introduce a public education campaign on digital literacy, and develop online digital literacy resources that are available to the general public.

Recommendation 5

The Australian Government should audit the use of social media platforms on government-issued devices within the Australian Public Service, and issue general guidance regarding device security.

Recommendation 6

The Australian government should introduce transparent user-data privacy and user-data protection frameworks that apply to all social media and internet companies.

Recommendation 7

Social media platforms should be legally required to provide users with greater control over their personal data. A users' data sharing setting should always be switched off by default.

Recommendation 8

The Australian Government should mandate that all social media platforms publicly disclose the content that they censor and make it an offence to censor content where that has not been publicly disclosed to users.

Recommendation 9

The Australian Government should take a proactive approach to protecting groups that are common targets of foreign interference but are not classified as government institutions.

Foreign interference is a big issue and needs to be actioned.

Using recommendations 1-9, it would be easy to develop AHRC recommendations that address the issues re misinformation, reducing the extent of this mind-boggling misinformation exposure bill, using an action and cooperation approach, not legislation. This needs to be focussed on governments working cooperatively with digital platforms and not impacting on freedom of expression of the Australian community. This would be a much better way to go rather than the measures in the exposure bill. Of course, this approach would need to be adapted from non-foreign interference mis and disinformation recommendations.

I note in the press "The Australian Human Rights Commission has warned against giving any body the power to be 'the sole arbiter of truth'". This matter needs to be actioned, the powers of ACMA are too great.

6 Conclusions

The government/ ACMA are seeking views on the draft Bill and whether it strikes an appropriate balance on a range of issues, including:

1. freedom of expression

The abuse of powers in regards freedom of expression are discriminatory, refer comments above.

2. the complexity of content exemptions

The exemptions are discriminatory, refer comments above.

3. the scope of the private message exemption

No comment

4. the size of the penalties and any other issues.

There are excessive penalties beyond belief and the whole system can be misused by governments and leftist groups against alternative views that they don't like.

The legislation definitely doesn't strike an appropriate balance on a range of issues, as outlined above.

Another major concern in relation to this legislation is that the government will not listen to legitimate concerns.

Another concern is that this legislation will be widened/ varied in the future, seriously weakening freedom of expression.

I have identified seven major concern areas in Section 3.

Massive concerns by digital providers and others in relation to this draft legislation are outlined in Section 4.

I have identified five opportunity areas, hopefully the legislation can be totally revamped and sensible action/ cooperative approaches developed.

John O'Donnell

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