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Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023

The *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023* (**the Bill**) is an assault upon freedom of speech and the political liberty of Australians.

The Bill provides that:

- Misinformation is online content that is false, misleading or deceptive, that is shared or created without an intent to deceive but can cause and contribute to serious harm.
- Disinformation is misinformation that is intentionally disseminated with the intent to deceive or cause serious harm.
- Serious harm is harm that affects a significant portion of the Australian population, economy or environment, or undermines the integrity of an Australian democratic process

The Bill proposes to give the *Australian Communications and Media Authority (ACMA)* the following powers to combat “*harmful misinformation and disinformation online*”:

- information-gathering powers, including the power to obtain Australia-specific data on measures platforms are taking to address misinformation;
- the power to make record keeping rules, requiring platforms to maintain and provide the ACMA with records of locally relevant data on measures to address misinformation and disinformation;
- reserve powers to register and enforce industry codes; and
- reserve powers to make industry standards.

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 to make a new code. That code will become mandatory and enforceable following registration.

While clause 60 of the Bill provides that the relevant parts of the Act (as the Bill will become if enacted) will “*have no effect to the extent (if any) that their operation would infringe any constitutional doctrine of implied freedom of political communication*” that just means that any digital platform service provider, or content creator, who wishes to challenge any action taken by the ACMA on constitutional grounds will have to litigate the matter through the courts involving them in considerable time and costs. It will be much easier for a digital platform service provider to just suppress content which the provider fears may lead ACMA to take mandatory and enforceable action against them.

Content creators will probably lack the resources to mount a legal challenge or the inclination to do so if the content creator is located outside Australia. This will not just affect a content creators' right to speak. It will also impact upon Australians' right to hear, to investigate and to form his or her own judgment upon important issues. The legislation will therefore have a highly chilling effect upon the practical exercise of the constitutional implied freedom of political communication.

Although the Bill does not propose to vest ACMA with the power to request specific content or posts be removed from digital platform services, the exercise of the powers with regards to misinformation codes and standards which the Bill does propose will necessitate ACMA forming a view as to what is or is not misinformation or disinformation before exercising those powers. However, the determination of what is or is not misinformation or disinformation is a matter with respect to which neither ACMA, digital platform providers, nor any other body, possesses any special competence.

Ironically, this is shown in ACMA's "A report to government on the adequacy of digital platforms' disinformation and news quality measures" of June 2021 (**the ACMA Report**) which led to the Bill but which itself demonstrates that an official body cannot be relied upon to identify what is or is not misinformation correctly.

The ACMA Report has not aged well.

It includes among its examples of "misinformation" the following: "wearing a mask does not significantly reduce your risk of infection or spreading the virus" (page 9). However, on 30 January 2023, the Cochrane Database of Systematic Reviews (International Standard Serial Number (ISSN):1469-493X), which is the leading resource for systematic reviews in health care, published a report entitled "Physical interventions to interrupt or reduce the spread of respiratory viruses". This included evidence published up to October 2022 and found that:

"...wearing a mask may make little to no difference in how many people caught a flu-like illness/COVID-like illness...and probably makes little or no difference in how many people have flu/COVID confirmed by a laboratory test..."

The ACMA Report also included anti-lockdown "narratives" as "misinformation" (pages 8 and 18). However, in January 2022, the Johns Hopkins Institute of Applied Economics, Global Health and the Study of Business Enterprise published "A Literature Review and Meta-Analysis of the Effects of Lockdowns on COVID-19 Mortality" which concluded:

"...While this meta-analysis concludes that lockdowns have had little to no public health effects, they have imposed enormous economic and social costs where they have been adopted. In consequence, lockdown policies are ill-founded and should be rejected as a pandemic policy instrument..."

Subsequently, in June 2023 the Institute of Economic Affairs published a report entitled "Did Lockdowns Work? The Verdict on Covid Restrictions". Their analysis was based on the evidence found in studies published between 1 January 2020 and 21 February 2022. This report concluded:

"...the COVID-19 pandemic gave rise to widespread lockdowns and some of the greatest infringements on personal liberties under peacetime conditions in history. In the final analysis, these infringements generated negligible public health benefits while imposing a set of massive costs on society. As we interpret the available evidence, a cost-benefit analysis of the lockdowns applied suggests that the policy of lockdowns represents a global policy failure of gigantic proportions..."

The ACMA Report also includes "anti-vaccine" or "vaccine hesitant" content as supposed "misinformation" Vaccine injury is a well-known and acknowledged issue. That is why vaccine development usually takes ten to fifteen years. However, the vector and mRNA injections, which function in a completely different way to normal conventional vaccines and had never been authorised for use before, were brought into use without any assessment of their medium and long term effects. There was therefore nothing inherently irrational about scepticism as to their safety. Although the ACMA Report acknowledges "legitimate concerns around vaccine safety" (page 24) it generally

appears to consider that all the content about vaccines which were opposed to official narratives were “misinformation”.

However, Pfizer's own confidential report entitled “5.3.6 Cumulative Analysis of Post-Authorization Adverse Event reports of PF-07302048 (BNT 162b2) received through 28-Feb-2021” was among a large volume of documents which became public as a result of a court order dated 2 February 2022 in proceedings brought by an organisation called *Public Health and Medical Professionals for Transparency* in the US District Court. This report showed that in a period of just two and a half months since the use of the mRNA injection was authorised on an emergency basis, there had been a total of 42,086 case reports (25,379 medically confirmed and 16,707 non-medically confirmed) containing 158,893 events in the USA and Europe including 1223 fatalities.

The official narrative throughout was that the mRNA injections were “safe and effective”. This is a view which reasonable minds could remain unpersuaded of for a number of reasons including the information contained in this report. If this information had been made public, people could have made better informed decisions about their health so far as deciding what, if any, injection they were willing to take. However, they were denied the opportunity of doing so because for a year this information was withheld. Oddly, it was necessary for *Public Health and Medical Professionals for Transparency* to take court proceedings against the Food and Drugs Administration in order to gain access to this information which should have been in the public domain from day one. It must surely be apparent to everyone that withholding relevant information equates to promoting misinformation.

The *Western Australian Vaccine Safety Surveillance – Annual Report 2021* was produced by the Immunisation Program, Communicable Disease Control Directorate and the COVID-19 Vaccination Program, Department of Health, Western Australia and published in 2022. It notes that the Covid 19 vaccination program (involving just the vector and mRNA injections) commenced in February 2021. The total adverse events following immunisation (AEFI) rate following a COVID-19 vaccine was 264.1 per 100,000 doses whereas for non-Covid vaccines the AEFI rate was 11.1 per 100,000 doses which was similar to the 2020 rate of 12.4 per 100,000 doses. The report noted that the rates of AEFI across the three COVID-19 vaccines administered in WA in 2021 were similar to national rates reported by the Therapeutic Goods Administration (TGA).

The TGA *Covid-19 vaccine safety report* of 27 July 2023 states that the TGA has identified only 14 reports where the cause of death was linked to vaccination from 996 reports which the TGA received and reviewed. However, the *Australian Bureau of Statistics Provisional Mortality Statistics* which were released on 28 July 2023 show that there have been 12.3% excess all cause deaths over the baseline average (for the years 2017 to 2019 and 2021) to 30 April 2023. The excess all cause death figure for 2022 was 15.3% (using the same baseline years) and for 2021 the figure was 5.7% (using the years 2015 to 2019 for the baseline). Internationally, the information available on the Human Mortality Database (associated with the Department of Demography at the University of California, Berkeley, the Max Planck Institute for Demographic Research and the French Institute for Demographic Studies) indicates that a number of countries have also experienced an increase in excess deaths such as the United States, Canada and Britain.

There are probably a number of factors contributing to the excess deaths but vaccine injury may be one of them. The *European Journal of Clinical Investigation* published a research letter by three Danish academics entitled “Batch-dependent safety of the BNT162b2 mRNA COVID-19 vaccine” which was accepted on 26 March 2023. The research letter stated that, unexpectedly, rates of suspected adverse effects (SAEs) varied considerably between vaccine batches in Denmark and serious SAEs and SAE related deaths displayed considerably greater variability between batches. There should be a similar rate and distribution of SAEs among batches. The Research letter acknowledged that the limitations of the passive reporting system for SAEs in Denmark means that the signals detected by the system cannot be used to establish causality and are hypothesis generating only but, the Research letter said, further studies were warranted. However, this is a signal that batch quality problems among the vaccines may be responsible for some of the reported SAEs including deaths and so may be contributing to the excess death figures. Strangely, official and mainstream content sources appear to be curiously incurious about investigating the excess death phenomenon.

Nonetheless, it is clear that there are a number of red flags indicating that serious investigation as to vaccine safety is warranted. Communicating significant concerns about this issue should not be dismissed as “*misinformation*” and suppressed. As set out above, those concerns are not based on nothing.

I have focussed on Covid-19 issues because the ACMA Report, which led to the Bill, places reliance on what it assumes to be “*misinformation*” concerning those issues. However, official statistics and scientific research show those assumptions to be misconceived and the rationale for the Bill refuted by ACMA’s own Report.

It is apparent from the ACMA Report that ACMA equates official or mainstream narratives with “*information*” and critiques of those narratives with “*misinformation*” or “*disinformation*”. The same misapprehension affects the promoters of the Bill. “*Professional news*” content, educational content and content authorised by the government of the Commonwealth, a State, a Territory or a local government area will all be exempt from the new proposed powers –as if those content sources were not capable of producing misinformation and disinformation themselves.

This inconsistency is irrational. If ACMA, a digital platform service provider or anyone else, possessed some special competence to determine what is or is not misinformation and disinformation for non-exempt content it, or they, would be equally competent to determine the same for the content sources currently proposed to be exempt. There would be no rational reason to exempt anyone. If any content is to be subject to the new proposed powers for ACMA, then all should be. It would be arbitrary and capricious to make some, but not all, subject to the new proposed powers.

The arrogance of the proposals in the Bill is astonishing. ACMA cannot get what is or is not misinformation correct in all issues concerning Covid 19 issues. But the powers in the Bill, if enacted, are not limited in scope and will apply to all areas of human experience in Australia. Plainly all ACMA will ever be able or willing to do is look to see what the exempt sources are saying about any particular issue and endeavour to secure the suppression of criticism and opposition from non-exempt sources by the exercise of the powers proposed to be vested in it. The question of the truth or falsity of the content will not enter into it.

The folly of the proposals in the Bill is equally astonishing. The Bill includes in the definition of “*harm*” the following: “*harm to the integrity of Australian democratic processes or of Commonwealth, State, Territory or local government institutions*”. If the Bill is enacted, it will inflict the most serious harm upon the integrity of Australian democratic processes. Freedom of speech is the essential underpinning of democracy. It is not an optional extra. Human beings have already learned that any problems caused by freedom of speech are far less serious than the problems caused by suppressing or inhibiting freedom of speech. Australia does not need to learn that lesson again the hard way. We need look no further than the ACMA Report itself for an example. It makes much of the \$11M cost of vandalism to mobile industry equipment arising from misinformation about 5G but compare that amount with the costs of the lockdowns with little public health utility to show for them. As early as 13 August 2021, the Sydney Morning Herald reported that the cost of the lockdowns was \$17 billion.

In December 2018, the Museum of Australian Democracy, in conjunction with the University of Canberra and the Institute for Governance and Policy Analysis published *Democracy 2025: Trust and Democracy in Australia – Democratic Decline and Renewal* in which they found that levels of trust in government and politicians in Australia were at their lowest levels since time series data had been available. There does not appear to have been any progress since then. The section of the Museum’s website entitled “*Trust and Democracy in Australia – a national survey of public opinion – see our latest findings*” just refers back to the December 2018 report.

The Bill, if enacted, will do nothing to diminish lack of trust in government and politicians. On the contrary, the rational and reasonable response to the enactment of the Bill would be to distrust any “*approved*” information since there may be no alternative information available to compare it with and judge it against.

All the democratic freedoms, including speech, expression and association, are related to freedom of thought, conscience and religion or belief. These are the essence of a free society. However, these

freedoms are under attack in Australia. The Democratic Labour Party is committed to defending and protecting these freedoms.

The Democratic Labour Party's position on free speech is very clear. While we may not agree with what you are saying, we will fight to the end for your right to say it. Opposing an idea should not equate with opposing the freedom with which that idea was expressed.

It is apparent that the Bill is fundamentally misconceived and is essentially anti-democratic. None of the detailed provisions within the Bill redeem it and it must be withdrawn.

Signed... *John Quinn pp AS Deem*

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