SUBMISSION re
Communications Legislation Amendment
(Combatting Misinformation and Disinformation) Bill 2023

July 2023

There are many ways to approach and analyse the proposed legislation, prepared by the government of Prime Minister the Hon. Anthony Albanese and Minister for Communications, the Hon. Michelle Rowland. I shall attempt to present a few of those perspectives and analyse the potential implications of the bill in this submission.

Overview and general comments

As a general comment, the proposed legislation / amendments represent a blatant attempt by the Albanese / ALP federal government to introduce ***censorship*** of well-known social media outlets such as Facebook, Instagram, Twitter and others, under the disguise of "protecting the community from harm". The bill would give the government huge power to impose massive fines on social media outlets if they refuse to act to remove posts which are deemed to be "misinformation" or "disinformation" in their content.

Whenever the word "censorship" is used, the overriding question then becomes: *"who or what is the ultimate authority that judges what contents should be censored?"* According to the proposed legislation, that authority would be the Australian Communications and Media Authority, **ACMA**. But which officials in ACMA would be making the call on which posts to censor? The legislation is silent on that matter, it simply does not address that extremely important detail.

How does the bill define "misinformation" and "disinformation"?

According to the draft legislation, the definition of the words misinformation and disinformation is identical. In section **7** we can read the following:

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;
(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;

But the identical definition of misinformation and disinformation ***is not*** how the words are defined according to world authorities or by accepted standards. In the real world, ***misinformation*** is defined as info that is false or untrue, but the person or platform relaying it sincerely believes that it is correct. In contrast, ***disinformation*** is defined as info that is known to be untrue or incorrect, and the person or platform relaying it knows it as such, thus the aim is to deliberately confuse or mislead.

From the Wikipedia entry (https://en.wikipedia.org/wiki/Misinformation):
"Misinformation is incorrect or misleading information. It differs from disinformation, which is *deliberately* deceptive and propagated information." Here is the Wikipedia entry

on disinformation (https://en.wikipedia.org/wiki/Disinformation): "**Disinformation** is false information deliberately spread to deceive people. It should not be confused with misinformation, which is false information but is not deliberate. Where misinformation refers to inaccuracies that stem from error, disinformation is a deliberate falsehood promulgated by design."

Incredibly, the draft legislation overlooks the important distinction between the two words! But in the Fact Sheet of June 2023 about the legislation – released by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts - there IS a correct definition of both misinformation and disinformation printed. Yet incredibly, in the draft legislation itself, that distinction is ignored!? That is very hard to understand.

The above Fact Sheet also claims that ACMA "will not have the power to request specific content or posts be removed from digital platform services", although ACMA ***will*** have the power "to create and enforce an industry standard (a stronger form of regulation), should a code of practice be deemed ineffective in combatting misinformation and disinformation on digital platforms." Those two statements are conflicting and contradictory in my view, and only serve to muddy or confuse the issue. In fact, according to provisions of the legislation, the government will be given power to impose huge fines, up to millions of dollars, for social media outlets that do not comply with the confusing, contradictory directives outlined in the Fact Sheet.

Is Australia ready to censor political opinions because they might be considered "misinformation"?

Debate and discussion – often leading to disagreements – will always be present about any contemporary issue. That is especially true in the political sphere, where disagreement is common and even to be expected on a daily basis between different parties.

As we know, during most of 2023 there has been persistent and at times heated discussion and debate about the proposed aboriginal Voice to Parliament on which there will be a constitutional referendum sometime later this year. It is not my intention to take sides in that discussion / debate or advocate for either the YES or NO vote, as that is irrelevant here. But let us ask ourselves this, is ACMA or any other government authority prepared to censor posts on social media that are considered "misinformation" or "disinformation" on the Voice? Can it be presumed that anyone who opposes the Albanese government's campaign for the YES vote is spreading misinformation or worse?

Recently (first week of July), the Hon. Linda Burney, Minister for Indigenous Affairs, claimed in parliament that proponents of the NO vote were spreading misinformation ("misinformation and scare campaigns"): **https://www.theguardian.com/australia-news/2023/may/22/linda-burney-blasts-peter-dutton-for-spreading-misinformation-on-indigenous-voice** . Here is the example of a prominent federal minister, speaking about a matter that has become politically charged and is evoking strong emotional responses among many Australians. Should ACMA have the power and authority to demand that persons who disagree with the government's position be censored? Or is Minister Burney herself liable to be censored for her remarks, if they can be viewed as misinformation?

The legislation amendments are recycled from failed attempts in the United States

The incredible thing about the proposed amendments is that they can be considered "recycled legislation" coming from America. In 2022, the administration of President Joe Biden set up the **Disinformation Governance Board**, ostensibly "….to protect national security by disseminating guidance to DHS agencies on combating misinformation, malinformation, and disinformation that threatens the security of the homeland." (https://en.wikipedia.org/wiki/Disinformation_Governance_Board). The Board only lasted a total of 10 months; it attracted criticism from not only the Republican Party but also concerned Americans in general. The US government attempt to censor information – under the pretext of "combating misinformation / disinformation" – was too obvious, too blatant. Attorneys-general of twenty different American states demanded that President Biden shut down the DGB: https://www.thecentersquare.com/national/article_c9ee1b92-cd33-11ec-b0ad-675b1ebc0b24.html .

In that failed attempt the American DHS, Department of Homeland Security, was the "umbrella authority" for the DGB. Here in Australia, that authority would become the ACMA if the legislation does pass. It is hard not to conclude that after the failed attempt of the Biden Administration to set up the DGB, that the Australian government was "ordered" by unknown authorities in the United States to introduce similar legislation here, in a sort of "copycat" manoeuvre. Or in other words, "well boys, we failed with the government censorship trial in America, now let's see if the Australians will fall for it."

Recent revelations from the US Congress, House Weaponization Subcommittee

The DGB was a blatant, public attempt to introduce censorship into the America experience. But there were other secret, hidden attempts made by some US government agencies with knowledge of the Biden Administration to censor what Americans were thinking and stating on social media. Recent revelations – there have been a whole series of those, dating back to 2022 and continuing into this year – point the finger at a relatively obscure agency, the Cybersecurity and Infrastructure Security Agency (CISA, not to be confused with the CIA). This report from recent hearings in the US Congress (https://www.foxnews.com/politics/house-weaponization-committee-biden-admin-colluded-big-tech-facilitated-censorship-americans):

"The House Weaponization Subcommittee says the Cybersecurity and Infrastructure Security Agency (CISA) has "facilitated the censorship of Americans directly" and through third-party intermediaries during the Biden administration….. The committee…. obtained non-public documents which lawmakers say reveals CISA "expanded its mission to surveil Americans's speech on social media, colluded with Big Tech and government-funded third parties to censor by proxy, and tried to hide its plainly unconstitutional activities from the public." The report states that CISA engaged in "surveillance," by expanding its mission from cybersecurity to monitor foreign "disinformation" to eventually monitor "all 'disinformation,' including Americans' speech."

"It also says CISA "exploited its connections with Big Tech and government-funded non-profits to censor, by proxy, in order to circumvent the First Amendment's prohibition against government-induced censorship." Specifically—the report says CISA-funded entities created reporting portals which "funneled 'misinformation' reports from the government directly to social media platforms." The report also alleges CISA engaged in "cover-ups" by trying to "cover their tracks ad cover up CISA's censorship of domestic speech and surveillance of American citizens' social media activity.

"This included scrubbing CISA's website of references to domestic 'misinformation' and 'disinformation,'" the report states.

"Misinformation and disinformation", that's the official narrative from the US government. It's the story of how the CISA used its connections to Big Tech in order to implement "proxy censorship" on the American public, of course without bothering to inform them of that. All under the guise of "combating misinformation and disinformation"……. Well, well, well. And now PM Albanese, Communications Minister Rowland and the ALP want to try that experiment here, perhaps hoping that very few Australians know much if anything about the failed American attempt.

George Orwell and the novel 1984

Needless to say, all the above pretty neatly dovetails into the dystopian future that the English novelist George Orwell envisioned when he wrote (1948) his well-known work **1984**. The good news is that Orwell's shocking vision from 75 years ago of a world completely controlled by the government – including the feared "thought police" – has not come to pass. But the bad news is that dystopian vision appears to be happening now with the attempt to foist the "combatting misinformation and disinformation" bill on the public. That is all very, very concerning.

An attack upon the 200+ year history of Australian democratic discussion and debate

To state the obvious, the Australian system of governance is based upon the Westminster System which we inherited from the United Kingdom where it had functioned for several centuries. While parts or portions of the Westminster System can be subject to questioning or criticism, the very fact that such a system has provided democratic governance for so long to the United Kingdom, Australia and many other former British colonies indicates that it is a system that generally works.

A keynote of this system of governance is that political parties, other organisations, and especially individuals be permitted to voice their opinion and views on a wide variety of subjects, as long as those views do not encourage violence, physical attacks and other behaviour which is clearly regarded as criminal. In the Westminster system there was little consideration of the "harm" that robust and vigorous discussion or debate on current issues might engender. Least of all the "harm to the integrity of Australian democratic processes or of Commonwealth, State, Territory or local government institutions" that is stated in the draft legislation. Not until now, that is.

The legislation amendments are a very concerning attempt to limit free speech in this nation and even to curtail or roll back the 200+ year history of Australian governance under the Westminster System. It is an appalling piece of legislation and it should be roundly condemned for its real aims and goals, not the spin in which it is dressed. The legislation should be unequivocally rejected, not only by federal MPs and Senators from both major parties, but all minor ones as well. And especially by the Australian public at large.