

# Submission

on the

## Exposure draft of the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023

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by

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## 1. Terms of reference

In January 2023, the Minister for Communications announced that the Australian Government would introduce new laws to provide the independent regulator, the Australian Communications and Media Authority (ACMA), with new powers to combat online “misinformation” and “disinformation”.

It is claimed that:

*The new powers will enable the ACMA to monitor efforts and require digital platforms to do more, placing Australia at the forefront in tackling harmful online misinformation and disinformation, while balancing freedom of speech.*

*The proposed powers would:*

- *enable the ACMA to gather information from digital platform providers, or require them to keep certain records about matters regarding misinformation and disinformation*
- *enable the ACMA to request industry develop a code of practice covering measures to combat misinformation and disinformation on digital platforms, which the ACMA could register and enforce*
- *allow the ACMA 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.*

*The ACMA will not have the power to request specific content or posts be removed from digital platform services.*

*The ACMA powers will strengthen and support the existing voluntary framework established by the Australian Code of Practice on Disinformation and Misinformation (the voluntary code), and will extend to non-signatories of the voluntary code.<sup>1</sup>*

FamilyVoice Australia is a national Christian advocacy group – promoting family, freedom, and faith values for the benefit of all Australians. Our vision is to see strong families at the heart of a healthy society: where marriage is honoured, human life is respected, families flourish, Australia’s Christian heritage is valued, and fundamental freedoms are enjoyed. FamilyVoice Australia has a longstanding interest in defending freedom of speech.

The submission deadline has been extended to **Sunday, 20 August 2023**.

## 2. Exposure draft of the Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023

### 2.1. Threat to freedom of speech

One of the most significant characteristics of the human race is our capacity for speech. Through speech people are able to share ideas, discover truth, form communities and develop nations.

Human history, including the development of civilisation, owes much to the knowledge, inventions and culture made possible by the capacity of the human species for elaborate speech.

In the development of modern democratic societies, freedom of speech is seen as a natural right arising from the intrinsic nature of humanity and beyond the authority of governments. This is in contrast with legal rights that are bestowed by governments.

Democratic society considers freedom of speech or expression to be one of our most cherished freedoms. The essence of freedom of speech is not merely the freedom to express ideas, but the freedom to disagree, dispute or cause controversy – an idea often witnessed in our political arena. Indeed, a right not to be offended would stifle legitimate debate and limit political freedom – an important concept in a functioning democracy. Speech also includes expression of personal beliefs which might not be supported by evidence, and may be controversial, leading to robust debate.

Given the importance of free speech, it is deeply concerning that the Albanese government is proposing what it terms the *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023*, but what is more appropriately called a “Censorship Bill”.

The Misinformation Bill will have a chilling effect on free speech, as the Victorian Bar has highlighted:

*The bill’s interference with the self-fulfilment of free expression will occur primarily by the chilling self-censorship it will inevitably bring about in the individual users of the relevant services (who may rationally wish to avoid any risk of being labelled a purveyor of misinformation or disinformation). Even leaving aside this effect, it is not at all clear that the bill is required. It is to be recalled that the problem of the dissemination of false information online has only relatively recently risen to prominence and has so far been relatively effectively responded to.*<sup>2</sup>

But it is not just the risk of individuals self-censoring. There is also the self-censorship which social media companies will impose on Australian users to avoid the risk of incurring fines, which as Justin Quill has pointed out, are potentially massive:

*In short, the bill proposes enormous powers be given to the Australian Communications and Media Authority to force social media companies such as Meta or Twitter to take down posts or tweets that ACMA, in its apparent all-knowing wisdom, decides is false and causes serious harm. If the information deemed “false” is not taken down, these companies face fines of billions of dollars. No, that is not a misprint, they could face fines in the billions because these fines can be up to 5 per cent of a company’s global turnover, which for Meta could mean a fine of over \$8bn given the company’s global turnover is around \$170bn.*

With such huge fines there is a very real risk that social media companies will remove content which is legitimate political material.

## **2.2. What is “misinformation” or “disinformation”?**

“Misinformation” and “disinformation” are defined in the Bill as, inter alia, content which “contains information that is false, misleading or deceptive”.<sup>3</sup> However what content is “false, misleading or deceptive” is highly subjective. The COVID lab leak theory was once considered a fringe theory but has gained increasing acceptance. In March 2023, Nine News reported:

*FBI Director Christopher Wray has acknowledged that the bureau believes the COVID-19 pandemic was likely the result of a lab accident in Wuhan, China.*<sup>4</sup>

Sky News Australia reported:

*Information relating to the Wuhan lab and the origin of COVID that was once censored and dismissed as a conspiracy has now been laid bare in black and white, according to Sky News host Sharri Markson. Ms Markson said all of the declassified intelligence was first uncovered on Sky News, The Australian, The Daily Telegraph and in her book: ‘What Really Happened in Wuhan’.*

*"The reason I'm talking about this tonight is ... because it clearly shows why a new move by the Albanese government is extremely dangerous," she said. Social media companies will be fined millions of dollars if they allow the spread of disinformation and misinformation on their platforms in a new crackdown by the Albanese government, a move Ms Markson labelled as "Orwellian style laws". "I'm sorry, but who decides what is misinformation? This is extremely dangerous," Ms Markson said.<sup>5</sup>*

Peta Credlin has also highlighted the highly subjective nature of determining what is misinformation:

*Under the Combating Misinformation and Disinformation Bill, the Australian Communications and Media Authority will be empowered to penalise online platforms that allow the propagation of what ACMA considers "misinformation" (which is false) or "disinformation" (which is deliberately false), if it has the potential to create "serious harm".*

*But harm is essentially whatever some faceless bureaucrat thinks might be damaging at any given time. A good example is that back in June 2021, when ACMA first recommended this bill, what it then regarded as harmful was any dissent from governments' pandemic policies, especially on lockdowns and vaccinations.<sup>6</sup>*

In the United States of America, the Hunter Biden laptop story is an interesting example of censorship of content claimed to be misinformation:

***Hunter Biden story is Russian disinfo, dozens of former intel officials say***

...

*More than 50 former senior intelligence officials have signed on to a letter outlining their belief that the recent disclosure of emails allegedly belonging to Joe Biden's son "has all the classic earmarks of a Russian information operation."*

*The letter, signed on Monday, centers around a batch of documents released by the New York Post last week that purport to tie the Democratic nominee to his son Hunter's business dealings. Under the banner headline "Biden Secret E-mails," the Post reported it was given a copy of Hunter Biden's laptop hard drive by President Donald Trump's personal lawyer Rudy Giuliani, who said he got it from a Mac shop owner in Delaware who also alerted the FBI.*

*While the letter's signatories presented no new evidence, they said their national security experience had made them "deeply suspicious that the Russian government played a significant role in this case" and cited several elements of the story that suggested the Kremlin's hand at work.*

*"If we are right," they added, "this is Russia trying to influence how Americans vote in this election, and we believe strongly that Americans need to be aware of this."*

*Nick Shapiro, a former top aide under CIA director John Brennan, provided POLITICO with the letter on Monday. He noted that "the IC leaders who have signed this letter worked for the past four presidents, including Trump. The real power here however is the number of former, working-level IC officers who want the American people to know that once again the Russians are interfering."<sup>7</sup>*

With so many former intel officials confident that the laptop emails were Russian disinformation it must surely be true? Wrong – which news outlets, such as the New York Times, belatedly admitted. Miranda Devine reported:

*There has been a lot of crowing this week about the fact that the New York Times has finally come clean and admitted Hunter Biden's laptop saga is not Russian disinformation. It's real.*

*You don't say.*

*This old bombshell was buried in the 24th paragraph of a story buried on page 20 of the newspaper, but at least the Grey Lady's readers now know something that readers of The Daily Telegraph and the New York Post knew 17 months ago.*

*It is an indictment of the Times and a betrayal of their readers who were kept in the dark about the true nature of Joe Biden before the 2020 election.<sup>8</sup>*

But in the meantime, the story had been heavily censored by Twitter (now X) which was acknowledged by Twitter's former head of trust and safety Yoel Roth as a mistake.<sup>9</sup> The Hunter Biden laptop story is a cautionary tale about having a type of 'Ministry of Truth' deciding what is and isn't misinformation. In this instance, the claims that the laptop emails were Russian disinformation turned out to be misinformation.

Section 2 of the Bill defines "harm" to include: "hatred against a group in Australian society on the basis of ethnicity, nationality, race, gender, sexual orientation, age, religion or physical or mental disability."<sup>10</sup>

Aspects of the Bill which target matters around sex and sexuality are of particular concern given falsehoods promulgated by LGBT ideology.

The idea that a person can change their sex is nonsense, as has been pointed out by Professor Lord Robert Winston:

*I will say this categorically, that you cannot change your sex. Your sex actually is there in every single cell in the body.*

*We are very confused about this unfortunately and regrettably, it's got into this argument that people will now accuse me of being transphobic.*

*Unfortunately you can't say this publicly, this is one of the big problems. Even saying this on this programme undoubtedly will result in my getting a huge amount of hate mail, it always does.*

*It does affect a whole lot of issues in schools and elsewhere in our society. Of course we should accept people as they are.*

*Overall I think it's a very sad thing that we can't discuss biological science without actually getting completely caught up emotionally in something that is just really completely wrong.<sup>11</sup>*

Neither hormone treatment nor surgery can actually change a person's sex. This is a lie and pure fantasy. Australian resident Alan Finch, who decided at age 19 years to transition from male to female and had genital surgery in his 20s, later regretted this action which he described as "genital mutilation". At age 36, he told *The Guardian* newspaper in 2004:

*transsexualism was invented by psychiatrists... You fundamentally can't change sex ... the surgery doesn't alter you genetically. It's genital mutilation. My 'vagina' was just the bag of my scrotum. It's like a pouch, like a kangaroo. What's scary is you still feel like you have a penis when you're sexually aroused. It's like phantom limb syndrome. It's all been a terrible misadventure. I've never been a woman, just Alan ... the analogy I use about giving surgery to someone desperate to change sex is it's a bit like offering liposuction to an anorexic.<sup>12</sup>*

In 2021, Walt Heyer, a man who previously identified as a woman, told a FamilyVoice webinar:

*As a male biologically, I came to the conclusion that when the sperm hits the egg, that is the end of the game. Your gender sex is fixed and innate and unchangeable from the time the sperm hits the egg and here we are, a lot of people are trying to say that that doesn't happen, but biologically and scientifically speaking it's fixed and unchangeable from the point of that sperm hitting the egg.*

*So we're having a discussion about trying to change something that the sperm in the egg has set in motion scientifically, biologically and medically speaking.*

*People taking hormones like I did, or undergoing surgery, as a court document that I have on record, the surgeon who performed my surgery and one of the authors of the standards of care for transgender care, signed off on in superior court of California, acknowledge in that document to the court that you cannot change a male into a female no matter how much surgery no matter how much hormones.*

*The only thing that they acknowledged was that you can neuter, they use the word neuter, however your intermorphology never changes. And what we know today from research is that there are 6,500 unique genes that differ between male and female and in those genes are unchangeable just like when the sperm hit the egg, those things are fixed and unchangeable.<sup>13</sup>*

Will it be considered misinformation to state the facts in table 1 in the left column because they are “harmful” or constitute “hatred” towards gender-confused men? Will it be considered misinformation to make the statements in the left column but not the right given they depart from LGBT orthodoxy?

<b>Reality</b>	<b>Woke falsehood</b>
Men cannot get pregnant	Men can get pregnant
Men cannot get periods	Men can get periods
Men cannot be lesbians	Men can be lesbians
There are two genders	There are unlimited genders
You cannot change your sex	You can change your sex

**Table 1**

The clampdown on those who dare to dissent from radical gender ideology is not far-fetched but is already happening, as a Norwegian lesbian discovered:

*A Norwegian woman could spend up to three years in prison for saying that men are not able to be lesbians.*

*On November 17, Tonje Gjevjon was told that she was being investigated by the police over hate speech because of a Facebook post that criticized men who said they were lesbians.*

*Gjevjon is a lesbian artist who has faced intense pushback for standing up for women. In her post, she also criticized transgender activists who try to prosecute women who are against gender ideology.*

*“It’s just as impossible for men to become lesbian as it is for men to become pregnant,” Gjevjon wrote. “Men are men regardless of their sexual fetishes.”<sup>14</sup>*

Men cannot have babies, nor can they be lesbians, but that is what extreme gender ideology would have us believe. It is inevitable that the more governments promote the gender lie that you can change your sex, the more they will seek to suppress those who speak the truth. The Misinformation Bill will aid this type of censorship.

## 2.3. Censorship double standard

Section 2 of the Bill details various “excluded content for misinformation purposes”.<sup>15</sup> Concerns have rightly been raised about the double standard of having censorship laws apply to some groups and not to others:

*[Andrew] Bolt explained he was “shocked” reading through the proposal, pointing out that while the bill would target everything from blogs, podcasts and people posting on Twitter, state and federal governments would be exempted.*

*“So governments can tell lies, spread misinformation that they call truth, but you could be banned from challenging it,” the Sky News Australia host said.<sup>16</sup>*

The absurdity of the double standard has also been explained this way:

*The Bin the Bill website details a series of criticisms of the proposed law.*

*These include the claims that government-authorized information could not be counted as misinformation under the bill, “but if you criticise the Government, that can be misinformation.”*

*That claims by university academics can’t be counted as misinformation, but “if you disagree with the academic that can be.”*

*And that the government would be able to “exclude its favourite websites” from being captured by the law, but that the same material posted on other websites could still be branded as misinformation.<sup>17</sup>*

This double standard creates an uneven playing field and will make it harder for citizens to counter powerful false government narratives.

## 3. Conclusion

Freedom of speech is one of our most cherished freedoms. The essence of freedom of speech is not merely the freedom to express ideas, but the freedom to disagree, dispute or cause controversy.

Whether content is misinformation or disinformation is highly subjective and can be completely wrong, as was the case with Hunter Biden’s laptop.

The Misinformation Bill will have a chilling effect on free speech with both individuals self-censoring themselves and social media companies censoring individuals. The Misinformation Bill is bad legislation and should be opposed.



## 4. Endnotes

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- <sup>1</sup> <https://www.infrastructure.gov.au/have-your-say/new-acma-powers-combat-misinformation-and-disinformation>
- <sup>2</sup> Lauren Croft, “Draft misinformation bill will create ‘illiberal double standard’: Victorian Bar”, Lawyers Weekly, 31 July 2023, <https://www.lawyersweekly.com.au/wig-chamber/37834-draft-misinformation-bill-will-create-illiberal-double-standard-vic-bar>
- <sup>3</sup> Section 7(1) & (2), Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023, <https://www.infrastructure.gov.au/sites/default/files/documents/communications-legislation-amendment-combatting-misinformation-and-disinformation-bill2023-june2023.pdf>
- <sup>4</sup> CNN, Associated Press, “FBI director acknowledges bureau assessment that COVID-19 likely resulted from lab incident”, Nine News, 2 March 2023, <https://www.9news.com.au/world/fbi-director-wray-acknowledges-bureau-assessment-that-covid19-likely-resulted-from-lab-incident/8890e5be-27ef-461b-b593-4d698f79a0b7>
- <sup>5</sup> Sharri Markson, “Australian government’s plan for ‘Orwellian style’ misinformation laws”, Sky News Australia, 26 June 2023, <https://www.skynews.com.au/opinion/sharri-markson/australian-governments-plan-for-orwellian-style-misinformation-laws/video/31e67ac0db7a5e43e46c31888b2cce7c>
- <sup>6</sup> Peta Credlin, “‘Ministry of Truth’ clamps down on free expression”, The Australian, 6 July 2023, <https://www.theaustralian.com.au/commentary/ministry-of-truth-clamps-down-on-free-expression/news-story/c7c7f4b96d6694a547905b2ef36705c3>
- <sup>7</sup> Natasha Bertand, “Hunter Biden story is Russian disinfo, dozens of former intel officials say”, Politico, 19 October 2020, <https://www.politico.com/news/2020/10/19/hunter-biden-story-russian-disinfo-430276>
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- <sup>9</sup> Emily Crane, “Twitter’s ex-safety chief Yoel Roth finally admits mistake of censoring Post’s Hunter Biden scoop”, New York Post, 30 November 2022, <https://nypost.com/2022/11/30/twitters-ex-safety-chief-admits-censoring-posts-hunter-biden-scoop-was-a-mistake/>
- <sup>10</sup> Section 2, Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023, <https://www.infrastructure.gov.au/sites/default/files/documents/communications-legislation-amendment-combatting-misinformation-and-disinformation-bill2023-june2023.pdf>
- <sup>11</sup> “Professor Winston: Stating biological fact will get you hate mail”, The Christian Institute, 22 October 2021, <https://www.christian.org.uk/news/professor-winston-stating-biological-fact-will-get-you-hate-mail/>
- <sup>12</sup> David Batty, “Mistaken identity”, The Guardian, 31 July 2004, <http://www.theguardian.com/society/2004/jul/31/health.socialcare>
- <sup>13</sup> Walt Heyer, “Gender Politics: Transgenderism Webinar”, FamilyVoice, YouTube, 5 July 2021, <https://www.youtube.com/watch?v=FrvpsuEikl4>
- <sup>14</sup> Charlotte Pence Bond, “Norwegian Lesbian Artist Being Investigated, Faces Criminal Charges For Saying Men Cannot Be Lesbians”, Daily Wire, 14 December 2022, [https://www.dailywire.com/news/norwegian-lesbian-artist-being-investigated-faces-criminal-charges-for-saying-men-cannot-be-lesbians?utm\\_source=facebook&utm\\_medium=social&utm\\_campaign=dwbrand](https://www.dailywire.com/news/norwegian-lesbian-artist-being-investigated-faces-criminal-charges-for-saying-men-cannot-be-lesbians?utm_source=facebook&utm_medium=social&utm_campaign=dwbrand)
- <sup>15</sup> Section 2, “Excluded content for misinformation purposes”, Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023, <https://www.infrastructure.gov.au/sites/default/files/documents/communications-legislation-amendment-combatting-misinformation-and-disinformation-bill2023-june2023.pdf>
- <sup>16</sup> Patrick Hannaford, “Albanese government’s draft misinformation laws denounced as the ‘worst piece of legislation for free speech’”, Sky News Australia, 30 June 2023, <https://www.skynews.com.au/australia-news/albanese-governments-draft-misinformation-laws-denounced-as-the-worst-piece-of-legislation-for-free-speech/news-story/2836441799c752294188bb6cacfe0d65>

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<sup>17</sup> Patrick Hannaford, “‘It is an attack on free speech’: Peter Dutton slams Labor’s misinformation laws as Coalition launches petition to ‘bin the bill’”, Sky News Australia, 10 August 2023, <https://www.skynews.com.au/australia-news/it-is-an-attack-on-free-speech-peter-dutton-slams-labors-misinformation-laws-as-coalition-launches-petition-to-bin-the-bill/news-story/5a1b7b1ac4bf3188c0b6b40b7738b40a>