

Submission

*Communications Legislation Amendment
(Combatting Misinformation and
Disinformation) Bill 2023*

August 2023



**Animal
Justice
Party**



Animal Justice Party Limited

Ground Floor, 470 St Kilda Rd
Melbourne, VIC 3004

Submission contacts

Primary Contact:

Natalie Kopas
Victorian Advocacy Manager)
advocacy@ajpvic.org.au

Other Contacts:

Linda Paull
Director of Advocacy
submissions@animaljusticeparty.org

Images

Front cover: Image from ABC News article

<https://www.abc.net.au/news/2023-06-25/fines-to-punish-online-misinformation-under-new-draft-bill/102521500>

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The Animal Justice Party acknowledges the First Nations peoples as the custodians of the land on which we live and work



About the Animal Justice Party

The Animal Justice Party (the AJP) is a political party established in 2009 to secure the interests of animals and nature through Australia's democratic institutions of government. Our vision is a planet on which animals and nature have the right to live and thrive free from negative human interference and a human society which functions with kindness and compassion within its ecological limits as a responsible member of the Earth community. The AJP seeks to foster respect, kindness, and compassion towards all species particularly in the way governments design and deliver initiatives, and the manner in which these initiatives function.

In New South Wales the AJP has one elected representative in the Legislative Council of NSW, Emma Hurst MLC, and one councillor in Local Government, Matt Stellino. In Victoria, the AJP has an elected representative in the Legislative Council, Georgie Purcell MLC, and one councillor in Local Government, Councillor Julie Sloan.

This submission was prepared by the Victorian Submissions Working Group within the AJP. The working group makes this submission on behalf of the AJP with the approval and the endorsement of the Board of Directors.

Introduction

"It's easier to fool someone than to convince them that they've been fooled"

Mark Twain

The government is looking for feedback on the proposed legislation designed to combat misinformation and disinformation on digital platforms.

'Misinformation and disinformation pose a threat to the safety and wellbeing of Australians, as well as to our democracy, society and economy.'

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.

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 combating 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. These powers are consistent with the key recommendations in the [ACMA's June 2021 Report to government on the adequacy of digital platforms' disinformation and news quality measures](#)'.

According to the World Health Organisation “Twitter, Facebook, YouTube, and Instagram are critical in disseminating the rapid and far-reaching spread of information,” The results of spreading misinformation on social media include a misunderstanding of scientific knowledge, and can cause friction between people on the various platforms and even cause fear and panic.¹

This was particularly evident during the Covid 19 epidemic when so-called conspiracy theorists were claiming that the virus was caused by 5G cellular technology or that Bill Gates was using the virus to enslave humanity by enforcing a global vaccination and surveillance program. This led the Director-General of the World Health Organization to warn that:

“We’re not just fighting an epidemic; we’re fighting an infodemic. Fake news spreads faster and more easily than this virus, and is just as dangerous”²

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<https://www.who.int/europe/news/item/01-09-2022-infodemics-and-misinformation-negatively-affect-people-s-health-behaviours-new-who-review-finds>

² <https://www.frontiersin.org/articles/10.3389/fpsyg.2021.646394/full>

Smartphones and other digital devices can spread misinformation rapidly, exacerbated by the different information being produced by mainstream news and right wing organisations such as the Murdoch Press and Sky news. This led to vaccine hesitancy and the promotion of unproven treatments such as hydroxychloroquine. The lives of politicians were threatened if they voted for Pandemic legislation to try to keep the community as safe as possible from the effects of the virus.

However we don't want to go to the other extreme where people are not allowed to express an opinion on social media and we have a situation resembling 'Big brother' and the 'thought police' in George Orwell's classic book, 1984, about the dangers of totalitarianism, government surveillance, and censorship. It is imperative that the principles of freedom of speech are protected, whenever there is discussion limiting the dissemination of information.

This submission is guided by our mission and vision and underpinned by our policies. The AJP has policies on animals, environment and human issues³, in particular our policies covering the following areas are particularly relevant to this consultation:

- Corruption⁴
- Democracy⁵
- Equality⁶
- Law and social justice⁷
- Mental health⁸
- Vaccination⁹

There are no terms of reference for this inquiry so our submission tackles this critical reform by presenting our arguments for and against the proposed legislation; recommendations are provided throughout our submission and summarised on the next page.

Thank you for the opportunity to contribute to this consultation.

³ <https://animaljusticeparty.org/policies/>

⁴ <https://www.animaljusticeparty.org/corruption>

⁵ <https://assets.nationbuilder.com/ajp/pages/822/attachments/original/1646610370/Democracy.pdf?1646610370>

⁶ <https://assets.nationbuilder.com/ajp/pages/826/attachments/original/1646612296/Equality.pdf?1646612296>

⁷ https://www.animaljusticeparty.org/law_and_social_justice

⁸ https://www.animaljusticeparty.org/mental_health

⁹ <https://www.animaljusticeparty.org/vaccinations>

1. Legislative Intent

What is the difference between misinformation and disinformation?

According to the Federal government, misinformation is false information that is spread due to ignorance, or by error or mistake, without the intent to deceive. Disinformation is knowingly false information designed to deliberately mislead and influence public opinion or obscure the truth for malicious or deceptive purposes.¹⁰

Victoria has been subject to a vast array of situations where digital platforms have been used to spread both misinformation and disinformation. From the covid conspiracy theories, to the rabid anti-trans and anti-LGBTQIA+ right wingers and neo nazis spreading hate speech , and now a select group of those who oppose the Voice referendum, digital media has been used to cause fear and distrust, to disrupt society and even in some cases to incite violence. For these reasons, the AJP supports the bill to combat misinformation and disinformation, provided that adequate safeguards are in place to preserve and promote freedom of speech.

Covid-19

The height of the Covid-19 pandemic was a time of fear and uncertainty as we faced an unknown virus with frightening capabilities. This novel illness with a questionable origin and (initially) no treatment or vaccine, research and learning being conducted in real time, combined with vulnerable people locked down in their homes, often relying on social media for interaction and updates, created the perfect storm for covid conspiracy theories to arise.

People have a right to question the information they are seeing and hearing and have an obligation to speak up when they believe they are witnessing wrongdoing, however the targeted campaigns against some Members of Parliament who supported pandemic legislation were totally unacceptable and fuelled by groups who used social media to incite hate and even call for physical violence including death threats. The wild theories purported on various social media platforms added fuel to the fire.

A stronger code of practice to aid digital platforms in taking action against misinformation that can lead to harm will offer a greater degree of protection for all.

Hate Speech

Recent years have seen a rise in intimidation techniques employed by far right groups targeting councils who have planned LGBTQIA+ inclusive events such as drag queen story time. Taking this to the extreme was the protest held outside Parliament on 18/3/23 by anti-trans protestors, which included the use of the Nazi flag and salute.¹¹ Whilst there is

¹⁰ https://www.aec.gov.au/About_AEC/files/eiat/eiat-disinformation-factsheet.pdf

¹¹

<https://www.theage.com.au/national/victoria/victoria-could-protect-drag-queens-from-nazi-hate-why-won-t-the-government-act-now-20230507-p5d6dn.html>

some legislative protection against these acts, such as the proposed extension of hate speech prohibitions to include the LGBTQIA+ community, this misinformation/disinformation bill would also afford added protections. There was online abuse targeting members of our Party for their support of the Victorian government's public health response to the pandemic and other social justice issues supported by our Party, which likely also affected our election outcome.

Social media was used to spread harmful misinformation about the 'risks' of drag queen story time, the 'dangers' of 20 minute neighbourhoods and also to organise intimidation campaigns at council meetings, leading to some councils reverting to online only meetings, to ensure the safety of councillors and residents.¹² Providing a more comprehensive framework for digital platforms to address these situations will improve equitable access to engaging in democratic process by making council meetings safe for all to attend.

The Voice

"It is perfectly legal to spread misinformation and disinformation and tell outright lies about the proposed constitutional amendment, just as it is legal to tell lies during federal election campaigns."¹³

The upcoming referendum has been hotly debated by both sides. Emotions have run high as campaigners seek to sway voters to their view. Considering the significance of this proposed amendment, it is disappointing that there is no requirement for information to be truthful.

An example is One Nation leader Pauline Hanson's use of a misleadingly edited viral video, which claimed that a Yes vote in the Voice to Parliament referendum would lead to increasing conflict between Indigenous and non-Indigenous Australians. The edited version was widely shared by anti-Voice campaigners and conservative figures without proper context. Many of the comments on Ms Hanson's post of the video contained vitriolic abuse directed towards Indigenous women, including a call for genocide against First Nations Australians.¹⁴

How can we rely on the results of a referendum based on voters whose views have been coloured by untruths? The bill to stop misinformation/disinformation would help to ensure voters are provided with information that allows them to make genuinely informed choices.

¹²

<https://www.theguardian.com/australia-news/2023/jul/08/the-new-frontline-for-conspiracy-theorists-how-victorian-councils-were-driven-online-to-avoid-chaos>

¹³ <https://theconversation.com/why-is-it-legal-to-tell-lies-during-the-voice-referendum-campaign-209211>

¹⁴ <https://www.abc.net.au/news/2023-08-11/one-nation-shares-misleading-voice-parliament-video/102697696>

2. Freedom of speech

One concern with this proposed bill is ensuring that freedom of speech is maintained. After all, people have a right to express an opinion that is unpopular or unpleasant, as long as it is not harmful, especially not deliberately harmful, to other groups or individuals. For example, questioning vaccine safety can, and should, be allowed. Creating social media content inciting violence against vaccine manufacturers or decision-makers should not be permitted, nor should spreading fear campaigns containing deliberate disinformation.

The ACMA adequacy of digital platforms disinformation and news quality measures report¹⁵ (is this the real title?) recommends that a Misinformation and Disinformation Action group is formed to assist with ongoing monitoring and implementation. This independent group would be useful by ensuring independent oversight regarding the ongoing implementation of the bill.

3. Clarifying conditions

The misinformation bill has detailed that content produced by “the Commonwealth, a State or a Territory; or an authority, or institution, of the Commonwealth, a State or Territory...”¹⁶ is exempt from this bill. This clause has caused concern for many reading it. We believe that in the interests of transparency and clarity, it should be explained within this misinformation bill that these exemptions occur as these ‘public bodies’ are subject to other legislation prohibiting the dissemination of misinformation, and the relevant legislation should be listed. This will also have the added benefit of assisting anyone wishing to make a complaint with knowing where to direct it.

Further to this, the bill should also include a clear description of how complaints may be made for alleged events of misinformation/disinformation, as well as detailing how a ‘right of reply’ will be managed.

Additionally, ‘professional news content’ is also exempt from this bill.¹⁷ Considering the bias historically shown by some news sources, considering them to be above dissemination mis- or disinformation is naive. This exemption should be reviewed before the bill is passed.

¹⁵

<https://www.acma.gov.au/sites/default/files/2021-11/Adequacy%20of%20digital%20platforms%20disinformation%20and%20news%20quality%20measures.pdf>

¹⁶

<https://www.infrastructure.gov.au/sites/default/files/documents/communications-legislation-amendment-combatting-misinformation-and-disinformation-bill2023-june2023.pdf>

¹⁷

<https://www.infrastructure.gov.au/sites/default/files/documents/communications-legislation-amendment-combatting-misinformation-and-disinformation-bill2023-june2023.pdf>

4. Truth in Political Advertising

Misleading political advertising

The Victoria Electoral Commission (VEC) does not regulate political advertising and Victorian electoral law does not require electoral material to be truthful.¹⁸

This means that voters need to be well informed about how to determine whether an election advertisement is true or whether it is designed to mislead. The general public needs to be made aware of the need for material to be authorised and the possibility of bots on social media. This information is available on the VEC website but needs to be widely available to people of non English-speaking background and people who might not have access to the internet.

Truth in Political Advertising

During the recent Electoral Matters Committee Inquiry into the Victorian State Election 2022, the examination of truth in political advertising was raised numerous times, in relation to the questions: should it be implemented, and if so, how?

Research by the Australian Institute indicates that the majority of Australians support truth in political advertising¹⁹; this bill represents an opportunity to combat this widespread form of misinformation/disinformation. Establishing guidelines or voluntary codes of conduct for truth in political advertising will not go far enough. The best way to ensure that voters are not misled is to legislate against lies or in political advertising, and this bill provides a useful vehicle for this legislation.

5. Educating Rationality

As a counterpoint to regulation, the Government should develop a national policy that prioritises the understanding of rational thinking through public education (via broadcast Public Service Announcements and the inclusion of educational curricula within the primary and secondary school system,) arming ordinary citizens with the skills required to detect false arguments.

¹⁸ <https://www.vec.vic.gov.au/voting/learn-to-vote/sorting-fact-from-fiction>

¹⁹ <https://australianinstitute.org.au/post/truth-in-political-ads-election-reform-welcome-but-devil-is-in-the-detail/>

Fortunately, resources for this project already exist in smaller NFP organisations such as The School of Thought ²⁰ and the Australian Skeptics ²¹, of which the latter brings together some of the country's senior science communicators (from multiple disciplines) to explain fallacies in plain language.

6. The Threat to Civil Society

Imagine the reaction to a 'leaked' recording of the Prime Minister in conversation with one of his colleagues, admitting to supporting an action that was so unpopular and counter-intuitive, that the likely outcome would be a January 6-style insurrection at APH.

The recording could be forensically authenticated as the PM, not an impersonator, by ASIO. This scenario is already possible, using only a three second sound bite of the PM and Generative Artificial Intelligence (AI).

This emerging technology of Generative AI has the very real potential to foment a complete breakdown in public discourse through the production of synthetic media. At the moment it can create audio and still images that, with the correct prompts, will be indistinguishable as fakes. In the not-too-distant future, it will be able to generate video files of people doing and saying things that never happened. It will be a tool for those who wish to incite anarchy.

This should be of great concern to leaders of our country; already a group of digital technology experts and ethicists ²² are conducting robust discussions around this problem with leaders in the US seeking to confront its destructive capability head-on.

Recommendations:

1. Support the bill to combat misinformation and disinformation
2. Preserve freedom of speech as a priority
3. Establish an independent Misinformation and Disinformation Action Group
4. Clarify the legislative framework that applies to public bodies to prevent misinformation/disinformation
5. Include the process for complaints regarding misinformation/disinformation events in the bill as well as the means for 'right of reply'

²⁰ <https://www.schoolofthought.org/>

²¹ https://www.skeptics.com.au/?utm_source=reviewbolt.com

²² <https://www.humanetech.com/>

6. Review the list of excluded content and reconsider the inclusion of professional news content on the list.
 7. Include 'truth in political advertising' legislation as part of this bill
 8. Embed in policy an intention and plan to teach rational thinking on a national scale through all available media and the education system.
 9. Support software applications which will create authenticating code at the point of media production.
 10. Support a multinational plan to instil into the technology of the Internet, background filters which will detect AI generated false media, without the aforementioned authenticating code, so that they never reach public domain.
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Conclusion

In an increasingly digital world, the possibilities for misinformation and disinformation, as well as the potential implications, become more significant. This proposed legislative amendment is aimed at obstructing those who intend to use these platforms to cause harm, usually directed to those more vulnerable. It also creates a greater requirement for social media platforms to take responsibility for the content they publish, holding them to a higher standard.

We wholeheartedly support the principles of freedom of speech, and believe this bill is not aimed at curtailing this, but at protecting us from 'fake news'.²³

The International Covenant on Civil and Political Rights from 1966, does apply a specific caveat to freedom of expression:

The exercise of the rights ... carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

*(b) For the protection of **national security** or of **public order** (ordre public), or of **public health** or morals.*²⁴

²³ <https://www.aspistrategist.org.au/more-stick-less-carrot-australias-new-approach-to-tackling-fake-news/>

²⁴ Article 19, para 3

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

In light of the disinformation that has been disseminated over the past three years, we should bear in mind that intervention to correct or obstruct future nefarious communication of this nature, falls well within the above caveats and guides the intervention required.