

## **Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023**

The Government is seeking views on this Exposure Draft Bill. I will make some general observations and respond to some of the dot points outlined in the request (those points have been underlined).

### General comments.

1. I am totally opposed to this Bill as, contrary to assertions, it is advocating censorship and is an attack on Free Speech. It is contrary to all philosophical arguments advanced by JS Mills, Edmund Burke and many others and adopted by civilised society. Further, free democratic society should continue to apply the incontestable maxim of Voltaire that “ I may not agree with what you say, but will defend to the death your right to say it” about the freedom of speech, no matter how confronting or incorrect.
2. Misinformation or disinformation is best corrected in the open marketplace where contesting views can be analysed and adopted or debunked. For example, assertions about the non-existence of the Holocaust have been clearly debunked by overwhelming objective evidence. At the same time, the suppression of information about various topics has been counterproductive, as much of what was considered misinformation has, subsequently, shown to be correct.
3. I note that this Bill would only apply to Digital Platforms. If the Government is concerned about misinformation and disinformation, why does the Bill not apply to mainstream media (MSM)? While the Australian MSM has yet to become as polarised as its US equivalent, many of the stories in both right-wing or left wing Australian MSM are misleading in the ‘slant’ and perspective provided by their journalists. Misinformation can take the guise of incorrect facts or incorrect impressions. This is the case in relation to both newspapers and television as well as the digital platforms.
4. ACMA’s role to date would not require the breadth of expertise necessary to identify misinformation and disinformation in all areas of debate. Who will ACMA consult to get the ‘right’ information?
5. If it is the Government, then surely the events of the past few years relating to COVID illustrate that, with all the best intentions, the Government’s ‘experts’ often got it wrong, as did much of the MSM. Lockdowns cost at least 10 times more than they saved (meta-analysis by the internationally regarded Johns Hopkins Institute in the US); masks were not effective (world leading analysis by the Cochrane Institute); vaccines were not tested for transmissibility (evidence by Pfizer executive to European Council) despite assertions that they would stop the transmission.
6. Further the denigration by the MSM of the Great Barrington Declaration, written by the leading epidemiologists at Oxford, Harvard and Stanford Universities was shown to be wrong, as the predictions by those (real) experts have been shown to be correct. Again, I’m not asserting that the Government was anything other than well-intentioned, but clearly, they got it wrong. Why would ACMA be any different?
7. Now it has emerged (due to FOI applications by Alex Antic MP) that M&C Saatchi were paid by the Government to monitor social media and advise it of any COVID ‘misinformation’ or ‘disinformation’ ( as determined by the Government) that was appearing. Following advice from Saatchi, the Government allegedly contacted social media platforms over 4000 times to ‘action’ those social media posts. While some of the posts were obviously incorrect, many of the posts about lockdowns, masks,

medicines etc were correct. If this Bill passes, we will see an increase in such censorship.

8. Accordingly, it would be a significant concern if ACMA were to rely on Government “experts” to determine if something were to be disinformation or misinformation. Secondly, it would also be making the ‘courageous’ assumption that the advice from Government experts were to be free of political bias or interference. Like most of us, Governments have a tendency to use experts who agree with their views, rightly or wrongly. Emerging evidence in the US suggests that the FBI and Department of Justice were not totally “politically objective” in their interactions with digital platforms about what was disinformation or misinformation. Can we be certain that ACMA will retain objective purity, free of political bias or influence?
9. The Bill states that “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”. This is considerably disturbing as it suggests that the Government (through ACMA) could be advised of the alleged misinformation or disinformation, and also the identity of the person or organisation making the relevant statements. For what purpose? Identifying statements that constitute disinformation or misinformation might allow the Government, *in an open marketplace*, to rebut the assertions, but the potential provision of the identity of the person under digital platform rules making the ‘offending’ statement seems highly dubious. What is to happen to that person? If nothing, why does the Government need this information? Section 27 *might* prevent ACMA publishing that person’s identity, but that is all.
10. How the digital platforms industry may be able to operationalise the Bill and various content exemptions. I note that the Bill excludes from this regime, content, inter alia, that is ‘(a) 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 and (d) content produced by or for an educational institution accredited by a foreign government’.
11. Who in ACMA has the eclectic sense of humour that will allow them to determine if something is “entertainment, parody or satire”? If the late, great Barry Humphries and Hannah Gadsby were to determine this, there would be endless arguments! Much of what passes as entertainment, parody or satire contains information, political bias and is misleading. It has an *informative* impact on those watching, and can, accordingly be misleading.
12. Secondly, as noted above, professional news services in the MSM often mislead by providing a slant on the news or overlooking relevant facts. How will ACMA deal with misinformation/disinformation caused by suppression of relevant facts?
13. Thirdly, the exemption of content ‘produced by or for an educational institution ignores what has become a significant issue in the UK i.e. the provision to schools, by third parties, of material that promotes the ideological positioning of activists groups despite there being, arguably, significant errors of facts in the material. While it could be argued that the schools should have rejected such material, the reality is that certain activists have considerable influence in the education system. Similar issues are arising in schools in Australia.
14. Fourthly, there is an exclusion for content ‘produced by or for an educational institution accredited by a foreign government’. Does this mean that the perspectives and facts taught by the various Confucius Institutes throughout Universities in Australia is exempt, despite it often being contrary to Australia’s best interests and of questionable accuracy?

15. The preconditions that must be met before the ACMA can require a new code, register a code and make an industry standard. The definition of ‘harm’ is far too wide and subjective and, arguably, internally consistent. Paragraph (a) appears to, in effect, expand the reach of the already problematic Section 18C of the Racial Discrimination Act into all types of areas in which there are legitimate conflicting viewpoints e.g gender identity, and would stifle comments that are arguably correct and would rely on the subjective views of ACMA staff about ‘which side’ they wish to adopt.
16. The ‘harm’ identified in paragraph (d) i.e harm to the health of Australians would allow the suppression of the information I referred to above, which has been found to be correct even though it was contrary to the Government’s own (incorrect) views at the time i.e Government misinformation.
17. The ‘harms’ identified in paragraph (e) harm to the Australian environment and (f) economic or financial harm to Australians, the Australian economy or a sector of the Australian economy’, again seems designed to stifle statements or views critical of Government policies on environment, despite many well informed views to the contrary about the *extent* of climate change (including that of President Obama’s former Undersecretary for Science, Steven Koonin, and Emeritus Professor of Geology, Ian Plimer). Conflict between these two ‘harms’ will arise if current policies on renewable energy are supported and not suppressed, but the deleterious impacts they are having on the Australian economy are suppressed.
18. The definitions of misinformation and disinformation. The definitions of misinformation and disinformation require ACMA to determine whether “the content contains information that is *false, misleading or deceptive*” and “whether provision of the content on the digital service is reasonably likely to cause or contribute to *serious harm*’. Both parts of the definition are highly subjective. As noted above the determination of what is correct information has often shown, subsequently, to be wrong. The definition of ‘serious harm’ is highly subjective and is open to abuse by activists who will pressure ACMA over any information they decide is ‘wrong’ or ‘seriously harmful’. This is an open invitation to the worst types of censorship and is the key issue with the entire Bill and the underlying policy position.
19. Further paragraph 33(3)(g) allows the development of standards or codes allowing *end-users* to detect and report misinformation or disinformation on digital platform services’ thus allowing activists to lobby ACMA to remove information that does not fit their ideology, regardless of the veracity of the information.
20. Further section 38 allows ACMA to make a *proactive* classification of information as ‘misinformation’ or ‘disinformation’ by requiring digital platforms to develop a ‘misinformation’ or ‘disinformation’ *code* to be applied to such ‘information’, and this is compulsory under Section 43. Section 46 also allows it to proactively set a misinformation *standard* for the same purpose.
21. The scope of the information-gathering and recording keeping powers, and appropriate civil penalties and enforcement mechanisms for non-compliance. The information gathering powers under Division 3 are very wide and I can see no reason why the privilege against self-incrimination has been set aside, even as limited by that Division. Further the 12-month imprisonment penalty in section 22 is draconian and would seem inconsistent with penalties in other legislation relating to incorrect disclosure.

## Summary.

I am totally opposed to this Bill as, contrary to assertions, it is advocating censorship and is an attack on Free Speech. The determination of 'truth' is best served by the operation of open discussion and debate, not by the suppression of speech that might 'offend' because it differs from that person's view or ideology.

The criteria for determining 'misinformation' and 'disinformation' and, particularly, 'serious harm', are far too wide, too subjective, and too open to activists' manipulation. The categories of 'harm' also illustrate a willingness to suppress information relating to current ideological and cultural issues such as gender and climate, regardless of the need to ensure that discussions identify any real detriment arising from following an ideological viewpoint e.g damage to the economy due to climate policies. ACMA does not have the expertise to decide, in all circumstances, what information is correct vs what is misinformation or disinformation. There is no clarity about where ACMA will seek advice to determine the correct position, and as we have seen over the past few years, Government expert advice has often been shown to be incorrect by internationally accredited and regarded experts. Nor is there any certainty that ACMA's deliberations will be free of political bias or intervention.