

ACMA powers to combat misinformation and disinformation.

*Feedback on an exposure draft of the Communications Legislation Amendment
(Combating Misinformation and Disinformation) Bill 2023.*

Submissions close on 6 August 2023. Submissions will be published after 6 August 2023.

I provide permission for the argument (the text) of my submission to be made public, as long as my personal information, being information about me as an identified individual that could reasonably be used to identify me, is kept confidential and not made public.

Submission:

Thank you for the opportunity to make a submission on this ACMA proposed legislation. It is probably a statistic of significance that I have never before written to the government, or a member of parliament, before in my ■ years of life. This demonstrates the level of importance I place on my submission, and the need to convey clearly my objections to the legislation, because of the risks and threats it poses.

Firstly, there must be some agreement on common foundation principles, for without such commonality in societal organisation, and the governance of society based on them, we cannot function as a free, open, liberal and democratic society. (Of course, oppressive regimes can force into existence anti-liberty and anti-democratic dystopian society. Stalinist Soviet Union and Mao Communist China are historical examples that oversaw four million Ukrainians perish in the Great Famine and tens of millions who died in the Great Leap Forward.) A liberal democracy needs to be based on a set of rules designed to ensure that government rests on the consent of the governed. It does not inherently dictate what policies should emerge from government, or what social arrangements should be tolerated or prohibited. There are many principles, such as the concept of natural justice – that a person has the right to a fair representation of their defence, and be allowed to counter accusations against them; and for example, in legal matters, a fair trial, the presumption of innocence until proven guilty, the right to face their accusers; and so on. Many books have and will be written on the topic of what is at the foundation of a free and open liberal democracy. Justice to this topic cannot be expounded upon here, but the point is that there must be a foundation of principles adhered to by society, if it is to remain free, open and democratic.

In the opening lines of the Infrastructure Department's website calling for submission on the proposed ACMA legislation, it is claimed: "misinformation and disinformation pose a threat to the safety and wellbeing of Australians, as well as to our democracy, society and economy." This threat may be real, but the proposed ACMA legislation is an even greater threat, with

many risks, to our democracy and society (and as a secondary effect, the economy, because there has never in history been a failing open-liberal-democratic-society with a successful economy). (As an aside, oppressive societies, such as the Roman Empire, can flourish economically, but you have to allow for unjust institutions, such as slavery, for that to occur.)

Leaving till later an alternative means to treat the problem from misinformation and disinformation; first addressed is how the proposed counter to mis- and disinformation is a greater threat is shown. It is a simple proposition:

1. No one has ever, in the history of the world, had a monopoly on the truth.
2. To legislate about, and implement policy for misinformation or disinformation, requires an assumption that the truth can be known. The legislation defines misinformation or disinformation to be “content that is false, misleading or deceptive”, along with other criteria. And there it is – it is impossible to deny the logic – the implementation of the legislation will require a determination of what is “false” (and thus what is “true” must also be known).
3. It is impossible to deny the logic – that no one can have omnipotent knowledge (or a monopoly) of the “truth”, and therefore the regulation of information based on a government determination of the “truth” is not implementable, and therefore cannot achieve the intended outcomes.

The intended outcome is the “regulation of untruth”; but because “truth” and the “government endorsement of the truth” may not be the same thing, then the only logical conclusion is there is a risk that the outcomes becomes an Orwellian 1984 “Ministry of Truth” scenario. It is a clear argument that the government, elite, professional expert, scientist, king, ruler, priest, or whatever authority, declaring something to be true, which is actually false, will never make it true, and visa-versa. The implementation of the principle of “government endorsed truth”, detached from actual truth, is embodied in the dystopian society of the book 1984, with the Ministry of the Truth deciding yesterday’s falsehood to be today’s truth. Likely many submissions will link this legislation to Orwell’s book, 1984; such that it need not be elaborated further here.

One can recall that at one point in recent Australian history, Lindy Chamberlin was found guilty of killing her own baby, based on forensic expert opinion; only to later be overturned, because that forensic evidence was actually incorrect – or false. Once it was considered true that the Earth was flat; and the Sun revolved around the Earth. These historical and incontrovertible – without controversy – examples demonstrate the deductive logical fact that any total or monopolistic claims on the “truth” are potentially problematic. And to be clear, the legislation must put ACMA (the government) in the position of being the arbitrators of what is true, and what is false.

Under a liberal democracy, legislation makes no claims on “truth”. It is Australian law that we drive on the left side of the road; but it is not true that driving on the right side of the road is wrong – many countries successful legislate contrary road rules about which side to drive on. The side of the road we drive on is not a “truth”, it is a rule. The outcome is an organised society. To some degree, citizens forgo a freedom (in this case, the freedom to drive on the right side of the road) to achieve a valued outcome (we all don’t die horribly in regular head-on collisions). There is no “truth” about speed limits. Driving regulations for speed limits are a compromise of costs and benefits. A political party in government that decided to reduce road deaths (the benefit) by limiting all road speeds to a maximum of 10 km/hr (an exaggerated cost for the purposes of demonstration) would likely be removed at

the next election in a democratic society. The cost to society of this regulation would be more than the democratic constituency could accept. But note, there is no right or wrong side of the road to drive on, and no “true” speed limit. The best a government could do would be to use statistics to derive evidence of the optimum trade-off between speed and road fatalities; and note that if circumstances changed (e.g., driverless cars proved safer) the evidentiary statistics, and the road rules, would need to evolve with the changes.

The ACMA legislation in question is on an entirely different philosophical level. It is not saying we think this is “best” based on the evidence, and therefore we will impose this regulation. It is saying we think this is “true”, and the regulation we will impose is to limit the ability for counter-opinions to be openly discussed. This is clearly a direct attack on a citizen’s freedom to dispute the position of the government. Going back to the example of the 10km/hr speed limit, if the government said “10 km/hr is the right and true answer to society’s ills”, and no citizen is then allowed to express an opinion counter to that view, then exactly how will there be a free and open election resulting in a demonstrably bad government being thrown out of office? (Again, the example is an exaggeration for the purposes of demonstration.)

Examples of “flat Earth” and “10km/hr road speed limits” are intended to demonstrate what is the tip of an iceberg. More recently, there have been many controversies over medical advice and government’s restrictions and policies from the COVID pandemic situation of 2020-2023; or climate change science and policies; or regulations about trans-women competing in women’s sports. It would be difficult to use these as examples, due to their contemporary, contested and controversial situation; however, these are the types of topics the government may move to regulate – and indeed recent examples of claims that government interventions against mis- and disinformation have already occurred, are being made in the newspapers at the moment. As clearly demonstrated by my 10km/hr speed limit example, government regulation of the freedom of speech and thought, are clearly anti-democratic. Even if “misinformation and disinformation pose a threat to the safety and wellbeing of Australians, as well as to our democracy, society and economy”; its regulation proposed through this legislation is a much greater threat.

Now to come back to the problem the legislation intends on treating: “misinformation and disinformation pose a threat to the safety and wellbeing of Australians, as well as to our democracy, society and economy”. There is no argument that this is not the case. An open and free democratic society depends upon the elite experts to contest ideas in the public, so that the society can adjudicate and elect representatives who will make policies, or the society freely makes its social arrangements (with or without government intervention), over what is tolerated or prohibited, according to the will of the people. Having bad actors inject false information is going to disrupt the operation of the contest of ideas. Emergent properties from “big tech’s” social media platforms can also disrupt the process. In a sense, even the legacy media in Lindy Chamberlin’s case acted as a positive feedback mechanism, such that opinion polls were used to gauge the court of public opinion (in this case, an early majority agreeing on her guilt, solely on the basis of the lady’s composure and speech). So, the problem has existed for a long time – and some anarchists and Marxists might argue is the reason to not have democracy; for democracy is just the election of the politic representatives based on public opinions that may be misled, or false, or irrational, or illogical, etc. The only feasible cure for the problem is the freedom to disagree, to argue the counter-point, and persuade the electorate of the better way. This is generally termed freedom of speech, and the freedom to elect the representative that best agrees with the

public opinion. In addition, it is well known from counter-terrorism and other citizenship studies, that education is a counter to opposing information.

Note here the careful avoidance of the term “false” information. As already shown, the proposition of true and false needs to be contested freely – unless we wish to go down the Orwellian 1894 road. Generally, in politics the arguments are not factual, but are competing on a values basis. If one values freedom and a democratic society, one will be against this legislation; but a person can hold the opinion (and obviously the ACMA proponents and the government do) that it is a better value to fight the scourge of mis- and disinformation, even if it risks instigating an authoritarian “Big Brother – Ministry of the Truth” outcome. I argue that the value of freedom, free speech, and a better functional democracy, is more important than the problem and cure proposed by the legislation. The other side might argue (if I imagine their philosophical position) that my analysis of the deleterious and inevitable consequences towards a 1984, dystopian, authoritarian, and anti-democratic government is wrong. My opponent might presently argue all they like! But imagine if government legislation forbade then from entering into the argument, that the government endorsed my opinion as “true”, and if they enunciated their arguments (now classified as mis- or disinformation), then they would face legal or criminal penalties. I can only think that the proponents of this legislation support it because they hold to the fallacy of believing in their own infallibility – they cannot imagine that the legislation can (and it will) be turned against them. (The same mistake befell many leaders of the French Revolution, who later lost their heads to the guillotine. 15,000 to 17,000 were guillotined across France under the Reign of Terror.)

Citizen’s education for children, immigrants, and adult Australians, can be designed to offer what is philosophically “western enlightenment”. Agreed that such education policy holds the risk of a bad government using it as a propaganda tool – which means once again the government falsely propagandising what is “true”. But a proper classical, liberal, education – maybe like the multicultural education programs by the governments in the 1970s to 1990s addressed tolerance to counter racism against immigrants – can instruct on the civic duty of the citizens to engage and discern the arguments in the marketplace of political ideas. To demonstrate the idea, if criminals were scamming citizens out of their money, a government education program would highlight the issue – be that cyber security awareness, or whatever the con. If bad political actors are scamming with bad political arguments, governments and the oppositions might collectively lift the standard of the national conversation and provide a more mature and honest competition of ideas, in contrast to what is found in the “gutters” (as they are called) of social media. (This might be why by convention referendums are accompanied by a formal “Yes” and “No” case, facilitated by the government of the day.)

In conclusion, because mis- and disinformation required the discernment of truthhoods and falsehoods, and as no one has a monopoly on the truth, the proposed legislation is fundamentally flawed. It is arguable that parallels are found between the legislation putting the government in the position of regulating what is true, and George Orwell’s book, 1984. A government deciding on what is true and false is the greater threat to democracy, not the availability of contested competing ideas. And even as mis- and disinformation can be harmful, the problem it is better treated through civic education – although that is not without the risk of a government using education to propagandise for its own political or corrupt gains. However, at least the public will be allowed to contest those ideas through freedom of speech, protest against the government, and remove them from office at the next democratic election, but only if we maintain and protect our free, open, liberal and democratic society.

