

Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023

The Australian Minister for Communications Michelle Rowlands tells us that this Bill is designed to **protect “the safety and wellbeing of Australians” from harm caused by online misinformation and disinformation.**

Upon closer inspection of the details of the Bill, you may decide otherwise. This Bill is an example of **Government overreach**, a **significant threat** to online freedom of expression and freedom of speech, two **pillars of democracy**, and **at worst, blatant censorship**. The internet and more specifically, social media platforms are the modern day public square, where people gather to share ideas, information and opinions. The ability to do this freely is key to our democracy and what is at stake should this Bill be passed.

The **underlying question** is this:

Do you think that the Australian **Government** (by way of ACMA and digital platforms) **should be deciding what is mis & disinformation?**

Do you appreciate living in a **nanny state** where the Government supposedly looks after you and tells you what you can or cannot do based on what they decide is right and wrong, true or false?

What price are you willing to pay for this online protection?

Are you willing to **give up your right to free speech online** and your unfettered access to all sides of the debate, not just the Government’s?

Do you prefer **self-determination**?

Do you believe that as an Australian citizen, you have the **capacity and right to make up your own mind by considering all sides of the argument through the free discussion of ideas?**

Do you believe that as an Australian citizen, you should have **unfettered access to independent and social media, search engines and thus websites**, that present **ideas** that may **differ to the mainstream media and the endorsed Government narrative?**

History of this Bill

The sentiment of this Bill is not new. It has been introduced into parliament in the past, without success.

In the [2012 Finkelstein Report on media regulation commissioned by the Gillard Government](#), the report noted that: *“Citizens must have the capacity to engage in debate, in the form of relevant critical reasoning and speaking skills”*, but added that *“there is real doubt as to **whether these capacities are present for all, or even most, citizens.**”* *“Even armed with full information, **people do not necessarily have the means for weighing and evaluating the information.**”*

Thankfully due to substantial pushback, that report wasn’t implemented at the time, but those ideas, that **Australians are too stupid to think for themselves and cannot be left to form their own opinions**, still prevail. That is exactly why the Government dares to introduce such a patronising Bill, because they believe, we the people, need all levels of Government, experts and mainstream media to **tell us what is true, what is false and how to think, what to believe and how to behave and vote.**

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United Nations' global communications representative, Melissa Fleming, told the World Economic Forum during a panel on disinformation, "**we own the science, and we think that the world should know it, and the platforms themselves also do.**" In the same vein, the Australian Government believes they are the **arbiters of truth** and they think the **Australian public should know that**, just as the online platforms do.

The Government is seeking your feedback on this proposed Bill until 20th August 2023.

If you value your human rights of freedom of expression and freedom of speech, please **have your say** and **let the Australian Federal Government know what you think**,

while you still enjoy the right to freedom of expression and free speech:

[CLICK HERE TO HAVE YOUR SAY](#)

What does this Bill aim to achieve?

The Australian Communications and Media Authority (ACMA) will decide whether a digital platform is doing enough to combat misinformation and disinformation. ACMA to have reserve powers to register enforceable industry codes with **significant penalties for non-compliance**, or create a standard requiring platforms to take stronger action.

Traditionally, **ACMA regulates infrastructure, not information. No one, including ACMA and digital platforms, has the right to determine what is misinformation and disinformation.** As was demonstrated throughout the pandemic, what was once labelled mis and disinformation turned out to be factual and true. The [science is never settled](#). Scientific process is an ongoing process of postulating and testing hypotheses through observation and coming up with new ideas as we learn more. Debate is as important to science as it is to politics.

What digital platforms will be included in this Bill?

- search engines like Google
- news aggregators like Google News and Apple News
- all independent media outlets
- social media: Facebook, YouTube, Instagram, Twitter, Pinterest, TikTok, WhatsApp, etc.
- instant messaging services: SnapChat, Signal & Telegram, etc.
- dating services such as Tinder
- web forums
- blogs
- podcasts &
- online marketplaces such as Facebook Marketplace.

Who/what does the Bill exempt?

- mainstream media (professional news content)
- all levels of Government: Federal, State and Local Councils and their staff and associated bureaucracy ie Government Departments and bodies
- authorised election and referendum material, such as the 'Yes Campaign' for the Voice
- universities and academics (accredited education institutions)

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The important point to note here is this; **those who write these rules are exempt from them.** Clearly, this Bill is **divisive** and **unfair** because it separates the “government authorised” from the rest of us. **It creates two tiers of Australian society.** The **arbiters of truth** (government, MSM & academia) **who can say no wrong by definition** and the rest of us. If it’s good enough for us, it must be good enough for them. These rules should apply to Government, academia and Mainstream Media (MSM), who over the past three years have been the **primary creators and spreaders of misinformation and disinformation that caused serious harm** to the Australian people, our health, our economy, our environment and our democracy.

Who remembers the government sanctioned, official narrative that the Covid-19 injections were “safe and effective”? In spite of **massive amounts of evidence**, including the clinical data of the manufacturers themselves, the **government is still pedalling this disinformation** and **seriously harming the health of the Australian people** and therefore harming our economy and democracy. Thanks to independent media and courageous individuals who risked their reputation, and in some instances their livelihoods, the truth was circulating throughout the Covid-19 crisis but it was stifled by “fact checkers” and throttled or banned on social media. This new Bill threatens to silence all these voices of dissent.

Who does the Bill target?

Digital platforms will be expected to **monitor, track and trace all instances of misinformation and disinformation shared on their platform.**

Digital platforms will be responsible for **preventing** and **responding to misinformation** and disinformation on their service and to prepare reports on this for ACMA.

Digital platforms will decide what is mis and disinformation.

Current Situation

Many large digital platforms, such as Facebook, already have processes in place to respond to perceived mis and disinformation. “Fact checks” are applied, warnings are given, posts are removed, accounts are throttled, shadow-banned and ultimately banned. We have seen that the

outcome of this is that alternative voices, voices that disagree with the mainstream narrative are silenced. Freedom of speech is censored. Democracy is eroded.

The **best way to correct mis or disinformation**, if necessary, is **through rigorous debate and discussion, by presenting evidence, data and reason.** This is exactly what this Bill proposes to suppress and eliminate, opinions other than the officially sanctioned ones.

During the pandemic, it appears that the Government and their departments told “**noble lies**” for the **sake of “the greater good”**. It then became **incumbent on Australian citizens** to **counter these lies with evidence, data and reason.** This is why, **if anyone needs to be held to accountability for telling the truth, it is the Government rather than the people. The people must hold the Government accountable for telling the truth.**

If the Bill is passed, online platforms would also have to offer their users the ability to report mis or disinformation. Reminiscent of the Stasi in Eastern Europe in the days of the Iron Curtain, **Australians would be encouraged to dob in our neighbours.** We could make a complaint to the platform and after a warning, if the individual or group continued to spread false or misleading information online, they may need to be **re-educated, banned or removed from the platform.**

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The **Federal Government doesn't want to be seen directly censoring their citizens' free speech**, just as they maintained the position that they **weren't responsible for mandates**. They needed to be able to blame the States and industry for that. This is why **ACMA won't directly monitor, record, track and trace** all this online mis and disinformation. That will be the **responsibility of industry**, the digital services providers, who will need to **report back to ACMA**, so ACMA can see if they are doing a good enough job.

Fines

If ACMA believes online platforms aren't doing enough to protect us from the harm of mis & disinformation, then they can face **fines** of up to **\$2.75 million** in 2023 or **2% of global turnover** (for global corporations), whichever gives the government more money. **Individuals** can face fines of up to **\$550,000**. That should be enough to make you think twice before hitting send on that next social media post!

If this Bill is passed and ACMA decides to make this an industry standard (as opposed to a registered code) then the government will profit even more, with maximum **fines** for **individuals** of **\$1.38m** and **\$6.88m** for **corporations** or **5% of global turnover** (for global corporates), whichever is greater, and this is just the starting figures for 2023.

What is at stake?

In short, the **democratic way of life**, specifically: **freedom of expression, freedom of speech, open public discussion and debate**; the **pillars of democracy**.

A healthy, functioning **democracy requires freedom of speech**, which means that **ideas** from across the ideological and political spectrum are **discussed and debated** with the **hope that good arguments, guided by the light of truth, will win the day**.

Key Definitions

According to the Bill's [Fact Sheet](#):

- **Misinformation** includes online content that is "false, misleading, or deceptive" that is created or shared **without an intent to deceive** and is likely to cause or contribute to "serious harm."
- **Disinformation** is "false, misleading, or deceptive" that is created or shared **with an intent to deceive** and is likely to cause or contribute to "serious harm."

So the **difference between misinformation and disinformation**, as defined in this Bill, is one of **intent**. **Who decides or proves what is someone's intent?**

It seems clear that **establishing the intent behind the creation and sharing of online content is subjective at best and completely arbitrary at worst**.

- Do you currently check your intent before writing or sharing a post on Facebook?
- Could you be seen to be intending to deceive or cause or contribute to harm?
- Could your post be seen as unintentionally deceiving or causing or contributing to harm?

These are very murky waters. Given that the **definitions are unclear, they are left open to interpretation**: the interpretation of online platforms, ACMA and the Australian Government, not yours.

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Harm

- **Serious harm** is defined as harm that affects a significant portion of the Australian population, economy or environment, or undermines the integrity of an Australian democratic process.

Many would argue that **this Bill undermines the integrity of an Australian democratic process**, that the **undermining of free speech undermines the integrity of democracy**. Apparently, the Government doesn't see it that way.

Harm to the health of Australians

Would that include such misinformation, now acknowledged as fact, as lockdowns doing more harm than good, or pharmaceutical products being linked to myocarditis?

Harm to the Australian environment

Will content that expresses scepticism about the Net Zero agenda be considered mis or disinformation under the pretext of protecting us from climate change?

Harm includes "**hatred** against a group in Australian society on the **basis of ethnicity, nationality, race, gender, sexual orientation, age, religion or physical or mental disability**."

Will saying that men shouldn't play women's sports, or defending traditional marriage, be considered "hate" speech?

Human Rights

See Rebekah Barnett's 25th July 2023 Substack article:

"Australian Government's misinfo bill 'inconsistent with human rights'"

According to [human rights lawyer, Peter Fam](#), this proposed Bill is "**inconsistent with human rights**". He describes the Bill as a "**poorly drafted** piece of proposed legislation" that poses a **threat to the rights of free expression, self-determination and freedom of thought, conscience and religion**.

"Do we want a Government department to have the power to impose **civil and criminal penalties** on users of the internet **if they publish something that the Government doesn't like**?" Asks Fam, of Sydney law firm *Maat's Method*.

"We think it proposes an unacceptable and contemptible breach of the right to freedom of speech and freedom of expression."

The **vague definitions** offered in the Bill makes **enforcement of the proposed laws inherently subjective**. This will inevitably end up in the courts, to the benefit of lawyers and the powerful, but to the detriment of everyone else.

It's important to understand that **Australia lacks strong protections for human rights**. "The Australian constitution isn't designed to protect our rights, it's designed to implement a structure of governance."

That the **rights of Australians are not already strongly protected in law** means that we ought to be **very careful about giving them away**.

"There is no need to allow Government even greater ability to impose on our rights and freedoms than they already have. If we do, we may find ourselves unable to challenge them."

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“As it stands, we fundamentally and vehemently oppose this Bill. If such law is allowed to pass, it will not only signal the **death knell of the internet as a free marketplace of ideas in Australia**, but it will signal to Australian citizens, and to citizens of the globe, that the **Australian Government seeks total control of the dissemination of information** within its borders, and that such **control is more valuable to that Government than the individual rights of its citizenry**. That would be a **dark day for democracy** indeed, were such a thing to pass.”

In summary, Peter Fam and the [Australians for Science and Freedom \(ASF\)](#) recommend:

- That the Bill be made **compatible** with Australia’s **human rights obligations** at international law;
- Stronger, proactive **protections** for the implied **right to freedom of political communication**;
- Include Guidance Principles within the Bill that make clear the **importance of freedom of speech and expression**, and which force ACMA to acknowledge these rights when making decisions;
- Follow the DIGI Code’s lead in ensuring that **content producers should not be compelled by Governments** or other parties to **remove content solely on the basis of its alleged falsity** if the content would not otherwise be unlawful.
- Amend the definition of ‘digital service’ to clarify and ensure that an **individual who posts on a social media platform is outside of the scope of the Bill’s operation**.
- The **current definitions** of ‘Misinformation’, ‘Disinformation’ and ‘Serious Harm’ within the Bill are **unworkable**. **Given that the Bill rests upon these definitions, this renders the Bill itself unworkable**. The definitions should be amended such that they are **not contingent on the identification of “truth”**, but are rather aimed at **capturing content** that is of a **criminal character, or which constitutes a criminal offence**.
- The drafters of the Bill must be clear in their intentions. At present, the **Guidance Note and the Fact Sheet say one thing** whilst the **functionality of the Bill suggests something else**. This will result in complex and costly litigation;
- If the Bill is to be allowed to pass, **stronger protections for free speech** must be incorporated into it, which would require a drastic re-drafting of the Bill. Anything less should not be allowed, because **freedom of speech and expression** are such **fundamental rights in our democracy**.
- **Stronger checks and balances** need to be incorporated into the Bill such that **ACMA** is not allowed unchecked, unilateral, **unchallenged power** to create codes, rules and standards;
- Statutory mechanisms for **review and challenge of ACMA decisions** must be incorporated into the Bill, with external and **independent oversight** that is timely and efficient;
- **ACMA’s discretion should be limited** and couched within clear parameters for reasonable assessment by a Court;
- The Bill must include a Clause excepting the provision of any information that would render the provider in **breach of Privacy legislation**.

Australian Examples of Government Censorship of Online Speech

Earlier this year, under Freedom of Information laws, [Senator Alex Antic](#) uncovered an **arrangement between the Department of Home Affairs (DHA) and social media companies** where the **Department would flag social media posts for removal** if the **bureaucrats deemed them** to represent “**misinformation**” or “**disinformation**”. The DHA requested the **censorship of 4,213 Covid-related social media**

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posts during the pandemic. A subsequent release of documents from the Twitter Files showed that posts flagged by DHA for take down included true information, jokes, memes and posts from accounts with as little as 20 followers.

AHPRA censored Health Care Workers

We also saw how the medical regulator **Australian Health Practitioner Regulation Agency (AHPRA) censored doctors** and health care workers from expressing **legitimate concerns about the safety and efficacy** of Covid-19 protocols and injections. In doing so, **AHPRA undermined a patient's right to informed consent**, ie receiving information describing the benefits and risks of a treatment so an informed choice can be made. This also **eroded the public's trust in the medical profession** in general.

YouTube Removed Australian MP's Maiden Parliamentary Speech

[YouTube's definition of "medical misinformation"](#) is information that "**contradicts local health authorities**" or the **World Health Organisation's (WHO) medical information about Covid-19**. YouTube recently cited this policy as justification for removing New South Wales Member of Parliament John Ruddick's maiden address to the NSW Parliament from YouTube.

Conclusion

In conclusion, this Bill has the potential to **restrict free expression and freedom of speech and dissenting voices**. It has the potential to result in the **ensorship of true information and valid expression**. **Words** like 'harm', 'misinformation', and 'disinformation' have been **weaponised to shut down critics** of the broader ideological agenda at work in western nations, with COVID providing many examples of how the Government can and did censor any ideas that questioned their narrative. **Censorship will be an inevitable outcome of this Bill** and it will likely **exacerbate the problem it intended to solve**.

[**CLICK HERE TO HAVE YOUR SAY**](#)