

The Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023 is to be opposed as it unfairly preserves the benefits of free speech for only a chosen few institutions in society and casts a chilling effect over the learning capacity of all other people.

While combatting disinformation is a noble purpose, our society already deems knowingly false and misleading statements illegal in the most important of contexts, from trade and contract through to academia and justice, and it is unclear what could be usefully added by new regulations specifically on digital platforms. The bill's working definition of disinformation as "contributing to serious harm" is prone to wider interpretation over time. It does not describe what sort of requisite foreknowledge is needed to predict harm, especially where severity of harm depends on factors that are unpredictable, nor how to prove the offender had such foreknowledge. The requirement to understand the "reach and speed" of dissemination is perhaps knowable only within a single large (walled garden) platform, but not on the open world-wide web of blogs where anybody can link to anybody for the first time at any time, so the requirement smells of a Big Tech bias. It appears well-intentioned but may not be enforceable practically by most curators.

Regarding the combatting of misinformation, there are good reasons to question the benefits and apparent nobility of such a motive. The policing of so-called misinformation in the everyday public sphere is to be opposed on the basis that people must be free to say what they believe to be true and that our conversations, especially when they contain misinformation, are steps toward a grander truth that no single human being fully possesses.

We must adopt some humility in our estimation of how much we have accurately discovered of the truth of life, the universe, and everything. There is no human being who knows all of this abstract truth. To expect a government department or a blog operator to know the truth in any and all matters is too much. This is especially so when the facts of the world are changing, goals and benefits are dependent on subjective preferences, and our vicarious knowledge is dependent on to whom we have delegated the tasks of delivering tuition and gathering news.

For the people to hold ultimate power in a democracy, information should flow from reality, through industry, academia, and journalism, to the people, then through representation to politicians and finally the public service. If the public service gains leverage over industry, academia, and journalism, it gains the ability to shape public opinion in an inversion of democracy.

This draft bill seeks (in the definition of excluded content) to give "professional news organisations" a free pass to spread misinformation. Yet the same news anchor who speaks such misinformation in their day job with impunity would imperil a blog operator with spreading the same misinformation content if they were to go home and repeat in comments on the Internet exactly what they had said in the TV studio. This is hypocritical and is clearly not a coherent attempt to support the dissemination of truth. It merely marks out particular departments and market sectors for special rights, some of whom can be relied upon to mimic government policy on any issue due to their

dependence on government for funding or broadcast licenses. The possibility of the withdrawal of immunity can then be held over that sector.

This draft bill seeks to give educational institutions a free pass to spread misinformation. Again, the possibility of the withdrawal of immunity can then be held over that sector. It also seems the greatest of ironies that under this anti-misinformation bill one of the few institutions we might expect to be the natural home of truth would instead remain a protected habitat for misinformation. If we can accept that academics need to be able to correct each other over the course of a long iterative process, we can accept the average person in broader society is entitled to the same iterative learning process. If anything, our academics should be held to a higher standard than the comments section on YouTube. The "publish or perish" culture prevailing in academia needs reform if it pressures academics into generating too much misinformation in need of unfavourable corrective citations - or worse, the silent treatment.

There are statements which are objectively verifiable within specified parameters of time, place, conditions, and test methods. These are only a small fraction of all that passes for conversation. Yet even such objective statements may be questioned in the process and framework of science, a method which Richard Feynman reminded us is predicated on the ignorance of the experts. During the 2019 trial of Dr Peter Ridd versus JCU, the benefits of free speech were advocated by the Applicant in a succinct observation; Truth is not a prerequisite for a conversation, but truth may be an outcome of a conversation.

Amongst other purposes, conversations are ways in which people think out loud and obtain feedback on their own thinking. Indeed, if it were not for free speech, we would not know someone harboured malicious or unsound beliefs prior to them acting on the belief with disastrous consequence. Far from promoting harmony in society, any attempt to suppress free expression - especially of beliefs that are contested - would fail to benefit from the early warning and mid-course correction opportunities that free expression creates.

Debates, corrections, and normalisation cannot happen in secret with deletions, visibility throttling, or AI automatic filtering. People must know why a belief should be accepted or rejected, they need to see the evidence and argument. Seeing the amount of backlash upon other dissenters illustrates how much preparation is needed before disagreeing substantively (rather than lazily). All of this is triggered by, and only makes sense in the context of, a contested utterance, which must therefore be free to occur. All of that process happens already. If the only policy for dealing with misinformation on a digital platform that would be consistent with free speech principles and long term productivity would be a policy of no specific suppression, editing, nor intervention, then there can be little benefit to society in requiring an interventionist policy via the code of conduct mechanisms required by this Bill. When the best policy is no policy, we should not be passing a bill that requires any other policy.

The bill makes pretences about industry bodies deciding their own code of practice for responding to misinformation, but the bureaucracy can deem a registered or absent misinformation code as being “deficient” and order ACMA’s own code to be followed anyway. The Departmental preamble to this public consultation phase claims “the ACMA will not have the power to request specific content or posts be removed from digital platform services”, yet section 16 subsection (2) and Section 44 subsection (2) require a platform operator to take any action that the ACMA believes is needed to reattain adherence to a code. It is ACMA's interpretation in effect there, not the platform operator's opinion. This is a mechanism for the public service to exercise editorial control over the content of digital public square conversations. It's a backdoor to censorship in essence. The member for Banks recently summarised: “ACMA will be able to require any Australian to appear before it to answer questions about misinformation or disinformation and fine that person \$8,000 per day if they do not appear before the ACMA misinformation interrogation.” Thus the bill creates a framework in which even the investigation process itself is a form of punishment. The cost of record-keeping and code adherence is affordable by a giant multinational but perhaps not by a lone blogger depending on what code ACMA imposes, which will unfairly inhibit diversity of content on the Internet to the benefit of certain highly capitalised companies.

Most damning of all, this bill seeks to give government departments a free pass to disseminate misinformation. Australians will wonder what intent is behind this bill when it holds such a self-serving clause.

This bill would create a chilling effect on the digital speech of most people in society, inhibiting their learning capacity, and unfairly granting immunity to a select group who are mostly dependent on government, thereby exacerbating political power disparities and upsetting the democratic relationship between government and the governed. The bill would be costly economically and morally wrong.