

Let Everyone Speak

Why I oppose the Australian Government's draft Bill about "Combating Misinformation and Disinformation"

I oppose the draft Bill because I believe in letting everyone speak, online as well as offline, and especially on matters of government policy. This freedom should be available to ordinary people, as well as to professional journalists, academics, and governments.

Ordinary people, as well as prominent people, should be free to support or oppose policies advocated in the name of particular groups in society — for instance gender self-identification laws. Ordinary people, as well as prominent people, should be free to support or oppose government positions on geopolitical conflicts, including wars.

Is it realistic to expect or demand that opinions shared online never get facts wrong? I think not. To err is human, after all, and shared misconceptions happen everywhere, offline as well as on. They're called "furphies" in informal Australian English, a word that dates back to the First World War.

Shared misconceptions can be annoying, distracting, even dangerous. Nonetheless, furphies that crop up in discussions of policy are best countered by open criticism and checking of sources.

To obstruct sharing of opinions on policy questions in the name of stopping furphies is to throw a baby out with its bathwater.

The new law's double standard

The proposed new law creates legal requirements for accuracy and harmlessness that apply to online statements of opinion by ordinary people, but the requirements do **not** apply to governments and news media.

If harmful false statements are made by a Prime Minister, Premier, or newspaper editor, the new law says they **cannot** be treated as "misinformation" or "disinformation".

Yet Prime Ministers, Premiers, and newspaper editors have resources including paid staff to help them sort out facts from furphies, which most of us don't.

How is it that furphies in statements by well-resourced people can never be treated as "misinformation" or "disinformation", while furphies in statements of opinion by less-resourced people can be?

Isn't this political censorship?

At present, people in Australia are generally free to speak about policy questions via social media. Platform owners can and do set limits on what may be said, but users can always seek out another platform where online speech is freer. Conversely, users who think that the limits applied by a platform owner are too lax can seek out another platform where moderation is stricter.

The proposed new law will enable a government-appointed quasi-autonomous body, the ACMA (Australian Communications and Media Authority) to establish legally enforceable “standards” across a range of platforms. This limits competition among platforms, since it means that one platform will not be able to attract users from others by offering them greater freedom than the “standard” allows.

We are told that the ACMA will not censor individual posts. However, three of the scenarios in the government’s Guidance Note (Scenario 2, Scenario 3, and Scenario 5) demonstrate that the government intends the ACMA to identify specific currents of “misinformation” or “disinformation” spreading through online platforms, and then to direct platform owners to curb these currents.

I endorse the point made by Prof. Suri Ratnapala and Dr Adrian Ratnapala in their open submission:

“... it matters nothing to the Australian public whether they are censored by ACMA or by digital platforms required by law to all sing from the same song-sheet.”

The proposed new law will establish a system of indirect government censorship that will obstruct ordinary people from sharing their views about policies.

Can it fairly be called “political censorship”?

It certainly fits the simple and unbiased definition of “political censorship” given by ChatGPT: “the act of regulating or controlling information, ideas, or expressions that are related to politics by an authoritative entity...”

How the new law may be used by activists against their opponents

I’m concerned about opportunities the proposed new law will provide to enthusiastic amateur censors — the sort of activists who try to silence their opponents offline by methods like deplatforming, confronting orderly protest meetings with noisy and intimidating counter-protests, and pressuring employers of targeted opponents to sack them.

Repressive governments aren’t the only people who can suppress open debate in practice. This isn’t just my own opinion. It’s a point that was made in July 2020, in a joint statement by over 150 American, British and Canadian scholars and writers, including Noam Chomsky, Thomas Chatterton Williams, Anne Applebaum, Francis Fukuyama, Salman Rushdie, Martin Amis, Michael Ignatieff, and J.K.Rowling. (Their statement is titled “A Letter on Justice and Open Debate”, and was published in Harper’s Magazine.)

If the draft Bill becomes law, I anticipate that censorious activists will pounce on minor or imagined inaccuracies in the posts of their opponents, and will call out opponents for supposedly causing harm, for instance by supposedly contributing to “hatred against a group in Australian society”, a term used by the draft Bill in its definitions.

They'll use the combination of alleged factual error and alleged harm to charge their opponents with "misinformation" or "disinformation", and demand that forum owners must close the opponents' accounts. If this doesn't work, they will then demand that the ACMA must take action against forum owners.

The draft Bill enables fines of millions of dollars to be imposed on online platforms for failure to censor as required, yet (as Suri and Adrian Ratnapala point out in their submission) no penalties are specified for undue or excessive censorship.

This will create an incentive for a platform owner fearful of financial loss to err on the side of caution, by practising censorship that goes beyond the newly-established legal requirements, especially when censorious activists are piling on the pressure.

Online discussions about international conflicts

I'm concerned about about how the new system of censorship will affect online discussion of conflicts among world powers and alliances.

The government's Guidance Note regarding the draft Bill includes a scenario where the new system will be used to deal with "objectively false user-generated material relating to an ongoing geopolitical conflict". (Guidance Note 3.3.2 Scenario 3)

On at least one point, I agree with the writers of the Guidance Note... False statements made when countries are at war, or are close to war, can lead to serious harm, therefore they fall within the draft Bill's definitions of misinformation and disinformation.

If a regional conflict ever escalates into global nuclear war, it will not only cause "harm to the health of Australians" and "harm to the Australian environment" (as specified in the draft Bill's definitions), it will cause extreme harm to humans and other living things all over the world.

I must point out, though, that distinguishing between objectively false and objectively true statements can in practice be very difficult, especially when nations are either at war or close to war.

As Hiram W Johnson said in 1917: "The first casualty when war comes is truth."

How will censors deal with false information from an ally?

History shows. unfortunately, that democratic governments as well as authoritarian ones are capable of making false and harmful statements about conflicts.

Here are two examples — not hypothetical scenarios, but things that happened:

* In 1964, the Lyndon B. Johnson administration in the USA justified its escalation of the Vietnam War by referring to the so-called Gulf of Tonkin Incident — a garbled account of an exchange of fire between American and North Vietnamese warships on August 2 that year, followed by an alleged similar incident on August 4 which in fact never happened at all.

* In 1990, the George H. W. Bush administration made use of the Nayirah Testimony — a fictitious massacre of Kuwaiti babies by soldiers from Iraq — to prepare public opinion for the First Gulf War.

On each occasion, the objective falsity of US claims was eventually exposed by mainstream news media, and is now a matter of historical record.

Yet each of these fake claims contributed to major escalation of a regional conflict, an escalation that involved Australians too.

Will the new system of censorship protect Australians from harmful false claims that come from an ally?

The draft Bill exempts statements by the Australian government from being treated as “misinformation” or “disinformation” by the ACMA. It does not give similar exemption to statements by governments of other countries, even if they are allies of Australia.

But is it conceivable that an Australian government body — even a quasi-autonomous body such as the ACMA — will ever tell an online forum to block misinformation from a longstanding ally like the USA?

Or will our guardians-against-misinformation do the opposite?

Will they simply assume that the current narratives of the White House and the US State Department are objectively true, and treat any different view of events as false and harmful?

What I suggest

I'd suggest that the best protection against potentially harmful false information regarding a geopolitical conflict is **not** to censor anyone's claims about what is happening.

Instead, let ordinary people in as many countries as possible talk together freely about the claims of all sides. Modern information technology, including social media, enables this to be done on a scale never before possible.

The combined good sense of people of many countries, talking together online, may help the world retain at least a little healthy scepticism — a healthy open-mindedness about which claims are true and which are not.

National governments, including Australia's government, should respect the independence of online forums.

Submitted by Colin Robinson, 19.8.2023

