



# Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2024 [Provisions]

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*Committee Secretary  
Senate Standing Committees on Environment and Communications  
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Parliament House  
Canberra ACT 2600*

Dear Secretary,

We write to express our major concern with the Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2024 [Provisions].

This bill is a direct attack on democracy and the right to free speech to which all Australians are entitled.

The bill is unnecessary because legislation already exists within Australia to achieve its aims. The focus of the bill appears to be regulatory capture of global online digital communications platforms under the guise of preventing harm.

Is this bill designed to address misinformation and disinformation? Or is it designed to protect the government narrative and to protect lies?

## Protecting the government, not the Australian people

Australians are being drawn into regulatory capture as an intended consequence of burdening digital communications platforms with legal responsibility for shutting down what the Minister or the Australian Communications and Media Authority (the ACMA) deem to be inappropriate content. Ultimately what will be censored is dissent, push back, opposing opinion or comments that pose a risk to public health messaging. Essentially the bill will require platforms to do the dirty work for the government - so that Government narratives can prevail. Of concern is the Governments ability, through the ACMA to determine what is serious harm.

The ‘meaning’ of serious harm within Schedule 1, Part 2, Div 1, s14(a):

***(a) harm to the operation or integrity of a Commonwealth, State, Territory or local government electoral or referendum process; or***

What qualifies the ACMA and digital communications platforms to police serious harm? The ‘meaning’ of serious harm is subjective and impossible to apply objectively. These standards



cannot be applied consistently or fairly and are open to personal interpretation. Who or what, will ensure these decisions are made without bias?

After the Voice to Parliament referendum in 2023, Prime Minister Albanese said the referendum failed because of misinformation during the campaign, a point he consistently made during<sup>1</sup> and after the referendum. “People can be subject to misinformation which in some cases is just about politics but in some cases can be dangerous,” he said during Question Time in the House of Representatives.<sup>2</sup>

The online community was abuzz with communication and discussion around what the Voice to Parliament would do in practical terms and public debate ensued for months.

People on both sides voiced either their support or concerns with the proposed constitutional changes, both sides of the debate considered the opinions of the other was misinformation or disinformation. This bill would force digital communications platforms to form an official opinion from an authoritative source, on a topic of debate and actively oppose and censor those who disagree with that position.

## Stifling dissent around the pandemic response – Protecting powerful global interests

The agenda of the government of the day could, during any debate, loosely use the term misinformation or disinformation and compel digital communications platforms to shut down any opinion that opposes their priorities, including involvement in global initiatives. This includes protecting/furthering the agenda of governments, powerful global corporations and non-government entities.

For example, at the 77th World Health Assembly conference held this year in May the amended International Health Regulations (IHRs) were discussed. Annexure 1. A. (C) (vi) of the IHRs requires member states to address communication risks posed in relation to public health events (i.e. pandemics) and addressing misinformation and disinformation.



We draw your attention to Schedule 1, Part 2, Div 1, s14(b), which says:

***(b) harm to public health in Australia, including to the efficacy of preventative health measures in Australia; or***

What is a preventative health measure?

Does it include a healthy diet, sunlight, exercise and natural therapies or is it only limited to allopathic medicine?<sup>3</sup>

What do the ACMA or the digital communications platforms rely upon to inform them of the efficacy of preventative health measures in Australia and the potential harm caused by dissenting opinion? There was a time when a lobotomy was a standard procedure.

This provision could in fact present as a harm to public health because it has the effect of suppressing free speech related to health measures.

During the COVID-19 pandemic novel mRNA vaccines were rolled out as preventative health measures. Australians were told they should protect their family members by having the vaccine. These products – only provisionally approved – were promoted as safe and effective, and yet there have been, to date, more than 140,000 reports of adverse effects to the Therapeutic Goods Administration (TGA). It was strongly implied that they would stop transmission when they did not and those who pointed out this now widely accepted revelation were at the time said to be spreading misinformation

Should another public health emergency arise, and this bill become law, the ability for individuals to challenge claims and tell their personal story will be shut down and censored. Digital communications platforms will be left with no choice but to silence any opposition to the Government's preventative health messaging. Open forum online discussion created awareness of the harmful side effects caused by the vaccines. Suppression of this type of information exchange could contribute to more harm suffered by Australian citizens. This provision may in fact achieve the reverse of what is intended.

This provision of the bill conflicts with and is a hinderance to, a medical practitioner's obligation to openly discuss health concerns with patients. It is their right to discuss emerging issues with other medical practitioners, in an open forum sharing knowledge and experiences in real time. We have seen medical practitioners silenced and threatened through regulatory action such as suspension, simply for asking questions about the efficacy of products such as the COVID-19 vaccines. This bill presents an extension of that type of



suppression of information and restricts discussions when that discussion falls foul of the approved government narrative.

## An agenda with respect to gender?

Vilification of groups or individuals based on their characteristics should always be discouraged. There are already a range of Acts that already protect Australians from discrimination and harassment.<sup>4</sup>

Drawing your attention to Schedule 1, Part 2, Div 1, s14(c):

***(c) vilification of a group in Australian society distinguished by race, religion, sex, sexual orientation, gender identity, intersex status, disability, nationality or national or ethnic origin, or vilification of an individual because of a belief that the individual is a member of such a group;***

Under this definition, for example, a person could make a statement on a digital communications platform that there are only two genders, male and female. This statement could then be deemed misinformation or disinformation for creating harm to a group based on gender identity. To support this assertion of discrimination or harm, an academic article covered by schedule 1, (16) as excluded dissemination (from a university) may be used to assert misinformation on the part of the original author.

Schedule 1, (13) (3) (f) refers to authority.

- How is the ‘authority’ of the source determined by the digital communications platforms?
- Will the ACMA provide a list of authoritative sources within Australia?
- Will this list be ranked?
- What criteria should an individual or organisation meet to be deemed authoritative?
- Does a government department have more authority than a non-government organisation?

There is a risk that the most powerful academic opinion may become an unquestionable single source of truth.

## The government can peddle misinformation

In many instances there is no way of stopping the government from purveying their own misinformation. For example, the Federal Government recently claimed credit for a 17.9%



drop in energy prices,<sup>5</sup> yet this was powered by significant federal and state subsidies.<sup>6</sup> Would this claim by the Government about its “performance” in this area constitute misinformation under the provisions of this bill? It might if they weren’t the Government.

This dangerous bill gives Government, through the Communications Minister and the ACMA, the ability to decide what is true and what is not, and who is exempt from any such scrutiny around the issue of truth.

The bill provides for the following:

- Government overreach
- The inability to define what is and isn’t truth
- Actions beyond the scope of reasonable power
- Exceeding the scope of authority
- Infringement on human rights
- Hindering personal freedoms

## Conflict with Australian obligations under International Human Rights Treaties

Australia is a party to a number of international human rights conventions, most notably the International Covenant on Civil and Political Rights<sup>7</sup> (ICCPR).

Under international human rights law (IHRL) Australia has obligations to:

- **prohibit** certain forms of expression, namely **prohibited speech** and
- **protect** a range of other forms of expression, namely **protected speech** (both offensive and inoffensive, including **political speech**) and

Under the IHRL, freedom of expression can only be restricted when a specific set of conditions are met and only in a very narrow capacity.

- freedom of expression may only be restricted when necessary to protect the rights or reputations of others, national security, public order, or public health or morals and
- any such restrictions must, however, give effect to the **presumption of freedom**: restrictions must be narrowly construed, convincingly justified and **not operate in a blanket, indiscriminate manner**.

Under IHRL there is no right not to be offended, and no right to **not** receive or be exposed to information or ideas even if those ideas may be offensive. The prohibition of false information is not in itself a legitimate aim under IHRL nor is falsity or manipulation of information a sufficient ground for restricting freedom of expression



## Right of review of an ACMA or Ministerial decision relating to censored content is absent

The bill is deficient in failing to provide for a right of review to a decision made by the ACMA or the Minister on a matter of disinformation, misinformation or censorship. Unlike other Commonwealth legislation the bill fails to protect Australians with a right to appeal an ACMA or Ministerial determination without the complexity and expense of issuing legal proceedings in the Federal Court.

## Conclusion

In summary we believe this bill should be rejected in its entirety for the following reasons:

1. Existing legislation is sufficient to achieve the protection of Australian citizens and minimise online harms, via the following existing legislation:
  - Online Safety Act 2021<sup>8</sup>
  - Australian Communications and Media Authority Act 2005<sup>9</sup>
  - Broadcasting Services Act 1992<sup>10</sup>
  - Defamation laws<sup>11</sup>
  - Federal and State criminal laws<sup>12</sup>
2. The Australian Code of Practice on Disinformation and Misinformation is an existing voluntary industry code established with online digital platforms intent, as signatories, on committing 'to safeguards to protect Australians against harm from online disinformation and misinformation
3. The bill if enacted will infringe on the human rights of Australian citizens. The bill raises serious concerns about potential infringements on freedom of expression, privacy, due process and would impact robust discussion on matters of public importance. The broad definitions and sweeping authority given to the ACMA and the Minister could lead to overreach and arbitrary application, potentially violating both Australian constitutional principles and international human rights.  
*Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*<sup>13</sup>
4. Granting the Minister, the ACMA or digital communications platforms the ability to determine the authority of the source of information, is and of itself, authoritarian control and beyond the scope of governmental power.



We could instead consider:

1. Adoption of the New Zealand approach where education opportunities are made for citizens to learn more about how to scrutinise information and how to identify reliable sources.<sup>14</sup>
2. Consider the ‘community notes’ concept for use by other digital communication platforms as a means to counter inaccurate information.
3. Trust the Australian public to determine fact from fiction for themselves.

We wish to acknowledge the more than 32,500 Australians who have taken the time to express their opposition to this bill on Senator Babet’s website.

Sincerely,

The United Australia Party

30<sup>th</sup> September 2024

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<sup>1</sup> [Anthony Albanese takes swipe at No campaign for ‘disinformation’ | Sky News Australia](#)

<sup>2</sup> [Hansard - House of Representatives 17/10/2023 Parliament of Australia \(aph.gov.au\)](#)

<sup>3</sup> <https://www.cancer.gov/publications/dictionaries/cancer-terms/def/allopathic-medicine>

<sup>4</sup> [A quick guide to Australian discrimination laws | Australian Human Rights Commission](#)

<sup>5</sup> [Inflation slows to 2.7% in August as electricity prices fall to record low \(infochoice.com.au\)](#)

<sup>6</sup> [Inflation falls to 3.5pc in July as energy rebates help to push electricity prices lower - ABC News](#)

<sup>7</sup> [International Covenant on Civil and Political Rights](#)

<sup>8</sup> [Federal Register of Legislation - Online Safety Act 2021](#)

<sup>9</sup> [AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY ACT 2005 \(austlii.edu.au\)](#)

<sup>10</sup> [BROADCASTING SERVICES ACT 1992 \(austlii.edu.au\)](#)

<sup>11</sup> [DEFAMATION ACT 2005 - As at 1 July 2024 - Act 77 of 2005 \(austlii.edu.au\)](#)

<sup>12</sup> [Criminal law of Australia - Wikipedia](#)

<sup>13</sup> [Freedom of information, opinion and expression | Australian Human Rights Commission](#)

<sup>14</sup> [Strengthening resilience to disinformation | Department of the Prime Minister and Cabinet \(DPMC\)](#)