

Australia: Censors celebrated as bill seeks to define misinformation, disinformation

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The heralded arrival of the Internet, an information medium never before seen on such scale, caused enthusiasm.

Humankind would go on to fawn over a technology which would, as Langdon Winner [writes](#), “bring universal wealth, enhanced freedom, revitalized politics, satisfying community, and personal fulfilment”.

Such high street techno-utopianism was bound to have its day.

The sceptics grumbled. Evgeny Morozov, in his [biting](#) study *The Net Delusion*, warned of the misguided nature of the “excessive optimism and empty McKinsey-speak” of cyber-utopianism and the ostensibly democratising properties of the Internet.

Governments, whatever their ideological mix, were similarly suspicious.

In Australia, the tech-utopians are being butchered, metaphorically speaking. Of concern is the [Communications Legislation Amendment \(Combating Misinformation and Disinformation\) Bill 2023](#).

This bill arises from the [2019 Digital Platforms Inquiry](#), conducted by the Australian Competition and Consumer Commission (ACCC). Its final report [noted](#) that consumers accessing news placed on digital platforms “potentially risk exposure to unreliable news through ‘filter bubbles’ and the spread of disinformation, malinformation and misinformation (‘fake news’) online.”

And what of television? Radio? Community bulletin boards?

In this state of knee-jerk control, the federal government pressed digital platforms conducting business in Australia to develop a voluntary code of practice to address disinformation and the quality of news.

The Australian Code of Practice on Disinformation and Misinformation [was launched](#) on February 22, 2021, by the Digital Industry Group. Eight digital platforms adopted the code, including Google, Facebook, Microsoft and Twitter.

This did little in terms of satisfying the Scott Morrison government. Paul Fletcher, then Minister of Communications, duly [announced](#) that new laws would be drafted to arm the Australian Communications and Media Authority (ACMA) with the means “to combat online misinformation and disinformation”.

He noted an ACMA report highlighting that “disinformation and misinformation are significant and ongoing issues”.

The resulting bill proposes to make various functional amendments to the *Broadcasting Services Act 1992* as to the way digital platform services work. It also proposes to vest the ACMA with powers to target misinformation and disinformation. Digital platforms not in compliance with the directions of the ACMA risk facing hefty penalties, although the regulator will not have the power to request the removal of specific content from the digital platform services.

In its current form, the proposed instrument defines misinformation as “online content that is false, misleading or deceptive, that is shared or created without an intent to deceive but which can cause and contribute to serious harm”.

Disinformation is regarded as “misinformation that is intentionally disseminated with the intent to deceive or cause serious harm”.

Of concern in the bill is the scope of the proposed ACMA powers regarding material it designates as “harmful online misinformation and disinformation”.

Digital platforms [will be required](#) to impose codes of conduct to enforce the interpretations made by the ACMA.

The regulator can even “create and enforce an industry standard” — which is unworkably opaque — and register them. Those in breach will be liable for up to \$7.8 million or 5% of global turnover for corporations. Individuals can be liable for fines up to \$1.38 million.

A central notion in the proposal is that the information in question must be “reasonably likely ... to cause or contribute serious harm”.

Examples of this rubbery concept are provided in the [Guidance Note to the Bill](#). They include hatred targeting a group based on ethnicity, nationality, race, gender, sexual orientation, age, religion or physical or mental disability.

It can also include disruption to public order or society. The example provided in the guidance suggests typical government paranoia about how the unruly, irascible populace might be incited: “Misinformation that encouraged or caused people to vandalise critical communications infrastructure”.

The proposed law will potentially enthrone the ACMA as an interventionist overseer of digital content. In doing so, it can decide what and which entity can be exempted from alleged misinformation practices.

For instance, “excluded content for misinformation purposes” can be anything touching on entertainment, parody or satire, provided it is done in good faith.

Professional news content is also excluded, but any number of news or critical sources may fall foul of the provisions. The discretion is woefully wide.

The Victorian Bar Association’s (VBA) [submission](#) warns that “the Bill’s interference with the self-fulfilment of free expression will occur primarily by the chilling self-censorship it will inevitably bring about in the individual users of the relevant services (who may rationally wish to avoid any risk of being labelled a purveyor of misinformation or disinformation)”.

The VBA also wonders if such a bill is even warranted, given that the problem has been “effectively responded to by voluntary actions taken by the most important actors in this space”.

Also critical, if less focused, is the rage coming from the Coalition and Sky News. Shadow Communications Minister David Coleman [called](#) the draft “a very bad bill” giving the ACMA “extraordinary powers. It would lead to digital companies self-censoring the legitimately held views of Australians to avoid the risk of massive fines.” Sky News has even [used the term](#) “Orwellian”.

Misinformation, Coleman said, was defined so broadly as to potentially “capture many statements made by Australians in the context of political debate”. He said content from journalists “on their personal digital platforms” risked being removed as crudely mislabelled misinformation.

This is an about face for the Coalition, given its enthusiasm in 2022 for a similar muzzling of information.

The proposed bill on assessing, parcelling and dictating information (mis-, dis-, mal-) is a nasty little experiment in censoring communication and discussion.

When the state decides, through its agencies, to tell readers what is appropriate to read and what can be accessed, the sirens should be going off.

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