

Submission to the Senate Standing Committees on Environment and Communication on the Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 [Provisions]

September 30, 2024

Committee Secretary

Senate Standing Committees on Environment and Communications

PO Box 6100

Parliament House

CANBERRA ACT 2600

Dear Committee Secretary,

Thank you for the opportunity to make this submission on behalf of Australians for Science and Freedom (ASF).

ASF promotes scientific inquiry and the central role of human freedom in maintaining a strong, healthy society. Our organisation was founded by academics and public intellectuals initially as a response to policies adopted during the COVID-19 crisis.

ASF made a submission, jointly with Maat's Method, opposing the original draft legislation released in 2023. We have read the new amendments to the legislation subject to this round of public consultation. We believe that even in its amended form, this Bill stands on faulty conceptual and philosophical pillars, displays a dangerous blindness to history and the Bill's broader consequences on the part of its drafters, and if passed would severely wound Australia.

Our submission follows.

Yours faithfully,

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With thanks to Alison Bevege, Andrew Lowenthal, and Rebekah Barnett for input on drafting.

1. This bill is incapable of solving the problem it purports to address.

This Bill rests on the assumption that spreading errors or lies online is such a danger to the public that legislation curtailing free speech is required to protect the nation from “serious harm”. We believe the proponents of this Bill have overstated the risks of “misinformation” (a word on whose definition reasonable people cannot agree) and underestimated the risks of censoring free speech.

It is true that digital platforms have enabled the rapid spread of errors and lies. They have also enabled the rapid spread of facts and good ideas.

The antidote to false information has never been censorship. The antidote to false information is its ultimate voluntary rejection by individual citizens tasked with evaluating evidence and thinking critically, part of each person’s rights and responsibilities in our democratic society.

No single person or body, including the government, the Australian Communications and Media Authority (ACMA), or a social media company is capable of determining what “misinformation” versus “truth” is at any given moment, because from a practical standpoint, no one is all-knowing, and from a philosophical and political standpoint no one has a monopoly on truth. Much of the history of human thought and scientific progress is one of allegedly unassailable truths being overturned later as complete fallacies. We review below a selection of innumerable historical examples of how proponents of new, useful thinking have been denigrated in horrific ways by the majority before finally being vindicated.

The “serious harm” caused by restrictions on the flow of information has, in the past, been measured in human blood. Passing this Bill would increase restrictions on the flow of information, and thereby add to this carnage. As we detail below, we believe that more “serious harm” is likely to befall Australia as a direct consequence of this Bill than as a consequence of any information they consume online.

2. The specific examples of harm given by the Impact Assessment to justify this Bill are built on “misinformation”.

Consider the examples of harm claimed by a literature review of 14 studies from October 2021.¹ According to the Impact Assessment, “In one example the report investigated, a popular myth in Iran suggested that consumption of pure alcohol (methanol) could eliminate the virus. This claim resulted in 800 deaths and 5,876 hospitalisations due to methanol poisoning.”²

This is not true.

The Iranian source study used to make that claim explicitly states that “it is unclear how many Iranians drank adulterated alcohol for recreational purposes or as gastrointestinal “disinfectant” to prevent—or treat—COVID-19 infection.”³

Iranians were locked down under curfew at the time. There is no way to know whether they were drowning their sorrows or responding to “misinformation”.

¹Yasmin Mendes Rocha et al, ‘The impact of fake news on social media and its influence on health during the COVID-19 pandemic: a systematic review’ (2021) (31) *Journal of Public Health* 1007-1016, 1014. Accessed 27 September 2024 at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8502082/>

²OpCit, Impact Assessment, “Misinformation and disinformation during the COVID-19 pandemic.”

³ Hossein Hassaniyan-Moghaddam et al, “Double trouble: methanol outbreak in the wake of the COVID-19 pandemic in Iran—a cross-sectional assessment,” *Critical Care*, Published online 9 July 2020. Accessed 27 September 2024 at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7344025/>

The source study makes it clear that the people did *not* deliberately drink methanol, which is poisonous. They *accidentally* drank methanol because alcohol (ethanol) is illegal in the Islamic theocracy of Iran. As a result, bootleggers added bleach to methanol to take out the warning colouring and sold it as ethanol.

This is nothing new for Iran. In September 2018, before the pandemic, 768 people suffered methanol poisoning of whom 76 died, for exactly the same reason: bootleg alcohol cut with methanol.⁴

What caused the deaths and hospitalisations in Iran pointed to by the Impact Assessment was not “misinformation”. The problem was criminal bootleggers.

The Impact Assessment then references a UK/US randomised controlled trial (RCT) that looked at how exposure to online “misinformation” affected the intent to vaccinate, while making the assumption that a sufficiently large population take-up of Covid vaccines would lead to herd immunity, a claim that has since been proven erroneous.⁵ (showing that even the authors of RCT-style scientific studies cannot always tell “misinformation” from fact at a given point in time).

In this study, participants were shown five images of “misinformation” with a control set of “factual information”.⁶

One “misinformation” tweet stated: “Scientists have expressed doubts over the effectiveness of a coronavirus vaccine that has been rushed to human trials, after all the monkeys used in initial testing later contracted coronavirus.” The tweet pointed to a story in which a former Harvard medical professor agreed that the AstraZeneca vaccine had not stopped transmission.⁷

The alleged “misinformation” claim about effectiveness against transmission was actually true:⁸ The vaccine had been shown in this study not to reduce nasal shedding (the proxy for transmission) in the vaccinated group versus the control group of monkeys. When released to humans, the vaccines in fact failed to prevent the catching or spreading of covid.⁹

Another “misinformation” tweet used in this study stated: “A virus with a 99.6% survival rate for people under 70 but the entire world needs to take a vaccine? I’m no Sherlock Holmes but something’s fishy about all that.”

The study authors classified this tweet as “misinformation” because the tweet questioned the necessity of a worldwide vaccination campaign. However, the information contained in the tweet was correct: the impact of Covid was indeed highly age-stratified, so much so that a reasonable person could argue that little needed to be done against Covid for those aged under 70, including

⁴ Hamidreza Aghababaeian et al. “The Methanol Poisoning Outbreaks in Iran 2018,” *Alcohol and Alcoholism*, 1 March 2019. Accessed 27 September 2024 at: <https://academic.oup.com/alcalc/article-abstract/54/2/128/5304656?redirectedFrom=fulltext&login=false>

⁵ Sahil Loomba et al. ‘Measuring the impact of COVID-19 vaccine misinformation on vaccination intent in the UK and USA’ (2021) (5) *Nature Human Behaviour* 337-348. Accessed online 27 September 2024 at: <https://www.nature.com/articles/s41562-021-01056-1>

⁶ Sahil Loomba et al, February 2021. Supplementary Information: Supplementary Table 1. Widely circulating misinformation and factual information on social media surrounding COVID-19 vaccines between June and August 2020, that was shown to respondents https://static-content.springer.com/esm/art%3A10.1038%2Fs41562-021-01056-1/MediaObjects/41562_2021_1056_MOESM1_ESM.pdf

⁷ Steve Watson, “Experts Suggest £90 Million Oxford University Coronavirus Vaccine Doesn’t Work,” *Summit News*, 19 May 2020. Archived version accessed 27 September 2024 at: <https://web.archive.org/web/20200519191649/https://summit.news/2020/05/19/experts-suggest-90-million-oxford-university-coronavirus-vaccine-doesnt-work/>

⁸ Original study: Neeltje van Doremalen et al, “ChAdOx1 nCoV-19 vaccine prevents SARS-CoV-2 pneumonia in rhesus macaques,” *Nature*, 30 July 2020. It found no reduction in nasal shedding in the vaccinated group. <https://www.nature.com/articles/s41586-020-2608-y>

⁹ Nabin K. Shrestha et al, “Risk of Coronavirus Disease 2019 (COVID-19) among those up-to-date and not up-to-date on COVID-19 vaccination by US CDC criteria,” *Plos One*, 8 November 2023. Accessed 27 September 2024 at: <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0293449>

taking a vaccine. The median Covid infection fatality rate for unvaccinated people under 70 years of age has been estimated as 0.07 percent.¹⁰

Of the “factual information” shown to participants in this study, some was in fact false.

For example, a “factual” tweet included from CEPI claiming vaccination was “the way out of this devastating pandemic” was more akin to a marketing claim than a scientific statement, and likely driven by monetary incentives.¹¹

Consider that CEPI is an organisation dedicated to promoting mRNA as a platform for 100-day “lab to jab” vaccination,¹² and hence logically has a vested interest in exaggerating pandemic severity and promoting vaccines. The study authors classified this tweet as “factual” because health authorities at the time agreed with it – yet it was not true. Other experts who said it was unwise to use a leaky vaccine in a pandemic were ignored.¹³ This allegedly “factual” tweet was a contested opinion, not a fact.

The presence of “misinformation” in the government’s own Impact Assessment demonstrates that the government itself cannot produce documents reliably free from error. Yet it hypocritically expects internet platforms and other bodies to develop the means to do so – or, more accurately and worse, it expects such bodies to develop the means to allow at any point in time only content consistent with the government’s interpretation of what “misinformation” is as referred to in this Bill – in order to comply with the Bill. This is a hopeless task.

3. The Bill’s proponents have still not shown that existing legislation is inadequate.

The Impact Assessment states that “to the extent that there is any burden on the freedom of political communication, this must be justified”.¹⁴ The onus is on this Bill’s proponents to show that existing legislation is inadequate to prevent “serious harms” from online behaviour.

The Impact Assessment uses as an example of serious “misinformation”-related harms to election integrity the claim that 2022 Federal Election ballot papers were found near bins in Port Macquarie.

However, as the Impact Assessment itself notes, the Australian Electoral Commission solved that problem by investigating and posting a note on social media.

Electoral processes are safeguarded in Australia by extensive legislation, both at the federal level and in individual states and territories. Existing laws cover everything from the display of posters to false and misleading statements, the registration of political parties, funding disclosures, and ballot papers.¹⁵

¹⁰Angelo Maria Pezzullo et al, “Age-stratified infection fatality rate of COVID-19 in the non-elderly population,” *Journal of Environmental Resources*, 1 January 2023. Accessed online 27 September 2024 at

<https://www.sciencedirect.com/science/article/pii/S001393512201982X?via%3Dihub>

¹¹CEPI, Tweet, @CEPIvaccines, 12 August 2020. Accessed 27 September 2024 at:

<https://twitter.com/CEPIvaccines/status/1293235060070645762>

¹²CEPI, “CEPI 2.0 and the 100 Days Mission,” accessed 27 September 2024 at: <https://cepi.net/cepi-20-and-100-days-mission>

¹³Geert Vanden Bossche, “Why should current Covid-19 vaccines not be used for mass vaccination during a pandemic?”, Vaccine Summit Ohio lecture slides, 2021 <https://web.archive.org/web/20211006153156/https://www.geertvandenbossche.org/post/why-should-current-covid-19-vaccines-not-be-used-for-mass-vaccination-during-a-pandemic>

¹⁴Online misinformation and disinformation reform, Impact Analysis September 2024, “Potential of over-censorship”, Accessed 27 September 2024 at:

https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr7239_ems_1f053271-fcb8-4f7e-8f96-16217ef1bcdf%22#_Toc176335028

¹⁵Commonwealth Electoral Act 1918, Austlii. Accessed 27 September 2024 at: https://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/cea1918233/

Similarly, the other areas flagged as vulnerable to “serious harm” from the “misinformation” targeted in this Bill are already governed by existing legislation.

Discrimination against and vilification of minority groups can be prosecuted under existing laws. Criminal law at both federal and state levels deals with incitement to violence. Existing laws deal with damaging critical infrastructure or disrupting emergency services. Rules exist already to govern fraud and false advertising.

Using existing legislation removes the matter to the legal system where appropriate judgments about harm and damage can most appropriately be made. This also preserves Australians’ legal rights, including the right to due process.

“Harm to the economy”, including “public confidence in the banking system”, is a vague concept that cannot be legislated against. Moreover, not enabling confidence in public institutions or public initiatives to shift in line with their performance (through the free exchange of thoughts about their performance) would constitute a dangerous blockade to the natural functioning of democratic oversight and institutional renewal. For example, if the banking system were to be on the verge of collapse, then it would be correct for the public to have no confidence in it, and it is that lack of confidence that would ultimately spur reform.

The remedy to “serious harm” to Australia due to institutional corruption, incompetence, or collapse is not censorship, but the reverse: perennial public scrutiny of institutions based on the free exchange of ideas, “facts”, and opinions.

4. This Bill will concentrate social media in the hands of large corporations.

The Department of Infrastructure, Transport, Regional Development, Communications, and the Arts claims to have identified 48 digital communications platform providers that may fall under the scope of the Australian Communications and Media Authority’s (ACMA’s) censorship powers, including 34 small platform providers.

Under the preferred and most invasive censorship option, the Impact Assessment estimates the total regulatory compliance costs at \$16.3 million per year.¹⁶

This unavoidably introduces a barrier to new innovators who cannot bear these costs. It provides a moat for a few large, centralised social media firms. Via this Bill, the government will weaken pro-consumer, free-market forces by working hand-in-glove with favoured corporations who stand to benefit.

5. The Bill’s proponents have not adequately considered its unintended consequences.

This Bill deputises digital platforms to enforce government censorship, obliging and empowering them to remove whatever ACMA and the Communications Minister deem to be “misinformation” from the internet via various means. Many such means are suggested in the Bill, e.g., specific inclusions in industry codes of practice (see Division 4, Subdivision B, Section 44).

Weak protections have been included for “professional news content” subject to existing media codes of practice, and for parody, satire, and academic, artistic, scientific, and religious content, which are defined as “excluded content.” However, these exclusions are undermined by the rest of the Bill, especially where justified by vague and subjective terms such as “safety” and “serious harm.”

¹⁶OpCit. Impact Assessment, “Total Regulatory Cost”.

As an example of the dangerous deputisation of government censorship to digital platforms that this Bill advocates, Division 4, Subdivision B, Section 44 (f) of the Bill explicitly states support for “fact-checkers” in codes or standards for digital platforms, as a means of aiding compliance with the Bill. “Fact-checking” has a very recent history of being applied as a weapon to discredit views counter to the mainstream at any given point. During the Covid crisis, “fact-checkers” were used to discredit dissidents and denounce opponents of policies, including government policies. For example, based on “fact-checking”, Facebook censored a *BMJ* investigative report featuring whistleblower Brook Jackson who exposed poor clinical trial practices at Ventavia, a contract firm conducting Pfizer's Phase Three Covid vaccine trials.¹⁷

This Bill will suppress adversarial independent journalism that seeks to hold government, corporations, or other large organisations to account.

By threatening large fines for non-compliance, the Bill creates incentives for digital platforms to set their AI surveillance and algorithms to target whatever they fear might get them into trouble with the government. This chilling effect was in evidence during the Covid era even in the absence of this Bill, when the views of medical professors who signed the Great Barrington Declaration opposing lockdowns were suppressed.¹⁸ This Bill would reinforce this sort of anti-scientific dynamic.

This Bill enables the Communications Minister to determine by legislative instrument what should be considered “misinformation” and “reasonably likely to cause or contribute to serious harm”.¹⁹ ACMA also has the ability to tinker with requirements under this Bill, without scope for Parliamentary interference. This gives scope for the rules to change at the whim of a Minister or unelected bureaucracy in unforeseen and potentially deleterious ways.

Further, the Bill enables ACMA to act as a spy agency, keeping dossiers on people who have been “wrong” on the internet. “Subdivision B – Information Gathering” allows ACMA to obtain documents and information not just from digital platforms, but also from “other persons” – i.e., third parties. The Bill allows ACMA to keep these documents as long as it likes.

This Bill will have a chilling effect on the free exchange of ideas, will weaken effective public oversight of institutions, and will give centralised authorities explicit and implicit power to direct public thought. The negative consequences of these effects on Australian society cannot be overstated.

6. We have seen the disastrous consequences of the suppression of ideas, a suppression directly promoted by this Bill, in the past.

This Bill is the legislative equivalent of beating Semmelweis.

In 1846, a Hungarian doctor named Ignaz Semmelweis was committed to an insane asylum.

He had once been in charge of the maternity clinic at the General Hospital of Vienna, where he had ordered his staff to wash their hands with chlorine solution before delivering babies.

The rate of maternal death in his clinic dropped dramatically, but instead of being thrilled, his fellow doctors were angry. They knew a different truth: that foul air, or “miasma”, transmitted disease. They mocked him. Semmelweis lost his job. He spent his life as an outcast wandering Europe, trying to

¹⁷ Rebecca Coombes and Madlen Davies, “Facebook versus the BMJ: when fact-checking goes wrong,” *BMJ*, 19 January 2022. Accessed 28 September 2024 at <https://www.bmj.com/content/bmj/376/bmj.o95.full.pdf>

¹⁸ Jay Bhattacharya, “What I discovered at Twitter HQ: Someone had put me on the trends blacklist,” *UnHerd*, 26 December 2022. Accessed 28 September 2024 at <https://unherd.com/2022/12/what-i-discovered-at-twitter-hq/>

¹⁹ Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024, First Reading, Part 2, Division 1, 13 “Meanings of misinformation and disinformation” at (4)

convince doctors to wash their hands, but no one listened to him.²⁰ Semmelweis was beaten in the asylum to which he was committed, and died of sepsis at age 47.

Imagine how much more thorough the suppression of Semmelweis' life-saving views would have been, had the media of the time had a Misinformation and Disinformation Bill similar to the one we contemplate today sitting over their shoulders. The existence of such a Bill, through its impact on the incentives to share information contrary to what was accepted at the time, might well have delayed the uptake of Semmelweis' views for even longer.

The danger created by the Bill we now contemplate recalls the fictional world of Orwell's *1984* less than it does the real-life nightmare of the USSR.

In the 1930s, an agricultural scientist named Trofim Lysenko was put in charge of Soviet agriculture. He climbed the bureaucracy because he said what the politburo wanted to hear. He was a powerful science bureaucrat, and few opposed his ideas, not because he was brilliant, but because he was powerful.

Lysenko said he could teach spring wheat to grow in autumn, dramatically boosting crop yields. Together, Joseph Stalin and Lysenko "modernised" Soviet agriculture via the collectivisation of farms and applied to those farms Lysenko's poorly tested hypothesis of educating grain.

No voices were heard against this plan, such were the chilling effects of the Soviet Union's information control network.

These bizarre agricultural experiments ended in famine and the deaths of up to seven million Russians.²¹ Lysenko was never punished. Instead, his portrait hung on walls and his power diminished only after Stalin died in 1953.

This Bill being contemplated for Australia advocates for a network of information control. The deadly danger of censorship, whether direct or indirect, is never worth the false promise of safety from harm. Safety is guaranteed only by the people's freedom to voice opposition and form opinions in a way unencumbered by government direction through direct or indirect means, including regulation, registration, industry standards, or centralised ownership by a few big players.

Our lives and the long-term health of our society depend on our ability to freely challenge orthodoxy and our freedom to access others' views, beliefs, and opinions, accepting some and discarding others, in the process of forming our own.

ASF recommends abandoning this Bill entirely. It cannot be salvaged.

²⁰Rebecca Davis, "The Doctor Who Championed Hand-Washing And Briefly Saved Lives," *NPR Morning Edition*, 12 January 2015. Accessed 28 September 2024 at: <https://www.npr.org/sections/health-shots/2015/01/12/375663920/the-doctor-who-championed-hand-washing-and-saved-women-s-lives>

²¹Morgan Dunn, "Meet Trofim Lysenko, The Russian Agronomist Whose Pseudoscience Doomed Millions," *All That's Interesting*, 9 February 2021. Accessed 28 September 2024 at: <https://allthatsinteresting.com/trofim-lysenko>