



**Submission to Department of
Infrastructure, Transport,
Regional Development,
Communications and the Arts
on Communications
Legislation Amendment
(Combatting Misinformation
and Disinformation) Bill 2023**

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The Australian Institute for Progress exists to advance the discussion, development and implementation of public policy for Australia's future, from its base in Brisbane. The future does not look after itself.

Table of Contents

Submission to Department of Infrastructure, Transport, Regional Development, Communications and the Arts on Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023	1
Introduction	2
Onus on proponents of legislation.....	4
Faulty research.....	4
Relationship to the original ACCC research	7
Effect on new media	9
Recommendations	10

August 20, 2023

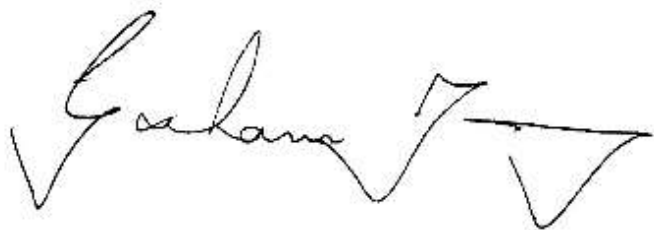
The Director General
Department of Infrastructure, Transport, Regional Development,
Communication and the Arts
GPO Box 594
CANBERRA ACT 2601

Dear Director General,

The Australian Institute for Progress is an Australian think tank based in Queensland, with a particular interest in free speech and publishing. We thank the committee for this opportunity to make a submission on the *Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2023*.

Should you have any queries you may contact me by email graham.young@aip.asn.au, or by phone 0411 104 801.

Regards,

A handwritten signature in black ink, appearing to read 'Graham Young', with a stylized flourish at the end.

GRAHAM YOUNG
EXECUTIVE DIRECTOR

Introduction

The Australian Institute for Progress (AIP) was founded in 2001 as The National Forum to publish the eJournal [On Line Opinion](#), and to foster the use of the Internet for engagement by Australians in discussion of politics and current affairs.

On Line Opinion was the first online journal of politics and current affairs in Australia, having been founded by the writer of this submission in April 1999, when it published 5 articles, with the intention of doing that monthly. Since then it has published 22,551 articles by 5,288 separate authors. It was one of the first professional online sites to allow discussion threads and to have an online forum attached to it.

One of the forms of engagement that grew out of *On Line Opinion* was qualitative and quantitative online polling on politics and policy issues.

In 2014 The National Forum changed its focus to being a think tank and became The Australian Institute for Progress, which continues to publish *On Line Opinion* as well as to conduct online polling.

We therefore have a deep understanding of the nature of digital platforms, their history and how they have developed.

That is why we are opposed to this bill in its entirety. It is mistaken in intent, attempting to cure ills which either do not exist, or are better tackled through other approaches. Rather than improve the Internet it will damage it. The legislation is also based on faulty research.

ACMA should be relieved of its role, as it has demonstrated in this report complete incapacity in tackling the issues.

The premise of *On Line Opinion* was that the inherent danger in the internet was the risk of polarisation. This was obvious to us 24 years ago. So *On Line Opinion* was designed as a platform where it was impossible to avoid views that readers might disagree with - views they might call "misinformation" or "disinformation".

Our aim was to produce a digital platform where rather than being reinforced in their views readers were challenged to rethink them. This is the Socratic approach to knowledge which underlies the concepts of both democracy and science. It is central to our success as a civilisation.

The site is not as successful as it might have been because the most profitable financial model on the internet is one where ideas are affirmed, not challenged, creating silos of enthusiastic agreement. That model has been most attractive to the majority of readers, and most destructive of civic capital. It is the one subscribed to by the vast majority of the mainstream media through their editorial practices.

As Cass Sunstein's [work on group polarisation demonstrates](#)¹, when you have a group that agrees, over time they become more extreme in their agreement. This might be harmless when it comes to, say sport, but dangerous when it comes to politics.

¹ Sunstein, Cass R., The Law of Group Polarization (December 1999). University of Chicago Law School, John M. Olin Law & Economics Working Paper No. 91.

If there is a role for government on digital platforms, that role should be to encourage viewpoint diversity, not viewpoint conformity. Unfortunately, based on shaky research and analysis this bill goes in the opposite direction. Rather than bringing us together, it will tear us apart.

There are already remedies in the law for most of the harms identified in the bill. If these harms are not being addressed, the government should review the legislation dealing with them, not put a subjective remedy into the hands of an authority which demonstrates through this draft bill that it is ill-equipped to prescribe them.

There is a broad range of problems with this proposal, including with the implied right to freedom of speech found by the High Court, and the undesirable delegation of legislation that ought to be the province of the legislature to the ACMA and industry codes of conduct. We are aware of a number of submissions on these points and believe that we are best to confine ourselves to issues arising out of the research and the publishing issues.

Our firm recommendations are that:

1. the bill be withdrawn completely and the matter be taken out of ACMA's hands;
2. an independent commissioner with experience in the law, publishing and public discourse be appointed to examine the need for legislation; and
3. that as per the ACCC Digital Platforms Inquiry recommendations, misinformation not be subject to oversight and any proposed legislation should apply only to disinformation, and potentially malinformation (using the ACCC definitions).

Onus on proponents of legislation

In the cases of all new legislation, it must be incumbent on the proponents of change to demonstrate a need and a benefit from the change which balances both the costs and the benefits. If it is possible to do this in the case of the proposed legislation, it is not contained in the research which the ACMA has relied on. We explore this below.

Faulty research

The research basis for the proposed bill is an initial report on Digital Platforms², undertaken by the ACCC, and then subsequent research by the News and Media Research Centre at the University of Canberra³.

The ACCC report, published in 2019, deals with misinformation, disinformation, and malinformation. It recommends that ACMA produce a code of conduct, but specifically excludes “misinformation”⁴. Research presented by the ACCC suggests that misinformation is mostly encountered by heavy internet users who probably dig more deeply than most for information. It is tentative in its assessment of how damaging this might be.

Its recommendations for a code are built on copying initiatives in other jurisdictions rather than being based on an evidentiary basis in Australia, and it recommends monitoring of the situation.

This is turned into an imperative to regulate misinformation as well as disinformation by the Canberra University research. However this research is poorly designed and actually shows the reverse of what the researchers purport to show.

The most fundamental problem is in measuring the extent of misinformation. The survey instrument uses information about COVID-19 to determine the extent of misinformation on digital media platforms and it fails in two ways.

First, it asks respondents whether they came across misinformation on COVID, without defining what constituted misinformation. All this boils down to is that they are measuring whether I see material online that I disagree with, whatever my position on COVID. This is not what the question purports to measure and has no utility.

It then, after confounding the concept of misinformation in earlier questions posits 5 propositions about COVID which it uses to judge whether respondents are misinformed. The problem for the researchers is that all of these propositions, while the researchers may have believed them to be inarguably false at the time, are now, two to three years after the survey, either true, or the subject of scientific discussion.

Therefore they cannot be disinformation, or used in any way to support the bill. Worse, it appears that the sources that the researchers labelled as being most prone to misinformation, such as Twitter, were the ones most likely to have provided the correct information.

These are the five propositions and the responses taken from the report.

² <https://www.accc.gov.au/about-us/publications/digital-platforms-inquiry-final-report>

³ <https://apo.org.au/node/316582>

⁴ Ibid p 370

TABLE 14 MISINFORMED GROUPS RECODING

	Percentage in the sample			
	Disagree	Neither	Agree	Don't know
Wearing a mask does not significantly reduce your risk of infection or spreading the virus.	60	17	21	2
Covid-19 vaccines that are approved by the health authorities in Australia are safe. <reverse>	9	28	56	8
I am confident that official medical guidelines and treatment for Covid-19 in my State or Territory are based on evidence and best practice. <reverse>	6	16	74	3
The risks posed by Covid-19 are being exaggerated by people in power who want to take advantage of the situation.	53	20	24	3
In most cases Covid-19 can be prevented or treated by simple remedies such as taking vitamins and supplements or other over the counter medicines.	66	15	16	3

Table 1: Source COVID-19: Australian News & Misinformation Longitudinal Study⁵

The first proposition is contradicted by the Cochrane Review's meta-analysis of studies on the issue which found no support for the proposition that masks were effective in stopping the spread of COVID⁶.

The second proposition relies on an undefined definition of "safe". There is plenty of room within normal understandings of that term to reasonably find the vaccines unsafe, particularly compared to other vaccines. The graph below from the Western Australian Health Department indicates that given the high level of reports of adverse events following vaccination, it would be reasonable to say the mRNA vaccines are not safe. This cannot be termed misinformation. This proposition has the fewest respondents disagreeing with it but this may be as a result of another confounding factor in that the survey was administered **before** any vaccines had been administered in Australia. Respondents had no personal experience at this stage, and **neither did anyone else**. So the survey question was effectively asking for an opinion on something that was unknowable at the time. So it was measuring speculation, but speculation is just that, and can't be misinformation.

⁵Covid-19: Australian News & Misinformation Longitudinal Study <https://apo.org.au/node/316582>

⁶ <https://www.cochranelibrary.com/cdsr/doi/10.1002/14651858.CD006207.pub6/full>

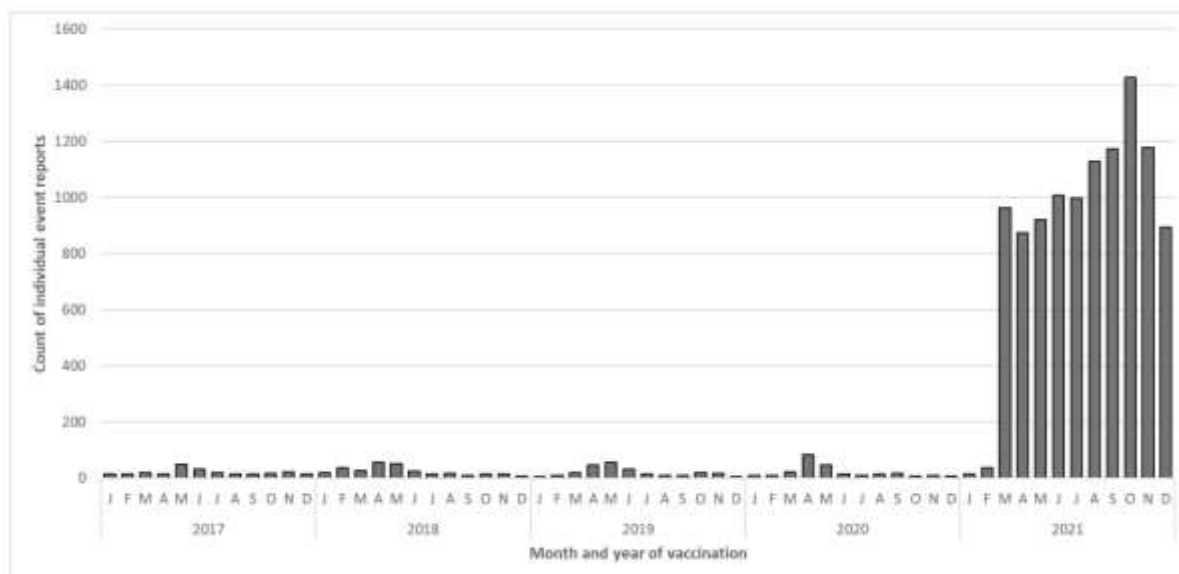


Figure 2: Adverse events following immunisation reported to WAVSS by month, 2017-2021, excluding active surveillance reports for routine vaccinator adverse events.

Figure 1: Western Australian Vaccine Safety Surveillance – Annual Report 2021⁷

The third proposition was unknowable by anyone at that stage, so could hardly meet the test for being “information” but more a prediction. It also depends on what one might consider the “best practice”. Again it would have been arguable then, and certainly is arguable now, that our response to COVID was not based on best practice. At the time Sweden was being criticised because of its approach to COVID-19 which diverged from most countries in the world. Yet now it would appear that they may have been closer to best practice than other countries, including Australia.

Again, the fourth proposition does not meet the criteria for being “information” so can’t be misinformation, however it does constitute a suspicion that can be said to have been justifiable, not least by the revelations contained in the WhatsApp messages from Matt Hancock, the UK Health Minister, which illustrate the truth of this proposition in the UK context⁸. Would it be unreasonable for similar things to have occurred in Australia?

The last proposition also has problems with wording and imprecision, but in the light of current knowledge, would it be unreasonable to say that ensuring a young person under 25 was dosed with Vitamin D, Zinc and Vitamin C, their chances of a serious case of COVID-19, already very low, are lowered even further?

So even when the definition of “misinformation” is refined, it is of no use to the researchers because the propositions are either incorrect, or arguable, but in no case meet any serious definition of “misinformation”.

The qualitative research is also problematic.

For example, on p147 the interviewers are instructed:

Perceptions of examples of misinformation

⁷ <https://www.health.wa.gov.au/~media/Corp/Documents/Health-for/Immunisation/Western-Australia-Vaccine-Safety-Surveillance-Annual-Report-2021.pdf>

⁸ <https://www.bmj.com/content/380/bmj.p522>

...

- *Other examples of misinformation that can be probed/drawn on include the recent US election result, the cause of the 2019–20 Australian bushfires, 5G, and QAnon [show stimulus material]⁹*

What exactly was being probed here? Whether you thought there was interference in the US election (an odd question to be asking Australians)? That something other than climate change could have caused the bushfires? (Our research ascribes only a small percentage effect to higher temperatures). What are the claims about 5G, and is everything Qanon believes misinformation, or is there a mix?

Relationship to the original ACCC research

What these problems with measuring and defining “misinformation” point to is that it is impossible to know with absolute certainty whether many things are true or false. What we think to be true today can be false tomorrow. That some people see conspiracies everywhere doesn’t mean that there are no conspiracies.

The researchers undoubtedly thought they were measuring undeniably true statements, but they weren’t – they were measuring things that were legitimately contestable, and often not even facts at all.

In its Digital Platforms Inquiry the ACCC directed ACMA to look at disinformation, not misinformation.

On the subject of misinformation it said:

To balance these competing interests, the recommended code does not include ‘misinformation’ which is defined as false or inaccurate information not created with the intention of causing harm. Under this approach, the ACCC expects the code would cover issues such as:

- ☐ *doctored and dubbed video footage misrepresenting a political figure’s position on issues*
- ☐ *incorrect information about time and location for voting in elections*
- ☐ *information incorrectly alleging that a public individual is involved with illegal activity.*

The ACCC expects the code would not apply to:

- ☐ *false or misleading advertising (which is regulated under the Australian Consumer Law and overseen by industry body Ad Standards, with advertising broadcast on television and radio also bound by additional legislative restrictions and is co-regulated by the ACMA)*
- ☐ *reporting errors (news publishers are generally regulated by the Australian Press Council with complaints about news broadcast on television and radio subject to coregulation through an industry code overseen by the ACMA)*

⁹ Ibid p147

☐ *explicit hate speech or incitements to violence not presented as journalism or reporting of fact (addressed through the Racial Discrimination Act 1975)*

☐ *commentary and analysis that is clearly identified as having a partisan ideological or political slant*

☐ *incorrect or harmful statements made against private individuals (addressed by existing defamation laws)*

☐ *satire and parody*¹⁰

We would agree with the ACCC.

Further it suggests that policing of disinformation should be confined to very large platforms.

Recommendation 15: Digital Platforms Code to counter disinformation

Digital platforms with more than one million monthly active users in Australia should implement an industry code of conduct to govern the handling of complaints about disinformation (inaccurate information created and spread with the intent to cause harm) in relation to news and journalism, or content presented as news and journalism, on their services. Application of the code should be restricted to complaints about disinformation that meet a 'serious public detriment' threshold as defined in the code. The code should also outline actions that constitute suitable responses to complaints, up to and including the take-down of particularly harmful material.

The code should be registered with and enforced by an independent regulator, such as the ACMA, that:

- is given information-gathering powers enabling it to investigate and respond to systemic contraventions of code requirements
- is able to impose sufficiently large sanctions to act as an effective deterrent against code breaches
- provides frequent public reports on the nature, volume and handling of complaints received by digital platforms about disinformation
- reports annually to Government on the efficacy of the code and compliance by digital platforms.

While the code should focus on addressing complaints about disinformation it should also consider appropriate responses to malinformation (information inappropriately spread by bad-faith actors with the intent to cause harm, particularly to democratic processes).

In the event that an acceptable code is not submitted to the regulator within nine months of an announced Government decision on this issue, the regulator should introduce a mandatory industry standard.

The code should be reviewed by the regulator after two years of operation, and the regulator should make recommendations as to whether it should be amended, replaced with an industry standard, or replaced or supplemented with more significant regulation to counter disinformation on digital platforms.

*Table 2: ACCC Digital Platforms Inquiry*¹¹

We agree. The approach taken by the ACMA would not only try to regulate things which are beyond regulation, like the truth, but they would make it impossible for small platforms to exist, transferring power back to the large media companies, many of whom are just as capable of producing misinformation, and with their greater reach, more damaging when they do.

¹⁰ Ibid pp 370-371

¹¹ Ibid pp 370

Effect on new media

The last point we want to make is the chilling effect on new media that these proposals would have.

On Line Opinion has always operated under legal rights and responsibilities which are listed on the site¹²; a Contributor's Agreement¹³; and a Guide to Contributors¹⁴. We approach the question of truth with humility believing that no one has a monopoly on it and that only through the clash of competing ideas can it be approached.

Perhaps our collected legal documents would satisfy the requirements of ACMA for a "Code of Conduct", but no code of conduct which sought to outlaw misinformation (as opposed to disinformation) would be acceptable to us, even though they might mandate it.

Most journals do not have our diverse approach to viewpoint, but taken in aggregate, it could be said that the collection of digital platforms on the Internet does share some of those characteristics.

If we were to make *On Line Opinion* less open to potential misinformation we would ironically make it more open to potential error. Our ethos relies on errors to be self-corrected if opinions are expressed in a context where they can be contested. In the same way, the entirety of the Internet could be said to operate in a self-correcting way.

Would the ACMA accept our documents as a code of practice? More to the point, would they accept our embrace of a variety of points of view, many of which must be misinformation, in that they are wrong, or not complete, as a feature, not a bug?

Probably not, as unlike the ACCC they don't seem to understand how public discourse works.

From our point of view the biggest problem on the Internet is the tendency of large digital platforms to restrict information as misinformation on the basis of political bias. The Hunter Biden laptop is an indisputable case in point where the truth was labelled as misinformation because it was politically inconvenient.¹⁵

Yet this would appear to be an approach encouraged by the ACMA report.

What this would mean would be the end of open tolerant publishing on the Internet. Not only would *On Line Opinion's* business be broken, but many smaller blogs with fewer viewers, would also face the risk of cancellation if they upset an activist who complained to ACMA, and ACMA thought at the time the activist's view was correct.

Much of the best journalistic work at the moment is being done on small sites run by enthusiasts who often contradict government or mainstream opinions. Under this proposed bill these sites, or sometimes the platforms they run on, like Substack, might be shut down. There is no advantage to the community in this. In fact it is a disadvantage as it slows down the rate at which truth can be discovered.

The ACMA approach would also put at risk new forms of scientific publishing like open access journals where papers are published to the internet without peer review. We know at least 50% of

¹² <https://onlineopinion.com.au/display.asp?page=legal>

¹³ <https://onlineopinion.com.au/display.asp?page=contributors>

¹⁴ <https://onlineopinion.com.au/display.asp?page=guide>

¹⁵ https://www.theepochtimes.com/mkt_app/us/hunter-biden-finally-admits-infamous-laptop-belongs-to-him-calls-for-criminal-probe-into-attempts-to-weaponize-contents-5028330

peer-reviewed journal articles are wrong, so a similar percentage or higher would also be wrong on these innovative journals – that’s a lot of potential misinformation.

What if a piece of misinformation becomes commonly accepted as true? Does a site then have a duty to take down warnings they may have put up? Would they potentially have a legal liability under defamation law if they didn’t because they are wrongly impugning the writer’s reputation? How do you gauge when something incorrectly judged to be misinformation has become information?

The ACMA report uses a concept of harm, but how is a site meant to determine the amount of harm and the effect of it? How many comments or articles need to cause some degree of harm before it is required to withdraw or qualify them?

The questions mount, and so does the potential cost to publishers on the Internet through the uncertainty.

Recommendations

We recommend that:

1. the bill be withdrawn completely and the matter be taken out of ACMA’s hands;
2. an independent commissioner with experience in the law, publishing and public discourse be appointed to examine the need for legislation; and
3. that as per the ACCC Digital Platforms Inquiry recommendations, misinformation not be subject to oversight and any proposed legislation should apply only to disinformation, and potentially malinformation (using the ACCC definitions).