

# The Censors Down Under: The ACMA Gambit on Misinformation and Disinformation

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Global Research, August 11, 2023

Region: [Oceania](#)

Theme: [Law and Justice](#), [Police State & Civil Rights](#)

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*In January 2010, the then US Secretary of State Hillary Clinton, doing what she does best, grasped a platitude and ran with it in launching, of all things, an institution called the Newseum. "Information freedom," [she declared](#), "supports the peace and security that provide a foundation for global progress."*

The same figure has encouraged the prosecution of such information spear carriers as Julian Assange, who dared give the game away by publishing, among other things, documents from the State Department and emails from Clinton's own presidential campaign in 2016 that cast her in a rather dim light. Information freedom is only to be lauded when it favours your side.

Who regulates, let alone should regulate, information disseminated across the Internet remains a critical question. Gone is the frontier utopianism of an open, untampered information environment, where bright and optimistic netizens could gather, digitally speaking, in the digital hall, the agora, the square, to debate, to ponder, to dispute every topic there was. Perhaps it never existed, but for a time, it was pleasant to even imagine it did.

The shift towards information control was bound to happen and was always going to be encouraged by the greatest censors of all: governments. Governments untrusting of the posting policies and tendencies of social media users and their facilitators have been, for some years, trying to rein in published content in a number of countries. Cyber-pessimism has replaced the cyber-utopians. "Social media," [remarked](#) science writer Annalee Newitz in 2019, "has poisoned the way we communicate with each other and undermined the democratic process." The emergence of the terribly named "fake news" phenomenon adds to such efforts, all the more ironic given the fact that government sources are often its progenitors.

To make things even murkier, the social media behemoths have also taken liberties on what content they will permit on their forums, using their selective algorithms to disseminate information at speed even as they prevent other forms of it from reaching wider audiences. Platforms such as Facebook and Twitter, heeding the call of the very screams and bellows of their own creation, thought it appropriate to exclude or limit various users in favour of selected causes and more sanitised usage. In some jurisdictions, they have become the surrogates of government policy under threat: remove any offending material, or else.

Currently under review in Australia is another distinctly nasty example of such a tendency. The Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023 is a proposed instrument that risks enshrining censorship by stealth. Its exposure draft is receiving scrutiny from public submissions till August. Submissions [are sought](#) “on the proposed laws to hold digital platform services to account and create transparency around their efforts in responding to misinformation and disinformation in Australia.”

The Bill is a clumsily drafted, laboriously constructed document. It is outrageously open-ended on definitions and a condescending swipe to the intelligence of the broader citizenry. It defines misinformation as “online content that is false, misleading or deceptive, that is shared or created without an intent to deceive but 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.”

The bill, should it become law, will empower the Australian Communications and Media Authority (ACMA) to monitor and regulate material it designates as “harmful online misinformation and disinformation”. The Big Tech fraternity [will be required](#) to impose codes of conduct to enforce the interpretations made by the ACMA, with the regulator even going so far as proposing to “create and enforce an industry standard”. Those in breach will be liable for up to A\$7.8 million or 5% of global turnover for corporations.

What, then, is harm? Examples are provided in the [Guidance Note to the Bill](#). These 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 old grievance the State has when protestors dare differ in their opinions and do the foolish thing by expressing them. (The example provided here is the mind of the typical paranoid government official: “Misinformation that encouraged or caused people to vandalise critical communications infrastructure.”)

John Steenhoff of the Human Rights Law Alliance [has identified](#), correctly, the essential, dangerous consequence of the proposed instrument. It will grant the ACMA “a mechanism what counts as acceptable communication and what counts as misinformation and disinformation. This potentially gives the state the ability to control the availability of information for everyday Australians, granting it power beyond anything that a government should have in a free and democratic society.”

Interventions in such information ecosystems are risky matters, certainly for states purporting to be liberal democratic and supposedly happy with debate. A focus on firm, robust debate, one that drives out poor, absurd ideas in favour of richer and more profound ones, should be the order of the day. But we are being told that the quality of debate, and the strength of ideas, can no longer be sustained as an independent ecosystem. Your information source is to be curated for your own benefit, because the government class says

it's so. What you receive and how you receive, is to be controlled paternalistically.

The ACMA is wading into treacherous waters. The conservatives in opposition are worried, with Shadow Communications Minister David Coleman [describing](#) the draft as “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.” Not that the conservative coalition has any credibility in this field. Under the previous governments, a relentless campaign was waged against the publication of national security information. An enlightened populace is the last thing these characters, and their colleagues, want.

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