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**SUBMISSION TO THE
DEPARTMENT OF
INFRASTRUCTURE, TRANSPORT,
REGIONAL DEVELOPMENT,
COMMUNICATIONS AND THE
ARTS**

**EXPOSURE DRAFT OF THE *COMMUNICATIONS
LEGISLATION AMENDMENT (COMBATTING
MISINFORMATION AND DISINFORMATION)
BILL 2023***

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Contents

Introduction	5
Summary	7
Authorised Content Provider	7
Misinformation and Disinformation	8
Covid Misinformation and Disinformation	11
Educational Exclusions	14
Example 1: China's Control Over Foreign Educational Institutions	15
Example 2: Academic Freedom in Autocratic Regimes	15
The Social Media World	16
Safeguarding Privacy within the scope of the framework.....	19
Why is defining harm unworkable and impractical.	19
The Australian Communications and Media Authority (ACMA) Powers to compel the production of information from Parties.	19
Regulatory Costs and Burden.....	22
Preserving the Separation of Powers.....	24
Freedom of Expression and Human Rights Law.....	26
Centralised Government Controlled Information Management.....	26
Harm, Misinformation and ACMA Legal Accountability Ambiguities	28
Gladys Berejiklian.....	31
Brad Hazzard	32
Daniel Andrews	33
James Merlino.....	34
Annastacia Palaszczuk.....	34
Jeannette Young	34
Yvette D’Ath	35
Mark McGowan	35

Roger Cook	36
Steven Marshall	36
Nicola Spurrier	36
Michael Gunner	37
International Conventions and the Lessons of History	39
Freedom of the Press and Whistleblowers	41
Censorship of Parliament, Health, and Science	44
a) Parliamentary Discourse	45
b) Health and Science	45
The Lab Leak Theory	46
Balancing Rights: The Role of Content Moderation	47
International Health Regulations and the Synchronisation with Australian Law	48
Unilateral Censorship by Government can be a dangerous proposition	54
Credentialing Government Sponsored Media	57
Public Health Should Not Go Unchallenged	57
List of Legal Cases involving Pharmaceutical Companies with Department of Justice USA	59
Civil Penalty Provisions	60
Conclusion	61
Closing Remark	63
Annexure 1	64
Annexure 2	65

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"Truth is knowledge held back by Power"¹

Introduction

- 1) Ashley, Francina, Leonard & Associates (AFL) welcomes the opportunity to provide input to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts in relation to the Exposure Draft of the *Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023* (Cth)(Bill).
- 2) AFL acknowledges the potential harm (harmful) conduct that can be posed by the rapid and wide dissemination of false or otherwise harmful information online. We unreservedly condemn harmful content, but making content illegal, unlawful or actionable in terms of civil penalties in circumstances that are medically, factually, evidentially and scientifically fluid and in many cases correct is not the answer.
- 3) AFL is concerned that the Bill's response to that alleged harmful conduct is too expansive thereby restricting freedom of expression and related privacy interests, the very foundation and bedrock of open participatory democracies.
- 4) This submission outlines AFL's concerns about the Bill, commencing with a general concern that the Bill's proposed derogations of free expression are unwarranted, draconian, unworkable and hasty given the raft of alternative instruments processes that can be utilised to protect against false or otherwise harmful online information.

¹ Tony Nikolic (9 January 2023) *Truth is knowledge held back by power – where did the burden of proof go?*
<https://www.spectator.com.au/2023/01/truth-is-knowledge-held-back-by-power-where-did-the-burden-of-proof-go/>

- 5) Although the submission addresses key points, there is no intention to degrade, implicate or allege wrongdoing in any way shape or form. Rather the submission takes the form of providing facts and evidence to support and provide context.
- 6) The submission then makes a number of comments about specific textual features of the Bill, and its integration into a larger global context. This submission also includes a brief summary relating to the similar treatment of such conduct in the USA and includes other contextual examples including:
 - a) Authorised content providers.
 - b) Definitions of ‘misinformation’ and ‘disinformation’;
 - c) Educational exclusions
 - d) The Social Media World
 - e) Social Media and Safeguards
 - f) Why is defining Harm unworkable
- 7) Although there may be some elements of this submission that may be controversial, it is important they are raised during the consultation process to ensure free and fair consideration.
- 8) This submission provides a non-exhaustive list of reasons and examples as to why the ACMA Bill should not be passed.

Summary

- 9) We believe the proposed Bill is **unworkable, dystopian in nature** and **should not** under any circumstances be passed.
- 10) Australian citizens have the right to engage in free debate about the significant issues affecting the country, particularly those that involve science, medicine, law, politics and journalism. Proposed laws advocating for the censorship of the population opens up to a dystopian paradigm historically reserved for hardline communist countries and dictatorships.
- 11) Any attempts to pass such a law should be resisted at all costs because they serve a unidirectional purpose whereby only the State can be a source of *truth and public enlightenment*. As you will see in this submission, that is not that case and if the Australian public is to have confidence in the Government, they do so by understanding that the Government is open to criticism and debate, not propaganda and censorship.
- 12) The most important recommendation is to propose a referendum to alter the Australian constitution to ensure free speech, freedom of press, religion, bodily autonomy and bill of rights are enshrined in the Australian Constitution to ensure they are not trammelled upon by the creation of emergencies.

Authorised Content Provider

- 13) An authorised content provider for digital media refers to entities or individuals that have been granted legal rights to distribute, sell, or share digital content. They obtain these rights from copyright holders or relevant licensing bodies, ensuring that the content is shared legally and that creators receive appropriate compensation. Unauthorised sharing can lead to copyright infringements. Such providers play a critical role in the digital media ecosystem, helping to combat piracy and ensuring that artists, writers, and creators are remunerated for their work.

14) Noting the overbearing State controls espoused in *the Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023* (Bill) section 2(e) (**definitions**) relevantly provides that the content to be managed must be authorised by the following entities, but importantly there appears to be a carve out provision excluding responsibility by the following:

15) the Commonwealth; or

a) a State; or

b) a Territory; or

c) a local government

16) It is clear that the power to control information will reside in a specialised Ministry portfolio thereby denying, restricting and encouraging free speech for party seeking to post on social media. For some, a reference to the Ministry of truth and public enlightenment is cogently evident in the proposed ACMA Bill (*albeit in a historical comparative example*).

17) Whilst we support the need for accurate information, the best way to combat misinformation is address it through factual evidence. Suppressing information and unilateral censoring may increase suspicions of Government and erode public trust in public institutions.

Misinformation and Disinformation

18) The Australian Communications and Media Authority (ACMA) is confronted with a precarious situation due to its ambiguous definitions of misinformation and disinformation. This lack of clarity could inadvertently pave the way for unwarranted criminalisation and the creation of offenses and breaches infringing upon freedom of speech.

- 19) The case of *Lange v Australian Broadcasting Corporation*² exemplifies the Australian High Court's commitment to freedom of political communication. Granting ACMA unchecked power to define misinformation and disinformation poses the risk of overregulation, clashing with the principles laid out in this case.
- 20) The concept of "chilling effects" becomes pertinent in this context. If ACMA's definitions are vague and prone to interpretation, individuals might self-censor to avoid potential legal repercussions, hampering open discourse. John Stuart Mill's *"On Liberty"* emphasises the importance of avoiding societal coercion and allowing individuals the freedom to express dissenting opinions.
- 21) Moreover, Friedrich Hayek's *"The Road to Serfdom"* warns against concentrating unchecked power, as it can lead to unintended consequences and erode individual liberties. The broad and potentially malleable definitions of misinformation and disinformation could pave the way for mission creep, gradually expanding ACMA's regulatory reach.
- 22) ACMA's ambiguous definitions of misinformation and disinformation are concerning, as they could inadvertently lead to the criminalisation of dissenting viewpoints and the construction of unwarranted offenses and breaches. The need for clear and well-defined parameters is crucial to avoid undermining free speech principles and safeguarding democratic values.
- 23) The Australian Communications and Media Authority (ACMA) grapples with an ambiguous definition of misinformation and disinformation, creating conceptual challenges for assigning legal responsibility. In the context of misinformation, the "chilling effect" emerges, as individuals may self-censor to avoid uncertain legal repercussions, infringing on freedom of expression. The foundational case of *Lange v Australian Broadcasting Corporation*³

² *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.

³ *Ibid.*

underscores the significance of political communication rights, potentially clashing with ACMA's vague definitions.

- 24) Determining legal liability for disseminating misinformation and disinformation becomes complex due to the evolving nature of information dissemination on digital platforms. The precedent set by *Dow Jones & Co Inc v Gutnick*⁴ highlights challenges in attributing responsibility across jurisdictions. For example, science is never fixed and remains fluid as we have seen throughout the Covid era, there have been many postulations and assertions, such as the science is settled and a scientific consensus. It is clear to most independent scientists, that science is rarely settled, and science is **NOT** about reaching a consensus.
- 25) The uncensored pursuit of science is pivotal for the integrity and progress of human knowledge. Censorship disrupts the scientific method—a systematic approach of observation, experimentation, and validation. Restricting this method undermines the objective quest for truth, stymies innovation, and risks perpetuating falsehoods. For society to benefit from accurate insights and informed decision-making, science must remain transparent, open to scrutiny, and free from undue interference or bias.
- 26) Throughout history, certain medications and chemicals were initially deemed safe or beneficial by doctors, experts and Government, only to be discovered harmful later:
- a) **Tobacco**: Promoted as healthy and sophisticated before recognizing its links to cancer and respiratory diseases.
 - b) **Agent Orange**: Used during the Vietnam War as a defoliant, it later emerged that it caused severe health issues in both veterans and Vietnamese civilians.

⁴ (2002) 194 ALR 433.

- c) **Asbestos:** Once a favoured insulation material, it's now known to cause mesothelioma and lung conditions.
- d) **Thalidomide:** Marketed as a sedative for pregnant women, it led to birth defects.
- e) **DDT:** A once-popular pesticide, later found to harm wildlife and potentially humans.

27) ACMA Bill threatens the very heart of the scientific method and should not be passed as it will prevent lifesaving information from passing through the appropriate scientific channels.

28) The ACMA Bill will essentially create a Ministry of Truth and form the basis for establishing a *censorship industrial complex* that will invariably become the beginning of a dystopian form of social control whereby pregnant mothers may be arrested for posting on facebook.⁵

29) The elucidation of '*excluded content for misinformation purposes*' in clause 2 of the ACMA Bill does not uphold freedom of speech. The suggested classes of '*excluded content*' lacks utility, displays a level of conceptual inconsistency, and places ACMA into a position to make interpretive decisions on matters that it is clearly not within the remit of ACMA.

Covid Misinformation and Disinformation

30) Although ACMA is still in embryonic phase and requires clarification, much must be said about the machinery provisions creating exclusive carve outs for exemptions.

31) The Australian Communications and Media Authority (ACMA)'s creation of authorised exemptions (see point 11 above) for government and authorised bodies raises serious concerns about the application of double standards within the legal framework.⁶ Such exemptions

⁵ Naaman Zhou (3 September 2020) *Victorian Bar criticises arrest of pregnant woman for Facebook lockdown protest post as 'disproportionate'* - <https://www.theguardian.com/australia-news/2020/sep/03/victoria-police-arrested-pregnant-woman-facebook-post-zoe-buhler-australia-warn-lockdown-protesters>

⁶ See ACMA Bill s2(c) (Definitions)

potentially undermine the fundamental principles of the Rule of Law and equitable treatment under the law, both domestically and internationally.

- 32) The Rule of Law, a cornerstone of democratic societies, mandates that all individuals and entities, including government and authorised bodies, be subject to the same laws without privilege or discrimination. The creation of exemptions for these entities challenges this principle and raises questions about fairness, accountability, and transparency.
- 33) In the context of Australian law, the precedent set by cases like *Kable v Director of Public Prosecutions (NSW)*⁷ reinforces the importance of maintaining the Rule of Law, even in cases involving government actions. The case established that government actions must adhere to the same legal standards as those applied to other individuals.
- 34) Internationally, the United Nations Universal Declaration of Human Rights emphasises the equal protection of the law for all without discrimination. By granting exemptions to government and authorised bodies, ACMA risks violating these principles and compromising the integrity of the legal system.
- 35) Furthermore, philosopher Lon Fuller's "*The Morality of Law*"⁸ underscores the importance of consistency, clarity, and the avoidance of arbitrariness in legal systems. ACMA's creation of exemptions could introduce arbitrariness and undermine public trust in the legal process.
- 36) ACMA's authorisation of exemptions for government and authorised bodies presents a significant challenge to the Rule of Law, both domestically and internationally. The potential for double standards, conflicts of interest, capture and unequal treatment contradicts foundational legal principles. Upholding the principles of fairness, consistency, and

⁷ *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51.

⁸ Fuller, Lon L. (1969) [1964]. *The Morality of Law* (2nd ed.). New Haven: Yale U. P

accountability is essential to preserving the integrity of the legal system and maintaining public trust in regulatory bodies. **There cannot be one source of truth in an open democratic society.**

- 37) A wide range of topics that were suppressed on social media at the urging of administration officials, including opposition to Covid vaccines, masking, lockdowns and the lab-leak theory and the fact that the Therapeutic Goods Administration did not test for genotoxicity, carcinogenicity and fertility of any of the vaccines before being released with claims they were "**SAFE and EFFECTIVE**". As noted by Senator Antic using Freedom of Information laws, the secretary of the Department of Home Affairs Michael Pezzullo revealed that between January 2017 and December 2022, his department had referred 13,636 posts to digital platforms such as Facebook, Meta, Twitter, Instagram and Google to review against their terms of service. Of these, 4,213 were related to Covid and a number were or have been found true, notwithstanding the developing state of scientific research. By passing the ACMA Bill, this will become the norm, a proposition that must be resisted in any open democratic society.
- 38) The statutory construct of 'misinformation' in the ACMA Bill expressly refers to information that is *false, misleading or deceptive*. There is a concern that the information that is alleged or suspected to be misinformation and/or disinformation or perceived to be so in the mind of a decision maker will capture information that is or may be true and characterised as falling within the scope of the ACMA Bill thereby potentially subjecting an author to civil penalties and the high costs of having to retain and instruct legal counsel. In essence, it has the potential to be utilised as a politically motivated tool to oppress and target information that is arbitrarily designated.
- 39) World Wide Web holds an immense reservoir of data, and the proposed legislation extends beyond content originated by Australians. Grasping the veracity of global data deemed

'misinformation' imposes an arduous responsibility and will invariably capture information that may be ambiguous today, but true tomorrow. The prospect of 'incorrect identifications' is tangible and of grave concern. An erroneous assertion (particularly from a governing body) labelling factual information as 'misinformation' can wield significant harm, while an unjust assertion linking an individual to 'misinformation' might carry grave defamatory consequences.

40) The legal definition designates material as 'misinformation' when it incorporates data that is erroneous, deluding, misleading or deceitful. The 'misinformation' encompasses not solely the deceiving content itself but is overzealously expansive. A legal prerequisite for content to predominantly comprise of deceptive information is absent despite a perceived characterisation that implies compliance to the proposed legislation. This potentially results in an excessively broad classification of 'misinformation.' To illustrate, an extensive article might qualify as 'misinformation' due to a solitary, unknowingly misleading phrase; even if the author is faultless and the majority of the article is impeccable. This may trigger the Ministry of Truth (ACMA) to commence investigations spending vast taxpayer resources to investigate faultless phrases.

41) We do not support the ambiguous and overzealous expansive nature of the ACMA Bill as it appears to be a reflection of a dystopian construct that has the ability to be mismanaged, abused and used as political tool to target free speech.

Educational Exclusions

42) The exclusion mentioned in subclause (d) of the ACMA Bill, which pertains to foreign institutions accredited 'to substantially equivalent standards as a comparable Australian educational institution,' does raise valid concerns. This exclusion could potentially lead to unintended consequences and challenges in terms of academic freedom and international

relations. To better understand this issue, let's delve into two examples from international settings that highlight the potential risks associated with such exclusions.

Example 1: China's Control Over Foreign Educational Institutions

43) China has been known for exerting significant control over its educational institutions, both domestic and foreign. The Chinese government's influence on foreign universities operating within its borders has raised concerns about academic freedom and the potential for censorship. For instance, in 2018, the University of Nottingham faced criticism when it reportedly censored references to sensitive topics, such as Tibet, Taiwan, and the Tiananmen Square massacre, in course materials and public discussions. This move was seen as a compromise of academic integrity due to pressures from Chinese authorities.

44) If Australia were to establish criteria based solely on 'substantially equivalent standards,' without taking into account the local context of foreign institutions, there could be a risk of inadvertently legitimising educational practices that compromise academic freedom, free speech, and unbiased research. This might position Australia alongside countries that allow foreign institutions to operate without scrutinizing their commitment to academic independence.

Example 2: Academic Freedom in Autocratic Regimes

45) In several autocratic regimes, academic freedom is often limited, and universities can face restrictions on research topics, teaching materials, and public discourse. Take the example of Russia, where universities have encountered pressures to align with government narratives. The case of Dmitry Muratov, a Russian journalist and recipient of the Nobel Peace Prize, underscores this issue. Muratov expressed concern about the declining state of academic freedom in Russia, emphasising that self-censorship among educators has become prevalent due to the fear of government reprisals.

46) If the ACMA Bill's exclusion were to be implemented without considering the broader context of academic freedom and the rule of law with foreign and domestic institutions, there could be a risk of inadvertently promoting collaborations with **heavily** funded universities that may not uphold the same standards of academic independence that Australia values.

47) Thus, inclusion of the subclause (d) exclusion in the ACMA Bill, which considers foreign institutions accredited to '*substantially equivalent standards*,' could be problematic without robust safeguards to ensure that such standards align with Australia's values of academic freedom and the rule of law. The examples from China and Russia illustrate that academic freedom can vary significantly across different societies. To avoid undermining its own principles, Australia should carefully assess the implications of partnerships with foreign educational institutions and consider not only equivalency in terms of curriculum but also the institutions' commitment to the fundamental principles of academic integrity and freedom of expression. This approach will help prevent Australia from being inadvertently associated with countries that seek to control education and stifle academic autonomy that we have seen in countries such as Afghanistan during Taliban rule.

The Social Media World

48) In today's interconnected world, social media has emerged as a powerful platform for communication and information dissemination. However, as social media platforms have gained influence and prominence, concerns regarding the censorship of content have become more prominent because it provides unbridled transfer of information that is no longer controlled by the State, its apparatuses and institutions.

49) This submission aims to argue against the censorship of social media using the framework of Australian, USA, and international law, while considering the principles of human rights, freedom of expression, international conventions, historical precedents such as Nazi Germany

(Reich Ministry for Public Enlightenment and Propaganda (Reichsministerium für Volksaufklärung und Propaganda; RMVP)). The dangers of government-controlled propaganda, and the implications of censorship on parliamentary discourse, health, law, free press, religion and science should not be tolerated or given up under any circumstances.

50) The principal strengths of free speech are to invite disputes and encourage open dialogue even if it the subject matter is contentious, controversial and heated.

51) Utilising social media to disseminate public health information is crucial for widespread awareness and timely response. During the COVID-19 pandemic, platforms like Twitter and Facebook facilitated rapid information sharing. Censorship, however, risks suppressing critical discussions. Missteps in censoring health content are evident; YouTube mistakenly removed educational COVID-19 videos. Balancing accurate information with free expression is vital, but it must be done in public without interference of Government control. Although fact-checking was employed during Covid promoting authoritative sources the lack of transparency and the flagging of important updates relating to risks, injuries and deaths were flagged as misinformation.

52) Fact-checkers' suppression of Astra Zeneca vaccine side effect reports, while censoring evidence-based scientific discourse on social media, raises concerns. Censorship should not hinder genuine discussions about vaccine safety. For example, the thrombosis link to Astra Zeneca vaccine (See: Greinacher et al., 2021)⁹ and its removal from the Australian market underscores the importance of balanced, transparent information-sharing, allowing individuals to make informed decisions while upholding scientific integrity and reinforcing trust in

⁹ Andreas Greinacher, M.D., Thomas Thiele, M.D., Theodore E. Warkentin, M.D., Karin Weisser, Ph.D., Paul A. Kyrle, M.D., and Sabine Eichinger, M.D. (2021) *Thrombotic Thrombocytopenia after ChAdOx1 nCov-19 Vaccination*. *N Engl J Med* 2021; 384:2092-2101 DOI: 10.1056/NEJMoa2104840.

regulatory processes. Despite scientific journals providing evidence, it has been suggested that third party contractors acting on behalf of Government were surreptitiously advising social media companies to remove this important information thereby contributing to further poor health outcomes. Of grave concern were the prospects that those advising on the censorship were not medically trained or held no qualifications in related scientific fields. Conduct such as this by the third-party Government contracted censors potentially placed thousands of Australian's lives at risk and continued the administration of the vaccine by denying the public information relating to the vaccine. This may be a more serious form of misinformation that may become the subject of future prosecutions because it prevented vital public health information from reaching the public.

53) Public health messaging on social media is crucial for empowering individuals to make informed decisions and provide valid informed consent. This aligns with ethical and legal principles like the concept of "informed consent" in medical practice. As highlighted in the case of *Rogers v. Whitaker*¹⁰, individuals have the right to be informed about potential risks and benefits. Robust, accurate information dissemination on platforms like social media ensures individuals can exercise autonomy over their health choices, however fact-checkers (*commonly deployed as censorship agents of the state*) removed many important public health social media posts about risks, injuries and deaths possibly linked to the Covid Vaccines.

54) We support an open and transparent social media process without interventions of the State or its agents.

¹⁰[1992] 175 CLR 479

Safeguarding Privacy within the scope of the framework

55) The *Australian Communications Legislation Amendment (Combating Misinformation and Disinformation) Bill 2023* can include instant messaging services within its scope by categorising them as communication platforms. This categorisation ensures that such services are subject to the same regulations as social media platforms, holding them accountable for combatting misinformation and disinformation. To safeguard privacy, the bill should stipulate measures for transparent data handling, end-to-end encryption where possible, and limited data retention periods. This approach balances the imperative of addressing harmful content while upholding individuals' right to privacy, fostering responsible digital communication within the legal framework and addresses Government sponsored intrusions with current laws.

Why is defining harm unworkable and impractical.

56) Defining harm with absolute clarity in the Australian Communications Legislation Amendment Bill could prove unfeasible due to the subjective nature of misinformation's effects.¹¹ Online content's impact can vary widely, making an all-encompassing definition challenging. Technological advancements and shifting societal norms further complicate crafting a rigid definition that remains relevant over time.¹² This could risk stifling free expression without effectively addressing misinformation's dynamic manifestations.

The Australian Communications and Media Authority (ACMA) Powers to compel the production of information from Parties.

57) The authority granted to the Australian Communications and Media Authority (ACMA) to compel the production of information presents complex legal and ethical implications within

¹¹ *Duffy v Google* [2015] SASC 170.

¹² ACCC Digital Platforms Inquiry Final Report [2019]

the context of media regulation. While the ACMA's mandate to ensure responsible media conduct is important, the extent of its power to demand information raises concerns about its potential impact on press freedom and individual rights.

- 58) The case of *ACMA v Today FM*¹³ exemplifies the ACMA's power to compel information in investigating media misconduct. In this case, ACMA required the radio station to disclose information related to a controversial prank call. While the case demonstrated the ACMA's commitment to media accountability, it simultaneously underscored the potential for overreach in regulatory actions and more importantly underscores the present powers are sufficient.
- 59) The expansive scope of ACMA's authority could deter robust journalism and free expression leading to a society controlled by fear and unilateral messaging that drowns out legitimate debate and as we had seen during covid, censorship with respect to scientific research indicating there were serious adverse events and lack of efficacy with Covid-19 vaccines.
- 60) In the Australian legal landscape, the principles of open justice and the implied freedom of political communication, as recognised in cases such as *Lange v Australian Broadcasting Corporation*¹⁴ and *Australian Capital Television Pty Ltd v Commonwealth*¹⁵, emphasise the importance of striking a balance between regulatory powers and individual rights. The Court has consistently recognised the vital role of media in democratic discourse, urging caution when curbing journalistic activities.
- 61) John Stuart Mill's "*On Liberty*" posits that a free press is a cornerstone of democracy, underscoring the need for minimal interference in the realm of public expression. ACMA's

¹³ *Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd* (2015) 255 CLR 352

¹⁴ *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.

¹⁵ *Australian Capital Television v Commonwealth* (1992) 177 CLR 106.

authority to compel information should be exercised judiciously, with careful consideration of its potential impact on media autonomy and the broader democratic fabric.

- 62) In conclusion, while the ACMA's power to compel information serves a legitimate purpose, its potential ramifications on press freedom and individual liberties necessitate careful deliberation. The delicate equilibrium between regulatory control and free expression must be maintained to ensure a robust democracy that values both accountability and open discourse.
- 63) Granting the Australian Communications and Media Authority (ACMA) unchecked authority to define misinformation and truth risks creating an unlevel playing field where power imbalances and biases can flourish. Such a concentration of authority could lead to the manipulation of information, stifling of dissenting voices, and favouring certain narratives and suppressing others as was the case during the Covid-19 flu crisis.
- 64) The concept of an impartial media landscape, where diverse viewpoints are allowed to thrive, is essential for a healthy democracy. However, if the ACMA becomes the sole arbiter of truth, it could potentially wield this authority to stifle critical perspectives that challenge the status quo. This aligns with philosopher Michel Foucault's warnings about the dangers of knowledge being controlled by those in power.
- 65) Moreover, such a centralised definition of truth disregards the inherent subjectivity and complexity of information in a rapidly changing world (*especially science and medicine*). Different interpretations of events are common, and a single authority's definition might not adequately account for this nuance.
- 66) Ultimately, a diverse and vibrant media environment is essential for the public's ability to critically engage with complex issues. By concentrating the power to define misinformation and truth, the ACMA could inadvertently silence dissent, limit the spread of knowledge, and hinder the public's capacity to make informed decisions.

67) In conclusion, allowing the ACMA supreme authority over defining truth risks undermining the principles of fairness, freedom of expression, and open discourse. The potential for manipulation and the stifling of diverse viewpoints caution against such a concentration of power as they tend to be more focussed on protectionism and concealment rather than candor and transparency.

Regulatory Costs and Burden

68) Enacting ineffective laws like the proposed ACMA Bill can amplify costs for taxpayers and businesses, leading to significant social and economic repercussions. The ACMA Bill's potential to burden businesses with compliance costs and stifle innovation might hinder economic growth. Additionally, if the Bill's provisions lack clarity or inadvertently infringe on freedom of expression, legal challenges and uncertainties could emerge. This could trigger social and economic distress, impacting businesses' operations and individuals' rights. To avert such adverse outcomes, careful consideration of the bill's implications and alignment with societal and economic well-being is crucial.

69) There is a high likelihood that the Bill will place a heavy burden on taxpayers and businesses.

70) For example, Clause 12 places a requirement on extraterritorial application extending acts and omissions for matters outside Australia, thereby creating an international context, that we presume will be at cost, logistical complication and subject to domestic laws and rules potentially creating legal quagmires.

71) Clause 14 places heavy burdens on the record keeping obligations of businesses.

72) Clause 38 places burdens on the businesses to provide ACMA with codes and provides no clarity or guidance on the level of organisation or entity that must develop such codes.

73) This list is not exhaustive but there are number of provisions and clauses within the proposed Bill that places a heavy burden on Taxpayers and businesses.

The Australian High Court

- 74) The Australian High Court stands as a cornerstone of the nation's judicial system, wielding significant influence over legal matters and constitutional interpretation. One of the most noteworthy aspects of its jurisprudence is its ongoing commentary on the importance of free speech, echoing the philosophies of eminent thinkers like John Locke and Jeremy Bentham.
- 75) John Locke's belief in the inherent rights of individuals, including the right to express one's thoughts freely, resonates in High Court judgments. The case of *Lange v Australian Broadcasting Corporation*¹⁶ exemplifies this, where the Court invoked "implied freedom of political communication" within the Australian Constitution. In his judgment, Chief Justice Brennan referenced the importance of public discourse in ensuring democratic governance, aligning with Locke's principles of individual liberty and limited government intervention.
- 76) The idea that freedom of expression is closely linked to the constitutional foundation of Australian society has been suggested and championed throughout the history of Australia's Highest Court.¹⁷ The fact that this was affected by the Covid era is another topic that may yield agitating in the future, but for now, freedoms are impliedly protected, albeit **selectively**.
- 77) Jeremy Bentham's utilitarian perspective, emphasising the greater good derived from open dialogue, finds its echoes in the High Court's decisions. The case of *Australian Capital Television Pty Ltd v Commonwealth* (1992) highlighted the Court's understanding of free speech as crucial for the functioning of a democratic society, drawing on Bentham's notions of utility. Justice Mason's opinion emphasised that a vibrant marketplace of ideas contributes to informed decision-making and better policy outcomes.

¹⁶ *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.

¹⁷ Eric Barendt, *Freedom of Speech* (Oxford University Press, 2nd ed, 2007) 13

78) The Australian High Court's commentary on free speech, informed by Locke and Bentham, showcases their enduring influence on the nation's legal philosophy. Through cases like *Lange and Australian Capital Television*¹⁸, the Court underscores the role of free expression in safeguarding individual liberties and fostering a robust democracy, aligning with the Enlightenment principles that continue to shape modern societies and they should be preserved.

Preserving the Separation of Powers

79) Content management and fact checking of misinformation and disinformation are better referred to as euphemisms for censorship, designed to control a narrative whether it is for example: *public health [medicine/science] or climate change*.

80) History offers poignant lessons on preserving separation of powers to enable an independent judiciary free from government intrusion. The atrocities of Nazi Germany and the Lysenko era in the Soviet Union serve as stark reminders of the dangers inherent in compromising the judiciary.

81) In Nazi Germany, the judicial system's subjugation to the Nazi regime enabled biases, dismissal of cases, and injustice. The Nuremberg Trials (London Agreement, 1945) highlighted the consequences of a judiciary influenced by politics, leading to grave human rights violations.¹⁹

82) The Lysenko period showcased how a subservient judiciary can contribute to censorship and suppression of scientific dissent. This Soviet era's legacy underscores the importance of an impartial judiciary in safeguarding democratic values and individual freedoms.

¹⁸ *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.

¹⁹ London Agreement (1945). *Avalon Project*, Yale Law School. <https://avalon.law.yale.edu/imt/london.asp>

- 83) International law, as enshrined in the *Universal Declaration of Human Rights* (UDHR), emphasizes the essential role of an independent judiciary. Jurisprudence from cases such as "*Banda v. Republic*" (Malawi Supreme Court, 1995) echoes the significance of judicial autonomy in upholding the rule of law.²⁰
- 84) These lessons underscore that separating powers is vital for preventing abuses, safeguarding justice, and upholding human rights. A resilient separation between the judiciary and the government is paramount to ensure fairness, transparency, and the protection of citizens' rights in modern societies.
- 85) By way of example, Deputy President Dean of the Fairwork Commission of Australia was barred from hearing any further vaccine mandate cases after labelling employer vaccine mandates being aligned to "*medical apartheid and segregation*" and said the concept is "*the antithesis of our democratic way of life and everything we value*".²¹
- 86) Nothing in this submission is making an allegation against the Australian judiciary because there is no evidence to suggest that matters relating to Covid and loss of employment due to public not adhering to mandates are all being dismissed, *carte blanche* in Courts and tribunals. But the Australian public must be aware of what is sometimes a well-intentioned ethical judicial body inadvertently digressing from their independent role as was the case in Nazi Germany and Soviet Union and they can unintentionally become the enforcers of censorship through purges [similar to Stalinist USSR] of those that do not think like the Government.
- 87) We do not support censorship of tribunals and Judges under any circumstances as they should be independent of vaccine policy directives and the executive arm of Government.

²⁰ *Banda v. Republic*, [1995] MLR 95 (Malawi Supreme Court) and Universal Declaration of Human Rights (1948). United Nations. <https://www.un.org>.

²¹ Nour Haydar, (28 October 2021) *Fair Work Commission deputy president barred from hearing vaccine matters until training is completed*. <https://www.abc.net.au/news/2021-10-28/fair-work-commission-deputy-president-barrred-hearing-vaccine/100574762>.

Freedom of Expression and Human Rights Law

- 88) Freedom of expression is a fundamental human right enshrined in various international conventions and constitutions, including the Universal Declaration of Human Rights (UDHR) and the *International Covenant on Civil and Political Rights* (ICCPR) together with the *Siracusa principles* (both of which Australia is signatory member). These documents emphasise the importance of allowing individuals to freely express their thoughts, ideas, and opinions. Social media, as a contemporary mode of communication, should be regarded as an extension of this right.
- 89) Censorship of social media content inherently contradicts the spirit of freedom of expression, limiting the diversity of voices and perspectives that contribute to democratic discourse. Any limitations on expression must meet strict legal criteria, including being necessary and proportionate to protect certain legitimate interests.
- 90) Blanket censorship undermines the essence of this right and risks suppressing dissent and stifling innovation.
- 91) Generally, the promoters of misinformation online (excluding the Government) are relatively small in reach, group size and resources. As such the Bill is unwarranted and should not be passed. It is better to combat examples such as these with facts and evidence as silencing them risks the prospects of increasing size, resources and reach due to erosion of public trust through censorship.

Centralised Government Controlled Information Management

- 92) Government-controlled propaganda can be a potent tool to manipulate public perception and control the narrative. Censorship on social media, even when carried out under the guise of curbing misinformation, risks creating a monopoly on information controlled by the

government or powerful entities. This not only curtails the people's right to access unbiased information but also undermines the democratic process itself.

- 93) The emergence of "*fake news*" and misinformation should be addressed through education, media literacy programs, and fostering critical thinking, rather than through censorship. An informed citizenry is better equipped to evaluate information independently, thereby reducing the risk of manipulation and the need for censorship.
- 94) But recognition should also be placed on the idea, that the large media networks are renowned for (*from time to time*) spreading misinformation (half-truths), erroneous reports (*inadvertent or otherwise*) and disinformation as we had seen during the Covid crisis and subsequent release of vaccine injury, safety and efficacy data about injuries and deaths related to the release of vaccine and potentially gene therapies.
- 95) A federal judge in Louisiana ruled that the Biden administration likely violated the First Amendment by censoring unfavourable views on social media over the course of the coronavirus pandemic, calling the efforts "Orwellian", but frighteningly resembling the present ACMA Bill."²²
- 96) Indeed, similar censorship programs occurred in Australia and appear to be linked to *International Health Regulations (2005) (IHR)* and proposed amendments directed by the World Health Organisation (WHO).
- 97) No doubt, healthcare emergency information provides vital, timely data to address health threats and guide public action. Conversely, censorship of good science suppresses evidence-based findings, hindering informed decision-making. While emergencies might demand rapid dissemination of data, suppressing credible scientific research can compromise public safety and knowledge progression. Denying free flow of information could imperil the lives of

²² *State of Missouri v Joseph R Biden* United States District Court Western District of Louisiana Monroe Division CASE NO. 3:22-CV-01213.

citizens as it may provide the basis for denying/restricting and/or preventing lifesaving medications to assist citizens as we seen with the controversies relating to alternative medication protocols (inter alia) ivermectin and hydroxychloroquine.

98) The absence of a comprehensive exemption for content encompassing rational scientific, scholarly, political, medical, legal, creative, or religious discourse is gravely concerning. Equally unsettling is the absence of a broad acknowledgment in the ACMA Bill that numerous subjects of public significance encompass authentic and justified factual disparities, ambiguity, or deliberation all of which are traditionally acknowledged and addressed through open debate and dialogue.

Harm, Misinformation and ACMA Legal Accountability Ambiguities

99) It is relevant at this point in time to breakdown some practical issues that may require attention.

100) The ACMA exposure draft clearly points out inter alia at section 2 (HARM) that:

- a) Harm to the health of Australians
- b) Harm to the Australian environment

101) The basis of the proposition espoused herein (*noting the extensive media and social presence of Australian politicians, Media personalities, Journalists, fringe experts appearing in daily media briefings, Premiers and chief health officers*), it would be difficult not to enforce ACMA rules upon all those who potentially misled the Australian public and caused harm. Anything short of this would militate against the Rule of Law.

102) Firstly, we address the misinformation surrounding transmission of the Covid virus and the various Premiers who took to various forms of media espousing such claims without having a basis to do, or in circumstances where they ought to have known using due skill care and diligence that their messages may harm Australians.

- 103) In Australia's first case challenging mandates, in or around August 2021 *Kassam v Hazzard*; [2021] NSWSC 1320 (Kassam), the Kassam Applicants deposed that there was no need to issue mandates because the vaccines **did not stop transmission**.
- 104) Global experts such as Peter McCullough MD, Bryan Tyson MD, Professor Bhattacharya, Professor Brighthope and others who had (amongst them) either researched or treated thousands of Covid patients and continue to treat/research Covid issues and patients despite the high vaccination rates, testified accurately, **that transmission was not stopped**, but their social media posts were often flagged as "misinformation" or missing "context" by Government paid third party fact checkers.
- 105) Although the Kassam challenge did not successfully overturn the mandates, it did solidify that Australia lacked a Bill of Rights, but it also noted that bodily integrity and choice were still permitted, despite the mixed messages and Government policy pushing employers to mandate vaccines, including Government employers in the workplace. Hence on one side, Ministers were indicating people had a choice, but on the side (*at the same time*) they introduced legislations to influence (*willing*) employers to introduce Occupational Health and Safety policies to **stop transmission** in the workplace, with little evidence.²³
- 106) On 11 October 2022, just over 1 year after the evidence led in Kassam, Robert Roos Minister in the European Parliament questioned Pfizer executive about the practical effects and requirement for a vaccine passport. Importantly, once again it was acknowledged that the vaccines **did not stop** transmission.

²³ Jack Mahony, (7 April 2022) *Matthew Guy savages Daniel Andrews for extending pandemic laws saying existing laws can be used 'sensibly'*. <https://www.skynews.com.au/australia-news/coronavirus/matthew-guy-savages-daniel-andrews-for-extending-pandemic-laws-saying-existing-laws-can-be-used-safely/news-story/68f282719ec0fd88a8747eb754517f47>

- 107) On 27 May 2023, experts such as emeritus Professor Robert Clancy, one of Australia’s leading immunologists, pointed out that the vaccines never could have stopped transmission because they couldn’t trigger the development of antibodies in the nose and throat.²⁴
- 108) Even the World Health Organisation, as far back as April 2021, cautioned that “*if mandatory vaccination is considered necessary to interrupt transmission chains and prevent harm to others, there should be sufficient evidence that the vaccine is efficacious in preventing serious infection and/or transmission*”.²⁵
- 109) No doubt that the lockdowns, coerced, compelled and influenced vaccinations and subsequent injuries have *harmed* Australians, physically, psychologically and economically, but **there needs to be accountability**.
- 110) The exemptions for liability carved out of the ACMA Bill are unworkable and militate against the operative functions relating to the Rule of Law whereby holding Premiers, Politicians, Media, Chief Health Officers and fringe experts to account is a pre-requisite to upholding Australian values.
- 111) A careful examination of the timelines relating to matters on social and regular media, details the failures of Government and those media institutions seeking to be accredited pursuant to this ACMA Bill. For example, a number of Premiers and Chief Health Officers had potentially misrepresented the true position of the science relating to COVID. We detail those positions below as evidence to highlight the need for law not only to be done, but seen to be done, even if it inculpates Premiers and Prime Ministers.

²⁴ Rebecca, Weisser, *WHO’s behind Australia’s censorship industrial complex*<https://www.spectator.com.au/2023/05/whos-behind-australias-censorship-industrial-complex/>

²⁵ World Health Organisation, *COVID-19 and mandatory vaccination: Ethical considerations* (30 May 2022) [WHO-2019-nCoV-Policy-brief-Mandatory-vaccination-2022.1-eng \(1\).pdf](https://www.who.int/publications/m/item/2019-nCoV-Policy-brief-Mandatory-vaccination-2022.1-eng-1)

Gladys Berejiklian

- 112) **August 25, 2021:** “*Don’t hold off, get your hands on any vaccine you can. Keep yourself [and] your loved ones safe. It’s also doing a community service by helping stop the spread and keeping people out of hospital. The quicker we are vaccinated, the quicker we will get to the next target.*”
- 113) **September 2, 2021:** “*Anybody should come forward and get vaccinated. We don’t want to see anybody vulnerable without vaccine. This is I’ve said a couple of times a pandemic, an epidemic of the unvaccinated. When we see people who are fully vaccinated hospitalised or horribly die, often there are other conditions associated with that.*”
- 114) **September 7, 2021:** “*I wouldn’t want to be in the room with lots of people who aren’t vaccinated. And I certainly hope that all of our colleagues [parliamentarians] are vaccinated. That’s the message we’ve been sending the community. And obviously as workplaces open up, every workplace will have their policies according to what the government is indicating. But I just want to make this point very clear — if people want to enjoy the things we have missed such as a meal or ... any other venue, they’re going to have to be vaccinated.*”
- 115) **September 13, 2021:** “*I don’t want people to think they can sit back and let everybody else do the hard work [getting vaccinated]. We all have choices and if it’s your choice not to be vaccinated, well that might mean you cannot participate in things that [the] fully vaccinated do.*”
- 116) **September 15, 2021:** “*We don’t want anyone who hasn’t been vaccinated yet to sit at home. Come out, get vaccinated, do your bit for yourself and your family. Remember that people might say well if you’re not vaccinated, that’s on you and you might get sick — well, no. Unvaccinated people spread the disease more readily. So if you’re in a venue or somewhere*

and there's unvaccinated people [you have] more chance of contracting the disease from them because they don't have that protection."

- 117) **September 20, 2021:** *"I just want people to acknowledge that because unvaccinated people ... it's one thing to put themselves in jeopardy, but they're jeopardising everybody else because they're more contagious. If you choose not to be vaccinated, it's one thing to make that decision for yourself and your family, but you're also making that decision, suggesting that you don't care if you're more contagious to other people. [People choosing not to be vaccinated] means all of us have to be on guard, because as Dr Chant and myself and everybody's been saying, even if you're double vaccinated and have underlying health conditions you can still be at risk. I worry for people like my parents or others in the community who are aged or fully vaccinated, but yet could still be vulnerable."*
- 118) **September 27, 2021:** *"It is not too late. You have the option, go today, make your booking and get vaccinated not only to protect yourself and your loved ones but also the community."*

Brad Hazzard

- 119) **July 29, 2021:** *"There are a lot of people who don't base their decisions in science or evidence. I'd say to those ... not wanting to take vaccines, my message to them is you're being extremely selfish if you think you can not have a vaccine just because you don't want to have a vaccine, well you should think about what you're doing to your family and to the community, and I would say even more than that, what a hide you have, what a ridiculous position is that when you're going to put health staff at risk, and when you get sick you're going to expect to come into hospital and get paid for by taxpayers."*

Daniel Andrews

- 120) **September 5, 2021:** *“We’re going to move to a situation where, to protect the health system, we’re going to lock out people who are not vaccinated and can be. If you’re making the choice not to get vaccinated, then you’re making the wrong choice, you’re making the wrong choice. And for safety’s sake, back to that point of how much work our nurses have to do, as this becomes absolutely a pandemic of the unvaccinated, and we open everything up, it’s not going to be safe for people who are not vaccinated to be roaming around the place spreading the virus. That’s what they’ll be doing.”*
- 121) **September 22, 2021:** *“There’ll be announcements [about vaccine mandates] made based on the very detailed consideration and determinations of the chief health officer. I wish I could just do a whole blanket list but he has to go through a process so that it’s properly, legally done. So it’s not about people unfairly picking on the construction sector — that’s where the cases are so that explains the required vaccine decision. Then there are other industries where we can get ahead of cases and prevent the spread of coronavirus.”*
- 122) **October 19, 2021:** *“I’m not going to say to someone, just wait us out ... just wait for five weeks and then you will be able to go to the pub. No, if you make the judgement to not get vaccinated and you reckon you can wait us out or the publican or whoever you want to think you are waiting out — you won’t outwait the virus. Because the virus will be here for a long time and your only protection against it is being vaccinated.”*
- 123) **October 26, 2021:** *“If you’re on the fence, if you haven’t quite made up your mind yet about whether you will or won’t get vaccinated and be protected by these vaccines that are free, that are safe, that are effective — please reconsider that decision. Two doses of this vaccine is the greatest protection that you can have for your health and the health of those you love and, indeed, the health system.”*

124) **January 30, 2022:** *“I think it’s only a matter of time before the relevant federal agencies confirm that it’s three doses ... [that are needed] in order to be protected, not just against really critical illness but to be protected or to minimise the likelihood that you get it and that you give it to the people that you love.”*

125) **January 2022:** *“At the moment two doses are protecting the vast majority of people from serious illness, but it’s only with three doses that you’ll be prevented not just from serious illness but from getting this virus, this Omicron variant, and therefore giving it to others.”*

James Merlino

126) **September, 2021:** *“A requirement for vaccination of teachers will be important to stop the spread and protect our kids.”*

Annastacia Palaszczuk

127) **November 9, 2021:** *“People want to be able to go to a music festival, a stadium, a cafe or a restaurant and know the people who are around them are fully vaccinated and it’s safe for their families. This is an important step in keeping our freedoms. Millions of people have gone and got vaccinated and they need to be rewarded for their efforts. They have done a great job, they have done everything I have asked them to do. But as a community, if we are going to stop the spread of this virus when the borders open and the virus is going to come here, we need people to get vaccinated. Families want to know they are safe when they are out in public.”*

Jeannette Young

128) **October 7, 2021:** *“The only thing that’s going to stop us getting locally acquired cases going forward, we know is vaccination. We can’t stop it. The only way to stop it is vaccination. It does take five weeks from your first dose of Pfizer to be fully protected and six weeks from your first dose of Moderna.”*

Yvette D’Ath

- 129) **December 7, 2021:** *“December 17 is going to be a great day for so many people in Queensland who will get to go out and enjoy the lifestyle that we love so much. They will be able to go there knowing that they’ve done the right thing by getting vaccinated and that they’re walking into a venue where everyone else is vaccinated as well.”*

Mark McGowan

- 130) October 31, 2021: *“I just urge these people to go and get vaccinated ... the time for protesting and reading crazy conspiracy theorists online is over ... Some of the material they’re spreading is extreme, misleading and frankly lies. [They should] get on with life, like everyone else. They are reading wacky theories online that are untrue. This rubbish that’s put out online and some of the lies and misleading information ... is dangerous. I just urge them to stop, go and get vaccinated and just act like normal, rational human beings.”*
- 131) January 13, 2022: *“Following WA’s Safe Transition, we want the public to be confident in these public settings, and that they’re only mixing with other vaccinated people. People less likely to be carrying or able to pass on the disease. It reduces the risks posed by unvaccinated people bringing the virus into busy, populated settings. Life will become very difficult for the unvaccinated from January 31. No pubs, no bottle shops, no gym, no yoga classes, no gigs, no dancefloors, no hospital or aged care visits. If you go and get vaccinated today you can have your second dose by early February, but if you choose to remain unvaccinated — and at this point, it certainly is your choice — you’re choosing to put yourself at risk, you’re choosing to put the people around you at risk and you’re choosing to increase the burden on our health staff.”*

Roger Cook

132) October 20, 2021: *“Unvaccinated workers in settings in where exposure is likely can cause tremendous harm. They are a risk to themselves, their colleagues and the community. The danger from Delta is very real. We simply cannot afford the hesitant or complacent infecting those workers who have already been vaccinated.”*

Steven Marshall

133) May 25, 2021: *“This is Kaylah Pascoe — she’s among the first 16 years olds [sic] in regional SA to roll up her sleeve and get a Covid-19 vaccine. Thank you Kaylah. By getting vaccinated, she is not only helping protect herself, but is preventing others from suffering from this insidious disease.”*

134) November 24, 2021: *“We’ve had a very, very good uptake in South Australia ... They know that when they look interstate at the moment, this is essentially the disease of the unvaccinated.”*

135) December 14, 2021: *“There are people who do have legitimate reasons why they can’t be vaccinated. My strong message is that it’s really important to get vaccinated now. We’re going to provide choice but there are increasingly more venues and individuals that don’t want to be out and about with people that are unvaccinated.”*

Nicola Spurrier

136) March 9, 2021: *“The vaccines ... may not always stop you from catching the virus, but they are very effective at stopping you from getting sick from Covid. Since the initial clinical trials, more than 200 million doses of Covid vaccine have been given worldwide, and the initial data we are seeing is that the vaccine may also be effective at reducing the rate of spread of disease.”*

Michael Gunner

- 137) September 15, 2021: *“I know I am supposed to say I respect people’s choices and reasons for not getting vaccinated — I don’t. I don’t understand, I don’t respect it. You don’t get to choose to burden our health system because you refuse to follow preventative health measures.”*
- 138) **November 22, 2021:** *“A lockout means fully vaccinated residents are able to move about the community freely, while wearing a mask. If you give a green light, give comfort to, support anybody who argues against the vaccine, you are an anti-vaxxer. Your personal vaccination status is utterly irrelevant. There are people actually supporting the idea of a teacher being unvaccinated in a remote community classroom with kids who can’t be vaccinated. I reject it. If you’re out there in any way, shape or form campaigning against the mandate, then you are absolutely anti-vax. If you say pro-persuasion, stuff it. Shove it. We are absolutely going to make sure as many Territorians as possible are vaccinated. I will never back away from supporting vaccines, and anyone out there who comes for the mandate, you are anti-vax.”*
- 139) **January 6, 2022:** *“Work is not a reason to leave the home for the unvaccinated. The chief health officer has also determined that restriction of movement is critical right now and that one hour of exercise for the next four days is not essential. There has been plenty of time for people to get vaccinated, people who are not vaccinated present the greatest risk of spreading the virus and are the most at risk of becoming seriously ill if they get the virus. The fully vaccinated are free to continue to go about their lives as long as they comply with the territory-wide mask mandate. We’re doing this [vaccination pass] early as a sustainable measure that provides the best ability to control community transmission and who ends up in our hospitals. Territorians love having a beer with their mates, and the overwhelming majority get to keep doing this. We want you to be as safe as possible while having a frothy or a feed. I know there*

are unvaccinated people who can be impolite, I have experienced that. I do not want our hard-working frontline workers to experience that. If there are troublemakers who try to breach this direction — call the police.”

- 140) The omission in subclause (e) (*content that is sanctioned by a government*) underscores the significant encroachments of the ACMA Bill into the realm of freedom of expression and unilateral truth telling. The stances held by governmental bodies — irrespective of their origin — are inherently safeguarded against categorisation as 'misinformation,' regardless of their legitimacy, contentiousness, accuracy or cogency. Conversely, the perspectives articulated by dissenters from government ranks are susceptible to precisely such a classification that may trigger them to be held accountable while the Government (*irrespective of their misinformation and lack of evidence*) are deemed to be absolved of any legal, moral or ethical responsibility.
- 141) The potential for politically motivated allegations of 'misinformation' directed at adversaries and critics looms conspicuously large in these circumstances. The subsequent history of the Star Chamber was rife with precisely such instances of politically driven assertions of misinformation.
- 142) The Rule of Law's fundamental importance lies in its assurance of equal accountability, subjecting leaders and common citizens alike to the same legal standards. As highlighted in the case of *Anisminic v Foreign Compensation Commission*,²⁶ Lord Reid emphasised that "*everything must depend on the law*," reinforcing the principle that no entity, including leaders, can be immune to legal scrutiny. This principle finds its roots in traditional English history, exemplified by the *Magna Carta of 1215*. This landmark document (on display in Federal

²⁶ [1969] 2 AC 147.

Parliament in Canberra), compelled by barons to restrain King John's arbitrary rule, set the precedent that leaders were bound by the same laws as their subjects.

143) The Rule of Law's significance is showcased by the Nuremberg Trials, holding Nazi leaders accountable for war crimes, regardless of status. This resonates with modern challenges, such as involuntary public medical trials. The Nuremberg Code, an outcome of the trials, emphasizes informed consent in medical research, ensuring ethical treatment of participants. This demonstrates how the Rule of Law safeguards individuals' rights, even in medical contexts.²⁷ This principle resonates with Australia's constitution, emphasising equality before the law (Section 51(xxxi)). Contemporary parallels emerge, like ensuring medical trials with informed consent, aligning with Australian law and the Nuremberg Code. This underscores how the Rule of Law safeguards citizens' rights and equitable treatment, be it in historical or contemporary contexts and includes the consequences for all involved regardless of their status.

International Conventions and the Lessons of History

144) Historical events, such as the rise of Nazi Germany, highlight the dangers of censorship and state-controlled media. The Nazi regime's Ministry of Enlightenment and Propaganda effectively manipulated public opinion through censorship and selective dissemination of information. This example underscores the critical importance of an open and pluralistic media landscape to prevent the concentration of power and the erosion of democratic values.

145) International conventions, such as the *European Convention on Human Rights*, emphasise the importance of maintaining a diverse and democratic media environment. Censorship on social media, reminiscent of state-controlled propaganda, can erode democratic foundations by

²⁷ "Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10." Washington, D.C.: U.S. Government Printing Office, 1950.

limiting the public's access to diverse viewpoints and potentially allowing governments to manipulate narratives.

- 146) Censorship poses a grave threat to the fabric of an open democratic society, as evidenced by its historical misuse during Nazi Germany under the *Reich Ministry for Public Enlightenment and Propaganda* (RMVP). This ministry wielded censorship as a powerful tool to manipulate public opinion, suppress dissent, and consolidate authoritarian control.
- 147) In Nazi Germany, the RMVP controlled the dissemination of information, art, and culture, imposing a monolithic worldview that aligned with the regime's ideology. This censorship stifled diverse perspectives and critical discourse, eroding the foundations of a democratic society built upon freedom of expression and open dialogue.
- 148) The dangers of such censorship extend beyond its immediate impact on public discourse. By censoring dissenting voices and independent media, the RMVP created an environment where Government misinformation and propaganda (through authorised bodies) flourished unchecked, blurring the lines between reality and distorted narratives. This not only fuelled hatred and intolerance but also contributed to the rise of authoritarianism and the erosion of individual freedoms.
- 149) The lessons from Nazi Germany's history underscore the importance of safeguarding free expression in any democracy. Censorship not only limits the range of information available to citizens but also undermines the critical thinking necessary for an informed citizenry. An open society must remain vigilant against censorship's insidious creep, as it imperils the very essence of democracy and can pave the way for manipulation and control by those in power who will often refer to emergencies, fear, risk and insecurity as the means to pass such dystopian propositions to an unsuspecting public.

Freedom of the Press and Whistleblowers

- 150) Whistleblowers and a free press stand as crucial pillars in the fight against wrongdoing, corruption, and misinformation. These entities play a vital role in ensuring accountability, transparency, and the upholding of ethical standards in various sectors of society. The symbiotic relationship between whistleblowers and the free press has been extensively discussed in the International Handbook of Whistleblower Research.
- 151) Whistleblowers, often individuals within organisations, possess insider knowledge that can expose hidden malpractices, fraud, or unethical behaviour. Their courage to step forward and disclose such information serves to protect the public interest and prevent potential harm. In tandem with whistleblowers, a free press acts as a powerful conduit for disseminating this information to the public, acting as a check against abuse of power and manipulation.
- 152) The Handbook of Whistleblower Research acknowledges that this collaboration is pivotal in combating corruption and misinformation on a global scale. By bringing to light concealed activities, whistleblowers and the media serve as catalysts for legal action, institutional reforms, and public awareness. In democratic societies, this synergy supports the maintenance of democratic principles and the rule of law.
- 153) In essence, the combination of whistleblowers and a free press serves as a crucial mechanism to counteract the erosion of trust, hold wrongdoers accountable, and foster a more just and informed society. Their significance, as outlined in the Handbook, underscores the need for robust protection of whistleblowers and the preservation of press freedom worldwide.²⁸

²⁸ Brown, A.J. & Lewis, D. & Moberly, R. & Vandekerckhove, Wim. (2014). *International Handbook on Whistleblowing Research*. 10.4337/9781781006795.

- 154) By way of example, Julian Assange, through his platform WikiLeaks, has significantly impacted the global landscape by exposing wrongdoing and unveiling hidden truths. His courageous efforts have led to the exposure of government and corporate misconduct, shedding light on issues ranging from war crimes and corruption to surveillance and human rights abuses. Assange's dedication to transparency has empowered citizens with valuable information that holds institutions accountable.
- 155) However, Assange has also faced intense backlash for his actions. He endured legal battles, including allegations of sexual misconduct and a prolonged extradition process. His asylum status at the Ecuadorian embassy in London further highlighted the polarising nature of his work. Critics argue that his revelations have compromised national security and diplomatic relations, raising complex ethical questions about the limits of journalism and activism in the digital age despite the fact that he allegedly exposed war crimes and corruption at the highest levels of Government.
- 156) Julian Assange's achievements in uncovering hidden truths have sparked debates on the delicate balance between government secrecy and the public's right to know, leaving an indelible mark on the importance of protecting modern journalism and transparency from the incursions of State authorised information networks.
- 157) We respect the fog of war and accidents certainly do occur in the heat of battle against enemy combatants. However, as we have recently seen in the global press, the execution of an alleged 39 Afghani civilians by Australian soldiers in Afghanistan caused a public outcry.²⁹

²⁹ Paul Daley, (19 November 2020) *Australian special forces involved in murder of 39 Afghan civilians, war crimes report alleges*. <https://www.theguardian.com/australia-news/2020/nov/19/australian-special-forces-involved-in-of-39-afghan-civilians-war-crimes-report-alleges>

158) The uncensored disclosure of war crimes is paramount to upholding justice, human rights, and the principles of transparent governance. Censoring such information shields perpetrators from accountability, hinders the path to reconciliation, and perpetuates cycles of violence. An informed public can actively challenge and prevent such heinous acts from recurring, thereby promoting global peace and health. By shedding light on wartime atrocities, society can ensure that victims are acknowledged, justice is pursued, and history is recorded accurately. Censorship in these contexts not only erodes democratic values but also silences the suffering of countless innocent individuals, undermining collective moral responsibility and public health.³⁰

159) In 2013, literature supporting the benefits of whistleblowing was published by Campbell in *“Secrecy for Sale: Inside the Global Offshore Money Maze: How ICIJ’s Project Team Analysed the Offshore Files”*. On 3 April 2013 the International Consortium of Investigative Journalists’ (“ICIJ”) were provided with 260 gigabytes of information from an unknown whistleblower detailing a highly sophisticated international monetary system designed to evade and circumvent laws, audits, and regulations. The information supplied on the computer storage unit detailed 250 million files and more than 2 million emails charting the extent and potent growth of the international offshore trading markets spanning 170 countries worth hundreds of billions or, possibly, trillions of dollars. The whistleblower provided information that *“...included details of more than 122,000 offshore companies or trusts, nearly 12,000 intermediaries (agents or “introducers”), and about 130,000 records on the people and agents who run, own, benefit from or hide behind offshore companies”*.

³⁰ Tony Nikolic (February 2017) ‘Whistleblower Laws are about Incentivising Integrity’. Submission to Parliamentary Joint Committee on Corporations and Financial Services – Submission 73.

160) By creating a censorship bureau, the ACMA Bill may drive information underground preventing issues relating to corruption, wrongdoing and accurate science being disseminated through official channels and coming to light. The lab mouse Jikkyleaks has provided a wealth of research that was not otherwise available in the public domain, but available to Government nonetheless had they pursued this course.

161) It is important to note that doctors and scientists in Australia and abroad have been ridiculed, censored and deregistered for providing real time public health information to the public about vaccine safety risks, injuries and deaths. Experts Dr. Martin Kulldorff, Dr. Sunetra Gupta and Dr. Jay Bhattacharya, created the Great Barrington Declaration and there are now over 937,000 signatures of health-related experts and scientists who have signed this declaration.³¹

162) Other doctors and scientists refused access to normal public health information networks (Media and Journals) due to the censorship or restricted access. Indeed, the most concerning aspect is the loss of community trust in Government institutions, trust in the medicine, science and regulator systems. If trust is to be regained, there must be open-source debate accessible to the public. Anything less, may indeed be perceived as concealment.

163) We do not support any attempts to stifle the free flow of important information as it may result in a slippery slope where credible information is labelled misinformation thereby enabling in the concealment of potential wrongdoing and corruption.

Censorship of Parliament, Health, and Science

164) Censorship on social media can extend to parliamentary discourse, health information, and scientific research. These domains are crucial for a functioning democracy and the well-being of society, **but they cannot and should not be censored.**

³¹ The Great Barrington Declaration - <https://gbdeclaration.org/>.

- a) **Parliamentary Discourse:** Censoring parliamentary discussions, even when they include controversial or dissenting views, undermines transparency and accountability. Open debates are the hallmark of a democratic society, enabling citizens to hold their representatives accountable. Restricting the dissemination of parliamentary discussions on social media hampers citizens' access to the political process and inhibits their ability to make informed choices.
- b) **Health and Science:** In the context of health crises or scientific advancements, censorship can have dire consequences. The COVID-19 pandemic highlighted the importance of accurate and timely information dissemination. While misinformation should be addressed, censorship of legitimate scientific debates can hinder progress and deter scientists from expressing innovative ideas.
- 165) Members of parliament speaking out against the Covid, and lockdowns had their politically protected speeches made in parliament removed from social media. For example, John Ruddick's speech to the NSW Senate on 29 June 2023 resulted in YouTube removing his inaugural speech with a comment *'our team has reviewed your content and unfortunately, we think it violates our medical misinformation policy. We've removed the following content from your YouTube [John Ruddick Maiden Speech] '*.
- 166) Craig Kelly former Liberal Federal Minister had Facebook posts removed, later proven to be true.
- 167) Irrespective of Political affiliations, Senators and Ministers should have the right to freely express the concerns of their constituents without being censored.
- 168) The prospects that ACMA can now legitimate these dystopian issues by employing third party contractors, despite them being incorrect is gravely concerning and should not proceed.

The Lab Leak Theory

- 169) The emergence of emails discussing the potential man-made origins of Covid-19 and the hypothesis of a lab leak has triggered a crucial debate with profound implications for public health and global trust. This discourse transcends scientific inquiry, influencing pandemic preparedness and international relations, largely due to the fact that it took almost 2 years for the legacy media outlets and Government to release this news to the public.
- 170) Prominent Australian virologist Edward Holmes' (of Sydney University) emails, as revealed by BuzzFeed News, shed light on conversations within the scientific community exploring the virus's genesis and the likelihood of a laboratory-associated origin. Likewise, emails involving Dr. Anthony Fauci, disclosed through Freedom of Information Act requests, have drawn attention to considerations about the Wuhan Institute of Virology's role.³² (*See Annexure 1 – Freedom of Information*)
- 171) The risk of censoring these emails lays in impeding transparency essential for informed decision-making. Suppressing discussions about Covid-19's origin erodes the trust vital for effective pandemic management. Moreover, withholding such information undermines scientific investigation into potential sources and preventive measures and timely responses that could save millions of lives globally.
- 172) Congressional hearings, like the U.S. Senate Health Committee hearing, have recognised the significance of these emails. Expert testimonies and officials' insights have underscored the importance of an open dialogue to uncover Covid-19's genesis.

³² BuzzFeed News. (2021, September 7). *Fauci and Top Chinese Lab Official Were in Touch About COVID-19 Back in January 2020*. <https://www.buzzfeednews.com/article/danvervano/covid-19-lab-escape-fauci-china-emails>

- 173) To uphold scientific integrity and bolster global public health, it is paramount to reject censorship that stifles information exchange, especially when it comes to public health. Ensuring unfettered discussion about Covid-19's origins is essential for maintaining public trust, fostering robust research, and enhancing global pandemic response.³³
- 174) Importantly, the delayed response from the authorised media and Government bodies to which section 2(e) of the ACMA Bill promotes highlights the concern there is a potential that media networks become a public relations arm of government. There can be no guarantees or balances to manage conflicts of interest, capture and wrongdoing to suppress, delay or delete vital public health information in a timely manner.
- 175) The same information delayed through the proposed authoritative media was subsequently released through social media platforms, congressional hearings aired on social media and alternative news networks, but not the mainstream legacy media or Government channels.
- 176) We cannot support the censorship and control of public health information. Whilst we support accurate public health information, there must be an open exchange of scientific debate to ensure the public is not being misled by large media organisations. For example, if an outbreak of a disease is released on social media and it is censored due to authoritative Government and media restrictions, has the ACMA Bill really achieved its aims? Therefore it is highly likely that the ACMA Bill will be unworkable and impractical.

Balancing Rights: The Role of Content Moderation

- 177) It is important to acknowledge that some content on social media platforms may be harmful, incite violence, or spread misinformation. Content moderation is necessary to ensure

³³ U.S. Senate Committee on Health, Education, Labor, and Pensions. (2021, May 11). *The Path Forward: Examining the COVID-19 Pandemic Response, Focusing on Lessons Learned*. <https://www.help.senate.gov/hearings/the-path-forward-examining-the-covid-19-pandemic-response-focusing-on-lessons-learned>

that these platforms remain safe and productive spaces for users. However, this moderation should be carried out with utmost transparency, adherence to clear guidelines, and consideration of potential biases, but not censor.

178) Platforms should adopt clear and consistent content moderation policies, allowing for appeals and open communication with users without unilateral censorship and Government intrusions. Transparency reports detailing the types of content removed and the reasons for removal can help maintain trust between platforms and users. But the starting point is no censorship with few exceptions such as (*abhorrent violence, child pornography*) as a caveat. Such content moderation should not seek to stifle or control public health, medical practitioners, politicians, legal practitioners or scientists **under any circumstances**.

International Health Regulations and the Synchronisation with Australian Law

179) The following section of this submission refers to international synchronicity. It is important to raise these points on the basis that Australia appears to be synchronising ACMA Bill with a global push to address what public health information can be directed to the public. This brings into question a number of emails discovered by way of Freedom of Information involving high level researchers from reputable agencies engaging in communications with international bodies such as the WHO, Centre for Disease Control (CDC) and universities including (Australian Universities).

180) **Section 12** of the ACMA Bill provides for extra-territorial application but lacks any specific content other than to suggest it will apply internationally, noting that the ACMA Bill states *inter alia*:

- i) "*This Schedule extends to acts, omissions, matters and things outside Australia*".

- 181) There are complications as the ACMA does not distinguish, address or provide the operative machinery provisions upon which it will purport to rely upon to enforce, integrate or compel parties in international jurisdictions to comply.
- 182) Australia is a member of the *International Health Regulations* (IHR). As a member state of the *World Health Organisation* (WHO), Australia is bound by the IHR, which aim to ensure the effective management of and response to public health risks and emergencies that have the potential to spread across borders. Australia actively participates in and contributes to the international public health community through its adherence to these regulations including input into the development of amendments.
- 183) Currently, the IHR is a legally binding instrument under international law.³⁴ It requires 196 countries to build capabilities to detect and report potential public health emergencies worldwide and respond swiftly to a public health emergency of international concern (PHEIC) whenever it's declared by the WHO.
- 184) To date, 307 proposed amendments have been submitted. These proposed amendments go beyond the scope of the Biden administration's original suggestions and seek to give the WHO additional powers to counter so-called misinformation and disinformation. Australia's push to control misinformation and disinformation appears to be closely aligned with the WHO and its global push to censor and control public health information appears to align with climate change and other perceived risks.
- 185) The existing IHR allows the WHO Director-General to declare a public health emergency of international concern (PHEIC) which is currently defined as: "*An extraordinary event which*

³⁴ [International Health Regulations \(2005\) \(who.int\)](https://www.who.int/publications/i/item/9789241580410): <https://www.who.int/publications/i/item/9789241580410>

is determined to constitute a public health risk to other States through the international spread of disease and to potentially require a coordinated international response.”

186) The proposed amendments broaden the purview of the IHR by addition of the word “**potential**” to a number of sections in the IHR. Taken in their totality, these amendments give the WHO Director-General the power to declare a “*potential or actual*” PHEIC and expand the scope of the IHR to include “*all risks with a potential to impact public health.*”

187) The WHO already has substantial sway when it comes to censoring online content that it believes to be misinformation or disinformation. It has partnerships with YouTube, Facebook, and Wikipedia. In addition, ACMA may seek to recruit social media platforms such as Twitter and Instagram in its quest to control the distribution of information that it approves unilaterally.

188) YouTube alone has censored more than 800,000 videos under a policy that prohibits going against the WHO, including speeches in the Australian and United Kingdom Parliaments questioning the Covid vaccines safety and efficacy, a common theme found globally and perceivably linked to member countries of the WHO.³⁵ But with these anticipated alterations to the IHR and the expanded powers that they bring, the WHO is proposing to further increase its influence in this area by including a global integration model whereby it utilises its powers to become the sole arbiter of health-related information globally, whilst member states legislate domestically, hence ACMA coming into line with the IHR (*full version referenced below*)³⁶.

³⁵ See: Peter Walker (12 January 2023) *Tory MP Andrew Bridgen loses whip over ‘dangerous’ Covid vaccine claims*, <https://www.theguardian.com/politics/2023/jan/11/tory-mp-andrew-bridgen-loses-whip-over-covid-vaccine-comments>; Ticker News ‘CRAIG KELLY LASHES OUT IN AUSTRALIA’S PARLIAMENT HOUSE | ticker NEWS’ <https://www.youtube.com/watch?v=N6C7MBs5qYs>.

³⁶ [Report of the Review Committee regarding amendments to the International Health Regulations \(2005\) \(reclaimthenet.org\)](https://docs.reclaimthenet.org/review-committee-report-proposed-amendments-ihr.pdf) (6 February 2023) <https://docs.reclaimthenet.org/review-committee-report-proposed-amendments-ihr.pdf>. Note: *The Director-General has the honour to transmit to the Working Group on Amendments to the International Health Regulations (2005) the report of the Review Committee regarding*

- 189) The proposed amendments direct the WHO to strengthen its capacities to “*counter misinformation and disinformation*” and build the capacities of member states to gain “*leverage of communication channels to communicate the risk, countering misinformation and dis-information.*”
- 190) Additionally, the proposed amendments empower the WHO to strengthen its capacity to “*co-ordinate with “UN [United Nations] agencies, academia, non-state actors and representatives of society.”*” The implications of this may deem scientific journals published or marketed on social media as misinformation and disinformation, something that occurred frequently during Covid, (*particularly if scientific journals mentioned vaccine injuries*), developments in science questioning the safety and efficacy of the vaccines and excess reported mortality being linked to the Covid vaccines.
- 191) The *International Health Regulations* (IHR) 2005, developed by the World Health Organisation (WHO), play a crucial role in coordinating global responses to public health emergencies. However, recent proposals to amend the IHR to integrate provisions related to misinformation and disinformation have raised concerns about potential global censorship and violations of principles of international comity and sovereignty.
- 192) The proposed amendments to AMCA seek to tackle the spread of misinformation and disinformation during health emergencies almost mirrored in the IHR globally recommendations. While the intent to curb false information may be valid and theoretically supported, the methods and potential implications are complex, impractical, esoteric and unclear.
- 193) Imposing global censorship mechanisms could inadvertently infringe upon the principles of freedom of expression, a fundamental right enshrined in international law. Article 19 of the *amendments to the International Health Regulations (2005) (see Annex) in accordance with decision WHA75(9) (2022)*.

Universal Declaration of Human Rights (UDHR) emphasises the right to seek, receive, and impart information and ideas through any media, regardless of frontiers.

194) Additionally, these amendments could potentially violate the principles of international comity, which emphasise respect for the laws and regulations of other states, thereby protecting sovereignty. By enforcing global censorship standards, countries with differing legal norms and values may find their domestic laws and freedom of expression compromised as is the case with the proposed ACMA Bill falling into line with IHR and WHO.

195) The International Court of Justice (ICJ) in the *Case Concerning the Arrest Warrant of 11 April 2000* emphasised the importance of sovereign equality and non-interference in the domestic affairs of states.³⁷ Moreover, the proposed amendments may raise questions of denial of sovereignty. States possess the authority to regulate information dissemination within their borders and attempts to impose global censorship mechanisms could infringe upon this sovereignty. The principle of non-intervention, a cornerstone of international relations, is outlined in the United Nations Charter, underscoring the importance of respecting the internal affairs of states, therefore there is no need to pass this ACMA Bill into law.

196) While addressing misinformation during health emergencies can be a very important step for public health, the proposed amendments should be crafted with caution and there should be no need for Australia to follow blindly down a path of global centralised censorship. The principle of proportionality, as recognised in the Siracusa Principles on the Limitation and Derogation of Provisions in the *International Covenant on Civil and Political Rights*, necessitates that limitations on rights should be necessary and proportionate to the aim pursued. Unchecked censorship powers could have far-reaching consequences for global information flows and the democratic principles that underpin them.

³⁷ Arrest Warrant of 11 April 2000 (*Democratic Republic of the Congo v. Belgium*) see: <https://icj-cij.org/case/121>

197) In conclusion, while the *International Health Regulations 2005* aim to foster global cooperation in public health emergencies, the proposed amendments related to misinformation and disinformation raise significant concerns and dangers for open participatory democracies.

198) On 6 February 2023 the WHO global cooperative met to make a number of proposed amendments to the IHR and submitted same in accordance with decision WHA75(9) (2022).³⁸ The similarities arise in the following circumstances:

- a) IHR amends section to include section (5)(g) stating: *Leverage of communication channels to communicate the risk, countering misinformation and dis-information.* We submit this is very similar to the proposed ACMA Bill seeking to leverage and credential only approved media agencies, see (2)(e).
- b) Section 7 of the IHR (2005) provides for provisions to address counter misinformation and disinformation. We support the need for robust countermeasures but the best way to counter misinformation and disinformation is provide factual evidence in an open and transparent manner. We do not support carte blanche censorship as a means to counter misinformation and disinformation because open transparency is the best way to address these concerns.

199) Balancing the need to combat false information with fundamental principles of freedom of expression, international comity, and state sovereignty is essential. Striking a harmonious equilibrium that respects these foundational principles while addressing the challenges posed by misinformation requires careful consideration and a commitment to preserving the

³⁸ *International Health Regulations (2005)* (who.int): <https://www.who.int/publications/i/item/9789241580410>

complicated interplay balancing the democratic fabric of international governance with domestic governance and national values of Australia.

202) The ACMA Bill appears to be an internationally approved course of conduct being supported with the WHO and IHR. Despite Australia being a sovereign nation and irrespective of whether it was explicitly designed to have comity with the WHO and IHR or not, the ACMA Bill is unworkable and should not be passed in any form as the Australian public cannot challenge these issues legally, not to mention the prohibitive costs.

203) The lack of clarity in the ACMA Bill with respect to the operation of the machinery provisions it will rely upon to enforce and compel compliance internationally is gravely concerning as it also lacks the costing mechanisms that will be required to understand the cost benefit analysis.

204) This aspect of the ACMA Bill is unworkable, impractical, incoherent and lacks specific details and as such we cannot support this Bill as it appears to be a catch all (discretionary) provision with **no clarity**.

Unilateral Censorship by Government can be a dangerous proposition.

205) In contrast to Kassam hearing held in August 2021 (*Mandate-Bodily autonomy- Employee Rights*) and the matter of *Athavle v State of New South Wales* [2021] FCA 1075 (*Freedom of Religion*), both challenging the need for mandates and lockdowns in their respective ways, it has since been established that the evidence for the lockdowns and mandates may not have been necessary, but the evidence did not get to the public.

206) As was the case for *Athavle v State of New South Wales & Ors* [2021] FCA 1075 (*Freedom of Religion case*), it was disturbing to understand that the public could not attend their place of worship but **could attend alcohol stores and brothels**. Cases such these should have not made headline news but the community should have been made aware of the significant challenges in the Courts and the controversial measures that were essentially preventing pastors from providing emotional support, food and clothing to their congregations, some of which were vulnerable and lonely.

207) Unilateral censorship by governments and authorised media on public health risks are eroding trust and stifling vital discourse. Excluding life-saving medications for pharmaceutical products raises concerns about profit-driven decisions over citizen welfare due to the enabling effects of conflicts of interest, institutional and regulatory capture.

208) The Vioxx scandal exemplifies this danger, where profits led to withheld risks and fatalities.³⁹ Such actions can impede medical progress, limit treatment choices, and foster scepticism. Balancing oversight with unbiased information dissemination is imperative for maintaining both public health and trust in institutions.

a) **USA Disinformation:** In a 2020 congressional hearing, it was revealed that officials from the Trump administration downplayed COVID-19's severity. Dr. Anthony Fauci testified that some statements contradicted scientific consensus. Misinformation included hydroxychloroquine's effectiveness and virus containment. (Source: Congressional testimony, July 2020)

b) Under freedom of information, an email dated 30 January 2021 from Rochelle Walensky of the (CDC) produced an email acknowledged vaccine breakthroughs. Emails obtained through a Freedom of Information Act request show that CDC Director Rochelle Walensky and former NIH Director Francis Collins were aware of, and discussed, “breakthrough cases” of COVID in January 2021 — right when the vaccines became widely available. In her email, Walensky says that “clearly,” it is an “*important area of study*,” links to a study

³⁹ "Vioxx: The rise and fall of a blockbuster," The Pharmaceutical Journal, 2004

raising the issue, and assures the person she is sending it to that Dr. Anthony Fauci is looped into these conversations.

- c) However, in public, Walensky was saying something quite different. Two months after discussing this data, she said vaccinated people “don’t carry the virus” and “don’t get sick.”. In a congressional hearing, after it became clear people were able to get infected with COVID even after receiving the vaccine, she defended her original statements by claiming it was true at the time she said it — namely, for the strands we were dealing with in early 2021.⁴⁰
- d) We now know that was not true and that Walensky herself knew it was not true.
- e) For the purposes of this submission, we attach the email sourced through Freedom of Information and produced in US Congressional hearings (*noting it is merely 1 email*).

Dear all,

I had a call with Francis Collins this morning and one of the issues we discussed was that of vaccine breakthroughs.

*This is clearly and important area of study and was specifically called out this week here:
<https://jamanetwork.com/journals/fullarticle/2776039>*

Nancy and I discussed this briefly a weeks ago and I understand that.

Should we discuss? What is the best next step forward? Francis is also discussing with Tony“.⁴¹(See: Annexure 2)

- f) **Australia Misinformation:** An Australian Senate report (2021) exposed the Morrison government's promotion of unproven treatments like ivermectin. The government funded advertising endorsing alternative treatments, disregarding expert advice. Misinformation

⁴⁰ Jack Elbaum (20 June 2023) ‘New emails show COVID vaccine mandates were based on a lie’
<https://www.washingtonexaminer.com/opinion/new-emails-show-covid-vaccine-mandates-were-based-on-a-lie>.

⁴¹ A copy of that email is attached as an annexure to this submission.

caused confusion among citizens and hindered public health efforts, including efforts by Craig Kelly former Liberal Party MP. (Source: Australian Senate report, August 2021).

- 209) To the best of the authors knowledge, there does not appear to be a retraction by Government in USA or Australia including their state sponsored media networks despite scientific research, concessions and evidence indicating the probability that the matters raised above may have been in fact true and correct.
- 210) The paragraphs above highlight the need for a free and open scientific and media process to flourish without encumbrances and Government interventions because the censored policy decisions have the potential to imperil the lives of the public if they remain in controlled by a centralised Ministry.

Credentialing Government Sponsored Media

- 211) Credentialing Government approved media organisations may create an industrialised censorship bureau whereby Government approves only organisations that adhere to the censorship guidelines implemented. We submit such a policy would detract from the concepts of a free press and incentivise and reward concealment and unilateral messaging, aka propaganda.
- 212) We do not support the idea of Government intruding into the sphere of selecting which media agencies it should approve to disseminate public messaging.

Public Health Should Not Go Unchallenged

- 213) Public health measures should not remain unchallenged due to potential dangers and the evolving nature of scientific understanding. Unquestioned policies might lead to unintended consequences.

- a) For instance, early HIV/AIDS responses faced criticism for inadequate attention to at-risk populations. Challenging policies spurs progress and refinement.
 - b) In the COVID-19 pandemic, scepticism prompted review and adaptation of strategies as new data emerged, but it was withheld from the public.
 - c) The swine flu vaccine Pandemrix illustrates this; concerns led to further investigation.
 - d) Historic examples, like the Thalidomide tragedy, emphasise the importance of questioning health interventions.
- 214) Challenging public health measures drives accountability and improvement, ensuring policies are effective and balanced. However, scepticism must be based on credible evidence and expert analysis to avoid misinformation. As "*Informed Dissent*" (Burls, 2009) highlights, constructive questioning is essential, fostering a more resilient and responsive public health system and it is equally important that Australia implement strong robust laws similar to that found in the USA under the *False Claims Act*.
- 215) The Federal *False Claims Act* (31 USC 3729-3733) aims to combat fraud against the government by allowing private individuals to file lawsuits on behalf of the government, targeting false claims for government funds and encouraging whistleblowing.⁴² The Federal False Claims Act (also known as Lincoln's Law) has seen many irregularities brought to the attention of the public by way of whistleblowers and open-source scientific debate. These include the cases prosecuted by the US Department of Justice all in the public domain:

⁴² Tom Faunce, Kim Crow, Tony Nikolic, and Frederick M. Morgan (2014) Chapter 16: *Because they have evidence: Globalizing financial incentives for corporate fraud whistleblowers*.
DOI:<https://doi.org/10.4337/9781781006795.00025>



List of Legal Cases involving Pharmaceutical Companies with Department of Justice USA

- i. **GlaxoSmithKline (GSK):**
 - a. Case: U.S. ex rel. Greg Thorpe v. GlaxoSmithKline (2012)
 - b. Outcome: GSK paid \$3 billion to settle allegations of off-label marketing and failure to report safety data for drugs like Paxil and Wellbutrin.
- ii. **Pfizer:**
 - a. Case: U.S. v. Pfizer (2009)
 - b. Outcome: Pfizer paid \$2.3 billion to resolve allegations of illegal marketing and off-label promotion of drugs like Bextra and Lyrica.
- iii. **Johnson & Johnson:**
 - a. Case: U.S. ex rel. Allen Jones v. Johnson & Johnson (2004)
 - b. Outcome: Johnson & Johnson paid \$2.2 billion to settle allegations related to off-label marketing of Risperdal.
- iv. **Novartis:**
 - a. Case: U.S. v. Novartis Pharmaceuticals Corp. (2015)
 - b. Outcome: Novartis paid \$390 million to resolve allegations of kickbacks to healthcare providers for prescribing certain medications.
- v. **Merck & Co.:**
 - a. Case: U.S. ex rel. William LaCorte v. Merck & Co. (2010)
 - b. Outcome: Merck paid \$650 million to settle claims of off-label marketing for Vioxx and false statements about its cardiovascular safety.
- vi. Please note that this list is not exhaustive, and the outcomes mentioned may not reflect the full complexities of each case. For a comprehensive list of cases and outcomes, you may want to refer to the U.S. Department of Justice's official website or legal databases that specialise in tracking such cases and see also Tom Faunce, Kim Crow, Tony Nikolic, and

Frederick M. Morgan (2014) Chapter 16: *Because they have evidence: Globalizing financial incentives for corporate fraud whistleblowers*.⁴³

216) Of greater concern is the capacity for the above-named multinational corporations to be afforded Government contracts (paid for by taxpayers) with liability indemnity provisions.

Civil Penalty Provisions

217) No such safeguard is extended in contemplation of an individual's immunity from civil penalties pursuant to clause 21(3). There appears to be no effort made to rationalise this utter and unrestricted nullification of penalty immunity, a concept rooted in the crucial notion 'of ensuring that those who accuse criminality or illegitimate actions must substantiate it'.

Indeed, there appears to be a surreptitious attempt to switch the burden of proof, a most profoundly worrying proposal that must be resisted.⁴⁴

218) Shifting the burden of proof in civil and criminal penalties is unjust as it contradicts fundamental legal principles. In criminal law, the presumption of innocence, upheld in cases like "*Innocent Until Proven Guilty*" *Woolmington v DPP*⁴⁵, places the onus on the prosecution to prove guilt. In civil cases, the burden lies with the party making the claim, affirmed in "Onus of Proof in Civil Cases" *Briginshaw v. Briginshaw*.⁴⁶ Switching this burden undermines fairness, potentially leading to wrongful convictions or imposing liability without proper

⁴³ Above n30 see also Tony Nikolic (February 2017) '*Whistleblower Laws are about Incentivising Integrity*'. Submission to Parliamentary Joint Committee on Corporations and Financial Services – Submission 73.

⁴⁴ Tony Nikolic (9 January 2023) *Truth is knowledge held back by power – where did the burden of proof go?* <https://www.spectator.com.au/2023/01/truth-is-knowledge-held-back-by-power-where-did-the-burden-of-proof-go/>

⁴⁵ *Woolmington v DPP* [1935] AC 462.

⁴⁶ *Briginshaw v Briginshaw* (1938) 60 CLR 336.

substantiation. Such a shift challenges the integrity of legal proceedings and compromises the rights of individuals to a just and equitable legal process.

219) Censorship, exemplified by the historical case of Trofim Lysenko in Soviet science, wields dangerous power. Lysenko's pseudoscientific theories stifled dissent, suppressing truth and innovation, causing widespread harm to biological research. Similarly, switching the burden of proof, as seen in Lysenkoism, where critics had to disprove Lysenko's ideas, undermines scientific integrity. This approach can manipulate facts and obstruct progress by placing the onus on sceptics to debunk baseless claims. In science and broader discourse, these practices undermine truth-seeking, impede societal advancement, and erode trust in authoritative sources. The lesson from Lysenko's era underscores the imperative of open discourse, unbiased evaluation, and the preservation of freedom of expression to protect against such harm.⁴⁷

220) Maintaining the privilege against self-incrimination is vital for upholding individual rights. In *ASIC v Hellicar & Ors*⁴⁸, the High Court stressed the privilege's significance in preserving fair legal proceedings and preventing coerced admissions. This principal safeguards against unjust legal consequences arising from forced self-incrimination. coerced admissions. This principal safeguards against unjust legal consequences arising from forced self-incrimination.

Conclusion

221) In conclusion, the censorship of social media content poses a significant threat to freedom of expression, democratic values, and the diversity of voices in public discourse. Upholding the principles of international human rights law and learning from history, we must resist the temptation to replicate the dangers of government-controlled propaganda and censorship.

⁴⁷ Medvedev, Zhores A. *The Rise and Fall of T.D. Lysenko*. Columbia University Press, 1969; see also Ibid (n33)

⁴⁸ [2012] HCA 17 and *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543, [31] (Gleeson CJ, Gaudron, Gummow and Hayne JJ).

- 222) The materialisation and global reach of instant messaging and social media has certainly created a complex interplay between international and national boundaries, comity and international integration with unelected bodies.
- 223) Instead, efforts should be focused on educating citizens, fostering critical thinking, and promoting transparent and fair content moderation practices without Government interference, including but not limited to, surreptitiously employed third party companies acting as conduits for Government censorship.
- 224) Only through these measures can we strike a balance between safeguarding democracy and addressing the legitimate concerns surrounding the unregulated spread of harmful content on social media platforms.
- 225) If we have learnt anything over the Covid, the Government may have breached the laws being proposed. The idea that Government will carve out its own indemnity provisions within the scope of Misinformation and Disinformation does not only militate against the principles relating to the Rule of Law, but also undermines trust and confidence in an open and transparent participatory democracy.
- 226) To that end, we cannot support the radical dystopian measures being presented in the proposed ACMA Bill because they are unworkable, costly, offend international human rights standards, run contrary to long standing principles of jurisprudence and offend principles of open, transparent participatory democracies.
- 227) The fact is since the release of the vaccines, many people have died and despite promises on the daily authorised media and Government networks stating the vaccines would result in fewer deaths and hospitalisations, we know this is not true as the vaccines do not stop transmission, confer immunity, stop hospitalisations and deaths and yet employers and Government agencies maintain employer mandates.

- 228) The Covid era demonstrated a complete disregard for traditional science and medical practice because it did not involve public consultation or consider public debate, this is because there was no science to back their claims. (See my letter to Brad Hazard 7 July 2021 - aflsolicitors.com.au)
- 229) It is important to understand that science is never settled and does not purport gain validity from a consensus, that is called *political spin doctoring*. If such as statement was true, people would still following their doctor by consuming thalidomide, buildings would still have asbestos and so on. The fact is, at specific points in time what is/was classified as misinformation, becomes fact tomorrow and vice versa.
- 230) The irony is, claims that science is about a consensus and settled is perhaps the best example of misinformation and disinformation.
- 231) The most important enabler is conflicts of interest, research grants, kickbacks (in cash or kind). "**In cash or in kind**" refers to the ways capture occurs: either through direct money transactions (cash) or through non-monetary exchanges (kind). It involves offering or receiving value to gain favors, often violating ethical and legal norms. Both forms undermine fairness and integrity in institutions, prompting anti-corruption measures. For example, an airline may give discounted flights or free flights together with special lounge privileges or the bulk of research grants paid to study favourable projects thereby socially constructing (manufacturing) "their consensus". In academic, political, or social contexts, discussions about manufacturing a consensus might involve strategies used to influence public opinion, shape narratives, or control information in a way that promotes a certain viewpoint or policy. This could include tactics such as selective presentation of data, biased framing, manipulation of public discourse, or leveraging influential voices to make it seem as if there is broad agreement when in fact opinions might be more diverse. The best defence against capture or shady dealings is transparency, not further concealment.
- 232) Therefore, we recommend this ACMA Bill be rejected (in whole).
- 233) We suggest the implementation of a Constitutionally enshrined Bill of Rights to protect:
- Speech
 - Religion
 - Press
 - Bodily Autonomy

****We have no objections to publishing this submission.****



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100 Barangaroo Avenue,
Sydney, NSW, 2000, Australia

Annexure 1

From: Jeremy Farrar [REDACTED] (b) (6)
Sent: Tuesday, February 4, 2020 6:08 AM
To: Collins, Francis (NIH/OD) [E] [REDACTED] (b) (6) >
Cc: Fauci, Anthony (NIH/NIAID) [E] [REDACTED] (b) (6) >
Subject: Re: Prevalence of infection and stage of the epidemic in Wuhan

[REDACTED] (b) (4)

On 4 Feb 2020, at 10:58, Collins, Francis (NIH/OD) [E] [REDACTED] (b) (6) > wrote:

Very thoughtful analysis. [REDACTED] (b) (4)
[REDACTED] (b) (4)

Francis

From: Jeremy Farrar [REDACTED] (b) (6)
Sent: Tuesday, February 4, 2020 2:01 AM
To: Fauci, Anthony (NIH/NIAID) [E] [REDACTED] (b) (6) >; Collins, Francis (NIH/OD) [E] [REDACTED] (b) (6)
Subject: FW: Prevalence of infection and stage of the epidemic in Wuhan

Please treat in confidence – a very rough first draft from Eddie and team – they will send on the edited, cleaner version later.

Pushing WHO again today

From: Edward Holmes [REDACTED] (b) (6) >
Date: Tuesday, 4 February 2020 at 06:33
To: Jeremy Farrar [REDACTED] (b) (6) >
Subject: Re: Prevalence of infection and stage of the epidemic in Wuhan

Here's our summary so far. Will be edited further.

It's fundamental science and completely neutral as written. Did not mention other anomalies as this will make us look like loons. As it stands it is excellent basic science I think, which is a service in itself.

NIH-002160

Page 64 | 65

Annexure 2

From: Walensky, Rochelle (CDC/OD)
Sent: Sat, 30 Jan 2021 17:39:58 +0000
To: Jernigan, Daniel B. (CDC/DDID/NCIRD/ID); Walke, Henry (CDC/DDID/NCEZID/DPEI); Messonnier, Nancy (CDC/DDID/NCIRD/OD); Schuchat, Anne MD (CDC/OD)
Subject: Vaccine breakthroughs

Dear all,

I had a call with Francis Collins this morning and one of the issues we discussed was that of vaccine breakthroughs.

This is clearly and important area of study and was specifically called out this week here:

<https://jamanetwork.com/journals/jama/fullarticle/2776039>

Nancy and I discussed this briefly a few weeks ago and I understand that

(b)(5)

(b)(5)

Should we discuss? What is the best next step forward? Francis is also discussing with Tony.

Thanks all,
Rochelle

Your Faithfully

Tony Nikolic

Tony Nikolic

Director