



Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024

Key Points

- Seriously harmful online mis- and disinformation poses a threat to the safety and wellbeing of Australians as well as to our democracy, society and economy.
- The Australian Government has been steadfast in its commitment to keeping Australians safe online and that includes ensuring the ACMA has the powers it needs to hold digital platforms to account for seriously harmful mis- and disinformation on their services.
- The Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 (the Bill) will increase the transparency and accountability of major digital platforms and their responses to seriously harmful mis- and disinformation.
- The Bill includes:
 - **core transparency obligations** on digital platforms requiring them to be up front about risks on their platforms and to publish a current media literacy plan and their policies in tackling mis- and disinformation.
 - **information gathering and record keeping powers** for the ACMA to shine a light on digital platforms' efforts to address mis- and disinformation on their services, setting a clear expectation that digital platforms must be transparent with the Australian public.
 - the **ability for the ACMA to approve codes and make standards** to compel digital platforms to prevent and respond to mis- and disinformation on their services. A code or standard could include obligations on platforms to have robust systems and processes such as reporting tools, links to authoritative information, support for fact checkers and demonetisation of disinformation.
 - **Greater parliamentary oversight** of the framework including triennial reviews, annual reporting, and subjecting codes approved by the ACMA to parliamentary scrutiny and disallowance.
- The Bill has been informed by feedback from the public consultation process last year about the need for safeguards for freedom of speech and the Bill provides a number of important safeguards and additional clarifications to ensure this Bill meets community expectations and strikes the right balance.

Key changes from the Exposure Draft Bill 2023

The Department received over 24,000 responses on draft legislation released for public consultation in 2023 and undertook further targeted consultation to help shape a revised approach to the Bill. Changes to the Bill have refined definitions, improved workability and reinforced safeguards for freedom of expression.

Reinforced protections to safeguard freedom of speech

- Narrower scope of serious harms in the Bill to ensure greater alignment with Australia's obligations under international human rights law.
- Refined the categories of content that would be excluded from the scope of the Bill, including the reasonable dissemination of content for any academic, artistic, scientific or religious purpose. Removed the exclusion for government-authorised content and authorised electoral matter.
- Explicit provisions in the Bill to make clear that nothing in the Bill could require the removal of content or blocking end-users unless it is disinformation that involves inauthentic behaviour such as bots.
- Information gathering powers will not require individuals to produce information or documents except where they are a platform employee, content moderator, fact checker or a person providing services to the provider of the platform.

Improved workability of the Bill

- Refined the definition of mis- and disinformation to require that the content in question must be reasonably verifiable as false, misleading or deceptive.
- Clarified the definition of disinformation to include false, misleading or deceptive information disseminated via inauthentic behaviour.

Strengthened transparency and accountability on the ACMA and digital platforms

- Core upfront obligations on the platforms: publishing a current media literacy plan, a risk assessment report and policies or information on approach to addressing mis- and disinformation.
- Additional transparency on the platforms: the ACMA could make digital platform rules (disallowable by Parliament) with additional transparency requirements such as a complaints and dispute handling process for mis- and disinformation complaints, risk management and risk assessment.
- Parliamentary oversight: triennial reviews of the Bill's framework, annual reporting by the ACMA, and codes approved by the ACMA would be subject to parliamentary scrutiny and disallowance.

Safeguards for freedom of expression

The definitions in the Bill set a high threshold for the content in scope.

The definitions set out the types of societal harms the powers are designed to address, and ensure that the ACMA's use of its powers, and the platforms' systems and processes, are targeted at serious harms with significant and far-reaching implications for the Australian community or a segment thereof, or severe consequences for an individual in Australia.

It does not intend to cover all dissemination of content that may be considered false, but rather, dissemination of content that is reasonably verifiable as false, misleading or deceptive, and reasonably likely to cause or contribute to serious harm.

Serious harms

The types of harm in the Bill are: harm to the operation or integrity of an electoral or referendum process in Australia; harm to public health in Australia including the efficacy of preventative health measures; vilification of a group in Australian society; intentionally inflicted physical injury to an individual in Australia; imminent

damage to critical infrastructure or disruption of emergency services in Australia; and imminent harm to the Australian economy.

ACMA powers are directed at digital platforms

Digital platforms will continue to be responsible for the content they host and promote to users.

The ACMA's powers are directed to digital communications platform providers and not individual end-users. The Bill aims to incentivise digital communications platform providers to have robust systems and measures in place to address mis- and disinformation on their services.

The Bill does not empower the ACMA to:

- directly regulate content on digital communications platforms itself.
- require digital communications platform providers to remove content or block end-users from their services, except in the case of disinformation involving inauthentic behaviour (for example, coordinated bots, troll farms or fake accounts).
- have a direct takedown power for individual content or particular accounts.
- investigate or hold hearings in relation to particular content posted on a platform by a single end-user identifiable by the ACMA.

Excluded content

To protect freedom of expression, the Bill does not apply to:

- content reasonably regarded as parody or satire.
- the reasonable dissemination of content for academic, artistic, scientific, or religious purposes.
- professional news content, as this is already subject to existing industry oversight.

Government authorised content and electoral matter would be within the scope of the Bill. This means that content produced by government or political parties in Australia is treated the same as posts by individuals.

Parliamentary oversight

Digital platform rules, approved codes and standards made under the Bill are subject to parliamentary scrutiny and disallowance. They will need to be accompanied by an Explanatory Statement including a statement of compatibility with human rights, in accordance with section 9 of the Human Rights (Parliamentary Scrutiny) Act and section 15J of the Legislation Act.

The Bill requires a triennial review of the operation of the legislation. A report of the review must be tabled in the Parliament and must follow a period of public consultation and an assessment of the legislation's impact on freedom of expression. The Bill would also require the ACMA to give the Minister for Communications an annual report for presentation to the Parliament on the operation of the Bill.

Digital platform services in scope

The powers would apply to a broad range of digital platform services. This includes search engines, news aggregators, instant messaging services, social media, web-forums, dating sites and podcasts with an interactive feature.

The powers would not apply to SMS and MMS (text messages sent via mobile telecommunications networks), email, and media sharing services without an interactive feature such as SVODs (subscription video on demand), and BVODs (broadcast video on demand).

The Bill enables the ACMA to exclude low-risk platforms from requirements under the core transparency obligations, digital platform rules and standards.

Private messages on a digital platform service are out of scope

The ACMA's powers would not apply to direct private messages sent from one user to another, or to no more than 1,000 other users on a messaging service or social media platform, if no other number is specified by digital platform rules. Private messages sent by employees of the platform or by persons providing services to the platform are however within scope.

Group chats open to the public on an instant messaging service will be within scope

The content of group chats that are open to the public or public "channels" on instant messaging services are intended to be within scope of the ACMA's powers. This is also the case for posts in a forum or on a message board. In these cases, digital platform services will be responsible for ensuring they prevent and respond to mis- and disinformation on their services.

Transparency and accountability on digital platforms

The Bill will impose core transparency obligations on digital platforms requiring them to be upfront about mis- and disinformation risks on their services and what their policy approach is in relation to mis- and disinformation.

Platforms will be required to publish:

- a risk assessment report including risks from the design or functioning of the platform and risks from the use of the platform by end-users.
- their current policy or information on their current policy approach in relation to mis- and disinformation on the platform.
- a current media literacy plan for the platform.
- information (other than source code) specified in the digital platform rules.

Further transparency measures to be considered by Parliament

The ACMA would be empowered to create digital platform rules (subject to parliamentary oversight and disallowance) which could require digital platforms to:

- have, and update at various times, a risk management plan concerning how platforms manage the risks of mis- and disinformation on their service.
- update their media literacy plans and to give the ACMA assessments of any media literacy tools in their plans.
- have complaints and dispute handling processes for mis- and disinformation.

Information gathering and record keeping powers

The ACMA will have the ability to make record keeping rules requiring platforms to keep and report on specific information such as the number of complaints and reports about mis- and disinformation made by Australian users.

The record keeping powers would enable the ACMA to gather consistent and comparable information across platforms. This in turn would allow them to form an evidence base (including key performance indicators) to benchmark the effectiveness of platforms' efforts to address mis- and disinformation.

Importantly, the Bill also provides protections for user privacy as the ACMA will not be able to require users to provide information or documents about content they have posted on a platform, except in a person's capacity as a platform employee or contractor, content moderator or fact checker.

The ACMA will also be able to publish the information collected under the information gathering powers and record keeping rules on its website, including the identity of the platform to which the information relates. This is designed to improve transparency about platforms' activities relating to mis- and disinformation.

The ACMA would not be permitted to publish commercially sensitive information except in very limited circumstances (for example, where the information is already in the public domain) and will be required to consult with impacted digital platform service providers prior to publishing any information that providers have flagged as being protected.

Misinformation codes and standards

Under the Bill, the ACMA would have the power to request and approve codes and make standards to compel digital platform service providers to take action to prevent and respond to mis- and disinformation on their services. An approved code or standard could include obligations to cover matters such as reporting tools, links to authoritative information, support for fact-checking and demonetisation of disinformation.

These powers could be used in the event that the ACMA determines that existing industry efforts to combat mis- and disinformation on digital platform services do not provide adequate community protections. The ACMA would have the ability to approve and register industry developed codes which govern arrangements to combat mis- and disinformation in the sections of the industry to which they apply.

The ACMA would need to be satisfied of a number of factors before approving an industry code. For example, that the body or association that developed the code represents the relevant section of the digital platform industry, and has consulted with members of the public and participants in that section of the industry; and that the code is reasonably appropriate and adapted to achieving the purpose of providing adequate protection for the Australian community from serious harm caused or contributed to by mis- or disinformation on the platforms, and that it goes no further than reasonably necessary to provide that protection.

Registration of an industry code would make compliance with its obligations mandatory across the relevant section of the industry (for instance a specific class of digital communications platform) or across multiple sections of the industry.

The ACMA would be able to determine standards for industry through a legislative instrument. This is generally intended to be a last resort, and these provisions would carry higher penalties in cases of non-compliance, reflecting the graduated nature of the powers. A standard made by the ACMA could apply to one or more sections of the industry. The ACMA would also be required to consult with the relevant body or association (where it exists) before making a standard. The matters that the ACMA can determine standards about as well as the limitations on these powers are the same as for approved codes.

Approved codes and standards would be subject to parliamentary scrutiny and disallowance.

Enforcement

It is expected that the ACMA will use a graduated, proportionate and risk-based approach to non-compliance and enforcement, which could include issuing formal warnings, remedial directions and infringement notices, and applying for injunctions and civil penalties, depending on the particular provision.

Digital platforms may be subject to civil penalties of up to 5 percent of annual global turnover for breaches of a misinformation standard and up to 2 percent for approved misinformation codes.

A number of decisions by the ACMA could be reviewed in the Administrative Review Tribunal (ART) and the amount of civil penalties payable by digital communications platforms for breaches of approved misinformation codes and misinformation standards would be determined by the courts (up to the maximum amounts in the Bill).

There are no criminal penalties in the Bill.